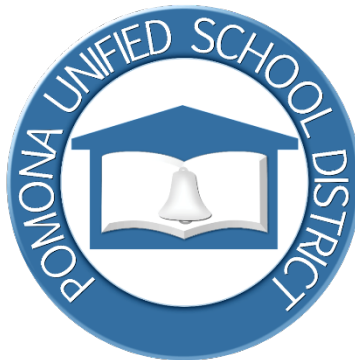


# **POMONA UNIFIED SCHOOL DISTRICT**

## **Renovation of Science Labs at Garey High School**

for

**Bid Package No. 10(25-26)FP**



**Owner:**

**Pomona Unified School District**

800 South Garey Avenue  
Pomona, California 91766

**Architect:**

YNL Architects

## **SCOPE of WORK**

The project Scope of Work included in this Contract is generally described as follows.

This project entails a thorough renovation of Rooms 112 and 113, the designated science laboratories at Garey High School. The renovation aims to ensure compliance with fire life safety standards and accessibility regulations.

- Complete demolition of existing cabinets and flooring.
- Construction of new steel stud walls.
- Three new electrical panels.
- Installation of water and gas lines with centrally located emergency services shut-off valves.
- Provision of a new fume hood, chemical safety shower, and deionized water stations.
- Installation of three monitors in each room, equipped with individualized learning experiences.
- Setup of new audio-visual (AV) and Intermediate Distribution Frame (IDF) racks in the adjacent hallway.

**END OF SCOPE OF WORK**

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PURPOSES**

NOTICE INVITING BIDS .....	7
INSTRUCTIONS TO BIDDERS .....	12
CHECKLIST OF MANDATORY BID FORMS .....	22
DESIGNATION OF SUBCONTRACTORS .....	23
DESIGNATION OF SUBCONTRACTORS FORM.....	24
BID FORM .....	25
CONTRACTOR’S CERTIFICATE REGARDING WORKERS’ COMPENSATION FORM.....	30
NON-COLLUSION DECLARATION.....	31
BID GUARANTEE FORM.....	32
BID BOND FORM.....	33
REQUEST FOR SUBSTITUTION AT TIME OF BID .....	36
ACKNOWLEDGMENT OF BIDDING PRACTICES REGARDING INDEMNITY FORM.....	38
DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) PARTICIPATION STATEMENT .....	39
DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) CONTRACTOR CLOSE-OUT STATEMENT .....	40
CONTRACTOR’S CERTIFICATE REGARDING DRUG-FREE WORKPLACE.....	41
CONTRACTOR’S CERTIFICATE REGARDING ALCOHOLIC BEVERAGE AND TOBACCO- FREE CAMPUS POLICY .....	42
* BIDDER REFERENCES AND RESPONSIBILITY INFORMATION .....	43
AGREEMENT FORM.....	46
PAYMENT BOND.....	55
PERFORMANCE BOND.....	58

GUARANTEE .....	62
ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION.....	63
INSURANCE DOCUMENTS & ENDORSEMENTS.....	66
CONTRACTOR CERTIFICATION REGARDING BACKGROUND CHECKS .....	68
CONTRACTOR CERTIFICATION REGARDING BACKGROUND CHECKS .....	69
ARTICLE 1 GENERAL PROVISIONS .....	70
1.1    BASIC DEFINITIONS.....	70
1.2    PARTIES TO THE CONSTRUCTION CONTRACT .....	83
1.3    CORRELATION, INTERPRETATION AND INTENT OF CONTRACT DOCUMENTS.....	83
1.4    OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS.....	85
ARTICLE 2 DISTRICT .....	86
2.1    INFORMATION AND SERVICES REQUIRED OF DISTRICT .....	86
2.2    DISTRICT’S RIGHT TO STOP THE WORK.....	87
2.3    DISTRICT’S RIGHT TO CARRY OUT THE WORK.....	87
2.4    DISTRICT’S AUDIT RIGHTS .....	87
2.5    DISTRICT-FURNISHED MATERIALS .....	88
ARTICLE 3 CONTRACTOR .....	91
3.1    CONTRACTOR STATUS .....	91
3.2    REVIEW OF CONTRACT DOCUMENTS AND SITE .....	92
3.3    SUPERVISION AND CONSTRUCTION PROCEDURES .....	95
3.4    LABOR, MATERIALS AND EQUIPMENT .....	96
3.5    CONTRACTOR'S WARRANTY .....	97
3.6    TAXES.....	98
3.7    PERMITS, FEES AND NOTICES.....	98
3.8    KEY PERSONNEL .....	99
3.9    CONTRACTOR'S CONSTRUCTION SCHEDULE.....	100
3.10   REPORTING, PROGRESS MEETINGS, DOCUMENTS AND SAMPLES AT THE SITE .....	101
3.11   SHOP DRAWINGS, PRODUCT DATA AND SAMPLES .....	102
3.12   USE OF SITE .....	104
3.13   CUTTING AND PATCHING .....	106
3.14   UTILITIES AND SANITARY FACILITIES.....	106
3.15   CLEANING UP .....	107
3.16   ACCESS TO THE WORK .....	107
3.17   ROYALTIES AND PATENTS .....	108
3.18   INDEMNIFICATION AND DEFENSE .....	108
3.19   LABOR, WAGES, PAYROLL RECORDS.....	109

3.20	LABOR COMPLIANCE PROGRAM .....	114
3.21	STORM WATER PERMITTING .....	115
3.22	SOLID WASTE MANAGEMENT .....	115
ARTICLE 4 CONSTRUCTION ADMINISTRATION .....		115
4.1	DESIGN CONSULTANT .....	115
4.2	CONSTRUCTION MANAGER .....	116
4.3	ADMINISTRATION OF THE CONSTRUCTION CONTRACT .....	116
4.4	CLAIMS .....	118
4.5	CLAIMS DISPUTE RESOLUTION PROCESS .....	122
4.6	NOTICE OF THIRD-PARTY CLAIMS .....	125
ARTICLE 5 SUBCONTRACTORS .....		125
5.1	SUBSTITUTION .....	125
5.2	SUBCONTRACTOR RELATIONS .....	125
5.3	CONTINGENT ASSIGNMENT OF SUBCONTRACTS .....	127
5.4	COMMUNICATIONS BY DISTRICT .....	127
5.5	NO THIRD-PARTY RIGHTS .....	128
5.6	DOCUMENT AVAILABILITY .....	128
5.7	NO LIABILITY OF DISTRICT .....	128
ARTICLE 6 DISTRICT'S OWN FORCES AND SEPARATE CONTRACTORS .....		128
6.1	DISTRICT'S RIGHT TO PERFORM CONSTRUCTION WITH OWN FORCES AND TO AWARD SEPARATE CONTRACTS .....	128
6.2	MUTUAL RESPONSIBILITY .....	128
6.3	DISTRICT'S RIGHT TO CLEANUP .....	129
ARTICLE 7 CHANGES IN THE WORK .....		129
7.1	CHANGES .....	129
7.2	SIGNATURES AND AUTHORIZATIONS .....	130
7.3	CHANGE ORDERS .....	131
7.4	UNILATERAL CHANGE ORDERS .....	131
7.5	FIELD ORDERS .....	131
7.6	PROCEDURES .....	133
7.7	PRICING .....	134
ARTICLE 8 CONTRACT TIME .....		142
8.1	COMMENCEMENT AND COMPLETION .....	142
8.2	DELAYS AND EXTENSIONS OF TIME .....	142
ARTICLE 9 PAYMENTS AND COMPLETION .....		146
9.1	CONTRACT SUM PAYABLE, CONTRACT PRICE .....	146
9.2	SEGREGATION OF COSTS/SCHEDULE OF VALUES .....	146
9.3	APPLICATIONS FOR PROGRESS PAYMENT .....	147
9.4	CERTIFICATIONS AND PROCESSING OF PROGRESS PAYMENTS .....	148
9.5	DECISIONS TO WITHHOLD CERTIFICATION OF PAYMENT .....	150
9.6	PAYMENT .....	152

9.7	FAILURE OF PAYMENT .....	153
9.8	DISPUTED PAYMENTS, CONTINUOUS WORK.....	153
9.9	SUBSTANTIAL COMPLETION .....	153
9.10	PARTIAL OCCUPANCY OR USE.....	154
9.11	FINAL COMPLETION.....	155
9.12	FINAL PAYMENT .....	156
ARTICLE 10 INSPECTIONS, HAZARDOUS SUBSTANCES AND SAFETY .....		158
10.1	INSPECTIONS .....	158
10.2	HAZARDOUS SUBSTANCES, MOLD.....	159
10.3	SAFETY PRECAUTIONS AND PROGRAMS .....	160
10.4	SAFETY OF PERSONS AND PROPERTY .....	161
10.5	EMERGENCIES .....	162
ARTICLE 11 INSURANCE AND BONDS .....		163
11.1	INSURANCE.....	163
11.2	DISTRICT'S LIABILITY INSURANCE .....	167
11.3	PERFORMANCE BOND AND PAYMENT BONDS .....	167
ARTICLE 12 UNCOVERING AND CORRECTION OF THE WORK.....		168
12.1	UNCOVERING OF THE WORK .....	168
12.2	CORRECTION OF THE WORK.....	169
12.3	GUARANTEE TO REPAIR PERIOD .....	169
12.4	ACCEPTANCE OF NONCONFORMING WORK.....	170
ARTICLE 13 MISCELLANEOUS PROVISIONS .....		171
13.1	GOVERNING LAW.....	171
13.2	TIME OF ESSENCE .....	171
13.3	SUCCESSORS AND ASSIGNS .....	171
13.4	WRITTEN NOTICE.....	171
13.5	RIGHTS AND REMEDIES .....	171
13.6	NO NUISANCE .....	172
13.7	EXTENT OF AGREEMENT .....	172
13.8	NO THIRD-PARTY RIGHTS.....	172
13.9	SEVERABILITY .....	172
13.10	PROVISIONS REQUIRED BY APPLICABLE LAWS.....	172
13.11	CONFLICTS OF INTERESTS.....	172
13.12	SURVIVAL .....	172
13.13	FEDERAL GRANTS .....	173
13.14	PROHIBITED INTERESTS.....	173
13.15	ASSIGNMENT OF ANTI-TRUST ACTIONS.....	173
13.16	CONFIDENTIALITY .....	173
13.17	NO WAIVER.....	174
13.18	Consent to photographing .....	174
ARTICLE 14 DEFAULT, TERMINATION AND SUSPENSION .....		174
14.1	DISTRICT REMEDIES FOR DEFAULT.....	174
14.2	SUSPENSION BY DISTRICT FOR CONVENIENCE.....	179

LEGAL:10526-0001/8093698.1

14.3	TERMINATION BY DISTRICT WITHOUT CAUSE.....	179
14.4	TERMINATION BY CONTRACTOR.....	180
14.5	WARRANTIES .....	180
ARTICLE 15 NON-DISCRIMINATION .....		181
15.1	NON-DISCRIMINATION IN SERVICES .....	181
15.2	NON-DISCRIMINATION IN EMPLOYMENT .....	181
GENERAL CONDITIONS .....		88





## **NOTICE INVITING BIDS**

### **POMONA UNIFIED SCHOOL DISTRICT**

NOTICE IS HEREBY GIVEN that the Pomona Unified School District, acting by and through its Governing Board, hereinafter referred to as “District”, will receive no later than **10:00 A.M. Tuesday, February 17, 2026** sealed bids for the award of a Contract for the project listed below: (The District will accept and not consider the sealed packets late as long as they are checked in and affixed with a district-generated label confirming receipt at the Front Desk of the Education Center by 10:00 A.M. The District will consider the sealed packets late if they are not checked in and affixed with a district-generated label confirming receipt by 10:01 A.M. on Tuesday, February 17, 2026. It is the highly recommended that Bidders confirm the time with the Receptionists upon arrival to the Education Center lobby.)

**BID NO. : 10(25-26)FP**

**PROJECT : Renovation of Science Labs at Garey High School**

Place of Bid Receipt: POMONA UNIFIED SCHOOL DISTRICT  
EDUCATION CENTER, FRONT DESK  
800 South Garey Avenue  
Pomona, California 91766

All bids shall be made and presented only on the forms presented by the District. All bids shall be opened and publicly read aloud in the Board Room at the above stated time. Any bids received after the time specified above or after any extensions due to material changes shall be returned unopened.

The Contract Time is **242** consecutive calendar days.

Liquidated Damages shall be **\$500.00** per day for every calendar day after Substantial Completion.

CONTRACTOR should consult the General Conditions, Supplementary Conditions, and General Requirements regarding Milestones and Liquidated Damages.

### **Labor Compliance Requirements**

All contractors must comply with the all applicable labor compliance requirements under the California Labor Code, including but not limited to, registration with the Department of Industrial Relations (Labor Code Sections 1771.1(a) and 1725.5), 1771, 1771.4, 1773.2, 1774, 1776, 1777.5, 1813, and 1815.

SB 854 – Department of Industrial Relations: SB 854 (Stat. 2014, chapter 28) made several changes to the laws governing how the Department of Industrial Relations (DIR) monitors compliance with prevailing wage requirements on public works projects. Prevailing wage applies to project over \$1,000.00. Pursuant to California Labor Code Section 1771.1(a), as amended by SB 854, a contractor may not bid, nor be listed as a subcontractor, for any bid proposal submitted for public work or engage in the performance of any contract for public work unless registered and qualified to perform public work pursuant to Labor Code Section 1725.5, subject to limited legal exceptions. Section 1771.1(a) states as follows:

LEGAL:10526-0001/8093698.1

Bid No. 10(25-26)FP  
Pomona Unified School District

Notice Inviting Bid  
Page 7

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

As a result, no contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with DIR. All contractors and subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner (aka Division of Labor Standards Enforcement). To comply with the DIR guidelines, the District will disqualify any contractor (and subcontractor) who is not registered with the DIR at the time the bid (or prequalification) package is opened, the award will go to the next low responsible bidder who is registered with the DIR.

This project will be subject to compliance monitoring and enforcement by the DIR, pursuant to California Labor Code Section 1771.4. In addition to submitting certified payroll records directly to the Labor Commissioner, the awarded contractor must also provide one original set of certified payroll records to the District's Purchasing Department.

Additional information on SB 854 and the labor compliance requirements can be found at the DIR's website at <http://www.dir.ca.gov>.

### **Prequalification of Bidders**

#### **[OPTIONAL UNTIL JANUARY 1, 2014 for State Funded Projects]**

As a condition of bidding for this Project, and in accordance with California Public Contract Code Section 20111.5, prospective bidders are required to submit to the District via PQBids a completed set of prequalification documents on forms. These documents will be the basis for determining which bidders are qualified to bid on this Project.

Bids will not be accepted if a Contractor has not been fully prequalified on PQBids where prequalification is required. Prequalification documents are available from **PQBids** at <https://pqbids.com/pomona-unified-school-district/> and then click on "*Click here to sign-up online as an AB 2031 contractor*". Prequalification documents must be submitted **and** fully approved by the PQBids by **8:00 A.M. on Tuesday, February 10, 2026**. Contractors will be notified by PQBids via email of their prequalification rating within a reasonable period of time after submission of their prequalification documents. Please note, when renewing existing prequalification status, applications should **NOT** be initiated within a week of prequalification deadline.

### **Additive/ Deductive Bid Alternates (See Section 13 of Instruction to Bidders)**

#### **[To Be Used Only on Projects Which Contain Additive or Deductive Alternates]**

If the District has included additive/ deductive alternates which require all bidders to price as part of their bid, the District will utilize the following method to determine the lowest bidder in accordance with Public Contract Code section 20103.8:

- ☒ The lowest bid shall be the lowest bid price on the base contract without consideration of the price on the additive or deductive items.
- ☐ The lowest bid shall be the lowest total of the bid prices on the base contract and the following additive or deductive items:

#### **[Insert List of Additive or Deductive Alternates]**

- ☐ The lowest bid shall be the lowest total of the bid prices on the base contract and the following additive or deductive items taken in order as listed below depending upon the available funds for this Project which is estimated at **[Insert Available Fund Amount for Project]**:

1. **[Insert Order of Additive or Deductive Alternates]**

2.

- ☐ 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 District before the ranking of all bidders from lowest to highest has been determined. The procedures the District will utilize to conceal the identity of any of the bidders will be as follows:

#### **[Insert Procedure to Conceal Identity of all Bidders]**

**\*\*Note:** Pursuant to Public Contract Code Section 20103.8, the selection process selected does not preclude the District from using any of the additive or deductive alternates from the Contract after the lowest responsible responsive bidder has been determined.

### **Miscellaneous Information**

Bids shall be received in the place identified above, and shall be opened and publicly read aloud at the above-stated time and place.

**Each qualified bidder may purchase a complete set of full size plans.** There will be a non-refundable fee for project documents. No partial sets will be available. To obtain the project documents please contact A & I Reprographics at 909-390-4839 or email your request to [bid@aandirepro.com](mailto:bid@aandirepro.com). For project information, please contact **Jeff Coakley** at the Pomona Unified School District at (951) 529-2551. Project plans and specifications also may be viewed on-line and downloaded by going to the Pomona Unified School District's website <http://www.pusd.org/go/purchasing>. No bid may be withdrawn for ninety (90) days.

There will be a Mandatory Pre-Bid Conference on **Tuesday, January 27, 2026 at 10:00 A.M. sharp in the Board Room at the District Education Center, 800 S. Garey Avenue Pomona, CA. Bidder must sign in at the Front Desk of the Education Center (same street address). A new electronic check-in process will be implemented, please plan on arriving at the Lobby at least 20 minutes early to allow sufficient time to complete check-in.** The doors will be locked at said time and no other access will be allowed. Any Contractor bidding on the Project who fails to attend the entire mandatory job walk and conference will be deemed a non-responsive bidder and will have its bid returned unopened. All bidders will be responsible for obtaining any addendums or revisions to the project. It is the contractor's responsibility to attend the requested Pre-Bid Conference and Job Walk to ensure accurate project bid cost(s) and any pertinent information.

Each bidder shall be a licensed contractor pursuant to the California Business and Professions Code, and be licensed to perform the work called for in the Contract Documents. The successful bidder must possess a valid and active Class **"B"** License at the time of award and throughout the duration of this Contract. The Contractor's California State License number shall be clearly stated on the bidder's proposal

Subcontractors shall be licensed pursuant to California law for the trades necessary to perform the Work called for in the Contract Documents.

Each bid must strictly conform with and be responsive to the Contract Documents as defined in the General Conditions.

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

Each bidder shall submit with his bid — on the form furnished with the Contract Documents — a list of the designated subcontractors on this Project as required by the Subletting and Subcontracting Fair Practices Act, California Public Contract Code Sections 4100 et seq. Each bidder shall fill in the Designation of Subcontractor Form provided by the District (attaching a list of subcontractors is not acceptable and may be grounds for the bidder to be considered non-responsive).

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

Each bidder's bid must be accompanied by one of the following forms of bidder's security: (1) cash; (2) a cashier's check made payable to the District; (3) a certified check made payable to the District; or (4) a bidder's bond executed by a California admitted surety as defined in Code of Civil Procedure Section 995.120, made payable to the District in the form set forth in the Contract Documents. Such bidder's security must be in an amount not less than ten percent (10%) of the maximum amount of bid as a guarantee that the bidder will enter into the proposed Contract, if the same is awarded to such bidder, and will provide the required Performance and Payment Bonds, insurance certificates and any other required documents. In the event of failure to enter into said Contract or provide the necessary documents, said security will be forfeited.

The District has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this work is to be performed for each craft, classification or type of worker needed to execute the Contract. These per diem rates, including holiday and overtime work, as well as employer payments for health and welfare, pension, vacation, and similar purposes, are on file at the District, and are also available from the Director of the Department of Industrial Relations. Pursuant to California Labor Code Sections 1720 et seq., it shall be mandatory upon the Contractor to whom the Contract is awarded, and upon any subcontractor under such Contractor, to pay not less than the said specified rates to all workers employed by them in the execution of the Contract.

No bidder may withdraw any bid for a period of ninety (90) calendar days after the date set for the opening of bids.

Separate payment and performance bonds, each in an amount equal to 100% of the total Contract amount, are required, and shall be provided to the District prior to execution of the Contract and shall be in the form set forth in the Contract Documents.

All bonds (Bid, Performance, and Payment) must be issued by a California admitted surety as defined in California Code of Civil Procedure Section 995.120.

Where applicable, bidders must meet the requirements set forth in Public Contract Code Section 10115 et seq., Military and Veterans Code Section 999 et seq. and California Code of Regulations, Title 2, Section 1896.60 et seq. regarding Disabled Veteran Business Enterprise ("DVBE") Programs. Forms are included in this Bid Package.

Any request for substitutions pursuant to Public Contracts Code Section 3400 must be made at the time of Bid on the Substitution Request Form set forth in the Contract Documents and included with the bid.

No telephone or facsimile machine will be available to bidders on the District premises at any time.

It is each bidder's sole responsibility to ensure its bid is timely delivered and received at the location designated as specified above. Any bid received at the designated location after the scheduled closing time for receipt of bids shall be returned to the bidder unopened.

POMONA UNIFIED SCHOOL DISTRICT

BY: Ed Govea, Director of Purchasing and Warehouse  
By authority of the Governing Board of  
Pomona Unified School District  
Los Angeles County, State of California

**PUBLICATION DATES: January 16, 2026 and January 23, 2026**

**PUBLICATIONS:** 1) Inland Valley Daily Bulletin, 2) BidNet Direct, 3) McGraw-Hill Construction Dodge, 4) BidAmerica

**Internet:** [www.pusd.org/go/purchasing](http://www.pusd.org/go/purchasing)

## **INSTRUCTIONS TO BIDDERS**

1. **Preparation of Bid Form.** Proposals under these specifications shall be submitted on the blank forms furnished herewith at the time and place stated in the Notice Inviting Bids. All blanks in the bid form must be appropriately filled in, and all proposed prices must be stated clearly and legibly in both words and numerals. All bids must be signed by the bidder in permanent blue ink and submitted in sealed envelopes, bearing on the outside, the bidder's name, address, telephone number, and California Contractor's License number, and the name of the Project for which the bid is submitted. The District reserves the right to reject any bid if all of the above information is not furnished. It is each bidder's sole responsibility to ensure its bid is timely delivered and received at the location designated as specified above. Any bid received at the designated location after the scheduled closing time for receipt of bids shall be returned to the bidder unopened. **The Pomona Unified School District is not responsible for bids sent via U.S. Mail, UPS, and Federal Express or by any other delivery service. All bids are due at the Front Desk of the Education Center by the posted or advertised closing date and time. It is the bidders' responsibility to ensure that their bid is delivered to the Front Desk located on the first floor, at 800 South Garey Ave, Education Center, Pomona, CA 91766.** The District will accept and not consider the sealed packets late as long as they are checked in and affixed with a district-generated label confirming receipt at the Front Desk of the Education Center by 10:00 A.M. The District will consider the sealed packets late if they are not checked in and affixed with a district-generated label confirming receipt by 10:01 A.M. on **Tuesday, February 17, 2026**. It is highly recommended that Bidders confirm the time with the Receptionists upon arrival to the Education Center lobby.

**If bidder is submitting their bid packet by mail (instead of in-person delivery), the sealed packet must reference the bid number and project title AND must be addressed to:**

Pomona Unified School District  
Attn: Purchasing Department  
800 S. Garey Avenue  
Pomona, CA 91766

It is still the bidder's responsibility to ensure that their bid packets, if mailed, still arrive at the Purchasing Department at least one day prior to the bid deadline.

2. **Bid Security.** Each bid must be accompanied by one of the following forms of bidder's security: (1) cash; (2) a cashier's check made payable to the District; (3) a certified check made payable to the District; or (4) a bidder's bond executed by a California admitted surety as defined in Code of Civil Procedure Section 995.120, made payable to the District, in the form set forth in the Contract Documents. If Bidder chooses to submit another form of Security in lieu of the Bidder's Bond, the District reserves the right to hold the Security until the award of the contract by the District's Board of Education. The District's decision shall be absolute and final. The Security will be released to Bidder the day after the Board Meeting on which the contract is awarded. Such bidder's security must be in an amount not less than ten percent (10%) of the maximum amount of such bidder's bid as a guarantee that the bidder will enter into the Contract, if the same is awarded to such bidder, and will provide the required Performance and Payment Bonds, insurance certificates and any other required documents. In the event that a bidder is awarded the Contract and such bidder fails to enter into said Contract or provide the surety bond or bonds within five (5) calendar days after award of the Contract to bidder, said security will be forfeited.

3. **Signature.** The bid form, all bonds, all designations of subcontractors, the Contractor's Certificate Regarding Workers Compensation, Non-Collusion Declaration, Substitution Request Form,

Acknowledgement of Bidding Practices Regarding Indemnity, DVBE Participation Statement, Contractor's Certificate Regarding Drug-Free Work Place, Contractor's Certificate Regarding Alcoholic Beverage and Tobacco-Free Campus Policy, Bidder References and Responsibility Information, the Agreement, and all Guarantees must be signed in **permanent blue ink** in the name of the bidder and must bear the signature in longhand of the person or persons duly authorized to sign the bid. (All documents identified in the Required Bid Forms Section must be signed in permanent blue ink.) No photocopies of signatures are permitted. All required documents must be signed and submitted with permanent wet ink. The same applies for embossed documents executed by a surety company and/or a corporation. If an embossed seal is used, it must be an original (not photocopies of embossed paperwork).

If bidder is a corporation, the legal name of the corporation shall first be set forth, together with two signatures: one from the President and one from the Secretary or Assistant Secretary. Alternatively, the signature of other authorized officers or agents may be affixed, if a certified copy of the resolution of the corporate board of directors authorizing them to do so is provided to the District. Such documents shall include the title of such signatories below the signature and shall bear the corporate seal, stamp, sticker, or other marks certifying a document's originality and validity as required by law and at the District's discretion to the extent permitted by law.

If bidder is a partnership, the true name of the firm shall first be set forth, together with the names of all persons comprising the partnership or co-partnership. The bid must be signed by all partners comprising the partnership unless proof in the form of a certified copy of a statement of partnership acknowledging the signer to be a general partner is presented to the District, in which case the general partner may sign.

Bids submitted as joint ventures must so state and be signed by each joint venturer.

Bids submitted by individuals must be signed by the bidder unless an up to date power-of-attorney is on file in the District office, in which case, said person may sign for the individual.

The above rules also apply in the case of the use of a fictitious firm name. In addition, however, where a fictitious name is used, it must be so indicated in the signature.

4. Modifications. Changes in or additions to the bid form, recapitulations of the work bid upon, alternative proposals, or any other modification of the bid form which is not specifically called for in the Contract Documents may result in the District's rejection of the bid as not being responsive to the Notice Inviting Bids. **No oral or telephonic modification of any bid submitted will be considered.**

5. Erasures, Inconsistent or Illegible Bids. The bid submitted must not contain any erasures, interlineations, or other corrections unless each such correction creates no inconsistency and is suitably authenticated by affixing in the margin immediately opposite the correction the signature or signatures of the person or persons signing the bid. In the event of inconsistency between words and figures in the bid price, words shall control figures. In the event that the District determines that any bid is unintelligible, inconsistent, or ambiguous, the District may reject such bid as not being responsive to the Notice Inviting Bids.

6. Examination of Site and Contract Documents. Each bidder shall visit the site of the proposed work and become fully acquainted with the conditions relating to the construction and labor so that the facilities, difficulties, and restrictions attending the execution of the work under the Contract are fully understood. Bidders shall thoroughly examine and be familiar with the drawings and specifications. The failure or omission of any bidder to receive or examine any Contract Documents, form, instrument,



addendum, or other document or to visit the site and become acquainted with conditions there existing shall not relieve any bidder from obligations with respect to the bid or to the contract. The submission of a bid shall be taken as prima facie evidence of compliance with this section. Bidders shall not, at any time after submission of the bid, dispute, complain, or assert that there were any misunderstandings with regard to the nature or amount of work to be done.

7. Withdrawal of Bids. Any bid may be withdrawn, either personally or by written request, at any time prior to the scheduled closing time for receipt of bids. The bid security for bids withdrawn prior to the scheduled closing time for receipt of bids, in accordance with this paragraph, shall be returned upon demand therefor.

No bidder may withdraw any bid for a period of ninety (90) calendar days after the date set for the opening of bids.

8. Agreements, Insurance and Bonds. The Agreement form which the successful bidder, as Contractor, will be required to execute, and the forms and amounts of surety bonds and insurance endorsements which Contractor will be required to be furnished at the time of execution of the Agreement, are included in the bid documents and should be carefully examined by the bidder. The number of executed copies of the Agreement, the Performance Bond, and the Payment Bond required is three (3). Payment and Performance bonds must be executed by an admitted surety insurer as defined in Code of Civil Procedure 995.120.

9. Interpretation of Plans and Documents/Pre-Bid Clarification. If any prospective bidder is in doubt as to the true meaning of any part of the Contract Documents, or finds discrepancies in, or omissions, a written request for an interpretation or correction thereof may be submitted to the District. The bidder submitting the request shall be responsible for its prompt delivery. **Any interpretation or correction of the Contract Documents will only be made by Addendum duly issued, and a copy of such Addendum will be made available for each contractor receiving a set of the Contract Documents.** No person is authorized to make any oral interpretation of any provision in the Contract Documents, nor shall any oral interpretation be binding on the District. If discrepancies on drawings, specifications or elsewhere in the Contract Documents are not covered by addenda, bidder shall include in their bid methods of construction and materials for the higher quality and complete assembly.

Each request for clarification or request for information (RFI) shall be submitted using the link below:

<https://forms.gle/5JKuFf4MndqULts5>

All questions or comments regarding this bid (except to inquire about the number of addenda issued) must be put submitted using the link above **no later than 12:00 P.M. on Tuesday, February 3, 2026.**

You will receive an email confirmation from Google upon successful submission of Request for Information (RFI). If you encounter problems submitting RFI's using the link, please contact Mina Young at 909 397 4800 ext. 23901.

Pomona Unified School District shall not be obligated to answer any questions received after the above-specified deadline or any questions submitted in a manner other than as instructed above.

Each transmitted request shall contain the name of the person and/or firm filing the request, address, telephone, and fax number, Specifications and/or Drawing number. Bidder is responsible for the legibility of hand written requests. A written response to timely pre-bid clarifications requests which

materially affects the bidders price will be made by Addendum issued by the Pomona Unified School District not less than seventy-two (72) hours prior to bid opening.

10. Bidders Interested in More Than One Bid. No person, firm, or corporation shall be allowed to make, or file, or be interested in more than one prime bid for the same work unless alternate bids are specifically called for. A person, firm, or corporation that has submitted a proposal to a bidder, or that has quoted prices of materials to a bidder, is not thereby disqualified from submitting a proposal or quoting prices to other bidders or making a prime proposal.

11. Award of Contract. The Contract will be awarded to the lowest responsive responsible bidder by action of the governing Board. The District reserves the right to reject any or all bids, or to waive any irregularities or informalities in any bids or in the bidding. In the event an award is made to bidder, and such bidder fails or refuses to execute the Contract and provide the required documents within five (5) calendar days after award of the Contract to bidder, the District may award the Contract to the next lowest responsible and responsive bidder or release all bidders. **Each bid must conform and be responsive to the Contract Documents as defined in the General Conditions.**

12. Bid Protest Procedure. At the time of the bid opening, bidder may request to see the Designation of Subcontractor list. Once the bid opening meeting has concluded, bid results, Designation of Subcontractor list(s), and other bid documents must be requested in writing, via email, Ed Govea, Director of Purchasing and Warehouse (Eduardo.Govea@pusd.org). Any bidder may file a bid protest. The protest shall be filed in writing with the District's Director of Purchasing and Warehouse not less than three (3) calendar days after the posting or release of the bid results. An e-mail address shall be provided and by filing the protest, protesting bidder consents to receipt of e-mail notices for purposes of the Protest and Protest related questions and Protest Appeal, if applicable. The protest shall specify the reasons and facts upon which the protest is based.

a. Resolution of Bid Controversy: Once the bid protest is received, the apparent lowest responsible bidder may be notified of the protest and the evidence presented. If appropriate, the apparent lowest responsible bidder may be given an opportunity to rebut the evidence and present evidence that the apparent low bidder should be allowed to perform the Work. If deemed appropriate by the District, an informal hearing will be held. District will issue a written decision within fifteen (15) calendar days of receipt of the protest, unless factors beyond the District's reasonable control prevent such resolution. The Decision on the Bid Protest will state the reasons for the actions taken by District and will be copied to all parties involved in the protest.

b. Appeal: If the protesting bidder or the apparent lowest responsible bidder is not satisfied with the decision, the matter may be appealed to the Assistant Superintendent, CFO of Business Services, or their designee, within three (3) calendar days after receipt of the District's written Decision on the Bid Protest. The appeal must be in writing and sent via overnight registered mail with all accompanying information relied upon for the appeal and an e-mail address from which questions and responses may be provided to:

**Pomona Unified School District  
Business Department**  
800 South Garey Avenue  
Pomona, CA 91766

c. Appeal Review: The Assistant Superintendent, CBO of Business Services or their designee shall review the Decision on the Bid Protest from the Director of Purchasing and Warehouse and issue a written response to the Appeal, or if appropriate, appoint a Hearing Office to conduct a hearing

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Bid No. 10(25-26)FP  
Pomona Unified School District

Instructions to Bidders  
Page 15

and issue a written decision. The written decision of the Assistant Superintendent, CBO of Business Services or the Hearing Officer shall be rendered within fifteen (15) calendar days and shall state the basis for the decision. The decision concerning the Appeal will be final and not subject to any further Appeals.

d. Reservation of Rights to Proceed with Project Pending Appeal. The District reserves the right to proceed to award the Project and commence construction pending an Appeal. If there is State Funding or a critical completion deadline, the District may choose to shorten the time limits set forth in paragraph 12 if written notice is provided to the protesting party. E-mailed notice with a written confirmation sent by First Class Mail shall be sufficient to constitute written notice. If there is no written response to a written notice shortening time, the District may proceed with the award.

e. Finality. Failure to strictly comply with this Bid Protest Procedure shall constitute a waiver of the right to protest and shall constitute a failure to exhaust the protesting bidder's administrative remedies. As such, full compliance is an express condition precedent to bidder's ability to submit a protest and any subsequent legal challenges, if any.

13. Alternates. If alternate bids are called for, the Contract may be awarded at the election of the Governing Board to the lowest responsible and responsive bidder using the method and procedures outlined in the Notice Inviting Bids and as specified in the section entitled Alternate/Deductive Bid Alternates.

a. Subcontractor Listing for Alternates. If alternate bids are called for and the bidder intends to use different or additional subcontractors, a separate list of subcontractors must be submitted for each such alternate.

14. 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, surety and insurance claims experience, construction experience, completion ability, workload, organization available for the performance of the Contract, and other factors pertinent to a Project of the scope and complexity involved.

15. Listing Subcontractors. Each bidder shall submit with its bid, on the form furnished with the Contract Documents, a list of the names, license numbers and locations of the places of business of each subcontractor who will perform work or labor or render service to the bidder in or about the project, or a subcontractor who under subcontract to the bidder, specially fabricates and installs a portion of the work, in an amount in excess of one-half of 1 percent of the bidder's total bid as required by the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100, et seq.).

a. Subcontractor Listing for Alternates. If alternate bids are called for and the bidder intends to use different or additional subcontractors, a separate list of subcontractors must be submitted for each such alternate.

16. Workers' Compensation. In accordance with the provisions of Labor Code Section 3700, the successful bidder as the Contractor shall secure payment of compensation to all employees. The Contractor shall sign and file with the 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 requires 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 a part of the Bid Package.

17. Contractor's License. To perform the work required by this notice, the Contractor must possess the Contractor's License as specified in the Notice Inviting Bids, and the Contractor must maintain the license throughout the duration of the contract. If, at the time of award of the Contract, bidder is not licensed to perform the Project in accordance with Division 3, Chapter 9, of the Business and Professions Code for the State of California and the Notice to Contractors calling for bids, such bid will not be considered and the Contractor will forfeit its bid security to the District.

18. Anti-Discrimination. It is the policy of the District that in connection with all work performed under contracts, 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. The Contractor agrees to comply with applicable federal and California laws, including, but not limited to, the California Fair Employment and Housing Act, beginning with Government Code section 12900 and Labor Code section 1735. In addition, the Contractor agrees to require like compliance by any subcontractors employed on the work by such Contractor.

19. Preference for Materials and Substitutions.

a. One Product Specified. Unless the Plans and Specifications state that no Substitution is permitted, whenever the Contract Documents indicate any specific article, device, equipment, product, material, fixture, patented process, form, method, construction, or any specific name, make, trade name, or catalog number, with or without the words, "or equal," such specification shall be read as if the language "or equal" is incorporated.

b. Request for Substitution. Bidder may, unless otherwise stated, offer any material, process, article, etc., which is materially equal or better in every respect to that so indicated or specified ("Specified Item") and will completely accomplish the purpose of the Contract Document. If bidder desires to offer a Substitution for a Specified Item, such bidder must make a request in writing on the District's Substitution Request Form ("Request Form") and submit the completed Request Form with the bidder's bid. The Request Form must be accompanied by evidence as to whether the proposed substitution:

- 1) Is equal in quality, service, and ability to the Specified Item as demonstrated by a side by side comparison of key characteristics and performance criteria (CSI comparison chart);
- 2) Will entail no changes in detail, construction and scheduling of related work;
- 3) Will be acceptable in consideration of the required design and artistic effect;
- 4) Will provide no cost disadvantage to the District;
- 5) Will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts; and
- 6) Will require no change in the Contract Time.

In completing the Request Form, bidder must state with respect to each requested substitution whether bidder will agree to provide the Specified Item in the event that the District denies bidder's request for substitution of a Specified Item. In the event that bidder does not agree in the Request Form to provide the Specified Item and the District denies the requested Substitution, the bidder's bid shall be considered non-responsive and the District may award the Contract to the next lowest bidder or in its sole discretion, release all bidders. In the event that bidder has agreed in the Request Form to provide the Specified Item and the District denies bidder's requested substitution for a Specified Item, bidder shall execute the Agreement and provide the Specified Item without any additional cost or charge to the District, and if bidder fails to execute the Agreement with the Specified Item(s), bidder's bid bond will be forfeited.

After the bids are opened, the apparent lowest bidder shall provide, within five (5) calendar days of opening such bids, any and all drawings, specification, samples, performance data, calculations, and other information as may be required to assist the Architect and the District in determining whether the proposed substitution is acceptable. The burden of establishing these facts shall be upon the bidder.

After the District's receipt of such evidence by bidder, the District will make its final decision as to whether the bidder's request for Substitution for any Specified Items will be granted. The District shall have sole discretion in deciding as to whether a proposed request for Substitution is equal to or better than a Specified Item. Any request for Substitution which is granted by the District shall be documented and processed through a Change Order. The District may condition its approval of any Substitution upon delivery to the District of an extended warranty or other assurances of adequate performance of the Substitution. Any and all risks of delay due to DSA, or any other governmental agency having jurisdiction shall be on the bidder.

20. Disqualification of Bidders and Proposals. More than one proposal for the same work from any individual, firm, partnership, corporation, or association under the same or different names will not be accepted; and reasonable grounds for believing that any bidder is interested in more than one proposal for the work will be cause for rejecting all proposals in which such bidder is interested and the bidder will forfeit their bid security to the District.

21. Unbalanced or Altered Bids. Proposals in which the prices are obviously unbalanced, and those which are incomplete or show any alteration of form, or contain any additions or conditional or alternate bids that are not called for or otherwise permitted, may be rejected. A proposal on which the signature of the bidder has been omitted may be rejected.

22. Employment of Apprentices. The Contractor and all Subcontractors shall comply with the provisions of California Labor Code including, but not limited to sections 1777.5, 1777.6, and 1777.7 concerning the employment of apprentices. The Contractor and any Subcontractor under him shall comply with the requirements of said sections, including applicable portions of all subsequent amendments in the employment of apprentices; however, the Contractor shall have full responsibility for compliance with said Labor Code sections, for all apprenticeable occupations, regardless of any other contractual or employment relationships alleged to exist.

23. Non-Collusion Declaration. Public Contract Code Section 7106 requires bidders to submit declaration of non-collusion with their bids. This form is included with the bid documents and must be signed and dated by the bidder under penalty of perjury.

24. Wage Rates, Travel and Subsistence.

a. The Contractor and all subcontractors shall comply with the requirements set forth in Division 2, Part 7, Chapter 1 of the Labor Code. Pursuant to Labor Code Sections 1770 et seq., the District has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this work is to be performed for each craft, classification or type of worker needed to execute the contract. Copies are available from the District to any interested party on request and are also available from the Director of the Department of Industrial Relations. The Contractor shall obtain copies of the above-referenced prevailing wage sheets and post a copy of such wage rates at appropriate, conspicuous, weatherproof points at the Site.

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

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

d. These per diem rates, including holiday and overtime work, and employer payments for health and welfare, pension, vacation, and similar purposes, are on file at the administrative office of the District, located as noted above and are also available from the Director of the Department of Industrial Relations. It is the Contractor's responsibility to ensure the appropriate prevailing rates of per diem wages are paid for each classification. It shall be mandatory upon the Contractor to whom the Contract is awarded, and upon any subcontractor under such Contractor, to pay not less than the said specified rates to all workers employed by them in the execution of the Contract.

25. No Telephone or Facsimile Availability. No telephone or facsimile machine will be available to bidders on the District premises at any time.

26. Obtaining Bidding Documents. Bidding Documents, may be obtained from:

There will be a non-refundable fee for project documents. No partial sets will be available. To obtain plans or to inquire about the cost of the plans, contact please contact A & I Reprographics at 909-390-4839 or email your request to [bid@aandirepro.com](mailto:bid@aandirepro.com). Project plans and specifications also may be viewed on-line and downloaded by going to the Pomona Unified School District's website <http://www.pusd.org/go/purchasing>.

Bidder shall utilize a complete set of Bidding Documents in preparing a bid. The failure or omission of bidder to receive any Bidding Document, form, instrument, Addendum, or other document shall not relieve bidder from any obligations with respect to the bid and/or Contract.

27. Addenda. Clarification or any other notice of a change in the Bidding Documents will be issued only by the Owner office of Pomona Unified School District and only in the form of a written Addendum, transmitted by fax, e-mail, or available for pick up to all who are known by the issuing office to have received a complete set of Bidding Documents. Any other purported Addenda are void and unenforceable.

Bidder is responsible for ascertaining the disposition of all Addenda issued regardless of Owner notification and to acknowledge all Addenda in the submitted sealed bid prior to the bid opening. Copies of Addendum will be made available for inspection wherever Bidding Documents are on file for inspection. Each Addendum will be numbered, dated, and identified with the Project number. Oral statements or any instructions in any form, other than Addendum as described above, shall be void and unenforceable. Addendum issued by the Owner office of Pomona Unified School District and not noted as being acknowledged by bidder as required in the Bid Form, may result in the bid being deemed non-responsive.

28. Debarment. Bidder may also be subject to debarment, in addition to seeking remedies for False Claims under Government Code Section 12650 et seq. and Penal Code Section 72, the District may debar

a Contractor pursuant to Article 15 of the General Conditions if the Board, or the Board may designate a hearing officer who, in their discretion, finds the Contractor has done any of the following:

- a. Intentionally or with reckless disregard, violated any term of a contract with the District
- b. Committed an act or omission which reflects on the Contractor's quality, fitness or capacity to perform work for the District;
- c. Committed an act or offense which indicates a lack of business integrity or business honesty; or,
- d. Made or submitted a false claim against the District or any other public entity (See Government Code Sections 12650, et seq., and Penal Code Section 72)

29. SB 854-Department of Industrial Relations. SB 854 (Stat. 2014, chapter 28) made several changes to the laws governing how the Department of Industrial Relations (DIR) monitors compliance with prevailing wage requirements on public works projects. Prevailing wage applies to projects over \$1,000.00. Pursuant to California Labor Code Section 1771.1(a), as amended by SB 854, a contractor may not bid, nor be listed as a subcontractor, for any bid proposal submitted for public work or engage in the performance of any contract for public work unless registered and qualified to perform public work pursuant to Labor Code Section 1725.5, subject to limited legal exceptions. Section 1771.1(a) states as follows:

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

By submitting its bid, Bidder expressly warrants and represents that it and all of its proposed subcontractors are registered and qualified to perform public work pursuant to Labor Code Section 1725.5.

**Bidder and any of its subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner (aka Division of Labor Standards Enforcement). This PROJECT will be subject to compliance monitoring and enforcement by the DIR, pursuant to California Labor Code Section 1771.4.**

In addition to submitting certified payroll records directly to the Labor Commissioner, the awarded contractor must also provide one original set of certified payroll records to the DISTRICT's Purchasing Department. Additional information on SB 854 and the labor compliance requirements can be found at the DIR's website at <http://www.dir.ca.gov>.

30. OSHA Requirements. Bidder must abide by District's safety rules and regulations and inform the District of any hazardous substances they intend to bring onto any site in order to perform their work.

a. Bidders are required to provide a list of all hazardous substances they intend to use at the District in the bid package. The list is to be forwarded to the EH&S Officer for evaluation and approval prior to bringing the substances onto District property. The list (once received) shall be maintained by the EH&S Officer.

b. The District reserves the right to deny use of any chemical the Bidder wishes to use which is deemed hazardous and may affect District Employees, Students or Visitors.

c. Bidder is required to maintain copies (on site) of the SDS of the chemicals they will use throughout the work place.

d. All chemicals brought onto the premises must be labeled as required by the HazCom Standard.

e. Bidder may be asked to provide records of their HazCom Training Program.

f. Bidder's employees may be required to attend a Safety Orientation prior to commencing work at the District. The orientation will cover the following:

- (1) The District's Safety Rules.
- (2) The district's emergency procedures for medical, spills, fires, accident reporting, property damage and evacuation.
- (3) Specific hazards (chemical or physical) in area where Contractor will be working.
- (4) Any other hazards as conditions warrant.

g. In the event of an emergency, the Contractor must immediately notify the Safety Coordinator. Indicate what the emergency is and what assistance is required.

h. All accidents, chemical spills, fires, accidents, property damage, etc., no matter how small, must be reported to the EH&S Officer immediately for investigation and documentation. **All Injuries are to be immediately reported to the Risk Management department.**

### **Non-Routine Tasks**

Supervisors shall determine if their employees might be involved in non-routine tasks. These tasks will be identified when assigned. Each employee responsible for working in a non-routine situation involving hazardous substances will be trained before beginning the process.

Non-routine tasks include outside contractors working at the District and using hazardous substances that may pose a health or physical hazard. Employees will be informed of the hazard and the method of protection before the contractor is allowed to begin work.

Supervisors shall contact the EH&S Officer for any questions regarding this requirement.



### **CHECKLIST OF MANDATORY BID FORMS**

(For Contractor's use and reference only. Additional documents may be required so bidders should carefully review all Contract Documents and Bid Documents)

- ☐ Designation of Subcontractors
- ☐ Bid Form
- ☐ Contractor's Certificate Regarding Workers Compensation
- ☐ Non-Collusion Declaration
- ☐ Bid Bond (or Bid Guarantee form if Security is other than Bid Bond)
- ☐ Substitution Request Form
- ☐ Acknowledgment of Bidding Practices Regarding Indemnity
- ☐ DVBE Participation Statement
- ☐ Contractor's Certificate Regarding Drug-Free Work Place
- ☐ Contractor's Certificate Regarding Alcoholic Beverage and Tobacco-Free Campus Policy
  
- ☐ Bidder References and Responsibility Information

## **DESIGNATION OF SUBCONTRACTORS**

In compliance with the Subletting and Subcontracting Fair Practices Act (California Public Contract Code Sections 4100 et seq.,) and any amendments thereof, each Bidder shall set forth below: (a) the name, license number, and location of the place of business of each subcontractor who will perform work or labor or render service to the Contractor, who will perform work or labor or work or improvement to be performed under this Contract, or a subcontractor licensed by the State of California who, under subcontract to the Contractor, specially fabricates and installs a portion of the work or improvements according to detailed drawings contained in the Plans and Specifications in an amount in excess of one-half of one percent of the Contractor's total bid; and (b) the portion and description of the work which will be done by each subcontractor under this Act. The Contractor shall list only one subcontractor for each such portion as is defined by the Contractor in this bid. All subcontractors shall be properly licensed by the California State Licensing Board.

If a Contractor fails to specify a subcontractor, or if a Contractor specifies more than one subcontractor for the same portion of work to be performed under the Contract in excess of one-half of one percent of the Contractor's total bid, the Contractor shall be deemed to have agreed that the Contractor is fully qualified to perform that portion, and that the Contractor alone shall perform that portion.

No Contractor whose bid is accepted shall (a) substitute any subcontractor, (b) permit any subcontractor to be voluntarily assigned or transferred or allow the relevant portion of the work to be performed by anyone other than the original subcontractor listed in the original bid, or (c) sublet or subcontract any portion of the work in excess of one-half of one percent of the Contractor's total bid where the original bid did not designate a subcontractor, except as authorized in the Subletting and Subcontracting Fair Practices Act.

Subletting or subcontracting of any portion of the work in excess of one-half of one percent of the Contractor's total bid where no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding, reduced to writing as a public record, of the authority awarding this Contract setting forth the facts constituting the emergency or necessity.

**NOTE:** If alternate bids are called for and bidder intends to use different or additional subcontractors on the alternates, a separate list of subcontractors must be provided for each such Alternate.

**DESIGNATION OF SUBCONTRACTORS FORM**

<b>Description &amp; Portion of Work</b>	<b>Name of Subcontractor</b>	<b>Location &amp; Place of Business</b>	<b>E-Mail &amp; Telephone</b>	<b>DIR Registration Number, License type and Number</b>

Proper Name of Bidder: \_\_\_\_\_

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

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

Signature of Bidder

Representative: \_\_\_\_\_

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

Phone: \_\_\_\_\_

**BID FORM**

**FOR**

**Renovation of Science Labs at Garey High School**

**Project No. 10(25-26)FP**

**FOR**

**POMONA UNIFIED SCHOOL DISTRICT**

CONTRACTOR  
NAME:

\_\_\_\_\_

ADDRESS:

\_\_\_\_\_

\_\_\_\_\_

TELEPHONE:

(       )

FAX:

(       )

EMAIL

\_\_\_\_\_

TO: Pomona Unified School District, acting by and through its Governing Board, herein called "District".

1. Pursuant to and in compliance with your Notice Inviting Bids and other documents relating thereto, the undersigned bidder, having familiarized himself with the terms of the Contract, the local conditions affecting the performance of the Contract, the cost of the work at the place where the work is to be done, with the Drawings and Specifications, and other Contract Documents, hereby proposes and agrees to perform within the time stipulated, the Contract, including all of its component parts, and everything required to be performed, including its acceptance by the District, and to provide and furnish any and all labor, materials, tools, expendable equipment, and utility and transportation services necessary to perform the Contract and complete all of the Work in a workmanlike manner required in connection with the construction of:

BID NO. 10(25-26)FP

**Renovation of Science Labs at Garey High School**

in the District described above, all in strict conformance with the drawings and other Contract Documents on file at the Purchasing Department of said District for amounts set forth herein.

2. BIDDER ACKNOWLEDGES THE FOLLOWING ADDENDUM:

Number	Number	Number	Number	Number	Number	Number	Number
_____	_____	_____	_____	_____	_____	_____	_____

Acknowledge the inclusion of all addenda issued prior to bid in the blanks provided above. Your failure to do so may render your bid non-responsive.

3. BASE BID (Must Include Allowance Per Scope for Unforeseen Conditions. See Article 4 in Contractor's Agreement.)

TOTAL CASH PURCHASE PRICE IN WORDS & NUMBERS:

\_\_\_\_\_ DOLLARS

(\$ \_\_\_\_\_)

**(Must Include a \$150,000.00 Allowance for Unforeseen Conditions. See Article 4 in Contractor's Agreement.), including all applicable bonds, insurance, taxes, permits and licenses.**

4. **[OPTIONAL] ALTERNATE BIDS:** The following amounts shall be added to or deducted from the Base Bid at the District's option. Alternates are fully described in the Specifications.

Alternate No. 1: ADD/DEDUCT \_\_\_\_\_ Dollars (\$\_\_\_\_\_)

Alternate No. 2: ADD/DEDUCT \_\_\_\_\_ Dollars (\$\_\_\_\_\_)

Alternate No. 3: ADD/DEDUCT \_\_\_\_\_ Dollars (\$\_\_\_\_\_)

LEGAL:10526-0001/8093698.1

Bid No. 10(25-26)FP

Pomona Unified School District

Contractor's Certificate Regarding Workers' Compensation Form

Page 26

5. TIME FOR COMPLETION: The District may give a notice to proceed within ninety (90) days of the award of the bid by the District. Once the Contractor has received the notice to proceed, the Contractor shall complete the work in the time specified in the Agreement. By submitting this bid, Contractor has thoroughly studied this Project and agrees that the Contract Time for this Project is adequate for the timely and proper completion of the Project. Further, Contractor has included in the analysis of the time required for this Project, Rain Days, Governmental Delays, and the requisite time to complete Punch List.

In the event that the District desires to postpone giving the notice to proceed beyond this ninety (90) day period, it is expressly understood that with reasonable notice to the Contractor, giving the notice to proceed may be postponed by the District. It is further expressly understood by the Contractor, that the Contractor shall not be entitled to any claim of additional compensation as a result of the postponement of giving the notice to proceed.

If the Contractor believes that a postponement will cause a hardship to it, the Contractor may terminate the contract with written notice to the District within ten (10) days after receipt by the Contractor of the District's notice of postponement. Should the Contractor terminate the Contract as a result of a notice of postponement, the District shall have the authority to award the Contract to the next lowest responsible bidder, if applicable.

It is understood that the District reserves the right to reject any or all bids and/or waive any irregularities or informalities in this bid or in the bid process. The Contractor understands that it may not withdraw this bid for a period of ninety (90) days after the date set for the opening of bids.

6. Attached is bid security in the amount of not less than ten percent (10%) of the bid:

Bid bond (10% of the Bid), certified check, or cashier's check (circle one)

7. The required List of Designated Subcontractors is attached hereto.

8. The required Non-Collusion Declaration is attached hereto.

9. The Substitution Request Form, if applicable, is attached hereto.

10. It is understood and agreed that if written notice of the acceptance of this bid is mailed, telegraphed, or delivered to the undersigned after the opening of the bid, and within the time this bid is required to remain open, or at any time thereafter before this bid is withdrawn, the undersigned will execute and deliver to the District a Contract in the form attached hereto in accordance with the bid as accepted, and that he will also furnish and deliver to the District the Performance Bond and Payment Bond, all within five (5) calendar days after award of Contract, and that the work under the Contract shall be commenced by the undersigned bidder, if awarded the Contract, by the start date provided in the District's Notice to Proceed, and shall be completed by the Contractor in the time specified in the Contract Documents.

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

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

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

12. PROTEST PROCEDURES. If there is a bid protest, the grounds shall be submitted within 3 working days as set forth at Paragraph 12 of the Instructions to Bidders.

13. The undersigned bidder shall be licensed and shall provide the following California Contractor's license information:

License Number: \_\_\_\_\_

License expiration date: \_\_\_\_\_

Name on License: \_\_\_\_\_

Class of License: \_\_\_\_\_

Department of Industrial Relations  
(DIR) Registration Number: \_\_\_\_\_

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

14. Time is of the essence regarding this Contract, therefore, in the event the bidder to whom the Contract is awarded fails or refuses to post the required bonds and return executed copies of the Agreement form within five (5) calendar days from the date of receiving the Notice of Award, the District may declare the bidder's bid deposit or bond forfeited as damages.

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

16. DEBARMENT. In addition to seeking remedies for False Claims under Government Code Section 12650 et seq. and Penal Code Section 72, the District may debar a Contractor pursuant to Article 15 of the General Conditions if the Board, or the Board's delagatee, in its discretion, finds the Contractor has done any of the following:

- a. Intentionally or with reckless disregard, violated any term of a contract with the District;
- b. Committed an act or omission which reflects on the Contractor's quality, fitness or capacity to perform work for the District;

c. Committed an act or offense which indicates a lack of business integrity or business honesty; or

d. Made or submitted a false claim against the District or any other public entity. (See Government Code Sections 12650, et seq., and Penal Code Section 72)

17. DESIGNATION OF SUBCONTRACTORS

a. In compliance with the Subletting and Subcontracting Fair Practices Act (California Public Contract Code Sections 4100 et seq.) and any amendments thereof, each bidder shall list subcontractors on the District's form Subcontractor list. This subcontractor list shall be submitted with the bid and is a required form

I agree to receive service of notices at the e-mail address listed below.

I the below-indicated bidder, declare under penalty of perjury that the information provided and representations made in this bid are true and correct.

---

Proper Name of Company

---

Name of Bidder Representative

---

Street Address

---

City, State, and Zip

---

(       )  
Phone Number

---

(       )  
Fax Number

---

E-Mail

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature of Bidder Representative

**NOTE:** If bidder is a corporation, the legal name of the corporation shall be set forth above together with the signature of authorized officers or agents and the document shall bear the corporate seal; if bidder is a partnership, the true name of the firm shall be set forth above, together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership; and if bidder is an individual, his signature shall be placed above.

All signatures must be made in permanent blue ink.



**CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION**  
**FORM**

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:

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

I am aware of the provisions of Labor Code Section 3700 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 provision before commencing the performance of the work of this Contract.

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

\_\_\_\_\_  
(Print)

\_\_\_\_\_  
(Date)

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 submitted with the Contractor's bid.

## **NON-COLLUSION DECLARATION**

The undersigned declares:

I am the \_\_\_\_\_ [Title] of \_\_\_\_\_ [Name of Company], the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. 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. All statements contained in the bid are true. 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, 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 and that this declaration is executed on \_\_\_\_\_ [Date], at \_\_\_\_\_ [City], \_\_\_\_\_ [State].

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

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

## **BID GUARANTEE FORM**

### **(Use only when not using a Bid Bond)**

Accompanying this proposal is a cashier's check payable to the order of the Pomona Unified School District or a certified check payable to the order of the Pomona Unified School District in an amount equal to ten percent (10%) of the base bid and alternates (\$\_\_\_\_\_).

The proceeds of this check shall become the property of said District, if, this proposal shall be accepted by the District through the District's Governing Board, and the undersigned fails to execute a Contract with and furnish the sureties required by the District within the required time; otherwise, said check is to be returned to the undersigned.

---

Signature of Bidder Representative

Note: Use this form, in lieu of Bid Bond form, when a cashier's check or certified check is accompanying the bid

## **BID BOND FORM**

KNOW ALL MEN BY THESE PRESENT that we, the undersigned, (hereafter called "Principal"), and \_\_\_\_\_ (hereafter called "Surety"), are hereby held and firmly bound unto the Pomona Unified School District (hereafter called "District") in the sum of \_\_\_\_\_ (\$\_\_\_\_\_) for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors, and assigns.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

The condition of the above obligation is such that whereas the Principal has submitted to the District a certain Bid, attached hereto and hereby made a part hereof, to enter into a Contract in \_\_\_\_\_ writing \_\_\_\_\_ for \_\_\_\_\_ the \_\_\_\_\_ construction \_\_\_\_\_ of \_\_\_\_\_.

NOW, THEREFORE,

- a. If said Bid is rejected, or
- b. If said Bid is accepted and the Principal executes and delivers a Contract or the attached Agreement form within five (5) calendar days after acceptance (properly completed in accordance with said Bid), and furnishes bonds for his faithful performance of said Contract and for payment of all persons performing labor or furnishing materials in connection therewith,

Then this obligation shall be void; otherwise, the same shall remain in 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 call for bids, or the work to be performed thereunder, or the specifications accompanying the same, shall in anyway affect its obligation under this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of said Contract, or the call for bids, or the work, or to the specifications.

In the event suit is brought upon this bond by the District and judgment is recovered, the Surety shall pay all costs incurred by the District in such suit, including without limitation, attorneys' fees to be fixed by the court.

IN WITNESS WHEREOF, Principal and Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, on the day and year first set forth above.

(Corporate Seal)

By \_\_\_\_\_  
Principal's Signature

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

\_\_\_\_\_  
Principal's Title

(Corporate Seal)

By \_\_\_\_\_  
Surety's Signature

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

\_\_\_\_\_  
Title

(Attached Attorney in Fact Certificate)

\_\_\_\_\_  
Surety's Name

\_\_\_\_\_  
Surety's Address

\_\_\_\_\_  
Surety's Phone Number

IMPORTANT:

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, it must also appear on the Treasury Department's most current list (Circular 570 as amended).

THIS IS A REQUIRED FORM.

Any claims under this bond may be addressed to:

(Name and Address of Surety)

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(Name and Address of agent or representative for service of process in California if different from above)

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(Telephone Number of Surety and agent or representative for service of process in California).

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## **REQUEST FOR SUBSTITUTION AT TIME OF BID**

Pursuant to Public Contract Code Section 3400, bidder submits the following request to Substitute with the bid that is submitted. I understand that if the request to substitute is not “an/or equal” or is not accepted by District and I answer “no” I will not provide the specified item, then I will be held non-responsive and my bid will be rejected. With this understanding, I hereby request Substitution of the following articles, devices, equipment, products, materials, fixtures, patented processes, forms, methods, or types of construction:

	Specification Section	Specified Item	Requested Substituted Item	Contractor Agrees to Provide Specified Item if request to Substitute is Denied <sup>1</sup> (circle one)	District Decision (circle one)
1.				Yes      No	Grant      Deny
2.				Yes      No	Grant      Deny
3.				Yes      No	Grant      Deny
4.				Yes      No	Grant      Deny
5.				Yes      No	Grant      Deny
6.				Yes      No	Grant      Deny
7.				Yes      No	Grant      Deny
8.				Yes      No	Grant      Deny
9.				Yes      No	Grant      Deny
10.				Yes      No	Grant      Deny
11.				Yes      No	Grant      Deny
12.				Yes      No	Grant      Deny

This Request Form must be accompanied by evidence as to whether the proposed Substitution (1) is equal in quality, service, and ability to the Specified Item; (2) will entail no change in detail, construction, and scheduling of related work; (3) will be acceptable in consideration of the required

<sup>1</sup> Bidder must state whether bidder will provide the Specified Item in the event the Substitution request is evaluate and denied. If bidder states that bidder will not provide the Specified Item the denial of a request to Substitute shall result in the rejection of the bidder as non-responsive. However, if bidder states that bidder will provide the Specified Item in the event that bidder’s request for Substitution is denied, bidder shall execute the Agreement and provide the Specified Item(s). If bidder refuses to execute the Agreement due to the District’s decision to require the Specified Item(s) at no additional cost, bidder’s Bid Bond shall be forfeited.

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design and artistic effect; (4) will provide no cost disadvantage to the District; (5) will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts; (6) will require no change of the construction schedule or milestones for the Project; and, (7) Contractor agrees to pay for any DSA Fees or other Governmental Plan check costs associated with this Substitution Request. (See General Conditions Section 3.6)

The undersigned states that the following paragraphs are correct:

1. The proposed Substitution does not affect the dimensions shown on the Drawings.
2. The undersigned will pay for changes to the building design, including Architect, engineering, or other consultant design, detailing, DSA plan check or other governmental plan check costs, and construction costs caused by the requested substitution.
3. The proposed substitution will have no adverse effect on other trades, the Contract Time, or specified warranty requirements.
4. Maintenance and service parts will be available locally for the proposed substitution.
5. In order for the Architect to properly review the substitution request, within five (5) days following the opening of bids, the Contractor shall provide samples, test criteria, manufacturer information, and any other documents requested by Architect or Architect's engineers or consultants, including the submissions that would ordinarily be required under Article 3.7 for Shop Drawings along with a document which provides a side by side comparison of key characteristics and performance criteria (often known as a CSI side by side comparison chart).
6. If Substitution Request is accepted by the District, Contractor is still required to provide a Submittal for the substituted item pursuant to Article 3.7 and shall provide required Schedule information (including schedule fragnets, if applicable) for the substituted item as required under Article 8.3.2.1. The approval of the Architect, Engineer, or District of the substitution request does not mean that the Contractor is relieved of Contractor's responsibilities for Submittals, Shop Drawings, and schedules under Article 3.7 and 8.3.2 if the Contractor is awarded the Project.

Name of Bidder: \_\_\_\_\_

Signature of Bidder: \_\_\_\_\_

District: \_\_\_\_\_

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



## **ACKNOWLEDGMENT OF BIDDING PRACTICES REGARDING INDEMNITY FORM**

TO: Pomona Unified School District

RE: Project Number **10(25-26)FP**

Construction Contract for **Renovation of Science Labs at Garey High School**

Please be advised that with respect to the above-referenced Project the undersigned Contractor on behalf of itself and all subcontractors hereby waives the benefits and protection of Labor Code Section 3864, which provides:

“If an action as provided in this chapter is prosecuted by the employee, the employer, or both jointly against the third person results in judgment against such third person, the employer shall have no liability to reimburse or hold such third person harmless on such judgment or settlement in the absence of a written agreement to do so executed prior to the injury.”

This Agreement has been signed by an authorized representative of the contracting party and shall be binding upon its successors and assignees. The undersigned further agrees to promptly notify the District of any changes of ownership of the contracting party or any subcontractor while this Agreement is in force.

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Signature of Contracting Party

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Name of Agent/Title

**DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) PARTICIPATION**  
**STATEMENT**

Each bidder must complete this form in order to comply with the Pomona Unified School District ("District") policy for participation of disabled veteran business enterprises (School District projects funded in whole or in part by the State of California pursuant to the Leroy F. Greene School Facilities Act of 1998. (Education Code §17070.10, *et seq.*)

Project Name: **Renovation of Science Labs at Garey High School**

Bid No.: **10(25-26)FP**

DSA No.: **DSA NO. 03-125098**

The undersigned, on behalf of the Contractor named below, certifies that the Contractor has made reasonable efforts to secure participation by DVBE in the Contract to be awarded for the above-referenced Bid No., including participation by DVBE subcontractors and/or material suppliers. **Check only one of the following:**

- ☐ The Contractor was unable after reasonable efforts to secure DVBE participation in the Contract for the above-referenced Project/Bid No. However, the Contractor will use DVBE services if the opportunity arises at any time during construction of the Project. Upon completion of the Project, the Contractor will report to the District the total dollar amount of DVBE participation in any Contract awarded to Contractor, and in any change orders, for the above-referenced Project.
- ☐ The Contractor has secured DVBE participation in the Contract for the above referenced Project/Bid No., and anticipates that such DVBE participation will equal approximately \_\_\_\_\_ dollars (\$\_\_\_\_\_ ), which represents approximately \_\_\_\_\_ percent (\_\_\_\_%) of the total Contract for such Project. Upon completion of the Project, Contractor will report to the District the actual total dollar amount of DVBE participation in the Contract awarded to Contractor, and in any change orders, for such Project

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

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

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

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

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

**DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) CONTRACTOR CLOSE-  
OUT STATEMENT**

The Contractor shall complete this form, as a condition to Final Payment, for purposes of reporting participation by Disabled Veteran Business Enterprises (DVBE) in the Contract for the Project/Bid No. specified below.

Project Name: **Renovation of Science Labs at Garey High School**

Bid No.: **10(25-26)FP**

DSA No.: **DSA NO. 03-125098**

Name	Address/Phone	Category of Work*	\$ Amount of Contract

\* Categories of work include: (1) construction services (specify services that DVBE will provide); (2) architecture and engineering services; (3) procurement of materials, supplies and equipment; and (4) information technology.

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

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

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

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

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

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

## **CONTRACTOR'S CERTIFICATE REGARDING DRUG-FREE WORKPLACE**

This Drug-Free Workplace Certification form is required from all successful bidders pursuant to the requirements mandated by Government Code Sections 8350 et seq., the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of any property or service from any State agency must certify that it will provide a drug-free workplace by performing 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 of the contract or grant, and the Contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

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:

1. Publishing a statement, notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace, and specifying actions which will be taken against employees for violations of the prohibition.
2. Establishing a drug-free awareness program to inform employees about all of the following:
  - a. The dangers of drug abuse in the workplace;
  - b. The person's or organization's policy of maintaining a drug-free workplace;
  - c. The availability of drug counseling, rehabilitation and employee-assistance programs; and
  - d. The penalties that may be imposed upon employees for drug abuse violations;
3. 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 Government Code Section 8355 listed above and will (a) publish a statement notifying employees concerning the prohibition of controlled substance at the workplace, (b) establish a drug-free awareness program, and (c) require each employee engaged in the performance of the contract be given a copy of the statement required by section 8355(a) and require such employee agree to abide by the terms of that statement.

I also understand that if the Pomona Unified School 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, that the contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of Sections 8350 et seq.

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

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

\_\_\_\_\_  
CONTRACTOR

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

**CONTRACTOR'S CERTIFICATE REGARDING ALCOHOLIC BEVERAGE AND  
TOBACCO-FREE CAMPUS POLICY**

The Contractor agrees that it will abide by and implement the District's Alcoholic Beverage and Tobacco-Free Campus Policy, which prohibits the use of alcoholic beverages and tobacco products, of any kind and at any time, on District-owned or leased buildings, on DISTRICT property and in DISTRICT vehicles. The Contractor shall procure signs stating "ALCOHOLIC BEVERAGE AND TOBACCO USE IS PROHIBITED" and shall ensure that these signs are prominently displayed in all entrances to school property at all times.

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

\_\_\_\_\_  
CONTRACTOR

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

**\* BIDDER REFERENCES AND RESPONSIBILITY INFORMATION**

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

**Address** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Contact:** \_\_\_\_\_

1. The District expressly reserves the right to reject the bid of any bidder who, upon investigation, has been determined to fail to complete similar contracts in a timely fashion or in a satisfactory manner. Such rejections would, if applicable, be based upon the principle that the bidder is "non-responsible" and poses a substantial risk of being unable to complete the work in a cost-effective, professional and timely manner.
2. In performing the above-described responsibility determination, the District reserves the right to utilize all possible sources of information in making its determination, including but not limited to: inquiries to regulatory state Boards and agencies; Dun and Bradstreet credit reports, inquiries to companies and public entities for which the contractor has previously performed work, reference checks and examination of all public records.
3. The bidder must also demonstrate a knowledge of school construction techniques and should possess a working ability to perform similarly-sized construction work for a public agency. This knowledge and ability shall be shown by furnishing the names, current phone numbers, address, points of contact and scope of work of at least five (5) unique customers served within the past five (5) years with requirements similar to the needs of the Pomona Unified School District.
4. The District expressly reserves the right to reject the bid of any bidder whom the District determines, based on reference checks and inquiries, to have failed to establish that the bidder has previously satisfactorily completed at least one science lab renovation project valuing at least \$1,000,000 per project completed within the last 5 years. The District strongly recommends providing more than two projects meeting requirements if possible so that additional references may be contacted in the event the references do not respond to the District in a timely manner. **FAILURE TO FURNISH THE REQUIRED REFERENCES (*IN THE COMPLETE FORMAT REQUIRED*) MAY CAUSE YOUR BID TO BE REJECTED AS NON-RESPONSIVE.**
5. **EXAMPLE:** Your references should be listed in the following format (facts are example only)
  - (a) Work for X Y Z Unified School District
  - (b) Phone # (222) 123-4567
  - (c) 999 Holly Drive, L.A., CA 92000
  - (d) Contact: J. Q. Jones III at above #
  - (e) Renovated Hills High in 1990 for \$1.3 MILLION.

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

6. Reference #1

District or Entity: \_\_\_\_\_

Phone #: \_\_\_\_\_

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

Name of Contact: \_\_\_\_\_

Scope of Work & \$ Amount: \_\_\_\_\_

Reference #2

District or Entity: \_\_\_\_\_

Phone #: \_\_\_\_\_

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

Name of Contact: \_\_\_\_\_

Scope of Work & \$ Amount: \_\_\_\_\_

Reference #3

District or Entity: \_\_\_\_\_

Phone #: \_\_\_\_\_

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

Name of Contact: \_\_\_\_\_

Scope of Work & \$ Amount: \_\_\_\_\_

Reference #4

District or Entity: \_\_\_\_\_

Phone #: \_\_\_\_\_

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

Name of Contact: \_\_\_\_\_

Scope of Work & \$ Amount: \_\_\_\_\_

Reference #5

District or Entity: \_\_\_\_\_

Phone #: \_\_\_\_\_

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

Name of Contact: \_\_\_\_\_

Scope of Work & \$ Amount: \_\_\_\_\_

[END OF DISTRICT BID DOCUMENTS]



## **AGREEMENT FORM**

**THIS CONSTRUCTION CONTRACT BETWEEN OWNER AND CONTRACTOR** entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20**XX** ("Construction Contract") in the County of Los Angeles of the State of California, by and between the Pomona Unified School District, ("District"), and \_\_\_\_\_ ("Contractor"). This Construction Contract pertains to the project known as \_\_\_\_\_ ("Project").

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

**ARTICLE 1 - SCOPE OF WORK:** The Contractor shall furnish all labor, materials, equipment, tools, and utility services, and perform and complete all of the Work required in connection with the purchase, delivery, construction and installation of the Project in strict compliance with the Contract Documents enumerated in Article 7 below, and as more particularly described in **Exhibit "A"** attached hereto, which is incorporated herein by reference.

### **ARTICLE 2 - CONTRACT TIME**

**2.2.1 Substantial Completion and Milestone Dates.** The District shall give a Notice to Proceed to Contractor after execution of this Construction Contract. Once the Contractor has received a Notice to Proceed, the Contractor shall achieve Substantial Completion of the Work within \_\_\_\_\_ calendar Days from receipt of the Notice to Proceed. This time period to achieve Substantial Completion shall be called the Contract Time. *It is expressly understood that time is of the essence in this Construction Contract.*

In addition to the above referenced date of Substantial Completion, Contractor shall achieve the following Milestone dates, which are mandatory and material terms of the Construction Contract:

- (i) \_\_\_\_\_ ;
- (ii) \_\_\_\_\_ ;
- (iii) \_\_\_\_\_ ; and
- (iv) \_\_\_\_\_ .

**2.2.2 Final Completion.** Contractor shall achieve Final Completion of the Work not later than thirty (30) Days after the actual occurrence of Substantial Completion, subject only to adjustments of the Contract Time as permitted by the Contract Documents.

**2.2.3 Contractor's Representation of Adequate Time.** Contractor has thoroughly studied the Project and has satisfied itself that the time period for this Project is adequate for the timely and proper completion of the Project within each milestone and within the Contract Time.

**2.2.4 Postponement of Notice to Proceed.** In the event that the District desires to postpone giving the Notice to Proceed beyond the time period above, it is expressly understood that with reasonable notice to the Contractor, giving the Notice to Proceed may be postponed by the District. It is further expressly understood by the Contractor, that the Contractor shall not be entitled to any claim of additional compensation as a result of the District's postponement of giving the Notice to Proceed.

If the Contractor believes that a postponement in issuing the Notice to Proceed will cause hardship to it, the Contractor may terminate the Contract with written notice to the District within ten (10) Days after receipt by the Contractor of the District's notice of postponement. It is further understood by

the Contractor that in the event that the Contractor terminates the Contract as a result of postponement by the District, the District shall only be obligated to pay the Contractor for the work performed by the Contractor at the time of notification of postponement. Should the Contractor terminate the Contract as a result of a notice of postponement, the District shall have the authority to award the Contract to the next lowest responsible bidder.

### **ARTICLE 3 - LIQUIDATED DAMAGES**

**3.1 Liquidated Damages to Owner.** Owner and Contractor acknowledge and agree that if Contractor fails to achieve Substantial Completion within the Contract Time, Owner will suffer substantial losses and damages, which would be both extremely difficult and impracticable to ascertain. As a result, it is agreed that the Contractor will pay the District the sum of [REDACTED] Dollars and [REDACTED] Cents (\$XX.XX) per Day for each and every Day of delay beyond the date required to achieve Substantial Completion set forth in Article 2 of this Construction Contract and any Milestone date set forth in Article 2 of this Construction Contract, as liquidated damages and not as a penalty or forfeiture. The liquidated damages amount is not a penalty but a reasonable amount of the Losses the District will suffer in the event that Substantial Completion and any Milestone is not timely achieved by Contractor.

**3.2 District's Right to Withhold and Deduct.** In the event liquidated damages are assessed by District and are not paid by Contractor within thirty (30) Days, the Contractor further agrees that the District shall have the right to deduct such liquidated damages from any money due or that may become due the Contractor. In addition, if the District determines that Contractor will not achieve Substantial Completion within the mandatory time frame, the District shall have the right to withhold amounts otherwise due to Contractor under its Applications for Payment even though the date for Substantial Completion and/or any Milestone has not yet passed. That is, if District believes, in its sole discretion, that Contractor is not on pace to achieve timely Substantial Completion and/or meet any Milestone although the date for Substantial Completion or Milestone has not come and gone, the District shall still have the right to withhold such monies and/or apply such deductions as liquidated damages against Contractor.

**3.3 No Apportionment.** Liquidated damages payable under Article 3 shall not be apportioned for portions of the Work that are completed prior to the expiration of the Contract Time. In the event District terminates this Construction Contract, either for cause or convenience, such termination does not relieve Contractor of any responsibility for liquidated damages. In addition, Contractor shall not be able to avoid the imposition of liquidated damages by terminating or attempting to terminate the Construction Contract.

**3.4 No Limitation on District's Other Remedies.** This Article shall not be construed as preventing the District from any other form of recovery or damages or any remedy available to District under the Contract Documents. As a result, the District's right to liquidated damages shall not be interpreted as either: (i) limiting any right or remedy of the District; or (2) precluding the District's right to order an acceleration of Contractor's performance of the Work, at Contractor's sole expense, including but not limited to, an acceleration to overcome a Delay where in the absence of such acceleration, the District would have the right to assess liquidated damages.

### **ARTICLE 4 - CONTRACT PRICE**

**4.1** The District shall pay to the Contractor as full consideration for the faithful performance of the Work, subject to any additions or deductions as provided in the Contract Documents, the Contract Price of [REDACTED] Dollars and [REDACTED] Cents (\$ [REDACTED]), includes a \$XX.XX allowance to be used at the discretion of the District for unforeseen conditions. All work pertaining to the allowance must be approved by the District. If work authorized is less than the allowance, a deductive change order will be issued. Work is to be directed by the District. The allowance shall be listed as a line item on the Contractor's schedule for values, said sum being the total amount stipulated in the Bid Contractor submitted. Payment shall be made as set forth in the

LEGAL:10526-0001/8093698.1

Bid No. XX(XX-XX)XX

Pomona Unified School District

Sample Agreement

Page 47

General Conditions. Should any Change Order result in an increase in the Contract Price, the cost of such Change Order shall be agreed to in advance by the Contractor and the District, subject to the monetary limitations set forth in Public Contract Code Section 20118.4. In the event that the Contractor proceeds with a Change in the Work without a prior written agreement between the District and Contractor regarding the cost of a Change Order, the Contractor waives any Claim of additional compensation for such additional work.

**ARTICLE 5 - PROVISIONS REQUIRED BY LAW:** Each and every provision of law and clause required to be inserted in this Construction Contract shall be deemed to be inserted herein, and this Construction 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. All provisions of the Contract Documents shall be enforced to the fullest extent permitted by law.

**ARTICLE 6 - STANDARD OF PERFORMANCE:** Without limitation to Contractor's other obligations under the Contract Documents, Contractor shall at all times in its performance of the obligations under the Contract Documents conform to the following general standards of performance: (1) strictly comply with all requirements of the Contract Documents; (2) comply with all applicable Laws; (3) conform to the highest standard of care applicable to those who provide construction of the type called for by this Construction Contract for projects of a scope and complexity that is comparable to the Project; (4) furnish efficient business administration of the Work, utilizing sufficient senior level management and other qualified personnel to manage the Work; and (5) apply its best and highest skill and attention to completing the Work in a timely, expeditious and economical manner, consistent with the expressed best interests of the District and within the limitations of the Contract Price and Contract Time, with the understanding that time is of the essence.

**ARTICLE 7 - ENUMERATION OF THE CONTRACT DOCUMENTS.** The Contract Documents (as that term is further defined in the General Conditions), all of which are expressly included and incorporated into this Construction Contract, include without limitation, the following:

**7.1 Construction Contract.** The Construction Contract is this executed Construction Contract Between Owner and Contractor.

**7.2 General Conditions.** The General Conditions are the General Conditions of the Construction Contract.

**7.3 District Forms.** The District Forms include, but are not limited to, the following:

- Designation of Subcontractors
- Non-Collusion Declaration
- Contractor's Certificate Regarding Worker's Compensation
- DVBE Documents & Forms
- Payment Bond
- Performance Bond
- Guarantee
- Escrow Agreement for Security Deposit In Lieu of Retention
- Workers' Compensation/Employers Liability Endorsement
- General Liability Endorsement
- Automobile Liability Endorsement
- Contractor's Certificate Regarding Drug-Free Workplace
- Contractor's Certificate Regarding Alcohol and Tobacco
- Contractor Certification Regarding Background Checks

**7.4 Specifications.** The Specifications are as set forth in **Exhibit "B"** attached hereto.

**7.5 Drawings.** The Drawings are as follows:

[illegible]

<b>STRUCTURAL</b>		

**7.6 Addenda.** The Addenda, if any, are as follows:

<b>Addendum No.</b>	<b>Issue Date</b>

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.

**ARTICLE 8 - PREVAILING WAGES:** Wage rates for this Project shall be in accordance with the general prevailing rate of holiday and overtime work in the locality in which the work is to be performed for each craft, classification, or type of work needed to execute the Contract as determined by the Director of the Department of Industrial Relations. Copies of schedules of rates so determined by the Director of the Department of Industrial Relations are on file at the administrative office of the District and are also available from the Director of the Department of Industrial Relations. Contractor must comply with the all applicable labor compliance requirements under the California Labor Code, including but not limited to, registration with the Department of Industrial Relations (Labor Code Sections 1771.1(a) and 1725.5, 1771, 1771.4, 1773.2, 1774, 1776, 1777.5, 1813, and 1815).

The following are hereby referenced and made a part of this Construction Contract and Contractor stipulates to the provisions contained therein.

1. Chapter 1 of Part 7 of Division 2 of the Labor Code (Section 1720 et seq.)
2. California Code of Regulations, Title 8, Chapter 8, Subchapters 3 through 6 (Section 16000 et seq.)

**ARTICLE 9 - DEPARTMENT OF INDUSTRIAL RELATIONS:** SB 854 (Stat. 2014, chapter 28) made several changes to the laws governing how the Department of Industrial Relations (DIR) monitors compliance with prevailing wage requirements on public works projects. Prevailing wage applies to project over \$1,000.00. Pursuant to California Labor Code Section 1771.1(a), as amended by SB 854, a contractor may not bid, nor be listed as a subcontractor, for any bid proposal submitted for public work or engage in the performance of any contract for public work unless registered and qualified to perform public work pursuant to Labor Code Section 1725.5, subject to limited legal exceptions. Section 1771.1(a) states as follows:

"A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of

LEGAL:10526-0001/8093698.1

**Bid No. XX(XX-XX)XX**

Pomona Unified School District

Sample Agreement

Page 50

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

As a result, no contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with DIR. To comply with the DIR guidelines, the District will disqualify any contractor (and subcontractor) who is not registered with the DIR at the time the bid (or prequalification) package is opened, the award will go to the next low responsible bidder who is registered with the DIR.

**All contractors and subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner (aka Division of Labor Standards Enforcement). This Project will be subject to compliance monitoring and enforcement by the DIR, pursuant to California Labor Code Section 1771.4.**

In addition to submitting certified payroll records directly to the Labor Commissioner, Contractor must also provide one original set of certified payroll records to the District's Purchasing Department. Additional information on SB 854 and the labor compliance requirements can be found at the DIR's website at <http://www.dir.ca.gov>.

**ARTICLE 10 - RECORD AUDIT:** In accordance with Government Code Section 8546.7 (and Davis Bacon, if applicable) and Article 13.11 of the General Conditions, records of both the Owner and the Contractor shall be subject to examination and audit for a period of five (5) years after a Final Retention Payment or the Recording of a Notice of Completion, whichever occurs first.

**ARTICLE 11 - CONTRACTOR'S LICENSE:** The Contractor must possess throughout the Project a Class "X" Contractor's License, issued by the State of California, which must be current, active, and in good standing at all times during the performance of the Work.

**IN WITNESS WHEREOF,** this Construction Contract has been duly executed by the above named parties, on the day and year above written.

**Pomona Unified School District**

**[Contractor]**

By: Sandra Garcia  
Assistant Superintendent, Chief Business Officer  
(CBO)

By: \_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Signature

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

**(CORPORATE SEAL)**

Approved as to Form:

WOOD, SMITH, HENNING & BERMAN, LLP

By: \_\_\_\_\_  
Keith E. Smith, Esq.

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

**EXHIBIT "A"**



**EXHIBIT "B"**

**PAYMENT BOND**  
**(CALIFORNIA PUBLIC WORK)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the POMONA UNIFIED SCHOOL DISTRICT (sometimes referred to hereinafter as "Obligee") has awarded to \_\_\_\_\_ (hereinafter designated as the "Principal" or "Contractor"), an agreement for the work described as follows: \_\_\_\_\_ (hereinafter referred to as the "Public Work"); and

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

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

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

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

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, Plans, or specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described; or pertaining or relating to the furnishing of labor, materials, or equipment therefor; nor by any change or modification of any terms of payment or extension of time for payment pertaining or relating to any scheme or work of improvement herein above

described; nor by any rescission or attempted rescission of the contract, agreement or bond; nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond; nor by any fraud practiced by any person other than the claimant seeking to recover on the bond; and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given; and under no circumstances shall the Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the Obligee and the Contractor or on the part of any obligee named in such bond; that the sole condition of recovery shall be that the claimant is a person described in California Civil Code Section 9100, and who has not been paid the full amount of his or her claim; and that the Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF this instrument has been duly executed by the Principal and Surety above named, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PRINCIPAL/CONTRACTOR:

\_\_\_\_\_

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

SURETY:

\_\_\_\_\_

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

Attorney-in-Fact

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: \_\_\_\_\_

STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF                                )

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public in and for said State, 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 as the Attorney-in-Fact of the \_\_\_\_\_ (Surety) and acknowledged to me that he/she/they subscribed the name of the \_\_\_\_\_ (Surety) thereto and his own name as Attorney-in-Fact on the executed 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 bonding company must be attached hereto.

**PERFORMANCE BOND**  
**(CALIFORNIA PUBLIC WORK)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the POMONA UNIFIED SCHOOL DISTRICT (sometimes referred to hereinafter as "Obligee") has awarded to \_\_\_\_\_ (hereinafter designated as the "Principal" or "Contractor"), an agreement for the work described as follows: \_\_\_\_\_ (hereinafter referred to as the "Public Work"); and

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

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

NOW, THEREFORE, we, \_\_\_\_\_, the undersigned Contractor, as Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the POMONA UNIFIED SCHOOL DISTRICT in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), said sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the bounded Contractor, his or her heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in said Contract and any alteration thereof made as therein provided, on his or her part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill guarantees of all materials and workmanship; and indemnify, defend and save harmless the Obligee, its officers and agents, as stipulated in said Contract, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

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

notice of any such changes, modifications, alterations, additions or extension of time to the terms of the contract, or to the work, or the specifications as well notice of any other actions that result in the foregoing.

Whenever Principal shall be, and is declared by the Oblige to be, in default under the Contract, the Surety shall promptly either remedy the default, or shall promptly take over and complete the Contract through its agents or independent contractors, subject to acceptance and approval of such agents or independent contractors by Oblige as hereinafter set forth, in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages; or, at Oblige's sole discretion and election, Surety shall obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Oblige of the lowest responsible bidder, arrange for a contract between such bidder and the Oblige and make available as Work progresses (even though there should be a default or succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the "balance of the Contract price" (as hereinafter defined), and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages. The term "balance of the Contract price," as used in this paragraph, shall mean the total amount payable to Principal by the Oblige under the Contract and any modifications thereto, less the amount previously paid by the Oblige to the Principal, less any withholdings by the Oblige allowed under the Contract. Oblige shall not be required or obligated to accept a tender of a completion contractor from the Surety.

Surety expressly agrees that the Oblige may reject any agent or contractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal. Unless otherwise agreed by Oblige, in its sole discretion, Surety shall not utilize Principal in completing the Contract nor shall Surety accept a bid from Principal for completion of the work in the event of default by the Principal.

No final settlement between the Oblige and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

The Surety shall remain responsible and liable for all patent and latent defects that arise out of or relate to the Contractor's failure and/or inability to properly complete the Public Work as required by the Contract and the Contract Documents. The obligation of the Surety hereunder shall continue so long as any obligation of the Contractor remains.

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

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

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

PRINCIPAL/CONTRACTOR:

\_\_\_\_\_

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

SURETY:

\_\_\_\_\_

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

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

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

**IMPORTANT: THIS IS A REQUIRED FORM.**

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

Any claims under this bond may be addressed to:  
(Name and Address of Surety)

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Telephone: \_\_\_\_\_

STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF                                    )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public in and for said State, 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 as the Attorney-in-Fact of the \_\_\_\_\_ (Surety) and acknowledged to me that he/she/they subscribed the name of the \_\_\_\_\_ (Surety) thereto and his own name as Attorney-in-Fact on the executed 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  
Commission expires: \_\_\_\_\_

(SEAL)

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



## **GUARANTEE**

Guarantee for \_\_\_\_\_ . We hereby guarantee that the \_\_\_\_\_, which we have installed in \_\_\_\_\_ has been done in accordance with the Contract Documents, including without limitation, the drawings and specifications, and that the work as installed will fulfill the requirements included in the bid documents. The undersigned and its surety agrees to repair or replace any or all such work, together with any other adjacent work, which may be displaced in connection with such replacement, that may prove to be defective in workmanship or material within a period of Three (3) years from the date of the Notice of Completion of the above-mentioned structure by the Pomona Unified School District, ordinary wear and tear and unusual abuse or neglect excepted.

In the event the undersigned or its surety fails to comply with the above-mentioned conditions within a reasonable period of time, as determined by the District, but not later than ten (10) days after being notified in writing by the District or within forty eight (48) hours in the case of an emergency or urgent matter, the undersigned and its surety authorizes the District to proceed to have said defects repaired and made good at the expense of the undersigned and its surety, who will pay the costs and charges therefor upon demand. The undersigned and its surety shall be jointly and severally liable for any costs arising from the District's enforcement of this Guarantee.

Countersigned

\_\_\_\_\_  
(Proper Name)

\_\_\_\_\_  
(Proper Name)

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

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

\_\_\_\_\_  
(Signature of Subcontract or Contractor)

\_\_\_\_\_  
(Signature of General Contractor if for Subcontractor)

Representatives to be contacted for service:

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

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

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

## **ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION**

This Escrow Agreement is made and entered into by and between the Pomona Unified School District, 800 South Garey Avenue, Pomona, CA 91766, hereinafter called "Owner", and \_\_\_\_\_ whose address is \_\_\_\_\_, hereinafter called "Contractor", and \_\_\_\_\_ whose address is \_\_\_\_\_, hereinafter called "Escrow Agent".

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

1. Pursuant to section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for Retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for \_\_\_\_\_ in the amount of \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the Owner shall make payments of the Retention earnings directly to the escrow agent. When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within ten (10) days of deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as Retention under the terms of the Contract between the Owner and Contractor. Securities shall be held in the name of the Owner, and shall designate the Contractor as beneficial owner.
2. The Owner shall make progress payments to the Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.
3. When the Owner makes payments of Retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until such time as the escrow created under this Contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.
4. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor, and Escrow Agent.
5. The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.
6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.
7. The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven (7) days' written notice to the Escrow Agent from the Owner of the notice of default under Article 2.2, Article 9.6 or Article 14, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

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8. Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payment of fees and charges.

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

10. The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Owner:

---

Title

---

Name

---

Signature

---

Address

On behalf of Contractor:

---

Title

---

Name

---

Signature

---

Address

On behalf of Agent:

---

Title

---

Name

---

Signature

---

Address

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

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

OWNER

CONTRACTOR

---

Title

---

Title

---

Name

---

Name

---

Signature

---

Signature

## **INSURANCE DOCUMENTS & ENDORSEMENTS**

The following insurance endorsements and documents must be provided to the Pomona Unified School District within five (5) calendar days after receipt of notification of award. If the apparent low bidder fails to provide the documents required below, the District may award the Contract to the next lowest responsible and responsive bidder or release all bidders, and the bidder's bid security will be forfeited. All insurance provided by the bidder shall fully comply with the requirements set forth in Article 11 of the General Conditions.

1. **General Liability Insurance:** Certificate of Insurance with all specific insurance coverages set forth in Article 11 of the General Conditions, proper Project description, designation of the District as the Certificate Holder, a statement that the insurance provided is primary to any insurance obtained by the District and minimum of 30 days' cancellation notice. Bidder shall also provide required additional insured endorsement(s) designating all parties required in Article 11 of the General Conditions. The additional insured endorsement shall be an ISO CG 20 10 (04/13), or an ISO CG 20 38 (04/13), or their equivalent as determined by the District in its sole discretion.

Incidents and claims are to be reported to the insurer at:

Attn: \_\_\_\_\_  
          (Title) \_\_\_\_\_ (Department) \_\_\_\_\_  
\_\_\_\_\_  
          (Company) \_\_\_\_\_  
\_\_\_\_\_  
          (Street Address) \_\_\_\_\_  
\_\_\_\_\_  
          (City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip Code) \_\_\_\_\_  
          ( \_\_\_\_\_ ) \_\_\_\_\_  
          (Telephone Number) \_\_\_\_\_

2. **Workers' Compensation/ Employer's Liability Insurance:** Certificate of Workers' Compensation Insurance meeting the coverages and requirements set forth in Article 11 of the General Conditions, minimum of 30 days' cancellation notice, proper Project description, waiver of subrogation and any applicable endorsements.

3. Automobile Liability Insurance: Certificate of Automobile Insurance meeting the coverages and requirements set forth in Article 11 of the General Conditions, minimum 30 days' cancellation notice, any applicable endorsements and a statement that the insurance provided is primary to any insurance obtained by the District.

Incidents and claims are to be reported to the insurer at:

Attn: \_\_\_\_\_  
(Title) (Department)  
\_\_\_\_\_  
(Company)  
\_\_\_\_\_  
(Street Address)  
\_\_\_\_\_  
(City) (State) (Zip Code)  
( ) \_\_\_\_\_  
(Telephone Number)

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

\_\_\_\_\_  
CONTRACTOR

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

Signature

**CONTRACTOR CERTIFICATION REGARDING BACKGROUND CHECKS**

**(Modernization Projects)**

\_\_\_\_\_ certifies that it has performed one of the following:  
[Name of contractor/consultant]

- ☐ Pursuant to Education Code Section 45125.1, Contractor has conducted criminal background checks, through the California Department of Justice, of all employees providing services to the Pomona Unified School District, pursuant to the contract/purchase order dated \_\_\_\_\_, and that none have been convicted of serious or violent felonies, as specified in Penal Code Sections 1192.7(c) and 667.5(c), respectively.

As further required by Education Code Section 45125.1, attached hereto as Attachment "A" is a list of the names of the employees of the undersigned who may come in contact with pupils.

OR

- ☐ Pursuant to Education Code Section 45125.2, Contractor will ensure the safety of pupils by one or more of the following methods:
- ☐ 1. The installation of a physical barrier at the worksite to limit contact with pupils.
  - ☐ 2. Continual supervision and monitoring of all employees of the entity by an employee of the entity whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
[Name of Contractor/Consultant]

\_\_\_\_\_  
By its:\_\_\_\_\_

**ATTACHMENT A:**

**CONTRACTOR CERTIFICATION REGARDING BACKGROUND CHECKS**

*(INSERT NAMES OF EMPLOYEES WHO MAY COME IN CONTACT WITH PUPILS)*



**GENERAL CONDITIONS OF  
THE CONSTRUCTION CONTRACT**

**ARTICLE 1  
GENERAL PROVISIONS**

**1.1 BASIC DEFINITIONS**

1.1.1      Acceptance means the point that the Work, or a portion thereof designated by District for separate delivery, is accepted by the Board of Education. Acceptance shall not constitute evidence or confirmation of Substantial Completion or Final Completion if in fact the Work is not Substantially Complete or Finally Complete on the date of such Acceptance and shall not constitute a waiver of any of District's rights with respect to any portion of the Work that does not conform to the requirements of the Contract Documents.

1.1.2      Act of God means earthquake, natural flood, tornado or other unusually severe natural or weather phenomenon occurring at the Site and causing Delay to performance of the Work; provided, however, that precipitation (including, without limitation, dry out time) and winds shall not be an Act of God unless it exceeds in any given month the 10-year average of monthly levels as established by the National Oceanic and Atmospheric Administration according to its records of precipitation and winds taken at its station located in the Los Angeles County basin area and nearest to the Site.

1.1.3      Addendum means written or graphics information (including, without limitation, Drawings or Specifications) prepared, issued and/or pending DSA approval, prior to the receipt of Contractor's Bid which modifies or interprets the proposed Contract Documents by additions, deletions, clarifications, or correction.

1.1.4      Admitted Surety means a surety insurer that is duly certified pursuant to California Insurance Code Section 995.120 to transact business as a surety in the State of California.

1.1.5      Allowable Costs means those costs, listed in Paragraph 7.7.3 of the General Conditions, for Work not covered by agreed unit prices, which are to be used in calculating adjustments to the Contract Sum Payable. Allowable Costs do not include those costs listed or referred to in Paragraph 7.7.4 of the General Conditions.

1.1.6      Allowable Markups means the percentage markups specified in Paragraph 7.7.5 of the General Conditions that are the agreed markups to be applied to Allowable Costs in calculating adjustments to the Contract Sum Payable.

1.1.7      Alternate means a proposed alternative described in the Bidding Documents for adding or deleting a particular material, system, product, method or construction.

1.1.8      Applicable Laws means all applicable federal, state and municipal laws (legal and equitable), statutes, building codes, ordinances, regulations and lawful orders (including, without limitation, conditions of permitting, development or entitlement) of Governmental Authorities having jurisdiction over the Project, Work, Site, District, Contractor (including, without limitation, Environmental Laws) and all ordinances, rules and regulations enacted by District. In the event of a conflict between or among Applicable Laws governing performance of the Work, the more stringent shall apply.

1.1.9      Application for Payment means Contractor's certified application for Progress Payment or Final Payment for Work performed in accordance with the Contract Documents.

## GENERAL CONDITIONS

1.1.10      As-Built Documents means the collection of documents assembled and prepared by Contractor (including, without limitation, the As-Built Drawings) showing the condition of the Work as actually constructed.

1.1.11      As-Built Drawings and Specifications means the set of Drawings and Specifications marked by Contractor showing the condition of the Work as actually constructed, including, without limitation, the quantities, locations, lengths and dimensions of mechanical, electrical, plumbing, HVAC or similar portions of the Work that are shown diagrammatically in the Contract Documents.

1.1.12      Award means the action of the Board of Educations duly approving by resolution District's entering into the Construction Contract with Contractor.

1.1.13      Base Bid means the sum of money stated in the Bid for which the Bidder proposes to perform the Work described in the Bidding Documents, exclusive of adjustments for Alternates.

1.1.14      Bid means the written proposal submitted to District in accordance with the Bidding Documents for the performance of the Work.

1.1.15      Bidder means a person or entity submitting a Bid for performance of the Work.

1.1.16      Bid Bond means the form of Bid Security consisting of a surety bond issued in accordance with the Instructions to Bidders.

1.1.17      Bid Form means the form prescribed by the Bidding Documents to be completed and signed by the Bidder and submitted as the Bid.

1.1.18      Bid Security means a deposit of cash, certified or cashier's check or bond submitted by the Bidder in accordance with the Bidding Documents guaranteeing that if Award of the Construction Contract is made to the Bidder, that Bidder will enter into the Construction Contract and furnish the Performance Bond and Payment Bond and other Post-Award Submittals as required by the Bidding Documents.

1.1.19      Bidding Documents means, if applicable, the following collection of documents prepared and issued for the purpose of soliciting Bids for the Work: (1) Notice to Bidders; (2) Instructions to Bidders; (3) Bid Form; (4) Construction Contract; (5) General Conditions; (6) Specifications; (7) Plans and Drawings; (8) Addenda; (9) Reference Documents; (10) District Construction Health, Safety and Environmental Program; (11) Project Labor Agreement (if applicable); (12) Labor Compliance Program (if applicable); and (13) those documents, or those portions or provisions of documents that, although not listed among the documents described in Clauses (1) through (12) hereinabove, are expressly cross-referenced therein or attached thereto.

1.1.20      Board of Education means the governing board of the Pomona Unified School District.

1.1.21      CADD Drafting Standards means the basic requirements for production and use of electronic files of documents depicting design information.

1.1.22      Certification for Payment means the statement from Construction Manager and Design Consultant certifying the undisputed amount of money due to Contractor upon an Application for Payment and stating the amount of money that is disputed upon an Application for Payment.

1.1.23      Change means a modification, change, addition, substitution or deletion in the Work or in Contractor's means, methods, manner, time or sequence of performing the Work arising from any cause or circumstances, including, without limitation, either directly at the request of District or constructively by reason of other circumstances. Use of the term "Change," in any context, in the Contract Documents shall not be interpreted as implying that Contractor is entitled to an adjustment

## GENERAL CONDITIONS

increasing the Contract Sum Payable or extending the Contract Time on any basis other than for Compensable Change or Compensable Delay.

1.1.24 Change Order means a written instrument, signed in accordance with the requirements of the General Conditions, setting forth agreement of District and Contractor on the terms of an adjustment in the Contract Sum Payable or Contract Time due to Compensable Change, Compensable Delay or Deleted Work, and in the form attached hereto as **Exhibit "B"**.

1.1.25 Change Order Request means Contractor's written request for an adjustment in the Contract Sum Payable or Contract Time due to a Compensable Change, Compensable Delay or Deleted Work.

1.1.26 Claim means a written demand or assertion by District or Contractor seeking, as a matter of right, an interpretation of contract, payment of money, recovery of damages or other relief. A Claim does not include the following: (1) tort claims for personal injury or death; (2) stop notice claims; or (3) the right of District to specific performance or injunctive relief to compel performance.

1.1.27 Claims Dispute Resolution Process means the process of resolution of Claims set forth in Section 4.5 of the General Conditions.

1.1.28 Close-Out Documents means the As-Built Documents, warranties, guaranties, maintenance and operations manuals and other documents that, along with electronic versions, that are required to be delivered by Contractor to Construction Manager upon Final Completion of the Work or a portion of the Work designated by District.

1.1.29 Construction Manager means the Project Team member primarily responsible for management, oversight and supervision of the implementation of the Project. Construction Manager may be an independent consultant retained by the District. Construction Manager may be replaced by District at any time, with written notice to Contractor.

1.1.30 Compensable Change means Extra Work: (1) that is the result of (a) Differing Site Conditions, (b) revisions in Applicable Laws enacted after the execution of the Construction Contract by District and Contractor, (c) a Change requested in a writing signed by District, or (d) other circumstances involving a Change in the Work for which the Contractor is given a specific and express right to an adjustment of the Contract Sum Payable under the Contract Documents; and (2) that is not caused, in whole or in part, by the negligence or willful misconduct of Contractor or a Subcontractor of any Tier or a failure to comply with Contractor's obligations under the Contract Documents; and (3) for which an adjustment to the Contract Sum Payable is not prohibited by nor waived under the terms of the Contract Documents; and (4) that if performed would require Contractor to incur additional and unforeseeable Allowable Costs that would not have been required to be incurred in the absence of such Extra Work.

1.1.31 Compensable Delay means a Delay to the critical path of activities affecting Contractor's ability to achieve Substantial Completion of the Work within the Contract Time for Substantial Completion, not caused, in whole or in part, by the negligence or willful misconduct of Contractor or a Subcontractor of any Tier or a failure to comply with Contractor's obligations under the Contract Documents, and that is caused solely by any of the following: (1) a Compensable Change; (2) the active negligence of District, Construction Manager, Design Consultant, a District Consultant or a Separate Contractor; or (3) other circumstances involving Delay for which the Contractor is given a specific and express right under the Contract Documents to both an adjustment of the Contract Sum Payable and Contract Time.

1.1.32 Conditional Safety Record Approval means an approval by District of Contractor's or a Subcontractor's safety record, given as part of a process of prequalification of bidders conducted by District for the purpose of prequalifying bidders for the Project, that under the terms of the applicable

## GENERAL CONDITIONS

prequalification documents is “conditional” upon Contractor or Subcontractor providing a full-time representative at the Site dedicated exclusively to matters of safety, if applicable.

1.1.33      Consequential Damages means damages incurred by either District or Contractor for loss of use, loss of profit or income, loss of revenue, lost opportunity, additional or unabsorbed overhead, loss of management or services, loss of productivity, loss of financing or funding, loss of business reputation, loss of bonding and all similar indirect, economic damages that are caused as a result of either Delay or that result from a termination or suspension (for default or convenience) of all or any portion of the Construction Contract or the Work. Consequential Damages do not include direct or indirect damage or injury to persons or tangible property, including, without limitation, the repair or replacement of tangible property damaged or lost.

1.1.34      Construction Contract means the written contract executed between District and Contractor for the Work.

1.1.35      Construction Schedule means the detailed, critical path schedule prepared by Contractor showing Contractor’s plan for construction of the Work within the Contract Time and in accordance with the Contract Documents.

1.1.36      Contract Documents means the following collection of documents governing Contractor’s performance of the Work: (1) the Construction Contract between District and Contractor, other terms, conditions and requirements applicable to the performance of the Construction Contract and Work (including the General Conditions, any Supplementary Conditions and the General Requirements), Drawings, Specifications, Addenda issued prior to execution of the Construction Contract and other documents listed in the Construction Contract and Modifications issued after execution of the Construction Contract; (2) a Change Order signed by both District and Contractor and/or such others, if any, as required by the General Conditions; (3) a Unilateral Change Order signed by District and/or such others, if any, as required by the General Conditions; (4) a Field Order signed by District and/or such others, if any, as required by the General Conditions; (5) a written order for a Minor Change in the Work issued by the Design Consultant or Construction Manager; (6) Project Labor Agreement (if applicable); (7) Labor Compliance Program (if applicable); (8) those documents, or those portions or provisions of documents that, although not listed among the documents described in Clauses (1) through (8) hereinabove, are expressly cross-referenced therein or attached thereto; and (9) if Contractor was previously prequalified by District as a condition to submitting its Bid for the Work, the Contract Documents include those written representations, obligations or responsibilities made, acknowledged or assumed by the Bidder as part of a prequalification process, including without limitation, any continuing obligations assumed by Contractor for disclosure of false or misleading information in its Prequalification Submittal, reporting changes in ownership or management, supervision of matters relating to safety and meeting minimum prequalification safety requirements.

1.1.37      Contract Price means the sum of the Contract Sum Payable and the unexpended portion of the District Contingency, if any.

1.1.38      Contract Sum Payable means the total amount of compensation stated in the Construction Contract that is payable to Contractor for the complete performance of the Work in accordance with the Contract Documents, which is based upon the Contractor’s Bid as adjusted for: (1) Alternates accepted by the District, if any; and (2) other adjustments permitted by the Contract Documents on account of Compensable Change, Compensable Delay or Deleted Work.

1.1.39      Contract Time means the total number of Days set forth in the Construction Contract within which Contractor is obligated to achieve Substantial Completion and/or Final Completion of the Work, as adjusted for extensions of time permitted under the terms of the Contract Documents and approved by District.

## GENERAL CONDITIONS

1.1.40 Contractor means the person or entity under contract with District pursuant to the Construction Contract to serve as the general contractor for construction of the Work.

1.1.41 Contractor Amount means the amount calculated on behalf of Contractor pursuant to Paragraph 14.1.5 of the General Conditions that is used to determine the amount payable to Contractor or District in the event of a partial or full termination or discontinuance of the Work.

1.1.42 Contractor's Own Expense, when used in the Contract Documents with regard to a stated circumstance, means that Contractor agrees to pay for any Loss associated with such circumstance without reimbursement by District and without adjustment to the Contract Sum Payable or Contract Time. References to Contractor's Own Expense in relation to a set of circumstances stated in one portion the Contract Documents shall not be interpreted as implying that such circumstances are the sole or exclusive circumstances under which Contractor is responsible to bear, at its own expense, risk or cost without compensation or reimbursement by District.

1.1.43 Contractor's Qualification Statement means the statement, completed by Bidder in the form specified in the Instruction to Bidders, of the Bidder's experience, qualifications and financial condition.

1.1.44 Date for Receipt of Bids means the date and time specified in the Notice to Bidders as the deadline for receipt of Bids, as amended by Addendum, if any.

1.1.45 Date of Commencement means the starting date used for calculation of the Contract Time, which shall be the date identified in the Notice to Proceed issued by District.

1.1.46 Day, whether capitalized or not, and unless otherwise specifically provided, means calendar day, including weekends and legal holidays.

1.1.47 Defective Work means Work by Contractor or a Subcontractor that is unsatisfactory, faulty, omitted, incomplete, deficient or does not conform to Applicable Laws, the Contract Documents or the requirements of any inspection, reference standard, test, code or approval specified in the Contract Documents.

1.1.48 Delay, whether capitalized or not, means any circumstances involving delay, disruption, hindrance or interference in the performance of the Work.

1.1.49 Deleted Work means Work that is eliminated due to a Change requested by District.

1.1.50 Department of Industrial Relations means The Department of Industrial Relations of the State of California.

1.1.51 Design Consultant means the individual or firm under contract with District primarily responsible to provide design, engineering and related construction administration services for the Project.

1.1.52 Design Documents means all plans, drawings, tracings, specifications, programs, reports, calculations, models, presentation materials and other materials or documents containing designs, specifications or engineering information prepared by the Design Consultant, District Consultants, Contractor, Separate Contractors or Subcontractors including, without limitation, computer aided design materials, electronic data files and paper copies. The term "Design Documents" includes, without limitation, all building and other designs depicted therein, as well as the written documents themselves.

1.1.53 Designation of Subcontractors means the list of proposed Subcontractors prepared by Contractor pursuant to California Public Contract Code Sections 4100 et seq.

1.1.54 Differing Site Condition means an unforeseen condition at the Site or in Existing Improvements at the Site, as described in Paragraph 4.4.8 of the General Conditions.

## GENERAL CONDITIONS

1.1.55      Discovery Date, used in reference to Contractor's obligation to give written notice of certain facts, conditions or circumstances, means the earlier of the dates that Contractor either: (1) discovered such facts, conditions or circumstances, or (2) should have discovered such facts, conditions or circumstances in the exercise of reasonable care practiced by the general contractors performing public works construction projects in the Southern California area.

1.1.56      District means the Pomona Unified School District.

1.1.57      District Amount means the amount calculated on behalf of District pursuant to Paragraph 14.1.5 of the General Conditions that is used to determine the amount payable to Contractor or District in the event of a partial or full termination or discontinuance of the Work.

1.1.58      District Consultant means a consultant, other than Construction Manager, and Design Consultant, engaged by District (or engaged as a subconsultant to the Design Consultant or a District Consultant) to provide professional advice with respect to the design, construction or management of the Project.

1.1.59      District Contingency means a budgeted amount stated in the Construction Contract for adjustments to the Contract Price Payable that are authorized by Change Order or Unilateral Change Order on account of Compensable Changes or Compensable Delay.

1.1.60      District Contingency Expenditures means amounts authorized by Change Order or Unilateral Change Order to be transferred from District Contingency to cover adjustments authorized by a Change Order or Unilateral Change Order increasing the Contract Sum Payable on account of additional Allowable Costs and Allowable Markup for Compensable Changes or liquidated damages payable to Contractor for Compensable Delay.

1.1.61      District Furnished Materials means materials, goods, products or other items that are furnished by District for incorporation into the Work by means of an assignment to Contractor of a District Materials Contract.

1.1.62      District Materials Contract means a contract (including, without limitation, an order placed under a master agreement) entered into between District and a District Materials Vendor for the furnishing of materials for incorporation by Contractor into the Work.

1.1.63      District Materials Vendor means a vendor, manufacturer or supplier under a District Materials Contract.

1.1.64      District Review Date means an end date(s) set forth in the Construction Schedule or Submittal Schedule for District to furnish information, review documents or render decisions.

1.1.65      District Review Period means a period of time set forth in the Construction Schedule or Submittal Schedule within which Contractor has scheduled time for District to provide information, review documents or render decisions.

1.1.66      Drawings means the graphic and pictorial portions of the Contract Documents prepared by the Design Consultant or a District Consultant showing the design, location and dimensions of the Work, including plans, elevations, details, schedules and diagrams. The term "Drawings" is used interchangeably with "Plans."

1.1.67      DSA means the Division of the State Architect in the Department of General Services for the State of California.

1.1.68      Environmental Laws means all applicable federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority, which regulate, relate to, or impose liability or standards of conduct concerning any Hazardous Substance (including, without limitation, the use, handling, transportation, production, disposal, discharge or storage thereof), occupational or environmental conditions on, under, or about the Property (including,

LEGAL:10526-0001/8093698.1

Bid No. 10(25-26)FP

Pomona Unified School District

Page 75

## GENERAL CONDITIONS

without limitation, soil, groundwater, and indoor and ambient air conditions), or occupational health or industrial hygiene (but only to the extent related to Hazardous Substances on, under, or about the Property), as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C.A. §§ 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 [42 U.S.C.A. §§ 6901 et seq.]; the Clean Water Act (also known as the Federal Water Pollution Control Act) [33 U.S.C.A. §§ 1251 et seq.]; the Toxic Substances Control Act [15 U.S.C.A. §§ 2601 et seq.]; the Hazardous Materials Transportation Act [49 U.S.C.A. §§ 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 U.S.C.A. §§ 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 U.S.C.A. §§ 6901 et seq.]; the Clean Air Act [42 U.S.C.A. §§ 7401 et seq.]; the Safe Drinking Water Act [42 U.S.C.A. §§ 300f et seq.]; the Solid Waste Disposal Act [42 U.S.C.A. §§ 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 U.S.C.A. §§ 1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 U.S.C.A. §§ 11001 et seq.]; the Occupational Safety and Health Act [29 U.S.C.A. §§ 655 and 657]; the Residential Lead-Based Paint Exposure Act (Title X of the Housing and Community Development Act of 1992) [15 U.S.C.A. §§ 2681 et seq.]; the Lead-Based Paint Poisoning Prevention Act [42 U.S.C.A. §§ 4821 et seq.]; the California Underground Storage of Hazardous Substances Act [Cal. Health & Safety Code §§ 25280 et seq.]; the California Hazardous Substances Account Act [Cal. Health & Safety Code §§ 25300 et seq.]; the California Hazardous Waste Control Act [Cal. Health & Safety Code §§ 25100 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [Cal. Health & Safety Code §§ 24249.5 et seq.]; the Porter-Cologne Water Quality Act [Water Code §§ 13000 et seq.], and all similar federal, state or local laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements.

**1.1.69**     Escrow Agent means the entity serving as escrow agent pursuant to California Public Contract Code Section 22300 in connection with the deposit of securities or retention.

**1.1.70**     Event of Contractor Default means any of the events constituting default by Contractor as set forth in Paragraph 14.1.1, below.

**1.1.71**     Evidence of Insurance means the statement, completed by Bidder in the form specified in the Instruction to Bidders, evidencing the Bidder's compliance with the insurance requirements of the Bidding Documents.

**1.1.72**     Excusable Delay means a Delay, other than a Compensable Delay, to Contractor's ability to achieve Substantial Completion or Final Completion of the Work within the Contract Time that is: (1) not caused, in whole or in part, by the negligence or willful misconduct of Contractor or a Subcontractor of any Tier or a failure to comply with the obligations of Contractor under the Contract Documents; (2) is unforeseeable, unavoidable and beyond the control of Contractor and the Subcontractors, of any Tier; and (3) the result of a Force Majeure Event. Without limitation to the foregoing, neither the bankruptcy, insolvency nor financial inability of Contractor or any Subcontractor, nor any failure by a Subcontractor to perform any obligation imposed by contract or Applicable Laws, shall constitute a ground for Excusable Delay.

**1.1.73**     Existing Improvements means improvements located on the Site as of the date of execution of the Construction Contract, whether above or below the surface of the ground, including, but not limited to, existing buildings, utilities, infrastructure improvements and other facilities.

**1.1.74**     Extra Work means Work (other than Work that is either a logical evolution of the Design Consultant's detailing, refinement and clarification of the Drawings and Specifications that are part of the Contract Documents or that is reasonably inferable as necessary to satisfy the design intent for a completed and fully operational system, facility or structure) that is not indicated by the Contract Documents, the performance of which requires the expenditure by Contractor of additional and unforeseen Allowable Costs. References to Extra Work shall not be interpreted to mean or imply that Contractor is entitled to an adjustment to the Contract Sum Payable or Contract Time unless such Extra Work constitutes a Compensable Change.

## GENERAL CONDITIONS

1.1.75 Field Order means a written instrument signed in accordance with the requirements of the General Conditions that: (1) directs the performance of a Minor Change; (2) directs performance of Work or a Change with respect to which there exists a dispute or question regarding adjustment of the Contract Sum Payable or Contract Time; or (3) establishes a mutually agreed basis for compensation to Contractor for a Compensable Change or Deleted Work under circumstances where performance needs to proceed in advance of the Contractor having completed its substantiation and evaluation of the impact thereof on the Contract Sum Payable or Contract Time.

1.1.76 Final Completion, Finally Complete mean the point at which the following conditions have occurred with respect to the entire Work or a portion of the Work designated by District for separate delivery: (1) the entirety of such Work is fully completed, including all minor corrective, or "punch list," items; (2) a permanent and unconditional certificate of occupancy, or equivalent certification issued by DSA, for the entirety of such Work has been delivered to District; (3) all documents required to be submitted by Contractor as a condition of Substantial or Final Completion of such Work have been submitted, including, without limitation, warranties, guaranties and other Close-Out Documents; (4) such Work and the related portions of the Site have been thoroughly cleared of all construction debris and cleaned in accordance with the requirements of the Contract Documents, including, but not necessarily limited to where applicable, the following: removal of temporary protections; removal of marks, stains, fingerprints and other soil and dirt from painted, decorated and natural-finished woodwork and other Work; removal of spots, plaster, soil and paint from ceramic tile, marble and other finished materials; all surfaces, fixtures, cabinet work and equipment are wiped and washed clean and in an undamaged, new condition; all aluminum and other metal surfaces are cleaned in accordance with recommendations of the manufacturer; and all stone, tile and resilient floors are cleaned thoroughly in accordance with manufacturers recommendations and buff dried by machine to bring the surfaces to sheen; and (5) all conditions set forth in the Contract Documents for Substantial and Final Completion of the Work of the Project have been, and continue to be, fully satisfied.

1.1.77 Final Completion Punch List means the list of items of Work to be completed or corrected by Contractor for Final Completion.

1.1.78 Final Payment means payment by District to Contractor of the entire unpaid balance of the Contract Sum Payable, as adjusted by Change Order or Unilateral Change Order.

1.1.79 Force Majeure Event means, and is restricted to, any the following: (1) Acts of God; (2) terrorism or other acts of public enemy; (3) acts or omissions of Governmental Authorities beyond the reasonable foreseeability and control of Contractor, including but not limited to, conduct, actions, omissions and delays by DSA; (4) epidemics or quarantine restrictions; (5) strikes, other than those resulting from a violation by Contractor or a Subcontractor of Applicable Laws or applicable collective bargaining agreements, resulting in the unavailability of workers or replacement workers; or (6) unusual shortages in materials that are supported by documented proof that (a) Contractor made every effort to obtain such materials from all available sources located within a reasonable distance of the Site, (b) such shortage is due to the fact that such materials are not physically available or could have been obtained only at exorbitant prices entirely inconsistent with current rates taking into account the quantities involved and the usual industry practices in obtaining such quantities, and (c) such shortages and the difficulties in obtaining alternate sources of materials could not have been known or anticipated at the time the Construction Contract was entered into.

1.1.80 Fragnet means a contemporaneous, fragmentary scheduling network, which graphically identifies the sequencing of all critical and non-critical new activities and/or activity revisions affected by a Compensable Delay or Excusable Delay with logic ties to all affected existing activities noted on the Construction Schedule. Its objective is to isolate and quantify any time impact of a specific issue, determine and demonstrate any such specific Delay in relation to past and/or other current Delays



## GENERAL CONDITIONS

and to provide a method for incorporating all approved extensions to the Contract Time into an update of the approved Construction Schedule.

1.1.81      General Conditions means the herein set forth general terms and conditions governing performance of the Work.

1.1.82      General Requirements means the portion of the Specifications so titled setting forth additional requirements for administration of the Work.

1.1.83      Governmental Authority means the United States, the State of California, the City in which the Project is located, the County of Los Angeles, DSA and any other local, regional, state or federal political subdivision, agency, department, commission, board, bureau, court, judicial or quasi-judicial body, and any legislative or quasi-legislative body, or instrumentality of any of them, which exercises jurisdiction over the Project, Work, Site, Contractor or District.

1.1.84      Governmental Authority Review Period means a period of time set forth in the Construction Schedule or Submittal Schedule for Governmental Authority (other than District) review and approval of the Design Documents or the Work.

1.1.85      Guarantee To Repair Period means the period of time set forth in Section 12.3 of the General Conditions for repair or replacement of Defective Work.

1.1.86      Hazardous Substance means: (1) any chemical, material or other substance defined as or included within the definition of "hazardous substances," "hazardous wastes," "extremely hazardous substances," "toxic substances," "toxic material," "restricted hazardous waste," "special waste", "contamination", or words of similar import under any Environmental Law, including, without limitation, the following: petroleum (including crude oil or any fraction thereof), asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs") and PCB-containing materials, whether or not occurring naturally; or (2) any substance that because of its quantity, concentration or physical or chemical characteristics poses a significant present or potential hazard to human health and safety or to the environment, and which has been determined by any Governmental Authority to be a hazardous waste or hazardous substance.

1.1.87      Holidays means those Days recognized by District as being legal holidays for its staff and employees, which shall include the following, which shall constitute a one Day holiday unless otherwise stated: Martin Luther King Day; Presidents' Day; Cesar Chavez Day; Memorial Day; Fourth of July; Labor Day; Veteran's Day; Thanksgiving (two Days); Christmas (two Days); and New Year's (two Days).

1.1.88      Indemnitees means those persons or entities listed in Paragraph 3.18.1 of the General Conditions as the "Indemnitees".

1.1.89      Inspector of Record means a certified inspector approved by the Office of Regulations Services of the Division of State Architect for the Department of General Services of the State of California to inspect the Work pursuant to the Field Act (California Education Code, Section 81130.3 et seq.) and applicable provisions of the California Code of Regulations.

1.1.90      Instructions to Bidders means the portion of the Bidding Documents setting forth the requirements to be followed by Bidders in preparing and submitting Bids.

1.1.91      Key Personnel, Key Persons mean those individuals employed by Contractor for performance of the Work that are considered of essence to Contractor's consideration for the Construction Contract.

1.1.92      Labor Compliance Program means the Labor Compliance Program that is identified in Construction Contract pursuant to California Labor Code Section 1771.7, if any.

## GENERAL CONDITIONS

1.1.93 Letter of Assent means Contractor's confirmation and agreement to abide by the terms and conditions of the Project Labor Agreement, if any.

1.1.94 Loss, Losses mean any and all economic and non-economic injuries, losses, costs, liabilities, claims, damages, actions, judgments, settlements, expenses, fines and penalties. "Losses" do not include attorney's fees or court costs, whether arising as an expense or cost of legal proceedings to which Contractor is a party or as a consequential damage claimed against Contractor by any third person or entity.

1.1.95 Master Files Archives System means the master filing system prepared by Construction Manager whereby all documents (electronic and hard copy) are stored for ready access by authorized Project Team members or auditors of District.

1.1.96 Minor Change means a Change in the Work that does not involve either performance of Extra Work or an adjustment to the Contract Sum Payable or Contract Time.

1.1.97 Modification means a written agreement of District and Contractor that amends, adds to or revises the provisions of the Construction Contract or other Contract Documents.

1.1.98 Mold means mold, mildew, spores or other microorganism of any type, nature or description or any by-product thereof, the presence of which poses an actual or potential threat to human health, including, without limitation, any species of organisms of the kingdom of fungi or mycota, including yeasts, smuts, ruts, mildews, mold and mushrooms or any microbial contamination, either airborne or surface, which arises out of or is related to the presence of fungus or spores (including, without limitation, aspergillus, cladesporium, penicillium and stachybotrys chartarum).

1.1.99 Non-Collusion Affidavit means the form, so titled, required by California Public Contract Code Section 7106 and the Bidding Documents to be submitted by Bidder.

1.1.100 Notice of Change means the formal written notice required to be submitted by Contractor pursuant to Paragraph 7.6.1 of the General Conditions notifying District of circumstances that Contractor believes may give rise to a Compensable Change.

1.1.101 Notice of Delay means a formal written notice required to be submitted by Contractor pursuant to Paragraph 8.2.2 of the General Conditions notifying District of circumstances that Contractor believes may give rise to an adjustment of the Contract Time for Excusable Delay or Compensable Delay.

1.1.102 Notice of Intent to Award means the written notice by or on behalf of District stating District's intent to Award the Construction Contract to Contractor.

1.1.103 Notice of Final Completion means the written notice by Construction Manager confirming the date that the Work is Finally Completed by Contractor.

1.1.104 Notice of Substantial Completion means the written notice by Construction Manager confirming the date that the Work is Substantially Completed by Contractor.

1.1.105 Notice to Bidders means the notice issued by or on behalf of District inviting submission of Bids.

1.1.106 Notice to Proceed means the written notice issued by District to Contractor to begin the Work.

1.1.107 Payee Data Record means the form, so titled, that the Bidding Documents require to be submitted by the Bidder.

1.1.108 Performance Bond, Payment Bond means the surety bonds required to be provided by Contractor pursuant to Section 11.4 of the General Conditions.

## GENERAL CONDITIONS

1.1.109 Plans means the graphic and pictorial portions of the Contract Documents prepared by the Design Consultant or a District Consultant showing the design, location and dimensions of the Work, including plans, elevations, details, schedules and diagrams. The term "Plans" is used interchangeably with "Drawings."

1.1.110 Post-Award Submittals means the collection of documents described in the Instructions to Bidders that is required to be submitted by the successful Bidder following its receipt of the Notice of Intent to Award.

1.1.111 Pre-Bid Conference means the conference, specified in the Notice to Bidders as either mandatory or optional, arranged prior to the Date for Receipt of Bids for the purpose, without limitation, of introducing the Bidders to the Project and which may, or may not, include a tour of the Site.

1.1.112 Request for Proposal Documents means those documents issued to and submitted by individuals or entities for the purpose of submitting Bids for the Construction Contract or for a classification of contracts that includes the Construction Contract.

1.1.113 Product Data means illustrations, standard schedules, charts, instructional brochures, diagrams and other information furnished by Contractor to illustrate a material, product or system for the Work.

1.1.114 Progress Payment means a monthly payment of a portion of the Contract Sum Payable prior to Final Completion based on Contractor's progressed performance of the Work.

1.1.115 Project means the **Bid No. 10(25-26)FP – Renovation of Science Labs at Garey High School.**

1.1.116 Project Health, Safety & Environmental Plan means the plan prepared by Contractor setting forth the general safety policies and procedures governing Contractor's performance.

1.1.117 Project Team means District, Construction Manager, the Design Consultant, District Consultants, Contractor, the Subcontractors, the Separate Contractors, Inspectors of Record and other firms or individuals retained by District, or retained by others with District's approval, participating in the planning, programming, design or construction of the Work.

1.1.118 Reasonable Order of Magnitude means a general estimate prepared by Contractor, or by Contractor and Construction Manager, without the benefit of complete or definitive pricing by Subcontractors, of the projected additional cost and time associated with Contractor's performance of a particular item or items of Extra Work or Deleted Work described in a Field Order. Unless otherwise agreed to in writing between District and Contractor, a Reasonable Order of Magnitude estimate does not constitute a guarantee by Contractor of the maximum adjustment to the Contract Sum Payable or Contract Time that may be associated with such Extra Work or Deleted Work nor does it constitute authorization or agreement by District to an expenditure from the District Contingency or an adjustment to the Contract Sum Payable or Contract Time in the amount of such estimate.

1.1.119 Reference Documents means, and is limited to, the documents provided or made available to the Bidders for their review in connection with the preparation of their Bids, that contain information describing surface and subsurface conditions at the Site or as-built conditions of Existing Improvements.

1.1.120 Request for Extension means a formal written request required to be submitted by Contractor pursuant to Paragraph 8.2.3 of the General Conditions setting forth the justification and support for Contractor's request for adjustment to the Contract Time due to an Excusable Delay or Compensable Delay.

1.1.121 Request for Information means a written request by Contractor for clarification of what it perceives to be discrepancies in the Contract Documents, (including, without limitation,

## GENERAL CONDITIONS

information in the Contract Documents constituting errors, omissions, conflicts, ambiguities, lack of coordination, noncompliance with Applicable Laws or variances between the information in the Contract Documents and field conditions.)

1.1.122     Samples means physical examples that, when approved by District and Design Consultant, illustrate materials, equipment or workmanship by which the Work is to be evaluated and judged.

1.1.123     Segregation of Costs/Schedule of Values means a detailed, itemized breakdown of the Contract Sum Payable, which provides for a fair and reasonable allocation of the dollar values to each of the various parts of the Work and that reflects on an on-going basis the status of District Contingency Expenditures.

1.1.124     Separate Contractor means a person or entity, other than Contractor, under separate contract with District to perform construction or supply materials or equipment to the Project.

1.1.125     Shop Drawings means drawings, diagrams, schedules and other data specially prepared for the Work by Contractor or a Subcontractor to illustrate some portion of the Work.

1.1.126     Site means: (1) the parcel(s) of land that are owned or leased by District; (2) all areas adjacent to such parcel(s) that may be used by Contractor or Subcontractors for staging, storage, parking or temporary offices; and (3) all land areas, both private and public, adjacent to such parcel(s) on which Work is required to be performed under the Contract Documents or Applicable Laws.

1.1.127     Specifications means the portion of the Contract Documents consisting of the written requirements for materials, equipment, standards and workmanship for the Work and performance of related services.

1.1.128     State Water Resources Control Board means the State Water Resources Control Board of the State of California.

1.1.129     Statement of Dispute means a written description of a disputed Claim required to be submitted as part of the Claims Dispute Resolution Process provided for in Section 4.5 of the General Conditions.

1.1.130     Storm Water Permit means a State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity issued by the State Water Resources Board for the State of California.

1.1.131     Sub-Bidder means a person or entity that submits a bid to a Bidder for some portion of the Work.

1.1.132     Subcontractor means a person or entity that has a contract to perform a portion of the Work, including without limitation, subcontractors, sub-subcontractors, suppliers and vendors, of any and every Tier. Unless otherwise express stated, the term "Subcontractor" includes a District Materials Vendor under a District Materials Contract that has been assigned to Contractor pursuant to Section 2.5 of these General Conditions.

1.1.133     Submittal means Shop Drawings, Product Data, Samples, detailed designs, exemplars, fabrication and installation drawings, lists, graphs, operating instructions and other documents required to be submitted by Contractor under the Contract Documents.

1.1.134     Submittal Schedule means the schedule prepared by Contractor showing the timing for submission and review of Submittals during construction.

1.1.135     Substantial Completion, Substantially Complete mean the point at which the Work, or a portion thereof designated by District for separate delivery, is: (1) sufficiently and entirely complete

## GENERAL CONDITIONS

in accordance with Contract Documents so that such Work can be fully enjoyed and beneficially occupied and utilized by District for its intended purpose (except for minor items which do not impair District's ability to so occupy and use such Work); (2) receipt by District of all permits and certificates by Governmental Authorities, if any, required to occupy and use such Work; and (3) all systems included in the Work are operational as specified, all designated or required inspections and certifications by Governmental Authorities have been made and posted and instruction of District's personnel in the operation of the systems has been completed.

1.1.136 Substantial Completion Punch List means the list of items of Work to be completed or corrected by Contractor for Substantial Completion.

1.1.137 Substitution means a material, product or item of material or equipment proposed by the Bidder or Contractor in place of that specified.

1.1.138 Substitution Request Form means the form, so titled, that is part of the Bidding Documents and that the Bidders are required to use when requesting a Substitution.

1.1.139 Supplementary Conditions means those portions of the Contract Documents that supplement, by addition, modification or deletion, a portion of the General Conditions.

1.1.140 Surety means Contractor's surety issuing the Bid, Performance and/or Payment Bonds.

1.1.141 Tier means the contractual level of a Subcontractor with respect to Contractor. For example, a "first-tier" Subcontractor is under contract with Contractor. A sub-subcontractor under contract with a first-tier Subcontractor is in the "second tier," and so on. Use of the phrase "of every Tier", or similar phraseology, in the Contract Documents shall not be interpreted as implying that other provisions of the Contract Documents, where such phrases are not used, are intended to be limited in application to only the first Tier or to only certain Tiers of Subcontractors.

1.1.142 Time Impact Analysis means a written report evaluating the impact of an Excusable or Compensable Delay, which shall include, at a minimum, the following: (1) a narrative description of the Delay and its impact on the critical path to Substantial Completion of the Work or a portion of the Work designated by District; (2) a Fragnet; (3) a detailed breakdown of the Allowable Costs, if any, sought by Contractor due to the Delay; (4) the number of Days of extension sought by Contractor as an adjustment to the Contract Time; (5) a statement that Contractor has complied with the requirements of the General Conditions for written notice of Delays, along with the dates and copies of such notices; (6) the measures taken by Contractor and Subcontractors to prevent or minimize the Delay; and (7) Contractor's recommendations for reordering or re-sequencing the Work to avoid or minimize further Delay.

1.1.143 Unexcused Delay means any Delay that is not an Excusable Delay or Compensable Delay or for which Contractor is not entitled to any extension of time on the grounds of Compensable Delay or Excusable Delay, including, without limitation, the following: (1) Delay caused by Contractor's failure to comply with the Contract Documents; (2) Delay for which Contractor has failed to provide timely and complete Notice of Delay and Request for Extension; or (3) Delay associated with any circumstances where costs or risk associated with such circumstances are designated in the Contract Documents as being at Contractor's risk or Contractor's Own Expense.

1.1.144 Unilateral Change Order means a writing signed by District in accordance with the General Conditions, in which District unilaterally sets forth its determination of the amount of adjustment to the Contract Sum Payable or Contract Time due to a Compensable Change, Compensable Delay or Deleted Work.

1.1.145 Work means all labor, materials, equipment, services, permits, licenses and taxes and all other things necessary for Contractor to perform its obligations under the Contract Documents,

## GENERAL CONDITIONS

including, without limitation, any Changes requested by District, in accordance with the Contract Documents and all Applicable Laws. The Work may constitute the whole or a part of the Project.

1.1.146 Worker's Compensation Certificate means the statement, completed by Bidder in the form specified in the Instruction to Bidders, evidencing the Bidder's compliance with the worker's compensation insurance requirements of the Bidding Documents and Applicable Laws.

### **1.2 PARTIES TO THE CONSTRUCTION CONTRACT**

The Contract Documents shall not be construed to create a contractual relationship of any kind between: (1) the Design Consultant and Contractor or a Subcontractor of any Tier; (2) Construction Manager and Contractor or a Subcontractor of any Tier; (3) the Design Consultant and Construction Manager; and (4) District and a Subcontractor of any Tier.

### **1.3 CORRELATION, INTERPRETATION AND INTENT OF CONTRACT DOCUMENTS**

1.3.1 Design Intent. The intent of the Contract Documents is for Contractor to provide all items necessary to produce a work of improvement that is complete as a whole and that is, in all of its parts, suitable for use and occupancy for its intended purpose, and without limitation, all equipment, case work, mechanical, electrical and similar devices of whatever nature, completely installed, hooked-up and made fully operational and functional.

1.3.2 Complementary. Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. Any Work called for on the Drawings and not mentioned in the Specifications, or vice versa, shall be performed as though fully set forth in both.

1.3.3 Technical Words. Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood construction industry meanings and non-technical words and abbreviations are used in accordance with their commonly understood meanings.

1.3.4 Trade Names. It is not the intention of the Contract Documents to go into detailed descriptions of any materials or methods commonly known to the trade under a "trade name" or "trade term." The mere mention or notation of such "trade name" or "trade term" shall be considered a sufficient notice to Contractor that it will be required to complete the Work so named with all its appurtenances according to first-class practices of the trade.

1.3.5 Incidental Items. The naming of any material or equipment shall mean furnishing and installing of same, including all incidental and accessory items thereto and labor therefor, in accordance with first-class practices of the trade involved, unless specifically noted otherwise.

1.3.6 Drawing Dimensions. Figured, derived or numerical dimensions on scale Drawings shall govern over Drawings without figured dimensions. The Drawings shall not be scaled to determine dimensions, and (except in the case of diagrammatic Drawings) dimensions shall be calculated from figures shown on the Drawings. Obvious discrepancies between scale and figured dimensions, not marked "not to scale," must be brought to Construction Manager's and Design Consultant's attention before proceeding with the Work affected by the discrepancy.

1.3.7 Specifications. In general, the Specifications will define materials and delineate the quality of products, systems and equipment and the standards of execution that are expected for all Work depicted in the Drawings. Any Work depicted in the Drawings for which there is no such delineation in the Specifications shall be reported to Construction Manager and Design Consultant for clarification before proceeding with the Work affected thereby.

1.3.8 Typical Work. Work not particularly shown, detailed, marked or specified shall be the same as similar parts that are shown, detailed, marked or specified.

## GENERAL CONDITIONS

**1.3.9 Divisions of the Work.** All the Work mentioned or indicated in the Contract Documents shall be performed by Contractor as part of the Work unless specifically indicated in the Contract Documents to be done by others. The organization of the Specifications into divisions, sections and articles and the arrangement of Drawings shall not control Contractor in dividing the Work among the Subcontractors or in establishing the extent of the Work to be performed by the Subcontractors.

**1.3.10 Applicable Laws.** Compliance with Applicable Laws shall be considered as a part of the Work.

**1.3.11 Modifiers.** The Contract Documents may omit modifying words such as "all" and "any," and articles such as "the" and "an." If a modifier or an article is not included in one statement and appears in another it is not intended to affect the interpretation of either statement. The use of the word "including," when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters whether or not non-limiting language (such as "without limitation," "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

**1.3.12 Singular, Gender, Captions.** When appropriate to the contexts, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust or other legal entity whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only as a matter of reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof. References to a particular Article, Section, Paragraph, Subparagraph or Part of the General Conditions includes all Sections, Paragraphs, Subparagraphs, Parts, Subparts and Clauses contained therein and shall not be interpreted as excluding other provisions of the Contract Documents that are applicable.

**1.3.13 Cross-References.** Any cross-references indicated between various paragraphs or other portions of the Specifications, Drawings or other Contract Documents are provided for the convenience of Contractor and shall not be deemed to be all-inclusive.

**1.3.14 Diagrammatic Portions.** Drawings and diagrams for mechanical, plumbing and electrical Work shall be considered as diagrammatic only, shall not be used for any structural guidance or physical layout, and Contractor shall be responsible to provide, at Contractor's Own Expense, any and all numbers and lengths of mechanical, plumbing or electrical fittings, wire, conduit, connections, attachments or similar materials needed to complete the Work, whether or not they exceed the numbers of pieces or the lengths indicated by the Drawings.

**1.3.15 Demolition.** Existing Improvements at the Site, for which no specific description is made on the Drawings, but which could be reasonably assumed to interfere with the satisfactory completion of the Work, shall be removed and disposed of by Contractor at Contractor's Own Expense.

**1.3.16 Omissions.** Items missing from the Contract Documents shall nevertheless be provided by Contractor, at Contractor's Own Expense, to the extent reasonably inferable from the Contract Documents as being necessary to satisfy the design intent.

**1.3.17 Conflicts, Order of Precedence.** Notwithstanding the order of precedence provisions set forth in this Paragraph, in the event of conflict between any of the Contract Documents, the provision placing a more stringent requirement or greater burden on Contractor or requiring the greater quantity or higher quality material or the workmanship shall prevail, unless otherwise directed by Construction Manager or Design Consultant in writing. Conflicts that cannot be so resolved shall be interpreted in accordance with the following order of precedence (the first being the highest order of precedence):

## GENERAL CONDITIONS

.1 Applicable Laws (provided, however, that where the Contract Documents or manufacturer's recommendations or specification required standards higher than those of Applicable Laws, the Contract Documents or manufacturer recommendations or specifications shall control).

.2 Change Orders, Unilateral Change Orders and Field Orders.

.3 Addenda.

.4 Construction Contract.

.5 Supplementary Conditions.

.6 General Conditions.

.7 General Requirements.

.8 Specifications.

.9 Drawings (with large-scale details taking precedence over smaller scale details).

.10 Reference Documents.

1.3.18 Rehabilitation Work. If and to the extent that the Work involves the alteration, rehabilitation or reconstruction of Existing Improvements, then the following provision shall apply: The intent of the Drawings and Specifications is that the Work is to be in accordance with all Applicable Laws, including, without limitation, Title 24, California Code of Regulations. Should any existing conditions such as deterioration or non-complying construction be discovered which is not covered by the Contract Documents wherein the finished Work will not comply with Title 24, California Code of Regulations, a Change Order or Unilateral Change Order, or a separate set of Drawings and Specifications, detailing and specifying the required Work shall be submitted to and approved by the Office of Regulations Services of the Division of the State Architect in the State Department of the General Services for the State of California before proceeding with the Work.

1.3.19 Conditions Precedent. Wording used in the Contract Documents indicating that a right of Contractor is subject to or conditioned upon the occurrence of a condition or event, whether or not such condition or event is within the control of Contractor, District or others and whether or not such condition or event is designated to be a condition precedent, shall be understood and interpreted to mean that the stated condition or event is a condition precedent to the existence, arising and exercise of such right.

## **1.4 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

1.4.1 Property of District. All Design Documents, Contract Documents and Submittals (including, without limitation, electronic versions and paper copies) and all designs and building designs depicted therein, are and shall remain the sole and exclusive property of District.

1.4.2 Copyrights. Contractor hereby irrevocably transfers and assigns, and will include provisions in the contracts it prepares causing the Subcontractors to transfer and assign, to District all copyright rights and all other intellectual property rights in and to any Submittals and other Design Documents prepared by Contractor, Subcontractors or others, including but not limited to, architectural works (as defined in 17 U.S.C. 101) and the design and building designs depicted therein. Such transfer and assignment will be effective for the entire duration of the copyrights and includes, but is not limited



## GENERAL CONDITIONS

to, all rights including rights in related plans, specifications, documentation, derivative works and moral rights.

**1.4.3 Non-Exclusive License.** Without derogation of District's rights under this Section 1.5, Contractor and Subcontractors are granted a limited, non-exclusive license, revocable at will of District, to use and reproduce applicable portions of the Design Documents, Contract Documents and Submittals as appropriate to and for use in the execution of the Work and for no other purpose.

**1.4.4 Reproduction.** Contractor shall do all reproduction and distribution of such reproducible prints of Contract Documents and Design Documents as necessary for the complete pricing and performance of the Work, including, without limitation, all Changes. The costs of such reproduction shall be at Contractor's Own Expense.

**1.4.5 Delivery to District.** All Design Documents, Contract Documents and Submittals (including electronic versions and paper copies) in the possession of Contractor or the Subcontractors shall, if requested by District, be returned to District upon the earlier of Final Completion or termination of the Construction Contract; provided, however, that Contractor and the Subcontractors of the first Tier shall have the right to retain one (1) copy of the Contract Documents and Submittals as a permanent record.

**1.4.6 Subcontractors.** Contractor shall take all necessary steps to assure that a provision is included in all subcontracts with the Subcontractors, of every Tier, who perform the Work on the Project establishing, protecting and preserving District's rights as set forth in this Section 1.4.

## ARTICLE 2 DISTRICT

### 2.1 INFORMATION AND SERVICES REQUIRED OF DISTRICT

**2.1.1 Information on Physical Conditions at Site.** District shall furnish, within a reasonable time after written request by Contractor, any known and materially relevant information in its custody, possession and control concerning the physical characteristics and conditions of the Site or in Existing Improvements at the Site, including, without limitation, reports concerning surface and subsurface soils and geotechnical conditions, locations of utilities, as-built plans and surveys.

**2.1.2 Legal Information on Site.** District shall furnish, within a reasonable time after written request by Contractor, information describing legal limitations affecting the Site, such as, but not limited, to easements and a legal description of the Site.

**2.1.3 Permits.** District shall secure and pay for only those permits and fees which are expressly stated to be the responsibility of District under the Contract Documents.

**2.1.4 Timely Furnishing of Information.** Information, approvals and decisions required of District, Construction Manager or the Design Consultant under the Contract Documents shall be provided upon request by Contractor in a timely manner in order to avoid unreasonable Delay in the orderly and sequential progress of the Work. Notwithstanding the foregoing, failure by District, Construction Manager or the Design Consultant to provide such information, approvals or decisions shall not be considered as a basis for Contractor to seek adjustment to the Contract Time based on a failure by District, Construction Manager or Design Consultant to promptly respond until seven (7) Days after District and Construction Manager (and the Design Consultant, in those instances where a response by the Design Consultant is required) have received from Contractor a written notice containing the following: (1) the statement, prominently displayed, that "pursuant to Paragraph 2.1.4 of the General Conditions, the failure to provide the requested information, approval or decision described herein within seven (7) Days from this notice may result in a request for adjustment to the Contract Time due to delay"; (2) a detailed

## GENERAL CONDITIONS

description of the information, approval or decision required; and (3) a statement of the date by which the information, decision or approval must be received so as to not result in a Delay.

**2.1.5**      Copies of Documents. District shall furnish Contractor, free-of-charge, with one set of reproducible Drawings (non-mylar, hard copy) and Specifications. All costs of reproduction of these or any other Contract Documents are the responsibility of Contractor.

**2.1.6**      Communications. District shall forward all communications to Contractor through Construction Manager and shall contemporaneously provide copies of those same communications, if instructed by Construction Manager, to the Design Consultant.

**2.1.7**      Other Responsibilities. The foregoing are in addition to other duties and responsibilities of District enumerated in the Contract Documents.

### **2.2      DISTRICT'S RIGHT TO STOP THE WORK**

If Contractor fails to correct Defective Work as required by Section 12.2 of these General Conditions, fails to perform the Work in accordance with the Contract Documents or violates any Applicable Law, District may, without limitation to District's other rights under Articles 12 and 14, below, immediately direct Contractor to stop the Work, or any portion thereof, until the cause for such directive has been eliminated by Contractor. Contractor shall immediately comply with such directive and not be entitled to any adjustment of Contract Time or Contract Sum Payable as a result of any such directive. District shall have no duty or responsibility to Contractor or any other party to exercise the right to stop the Work.

### **2.3      DISTRICT'S RIGHT TO CARRY OUT THE WORK**

Without limitation to District's other rights under Article 14 or Applicable Laws, if Contractor fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools and services to maintain the Construction Schedule, or otherwise fails to comply with any requirement of the Contract Documents, and fails to cure such failure in the manner required by Subparagraph 14.1.1.4, below, District may, without prejudice to other remedies District may have, correct such failure. In such case, District shall be entitled to recover from Contractor or deduct from payments then or thereafter due Contractor the cost of correcting such failure, including compensation for the additional services and expenses of Construction Manager, Design Consultant, Inspector of Record, District Consultants or others to whom District may be liable, made necessary by such default, neglect or failure. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall promptly pay the additional amount to District.

### **2.4      DISTRICT'S AUDIT RIGHTS**

**2.4.1**      Accounting System. Contractor shall exercise such controls as may be necessary for proper financial management of the Work. Such accounting and control systems shall comply with prevailing custom and practice for similar projects, be satisfactory to District and shall include preservation of records for a period of four (4) years after Final Completion of the Work, or for such longer period as may be required by Applicable Laws.

**2.4.2**      Books and Records. Contractor shall keep, and shall require provisions to be included in all contracts entered into by Subcontractors requiring the Subcontractors to keep, full and detailed books, records, information, materials and data, of every kind and character (hard copy, as well as computer readable data if it exists), that have any bearing on or pertain to any matters, rights, duties or obligations relating to the Project, Work or Construction Contract, including, without limitation, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, change orders, change order requests, estimates, field orders, schedules, diaries, logs, reports, shop drawings, samples, exemplars, drawings, specifications, invoices, delivery tickets, receipts, vouchers, cancelled checks, memoranda; accounting records; job cost reports; job cost files (including complete documentation of negotiated settlements); backcharges; general ledgers; documentation of cash and trade discounts earned;

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Bid No. 10(25-26)FP

Pomona Unified School District

Page 87

## GENERAL CONDITIONS

insurance rebates and dividends, and other documents relating in any way to any claims, charges or time extensions asserted by Contractor or any of the Subcontractors.

**2.4.3**      Inspection and Copying. Contractor shall allow, and shall require provisions to be included in all contracts entered into by Subcontractors allowing, District and its authorized representative(s), auditors, attorneys and accountants, upon twenty-four (24) hours notice to Contractor, full access to inspect and copy all its aforesaid books and records at a location within the Southern California area.

**2.4.4**      Noncompliance by Contractor. Contractor's compliance with this Section 2.4, shall be a condition precedent to maintenance of any judicial or extra-judicial action by Contractor against District. In addition to and without limitation upon District's other rights and remedies for breach, including any other provisions for withholding set forth in the Contract Documents, District shall have the right, exercised in its sole discretion, to withhold from any payment to Contractor due under a current Application for Payment an additional sum of up to ten percent (10%) of the total amount set forth in such Application for Payment, until Contractor and the Subcontractors have complied with any outstanding and unsatisfied request by District under this Section 2.4. Upon compliance with this Section 2.4, any such monies withheld shall be released to Contractor.

**2.4.5**      Specific Enforcement by District. Contractor agrees that any failure by Contractor or any Subcontractor to provide access to books and records as required by this Section 2.4 shall be specifically enforceable, by issuance of a preliminary and/or permanent mandatory injunction by a court of competent jurisdiction based on affidavits submitted to such court and without the necessity of oral testimony, to compel Contractor to permit access, inspection, audit and/or reproduction of such books and records or to require delivery of such books and records to District for inspection, audit and/or reproduction.

## **2.5**      **DISTRICT-FURNISHED MATERIALS**

**2.5.1**      Assignment by District. In addition to and without limitation upon District's other rights under Applicable Laws or the Contract Document to furnish materials or other items required for performance of the Work, District shall have the right to assign to Contractor the rights and responsibilities of District under any District Materials Contract entered into by District with a District Materials Vendor for purchase of materials required for the Work if: (1) the Contractor was informed in the Bidding Documents of the District's intent to reserve the right to furnish the materials by assignment of an existing District Materials Contract; (2) the Contractor was provided the opportunity, prior to submitting its Bid, to review the terms and conditions of the District Materials Contract; and (3) District notifies Contractor prior to Award of District's decision to furnish materials by means of an assignment of the District Materials Contract that was noticed and made available to Contractor for review in accordance with Clauses (1) and (2) of this Paragraph.

**2.5.2**      Notice of Transfer. District shall give written notice to Contractor, prior to Award, of District's decision to assign to Contractor a District Materials Contract.

**2.5.3**      Review of Documents. District shall promptly provide to Contractor a complete copy of any District Materials Contract that is assigned to Contractor.

**2.5.4**      Acceptance of Assignment. Contractor hereby contingently accepts assignment of any District Materials Contract that District is entitled and elects to assign to Contractor pursuant to this Section 2.5. Such acceptance is contingent solely upon District giving notice of assignment in accordance with Paragraph 2.5.2, above.

**2.5.5**      Effect of Transfer. An assignment of a District Materials Contract pursuant to this Section 2.5 shall be deemed to have the following legal effect: (1) Contractor shall be deemed to have assumed and agreed to perform, as the sole primary obligor, all of District's obligations (excepting those

## GENERAL CONDITIONS

obligations that are expressly described in the District Materials Contract as non-transferable) under the District Materials Contract, including, without limitation, the obligation to make payment for the materials furnished by the District Materials Vendor; (2) Contractor shall be deemed to have received and acquired the right to exercise and enforce, as the sole holder thereof, all of the District's rights (excepting those rights that are expressly described in the District Materials Contract as being either non-transferable or jointly enforceable by District and Contractor) under the District Materials Contract; and (3) Contractor shall be deemed to have received and acquired the right to exercise and enforce, jointly and severally with District, those rights of District under the District Materials Contract that are expressly described in the District Materials Contract as jointly enforceable by District and Contractor.

2.5.6      Incorporation into Work. With respect to District Furnished Materials furnished under a District Materials Contract that is assigned in accordance with this Section 2.5, Contractor shall be solely responsible, as part of the Work and without adjustment of the Contract Sum Payable or Contract Time, to perform and provide any and all processing, fabrication, cutting, shaping, fitting or assembly of such District Furnished Materials that is required in order to fully incorporate the District Furnished Materials as part of the Work in full compliance with the requirements of the Contract Documents.

2.5.7      Release of District. Contractor understands, acknowledges and agrees that an assignment of a District Materials Contract to Contractor in accordance with this Section 2.5 shall unconditionally and irrevocably release District from any obligation, responsibility or liability, whether arising prior to or after such assignment, to Contractor or District Materials Vendor under such District Materials Contract; provided, however, that nothing stated in this Paragraph 2.5.6 shall be interpreted as releasing District from any obligation to a District Materials Vendor that is designated in the District Materials Contract as an obligation that is non-transferable by District.

2.5.8      Contractor Responsibility. Contractor shall, notwithstanding a decision by District to furnish materials by means of an assignment of a District Materials Contract pursuant to this Section 2.5, be solely and exclusively responsible and liable to District for the acts and omissions of the District Materials Vendor and for the delivery and incorporation of the District Furnished Materials into the Work in a manner that fully complies with the requirements of the Contract Documents, in the same manner and to the same extent as if Contractor alone had contracted, originally and directly, with the District Materials Vendor for the furnishing of such materials to Contractor.

2.5.9      Not a Contract Document. A District Materials Contract that has been assigned to Contractor pursuant to this Section 2.5 is not a Contract Document.

2.5.10      Contract Adjustments. Contractor's right to adjustment of the Contract Sum Payable or Contract Time on account of Extra Work or Delay associated with performance or non-performance by a District Materials Vendor under a District Materials Contract that has been assigned by District pursuant to this Section 2.5 shall, irrespective of the terms of the District Materials Contract, be governed solely by the terms of the Contract Documents between District and Contractor. Nothing stated in the Contract Documents between District and Contractor nor in the District Materials Contract shall be interpreted as granting the Contractor the right to recovery of additional compensation from District that is payable under the District Materials Contract unless and except such right is expressly provided for under, and if provided for shall be limited to extent required by, the terms of the Contract Documents.

2.5.11      Payments by District. Payments made by District to a District Materials Vendor, either before or after assignment, under the terms of a District Materials Contract that has been assigned by District and deemed accepted by Contractor pursuant to the terms of this Section 2.5 shall be deemed and credited as payments to Contractor of the Contract Sum Payable. District shall promptly notify Contractor of such payments.

## GENERAL CONDITIONS

2.5.12 No Retention. No retention shall be held by District on account of that portion of the Contract Sum Payable that is earned and due for materials delivered and properly stored at the Site by a District Materials Vendor pursuant to a District Materials Contract that has been assigned by District pursuant to this Section 2.5. Nothing stated herein shall be interpreted as limiting District's right under Section 9.5, below, or elsewhere in the Contract Documents, to withhold monies claimed due by a District Materials Vendor from Contractor under a District Materials Contract that has been assigned by District to Contractor.

2.5.13 Termination. Contractor's right to terminate a District Materials Contract that has been assigned by District pursuant to this Section 2.5 includes and is limited to those rights set forth in or reserved under the terms of the District Materials Contract, save and except for those rights of termination or suspension that are designated in the District Materials Contract as non-transferable rights of District.

2.5.14 Dispute Resolution. In the event of a dispute between Contractor and a District Materials Vendor relating to a District Materials Contract that has been assigned by District pursuant to this Section 2.5, such dispute shall be resolved in the manner provided for in the District Materials Contract.

2.5.15 Joint Rights. Contractor consents to, and shall not be entitled to an adjustment of the Contract Price or Contract Time on account of, the exercise by District of any right that under the terms of a District Materials Contract that is assigned to Contractor pursuant to this Section 2.5 constitutes a right that is designated in the District Materials Contract as being held and exercisable jointly by District and Contractor.

2.5.16 Warranty of Materials. All District Furnished Materials furnished by District pursuant to a District Materials Contract that has been assigned to Contractor pursuant to this Section 2.5 shall be deemed to be subject to and shall comply with all of the warranty requirements of the Contract Documents pertaining to such materials, whether furnished by District or Contractor, to the same extent as if the materials were furnished directly by Contractor or by a Subcontractor retained by Contractor or a Subcontractor.

2.5.17 Authorized Installers. If the District Materials Contract requires that an authorized or certified installer must be used to maintain any warranty or guaranty, then Contractor shall subcontract the installation of the District Furnished Materials covered by such District Materials Contract to only an authorized installer that is listed in the District Materials Contract.

2.5.18 Defective Materials. District Furnished Materials furnished by District pursuant to a District Materials Contract that has been assigned to Contractor pursuant to this Section 2.5 and that are deficient or defective in any way (including, without limitation, their failure to comply with or perform to the standards of the Contract Documents) shall be deemed to be Defective Work under the terms of the Contract Documents, to the same extent as if the materials were furnished directly by Contractor or by a Subcontractor retained by Contractor or a Subcontractor, save and except only if the defect or deficiency: (1) is not covered by the District Materials Vendor's warranty; and (2) was known by District at the time the District notified Contractor of the assignment of the District Materials Contract to Contractor.

2.5.19 Failure to Perform. Save and except as otherwise provided in Paragraph 2.5.18, above, any default by a District Materials Vendor under a District Materials Contract that has been assigned to Contractor pursuant to this Section 2.5 shall be deemed an Event of Contractor Default under the Contract Documents, regardless of the reason for the failure to perform, including, without limitation, the inability of the District Materials Vendor to perform due to bankruptcy, insolvency or other reasons having their source in the inability of the Owner Materials Vendor to meet its business or financial responsibilities or in changes in market or industry conditions applicable to the District Furnished Materials.

**ARTICLE 3  
CONTRACTOR**

**3.1 CONTRACTOR STATUS**

**3.1.1 Trust and Confidence.** Contractor accepts the obligation of trust and confidence established between it and District by the Contract Documents, shall act in the best interests of District in carrying out Contractor's duties and responsibilities under the Contract Documents, including, without limitation, fully disclosing when requested all information concerning pricing and estimating, furnishing efficient business administration, utilizing sufficient senior level management and other qualified personnel to manage the Work and applying its best and highest skill and attention to completing the Work in an expeditious and economical manner, consistent with the best interests of District and within the Contract Sum Payable and Contract Time.

**3.1.2 Independent Contractor.** Contractor is, and shall at all times be deemed to be, an independent contractor and is wholly responsible for the manner in which it performs the obligations required of it by the terms of the Contract Documents. Contractor wholly and without reservation assumes the responsibility for the acts of its agents and employees and the agents and employees of each Subcontractor as they relate to the Work Contractor, its agents and employees, shall not be entitled to any rights or privileges of District's employees and nothing contained in the Contract Documents and no course of conduct shall be construed as creating the relationship of employer and employee, or principal and agent, between District and any agent or employee of Contractor or any of the Subcontractors. District shall have the right, but not the obligation, to monitor the employment and other activities of Contractor and the Subcontractors to determine compliance with the terms of the Contract Documents.

**3.1.3 Licenses.** Contractor shall maintain, and shall require the Subcontractors, of every Tier, to maintain, such contracting, professional and business licenses as may be required by Applicable Laws for the duration of time that Contractor is performing the Work under the Contract Documents, including the period of any warranty provided covering all or any portion of the Work.

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

**3.1.5 Responsibility Not Relieved by Approvals.** Contractor shall not be relieved of any obligations to perform the Work in strict accordance with the Contract Documents either by the activities or duties of District, Design Consultant, Construction Manager, Inspector of Record or District Consultants, or by tests, inspections or approvals required or performed by persons other than Contractor. Therefore, regardless of whether the Work of Contractor has been inspected, observed, approved, or otherwise acknowledged by District, Design Consultant, Construction Manager, Inspector of Record or District Consultants, Contractor's duties to strictly comply with the Contract Documents are in no way lessened or reduced. Therefore, notwithstanding any inspection, approval or other means of communicating any form of acceptance of Contractor's Work, Contractor remains solely responsible to District to ensure that all of the work conforms to the Contract Document and shall not seek to lay blame at District or others for any inspection or approval. Contractor's sole and one-hundred percent (100%) responsibility shall not be lessened or reduced by any means whatsoever on account of such inspection, testing, or approvals.

**3.1.6 Design Services by Contractor.** Contractor shall provide professional design services if such services are expressly required by the Contract Documents for a portion of the Work or are required in order for Contractor to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Professional design services or certifications so required of Contractor shall be furnished by design professionals exercising the standard of care applicable to

## GENERAL CONDITIONS

design professionals performing similar services and utilizing designs and engineering, that comply with all systems, materials or equipment, performance and design criteria set forth in the Contract Documents. Certification by a properly licensed design professional, including such professional's manual signature and seal, shall appear on all drawings, calculations, specifications, certifications and Submittals prepared by such professional. Submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's manual signature when submitted to the Design Consultant. District, Construction Manager and the Design Consultant shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

**3.1.7**      Compliance with Title 24. Contractor is responsible to comply with all of the requirements of the California Code of Regulations as they related to contractors performing construction on community District campuses within the State of California, including, without limitation, Titles 8, 17 and Part 1, Title 24, California Code of Regulations.

### **3.2**      REVIEW OF CONTRACT DOCUMENTS AND SITE

#### **3.2.1**      Contract Documents.

**.1 Contractor Responsibility.** Contractor acknowledges and agrees that its submission of its Bid and execution of the Construction Contract constitutes a representation that it has had the opportunity, in its capacity as a contractor, and not as a design professional, prior to submitting its Bid for the Work to thoroughly and carefully review and compare to its satisfaction the Contract Documents, including, without limitation, the Drawings and Specifications. Based thereon, Contractor agrees that it shall not be entitled to, and hereby conclusively waives, any right to an adjustment to the Contract Sum Payable or Contract Time due to additional or unforeseen Losses or Delays relating to information in Contract Documents constituting errors, omissions, conflicts, ambiguities, lack of coordination or noncompliance with Applicable Laws, if prior to submission of its Bid such information was either: (1) discovered by Contractor or any Subcontractor of any Tier and Contractor failed to seek clarification prior to submitting its Bid; or (2) reasonably discoverable by Contractor or any Subcontractor of any Tier in the exercise of care and diligence in the capacity as a contractor. Without limitation to any other provisions of the Contract Documents, Contractor shall take steps to ensure that the provisions of this Subparagraph 3.2.1.1 are incorporated into all contracts entered into by Subcontractors for performance of any portion of the Work.

**.2 Contract Adjustments.** Provided that Contractor has complied with the provisions and procedures of these General Conditions applicable to adjustments of the Contract Sum Payable and Contract Time, Contractor shall be entitled to an adjustment to the Contract Sum Payable and Contract Time pursuant to Article 7 of the General Conditions for Compensable Change and Compensable Delay resulting from information in the Contract Documents constituting errors, omissions, conflicts, ambiguities, lack of coordination or noncompliance with Applicable Laws, that were not discovered or reasonably discoverable by Contractor or the Subcontractors, of any Tier, in the performance of the obligations set forth in Subparagraph 3.2.1.1, above. Said right to adjustment to the Contract Sum Payable and Contract Time constitutes Contractor's sole and exclusive right and remedy for recovery for Losses or Delays arising from information in the Contract Documents constituting errors, omissions, conflicts, ambiguities, lack of coordination or noncompliance with Applicable Laws, in lieu of any rights or remedies that Contractor may have under Applicable Laws, including, without limitation, any right or remedy for breach of contract or breach of implied warranty.

**.3 Additional Detailing.** The general character of the Work is shown on the Drawings and Specifications, but clarifications and additional detailing may be made when needed to

## GENERAL CONDITIONS

more fully explain the Work. Provided that they are a logical evolution of the Drawings and Specifications that are part of the Contract Documents or were reasonably inferable as necessary to satisfy the design intent for a completed and fully operational system, facility or structure, the same shall be considered part of the scope of the Work to be performed without adjustment to the Contract Sum Payable or Contract Time. Such clarifications or additional detailing shall be provided by means of drawings, where necessary for proper execution of the Work. If the Design Consultant provides clarification or additional detailing that Contractor believes constitutes a Compensable Change, then Contractor shall give written notice thereof to the Design Consultant and Construction Manager as required by Article 7 of these General Conditions. If no such notice is given to the Design Consultant and Construction Manager, it will be conclusively presumed that the clarification or additional detailing does not constitute a Compensable Change.

### 3.2.2 Site and Existing Improvements.

**.1 Contractor Responsibility.** Contractor warrants and represents that it has carefully and thoroughly inspected: (1) the Site and its surroundings, Existing Improvements and their existing uses by District or District staff and students, routes of ingress and egress, and local conditions in the vicinity of the Site (including, without limitation, sources and availability of labor, materials and equipment); (2) the status of any construction at the Site concurrently under construction; and (3) all surveys, reports, data, as-built drawings of Existing Improvements and other information made available by District or disclosed by public records concerning visible and/or concealed conditions (including, without limitation, locations and capacities of utility sources and locations of utility lines) above and below the surface of the ground and in Existing Improvements, in order to fully acquaint itself with all conditions, restrictions, obstructions, difficulties and other matters which might affect Contractor's ability to complete the Work for the Contract Sum Payable and within the Contract Time and has correlated its observations with the requirements of the Contract Documents.

**.2 Pre-Contract Inspection.** Contractor shall be deemed charged with knowledge of all facts, circumstances and other information that was available or provided to Contractor prior to executing the Construction Contract, including, without limitation, any and all of the physical conditions of the land and Existing Improvements at the Site that were visible and/or available for inspection or review.

**.3 Contractor Remedy.** Contractor's right to an adjustment to the Contract Sum Payable or Contract Time arising out of or relating to, in whole or in part, variances between conditions indicated by the Contract Documents and conditions encountered in the field shall, notwithstanding the existence of any related deficiency in the Contract Documents, be governed exclusively by Paragraph 4.4.8, below, pertaining to Differing Site Conditions.

**.4 Subcontractors.** Without limitation to any other provisions of the Contract Documents, Contractor shall take steps to ensure that the provisions of this Paragraph 3.2.2 are incorporated into all contracts entered into by Subcontractors for performance of any portion of the Work.

### 3.2.3 Requests for Information.

**.1 Contractor's Responsibility.** In addition to Contractor's obligations under Paragraphs 3.2.1 and 3.2.2, above, and without limitation to Contractor's notice obligations under Sections 4.4, 7.6, and 8.2, below, if Contractor discovers what it perceives to be discrepancies in the Contract Documents, (including, without limitation, information in the Contract Documents constituting



## GENERAL CONDITIONS

errors, omissions, conflicts, ambiguities, lack of coordination, noncompliance with Applicable Laws or variances between the information in the Contract Documents and field conditions), then Contractor shall, before proceeding with any portion of the Work affected and no later than three (3) Days after the date of such discovery, provide to Construction Manager written notice in the form of a Request for Information.

**.2 Content.** Each Request for Information shall include the following:

(1) a detailed description of the discrepancies or variances discovered;  
(2) Contractor's request for clarification, further detailing or correction of the Contract Documents;

(3) whether the discrepancies or variations were or were not discovered by Contractor prior to submitting its Bid and, if not discovered, the reasons why the discrepancies were not reasonably discoverable by Contractor or the Subcontractors in the exercise of care and thoroughness in the review and comparison of the Contract Documents and Site prior to submission by Contractor of its Bid; and

(4) a statement of whether Contractor believes it is entitled to any adjustment to the Contract Sum Payable or Contract Time by reason of such discrepancies.

**.3 Submission by Contractor.** Contractor shall carefully review, coordinate and consolidate (where appropriate to prevent piecemeal submission) requests for information or clarification (whether originating with Contractor or the Subcontractors) prior to submitting them in order to avoid unnecessary multiplicity or duplication of requests and to eliminate requests for information that are already contained in the Contract Documents.

**.4 Responses by District.** Responses to requests by Contractor for additional information or clarification shall be furnished with reasonable promptness so as to not unreasonably Delay progress of the Work; provided, however, that the timing of a response by the Design Consultant or Construction Manager to a request for clarification or information shall not constitute grounds for adjustment to the Contract Sum Payable or Contract Time unless Contractor has submitted its Request for Information or clarification in accordance with the requirements pertaining to submission of requests for information or clarification set forth in this Paragraph 3.2.3 and elsewhere in the Contract Documents.

**.5 Charges by District.** District shall have the right to deduct from payments due to Contractor sums expended by District for the services of the Design Consultant, Construction Manager, Inspectors of Record and District Consultants due to failure by Contractor to comply with this Paragraph 3.2.3.

**.6 Waiver by Contractor.** Failure by Contractor to provide such written notice under circumstances in which such notice was required by this Paragraph 3.2.3, shall result in Contractor waiving its right to an adjustment to the Contract Sum Payable and Contract Time on account of such circumstances.

**3.2.4 Correction of Work.** Contractor shall, at Contractor's Own Expense, correct or replace in accordance with the direction of Construction Manager any portion of the Work that is performed by Contractor or a Subcontractor, without first notifying and obtaining the written approval of Construction Manager or Design Consultant, knowing that it involves, or that Contractor or Subcontractor in the exercise of reasonable care and diligence should have known involves, a portion of the Contract Documents that contains an error, omission, conflict, ambiguity, lack of coordination or noncompliance with Applicable Laws.

### **3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

#### **3.3.1 Supervision by Contractor.**

**.1 General Obligation.** Contractor shall provide competent, fully qualified personnel to supervise, administer, manage, coordinate and direct the Work, competently and efficiently, at all times devoting their best skill and attention as may be necessary to perform the Work in accordance with the Contract Documents.

**.2 Supervisory Staff.** Contractor shall employ a competent project manager, superintendent, scheduler and forepersons and necessary assistants during performance of the Work. Contractor's superintendent and forepersons shall be present at the Site at all times that the Work is in progress and at any time that any employee of Contractor or the Subcontractor is present at the Site. Contractor's project manager and superintendent shall, unless excused from attendance by Construction Manager, attend all job meetings. Contractor's project manager and superintendent must be able to read, write and communicate in English. Contractor's superintendent shall not perform the Work of any trade, pick up materials, or perform any Work not directly related to the supervision and coordination of the Work and shall be available twenty-four (24) hours a Day, seven (7) Days a week to respond to emergencies.

**.3 Supplementary Personnel.** Without limitation upon any of the rights or remedies of District under the Contract Documents or under Applicable Laws arising from a default by Contractor, in the event that Contractor fails to have personnel on Site to supervise the Work, District shall have the right, exercised in its sole discretion, but not the responsibility, upon twenty-four (24) hours' telephonic notice by District or Construction Manager to Contractor, to provide such supervision on a temporary basis. Contractor shall, notwithstanding District's providing such temporary supervision, remain solely responsible for all actions of its personnel and the Subcontractors and shall defend, hold harmless and indemnify District and other Indemnitees against any Losses arising therefrom. District shall have the right, in its discretion, to deduct from the sums owing to Contractor the reasonable cost of such temporary supervision.

**3.3.2 Means, Methods.** Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, Contractor shall nonetheless be fully and solely responsible for the jobsite safety associated with implementing such means, methods, techniques, sequences or procedures. If Contractor believes that such means, methods, techniques, sequences or procedures may not be safe or adequate, Contractor shall give written notice to Construction Manager and shall not proceed with that portion of the Work without further written instruction from Construction Manager or the Design Consultant. In response to such notice, District may order Contractor to improve the character or increase efficiency of the means, methods, techniques, sequences or procedures employed, and Contractor shall conform to such order; but the failure of District to order such improvement or increase of efficiency will not relieve Contractor from its sole responsibility for safety at the Site nor shall it relieve Contractor from its obligation to perform the Work in accordance with the Contract Documents, Applicable Laws and within the Contract Sum Payable and Contract Time.

**3.3.3 Existing Improvements.** Contractor shall be in charge of and responsible for ensuring that all portions of the Existing Improvements that are to receive or join with subsequent Work to be provided by Contractor are in a condition suitable to receive such subsequent Work. Contractor shall furthermore inspect other portions of the Existing Improvements related to, but not comprising,

## GENERAL CONDITIONS

Contractor's Work in order to determine that such portions are in proper condition suitable to receive Contractor's Work and notify Construction Manager in writing of any unsuitable conditions.

**3.3.4**      Compliance with Contract. Contractor shall perform the Work in accordance with the Contract Documents and Submittals approved by Construction Manager and Design Consultant.

### **3.4**      **LABOR, MATERIALS AND EQUIPMENT**

**3.4.1**      Costs. Unless otherwise provided for in the Contract Documents, Contractor shall provide and pay for labor, materials, tools, equipment, machinery, water, heat, utilities, transportation, facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**3.4.2**      Coordination. Contractor shall provide supervision sufficient to ensure proper coordination leading to timely and efficient performance and completion of the Work.

**3.4.3**      Field Conditions. Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other known information with the Contract Documents before commencing activities.

**3.4.4**      Layout. Contractor shall be solely responsible for the accurate layout of all portions of the Work. Contractor will be responsible for the accuracy of the Project lines and levels. Contractor will compare carefully the levels shown on the Drawings with existing levels and will call any discrepancies to the attention of Construction Manager before proceeding with the Work. The Work will be erected square, plumb, level, true to line and grade, in the exact plane and to the correct elevation and sloped to drain as indicated or (if not indicated) as necessary to drain.

**3.4.5**      Conduct of Personnel. Contractor shall at all times maintain good discipline and order among its employees and the Subcontractors at the Site. Any person in the employ of Contractor or any of the Subcontractors whom District or Construction Manager may deem, in its sole discretion, incompetent, unfit, intemperate, troublesome or otherwise undesirable shall be excluded from the Site and shall not again be employed on the Site except with written approval of Construction Manager.

#### **3.4.6**      Materials, Equipment.

**.1**      **Delivery, Storage, Inventory.** Materials and equipment shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be properly stored and protected as necessary, or as directed by Construction Manager, to prevent loss, damage or theft. In the event that Construction Manager gives direction as to the location for storage or protection of materials or equipment, Contractor shall nonetheless remain solely responsible for its safe and secure storage and protection. No part of any materials and equipment shall be removed from its place of storage except for immediate installation in the Work. Contractor shall keep an accurate inventory of all materials and/or equipment in a manner satisfactory to Construction Manager.

**.2**      **Purchases.** Contractor shall place orders for materials and/or equipment as specified so that delivery of same may be made without Delay to the Work. Contractor shall, upon request from Construction Manager, furnish to Construction Manager documentary evidence showing that orders have been placed. District reserves the right, in the event of Contractor's failure to comply with the requirements of this Subparagraph 3.4.6.2 to place orders for such materials and/or equipment as it may deem advisable in order that the Work may be completed within the Contract Time, in which event Contractor shall bear, at Contractor's Own Expense, all costs of procuring said materials and/or equipment and shall, if requested by District, accept assignment of any such contracts entered into by District with no adjustment to the Contract Sum Payable or Contract Time.

## GENERAL CONDITIONS

**.3 Title.** Title to materials and equipment for the Work and attendant liability for its protection and safety, shall remain with Contractor until the earlier of payment by District or incorporation into the Work. No material, supplies or equipment for the Work 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 the Work and agrees upon Final Completion of all the Work to deliver the premises, together with all improvements and appurtenances constructed or placed thereon by Contractor, to District free from any claims, liens, or charges. Contractor further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any of the Work shall have any right of lien upon the Site, or any Existing Improvement or appurtenance thereon, except that Contractor may install metering devices or other equipment of utility companies or political subdivisions, title to which may be retained by such utility company or political subdivision. In the event of installation of any such metering device or utility equipment, Contractor shall advise District as to the owner thereof.

**.4 Start Up.** Contractor will be responsible for start-up of all systems and equipment purchased by Contractor or such other systems and equipment approved by the parties and will have included sufficient amounts in the Contract Sum Payable to cover contingencies arising out of the start-up of those individual systems and equipment. Contractor will comply fully with each manufacturer's specifications and instructions. Systems and equipment specified to be furnished with manufacturer's supervision of start-up will be placed in operation only under such supervision.

**.5 District-Furnished Items.** Contractor assumes complete liability and responsibility for all property, materials, equipment or other items provided by District to Contractor, unless otherwise provided in the Contract Documents.

### **3.5 CONTRACTOR'S WARRANTY**

**3.5.1 General Warranty.** In addition to other warranties and guaranties expressly or impliedly required by the Contract Documents (including, without limitation, the implied warranties of merchantability and fitness for a particular purpose or use), Contractor shall, and hereby does, warrant and guarantee that: (1) all labor, installation, materials and equipment used, employed or performed in connection with the Work and/or incorporated into the Work, unless otherwise expressly permitted or required by the Contract Documents, is of first-class quality, new, free of defects not caused by ordinary wear and tear or unusual abuse or neglect by District and free of liens, claims and security interests of third parties; and (2) the Work conforms with the requirements of the Contract Documents and Applicable Laws. If required by the District, Contractor shall furnish satisfactory evidence as to the kind and quality of labor, installation, materials and equipment used. Manufactured items installed in the Work and not specifically covered in the Contract Documents are to be installed in strict accordance with manufacturers' current printed instructions.

**3.5.2 Repair, Replacement.** Without limitation upon the District's other rights or remedies under the Contract Documents or Applicable Laws, any and all Work that is not in conformance with the foregoing general warranty or other warranties or guaranties expressly or impliedly required by the Contract Documents shall be repaired or replaced, together with the repair or replacement of any other Work or the work of the Separate Contractors, District's own forces or others, which may be removed, displaced or damaged in so doing. Contractor shall notify District in writing upon completion of such repair or replacement. In the event of failure by Contractor to commence and pursue with diligence said replacements, repairs or other Work within ten (10) Days after being notified in writing by District, District is hereby authorized to proceed, at the expense of Contractor, with such repairs or replacement and other Work as District deems necessary and expedient. Such monies expended by District may be withheld or otherwise deducted from monies due Contractor, if any.

## GENERAL CONDITIONS

**3.5.3**      No Limitation. Nothing stated in this Section 3.5 shall in any way limit the guaranties or warranties on any items of Work for which a guarantee or warranty is required under any other provision of the Contract Documents or on any items of Work for which a manufacturer gives any guarantee or warranty on terms that afford District greater rights than that provided for in this Section 3.5. Contractor acknowledges and agrees that no exclusion of or limitation to warranties or guarantees contained in any proposal, product literature or other submittal, whether or not approved by District, Construction Manager, Design Consultant or others, shall affect the warranties or guarantees provided pursuant to this Section 3.5.

**3.5.4**      Delivery. Unless sooner requested by District, Contractor shall furnish to Construction Manager, as a condition precedent to Final Completion and Final Payment, all guaranties or warranties as are required by the terms of the Contract Documents. All such guaranties and warranties shall be in writing and in such form and accompanied by such certifications and instruction materials as may be required by the Contract Documents.

### **3.6**      TAXES

**3.6.1**      General. Contractor shall pay, at Contractor's Own Expense, all local, state and federal taxes, including, without limitation, all sales, consumer, business license, use and similar taxes on materials, labor or other items furnished for the Work or portions thereof provided by Contractor or the Subcontractors, all taxes arising out of its operations under the Contract Documents and all benefits, insurance, taxes and contributions for social security and unemployment insurance which are measured by wages, salaries or other remuneration paid to Contractor's employees. 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, then District, upon request, will execute documents necessary to show: (1) that 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 District. No excise tax for such materials shall be included in any price (including, without limitation, the Bid) submitted by Contractor for the Work or for Changes in the Work.

**3.6.2**      Tax Exempt Status. Contractor shall comply with Applicable Laws concerning tax-exempt construction projects.

**3.6.3**      Records of Taxes. Contractor and the Subcontractors shall keep sufficient records to verify the amount of sales and use taxes paid. Copies shall be submitted with each monthly Application for Payment. Failure to keep or submit such records, resulting in the inability of District to claim a refund for taxes for such materials, shall render Contractor liable to District for the amounts of such tax refund.

### **3.7**      PERMITS, FEES AND NOTICES

**3.7.1**      Permits, Fees. Unless otherwise provided in the Contract Documents, District shall secure and pay for DSA approvals relating to the Project. Contractor shall secure and pay for all other permits, approvals, fees, licenses, certificates, assessments, charges and inspections of local (city and county) Governmental Authorities and easements, whether related to the Work on the Site, off the Site or on public property, that are legally required and necessary for proper execution, completion, use or occupancy of the Work (including, without limitation, permanent changes in Existing Improvements that are necessary to perform the Work). All permits, licenses, approvals and certificates obtained by Contractor shall be delivered to Construction Manager prior to and as a condition precedent to Contractor's right to receive Final Payment.

**3.7.2**      Applicable Laws, Notices. Contractor shall comply with, and give notices required by, Applicable Laws (including, without limitation, the applicable provisions of the California Code of Regulations) bearing on performance of the Work, and applicable to contractors performing construction,

## GENERAL CONDITIONS

including, without limitation, all Applicable Laws relating to safety, prevailing wage and equal employment opportunities.

**3.7.3**      Notice of Violations. Contractor shall immediately notify District and Construction Manager in writing of any instruction received from District, Construction Manager, the Design Consultant or any other person or entity that, if implemented, would cause a violation of any Applicable Law. If Contractor fails to provide such notice, then District, Construction Manager and the Design Consultant shall be entitled to assume that such instruction is in compliance with Applicable Laws. If Contractor observes that any portion of the Contract Documents or the Work are at variance with Applicable Laws, or should Contractor become aware of conditions not covered by the Contract Documents which will result in the Work being at variance therewith, Contractor shall promptly notify the Design Consultant and Construction Manager in writing. If, without such notice to the Design Consultant and Construction Manager, Contractor or any of the Subcontractors performs any the Work which it knew, or through exercise of reasonable care should have known, to be contrary to Applicable Laws, then Contractor shall bear all resulting Losses at Contractor's Own Expense.

**3.7.4**      Governmental Authorities. Where the Contract Documents state that materials, processes or procedures must be approved by DSA, State Fire Marshall, or other Governmental Authority, Contractor shall be responsible for satisfying requirements of such Governmental Authority.

### **3.8**      KEY PERSONNEL

**3.8.1**      Key Persons. Contractor's project manager, scheduler, superintendent and commissioning agent constitute Key Persons employed to act on behalf of Contractor. Individuals acting as Key Persons who are not already identified in Contractor's Post-Award Submittals shall be identified in writing to Construction Manager prior to commencement of the Work. The Key Person acting as project manager shall be deemed to have full authority to contractually bind Contractor, including, without limitation, the authority to contractually bind Contractor to adjustments to the Contract Sum Payable or Contract Time.

**3.8.2**      Transfer. Contractor's Key Personnel are deemed of essence to the Construction Contract. No Key Person shall, for so long as he/she is employed by Contractor, be transferred to any other project nor any of his/her responsibilities reassigned at any time during performance of the Work without the prior written approval of District, which approval may be granted or withheld in District's sole discretion.

**3.8.3**      Removal. District shall have the right, at any time, to direct the removal and replacement of any Key Person if his/her performance is determined by District, in its sole discretion, to be unsatisfactory.

**3.8.4**      Replacement. Any individual proposed by Contractor as a replacement for a Key Person must be approved in advance by District, such approval not to be unreasonably withheld, after submission by Contractor to Construction Manager of complete information concerning such individual's experience and qualifications.

**3.8.5**      Communications. Important communications by Key Persons shall be confirmed in writing by Contractor. Other communications by Key Persons shall be confirmed on written request in each case.

**3.8.6**      Contact Information. Contractor shall provide, prior to the start of the Work, telephone numbers where Key Persons can be reached 24-hours a day, 7 Days a week.

**3.8.7**      Signatures. Prior to commencing the Work, a facsimile of the signatures of the Key Person acting as project manager, as well as any other representatives of Contractor with authority to sign on behalf of and contractually bind Contractor, shall be submitted to Construction Manager.

### **3.9 CONTRACTOR'S CONSTRUCTION SCHEDULE**

**3.9.1 Preparation.** Within thirty (30) Days after execution of the Construction Contract, Contractor shall prepare and submit in accordance with the Contract Documents a Construction Schedule for the Work, both in hard copy and electronically, for District's and the Design Consultant's information and Construction Manager's approval. Such schedule shall not exceed time limits set forth in the Contract Documents, shall be revised in the manner required by the Contract Documents and shall be related to and consistent with District's overall construction schedule for the entire Project. The Construction Schedule shall be in the form of a critical path progress schedule that shows, in graphic form, a practical plan for performance of the Work within the Contract Time. In preparing the Construction Schedule, Contractor shall consult and exchange information with the Subcontractors so as to achieve optimum coordination of the activities of the Subcontractors on the Site and shall arrange the Work so as to cause a minimum of inconvenience to District and its students, faculty and staff.

**3.9.2 Approval.** The Construction Schedule, once approved by Construction Manager, shall not be changed without the written consent of Construction Manager. The governing schedule for the Work shall be the Construction Schedule approved by Construction Manager or, if updated, the latest update to the Construction Schedule that has been approved by Construction Manager. Unless otherwise directed in a writing signed by Construction Manager, no other schedule shall be used or relied upon by Contractor or the Subcontractors in planning or performing the Work or in connection with any request for adjustment to the Contract Time.

**3.9.3 Coordination with Others.** Contractor shall cooperate with Construction Manager in scheduling and performing the Work to avoid conflict, delay in or interference with the work of the Separate Contractors or the construction or operations of District's own forces or those of District. Contractor hereby acknowledges that District may hire separate contractors to work on other phases of the Project, including but not limited to, Phase II of the Project. Contractor further acknowledges and agrees to work with and coordinate its performance of the Work with such other contractors hired by District, and importantly, to not interfere with or delay the work of such other contractors. Contractor has been advised and hereby acknowledges that any Delay in the performance of the Work will impact the work of the other contractors hired by District, and for this reason, Contractor's timely performance of the work is essential and Contractor's coordination with the other contractors is essential and mandatory.

**3.9.4 Submittal Schedule.** Within thirty (30) Days after execution of the Construction Contract, Contractor shall prepare and submit, in accordance with the Contract Documents, a Submittal Schedule for District's and the Design Consultant's information and Construction Manager's approval. The Submittal Schedule shall be coordinated with Contractor's Construction Schedule and allow Construction Manager and the Design Consultant such time for review Submittals as may be required by the Contract Documents, or if none is required, a reasonable time for such review. Contractor shall keep the Submittal Schedule current and updated in accordance with the requirements of the Contract Documents.

**3.9.5 Contractor Responsibility.** Contractor shall remain solely responsible, notwithstanding District's or Construction Manager's review or approval thereof, for the accuracy, suitability and feasibility of all elements of all schedules it prepares for the Project, including, without limitation, the Construction Schedule, Submittal Schedule, other long and short term schedules, recovery schedules and any updates thereof.

**3.9.6 Condition of Payment.** Compliance by Contractor with the requirements of this Section 3.9 and the other provisions of the Contract Documents pertaining to preparing, submitting, revising and updating the Construction Schedule and Submittal Schedule is a condition precedent to District's obligation to make payment to Contractor. Failure by District to assert its right to withhold payment under this Paragraph 3.9.6 due to noncompliance by Contractor shall not constitute a waiver of

## GENERAL CONDITIONS

the right to withhold future payments on account of such prior noncompliance or on account of any subsequent noncompliance by Contractor with its schedule obligations.

### **3.10 REPORTING, PROGRESS MEETINGS, DOCUMENTS AND SAMPLES AT THE SITE**

**3.10.1 Contract Documents, Submittals.** In addition to and without limitation to Contractor's obligations set forth in Paragraph 3.10.2, below, Contractor shall maintain at the Site one (1) legible record copy of the current version of the Contract Documents, in good order and marked currently to record changes and selections made during construction, and one (1) copy of approved Shop Drawings, Product Data, Samples and other Submittals.

**3.10.2 As-Built Documents.** The Design Consultant or Construction Manager will furnish to Contractor one (1) complete set of blue-line prints for creation of As-Built Drawings and Specifications. During the performance of the Work, Contractor shall maintain the set of As-Built Drawings and Specifications in a satisfactory record condition by posting, on a daily basis, thoroughly and neatly, all Changes to the Work and the location of the Work, including, without limitation, the location of portions of the Work shown diagrammatically, as occurs in the actual construction of the Work. Such updated As-Built Drawings and Specifications shall be produced, upon and whenever requested by the Construction Manager or Inspector of Record, for review to confirm Contractor's compliance with its updating obligation. Such updated As-Built Drawings and Specifications shall be manually signed by Contractor's superintendent certifying that, to the best of his/her knowledge, they are true and accurate and that the indications thereon represent the actual condition of the Work. The As-Built Drawings and Specifications and other As-Built Documents shall be in electronic form in compliance with the CADD Drafting Standards. All As-Built Drawings and Specifications and other As-Built Documents shall be deemed the sole property of District and shall be turned over to Construction Manager at the earlier of Final Completion of the Work or termination of the Construction Contract.

**3.10.3 Daily Reports.** At the end of each Day that Contractor performs the Work on the Site, Contractor shall submit a daily report to Construction Manager (on the form provided or approved by Construction Manager), together with applicable delivery tickets listing all labor, materials and equipment involved for that Day, and for the other services and expenditures when authorized as follows:

- .1 Labor -** The names of the workers, classification, and hours worked.
- .2 Material -** A list of quantities of materials used.
- .3 Equipment -** The type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable.
- .4 Inspection and Testing Activities –** A list of inspections performed by name of inspector and testing company and the type of inspection, items of the Work involved and a description of the outcome of such inspection or test.
- .5 Visitors, Guests, Dignitaries –** A list of visitors and guests by name, title, company and purpose of visit.
- .6 Areas of the Work –** A statement of the areas of the Site on which the Work was performed and a detailed description of the stage, status and progress of the Work in each such area at the beginning and end of the Day.
- .7 Accidents, Delays, Defective Work –** A description in detail of any injuries to the workers, accidents, delays, or Defective Work that were encountered.



## GENERAL CONDITIONS

**.8 Other Services and Expenditures** – A description of other services and expenditures in such detail as Construction Manager may require.

Timely and complete submission of daily reports and (if required) meeting minutes by Contractor shall be a condition precedent to Contractor's right to payment under the Construction Contract. If requested by Construction Manager, daily reports shall be delivered electronically.

**3.10.4 Progress Meetings.** Contractor shall attend progress meetings at the Site weekly (or at such other time or frequency as District or Construction Manager requests) at which progress of the Work shall be reported in detail with reference to then-current updated Construction Schedule approved by Construction Manager. Each Subcontractor, then active on the job or immediately scheduled to become active, shall have a competent representative present at such progress meeting to report on the condition of the Work of such Subcontractor and to receive relevant information. Meeting minutes shall be taken by the Design Consultant, unless otherwise directed by Construction Manager, and distributed to Contractor, District, the Design Consultant, all meeting attendees and all other affected parties.

**3.10.5 Notice Requirements; Insufficient Notice.** Under no circumstances shall information contained in Contractor's daily job reports, monthly reports or job meeting minutes relieve Contractor of its mandatory obligations to comply with, serve as a substitute for, nor constitute a waiver by District of its right to insist upon, Contractor's compliance with the provisions of the Contract Documents relative to timely and complete notice to District of Changes, Delays, Claims, or other matters for which written notice is required by the Contract Documents. Contractor acknowledges and agrees that it will not assert nor contend that the daily job reports, monthly reports or job meeting minutes suffice to comply with the timely and complete notice requirements.

**3.10.6 Availability for Review.** Copies or originals of all documents required to be maintained by Contractor at the Site or required to be submitted to Construction Manager or the Design Consultant shall be available to District, Construction Manager, Inspector of Record, the Design Consultant and Governmental Authorities.

**3.10.7 Verified Reports.** Without limitation to any of Contractor's other obligations under the Contract Documents or Applicable Laws, Contractor shall maintain at the Site, be acquainted with and comply with the provisions of the California Code of Regulations as they relate to the Project, including, without limitation, Titles 8, 17 and Part 1, Title 24, California Code of Regulations. A representative of Contractor shall, in accordance with the provisions of Part 1, Title 24 of the California Code of Regulations, prepare and file periodic and final verified reports on forms prescribed by DSA averring that of his/her own personal knowledge (as defined in California Education Code 81141) the Work performed, during the period of time covered by the report, has been performed, and materials have been used and installed in every material respect in compliance with the Drawings and Specifications approved by DSA for the Project, together with such other detailed statements of fact as DSA may require.

### **3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

**3.11.1 Not Contract Documents.** Shop Drawings, Product Data, Samples and other Submittals are not Contract Documents. Their purpose is to demonstrate for those portions of the Work for which Submittals are required the way Contractor proposes to conform to the designs and other information in the Contract Documents.

**3.11.2 Contractor Approval.** Contractor shall review, stamp "approved" and submit all Submittals to Construction Manager, in accordance with the latest Submittal Schedule approved by Construction Manager. Contractor's approval and submission of Submittals constitutes an express representation that Contractor has determined and verified materials and field measurements and conditions related thereto, and that it has checked and coordinated the information contained within such Submittals with the requirements of the Contract Documents and with the Submittals for related Work.

## GENERAL CONDITIONS

Contractor's submission of a Submittal to District constitutes a material representation that it conforms to the requirements of the Contract Documents. Submittals without evidence thereon of Contractor's approval shall be returned, without further consideration, for resubmission in accordance with these requirements.

**3.11.3 Coordination with Others.** Contractor shall cooperate with Construction Manager in the coordination of Contractor's Shop Drawings, Product Data, Samples and other Submittals with related documents submitted by the Separate Contractors.

**3.11.4 Submission by Contractor.**

**.1 Submission.** All Shop Drawings, Product Data, Samples and other Submittals required by the Contract Documents shall be submitted to Construction Manager who will forward same to the Design Consultant for its review and approval. Informational submittals upon which Construction Manager and the Design Consultant are not expected to take responsive action may also be identified in the Contract Documents. Submittals made by Contractor which are not required by the Contract Documents may be returned without action.

**.2 Transmittal.** All Submittals shall be accompanied by an accurately completed transmittal in the form required by Construction Manager. The transmittal shall give a list of the numbers of the sheets submitted. All sheets shall be marked with the name of the Project and the name of Contractor shall be numbered consecutively and referenced to the sheets or paragraphs of the Drawings and Specifications affected. A separate transmittal form shall be used for each specific item or class of material or equipment for which a Submittal is required. Transmission of Submittals of various items using a single transmittal form will be permitted only when the items taken together constitute a manufacturer's "package" or are so functionally related that expediency dictates review of the group or package as a whole. Any Submittal not accompanied by such transmittal form, or where all applicable items on the form are not completed, will be returned for re-submittal without review.

**.3 Timing.** Submittals shall be provided within the time frame specified in the Contract Documents, in accordance with the Construction Schedule and Submittal Schedule and at a time sufficiently early to allow review of the same by the Design Consultant without causing Delay to construction progress. Contractor will be responsible to pay, at Contractor's Own Expense, additional services fees and costs incurred by District to the Design Consultant, Construction Manager and District Consultants in order to expedite review of Submittals which are not submitted in a timely fashion.

**.4 Content.** Submittals shall consist of the appropriate combination of catalog sheets, material lists, manufacturer's brochures, technical bulletins, specifications, diagrams or product samples, necessary to describe a system, product or item. Submittals shall show in detail the size, sections and dimensions of all members; the arrangement and construction of all connections, joints and other pertinent details; and all holes, straps and other fittings for attaching the Work. When required by the Design Consultant or the Contract Documents, engineering computations shall be submitted.

**.5 Professional Certifications.** When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, Construction Manager and the Design Consultant shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

**.6 Multiple Submittals.** Except where the preparation of a Submittal is dependent upon the approval of a prior Submittal, all Submittals pertaining to the same class or portion of the Work shall be submitted simultaneously.

## GENERAL CONDITIONS

**.7 Notation of Revisions.** Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or other Submittals, to revisions other than those requested by Construction Manager and the Design Consultant on previous Submittals.

**.8 Duplicates.** Contractor shall be responsible for delivering duplicates of Submittals to all other persons whose work is dependent thereon.

**3.11.5 Review of Submittals.** Review by Construction Manager and Design Consultant is subject to the limitations of Paragraphs 4.3.8 and 4.3.9, below. Contractor shall, notwithstanding any review or approval thereof by District, Construction Manager the Design Consultant or a District Consultant, be solely responsible for the content of all Shop Drawings, Product Data, Samples and other Submittals. Without limitation to the foregoing, deviations in Submittals from requirements of the Contract Documents shall remain the sole responsibility of Contractor unless Contractor has specifically informed Construction Manager and the Design Consultant in writing of such deviation at the time of submission of the Submittal and Construction Manager and the Design Consultant have given specific written approval thereof.

**3.11.6 Performance of the Work.** Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or other Submittals until the respective Submittal has been approved by Construction Manager and the Design Consultant. Such Work shall be in accordance with approved Submittals.

**3.11.7 DSA Deferred Approval.** With respect to any items for which a deferred approval by DSA is permitted under the Contract Documents and Applicable Laws, Contractor shall submit its related Submittals to DSA, Design Consultant and Construction Manager with an original, manual signature of the professional engineer registered in the State of California responsible for preparing such Submittal.

**3.11.8 Contract Adjustments.** Subject to Contractor's rights and obligations under Article 7, below, revisions indicated on Shop Drawings, Product Data, Samples or other Submittals shall not be considered as a basis for adjustment to the Contract Sum Payable or Contract Time.

### **3.12 USE OF SITE**

**3.12.1 Work Area.** Contractor will be assigned working space adjacent to the Site, and all field offices, materials and equipment shall be kept within this area. Contractor shall be responsible for leaving such area and surrounding areas in as good condition as Contractor found them and restoring them to the condition they were in prior to Contractor commencing the Work.

**3.12.2 Existing Improvements.** During the installation of the Work, Contractor shall ensure that existing facilities, fences and other Existing Improvements are all adequately protected. Upon Final Completion of the Work, all Existing Improvements that may have been damaged shall be restored to a condition acceptable to Construction Manager.

**3.12.3 Operations at Site.** Contractor shall confine operations, access and parking at the Site to areas permitted by Applicable Laws and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment. Contractor acknowledges that it is experienced in performing construction within limited and confined areas and spaces such as those that are anticipated to exist on this Project and agrees to assume responsibility, without adjustment to the Contract Sum Payable or Contract Time, to take all special measures (including, without limitation, those related to protection, storage, staging and deliveries) as may be necessary to adapt its performance to the restraints of the Site.

**3.12.4 Coordination.** Contractor shall coordinate Contractor's operations with, and secure the approval of, Construction Manager before using any portion of the Site.

## GENERAL CONDITIONS

3.12.5 Unauthorized Use. Personnel of Contractor and the Subcontractors shall not occupy, live upon or otherwise make use of the Site during any time that the Work is not being performed at the Site, except as otherwise provided in the Contract Documents.

3.12.6 Security. Contractor is responsible for the security of the Site and all of the Work provided under the terms of the Contract Documents, as well as the work of the Separate Contractors or District's own forces that occurs on the Site. Fences, barricades and other perimeter security shall be maintained in good condition and secured with locking devices. Damage shall be repaired immediately. Graffiti and unauthorized postings shall be removed or painted over so as to maintain a clean and neat appearance. Mobile equipment and operable machinery shall be kept locked or otherwise made inoperable whenever left unattended.

3.12.7 Persons on Site. Contractor shall not allow any person, other than the workers on the Project, authorized representatives of a union pursuant to the Project Labor Agreement (if any) or other labor agreement, or other individuals authorized by District or Construction Manager, to come upon any portion of the Site where the Work is being performed. Only authorized personnel will be permitted on the Site. Contractor shall submit to Construction Manager the names of all personnel either directly employed by Contractor or in the employ of any of the Subcontractors who will be present at the Site. All construction personnel will be required to register with District and wear badges as furnished by Construction Manager. Personnel not displaying badge identification will be removed from the Site until properly registered and wearing badge. All badges shall be maintained and controlled by Contractor and shall be returned to Construction Manager upon Final Completion of the Work. If additional or special personnel shall be needed for the efficient completion of the Work, then Contractor shall submit a list of names of all such additional personnel prior to their appearance on the Site.

3.12.8 District Activities. Contractor shall, prior to performing the Work at an operating District campus, become informed and take into specific account the schedule of classes, examinations, class locations, planned functions and ceremonies, and other scheduled campus activities on the Site and coordinate its planning, staging, scheduling, coordination and performance of the Work so as to minimize any interference or disruption (including, without limitation, noise and dust) to campus functions and activities, whether before, during or after instructional hours. Contractor shall enclose the working area with a substantial barricade and arrange the Work to cause minimum amount of inconvenience to students, faculty, staff and visitors.

3.12.9 Trenches. As required by California Labor Code Section 6705, if the Contract Sum Payable exceeds Twenty-Five Thousand Dollars (\$25,000) and involves the excavation of any trench or trenches five (5) feet or more in depth, Contractor shall, in advance of commencing excavation, submit to Construction Manager 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 such trench or trenches. If such plan varies from the Shoring Systems Standards established by the Construction Safety Orders of the Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer, employed by Contractor at Contractor's Own Expense. Nothing in this Paragraph 3.12.9 shall be deemed to allow the use of a system less effective than that required by such Construction Safety Orders. No excavation of such trench or trenches shall be commenced until such plan has been approved by Construction Manager and Design Consultant. Nothing in this Paragraph 3.12.9 shall be construed to impose any liability, including, without limitation, any tort liability, upon District nor any of its officers, agents, representatives or employees.

3.12.10 Dust, Fumes, Noise. Contractor shall take preventive measures to minimize, and eliminate wherever reasonably possible, generation of dust, fumes and noise.

3.12.11 Confinement of Operations. Contractor shall confine apparatus, the storage of materials and the operations of the workers to limits indicated by Applicable Laws or directions of Construction Manager.

## GENERAL CONDITIONS

**3.12.12 Prohibited Substances.** Contractor shall not permit the possession or use of tobacco, alcohol or controlled substances on the Site.

**3.12.13 Survey Markers.** Contractor shall take care to prevent disturbing or covering any survey markers, monuments or other devices marking property boundaries or corners. If such markers are disturbed, they shall be replaced by a licensed land surveyor at Contractor's Own Expense.

**3.12.14 Drainage, Erosion.** Contractor shall be responsible for changes in patterns of surface water drainage resulting from, and related erosion control or made necessary by, the performance of the Work.

### **3.13 CUTTING AND PATCHING**

Contractor shall be responsible for all cutting, fitting or patching required to complete the Work or to make its parts fit together properly and fit together properly with any Existing Improvements or work of Separate Contractors. Cutting, boring, sawcutting or drilling through structural elements of Existing Improvements is not to be started until the details (if the details are not already shown in, or as shown do not conform to, the DSA-approved Contract Documents) have been reviewed and approved the Design Consultant, the District Consultant responsible for structural engineering and the DSA field engineer. In all cases, cutting shall be performed under the supervision of competent mechanics skilled in the applicable trade and openings shall be cut as small as possible to minimize unnecessary damage. Contractor shall not damage or endanger a portion of the Work, Existing Improvements or fully or partially completed construction of District's own forces or of the Separate Contractors by cutting, patching, excavating or otherwise altering such construction. Contractor shall not cut or otherwise alter such Existing Improvements or construction by Separate Contractors or by District's own forces except with written consent of Construction Manager and such Separate Contractors; such consent not to be unreasonably withheld. Contractor shall not unreasonably withhold from the Separate Contractors or District Contractor's consent to cutting or otherwise altering the Work.

### **3.14 UTILITIES AND SANITARY FACILITIES**

**3.14.1 Contractor Responsibility.** Except as otherwise required by California Government Code Section 4215, Contractor shall contact and arrange for obtaining all available information concerning location of subsurface utility lines prior to commencement of any digging and shall, at Contractor's Own Expense, pay for any damage caused and make good any Loss to District as a result of Contractor's failure to confirm the location of such utilities.

**3.14.2 District Responsibility.** Pursuant to California Government Code Section 4215, District assumes the responsibility for removal, relocation, and protection of existing main or trunkline utility facilities located at the Site at the time of commencement of the Work and which are not identified in the Contract Documents. Contractor shall, to the extent not arising from the failure of Contractor to exercise reasonable care, be entitled if and to the extent permitted by Article 7, below, to a Change Order adjusting the Contract Sum Payable for relocating, repairing or removing such utility facilities not indicated in the Contract Documents with reasonable accuracy, including, without limitation, equipment on the Site necessarily idled thereby. Delays caused by District's or a utility owner's failure to provide for the removal or relocation of such utility facilities shall be deemed Compensable Delay. Nothing herein shall be deemed to require District to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site can be inferred from the presence of other visible facilities, such as buildings or meter junction boxes located on or adjacent to the Site. Contractor shall make its own investigation, including exploratory excavations, to determine the locations and type of Work which could result in damage to such utilities. In accordance with California Government Code Section 4216, et seq., except in an emergency, Contractor shall contact the appropriate regional notification center, at least two (2) working days, but not more than fourteen (14) Days, prior to commencing any excavation, if the excavation will be conducted in an area which is known or reasonably

## GENERAL CONDITIONS

should be known, to contain sub-service installations and shall obtain an inquiry identification number from the regional notification center.

**3.14.3**      Temporary Utilities. All utilities, including but not limited to electricity, water, gas and telephone, used in performance of the Work (including, without limitation, meters and temporary distribution systems from distribution points to points on Site where a utility is needed) shall be furnished and paid for by Contractor without adjustment to the Contract Sum Payable. Upon Final Completion of the Work, Contractor shall remove all temporary distribution systems. If the Work involves an addition to existing facility, Contractor may, with written permission of Construction Manager, granted or withheld in Construction Manager's sole discretion, use District's existing utilities by making prearranged payments to District for utilities used by Contractor. When it is necessary to interrupt any existing utility service to make connections, a minimum of two (2) working days' advance notice shall be given Construction Manager. Interruptions shall be of the shortest possible duration. Contractor shall bear, at Contractor's Own Expense, any Loss in the event utility service is interrupted without such prior notice.

**3.14.4**      Sanitary Facilities. Contractor shall provide sanitary temporary toilet facilities, for the use of all the workers, in no fewer numbers than required by Applicable Laws, plus such additional facilities as may be directed by Construction Manager. Such facilities shall be maintained in a sanitary condition at all times and shall be left at the Site until removal is directed by Construction Manager. Use of existing or permanent toilet facilities shall not be permitted except by written consent of Construction Manager.

### **3.15**      CLEANING UP

**3.15.1**      Contractor Responsibility. Contractor at all times shall keep the Site free from debris such as waste, rubbish and excess materials and equipment caused by the performance of the Work. Contractor shall not leave debris under, on or about the Site but shall promptly remove same from the Site. Without limitation to any other requirements of the Contract Documents, upon Final Completion of the Work Contractor shall clean interiors and exteriors of buildings, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections and any areas where debris has collected so surfaces are free from foreign material or discoloration; clean and polish all glass, plumbing fixtures, finish hardware and similar finish surfaces and equipment; and remove temporary fencing, barricades, planking, sanitary facilities and similar temporary facilities from Site.

**3.15.2**      Cleanup by District. If Contractor fails to clean up as provided in the Contract Documents, Construction Manager may arrange to do so, and the cost thereof shall be charged to Contractor or, at District's option, may be deducted or withheld from payments due to Contractor.

### **3.16**      ACCESS TO THE WORK

**3.16.1**      District. District, Construction Manager, Inspector of Record, Design Consultant and District Consultants, and their representatives, and such other persons as authorized by District or Construction Manager, shall at all times have access to the Work, either in preparation or in progress. Contractor shall provide safe and proper facilities for such access so that they and their representatives may perform their functions safely.

**3.16.2**      Separate Contractors. District, using its own forces or the Separate Contractors, may, at any time during the performance of the Work, enter the Site for the purpose of performing construction or for any other purpose. Contractor shall cooperate with District, District's forces and Separate Contractors and not interfere with other Work being done by them or on their behalf. Contractor hereby agrees and acknowledges that its coordination with the Separate Contractors on the other phases of this Project has been explained to Contractor and is mandatory and essential in order to comply with the requirements of the Contract Documents.

## GENERAL CONDITIONS

**3.16.3**     Delivery Routes. Contractor shall arrange for delivery of material over routes designated by Construction Manager.

### **3.17**     ROYALTIES AND PATENTS

Contractor shall pay all royalties and license fees. Contractor shall defend suits or claims for infringement of copyright, trademark or patent rights and shall indemnify and hold District, Construction Manager, the Design Consultant and the District Consultants harmless from Loss on account thereof, but shall not be responsible for such defense or Loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if Contractor has reason to believe that the required design, process or product is an infringement of a patent, Contractor shall be responsible for such Loss unless such information is promptly furnished to Construction Manager and the Design Consultant.

### **3.18**     INDEMNIFICATION AND DEFENSE

**3.18.1**     Indemnity. To the fullest extent permitted by law, Contractor agrees to indemnify, defend at its own expense and hold harmless, District, Board of Education, Construction Manager and each of their members, officers, employees, agents, insurers and volunteers ("Indemnatee(s)"), through legal counsel reasonably acceptable to District, from any and all Losses, whether real or alleged, regardless of whether caused in part by such Indemnatee or its agents, servants or independent contractors who are directly responsible to such Indemnatee, arising out of or relating to any of the following: (1) the Work; (2) any act or omission of Contractor or a Subcontractor, of any Tier; (3) the activities of Contractor or a Subcontractor, of any Tier, on the Site or on other properties related to performance of the Work or the preparation for performance of the Work; (4) the payment or nonpayment of any Subcontractor, of any Tier, for the Work performed; (5) the existence or dispersal of any Hazardous Substances or Mold on the Site as a result of Contractor's or a Subcontractor's, of any Tier, failure to comply with its obligations under the Contract Documents; (6) the violation by Contractor or a Subcontractor, of any Tier, of any patent, copyright or trademark rights; (7) the violation by Contractor or a Subcontractor, of any Tier, of any Applicable Law, including, without limitation, the violation of any requirement of the Storm Water Permit or the Storm Water Management or Storm Water Pollution Prevention Plans; (8) the violation by Contractor or a Subcontractor, of any Tier, of any of the labor requirements pertaining to the Project, including, without limitation, the Project Labor Agreement, if any; and (9) any failure by Contractor or a Subcontractor, of any Tier, to perform the Work in strict conformity with the Contract Documents, regardless of whether such above-referenced (1-9) Losses were caused in whole, or in part, by the passive negligence of any Indemnatee. Nothing contained herein shall be construed as obligating Contractor to indemnify an Indemnatee for Losses resulting from the sole negligence, the Indemnatee's active negligence or willful misconduct of its agents, servants or independent contractors who are directly responsible to such Indemnatee, where such sole negligence, active negligence or willful misconduct has been determined by agreement of Contractor and that Indemnatee or has been adjudged by the final and binding findings of a court or arbitrator of competent jurisdiction. In instances where the active negligence or willful misconduct of an Indemnatee or its agents, servants or independent contractors who are directly responsible to such Indemnatee accounts for only a percentage of the Loss involved, the obligation of Contractor will be for that portion of the Loss not due to the active negligence or willful misconduct of such Indemnatee or its agents, servants or independent contractors who are directly responsible to such Indemnatee. To the extent any portion of this provision is deemed to be unenforceable, such portion shall be severed, and all other enforceable portions shall be enforced in accordance with the law.

**3.18.2**     Indemnification of Adjacent Property Owners. In the event Contractor enters into any agreement with the owners of any adjacent property to enter upon such property for the purpose of performing the Work or other activities incidental to the Work, Contractor shall fully indemnify, defend and hold harmless any person or entity which owns or has any interest in such adjacent property. The

## GENERAL CONDITIONS

form and content of such indemnification agreement shall be approved by District prior to commencement of any Work on or around such property.

**3.18.3 Insurance and Employment Benefits.** The indemnification, defense and hold harmless obligations of Contractor under this Section 3.18, as well as any such obligations stated elsewhere in the Contract Documents: (1) shall not be limited by the amounts or types of insurance (or the deductibles or self-insured retention amounts of such insurance) which Contractor or any Subcontractor is required to carry under the terms of the Contract Documents; (2) are independent of and in addition to the Indemnitees' rights under the insurance to be provided by Contractor or any Subcontractor; and (3) shall not be limited, in the event of a claim against an Indemnitee by an employee of Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, by a limitation on amount or type of damages, compensation or benefits payable by or for Contractor or Subcontractor under any worker's compensation act, disability benefit act or other employee benefit program.

**3.18.4 Subcontractor Indemnity Agreements.** Contractor agrees to obtain or cause to be obtained executed defense and indemnity agreements with provisions identical to those set forth in this Section 3.18 from each and every Subcontractor, of every Tier. Contractor must require that each such subcontract agreement have the identical language and that the Indemnities identified above are included as indemnified parties. In the event Contractor fails to do so, Contractor agrees to be fully responsible to provide such defense and indemnification on the Subcontractor's behalf according to the terms of this Section 3.18. The failure of Contractor to mandate such language constitutes a material breach.

**3.18.5 Implied Indemnity Rights.** Notwithstanding anything stated in this Section 3.18 or elsewhere in the Contract Documents to the contrary, an Indemnitee's right to seek equitable indemnity and contribution from Contractor is in no way diminished or precluded by any agreement by Contractor to provide express contractual indemnity to such Indemnitee. Contractor's obligations under this Section 3.18 shall be deemed to completely eliminate and preclude any right by Contractor to seek contractual or equitable indemnity or contribution from any Indemnitee for any Loss covered by the Contractor's express indemnification obligations under this Section 3.18.

**3.18.6 Obligation to Defend.** The Contractor's obligation to defend under this Section 3.18 includes, without limitation, the obligation to immediately retain counsel approved by such Indemnitee, reimburse an Indemnitee for any attorney's fees, court costs (statutory and non-statutory), arbitration and mediation expenses, professional, expert and consultant fees, investigative costs, postage costs, document copying costs, telecopy costs and any and all other costs and expenses associated with defense of such Indemnitee, as and when incurred by any Indemnitee in defense of a claim by any third person or entity as a result of Contractor's failure or refusal to comply with its immediate defense obligation to such Indemnitee. Nothing stated in this Section 3.18 or elsewhere in the Contract Documents shall be interpreted as providing or implying that the obligation of Contractor to defend an Indemnitee against an alleged Loss that is within the scope of the Contractor's indemnification obligation under Section 3.18 or under any other provision of the Contract Documents is to any extent released, excused, limited or relieved by a finding, determination, award or judgment by a court or arbitrator that the alleged Loss was due to circumstances not within the scope of such indemnification obligation. Contractor's defense obligation applies whether the issue of Contractor's liability, breach of this Construction Contract or other obligation, or Contractor's responsibility has been determined and whether the Indemnitee (or any of them) have paid any sums or incurred any detriment, arising out of or resulting directly or indirectly from Contractor's performance of the Work.

### **3.19 LABOR, WAGES, PAYROLL RECORDS**

**3.19.1 Public Work.** This Work is a "public work" as defined in Labor Code section 1720 and must be performed in accordance with the requirements of Labor Code sections 1720 to 1850 and



## GENERAL CONDITIONS

Title 8 California Code of Regulations sections 16000 to 17270, which govern the payment of prevailing wage rates on public works projects.

3.19.2 Prevailing Wage Rates. \ Pursuant to the provisions of Article 2 (commencing at Section 1770), Chapter 1, Part 7, Division 2 of the Labor Code of California, the Board of Education has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime Work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to execute the Work from the Director of the Department of Industrial Relations. These rates are on file with District and copies will be made available to any interested party on request. Contractor shall post a copy of such wage rates at the Site. The adoption of such wage rates is not a representation that labor can be obtained at these rates. It is the responsibility of Contractor to inform itself as to the local labor conditions. Holiday and overtime Work, when permitted by Applicable Laws, shall be paid for at a rate of at least one and one-half times the adopted rate of per diem wages, unless otherwise specified. Holidays shall be defined in the collective bargaining agreement applicable to each particular craft, classification or type of worker employed.

3.19.3 Unclassified Workers. Any worker employed to perform the Work not covered by any classification listed in the general prevailing wage rate of per diem wages determined by the Director of the Department of Industrial Relations shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to the Work to be performed by him/her, and such minimum wage rate shall be retroactive to time of initial employment of such person on the Project in such classification.

3.19.4 Per Diem Wages. Contractor shall pay and shall cause to be paid each worker engaged in the Work not less than the general prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations, regardless of any contractual relationship which may be alleged to exist between Contractor or any of the Subcontractors and such workers. Pursuant to California Labor Code Section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time and subsistence pay.

3.19.5 Applicable Laws. Contractor represents and warrants that the Contractor's Bid and the Contract Sum Payable includes funds sufficient to allow Contractor to comply with all Applicable Laws governing the labor or services to be provided. Contractor shall defend and indemnify the Indemnitees for any violation of any Applicable Law, including but not limited to California Labor Code Section 2810, and agrees to pay all assessments, including wages and penalties, made against District in relation to such violations.

3.19.6 Posting at Site. Contractor shall post at appropriate conspicuous points on the Site the prevailing wage rates of the Department of Industrial Relations in accordance with 8 California Code of Regulations 16100(b).

3.19.7 Worker Hours. As provided in Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the California Labor Code, eight (8) hours of labor shall constitute a legal day's work. The standard work day of any worker employed at any time by Contractor or any of the Subcontractors performing the Work, or any part of the Work, shall, except as hereinafter provided, be limited and restricted by Contractor to eight (8) hours per day, between the hours of 6:00 A.M. and 6:00 P.M. (unless otherwise required by Applicable Laws), plus one-half hour unpaid lunch, approximately midway through the shift, provided that Contractor or any of the Subcontractors may establish a four day-ten-hour schedule consistent with Applicable Laws pertaining to payment of prevailing wages and the provisions of the Project Labor Agreement, if any, and any applicable collective bargaining agreement. A regular-work week shall constitute forty (40) hours during any one week. Notwithstanding the provisions hereinabove set forth, the parties hereto may agree to changes in the work day or the work week as permitted by Applicable Laws.

## GENERAL CONDITIONS

**3.19.8 Overtime.** Overtime work performed by employees of Contractor or any of the Subcontractors shall be compensated according to the applicable general prevailing rate established by the Department of Industrial Relations for holiday and overtime work for each craft, classification or type of worker in the locality in which the Work is to be performed.

**3.19.9 Payroll Records.** It shall be the sole responsibility of Contractor to ensure compliance with the provisions of Applicable Laws and the Contract Documents relating to maintenance and submission of payroll records. Pursuant to the provisions of California Labor Code Section 1776, Contractor shall keep, and shall cause each Subcontractor performing any portion of the Work to keep, an accurate certified payroll record, showing the name, address, social security number, worker classification and straight-time and overtime hours worked each Day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by Contractor in connection with the Work. Certified payroll records must be in the payroll reporting format prescribed by the Division of Labor Standards Enforcement. If there is no work by Contractor or a subcontractor in a given week, contractor must keep and submit a certified "Nonperformance" payroll record, indicating "no work" for that week. Contractor shall submit all certified payroll records to District and Construction Manager in complete, unredacted form with an original signature on the Statement of Compliance, along with, and as a condition to, its Applications for Payment. Additionally, payroll records shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:

**.1** a certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request;

**.2** a certified copy of all such payroll records shall be made available for inspection or furnished upon request to District, Construction Manager, the Division of Labor Standards Enforcement and/or the Division of Apprenticeship Standards of the Department of Industrial Relations or such other person or entity as designated by District;

**.3** a certified copy of all such payroll records shall be made available upon request by the public for inspection or for copies thereof, provided that such request is made by the public through either District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the Department of Industrial Relations. If such requested payroll records have not previously been provided pursuant to Subparagraph 3.19.8.2, above, then the requesting individual or entity shall, prior to being provided the records, reimburse the costs of preparation by Contractor, the Subcontractors and the entity through which the request was made. The public shall not be given access to records at the principal office of Contractor;

**.4** Contractor and each Subcontractor shall within ten (10) Days after receipt of a written request, file a certified copy of such payroll records with the person or entity that requested the records;

**.5** Contractor shall provide, and shall cause each Subcontractor to provide, payroll records as defined in Title 8 California Code of Regulations 16000 to District, Construction Manager and within ten (10) Days after receipt of written request, at no cost to District;

**.6** any copy of such payroll records made available for inspection, and copies furnished, to the public shall be obliterated in a manner so as to prevent disclosure of an individual's name, address, and social security number. Any copy made available for inspection, and copies furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Section 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. In either event, the name and address of Contractor or the Subcontractor performing the Work shall not be so obliterated; and

## GENERAL CONDITIONS

.7 Contractor shall inform District and Construction Manager of the location of such payroll records, including the street address, city and county, and shall, within five (5) working Days, provide a notice of change of location and address.

3.19.10 Apprentices. Contractor acknowledges that, even if performance of the Work involves a dollar amount greater than or a number of working days greater than that specified in California Labor Code Section 1777.5, it shall be the sole responsibility of Contractor, for all apprentice occupations, to ensure compliance with California Labor Code Section 1777.5, including, without limitation, the following provisions:

.1 apprentices of any crafts or trades may be employed and, when required by California Labor Code Section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the California Labor Code;

.2 every such apprentice shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered;

.3 only apprentices, as defined in California Labor Code Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing at Section 3070), Division 3 of the California Labor Code, are eligible to be employed at the apprentice wage rate on Public Works. The employment and training of each apprentice shall be in accordance with either: (1) the apprenticeship standards and apprentice agreements under which he or she is training, or (2) the rules and regulations of the California Apprenticeship Council;

.4 Contractor and any of the Subcontractors employing workers in any apprenticeable craft or trade in performing any of the Work shall apply to the applicable joint apprenticeship committee for a certificate approving Contractor or the Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work;

.5 prior to commencing the Work, Contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the Site of the Work. The information submitted shall include an estimate of journeyman hours to be performed under the Construction Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to District or Construction Manager if requested by District or Construction Manager;

.6 the ratio of the Work performed by apprentices to journeymen employed in a particular craft or trade on the Work may be no higher than the ratio stipulated in the apprenticeship standards, under which the apprenticeship program operates where Contractor or the Subcontractor agrees to be bound by those standards, but, except as otherwise provided in this Paragraph, in no case shall the ratio be less than one (1) hour of apprentice work for every five (5) hours of journeyman work. Apprentices may comprise up to thirty percent (30%) of the work force of each particular craft, classification or type of worker employed, unless the applicable joint apprenticeship committee establishes a lower percentage. To the extent possible, fifty percent (50%) of the apprentice work force shall consist of first-year apprentices;

.7 the interpretation and enforcement of California Labor Code Section 1777.5 shall be in accordance with the rules and procedures of the California Apprenticeship Council;

## GENERAL CONDITIONS

**.8** Contractor and all the Subcontractors shall comply with California Labor Code Section 1777.6, which Section forbids certain discriminatory practices in the employment of apprentices; and

**.9** Contractor shall become fully acquainted with the law regarding apprentices prior to commencement of the Work, paying special attention to California Labor Code Sections 1777.5, 1777.6, and 1777.7 and Title 8, California Code of Regulations, Section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California.

**3.19.11** Pre-Construction Meetings, Interviews. Contractor shall attend any pre-construction meetings held by District to discuss labor requirements. Contractor and the Subcontractors shall allow District, Construction Manager, District Consultants, the Department of Industrial Relations, and designated representatives of each, to conduct, at their discretion, interviews of workers at the Site during working hours.

**3.19.12** Penalties for Violations.

**.1 Prevailing Wage Violations.** Pursuant to California Labor Code Section 1775, Contractor and any of the Subcontractors shall, as a penalty, pay an amount not to exceed Fifty Dollars (\$50) for each Day, or portion thereof, for each worker paid less than the prevailing rates, determined by the Director of the Department of Industrial Relations, for such Work or craft in which such worker is employed by Contractor or the Subcontractor for performance of the Work or, except as provided by said Section 1775, for any of the Subcontractors of any Tier. The amount of this penalty shall be determined by the Labor Commissioner and shall be based on consideration of both: (1) whether the failure of Contractor or the Subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, whether the error was promptly and voluntarily corrected upon being brought to the attention of Contractor or the Subcontractor; and (2) whether Contractor or the Subcontractor has a prior record of failing to meet its prevailing wage obligations. The difference between the amount owed to each worker pursuant to such prevailing wage rates, and the amount paid to each worker for each Day or portion thereof for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Contractor.

**.2 Working Hour Violations.** Pursuant to Labor Code Section 1813, Contractor shall pay a penalty of Twenty-Five Dollars (\$25) per worker employed in the performance of the Work by Contractor or by any of the Subcontractors for each Day during which such workers are required or permitted to work more than eight (8) hours in any 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 California Labor Code.

**.3 Payroll Record Violations.** Pursuant to California Labor Code Section 1776, Contractor shall, as a penalty for failing to comply within ten (10) Days with any written notice requesting the records enumerated in subdivision (a) of said Section 1776, pay Twenty-Five Dollars (\$25) for each Day, or portion thereof, for each worker, until Contractor has strictly complied with such request. 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.

**.4 Apprenticeship Violations.** Pursuant to California Labor Code Section 1777.7, if Contractor or the Subcontractor is determined by the Chief of the Division of Apprenticeship Standards (the "Chief") to have knowingly committed a first-time violation of California Labor Code Section 1777.5, Contractor or the Subcontractor shall pay, as a civil penalty, an amount not exceeding One Hundred Dollars (\$100) for each full Day of noncompliance, provided that the amount of this penalty

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Bid No. 10(25-26)FP

Pomona Unified School District

Page 113

## GENERAL CONDITIONS

may be reduced by the Chief if the penalty would be disproportionate to the severity of the violation. In lieu of this penalty, the Chief may, for a first-time violation and with the concurrence of the joint apprenticeship committee, order Contractor or the Subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance. If such violation by Contractor or the Subcontractor is a second or subsequent violation committed within a three (3) year period from a previous violation of Section 1777.5, Contractor or the Subcontractor shall pay, as a civil penalty, to District the sum of not more than Three Hundred Dollars (\$300) for each full Day of noncompliance. District shall withhold the amount of the civil penalty from contract progress payments then due or to become due. In addition, if Contractor or the Subcontractor is determined to have knowingly committed a serious violation of any provision of Section 1777.5, the Chief may deny to Contractor or the Subcontractor, and to its responsible officers, the right to bid on or be awarded a contract to perform work as a subcontractor on any subsequent project for District for a period of up to one (1) year for the first violation and for a period of up to three (3) years for a second or subsequent violation.

**3.19.13 Subcontractor Provisions.** Contractor shall include, and shall require the Subcontractors to include, contractual provisions in all contracts they enter into for the performance of the Work requiring compliance with the provisions of this Section 3.19, at no additional cost.

**3.19.14 Condition of Payment.** Compliance by Contractor with the requirements of Section 3.19 and each of its Paragraphs shall be a condition to Contractor's right to payment under its Applications for Payment. Without limitation to the foregoing, payments to Contractor shall not be made when payroll records are delinquent or inadequate.

### **3.20 LABOR COMPLIANCE PROGRAM**

The following provisions shall apply only if the Construction Contract states that a Labor Compliance Program has been approved for the Project: Pursuant to California Labor Code Section 1771.7, District has implemented and shall enforce Labor Compliance Program that has been established for the Project. A pre-construction conference will be held for the benefit of Contractor and the Subcontractors to discuss labor requirements of the Labor Compliance Program that apply to the Project at which attendance by Contractor is mandatory. The Labor Compliance Program includes, without limitation, provisions requiring Contractor to comply with the prevailing rates of wages, maintenance and submission of weekly certified payroll records, employment of apprentices and, compliance with legal hours of work, and debarment as set forth in Section 3.19, above. Contractor shall post "Notice of Initial Approval" of the District's Labor Compliance Program at the Site in accordance with 8 California Code of Regulations 16429. Contractor, and any Subcontractors, are required to comply with the requirements of the Labor Compliance Program, at no additional cost to District. Payroll records shall be certified and submitted to the labor compliance office, along with, and as a condition to, Contractor's Applications for Payment (or at the time intervals designated in the Labor Compliance Program) and furthermore shall be available for inspection at all reasonable hours at the principal office of Contractor. Contractor shall include, and shall require the Subcontractors to include, contractual provisions in all contracts they enter into for the performance of the Work, requiring each Subcontractor, of every Tier, who furnishes any labor for the performance of Work, to comply with these provisions at no additional cost. Compliance by Contractor with the requirements of this Section 3.21 shall be a condition to Contractor's right to payment under its Applications for Payment. Contractor and the Subcontractors shall comply with all applicable provisions of the California Labor Code and the Labor Compliance Program relating to prevailing wage, hours of work, apprentices, and maintenance and submission of certified payroll reports, and shall pay appropriate penalties as described in Paragraph 3.19.11, above, for failure to comply pursuant to the California Labor Code, including, but not limited to, §§ 1775, 1776, 1777.7 and 1813. The requirements of this Section 3.21 are in addition to, and not a limitation upon, the other requirements of Section 3.19, above and other applicable provisions of the Contract Documents.

## GENERAL CONDITIONS

### **3.21 STORM WATER PERMITTING**

**3.21.1 General Requirements.** If and to the extent storm water permitting, control, mitigation or discharge control is required by Applicable Law, Contractor shall: (1) file and obtain the Storm Water Permit; (2) furnish all notices required under the Storm Water Permit; (3) prior to starting any Work at the Site prepare the Storm Water Management Plans and Storm Water Pollution Prevention Plans; and (4) take all necessary steps to monitor, report, enforce and otherwise implement and comply with the requirements of the Storm Water Permit, Storm Water Management Plans and Storm Water Pollution Prevention Plans and all Applicable Laws pertaining to the elimination or mitigation of storm water pollutant discharge to separate storm sewer systems or other watercourses, including without limitation, applicable requirements of the State Water Resources Control Board, Los Angeles Region Water Quality Control Board and municipal storm water management programs. Contractor represents and warrants that it has included in the Contractor's Bid and the Contract Sum Payable all costs of compliance with the requirements of this Section 3.22.

**3.21.2 Copies.** Contractor shall provide copies of all reports and monitoring information to Construction Manager.

**3.21.3 Violations.** Contractor recognizes and understands that failure to comply with the requirements of the Storm Water Permit is a violation of federal and state law. Compliance by Contractor with the requirements of this Section 3.22 shall be a condition to Contractor's right to payment under its Applications for Payment.

### **3.22 SOLID WASTE MANAGEMENT**

Contractor shall comply with all provisions of Applicable Laws (including, without limitation, the requirements of the California Public Resources Code, rules and regulations of the California Integrated Waste Management Board and provisions of any Site-specific plans adopted by District) that are applicable to the activities of contractors performing construction or related activities on the Site. Without limitation to the foregoing, Contractor shall take action to ensure that no less than ninety percent (90%) of marketable materials generated from the activities of Contractor and Subcontractors on the Site that are not fully consumed in the performance of the Work are recycled. Contractor shall maintain, and make available to Construction Manager upon request, complete and accurate records verifying its compliance with its obligations under this Section 3.23. Compliance by Contractor with the requirements of this Section 3.23 shall be a condition to Contractor's right to payment under its Applications for Payment.

## **ARTICLE 4 CONSTRUCTION ADMINISTRATION**

### **4.1 DESIGN CONSULTANT**

The Design Consultant shall have the authority to act on behalf of District only to the extent expressly provided in the Contract Documents; provided, however, and notwithstanding anything else set forth in the Contract Documents, that the Design Consultant does not have authority to: (1) obligate or commit District to any payment of money; (2) obligate District to any adjustment to the Contract Sum Payable, Contract Price or Contract Time; (3) relieve Contractor of any of its obligations under the Contract Documents; or (4) approve or order any Work involving Delay or Extra Work. The Design Consultant's authority includes, without limitation, the authority to observe the progress and quality of the Work and to stop the Work whenever such stoppage may be necessary, in the Design Consultant's opinion, for the proper execution of the Work. The Design Consultant shall have the authority and responsibility established by law, including, without limitation, Title 24 of the California Code of Regulations. Within the scope of his/her authority under the Contract Documents and Applicable Law, the Design Consultant has the authority to issue approvals and disapprovals for the purpose of enforcing compliance with the

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Bid No. 10(25-26)FP

Pomona Unified School District

Page 115

## GENERAL CONDITIONS

Contract Documents, including, without limitation, the Drawings and Specifications. No inspection, observation, coordination, discussion or other conduct by Design Consultant shall in any way relieve Contractor of its mandatory obligation to strictly comply with the Contract Documents.

### **4.2 CONSTRUCTION MANAGER**

Construction Manager shall have the authority to act on behalf of District only to the extent expressly provided in the Contract Documents; provided, however, and notwithstanding anything else set forth in the Contract Documents, that Construction Manager does not have authority (absent written authorization by District and/or District in the manner required by the Contract Documents) to: (1) obligate or commit District to any payment of money; (2) obligate District to any adjustment to the Contract Sum Payable or Contract Time; (3) relieve Contractor of any of its obligations under the Contract Documents; or (4) approve or order any Work involving Delay or Extra Work. District may, in its sole discretion, substitute another person or entity, or add persons or entities, to perform the functions of Construction Manager or to exercise some or all of the authority of Construction Manager provided for in the Contract Documents. All rights and authority conferred upon Construction Manager constitute rights that District may, in its discretion, exercise on its own behalf.

### **4.3 ADMINISTRATION OF THE CONSTRUCTION CONTRACT**

**4.3.1 General Provisions.** Construction Manager and the Design Consultant will provide administration of the Work as described in the Contract Documents: (1) during construction; (2) until no earlier than the time that Final Payment is due; and (3) with District's concurrence, from time to time, during the Guarantee to Repair Period.

**4.3.2 Coordination of Separate Contractors.** Construction Manager will provide for coordination of the activities of the Separate Contractors and of District's own forces with the Work of Contractor, who shall cooperate with them. Contractor shall participate with the Separate Contractors and Construction Manager and District in reviewing their construction schedules when directed to do so.

**4.3.3 Observations of the Work.** The Design Consultant will visit the Site as appropriate to the stage of the Work to observe the Work in progress. Observations shall be for the purpose of ascertaining the progress of the Work and that the character, scope, quality and detail of construction (including workmanship and materials) comply with the Contract Documents, the Design Consultant's directives, approved Submittals and clarifications issued by the Design Consultant. Observations shall be separate from any inspections which may be provided by others.

**4.3.4 Contractor Responsibility for Means, Methods.** Construction means, methods, techniques, sequences, procedures and safety precautions and programs in connection with the Work are solely the responsibility of Contractor. Construction Manager and the Design Consultant will not: (1) have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely Contractor's responsibility; (2) be responsible for Contractor's failure to carry out the Work in accordance with the Contract Documents; or (3) have control over, or charge of, or be responsible for acts or omissions of Contractor, the Subcontractors or their agents or employees, or of any other persons performing portions of the Work.

**4.3.5 Communications Facilitating Contract Administration.** Construction Manager will facilitate communications between District, the Design Consultant, the District Consultants, Contractor and other Project Team members retained by District. Unless otherwise provided in the Contract Documents or when direct communications have been specifically authorized, communications between Contractor and District shall be through Construction Manager. Communications from Contractor and the Subcontractors to Separate Contractors or the Design Consultant shall be through Construction Manager. Contractor shall not rely on oral or other non-written communications. In accordance with California Education Code Section 81141, copies of communications received by Construction Manager

## GENERAL CONDITIONS

shall be contemporaneously provided by Construction Manager to the Design Consultant so as to keep the Design Consultant fully informed of the progress of the Work, testing of materials, inspection and superintendence of the Work that is performed between the times of the Design Consultant's periodic visits to the Site.

4.3.6 Review of Applications for Payment. Construction Manager and the Design Consultant will review and certify all Applications for Payment by Contractor, including Applications for Payment requesting Progress Payments and Final Payment. Construction Manager will forward Contractor's Applications for Payment and Certifications for Payment, to Design Consultant. In the event of a disagreement between Construction Manager and Design Consultant on the content of a Certification for Payment, the Construction Manager shall make the determinations necessary to certify, in whole or in part, the Application for Payment.

4.3.7 Rejection of the Work. The Design Consultant and Construction Manager will have authority to reject the Work which does not conform to the Contract Documents and to require additional inspection or testing, in accordance with Article 10, whether or not such Work is fabricated, installed or completed. Whenever Construction Manager or Design Consultant considers it necessary or advisable for implementation of the intent of the Contract Documents, Construction Manager and Design Consultant will have authority to require additional inspection or testing of the Work in accordance with Article 10, whether or not such Work is fabricated, installed or completed. Neither Construction Manager's nor Design Consultant's authority to act under this Paragraph 4.3.7 nor a decision made in good faith either to exercise or not to exercise such authority, shall give rise to a duty or responsibility of Construction Manager or Design Consultant to Contractor, the Subcontractors, their agents or employees, or other persons performing any of the Work. District shall have the right, notwithstanding a recommendation by the Design Consultant pursuant to this Paragraph, to elect to accept any Work that is rejected by Design Consultant in cases where the Design Consultant's rejection is not based, in whole or in part, on the assertion that the Work in question poses a threat to the life or safety of persons on the Site or occupying the Work.

4.3.8 Review of Submittals by Construction Manager. Construction Manager will receive from Contractor and review all Shop Drawings, Product Data and Samples and other Submittals, coordinate them with information received from Separate Contractors, and transmit to the Design Consultant those Submittals that Construction Manager approves as properly assembled and ready for technical review by the Design Consultant. Construction Manager's actions will be taken with such promptness as to cause no unreasonable Delay in the Work of Contractor or in the activities of the Separate Contractors, District or the Design Consultant. Such review and approval by Construction Manager is solely for the purpose of determining if a Submittal has been assembled to include those documents required by the Contract Documents to be included in such Submittal and does not constitute a review or approval of the design or other technical information contained therein.

4.3.9 Review by Design Consultant. The Design Consultant will review and approve or take other appropriate action upon Contractor's Submittals such as Shop Drawings, Product Data and Samples and other Submittals, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Design Consultant's action will be taken with such promptness as to cause no unreasonable Delay in the Work of Contractor or in the activities of the Separate Contractors, District or Construction Manager, while allowing sufficient time in the Design Consultant's professional judgment to permit adequate review. Review of such Submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of Contractor as required by the Contract Documents. The Design Consultant's review of Contractor's Submittals shall not relieve Contractor of the obligations under Section 3.11, above. The Design Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Design Consultant, of any construction



## GENERAL CONDITIONS

means, methods, techniques, sequences or procedures. The Design Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**4.3.10**      Change Orders, Unilateral Change Orders and Field Orders. After consultation with the Design Consultant, Construction Manager will prepare the form of Change Orders, Unilateral Change Orders and Field Orders for execution by Design Consultant and others as provided in Article 7, below. Following consultation with each other, Construction Manager and the Design Consultant will take appropriate action on Change Orders, Unilateral Change Orders and Field Orders in accordance with Article 7.

**4.3.11**      Documents at Site. Construction Manager will maintain in good order at the Site for District one (1) record copy of all Contracts, Drawings, Specifications, Addenda, Change Orders, Unilateral Change Orders, Field Orders and other Contract Documents, and approved Shop Drawings, Product Data, Samples and other required Submittals. These will be available to the Design Consultant and Contractor, and will be delivered to District upon Final Completion of the Work. Nothing contained herein shall relieve Contractor of its responsibility under the Contract Documents with respect to maintenance of documents at the Site.

**4.3.12**      Close-Out Documents. Construction Manager will receive and forward to the Design Consultant written warranties and related documents required by the Contract Documents and assembled by Contractor.

**4.3.13**      Decisions on Aesthetic Effect. The Design Consultant's decisions on matters relating to aesthetic effect will be final if consistent with the design intent.

## **4.4**      **CLAIMS**

### **4.4.1**      Arising of Claim.

**.1**      **Disputed Compensable Changes.** A Claim by Contractor involving an adjustment to the Contract Sum Payable or Contract Time due to a Compensable Change or Deleted Work arises upon the District's issuance of a decision denying, in whole or in part, Contractor's Change Order Request. Such Claim shall be prepared and submitted in accordance with the requirements of this Section 4.4, including, without limitation, Paragraphs 4.4.2 through 4.4.4.

**.2**      **Other Claims.** In the case of a Claim by Contractor that does not involve an adjustment to the Contract Sum Payable or Contract Time due to a Compensable Change or Deleted Work, the Claim arises at the time that District and Construction Manager receive written notice by Contractor of intent to file the Claim. Such notice of intent shall be given no later than three (3) Days after the Discovery Date relative to such circumstances (even if Contractor has not yet experienced a Loss or Delay due to such circumstances) and shall state the event or condition giving rise to the Claim and its probable effect, if any, with respect to Contractor's entitlement to an adjustment to the Contract Sum Payable or Contract Time. Failure to timely provide such written notice of intent to file a Claim shall constitute a waiver of Contractor's right to assert such Claim.

**4.4.2**      Content of Claims By Contractor. A Claim by Contractor must include the following:

- .1**      a statement that it is a Claim and a request for a decision on the Claim;
- .2**      a detailed description of the act, error, omission, unforeseen condition, event or other circumstance giving rise to the Claim;

## GENERAL CONDITIONS

**.3** if the Claim involves an adjustment to the Contract Sum Payable or Contract Time due to a Compensable Change, a statement demonstrating that all requisite notices were provided, including, without limitation, timely and proper Notice of Change, Change Order Request, Notice of Delay and Request for Extension. If the Claim does not involve an adjustment to the Contract Sum Payable or Contract Time due to a Compensable Change, a statement demonstrating that a notice of intent to file the Claim was timely submitted as required by Subparagraph 4.4.1.2, above;

**.4** a detailed justification for any remedy or relief sought by the Claim, including without limitation: (1) a detailed cost breakdown (subject to the prohibition in Paragraph 7.7.13, below, relating to calculations based on “total cost” or “modified total cost” methodology) in the form required for submittal of Change Order Requests; and (2) actual job cost records demonstrating that the costs have been incurred;

**.5** if the Claim involves a request for adjustment to the Contract Time, written documentation demonstrating that Contractor has complied with the requirements of the Contract Documents for written substantiation (including, without limitation, a Time Impact Analysis) of Contractor’s entitlement to an adjustment to the Contract Time under the Contract Documents; and

**.6** a written certification signed by a managing officer of Contractor’s organization who has the authority to sign contracts and purchase orders on behalf of Contractor and who has personally investigated and confirmed the truth and accuracy of the matters set forth in such certification, in the following form:

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

**(1)** The facts alleged in or that form the basis for the Claim are, to the best of my knowledge following diligent inquiry, true and accurate; and,

**(2)** I do not know of any facts or circumstances, not alleged in the Claim, that by reason of their not being alleged render any fact or statement alleged in the Claim materially misleading; and,

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

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

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

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

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

## GENERAL CONDITIONS

Title: \_\_\_\_\_  
Company: \_\_\_\_\_  
Date: \_\_\_\_\_"

**4.4.3 Noncompliance. Failure by Contractor to submit complete information, documentation and certifications as required by Paragraph 4.4.2, above and within the time period required by Paragraph 4.4.4, below, shall result in the Claim being returned to Contractor without any decision.**

### **4.4.4 Submission of Claims.**

**.1 Transmittal.** Claims by Contractor shall be first submitted to District via Construction Manager for decision by District. Informational copies of Claims shall be distributed by Construction Manager to the Design Consultant as provided in Paragraph 4.3.5, above.

**.2 Continuous Work.** Except to the extent permitted by Sections 9.7 or 14.4, below, no dispute or disagreement with respect to any Claim shall relieve or excuse Contractor from the obligation to proceed with and maintain continuous, expeditious and uninterrupted performance of the Work, including performance of any disputed Changes in the Work.

**.3 Time for Filing.** All Claims by Contractor and supporting documentation and certifications must be filed within thirty (30) Days after the Claim arises (as "arises" is defined in Paragraph 4.4.1, above). No Claims by Contractor shall be filed after Final Payment and Contractor hereby waives any Claims not filed prior to Final Payment being issued.

**.4 Condition Precedent.** Contractor's strict compliance with the requirements of this Section 4.4 as to a Claim shall be considered conditions precedent to Contractor's right to initiate the Claims Dispute Resolution Process or any legal proceedings with respect to such Claim.

### **4.4.5 Response to Claims.**

**.1 Claims under \$50,000.** Claims by Contractor that are less than Fifty Thousand Dollars (\$50,000) shall be responded to by District in writing within forty-five (45) Days of receipt of the Claim, unless District requests additional information or documentation of the Claim within thirty (30) Days of receipt of the Claim, in which case District shall respond to the Claim within fifteen (15) Days after receipt of the further information or documentation or within a period of time no greater than that taken by Contractor in producing the additional information or documentation, whichever is greater.

**.2 Claims over \$50,000.** Claims by Contractor that are over Fifty Thousand Dollars (\$50,000) shall be responded to by District in writing within sixty (60) Days of receipt of the Claim, unless District requests additional information or documentation of the Claim within thirty (30) Days of receipt of the Claim, in which case District shall respond to the Claim within thirty (30) Days after receipt of the further information or documentation or within a period of time no greater than that taken by Contractor in producing the additional information or documentation, whichever is greater.

**4.4.6 Meet and Confer.** If Contractor disputes District's response, or if District fails to respond within the prescribed time set forth in Paragraph 4.4.5, above, Contractor may so notify District, in writing, within fifteen (15) Days of Contractor's receipt of District's response, or within fifteen (15) Days of District's response due date in the event of a failure to respond, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon demand, District shall schedule a meet and confer conference within thirty (30) Days of such demand, for discussion of settlement of the dispute. If either District or Contractor determines that the meet and confer process has

## GENERAL CONDITIONS

not been successful, it shall have the right to declare the meet and confer process closed by written notice to the other party so stating.

**4.4.7 Finality of Decision.** District's decision set forth in its response issued pursuant to Paragraph 4.4.5 shall be deemed final: (1) on the fifteenth (15th) Day after Contractor's receipt of District's response in the case of a failure by Contractor to demand an informal conference to meet and confer within the time period required by Paragraph 4.4.6, above; or (2) upon receipt by either party of written notice by the other party declaring the meet and confer process closed in the case where Contractor has timely requested to meet and confer in accordance with Paragraph 4.4.6, above.

### **4.4.8 Claims Based on Differing Site Conditions.**

**.1 Contractor Responsibility.** Save and except as provided in this Paragraph 4.4.8 for Differing Site Conditions, Contractor agrees to solely bear the risk of Loss and Delay due to concealed or unknown conditions, surface or subsurface, at the Site or in Existing Improvements, without adjustment to the Contract Sum Payable or Contract Time.

**.2 Differing Site Conditions.** Differing Site Conditions are those conditions, located at the Site or in Existing Improvements, not otherwise ascertainable by Contractor through the exercise of thorough care and diligence in its inspection of the Site and Bidding Documents, that constitute: (1) hazardous materials that constitute hazardous waste, as defined in California Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of Applicable Laws; or (2) subsurface or concealed conditions at the Site or concealed conditions in Existing Improvements which differ materially from those indicated by the Contract Documents or other information available to Contractor prior to submission of its Bid; or (3) unknown physical conditions at the Site or concealed conditions in Existing Improvements of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in the Contract Documents. If Contractor encounters conditions it believes constitute Differing Site Conditions, then notice of such conditions shall, before such conditions are disturbed, be promptly reported to District within twenty-four (24) hours by a written notice stating a detailed description of the conditions encountered.

**.3 Investigation by District.** District shall promptly investigate Contractor's report of Differing Site Conditions. If District finds that Differing Site Conditions exist, then following written request by Contractor in accordance with this Paragraph 4.4.8, an adjustment shall be made in the Contract Sum Payable and/or Contract Time, in such amount as District determines is reasonable and permitted by these General Conditions.

**.4 Submission Procedure.** If Contractor intends to seek an adjustment to the Contract Sum Payable or Contract Time based upon Differing Site Conditions, it must submit a timely Notice of Change and Change Order Request that complies with the requirements of Section 7.6, below, setting forth the adjustments to the Contract Sum Payable, Contract Price or Contract Time resulting from such Differing Site Conditions. If after decision by District on a Change Order Request that is based on Differing Site Conditions Contractor intends to further seek adjustment to the Contract Sum Payable or Contract Time, Contractor shall submit a Claim therefor in accordance with the provisions of Paragraphs 4.4.1 through 4.4.6, above.

**.5 Failure to Comply.** Failure by Contractor to strictly comply with the requirements of this Paragraph 4.4.8 concerning the timing and content of any notice of Differing Site Conditions or request for adjustment to Contract Sum Payable or Contract Time based on

## GENERAL CONDITIONS

**Differing Site Conditions shall be deemed waiver of any right by Contractor for an adjustment to the Contract Sum Payable or Contract Time by reason of such conditions.**

**.6 Final Completion.** No claim by Contractor for additional compensation for Differing Site Conditions shall be allowed if asserted after Final Payment.

**4.4.9 Continuous Performance.** No dispute or disagreement with respect to any adjustment to the Contract Sum Payable or Contract Time on account of a Claim shall relieve or excuse Contractor from the obligation to proceed with and maintain continuous, expeditious and uninterrupted performance of the Work, including performance of any of the Work impacted by the circumstances of such Claim. Contractor shall not have the right to stop work pending a dispute regarding a Claim.

**4.4.10 Claims by District.** Claims by District against Contractor shall be submitted and resolved in accordance with the provisions of Section 4.5, below.

**4.4.11 Waiver of Consequential Damages.** Contractor and District waive all rights and claims against each other for Consequential Damages arising out of or relating to the performance or nonperformance of any obligation under the Contract Documents, including, without limitation, all Consequential Damages due to termination or suspension by Contractor or District. Nothing contained in this Paragraph 4.4.11 or stated elsewhere in the Contract Documents shall be deemed or interpreted: (1) to preclude any right or claim for liquidated damages that is permitted to District under the terms of the Construction Contract; or (2) as a limitation on or a release or waiver of any express or implied rights of District to indemnification, including, without limitation, District's rights under Section 3.18, above.

### **4.5 CLAIMS DISPUTE RESOLUTION PROCESS**

**4.5.1 Resolution of Claims by Contractor.** Claims by Contractor not resolved under Section 4.4, above, shall be finally resolved in accordance with the Claims Dispute Resolution Process set forth in this Section 4.5, which shall be the deemed the exclusive recourse of Contractor for final determination and resolution of such Claims.

**4.5.2 Resolution of Claims by District.** Claims by District shall be finally resolved in accordance with the Claims Dispute Resolution Process set forth in this Section 4.5, which shall be deemed the exclusive recourse of District for final determination and resolution of such Claims.

**4.5.3 Resolution of Other Disputes.** Disputes between District and Contractor that do not constitute Claims by Contractor or District shall be resolved by way of an action filed in the Superior Court of the State of California, County of Los Angeles and shall not be subject to the Claims Dispute Resolution Process.

**4.5.4 Submission of Dispute.**

**.1 By Contractor.** Contractor's right to commence the Claims Dispute Resolution Process shall arise upon District's written response denying all or part of a Claim becoming final as provided in Paragraph 4.4.7, above. Contractor shall initiate the Claims Dispute Resolution Process by submitting a written Statement of Dispute to Construction Manager within seven (7) Days after the decision by District on Contractor's Claim has become final under Paragraph 4.4.7, above. Informational copies shall be distributed by Construction Manager to the Design Consultant as provided in Paragraph 4.3.5, above. Contractor's Statement of Dispute shall be signed under penalty of perjury and shall state with specificity the events or circumstances giving rise to the Claim, the dates of their occurrence and the asserted effect, if any, on the compensation due or time of performance obligations of Contractor under the Construction Contract. Such Statement of Dispute shall include adequate supporting data to substantiate the disputed Claim. Adequate supporting data for a Claim relating to an adjustment to

## GENERAL CONDITIONS

Contractor's obligations relative to time of performance shall include a detailed, event-by-event description of the impact of each Delay on Contractor's time for performance. Adequate supporting data to a Statement of Dispute submitted by Contractor involving Contractor's compensation shall include a detailed cost breakdown and supporting cost data in such form and including such detailed information and other supporting data as required to demonstrate the grounds for, and precise amount of, the Claim.

**.2 By District.** District's right to commence the Claims Dispute Resolution Process shall arise at any time following District's actual discovery of the circumstances giving rise to a Claim by District. A Statement of Dispute shall be submitted by District to Contractor, which shall state the events or circumstances giving rise to the Claim, the dates of their occurrence and the damages or other relief claimed by District as a result of such events.

**4.5.5 Claims Dispute Resolution Process.** District and Contractor shall each participate fully and in good faith in each step and level in the Claims Dispute Resolution Process in the sequence they appear in Subparagraphs 4.5.5.1 through 4.5.5.3, below. Such good faith effort on the part of a party shall be a condition precedent to the right of such party to proceed to the next step and level in the Claims Dispute Resolution Process; provided, however, that nothing stated in this Paragraph 4.5.5 or elsewhere in these General Conditions shall be interpreted as limiting the right of Contractor or Owner to commence an action to perfect such Claim prior to the running of the statute of limitations, only to the extent the Claims Dispute Resolution Process has not been completed.

### **.1 First Step: Stepped Negotiations.**

**(1) Project Level Negotiations.** Project-level representatives of District (consisting of a representative of Construction Manager) and Contractor (consisting of Contractor's project manager assigned to the Project) shall meet as soon as possible (but not later than seven (7) Days after receipt by the responding party of a Statement of Claim) in a good faith effort to negotiate a resolution to the Claim. If the Claim involves the assertion of a right or claim by a Subcontractor, of any Tier, that is in turn being asserted by Contractor against District ("Pass-Through Claim"), then such Subcontractor shall also have a Project representative present of comparable seniority to Contractor's negotiating representative. Upon completion of the meeting, if the Claim is not resolved, Contractor and District may either continue the Project Level Negotiations or either of Contractor or District may declare in writing the Project Level Negotiations ended. All discussions that occur during the Project Level Negotiations and all documents prepared solely for the purpose of Project Level Negotiations shall be confidential and privileged pursuant to California Evidence Code Sections 1119, 1120 and 1152.

**(2) Senior Management Level Negotiations.** If the Project-Level Negotiations fail to resolve the Claim, then senior management representatives of District (consisting of the Director of Facilities) and Contractor (consisting of a representative at the level of owner, president or chief executive officer) shall meet as soon as possible (no later than seven (7) Days after the end of the Mid-Management Level Negotiations) in a good faith effort to negotiate a resolution to the Claim. If the Claim involves a Pass-Through Claim by a Subcontractor, then such Subcontractor shall also have a Project representative present of comparable seniority to Contractor's negotiating representative. Upon completion of the meeting, if the Claim is not resolved, Contractor or District may either continue the Senior Management Level Negotiations or either of Contractor or District may declare in writing the Senior Management Level Negotiations ended. All discussions that occur during the Senior Management Level Negotiations and all documents prepared solely for the purpose of the Senior Management Level Negotiations shall be confidential and privileged pursuant to California Evidence Code Sections 1119, 1120 and 1152.

**(3) Deferral of Further Resolution.** Following the completion of the negotiations required by Parts (1) and (2) of this Subparagraph 4.5.5.1, if the Claim that remains unresolved involves the rights or obligations of persons or entities not bound by the Claims Dispute

## GENERAL CONDITIONS

Resolution Process, then continuation of the Claims Dispute Resolution Process as provided in Subparagraphs 4.5.5.2 and 4.5.5.3, below, shall be deemed automatically suspended and deferred until after Final Completion and Acceptance of the Project; provided, however, that District shall have the right, in its sole and absolute discretion, to elect and require by written notice to Contractor that the Claims Dispute Resolution Process with respect to any such Claim not be deferred and that the Claims Dispute Resolution Process continue prior to such Final Completion and Acceptance. All Claims that have been deferred in accordance with the provisions of this Part (4) shall be consolidated within a reasonable time after such Final Completion and Acceptance and shall thereafter proceed to resolution in accordance with Subparagraphs 4.5.5.2 and 4.5.5.3, below. Nothing contained herein or elsewhere in this Article 4 shall be interpreted as limiting the parties' right to continue informal negotiations of Claims that have been deferred pursuant to this Part (4); provided, however, that such informal negotiations shall not be interpreted as a waiver by District of its right to defer further steps in the Contract Dispute Resolution Process until after Final Completion and Acceptance of the Work. In the case of a Claim by Contractor that is deferred as provided in this Part (4). Nothing stated in this Subparagraph 4.5.5 shall be interpreted as limiting the right of Contractor to filing an action pursuant to Subparagraph 4.5.5.3, below, prior to completion of the requisite preceding steps in the Claims Dispute Resolution Process in the event that such preceding steps are not completed within the period of time required for commencing such action; provided, however, that following initiation of such action by Contractor all further proceedings in the action, including, without limitation, pre-hearing discovery, shall unless otherwise agreed in writing by District, be stayed pending Final Completion and Acceptance of the Work.

**.2 Second Step: Mediation.** If the Claim remains unresolved after completion of stepped negotiations pursuant to Subparagraph 4.5.5.1, above, and a party wishes to pursue the Claim further, the parties agree to submit the Claim to non-binding mediation before a mutually acceptable third party mediator in accordance with the following provisions:

**(1) Qualifications of Mediator.** The parties shall endeavor to select a mediator who is a retired judge or an attorney with at least five (5) years of experience in public works construction contract law and in mediating public works construction disputes.

**(2) Submission to Mediation and Selection of Mediator.** The party initiating mediation of a Claim shall provide written notice to the other party of its decision to mediate. In the event the parties are unable to agree upon a mediator within fifteen (15) Days after the receipt of such written notice, then the parties shall submit the matter to either the American Arbitration Association (AAA) or Judicial Arbitration and Mediation Services (JAMS) at its Los Angeles Regional Office for selection of a mediator in accordance with the rules of each respective agency.

**(3) Mediation Process.** The location of the mediation shall be at the offices of District. The costs of mediation shall be shared equally by the parties. If the Claim involves the assertion of a right or claim by a Subcontractor against Contractor that is in turn being asserted by Contractor against District, then such Subcontractor shall be considered a "party" to such mediation for purposes of allocating responsibility for the costs of the mediation. The mediator shall provide an independent assessment on the merits of the Claim and recommendations for resolution. All discussions that occur during the mediation and all documents prepared solely for the purpose of the mediation shall be confidential and privileged pursuant to California Evidence Code Sections 1119 and 1152.

**(4) End of Mediation.** District or Contractor may, if either determines in good faith that further mediation would not be productive, declare in writing the end of the mediation.

**.3 Third Step: Commencement of Litigation.** If the Claim is not resolved by mediation pursuant to Subparagraph 4.5.5.2, above, then the party wishing to further pursue resolution or determination of the Claim shall submit the Claim to the Los Angeles County Superior Court in the venue where the Project is located, within the applicable statute of limitations.

**4.5.6 Participation Not a Waiver.** Participation in the Claims Dispute Resolution Process shall not constitute a waiver, release or compromise of any defense of either party, including, without

## GENERAL CONDITIONS

limitation, any defense of District that is based on the assertion that the rights of Contractor were previously waived by Contractor due to failure to comply with the Contract Documents, including, without limitation, Contractor's failure to comply with any time periods for providing notices or for submission of Claims or supporting documentation of Claims.

**4.5.7**      Continuous Performance. Contractor shall maintain continuous, expeditious and uninterrupted performance of the Work throughout the duration of the Claims Dispute Resolution Process. Disputes under the Claims Dispute Resolution Process shall not provide Contractor grounds to stop work.

### **4.6**      NOTICE OF THIRD-PARTY CLAIMS

District shall provide notification to Contractor within a reasonable time after receipt of any third-party claim relating to the Construction Contract. District shall be entitled to recover from Contractor its reasonable costs of providing such notification.

## **ARTICLE 5 SUBCONTRACTORS**

### **5.1**      SUBSTITUTION

**5.1.1**      Substitutions Allowed. There shall be no substitution of or addition to the Subcontractors except: (1) as permitted pursuant to Section 2.5, above; or (2) as permitted by Chapter 4 (commencing at Section 4100), Division 2, Part 1 of the California Public Contract Code.

**5.1.2**      Contractor's Own Expense. Any increase in the cost or time of performance of the Work resulting from the replacement, substitution or addition of the Subcontractor shall be borne solely by Contractor at Contractor's Own Expense.

**5.1.3**      Substantiation of Compliance. At any time during performance of the Work it shall be the responsibility and burden of Contractor, if requested by District, to present complete and accurate evidence demonstrating by clear and convincing evidence that Contractor is, and all times during the bidding and Award of the Construction Contract was, in full compliance with all of the applicable provisions of Chapter 4 (commencing at Section 4100), Division 2, Part 1 of the California Public Contract Code (herein, the "Act"). Failure by Contractor to present such evidence when requested shall be deemed a breach of this Section 5.1 and of the Act, thereby entitling District to exercise any or all of its rights and remedies under the Contract Document or Applicable Laws, including, without limitation, the right to cancel the Construction Contract or assess any penalties provided for by the Act.

**5.1.4**      Splitting Prohibited. Any attempt by Contractor to avoid compliance with Chapter 4 (commencing at Section 4100), Division 2, Part 1 of the California Public Contract Code (herein, the "Act"), such as, but not limited to, by splitting the work of subcontracts with Subcontractors into separate contracts or change orders so as to not exceed the monetary threshold of the Act applicable to listing of Subcontractors, is strictly prohibited.

### **5.2**      SUBCONTRACTOR RELATIONS

**5.2.1**      Written Agreements. Contractor shall, by written agreement entered into between the Contractor and Subcontractor (other than a District Materials Vendor) no later than twenty (20) Days after Award, require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Contractor by terms of the Contract Documents and to assume toward Contractor all the obligations and responsibilities which Contractor, by the Contract Documents, assumes toward District, Construction Manager and the Design Consultant. Each subcontract agreement shall preserve and protect the rights of District, Construction Manager and the Design Consultant under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not



## GENERAL CONDITIONS

prejudice such rights, and shall allow the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against Contractor that Contractor, by the Contract Documents, has against District. Contractor shall require each Subcontractor to enter into similar agreements with their sub-subcontractors. The Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors. Without limitation to the foregoing, each contract that is entered into by a Subcontractor, of the any Tier, shall, without limitation, require the Subcontractor:

- .1 to perform the Work in accordance with the terms of the Contract Documents;
- .2 to assume all the obligations and responsibilities which Contractor assumes toward District by the Contract Documents;
- .3 to preserve and protect the rights of District under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights;
- .4 to waive all rights (including, without limitation, rights of subrogation) that the Subcontractor or its insurers may have against District and others required by the Contract Documents to be named as additional insureds, for Losses covered by insurance carried by Contractor or District, except for such rights that the Subcontractor may have to the proceeds of such insurance held by District or such other additional insured;
- .5 to afford District and entities and agencies designated by District the same rights and remedies afforded to them under the Contract Documents with respect to access to and the right to audit and copy at District's cost all of the Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, memoranda and other records and documents relating to the Work and requiring the Subcontractor to preserve all such records and other items for a period of at least four (4) years after Final Completion;
- .6 to recognize the rights of the District under Section 5.3, below (Contingent Assignment of Subcontracts), including, without limitation, the District's right to elect to accept assignment of the Subcontractor's contract and of Contractor's rights as principal under such Subcontractor's performance bond, if any, and to retain the Subcontractor pursuant to the terms of its contract to complete the unperformed obligations under its subcontract and, if requested by the District, to execute a written agreement on terms acceptable to the District confirming that the Subcontractor is bound to the District under the terms of its subcontract;
- .7 to submit applications for payment, requests for change orders and extensions of time and claims, and to comply with all other notice and submission requirements of the Contract Documents, sufficiently in advance to allow Contractor time to comply with its obligations under the Contract Documents;
- .8 to purchase and maintain insurance in accordance with the requirements of the Contract Documents;
- .9 to defend and indemnify the Indemnitees on the same terms as provided in Section 3.18, above;
- .10 to comply with the nondiscrimination (Article 15) and prevailing wage (Section 3.19) provisions of these General Conditions;

## GENERAL CONDITIONS

.11 to warrant and represent that the Subcontractor has reviewed the Contract Documents and inspected the Site on the terms provided for in Paragraphs 3.2.1 and 3.2.2, above;

.12 to provide for a right of termination for convenience by Contractor that limits the Subcontractor's right to compensation to an allocable share of the subcontract sum that corresponds to the percentage of the Work properly performed by the Subcontractor, with no additional sum payable for prospective damages, lost profits, consequential damages or other Losses, of any kind;

.13 to provide that time is of the essence to each of the Subcontractor's obligations;

.14 to provide for resolution of disputes and waiver of right to jury and court trial in accordance with the provisions of Section 4.5 of these General Conditions; and

.15 require compliance with the Project Labor Agreement (if applicable) and (if any) the Labor Compliance Program.

5.2.2 Copies. Contractor shall, promptly after their execution, furnish to Construction Manager true, complete, and executed copies of all contracts with the Subcontractors and amendments, modifications and change orders thereto. Progress payments shall not be made for items of the Work for which District has not received such documents.

5.2.3 No Brokering. Contractor shall not permit any portion of the Work to be contracted to a firm acting as broker, factor or other entity not actually performing a substantial portion of the Work with its own forces.

5.2.4 All Subcontractor Tiers. It is Contractor's obligation to see to it that all obligations of Contractor are assumed by (or, "passed through") to the Subcontractors, of every Tier, by the inclusion of contractual provisions requiring each of the Subcontractors to bind not only themselves but their lower Tier Subcontractors (and similarly requiring such lower Tier Subcontractors to bind themselves and their lower Tier Subcontractors, and so on for each lower Tier, so as to bind all Tiers of Subcontractors) to the obligations of Contractor under the Contract Documents.

### **5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

Contractor hereby assigns to District, or to such person or entity as District, in its discretion, designates, all its interest in both (1) its contracts with first-Tier Subcontractors now or hereafter entered into by Contractor for performance of any part of the Work; and (2) its rights as principal under any and all performance bonds furnished by such first-Tier Subcontractors. Such assignment will be effective only as to those contracts which Owner or its designee accepts in writing. District's and its designee's sole payment obligation in the event it accepts such assignment shall be to pay in accordance with the terms of such contract for the Work performed after District's or its designee's acceptance of such assignment.

### **5.4 COMMUNICATIONS BY DISTRICT**

District and Construction Manager shall have the right to communicate directly with the Subcontractors with respect to matters that are related to Contractor's performance of its obligations under the Contract Documents. Contractor shall be provided with a copy of all such written communications. The Design Consultant shall also be provided with copies of such communications as provided in Paragraph 4.3.5, above. Such communications shall not create, or be interpreted as creating, any contractual relationship between District or Construction Manager, on the one hand, and any of the Subcontractors, on the other hand.

## GENERAL CONDITIONS

### **5.5 NO THIRD-PARTY RIGHTS**

Nothing contained in the Contract Documents shall create any contractual relationship between any of the Subcontractors and District or Construction Manager, except (as to District only) when, and only to the extent: (1) that District elects to accept the assignment of the contract between Contractor and such Subcontractor pursuant to Section 5.3, above; or (2) provided for in a District Materials Contract that is assigned to Contractor pursuant to Section 2.5, above. However, District shall be an intended third party beneficiary to all subcontract agreements.

### **5.6 DOCUMENT AVAILABILITY**

Contractor shall make available to each proposed Subcontractor with whom it enters into a contract for performance of any portion of the Work, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound so as to ensure that all matters disclosed thereby are taken into consideration and included in the terms of such contracts and shall identify to such Subcontractor the terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents.

### **5.7 NO LIABILITY OF DISTRICT**

Nothing set forth in this Article 5, and no action taken by District or Construction Manager with respect to review or approval of the Subcontractors or their contracts, shall impose any liability or responsibility upon District nor relieve Contractor of its responsibilities under the Contract Documents or Applicable Laws.

## **ARTICLE 6**

### **DISTRICT'S OWN FORCES AND SEPARATE CONTRACTORS**

#### **6.1 DISTRICT'S RIGHT TO PERFORM CONSTRUCTION WITH OWN FORCES AND TO AWARD SEPARATE CONTRACTS**

**6.1.1 Right of District.** District reserves the right to perform construction or operations related to the Project with District's own forces and to award other contracts in connection with other portions of the Project or other construction or operations on the Site. To that end, Contractor represents, warrants, and acknowledges that the District intends to hire Separate Contractors to work on other phases and portions of the Project, such that Contractor shall coordinate and work with such Separate Contractors so as to not interfere with or delay the work of the Separate Contractors.

**6.1.2 Separate Contractors.** Contractor shall ascertain to its own satisfaction the existence, scope and nature of any other contracts that have been or may be awarded by District to Separate Contractors in prosecution of the Project. Contractor shall look solely to such Separate Contractors, and District shall not be responsible, for any Losses suffered by Contractor or the Subcontractors, of any Tier, resulting directly or indirectly from the conduct of work by the Separate Contractors.

**6.1.3 District's Forces.** Provided that Contractor has complied with its obligations under the Contract Documents, Contractor shall have the right subject to the terms of Article 7, below, to an adjustment to the Contract Sum Payable for unavoidable and unforeseeable additional costs caused by District's own forces in performing other work on the Site.

#### **6.2 MUTUAL RESPONSIBILITY**

**6.2.1 Coordination.** Nothing contained in the Contract Documents shall be interpreted as granting Contractor exclusive use or occupancy of the Site. Contractor shall afford District's own forces and the Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities. Contractor shall not Delay the work of the Separate Contractors or District's forces and shall coordinate Contractor's construction and operations with the

## GENERAL CONDITIONS

construction activities of District's forces and the Separate Contractors as required for the prompt and expeditious performance of the Work.

**6.2.2**      Adjoining Work. If part of Contractor's Work depends for proper execution or results upon construction or operations by District's own forces or Separate Contractors, Contractor shall, prior to proceeding with that portion of the Work, promptly report to Construction Manager and the Design Consultant apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Contractor will be responsible at Contractor's Own Expense for Losses to District for any such defects or deficiencies not reported in accordance with this Paragraph 6.2.2 that were apparent or that should have been apparent to Contractor on careful inspection. Failure of Contractor to carefully inspect or report shall constitute an acknowledgment that District's own forces' and the Separate Contractors' completed or partially completed construction is fit and proper to receive Contractor's Work.

**6.2.3**      Delay. Contractor shall coordinate its Work with the construction and operations of District's forces and the Separate Contractors so as to eliminate interference and shall do so without Delay to the Work of Contractor or the construction or operations of such others. Costs caused by improperly timed activities or defective construction shall be borne by the party responsible therefor.

**6.2.4**      Damage. Contractor shall promptly remedy damage caused by Contractor to completed construction or partially completed construction or to property of District or the Separate Contractors.

**6.2.5**      Disputes. Contractor shall notify Construction Manager in writing within three (3) Days if it believes it has experienced or is experiencing any Delay or Loss due to the activities of District's forces or the Separate Contractors or in the event of any dispute with District's forces or the Separate Contractors.

### **6.3**      DISTRICT'S RIGHT TO CLEANUP

If a dispute arises among Contractor, the Separate Contractors and/or District as to the responsibility for maintaining the Site and surrounding area free from waste materials and rubbish, District may clean up and allocate the cost among those responsible as Construction Manager determines to be just.

## **ARTICLE 7 CHANGES IN THE WORK**

### **7.1**      CHANGES

**7.1.1**      General. Changes in the Work, whether ordered by District or otherwise arising, are permitted, reasonably foreseeable and, regardless of their number, size, scope or complexity, shall not invalidate the Construction Contract or give rise to any right on the part of Contractor to seek recovery of any Loss from District other than pursuant to the contractual processes for adjustment of the Contract Sum Payable and/or Contract Time that are expressly provided for by the Contract Documents.

**7.1.2**      Contract Adjustments. Adjustments to the Contract Sum Payable or Contract Time shall only be permitted as follows: (1) the Contract Sum Payable shall only be adjusted pursuant to this Article 7 by means of a Change Order or Unilateral Change Order for Compensable Change, Deleted Work or Compensable Delay; (2) the Contract Price shall be adjusted pursuant to this Article 7 by means of a Change Order or Unilateral Change Order for Compensable Change or Compensable Delay only if and to the extent that the District Contingency has been fully expended and then only to the extent, dollar-for-dollar, that the Contract Sum Payable is also adjusted; and (3) the Contract Time shall only be adjusted for pursuant to this Article 7 by means of a Change Order or Unilateral Change Order for Compensable Delay, Excusable Delay or Deleted Work authorizing an extension or contraction of the Contract Time as provided in Article 8, below.

## GENERAL CONDITIONS

**7.1.3 Exclusive Rights.** The rights expressly set forth in the Contract Documents for adjustment of the Contract Sum Payable and Contract Time constitute Contractor's exclusive rights for additional compensation or extensions of time and are intended to be in lieu of and wholly replace any other rights that Contractor may have under Applicable Laws for additional compensation, reimbursement, extension of time or recovery of Losses due to Changes or Delay, of any kind or to any extent. Without limitation, the foregoing shall be understood to mean that if circumstances affecting the Work arise for which the Contract Documents do not provide a right to Contractor for an adjustment of the Contract Sum Payable or Contract Time, that it is the intent of the District and Contractor that Contractor shall not be entitled to any adjustment to the Contract Sum Payable or Contract Time and that any Loss to Contractor or Subcontractors on account of such circumstances shall be borne by Contractor at Contractor's Own Expense.

**7.1.4 Contractor's Own Expense.** Without limitation to any other provisions of the Contract Documents expressly or impliedly requiring performance of Work at Contractor's Own Expense, any Change performed by Contractor pursuant to any direction other than a duly authorized and executed Change Order, Unilateral Change Order or Field Order shall be deemed performed at Contractor's Own Expense and Contractor hereby waives and relinquishes any right to any additional compensation or time as a result thereof.

**7.1.5 Prompt Performance.** Subject to the procedures set forth in this Article 7 and elsewhere in the Contract Documents, all Changes shall be performed promptly and without Delay.

**7.1.6 DSA Approval.** Changes to the DSA-approved Drawings and Specifications shall be made by revised Drawings and Specifications that have been approved by DSA and incorporated in an Addendum, Change Order or Unilateral Change Order, as required by Section 4-338, Part I, Title 24 of the California Code of Regulations.

## **7.2 SIGNATURES AND AUTHORIZATIONS**

**7.2.1 Execution.** A Change Order shall be based upon an agreement between District and Contractor. A Unilateral Change Order and a Field Order may or may not be executed by Contractor. Change Orders, Unilateral Change Orders and Field Orders that involve Changes in the Work shall be signed by the Design Consultant.

**7.2.2 Written Authorization.** Contractor shall not be entitled to an adjustment to the Contract Sum Payable by Change Order or Unilateral Change Order except as authorized in writing that is signed by the Design Consultant as required by Paragraph 7.2.1, above, the Construction Manager, and the District.

**.1 Board of Education's Prior Authorization.** Adjustments to the Contract Sum Payable (whether authorized by Change Order, Unilateral Change Order and/or Field Order) shall and must be approved by the Board of Education in advance of performance of the Work that is the subject thereof. To the extent that Applicable Laws require competitive bidding of Changes, Contractor consents thereto and agrees that any interruption in performance due thereto shall not constitute a breach by District of its obligations to Contractor under the Contract Documents or Applicable Laws.

**.2 Application of Education Code 81655.** Nothing stated in this Section 7.2 or elsewhere in the Contract Documents shall be interpreted as altering the requirements of California Education Code Section 81655 pertaining to approval or ratification by the Board of Education of contracts and modifications to contracts entered into by District.

**.3 Changes to Authorizations.** District reserves the right, exercised in its sole discretion to unilaterally change the list of persons or entities set forth in Paragraph 7.2.2 as having authority to authorize adjustments to the Contract Sum Payable and/or to specify a separate list of persons

## GENERAL CONDITIONS

or entities having authority to authorize adjustments to the Contract Sum. Such right shall be exercised by written notice to Contractor specifying the particulars of such change.

**7.2.3 Written Authorization of Essence. IT IS OF THE ESSENCE TO THE AGREEMENT BETWEEN CONTRACTOR AND DISTRICT THAT ALL ADJUSTMENTS TO THE CONTRACT SUM PAYABLE OR CONTRACT TIME MUST BE AUTHORIZED IN ADVANCE, IN WRITING, AS REQUIRED BY THIS ARTICLE 7. ACCORDINGLY, NO VERBAL DIRECTIONS, COURSE OF CONDUCT BETWEEN THE PARTIES, OR EXPRESS OR IMPLIED ACCEPTANCE OF CHANGES OR OF THE WORK, AND NO CLAIM THAT DISTRICT HAS BEEN UNJUSTLY ENRICHED (WHETHER OR NOT THERE HAS BEEN SUCH ENRICHMENT) SHALL BE THE BASIS FOR AN ADJUSTMENT TO THE CONTRACT SUM PAYABLE OR CONTRACT TIME IF CONTRACTOR HAS NOT OBTAINED ADVANCE WRITTEN AUTHORIZATION IN THE MANNER REQUIRED BY THIS ARTICLE 7.**

### **7.3 CHANGE ORDERS**

**7.3.1 Purpose.** The purpose of a Change Order is to establish the terms of District's and Contractor's mutual agreement to an adjustment of the Contract Sum Payable or Contract Time on account of Compensable Change, Deleted Work, Compensable Delay or Excusable Delay.

**7.3.2 Content.** A Change Order is a written instrument signed by Contractor and District in accordance with Paragraph 7.2.2, above, stating:

- .1 a Compensable Change to the Work or Deleted Work;
- .2 a Compensable Delay or Excusable Delay;
- .3 the amount of the adjustment, if any, to the Contract Sum Payable; and
- .4 the extent of the adjustment to the Contract Time, if any.

### **7.4 UNILATERAL CHANGE ORDERS**

**7.4.1 Purpose.** If, after receipt by District of a Change Order Request properly prepared and submitted by Contractor, the parties are unable to agree upon the amount of any adjustment to the Contract Sum Payable or Contract Time to be included in a Change Order or if the amount of such adjustment after performance is otherwise disputed, then District may, in its sole discretion, issue a Unilateral Change Order setting forth its unilateral determination of the appropriate adjustment to the Contract Sum Payable or Contract Time.

**7.4.2 Good Faith Estimate.** District's determination in a Unilateral Change Order of the adjustment to the Contract Sum Payable or Contract Time shall be based upon District's good faith estimate of an appropriate and reasonable adjustment to the Contract Sum Payable and Contract Time.

**7.4.3 Response by Contractor.** District's unilateral determination of an adjustment to the Contract Sum Payable or Contract Time shall become final and binding upon Contractor if Contractor fails to submit a Claim in writing to District disputing the terms of such Unilateral Change Order within thirty (30) Days of the issuance of the Unilateral Change Order.

### **7.5 FIELD ORDERS**

**7.5.1 Purpose.** A Field Order is a written directive that: (1) directs the performance of a Minor Change; (2) directs performance of Work or a Change with respect to which there exists a dispute or question regarding adjustment of the Contract Sum Payable or Contract Time; or (3) establishes a

## GENERAL CONDITIONS

mutually agreed basis for compensation to Contractor for a Compensable Change or Deleted Work under circumstances where performance needs to proceed in advance of Contractor having completed the substantiation and evaluation of the impact thereof on the Contract Sum Payable or Contract Time.

**7.5.2 Reasonable Order of Magnitude Estimates.** Each Field Order involving a Compensable Change or Deleted Work shall include a Reasonable Order of Magnitude estimate prepared by Contractor of the probable amount of the adjustment to the Contract Sum Payable and Contract Time based on Allowable Costs and Allowable Markups.

**7.5.3 Authorization.** Except as otherwise provided in Paragraph 7.5.4, below, a Field Order is not binding upon District and confers no rights upon Contractor unless it is authorized to be performed by Contractor in advance of establishment of an adjustment to the Contract Sum Payable by Design Consultant, Construction Manager and District.

**.1 Minor Change.** A Field Order for a Minor Change may be authorized by either Construction Manager or Design Consultant.

**.2 No Change.** A Field Order for the performance of Work that is not a Change to the Work and does not involve an adjustment to the Contract Sum Payable or Contract Time may be authorized by either Construction Manager or District.

**7.5.4 Interim Compensation.** Except as otherwise provided in Paragraphs 7.5.7 or 7.5.8, below, Contractor's right to an adjustment to the Contract Sum Payable for a Compensable Change performed pursuant to a Field Order that has been duly authorized pursuant to Paragraph 7.5.3, above, shall, until such time as an adjustment to the Contract Sum Payable is established by Change Order or Unilateral Change Order, be determined in accordance with the method of calculation set forth in Subparagraph 7.7.1.4, below (time and materials); provided, however, that the total charges by Contractor therefore shall not exceed a price that is reasonable, competitive and fair to District for the amount and type of Work involved in performance of the Compensable Change.

**7.5.5 Additional Notices.** Issuance of a Field Order shall not be interpreted as relieving Contractor of its obligation to comply with the requirements of these General Conditions for timely submission of notices required by the Contract Documents, including, without limitation, Notice of Change, Change Order Request, Notice of Delay or Request for Extension. If Contractor believes that a Field Order constitutes a basis for adjustment to the Contract Sum Payable or Contract Time, then Contractor shall, prior to performance of the Work affected or involved, submit a Notice of Change as required by Paragraph 7.6.1, below.

**7.5.6 Disputed Work.** In the event there arises a dispute over whether Work directed to be performed by Field Order constitutes a Compensable Change, Contractor shall, if requested in a Field Order nonetheless proceed with performance of the Work (including, without limitation, any Change) as directed by such Field Order.

**7.5.7 No Implied Obligation.** In recognition of the fact that Field Orders may be issued under circumstances in which the District may not have had the time and opportunity to fully evaluate the circumstances giving rise to a Change, it is agreed that neither the issuance nor execution of, nor any statement contained in, nor any course of conduct in connection with, a Field Order shall be interpreted as creating or implying any obligation on the part of District to increase the Contract Sum Payable or extend the Contract Time on account of any Change described in the Field Order that upon further investigation is found in fact to not constitute a valid basis for adjustment of the Contract Sum Payable or Contract Time.

**7.5.8 Waiver by Contractor.** The following shall be deemed performed by Contractor at Contractor's Own Expense: (1) any Changes or Extra Work performed by Contractor, before or after issuance by Contractor of a Notice of Change or Change Order Request, without Contractor having first

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Bid No. 10(25-26)FP

Pomona Unified School District

Page 132

## GENERAL CONDITIONS

obtained a Field Order that has been duly authorized as required by this Section 7.5 directing such performance to proceed; and (2) any Changes or Extra Work performed in response to a directive set forth in a Field Order prior to the receipt by Construction Manager of a Notice of Change in accordance with Paragraph 7.6.1, below.

### **7.6 PROCEDURES**

#### 7.6.1 Notice of Change.

**.1 Submission.** Contractor shall submit a written Notice of Change to Construction Manager (a copy of which shall be forwarded to the Design Consultant as provided in Paragraph 4.3.5, above) if, in Contractor's opinion, any instruction, request, drawing, specification, action, condition, omission, default or other circumstance occurs that Contractor considers constitutes a Compensable Change or other matter for which Contractor believes it is or may be entitled to an adjustment to the Contract Sum Payable. Such notice shall be provided prior to performance of the Work affected or involved and no later than seven (7) Days after the Discovery Date of such circumstances. Construction Manager shall provide copies of the Notice of Change to the Design Consultant as provided in Paragraph 4.3.5, above.

**.2 Content.** Each Notice of Change in order to be considered complete shall include:

(1) a general statement of the circumstances giving rise to the Notice of Change (including, without limitation, identification of any related Field Order);

(2) Contractor's Reasonable Order of Magnitude estimate of the Allowable Costs and Allowable Markups of any Compensable Change and/or Deleted Work involved;

(3) if such circumstances involve a right to adjustment of the Contract Time due to Compensable Delay or Excusable Delay that has not been waived pursuant to Paragraph 8.2.2., below, Contractor shall include, if not previously provided, a complete and timely Notice of Delay; and

(4) if the Notice of Change seeks information, approval or decision of District, Construction Manager or the Design Consultant, it shall demonstrate that Contractor has complied with the requirements of Paragraph 2.1.4, above.

**.3 Waiver by Contractor.** Failure by Contractor to provide a complete and timely Notice of Change under circumstances where a Notice of Change is required by this Paragraph 7.6.1 shall constitute a waiver by Contractor of the right to any adjustment to the Contract Sum Payable on account of such circumstances.

#### 7.6.2 Change Order Request.

**.1 Submission.** With respect to any matter that Contractor believes may involve or require an adjustment to the Contract Sum Payable, Contractor shall, within the earlier of (1) twenty-one (21) Days after the Discovery Date of such circumstances; or (2) fourteen (14) Days after receipt by Construction Manager of a Notice of Change pursuant to Paragraph 7.6.1, above, submit to Construction Manager a Change Order Request. With respect to Deleted Work, Contractor shall submit a Change Order Request no later than twenty-one (21) Days after receipt of a request for pricing of such Deleted Work. Copies of such Change Order Requests shall be forwarded by Construction Manager to the Design Consultant as provided in Paragraph 4.3.5, above.

**.2 Form.** Change Order Requests shall be provided using forms furnished by District and attached hereto as **Exhibit "C"**. Failure by District to provide or approve a particular form,



## GENERAL CONDITIONS

however, shall not relieve Contractor of its obligation to provide Change Order Requests in a written form that complies with the requirements of this Paragraph 7.6.2.

**.3 Content.** Each Change Order Request in order to be considered complete shall include:

(1) a detailed description of the circumstances for the Compensable Change, Deleted Work or Compensable Delay and a detailed estimate, which in the case of a Compensable Change shall be based on definitive Subcontractor pricing where available, of the proposed adjustments of the Contract Sum Payable;

(2) a complete, itemized cost breakdown of all Contractor and Subcontractor costs, quantities, hours, unit prices, rates and markups (additive and deductive); provided, however, that, unless otherwise agreed to by District in writing, under no circumstances shall any Change Order Request include or be based upon any costs, expenses or markups (on behalf of Contractor or any Subcontractor) other than either: (1) a unit price set forth in the Construction Contract, or (2) Allowable Costs and Allowable Markups. If the Change Order Request involves the performance of Work by the Subcontractor, Contractor must include an estimate or bid from the Subcontractor containing the same detailed information as required herein of Contractor; and

(3) if such circumstances involve a right to adjustment of the Contract Time due to Compensable Delay or Excusable Delay that has not been waived pursuant to Paragraph 8.2.3., below, Contractor shall include, if not previously provided, a complete and timely Request for Extension.

**.4 Waiver by Contractor. Failure by Contractor to provide a timely and complete Change Order Request under circumstances where a Change Order Request is required by this Paragraph 7.6.2 shall constitute a waiver by Contractor of the right to any adjustment to the Contract Sum Payable on account of such circumstances.**

**7.6.3 Formal Notice of Essence. CONTRACTOR RECOGNIZES AND ACKNOWLEDGES THAT TIMELY SUBMISSION OF A FORMAL NOTICE OF CHANGE AND CHANGE ORDER REQUEST, WHETHER OR NOT THE CIRCUMSTANCES OF THE CHANGE MAY BE KNOWN TO DISTRICT OR CONSTRUCTION MANAGER OR AVAILABLE TO DISTRICT THROUGH OTHER MEANS, IS NOT A MERE FORMALITY BUT IS OF CRUCIAL IMPORTANCE TO THE ABILITY OF DISTRICT TO PROMPTLY IDENTIFY, PRIORITIZE, EVALUATE AND MITIGATE THE POTENTIAL EFFECTS OF CHANGES. ANY FORM OF INFORMAL NOTICE, WHETHER VERBAL OR WRITTEN (INCLUDING, WITHOUT LIMITATION, STATEMENTS AT REGULAR JOB MEETINGS OR ENTRIES ON MONTHLY REPORTS, DAILY LOGS OR JOB MEETING MINUTES, E-MAILS, TEXT MESSAGES, LETTERS, ETC.), THAT DOES NOT STRICTLY COMPLY WITH THE FORMAL REQUIREMENTS OF PARAGRAPHS 7.6.1 AND 7.6.2, ABOVE, SHALL ACCORDINGLY BE DEEMED INSUFFICIENT.**

## **7.7 PRICING**

**7.7.1 Alternative Methods of Pricing.** Adjustments to the Contract Sum Payable shall be calculated as follows: (1) for adjustments permitted by the Contract Documents due to Compensable Delay the adjustment shall be calculated as provided in Section 3.4 of the Construction Contract; and (2) for adjustments due to Compensable Change or Deleted Work the adjustment shall be calculated by one of the following methods:

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

## GENERAL CONDITIONS

**.2 Unit Prices.** By the unit prices set forth in the Construction Contract or such other unit prices as are subsequently and mutually agreed to between District and Contractor.

**.3 Estimating Guides.** For Compensable Changes with respect to which District has elected to make a unilateral determination pursuant to Paragraph 7.7.9, below, by the sum of all the following: (1) the reasonable value of materials and equipment documented as having been actually incorporated into the Work, which reasonable value may be less than but shall never be more than Contractor's actual Allowable Costs and Allowable Markups; (2) an estimate of the reasonable costs of labor, installation and other services using the lesser cost to the District derived by applying the following recognized estimating guides: (a) R. S. Means Company, Inc. Building Construction Cost Data, Western Region - Latest Edition, P.O. Box 800 Kingston, MA 02364-800; or (b) Lee Saylor, Inc. Current Construction Costs - Latest Edition, 9420 Topanga Canyon Boulevard, Woodland Hills, CA 91311, and (3) Allowable Markups on the sum of the amounts derived from Parts (1) and (2) of this Subparagraph 7.7.1.3.

**.4 Time and Materials.** If none of the methods provided for in Subparagraphs 7.7.1.1 through 7.7.1.3, above, is applicable, then as follows:

**(1) Compensable Changes.** In the case of Compensable Changes, the adjustment shall be calculated by taking (a) the reasonable expenditures by Contractor and Subcontractors, documented in the manner required by Paragraph 7.7.2, below, for Allowable Costs that are actually and directly incurred and paid in the performance of the Compensable Change, not to exceed for any Compensable Change a price that is reasonable, competitive and fair to District for the Extra Work directly involved in the performance of the Compensable Change, and (b) adding thereto amounts permitted for Allowable Markups.

**(2) Deleted Work.** In the case of Deleted Work the adjustment shall be calculated by taking (a) the greater of either (i) the value assigned to the Deleted Work in the Segregation of Costs/Schedule of Values submitted by Contractor at the time of Award, exclusive of all estimated markups by Contractor and any Subcontractor for overhead and profit (or, if insufficient detailed information on costs, overhead and profit for the Deleted Work is explicitly assigned in the Segregation of Costs/Schedule of Values, a proportionate amount for overhead and profit as derived from the Contractor's cost, bidding and/or estimating information that formed the basis for the establishment of the values set forth in such Segregation of Costs/Schedule of Values), or (ii) a reasonable estimate of the Allowable Costs of performance of the Deleted Work (exclusive of any amounts of overhead or profit) based on prevailing prices for similar Work at the time of Award of the Construction Contract, plus (b) an amount for overhead and profit based on the applicable Allowable Markups for Deleted Work as stated Paragraph 7.7.5, below; provided, however, that if the Segregation of Costs/Schedule of Values is the basis for the credit calculation and if it includes, for Contractor or any Tier of Subcontractor, an amount of overhead and profit on the Deleted Work that, when expressed as a percentage of such Contractor's or Subcontractor's other costs in the direct performance of the Deleted Work (as assigned or derived in the manner provided for in Subclause (i) hereof), would exceed the additive percentage of Allowable Markup applicable to Contractor or Subcontractor and allowed for Compensable Changes under Paragraph 7.7.5, below, then the credit amount derived from the calculation in preceding Clauses (a) and (b) shall be further increased so as to limit the percentage rate of overhead and profit that would effectively be retained by Contractor (for its own benefit or on behalf of or by any Subcontractor) on account of payment of the Contract Sum Payable after adjustment for such Deleted Work, to no more than the difference between the applicable additive Allowable Markup pursuant to Paragraph 7.7.5, below for Compensable Changes and the applicable deductive Allowable Markup credit pursuant to Paragraph 7.7.5, below, for Deleted Work.

**7.7.2 Time and Materials Documentation.** Without limitation to any other provisions of the Contract Documents, Contractor's right to reimbursement of Allowable Costs incurred by Contractor

## GENERAL CONDITIONS

or Subcontractors in the performance of a Compensable Change on a time and materials basis pursuant to Subparagraph 7.7.1.4, above, shall be conditioned on its compliance with the following conditions with respect to documentation of Extra Work that is involved in the performance of a Compensable Change:

**.1 Labor.** At the close of the Day on which such Extra Work is performed, Contractor shall submit an Extra Work labor report, on forms provided by Construction Manager, to Construction Manager and Inspector of Record that sets forth a list of the actual hours spent in performing the Extra Work, that clearly identifies the labor expended on the Extra Work and the Allowable Costs for such Extra Work performed that Day and showing the names of the workers, their classifications, hours worked and hourly rates. Such forms shall be signed by Contractor's project manager or superintendent at the time of submission as verification on behalf of Contractor that the information contained therein is complete and accurate.

**.2 Materials, Equipment.** A list of Allowable Costs of materials and equipment consumed in the performance of the Extra Work on the Day that the Extra Work was performed, together with copies of applicable delivery tickets and prices for all materials and for all equipment used, the type of equipment, identification number, hours of operation (including loading and transportation) and hourly/daily rates involved for that Day.

**.3 Other Services or Expenditures.** A list of other services and expenditures constituting Allowable Costs incurred in performance of the Extra Work on the Day that the Extra Work was performed, along with documentation verifying the amounts thereof in such detail as Construction Manager may require.

**.4 Subsequent Documentation.** Documentation not available on the Day that the Extra Work is performed, such as, but not limited to, material invoices, shall be submitted as soon as they are available but not later than twenty-one (21) Days after the earlier of the Day of delivery or incorporation of the particular item of Extra Work at the Site.

**.5 Subcontractor Costs.** Extra Work performed by Subcontractors shall be documented in the same manner as required of Contractor under this Paragraph 7.7.2 and shall not, unless approved in writing by District, be based on lump sum or unit price; provided, however, that if Contractor has reason to believe that a lump sum or unit price for a Subcontractor's performance of a portion of Extra Work authorized to be performed on a time and materials basis is available and Contractor has reason to believe such price is lower than the price that would be charged by the Subcontractor on a time and material basis, then Contractor has an obligation to inform District of that fact so as to afford District the opportunity to avail itself of such favorable pricing.

**.6 Authentication.** District or Construction Manager may additionally require authentication of all time and material tickets and invoices by persons designated by District or Construction Manager for such purpose.

**.7 Waiver by Contractor.** The failure of Contractor to submit authentication of costs in the manner required by this Paragraph 7.7.2 shall, if District elects in its sole discretion to treat it as such, constitute a waiver by Contractor of any right to adjustment to the Contract Sum Payable for the Allowable Cost of all or that portion of the Extra Work covered by such non-authenticated cost.

**7.7.3 Allowable Costs.** The term "Allowable Costs" means, and is limited to, the costs listed in this Paragraph 7.7.3 and that are not prohibited under Paragraph 7.7.4, below:

**.1 Labor.** Straight-time wages and salaries, and overtime wages and salaries specifically authorized by District or Construction Manager in writing, for employees employed at the

## GENERAL CONDITIONS

Site, or at fabrication sites off the Site, in the direct performance of the Extra Work or that would have been incurred in the direct performance of the Deleted Work, based on the actual cost for wages prevailing locally for each craft or type of the workers at the time the Extra Work is done or the Deleted Work is ordered eliminated. Labor costs for equipment operators and helpers involved in the performance of Extra Work shall be allowed only when such costs are not included in the invoice for equipment rental. The use of labor classification which would increase the Allowable Costs for Extra Work will not be permitted unless Contractor establishes the necessity for such additional costs. Overtime wages and salaries shall only constitute an Allowable Cost to the extent permitted by the Contract Documents and only as specifically authorized by Construction Manager in writing setting forth the amount of overtime anticipated, which amount shall be deemed the maximum amount of overtime reimbursable as an Allowable Cost.

**.2 Benefits.** Net actual employer costs of payroll taxes (FICA, Medicare, SUTA, FUTA), insurance (as adjusted for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, or the like), health and welfare, pension, vacation, apprenticeship funds and benefits required by the Project Labor Agreement (if applicable), Labor Compliance Program (if applicable) or lawful collective bargaining agreements for employees on straight-time wages or salaries, and on overtime wages and salaries specifically authorized by Construction Manager in writing, for employees employed at the Site, or at fabrication sites off the Site. Contractor shall reduce its standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes. An estimated percentage for labor burden may be used for the pricing of Compensable Changes; however, the percentage will be subject to verification by audit at Final Completion and the amount of any Change Order or Unilateral Change Order shall be subject to adjustment if it is determined that the actual labor burden percentage is less than the estimated percentage used. Contractor shall provide if requested by District as a condition of its right to payment, a breakdown of the calculation by Contractor and the Subcontractors of amounts charged for labor benefits and burden, which information may be used to establish billing rates for Compensable Changes.

**.3 Materials, Consumables.** Costs of materials and consumable items furnished or incorporated into the Work. Except for costs that have been previously agreed to between District and a District Materials Vendor in a District Materials Contract that has been assigned to Contractor pursuant to Section 2.5, above, such costs for Extra Work shall be at the lowest price available to Contractor but in no event shall such costs exceed competitive costs obtainable from other subcontractors, suppliers, manufacturers and distributors in the general vicinity of the Site.

**.4 Taxes.** Sales taxes on the costs of the materials and consumable items described in Subparagraph 7.7.3.3, above.

**.5 Tool, Equipment Rental.** Rental charges for necessary machinery and equipment, whether owned or hired, as authorized in writing by District or Construction Manager, exclusive of hand tools. Regardless of ownership, such rental charges for Extra Work shall not exceed the lower of: (1) listed rates prevailing locally at equipment rental agencies or distributors at the time the Extra Work is performed; or (2) current U.S. Army Corp of Engineers scheduled charges for the area of the Project. Contractor shall attach a copy of the rate schedule to the daily reports and other documentation required by Paragraph 7.7.2, above. No charge shall be allowed or credit required for use of tools which have a replacement value of One Hundred Dollars (\$100) or less. The allowable rental rates shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, loading, transportation, repairs and maintenance of any kind, depreciation, storage, insurance and all incidentals. If equipment used for Extra Work is used intermittently and, when not in use, could be returned to its rental source at less expense to District than holding it at the Site, it shall be returned, unless Contractor

## GENERAL CONDITIONS

elects to keep it at the Site at no expense to District. All equipment shall be acceptable to Construction Manager, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and manufacturer's approved modifications shall be used to classify equipment, and it shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

**.6 Royalties, Permits.** Additional or saved costs of royalties and permits .

**.7 Insurance, Bonds.** Except as otherwise provided in Paragraph 11.4.6, below, with respect to premiums on bonds obtained by Subcontractors, additional or saved costs of insurance and bonds required by the Contract Documents, provided, however, that such additional costs chargeable for Extra Work or credited for Deleted Work shall not exceed one percent (1%) of the costs described in Subparagraph 7.7.3.1 through 7.7.3.6, above.

7.7.4 Costs Not Allowed. Allowable Costs shall not include any of the following:

- .1** superintendent(s);
- .2** assistant superintendent(s);
- .3** project engineer(s);
- .4** project manager(s);
- .5** scheduler(s);
- .6** estimator(s);
- .7** drafting or detailing;
- .8** vehicles not dedicated solely to the performance of the Work;
- .9** small tools with a replacement value not exceeding One Hundred Dollars (\$100);
- .10** office expenses, including staff, materials and supplies;
- .11** on-Site and off-Site trailer and storage rental and expenses;
- .12** Site fencing not added solely due to the performance of Extra Work;
- .13** utilities, including gas, electric, sewer, water, telephone, telefax and copier equipment;
- .14** computer and data-processing personnel, equipment and software;
- .15** federal, state or local business income and franchise taxes;
- .16** costs (other than the liquidated damages for Compensable Delay permitted by Section 3.4 of the Construction Contract) arising from or related to Delay or acceleration to overcome Delay, whether incurred by Contractor or the Subcontractors, of any Tier;
- .17** costs or expenses payable by Contractor pursuant to Part (7) of Subparagraph 11.1.3.4, below; and

## GENERAL CONDITIONS

**.18** costs and expenses of any kind or item not specifically and expressly included in Paragraph 7.7.3, above.

**7.7.5 Allowable Markups.** Allowable Markups consist of the percentages set forth in this Paragraph that, except as otherwise stated in the Contract Documents, are to be applied to the Allowable Costs for purposes of computing permitted adjustments to the Contract Sum Payable. Allowable Markups are deemed to cover, without limitation, the following: (1) direct and indirect overhead, consumables, small tools, cleanup and profit of Contractor; (2) direct and indirect overhead, consumables, small tools, cleanup and profit of the Subcontractors, of every Tier; and (3) all costs that are not reimbursable to Contractor under Paragraph 7.7.4, above. Allowable Markups shall be computed and applied as follows:

### **.1 Self-performed Work:**

**(1) Compensable Change.** With respect to a Compensable Change performed by Contractor with its own forces, the Allowable Markup shall be fifteen percent (15%) of the Allowable Costs that are added.

**(2) Deleted Work.** Subject to further adjustment as provided in Part (2) of Subparagraph 7.7.1.4, above, with respect to Deleted Work involving Work to be performed by Contractor the District shall be entitled to a credit for Allowable Markup of eight percent (8%) of the Allowable Costs that are saved.

### **.2 First-Tier Subcontractor Work:**

**(1) Compensable Change.** With respect to a Compensable Change performed by first-Tier Subcontractors, the Allowable Markup shall be (a) an Allowable Markup to the first-Tier Subcontractor of fifteen percent (15%) of (b) the Allowable Costs that are added for that portion of the Compensable Change performed by the first-Tier Subcontractor, plus (c) five percent (5%) on the sum of (a) and (b) as Allowable Markup to Contractor.

**(2) Deleted Work.** Subject to further adjustment as provided in Part (2) of Subparagraph 7.7.1.4, above, with respect to Deleted Work involving Work to be performed by first-Tier Subcontractors, District shall be entitled to a credit from the first-Tier Subcontractor of (a) eight percent (8%) of the (b) Allowable Costs saved for the portion of the Deleted Work involving Work of the first-Tier Subcontractor, and (c) an additional credit from Contractor on the sum of (a) and (b) of five percent (5%).

### **.3 Lower-Tier Subcontractors' Work:**

**(1) Compensable Change.** With respect to a Compensable Change performed by second and all lower-Tier Subcontractors, the Allowable Markup shall be (a) an Allowable Markup to the lower-Tier Subcontractors of fifteen percent (15%) of the (b) cumulative Allowable Costs that are added for that portion of the Compensable Change performed by all lower-Tier Subcontractors, plus (c) an additional Allowable Markup on the sum of (a) and (b) of five percent (5%) for the first-Tier Subcontractor, plus (d) five percent (5%) on the sum of (a), (b) and (c) as Allowable Markup to Contractor. Under no circumstances shall the total, cumulative markup applied by all Subcontractors, of every Tier, exceed twenty-five percent (25%) for all Tiers.

**(2) Deleted Work.** Subject to further adjustment as provided in Part (2) of Subparagraph 7.7.1.4, above, with respect to Deleted Work involving Work to be performed by second and any lower-Tier Subcontractors, the District shall be entitled to a cumulative credit from the lower-Tier Subcontractors of (a) eight percent (8%) of the (b) Allowable Costs for portion of the Deleted Work involving the Work of such lower-Tier Subcontractors, and (c) an additional credit from the first-Tier Subcontractor on the sum of (a) and (b) of five percent (5%), and (d) an additional credit from Contractor on the sum of (a), (b) and (c) of five percent (5%).

## GENERAL CONDITIONS

**.4 Review of Markups.** It is Contractor's responsibility to review information submitted by Subcontractors to ensure that all markups by Subcontractors, of every Tier, comply with the requirements of the Contract Documents. Payment by District of markups that exceed Allowable Markups (as adjusted pursuant to Part (2) of Subparagraph 7.7.1.4, above) shall not be considered as a waiver by District of the right to repayment by Contractor of any markup charged that is in excess of Allowable Markups.

**.5 No Markup Allowed.** Notwithstanding and without limitation to anything else stated in the Contract Documents, Contractor shall not be entitled to an Allowable Markup or any other amount or allowance as markup for overhead or profit on the following: (1) sums due to Contractor for Compensable Change that are based on agreed unit prices; (2) liquidated damages payable to Contractor pursuant to Section 3.4 of the Construction Contract for Compensable Delay; or (3) other amounts with respect to which the Contract Documents provide that no additional Allowable Markup shall be paid. Markup for overhead or profit on Compensable Changes that are performed by a District Materials Vendor pursuant to a District Materials Contract that has been assigned to Contractor pursuant to Section 2.5, above, shall be only permitted to be charged by the District Materials Vendor if, and if so only to the extent that, such markup is permitted under the terms of the District Materials Contract.

**7.7.6 Net Allowable Costs.** If any one Change or collection of Changes in the same or related portions of the Work or for Work covered by a single bulletin or instruction by District, Construction Manager or Design Consultant involves both additive adjustments and deductive adjustments, then the computation of amounts added or credited for Allowable Markups shall be based on the net difference between the additive items for which additional Allowable Markups is permitted and deductive items for which credits for Allowable Markups is required.

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

**7.7.8 Discounts.** For purposes of determining Allowable Costs of a Compensable Change, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to District, and Contractor shall make provisions so that such discounts, rebates, refunds, and returns are secured.

**7.7.9 Prompt Pricing.** It is fundamental to the District's objective of controlling costs that performance of Compensable Changes on a time and materials basis of compensation and without a not-to-exceed price be limited to circumstances where it is impractical, without causing Delay to the Work, for Contractor to obtain competitive fixed or not-to-exceed prices pursuant to the regular pricing processes provided for by the Contract Documents. Contractor recognizes that prompt pricing by Contractor is critical to this objective. Accordingly, without limitation to any of District's other rights or remedies, it is agreed that if Contractor fails to timely submit a complete Change Order Request in accordance with Paragraph 7.6.2, above, with respect to any circumstance, event or occurrence constituting a Compensable Change that: (1) any resulting Delay to the performance of the Work (including, without limitation, the Compensable Change) shall be conclusively deemed to be an Unexcused Delay; (2) District shall have the option, exercised in its sole discretion, in lieu of exercising its rights under Paragraph 7.6.2.4, above, to unilaterally fix the amount of the adjustment to the Contract Sum Payable for such Compensable Change based on the "estimating guide" method set forth in Subparagraph 7.7.1.3, above; and (3) such unilateral adjustment by District shall be final and binding

## GENERAL CONDITIONS

upon Contractor for purpose of determining the amount of the adjustment to the Contract Sum Payable on account of such Compensable Change, without any further right or recourse on the part of Contractor for any additional compensation or adjustment to the Contract Sum Payable.

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

7.7.11 Full and Final Resolution. Except as otherwise stated in Paragraph 7.7.12, below, the signing of a Change Order by Contractor shall be conclusively deemed to be a full resolution, settlement and accord and satisfaction with respect to any and all Loss and Delay related to the subject matter of the Change Order including, without limitation, all rights to recovery of costs, expenses or damages for delay, disruption, hindrance, interference, extended or extraordinary (direct and indirect) overhead, unabsorbed home office overhead, multiplicity of changes, loss of productivity, labor, wage or material cost escalations, inefficiency, legal expenses, consultant costs, interest, lost profits or revenue, bond and insurance costs, changes in taxes and other similar and related Losses. As a result, after Contractor executes a Change Order, this is a full and final resolution, and Contractor waives, releases, and relinquishes any further damages or claims related to the Change Order.

7.7.12 Reserved Rights by District. Change Orders shall be executed by Contractor without any express or implied reservation of rights by Contractor to reserve for the future the assertion of any right of recovery from District for Loss or Delay arising out of or relating to the subject matter of the Change Order. Unless specifically stated otherwise in the Change Order, execution by District of a Change Order shall not be interpreted as a waiver, release or settlement of any rights or claims that District may have for either: (1) Defective Work; (2) liquidated damages for Delay; or (3) recoupment by District (by way of withholding of funds, set off or recovery from Contractor) of amounts paid by District for costs or markups on costs that District determines, following payment of such amounts to Contractor, do not constitute reimbursable Allowable Costs or Allowable Markups under the terms of the Contract Documents. Contractor shall have no right to interlineate or otherwise place handwritten notations on the Change Order reserving any rights and any such handwriting or interlineations shall have no force or effect and shall not be binding on District.

7.7.13 No "Total Cost" Calculations. Contractor represents and warrants that it has the ability to generate and maintain complete and accurate cost accounting records that, if required, will reflect the actual Allowable Costs incurred or saved for multiple items of Compensable Change and, on an event-by-event basis, the effect of multiple Compensable Delays on the progress of the Work. Accordingly, Contractor agrees that all Change Order Requests and Claims shall be itemized in a manner that, with reasonable mathematical certainty and without reliance upon probabilities or inferences, segregates on a discrete, event-by-event basis the direct, actual Allowable Costs for which reimbursement is permitted and that are associated with each individual Compensable Change or Compensable Delay. Change Order Requests and Claims shall not be based, in whole or in part, upon any methodology (such as "total cost" or "modified total cost" methodologies) that purports to establish Contractor's entitlement to additional compensation inferentially based, solely or principally, on the difference between Contractor's total costs for the Work or a portion of the Work and its original Bid.

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



## GENERAL CONDITIONS

7.7.15 Continuous Performance. No dispute or disagreement with respect to any Changes or Delay, including, without limitation, disputes over Contractor's right to or the amount of any adjustment to the Contract Sum Payable or Contract Time, shall relieve or excuse Contractor from the obligation to proceed with and maintain continuous, expeditious and uninterrupted performance of the Work, including performance of any disputed Changes.

### **ARTICLE 8 CONTRACT TIME**

#### **8.1 COMMENCEMENT AND COMPLETION**

8.1.1 Commencement. The Date of Commencement of the Work is a date fixed in a Notice to Proceed issued by District or Construction Manager. The date shall not be postponed by the failure to act of Contractor or of persons or entities for whom Contractor is responsible. Contractor shall not knowingly, except by agreement or instruction of District in writing, prematurely commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by Contractor. The Date of Commencement of the Work shall not be changed by the effective date of such insurance.

8.1.2 Substantial, Final Completion. Contractor shall proceed expeditiously with adequate forces and shall achieve the Milestone dates, Substantial Completion and Final Completion within the Contract Time, as adjusted for extensions of time duly permitted, authorized and noticed pursuant to Section 8.2, below.

8.1.3 Adjustments to Contract Time. Subject to the limitations set forth in this Article 8 and elsewhere in the Contract Documents, the Contract Time shall be extended for Compensable Delays and Excusable Delays and shall be contracted for Changes involving Deleted Work.

8.1.4 Early Completion. Nothing stated in these General Conditions or elsewhere in the Contract Documents shall be interpreted as creating any contractual right, express or implied, on the part of Contractor to complete the Work earlier than the Contract Time. Contractor has included in its Bid that is the basis for the Contract Sum Payable the costs of all Contractor's and the Subcontractors' direct and indirect overhead, including but not limited to all Project staff, temporary facilities, temporary utilities and home office overhead for the entire duration of the Contract Time. The above costs have been included in the Bid and Contract Sum Payable notwithstanding Contractor's possible anticipation of completion in fewer Days than established by the Contract Time. Under no circumstances shall District be liable to Contractor for any Losses, of any kind, due to the inability of Contractor to complete the Work earlier than the Contract Time, regardless of the cause, including, without limitation, Delays due to acts or omissions (intentional or negligent) of District, the Design Consultant, Construction Manager or others. No reduction in the Contract Sum Payable shall be made nor will Contractor be required to remain on the Site if the Work is Finally Completed before expiration of the Contract Time.

#### **8.2 DELAYS AND EXTENSIONS OF TIME**

8.2.1 Adjustments Extending Contract Time. Provided that Contractor has complied with the provisions of this Section 8.2 (including, without limitation, the requirements of this Section 8.2 pertaining to timely delivery of a complete Notice of Delay and Request for Extension), if Contractor is delayed in its achieving Substantial Completion of the Work within the Contract Time by an Excusable Delay or Compensable Delay to the path(s) of activities critical to Substantial Completion, then the Contract Time for Substantial Completion shall be extended, either by Change Order or Unilateral Change Order, for such reasonable time as Construction Manager may determine. The Contract Time for Final Completion shall, provided that Contractor has complied with the aforementioned provisions of the Contract Documents, be similarly extended for Excusable Delay or Compensable Delay occurring after Substantial Completion of the Work. The Contract Time shall not be adjusted for Unexcused Delays.

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Bid No. 10(25-26)FP

Pomona Unified School District

Page 142

## GENERAL CONDITIONS

### 8.2.2 Notice of Delay.

**.1 Submission.** Contractor shall submit written Notice of Delay to Construction Manager if, in Contractor's opinion, any instruction, request, drawing, specification, action, condition, omission, default or other circumstance occurs that Contractor considers constitutes an Excusable Delay or Compensable Delay or other matter that Contractor believes may involve or require an adjustment extending or contracting the Contract Time. Such notice shall be provided prior to performance of the Work affected or involved and no later than seven (7) Days after the Discovery Date of such circumstances. Construction Manager shall provide copies of the Notice of Delay to the Design Consultant as provided for in Paragraph 4.3.5, above.

**.2 Content.** Each Notice of Delay in order to be considered complete shall include:

- (1) a general statement of the circumstances giving rise to the Notice of Delay (including, without limitation, identification of any related Field Order); and
- (2) a Reasonable Order of Magnitude estimate by Contractor of any related adjustments extending or contracting the Contract Time; and
- (3) if such circumstances involve a right to an adjustment of the Contract Sum Payable for Compensable Change that has not been waived by Contractor, Contractor shall include, if not previously provided, a complete and timely Notice of Change; and
- (4) if the Notice of Delay seeks any information, approval or decision of District, Construction Manager or the Design Consultant, it shall demonstrate that Contractor has complied with the requirements of Paragraph 2.1.4, above.

**.3 Waiver by Contractor** Failure by Contractor to provide a complete and timely Notice of Delay in accordance with this Paragraph 8.2.2 under circumstances where a Notice of Delay is required by this Paragraph 8.2.2 shall constitute a waiver by Contractor of the right to any adjustment to the Contract Time or Contract Sum Payable on account of such circumstances.

### 8.2.3 Request for Extension.

**.1 Submission.** With respect to any matter that Contractor believes may involve or require an adjustment extending or contracting the Contract Time, Contractor shall, the earlier of:  
(1) twenty-one (21) Days after the Discovery Date of the circumstances causing a Compensable or Excusable Delay; or (2) fourteen (14) Days after receipt by Construction Manager of a Notice of Delay pursuant to Paragraph 8.2.2, above; or (3) in the case of a Delay caused by Compensable Change, within the period of time set forth in Paragraphs 7.6.1 and 7.6.2, above, for submission of Change Order Requests, submit to Construction Manager a written Request for Extension. Construction Manager shall provide a copy of the Request for Extension to the Design Consultant as provided for in Paragraph 4.3.5, above.

**.2 Content.** Each Request for Extension in order to be considered complete shall include:

- (1) a detailed description of the circumstances for the Compensable Delay and Excusable Delay and a Time Impact Analysis. A Request for Extension that seeks an extension for more than one Delay, shall be supported by a separate Time Impact Analysis for each separate Delay; and
- (2) if such circumstances involve a right to an adjustment of the Contract Sum Payable for Compensable Change that has not been waived by Contractor, Contractor shall include, if not previously provided, a complete and timely Change Order Request.

## GENERAL CONDITIONS

**.3 Waiver by Contractor. Failure by Contractor to provide a timely and complete request for extension in accordance with this Paragraph 8.2.3 under circumstances where a Request for Extension is required by this Paragraph shall constitute a waiver by Contractor of the right to any adjustment to the Contract Time or Contract Sum Payable on account of such circumstances.**

**.4 Response by District.** Construction Manager shall thereafter investigate the facts concerning the cause and extent of such Delay and, depending on whether the Request for Extension is justified, will notify Contractor of its approval or disapproval of all or a portion of Contractor's request. Extensions of time approved by Construction Manager shall apply only to that portion of the Work affected by the Delay, and shall not apply to other portions of Work not so affected.

**8.2.4 Formal Notice of Essence. CONTRACTOR RECOGNIZES AND ACKNOWLEDGES THAT TIMELY SUBMISSION OF FORMAL NOTICE OF DELAY AND REQUEST FOR EXTENSION, WHETHER OR NOT THE CIRCUMSTANCES OF A DELAY MAY BE KNOWN TO DISTRICT OR CONSTRUCTION MANAGER OR AVAILABLE TO DISTRICT THROUGH OTHER MEANS, IS NOT A MERE FORMALITY BUT IS OF CRUCIAL IMPORTANCE TO THE ABILITY OF DISTRICT TO PROMPTLY IDENTIFY, PRIORITIZE, EVALUATE AND MITIGATE THE POTENTIAL EFFECTS OF DELAY. ANY FORM OF INFORMAL NOTICE, WHETHER VERBAL OR WRITTEN (INCLUDING, WITHOUT LIMITATION, STATEMENTS AT REGULAR JOB MEETINGS OR ENTRIES ON MONTHLY REPORTS, DAILY LOGS OR JOB MEETING MINUTES, E-MAIL, TEXT MESSAGE, LETTER, ETC.), THAT DOES NOT STRICTLY COMPLY WITH THE FORMAL NOTICE REQUIREMENTS OF PARAGRAPHS 8.2.2 AND 8.2.3, ABOVE, SHALL ACCORDINGLY BE DEEMED INSUFFICIENT.**

### **8.2.5 Compensation for Delay.**

**.1 Compensable Delay.** Contractor agrees to accept compensation permitted under the Section 3.4 of the Construction Contract for Compensable Delay in lieu of any other right that may exist under Applicable Law or in equity for recovery of Losses, whether incurred by Contractor or the Subcontractors, of any Tier, due to Delay, including, without limitation, the following: extended or extraordinary (direct and indirect) overhead; loss of productivity; labor, wage or material cost escalations; inefficiency; direct and indirect costs associated with the cumulative impact of multiple Changes or Delays; legal expenses; consultant costs; interest; lost profits or revenue; bond and insurance costs; and changes in taxes.

**.2 Deleted Work.** Adjustments reducing the Contract Sum Payable for contractions of the Contract Time due to Deleted Work shall be based, without duplication to any other adjustments to the Contract Sum Payable or Contract Price, on the calculation set forth in Section 3.4 of the Construction Contract.

### **8.2.6 Acceleration of the Work.**

**.1 Due to Unexcused Delay.** If Construction Manager determines and notifies Contractor that Contractor's progress in performance of the Work is such that, in Construction Manager's good faith judgment, Contractor will not Substantially Complete the Work within the Contract Time as adjusted pursuant to Paragraph 8.2.1, above, then Contractor shall immediately respond in writing setting forth a detailed plan for accelerating the Work and shall thereafter take, at Contractor's Own Expense, all measures necessary, including working overtime, additional shifts, Saturdays, Sundays and holidays to

LEGAL:10526-0001/8093698.1

Bid No. 10(25-26)FP

Pomona Unified School District

Page 144

## GENERAL CONDITIONS

accelerate performance to ensure that the Work is performed within the Contract Time. District may also take all necessary measures to ensure no further Delays to the completion of the Work within the Contract Time. Contractor shall reimburse District, or District may withhold from payment due to Contractor, Losses incurred by District to perform such measures.

**.2 Due to Excusable Delay.** Contractor shall have the right, exercised in its sole discretion, to accelerate performance of the Work to overcome time lost due to Excusable Delay. However, such acceleration, if performed, shall be deemed a voluntary acceleration performed at Contractor's Own Expense.

**.3 Due to Compensable Delay.** District shall have the right, exercised in its sole discretion, in lieu of granting an adjustment to the Contract Time, Contract Sum Payable for Compensable Delay, to direct in writing the acceleration of the Work by Contractor in order to recapture time lost due to Compensable Delay. Any adjustment to the Contract Sum Payable on account of such shall not exceed the liquidated damages that would be payable to Contractor under Section 3.4 of the Construction Contract for the Compensable Delay if the Work was not accelerated. District and Contractor shall endeavor prior to commencement of the acceleration to mutually agree upon an amount of compensation to be paid therefor that is consistent with the provisions of this Subparagraph 8.2.6.3. District shall have the right, in the absence of such an agreement, to direct in writing that Contractor accelerate, in which case Contractor's compensation therefore shall be limited, subject to the other provisions of this Subparagraph 8.2.6.3, to costs incurred and paid for the premium time portion of overtime only that is required to recapture the number of Days of Compensable Delay stated by District in such direction. Except as directed by District in the manner stated in this Subparagraph 8.2.6.3, no statements, conduct or actions by District or Construction Manager will be construed as creating an obligation on the part of District to make payment for the cost of any overtime or other costs associated with an acceleration of the Work and any acceleration undertaken without the prior written direction of District as required by this Subparagraph 8.2.6.3 shall be deemed to be a voluntary acceleration performed at Contractor's Own Expense.

**8.2.7 Concurrent Delays.** Contractor's right to adjustment to the Contract Time for Excusable Delay and its right to adjustment to the Contract Sum Payable and Contract Time for Compensable Delay shall, in the case of concurrency of Delays, be calculated as follows:

**.1** If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of Days from the commencement of the first Delay to the cessation of the Delay which ends last.

**.2** If an Unexcused Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of Days, if any, by which such Excusable Delay or Compensable Delay exceeds the number of Days of such Unexcused Delay.

**.3** If an Unexcused Delay occurs concurrently with both Excusable Delay and Compensable Delay, the maximum extension of the Contract Time shall be the number of Days, if any, by which such Excusable Delay and Compensable Delay, as determined pursuant to Subparagraph 8.2.7.1, above, exceeds the number of Days of such Unexcused Delay.

**.4** If an Unexcused Delay occurs concurrently with a Compensable Delay, the maximum period of time for which Contractor shall be entitled to liquidated damages in accordance with Section 3.4 of the Construction Contract shall be the number of Days, if any, by which such Compensable Delay exceeds the number of Days of such Unexcused Delay.

## GENERAL CONDITIONS

**.5** If an Unexcused Delay occurs concurrently with both an Excusable Delay and a Compensable Delay, the maximum period of time for which Contractor shall be entitled to liquidated damages in accordance with Section 3.4 of the Construction Contract shall be the number of Days, if any, by which such Compensable Delay, as determined pursuant to Subparagraph 8.2.7.6, below, exceeds the number of Days of such Unexcused Delay.

**.6** If a Compensable Delay occurs concurrently with an Excusable Delay, the maximum period of time for which Contractor shall be entitled to liquidated damages in accordance with Section 3.4 of the Construction Contract shall be the number of Days, if any, by which such Compensable Delay exceeds the number of Days of such Excusable Delay.

**8.2.8** Delay Claims. Claims relating to disputed adjustments of the Contract Time or adjustments to the Contract Sum Payable due to Delay shall be made in accordance with applicable provisions of Section 4.4, above.

**8.2.9** Exercise of District Rights. Notwithstanding any other provision of the Contract Documents to the contrary, any Delay to Contractor's performance of the Work that is the result of District's exercise of its rights or remedies under the Contract Documents or Applicable Laws in response to a failure by Contractor or any Subcontractor to comply with the Contract Documents shall be deemed an Unexcused Delay and shall not, under any circumstances, entitle Contractor to an adjustment to the Contract Time or Contract Sum Payable.

**8.2.10** District-Furnished Information. Information included as part of the Contract Documents and furnished by District's equipment vendors including the expected shipping dates, weights, handling instructions, erection information and all other such data is furnished in good faith, but no warranty of accuracy, sufficiency or completeness is given or implied.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **9.1 CONTRACT SUM PAYABLE, CONTRACT PRICE**

The Contract Sum Payable as stated in the Construction Contract, including adjustments authorized by Change Order or Unilateral Change Order, is the total amount payable by District to Contractor for performance of the Work under the Contract Documents. The District is under no obligation, under any circumstances whatsoever, to pay the any portion of the Contract Price that exceeds the Contract Sum Payable.

### **9.2 SEGREGATION OF COSTS/SCHEDULE OF VALUES**

Within thirty (30) Days after receipt by Contractor of the Notice of Intent to Award, Contractor shall submit to Construction Manager a Segregation of Costs/Schedule of Values allocated to various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as Construction Manager or the Design Consultant may require, including, without limitation, segregation of costs by Project general ledger accounts. A copy of such Schedule of Values shall be forwarded to the Design Consultant by Construction Manager as provided for in Paragraph 4.3.5, above. The Segregation of Costs/Schedule of Values, unless objected to by Construction Manager or the Design Consultant, shall be used as a basis for reviewing Contractor's Applications for Payment. The Segregation of Costs/Schedule of Value shall be balanced, reflecting in each line item Contractor's actual cost commitments for the category of Work included in the line item and a proportionate share of overhead and profit. Except as otherwise expressly required by Article 7, above, the Segregation of Costs/Schedule of Values shall not be utilized by Contractor as a basis for calculating any adjustments to the Contract Sum Payable.

### **9.3 APPLICATIONS FOR PROGRESS PAYMENT**

**9.3.1 Draft Application.** On the twenty-fifth (25th) Day of each month, Contractor shall submit to Construction Manager a draft copy of its proposed Application for Payment and Segregation of Costs/Schedule of Values, marked to show the percentage of completion certified by Contractor for each line item in the Segregation of Costs/Schedule of Values, including any stored materials approved for payment by District and any withholdings from Contractor proposed by Construction Manager. A copy thereof shall be provided by Construction Manager to Design Consultant as provided in Paragraph 4.3.5, above. Application for Progress Payment for Fiscal Year-End – Due to the District’s fiscal year-end deadlines, the Contractor must submit to the Construction Manager application for payment for all substantially completed work by May 15<sup>th</sup> of the current year. Applications for payment not submitted by then will be processed in August with no late fees incurred by the District.

**9.3.2 Monthly Review Meeting.** For the purpose of expediting the payment procedure, Contractor shall meet with Construction Manager and Design Consultant on the first (1st) day of each month to review Contractor’s draft Application for Payment prepared in accordance with Paragraph 9.3.1, above. Construction Manager and the Design Consultant shall revise as appropriate and sign the draft Application for Payment and Segregation of Costs/Schedule of Values to verify such review. If any item in the draft Application for Payment or Segregation of Costs/Schedule of Values is disputed during this review, Contractor agrees to use its best efforts to resolve the disputed items with Construction Manager and the Design Consultant before submitting its formal Application for Payment. If Construction Manager, Design Consultant and Contractor cannot agree, then the percentage of completion shall be established at such percentage as Construction Manager, in good faith, determines is appropriate to the actual progress of the Work. No inaccuracy or error in Construction Manager’s good faith estimate shall operate to release Contractor from any responsibility or liability arising from or related to performance of the Work. District or Construction Manager shall have the right subsequently to correct any error and dispute any item submitted in Contractor’s Application for Payment, regardless of whether or not an item was identified as disputed in the review process provided for herein.

**9.3.3 Submission of Application.** Applications for Progress Payment shall be submitted in accordance with the provisions of Article 5 of the Construction Contract.

**9.3.4 Conditions to Progress Payments.** Contractor shall submit its Applications for Payment requesting Progress Payments to District and Construction Manager using such forms as required by Construction Manager. Without limitation to any other conditions to payment set forth elsewhere in the Contract Documents, the following shall be conditions precedent to a proper submission, and to Construction Manager’s and Design Consultant’s approval, of each Application for Payment:

.1 Submission of a Segregation of Costs/Schedule of Values that reflects the percentages of completion either mutually agreed to or determined by Construction Manager in accordance with Paragraph 9.3.2, above;

.2 Submission of Contractor’s certification required by Paragraph 9.4.4, below;

.3 Submission of: (1) forms of conditional releases of stop notice and bond rights upon progress payment, complying with California Civil Code Section 3262 (d) (1), for all Work performed during the time period covered by the current Application for Payment, signed by Contractor and the Subcontractors, of every Tier; and (2) forms of unconditional release of stop notice and bond rights upon progress payment, complying with California Civil Code Section 3262 (d) (2), for all Work performed during the time period covered by the previous Application for Payment, signed by Contractor and the Subcontractors, of every Tier;

## GENERAL CONDITIONS

.4 Compliance by Contractor with its obligation for daily maintenance of As Built Drawings as required by Paragraph 3.10.2, above;

.5 Compliance by Contractor with its obligation for submission of daily reports as required by Paragraph 3.10.3, above;

.6 Compliance by Contractor with its obligations for submission of scheduling information and updating of the Construction Schedule as required by Section 3.9, above, and other provisions of the Contract Documents pertaining to preparation or updating of schedules and scheduling information;

.7 Proper payment of prevailing wages as defined in California Labor Code Section 1720, et seq.;

.8 Compliance with the Project Labor Agreement (if applicable) and the Labor Compliance Program (if applicable);

.9 Timely submission of adequate and complete certified payroll records as required by the Contract Documents;

.10 Submission of certifications by Contractor and the Subcontractors as required by the Project Labor Agreement (if applicable), Labor Compliance Program (if applicable) or Applicable Laws certifying that all employee benefit contributions due and owing have been paid in full;

.11 Submission of sales tax information as required by Paragraph 3.6.3, above; and

.12 Compliance by Contractor with all of its other obligations for submission of documentation or performance of conditions which, by the terms of the Contract Documents, constitute conditions to Contractor's right to receive payment for Work performed.

### **9.4 CERTIFICATIONS AND PROCESSING OF PROGRESS PAYMENTS**

**9.4.1** Certifications. As soon as practicable, but not later than seven (7) Days after Construction Manager's receipt of an undisputed and properly submitted Application for Payment, Construction Manager and the Design Consultant (or, in the event they are unable to agree, Construction Manager) will either issue to District a Certification for Payment, with a copy to Contractor, for such amount as Construction Manager and the Design Consultant determine (or, in the event Construction Manager and Design Consultant are unable to agree, Construction Manager determines) is properly due, or notify Contractor and District in writing of Construction Manager's or the Design Consultant's reasons for withholding certification, in whole or in part, or the reasons why the Application for Payment is otherwise improper. Such notification will be forwarded to Contractor by Construction Manager. Certification for Payment by the Design Consultant and Construction Manager (or, in the event Construction Manager and Design Consultant are unable to agree, Construction Manager) shall be a condition precedent to District's obligation to make payment to Contractor. In the event of a conflict with section 9.4.1, section 9.3.1 shall supersede and govern the agreement.

**9.4.2** Limitations of Certifications. The issuance of a Certification for Payment by Construction Manager or Design Consultant will constitute representations made respectively by them to District, based on their individual observations at the Site and the data comprising the Application for Payment submitted by Contractor, that the Work has progressed to the point indicated and that, to the best of Construction Manager's and the Design Consultant's knowledge, information and belief, quality of the

## GENERAL CONDITIONS

Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion (where Substantial Completion has not yet occurred), to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by Construction Manager or the Design Consultant. Such issuance of a Certification for Payment will further constitute a representation that Contractor is entitled to payment in the amount certified. However, the issuance of a Certification for Payment will not be a representation that Construction Manager or the Design Consultant has: (1) made exhaustive or continuous onsite inspections to check the quality or quantity of the Work; (2) reviewed Contractor's construction means, methods, techniques, sequences or procedures; (3) reviewed copies of requisitions received from the Subcontractors and material suppliers and other data requested by Construction Manager or Design Consultant to substantiate Contractor's right to payment; or (4) made examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum Payable. In addition, the issuance of a Certification for Payment shall not constitute any waiver or release by District or in any other way relieve Contractor of its mandatory obligation to strictly comply with the Contract Documents. Therefore, if Contractor's Work is later found to be non-conforming to the Contract Documents, any issuance of a Certification for Payment shall not bar or preclude District from later requiring the Contractor fix, repair, or otherwise rectify the non-conforming Work.

9.4.3 Submission to District for Payment. All Applications for Payment that are properly prepared and submitted by Contractor shall, after issuance of Certification for Payment as provided for in this Section 9.4, be submitted by Construction Manager to District for payment.

9.4.4 Certification by Contractor. Each Application for Payment, other than the draft Application for Payment referred to in Paragraph 9.3.1, above, that is submitted by Contractor shall be signed by Contractor with a certification by Contractor to District that: (1) the data comprising the Application for Payment is accurate and the Work has progressed to the point indicated; (2) to the best of Contractor's knowledge, information and belief, the Work is in accordance with the Contract Documents and that the Work meets all of the contractual requirements and complies with all Applicable Laws; (3) Contractor is entitled to payment in the amount certified; and (4) all sums previously applied for by Contractor on account of the Work performed by the Subcontractors and that have been paid by District have been paid to the Subcontractors performing such Work, without any retention, withholding or back charge by Contractor.

9.4.5 Compensable Changes. Applications for Payment may include requests for payment on account of Compensable Changes in the Work which have been properly authorized by Change Order or Unilateral Change Order. Amounts to which Contractor may be entitled for Compensable Delay that are included in a Change Order or Unilateral Change Order may be requested for payment and shall be payable as provided in Section 3.4 of the Construction Contract.

9.4.6 Payments by Contractor to Subcontractors. Contractor shall not include in its Applications for Payment sums on account of any of the Subcontractors' portion of the Work that it does not intend to pay to such Subcontractor.

9.4.7 Stored Materials. Payments may be made by District, at its sole discretion, on account of materials or equipment not incorporated into the Work but delivered on the ground at the Site and suitably stored by Contractor or stored off-Site. Such payments shall only be considered upon submission by Contractor of satisfactory evidence that it has acquired title to same, that the material or equipment will be utilized in the Work, that the material is satisfactorily stored, protected and insured and that such other procedures are in place satisfactory to District to protect the District's interests. To be considered for payment, materials or equipment stored off-Site shall, in addition to the above requirements and unless otherwise specifically approved by District in writing, be stored in a bonded



## GENERAL CONDITIONS

warehouse, fully insured and available to District for inspection. District shall have sole discretion to determine the amount of material and equipment that may be stored on the Site at any given time.

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

### **9.5 DECISIONS TO WITHHOLD CERTIFICATION OF PAYMENT**

**9.5.1 Grounds for Withholding.** Construction Manager or the Design Consultant may decline to issue a Certification for Payment or nullify a Certification for Payment previously issued and withhold payment requested under any unpaid Application for Payment, in whole or in part, on any of the following grounds set forth in this Paragraph 9.5.1 or elsewhere in the Contract Documents, to such extent as may be necessary, in Construction Manager's or the Design Consultant's opinion, to protect District from Loss or threatened Loss because of any of the circumstances listed in:

**.1 Third-Party Claims.** Third-party claims or stop notices filed or reasonable evidence indicating probable filing of such claims or stop notices.

**.2 Defective Work.** Defective Work not remedied.

**.3 Nonpayment.** Failure of Contractor to make proper payments to a Subcontractor for services, labor, materials or equipment or other Work.

**.4 Inability to Complete.** Reasonable doubt that the Work can be completed for the then unpaid balance of the Contract Sum Payable or within the Contract Time.

**.5 Violation of Applicable Laws.** Failure of Contractor or the Subcontractors to comply with Applicable Laws.

**.6 Penalty.** Any claim or penalty asserted against District by virtue of Contractor's failure to comply with Applicable Laws.

**.7 Failure to Meet Contract Time.** Any Loss which may accrue as a result of Contractor failing to meet the Construction Schedule or failing to perform within the Contract Time.

**.8 Setoff.** Any reason specified elsewhere in the Contract Documents as grounds for a withholding, offset or setoff or that would legally entitle District to a setoff or recoupment.

**.9 Consultant Services.** Additional professional, consultant or inspection services required due to Contractor's failure to comply with the Contract Documents.

**.10 Liquidated Damages.** Liquidated damages payable to District pursuant to Section 3.3 of the Construction Contract.

**.11 Materials.** Materials ordered by District pursuant to Subparagraph 3.4.6.5 or Subparagraph 7.7.2.7, above.

## GENERAL CONDITIONS

**.12 Damage.** Loss caused to District, a Separate Contractor or any other person or entity under contract to District, by Contractor or a Subcontractor.

**.13 Cleanup.** Cleanup performed by District and chargeable to Contractor pursuant to Paragraph 3.15.2, above.

**.14 Employee Benefits.** Failure of Contractor to pay contributions due and owing to employee benefits funds pursuant to the Project Labor Agreement (if applicable), the Labor Compliance Program (if any) or any applicable collective bargaining agreement or trust agreement.

**.15 Required Documents.** Failure of Contractor to submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including, without limitation, Construction Schedule updates, 'look ahead' schedules, Submittals, Segregation of Costs/Schedule of Values, information on the Subcontractors, Change Orders, certifications and other required reports or documentation.

**.16 Labor Compliance.** Failure of Contractor or any Subcontractor to properly pay prevailing wages as defined in California Labor Code Section 1720 et seq. or to comply with the requirements of the Project Labor Agreement or (if any) the Labor Compliance Program.

**.17 Demand on Security.** The occurrence of a claim upon any security (including, without limitation, any letter or credit or guaranty) provided by District at the request of Contractor or a Subcontractor prior to Award to assist Contractor or Subcontractor in obtaining credit, financing or bonding needed: (1) to qualify for Award of the Construction Contract; or (2) to meet its obligations under the Contract Documents.

**.18 Demand upon Guaranty.** The occurrence of a demand by a District Materials Vendor upon a guaranty of collectability of payment made by District to the District Materials Vendor under a District Materials Contract that has been assigned to Contractor pursuant to Section 2.5, above.

**.19 Surety Bond and Finance Assistance Program.** The default of Contractor, or any Subcontractor, receiving assistance under the Surety Bond and Finance Assistance Program to comply with its obligations under the Surety Bond and Finance Assistance Program.

**.20 Other Breach.** A breach by Contractor of any obligation or provision of the Contract Documents.

**9.5.2 Determination by Construction Manager.** If the Construction Manager and Design Consultant cannot agree on the amount to be certified or nullified and withheld pursuant to Paragraph 9.5.1, above, then Construction Manager shall determine the amount to certified or nullified and withheld.

**9.5.3 Application of Withholding.** Sums properly withheld pursuant to Paragraph 9.5.1, above, may be used by District without a prior judicial determination of District's actual rights with respect to recovery of any Loss on which such withholding is based. Contractor agrees and hereby designates District as its agent for such purposes, and agrees that such payments shall be considered as payments made under the Construction Contract by District to Contractor. District shall submit to Contractor an accounting of such funds disbursed on behalf of Contractor. As an alternative to such payment, District may, in its sole discretion, elect to exercise its right to adjust the Contract Sum Payable as provided in Section 12.4, below.

**9.5.4 Limitation on Withholding from Final Payment.** In accordance with California Public Contract Code Section 7107, the amount to be withheld from Contractor's Final Payment pursuant

## GENERAL CONDITIONS

to a certification for withholding issued pursuant to Paragraph 9.5.1, above, shall be limited to one hundred fifty percent (150%) of the disputed amount.

9.5.5 Release of Withholding. When the reasons for withholding of certification or payment as set forth in Paragraph 9.5.1, above, are removed, certification will be made for amounts previously withheld.

### **9.6 PAYMENT**

9.6.1 Payment by District. After Certification for Payment has been issued, District shall make payment in the manner and within the time provided in Article 5 (Progress Payments) and Article 6 (Final Payment) of the Construction Contract and shall so notify Construction Manager.

9.6.2 Payment by Contractor to Subcontractors. Upon receipt of payment from District, Contractor shall pay the Subcontractors performing the Work, out of the amount paid to Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled in accordance with the terms of its contract with Contractor and Applicable Laws, including, without limitation, California Public Contract Code Section 7107. Contractor shall remain responsible, notwithstanding a withholding by District pursuant to the terms of these General Conditions, to promptly satisfy from its own funds sums due to all the Subcontractors who have performed the Work that is included in Contractor's Application for Payment. Contractor shall, by appropriate agreement, require each Subcontractor to make payments to its sub-subcontractors and suppliers in similar manner. District shall have no obligation to pay or be responsible in any way for payment to the Subcontractors, of any Tier.

9.6.3 Information Requested by the Subcontractors. Construction Manager will, on request, furnish to any of the Subcontractors, if practicable, information regarding percentages of completion or amounts applied for by Contractor and action taken thereon by District, Construction Manager and the Design Consultant on account of portions of the Work done by such Subcontractor.

9.6.4 No Obligation to Subcontractors. Neither District, Construction Manager nor the Design Consultant shall have any obligation to pay or to see to the payment of money to any of the Subcontractors except as may otherwise be required by Applicable Laws.

9.6.5 Not Acceptance. A Certification for Payment, progress payment, Final Payment or partial or entire use or occupancy of the Project by District shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.6.6 Joint Payment. District shall have the right, if deemed necessary in its sole discretion, to issue joint checks made payable to Contractor and any of the Subcontractors, of any Tier. The joint check payees shall be solely responsible for the allocation and disbursement of funds included as part of any such joint payment. Endorsement on such check by a payee shall be conclusively presumed to constitute receipt of payment by such payee. In no event shall any joint check payment be construed to create: (1) any contract between District and any of the Subcontractors, of any Tier; (2) any obligation from District to any of the Subcontractors; or (3) any third-party rights against District, Construction Manager, or the Design Consultant.

9.6.7 Direct Negotiation of Stop Notices. District shall have the right to directly discuss, negotiate, settle or pay, without notice to or participation by Contractor, any stop notice claims asserted by the Subcontractors, of any Tier, and to deduct such sums paid from sums due to Contractor.

9.6.8 Release of Stop Notices. Except to the extent of any payments that District fails to make to Contractor under circumstances that constitute a breach by District of its payment obligations under the Contract Documents, if any stop notice, whether invalid or valid, is made, filed with, served upon or asserted against District or Construction Manager by any of the Subcontractors, of any Tier, or their agent or employee, for money claimed due for Work of any kind provided to the Project, then

LEGAL:10526-0001/8093698.1

Bid No. 10(25-26)FP

Pomona Unified School District

Page 152

## GENERAL CONDITIONS

Contractor shall within five (5) Days after written notice by District or Construction Manager and at Contractor's Own Expense, procure, furnish and record appropriate releases or other instruments which under Applicable Laws will fully release, extinguish and remove such stop notice. Unless and until such stop notice is fully released as afore-stated, District shall have the right to retain from any payment then due, or thereafter to become due, an amount equal to one hundred and fifty percent (150%) of the amount necessary to satisfy, discharge and defend against any such stop notice and any action or proceeding thereon which may be brought to judgment or award. If the amount to be paid, or the amount retained, is insufficient to satisfy, discharge and defend against any such stop notice and any action or proceeding thereon, then Contractor shall be liable for the difference and upon written demand shall immediately deposit the same with District. The provisions of this Paragraph 9.6.8 are in addition to such other rights as District may have against Contractor under the Contract Documents or Applicable Laws.

### **9.7 FAILURE OF PAYMENT**

If, through no fault of Contractor or failure by Contractor to comply with its obligations under the Contract Documents: (1) Certification for Payment is not issued within seven (7) Days after receipt of an undisputed and properly prepared and submitted Application for Payment; or (2) District, through Construction Manager, does not pay Contractor within thirty (30) Days after the date established therefor in the Contract Documents the amount certified in accordance with Paragraph 9.4.1, above, as earned and undisputed upon an Application for Payment that is properly prepared and submitted or awarded by arbitration, then Contractor may, upon fourteen (14) additional Days' written notice to District and Construction Manager, stop the Work until a Certification for Payment has been issued and payment of the amount certified in a Certification for Payment as undisputed and owing has been received by Contractor. Any resulting Delay associated with the shut down and start up of the Work as a result of Contractor's proper exercise of its rights under this Section 9.7 shall constitute a Compensable Delay.

### **9.8 DISPUTED PAYMENTS, CONTINUOUS WORK**

No dispute or disagreement with respect to the amount of any payment claimed due by Contractor shall relieve or excuse Contractor from the obligation to proceed with and maintain continuous, expeditious and uninterrupted performance of the Work.

### **9.9 SUBSTANTIAL COMPLETION**

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

**9.9.2 Request for Inspection.** Contractor shall notify Construction Manager when Contractor believes that the Work, or portion thereof designated by District for separate delivery, is Substantially Complete.

**9.9.3 Substantial Completion Inspection.** Unless Construction Manager or Design Consultant determines that the Work or such designated portion is not sufficiently complete to warrant an inspection to determine Substantial Completion, Construction Manager, accompanied by Inspector of Record and, if requested by Construction Manager, by Design Consultant, District Consultants and such others as deemed appropriate by Construction Manager, will inspect the Work or such designated portion. Contractor, along with such Subcontractors and others as Construction Manager deems necessary, shall participate in inspection of the Work for Substantial Completion. If the Work is found to be Substantially Complete, then Construction Manager shall proceed to issue a Notice of Substantial Completion as provided hereinafter.

**9.9.4 Substantial Completion Punch List.** Any items necessary for Substantial Completion that are found by Construction Manager, Design Consultant, Inspector of Record or a District Consultant to be missing, incomplete or requiring correction shall be summarized by Contractor in a Substantial

## GENERAL CONDITIONS

Completion Punch List. The Substantial Completion Punch List shall be promptly signed by Contractor and delivered to Construction Manager and Design Consultant. Contractor shall proceed within forty-eight (48) hours after signing the Substantial Completion Punch List to commence correction and completion of the items on the Substantial Completion Punch List. Any items of Work listed in the Substantial Punch List shall be completed or corrected before the Work will be considered as Substantially Complete. Failure to include an item on the Substantial Completion Punch List does not alter the responsibility of Contractor to complete the Work within the Contract Time and in accordance with the Contract Documents. Items of Work necessary for Substantial Completion that, for any reason, have been omitted from the Substantial Completion Punch List shall be added to the Substantial Completion Punch List upon request by Construction Manager made at any time prior to Final Payment.

**9.9.5 Re-Inspection.** Contractor shall notify Construction Manager when the items of Work shown on the Substantial Completion Punch List are completed. Construction Manager and Inspector of Record, accompanied if requested by Construction Manager by Design Consultant, District Consultants and such others as Construction Manager deems appropriate, will then make a further inspection to determine whether the Work or such designated portion thereof is Substantially Complete. If such inspection discloses any item, whether or not included on the Substantial Completion Punch List, which must be completed or corrected before Substantial Completion, Contractor shall, as a condition of Substantial Completion, complete or correct such item. Contractor shall reimburse District, or District may at its option withhold from Contractor's payments, amounts incurred by District to Construction Manager, Inspector of Record, Design Consultant, District Consultants or others whose services are necessary for more than two (2) inspections to determine Substantial Completion.

**9.9.6 Notice of Substantial Completion.** When Construction Manager determines that the Work or such designated portion is Substantially Complete, Construction Manager will prepare a Notice of Substantial Completion on the District's form, which shall state the date of Substantial Completion, the responsibility of Contractor or District for security, maintenance, heat, utilities and insurance, and shall attach a Final Completion Punch List prepared in accordance with Paragraph 9.11.2, below. A copy of the Notice of Substantial Completion shall be contemporaneously provided by Construction Manager to the Design Consultant. Regardless of the date the Notice of Substantial Completion is issued, Substantial Completion shall be deemed to have occurred on the date of actual Substantial Completion as stated in the Notice of Substantial Completion.

### **9.10 PARTIAL OCCUPANCY OR USE**

District reserves the right to occupy all or any portion of the Work at any time before Substantial Completion of the entire Work. Exercise by District in accordance with the provisions of this Section 9.10 of its right to take beneficial occupancy shall not constitute grounds for adjustment to the Contract Sum Payable or Contract Time. Such right of beneficial occupancy shall be subject to the following conditions:

**9.10.1** District, the Design Consultant and Construction Manager will make an inspection of the portion of the Work to be beneficially occupied and prepare a list of items to be completed or corrected.

**9.10.2** Beneficial occupancy by District shall not be construed by Contractor as Acceptance of that portion of the Work that is to be occupied.

**9.10.3** Beneficial occupancy by District shall not constitute a waiver of rights of District against Contractor.

**9.10.4** Prior to District's taking occupancy, Contractor shall submit to Construction Manager an itemized list of each piece of equipment stating the date operation commenced, together with operating instructions, manuals and other information required by the Contract Documents. A copy of such list shall be contemporaneously provided by Construction Manager to the Design Consultant. Contractor shall provide, in the areas beneficially occupied, on a continual basis, utility services, elevator service, and heating and cooling systems in operable condition commencing at the time of beneficial occupancy.

## GENERAL CONDITIONS

District shall be responsible, from and after taking occupancy, for the regular operation and regular maintenance of such systems or equipment during the period of beneficial occupancy.

**9.10.5** Provided that all of the equipment and systems located in or serving the occupied area are complete and operational, the Guarantee To Repair Period, as well as other express warranties on materials, equipment or other Work installed within that portion of the Work which is occupied, will commence upon the first date of actual occupancy or use of such occupied portions of the Work.

**9.10.6** District shall pay all normal operating and maintenance costs resulting from its use of equipment in areas beneficially occupied.

**9.10.7** District shall pay all utility costs that arise out of its beneficial occupancy.

**9.10.8** Contractor shall not be responsible for providing security in areas beneficially occupied.

**9.10.9** District shall use its best efforts to prevent its beneficial occupancy from interfering with the conduct of Contractor's remaining Work.

**9.10.10** Contractor shall not be required to repair damage caused solely by District's beneficial occupancy.

**9.10.11** Contractor shall continue to maintain all insurance required by the Contract Documents in full force and effect.

### **9.11 FINAL COMPLETION**

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

**9.11.2 Final Completion Punch List.** Contractor shall provide Construction Manager, at the time that Contractor requests inspection pursuant to Paragraph 9.9.2, above, for Substantial Completion, with a proposed, draft Final Completion Punch List of items of Work to be completed for Final Completion. Construction Manager will contemporaneously forward a copy of Contractor's notice and proposed Final Completion Punch List to the Design Consultant. Contractor shall, if requested by Construction Manager or the Design Consultant, make such revisions to the Final Completion Punch List to add any items determined by them to be necessary for Final Completion. Neither such requests nor the failure to include an item on the Final Completion Punch List shall be considered as altering the responsibility of Contractor to complete all the Work in accordance with the requirements of the Contract Documents for Final Completion.

**9.11.3 Request for Inspection.** Contractor shall forward to Construction Manager (and Construction Manager shall contemporaneously forward a copy to the Design Consultant) a written notice when Contractor believes that the Work is Finally Complete and ready for final inspection for Final Completion.

**9.11.4 Final Completion Inspection.** Unless Construction Manager or Design Consultant determines that the Work or such designated portion is not sufficiently complete to warrant an inspection to determine Final Completion, Construction Manager, accompanied by Inspector of Record and, if requested by Construction Manager, by Design Consultant, District Consultants and such others as deemed appropriate by Construction Manager, will inspect the Work or such designated portion. If the Work is found to be Finally Complete, then Construction Manager shall proceed to issue a Notice of Final Completion as provided hereinafter. Any items necessary for Final Completion that are found by Construction Manager, Design Consultant or Inspector of Record to be missing, incomplete or requiring correction shall be added to the Final Completion Punch List. Contractor shall proceed within forty-eight (48) hours to commence correction and completion of the items on or added to the Final Completion Punch List. Any items of Work listed in the Final Punch List shall be completed or corrected before the Work will be considered as Finally Complete. Failure to include an item on the Final Completion Punch List does not alter the responsibility of Contractor to Finally Complete the Work within the Contract

## GENERAL CONDITIONS

Time and in accordance with the Contract Documents. Items of Work necessary for Final Completion that, for any reason, have been omitted from the Final Completion Punch List shall be added to the Final Completion Punch List upon request by Construction Manager made at any time prior to Final Payment.

**9.11.5 Re-Inspection.** Contractor shall notify Construction Manager when the items of Work shown on the Final Completion Punch List are completed. Construction Manager and Inspector of Record, accompanied if requested by Construction Manager by Design Consultant, District Consultants and such others as Construction Manager deems appropriate, will then make a further inspection to determine whether the Work or such designated portion thereof is Finally Complete. If such inspection discloses any item, whether or not included on the Final Completion Punch List, which must be completed or corrected before Final Completion, Contractor shall, as a condition of Final Completion, complete or correct such item. Contractor shall reimburse District, or District may at its option withhold from Contractor's payments, amounts incurred by District to Construction Manager, Inspector of Record, Design Consultant, District Consultants or others whose services are necessary for more than two (2) inspections to determine Final Completion.

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

**9.11.7 Notice of Final Completion.** When Construction Manager determines that the Work or such designated portion is Finally Complete, Construction Manager will prepare a Notice of Final Completion on District's form, which shall state the date of Final Completion. A copy of the Notice of Final Completion shall be contemporaneously provided by Construction Manager to the Design Consultant. Regardless of the date the Notice of Final Completion is issued, Final Completion shall be deemed to have occurred on the date stated in the Notice of Final Completion.

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

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

## **9.12 FINAL PAYMENT**

**9.12.1 Application for Final Payment.** Upon issuance by Construction Manager of the Notice of Final Completion, Contractor shall submit its Application for Payment requesting Final Payment to Construction Manager.

**9.12.2 Conditions to Final Payment.** Contractor shall submit its Application for Payment for Final Payment, using such forms as required by Construction Manager, on or before the first (1st) Day of the month following Final Completion of the Work. Without limitation to any other conditions to payment set forth elsewhere in the Contract Documents, the following shall be conditions precedent to a proper submission, and to District's, Construction Manager's and Design Consultant's approval, of Contractor's Application for Payment requesting Final Payment:

**.1** Submission of an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which District or District's property or funds might be liable have been paid or otherwise satisfied;

## GENERAL CONDITIONS

- .2 Submission of Contractor certification as required by Paragraph 9.4.4, above;
- .3 Submission of consent of Surety, if any, to Final Payment;
- .4 Submission of a certificate evidencing that the insurance required by the Contract Documents is in force;
- .5 Submission of conditional releases and waivers of stop notice and bond rights upon final payment in the form required by California Civil Code Section 3262 (d) (3) executed by Contractor and by all the Subcontractors, of every Tier;
- .6 Submission of all Close-Out Documents (including, without limitation, complete, accurate As-Built Drawings and Specifications certified by Contractor as required by Paragraph 3.10.2, above).
- .7 Timely submission of adequate and complete certified payroll records as required by the Contract Documents for any time period that Work was performed, which have not been submitted by Contractor in connection with its previous Applications for Payment;
- .8 Proper payment of prevailing wages as defined in California Labor Code Section 1720, et seq.
- .9 Compliance with the Project Labor Agreement (if applicable) and the Labor Compliance Program (if applicable);
- .10 Submission of certifications by Contractor and each Subcontractor, as required by the Project Labor Agreement (if applicable), Labor Compliance Program (if any), any applicable collective bargaining agreement or trust agreement or Applicable Laws, certifying that all employee benefit contributions due and owing have been paid in full; and
- .11 Submission of any other documents or information required by the Contract Documents as a condition of Final Payment or Final Completion.

9.12.3 Certification of Final Payment. As soon as practicable, but not later than fourteen (14) Days after Construction Manager's receipt of an undisputed and properly submitted Application for Payment requesting Final Payment, Construction Manager and the Design Consultant (or, in the event they are unable to agree, Construction Manager) will either issue to District a Certification for Payment, with a copy to Contractor, for such amount as Construction Manager and the Design Consultant determine (or, in the event Construction Manager and Design Consultant are unable to agree, Construction Manager determines) is properly due, or notify Contractor and District in writing of reasons for withholding certification, in whole or in part, or the reasons why the Application for Payment is otherwise improper. Such notification will be forwarded to Contractor by Construction Manager. Certification for Payment issued pursuant to this Paragraph 9.12.3 shall be subject to the limitations set forth in Paragraph 9.4.2, above. Certification for Payment by the Design Consultant and Construction Manager (or, in the event Construction Manager and Consultant are unable to agree, Construction Manager) of Contractor's Application for Payment requesting Final Payment shall be a condition precedent to District's obligation to make Final Payment to Contractor.

9.12.4 Final Payment. Final Payment shall not become due by District until sixty (60) Days after "completion" of the Work as defined in California Public Contract Code Section 7107.



## GENERAL CONDITIONS

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

**9.12.6**     Waiver by Contractor. Acceptance of Final Payment by Contractor or a Subcontractor shall constitute a waiver of all rights by that payee against District for recovery of any Loss, excepting only those Claims that have been submitted by Contractor in the manner required by Section 4.4, above, prior to or at the time of Contractor's submission to District of its Application for Payment requesting Final Payment.

## **ARTICLE 10 INSPECTIONS, HAZARDOUS SUBSTANCES AND SAFETY**

### **10.1     INSPECTIONS**

**10.1.1**     General. One or more Inspectors of Record, including special inspectors as required, will be employed by District in accordance with requirements of the Field Act and Title 24 of the California Code of Regulations and will be assigned to the Work. Duties of Inspector of Record are as specifically defined in the Field Act and Title 24 of the California Code of Regulations. The fees of Inspectors of Record shall be directly paid for by District. NO WORK SHALL BE CARRIED ON EXCEPT UNDER THE INSPECTION, AND WITH THE KNOWLEDGE, OF THE APPROPRIATE INSPECTOR(S) OF RECORD, and Contractor shall be responsible, at Contractor's Own Expense, to remove and replace any Work performed without such inspection by the appropriate Inspector of Record.

**10.1.2**     Coordination. Contractor shall schedule, arrange, and coordinate its activities with the activities of Inspector of Record, the Design Consultant, Construction Manager and District Consultants assigned to inspect or observe the Work. When, in order to comply with the intent of the Contract Documents or as otherwise determined necessary by Construction Manager, inspection or observation must be made at the plant or mill of the manufacturer or fabricator of material or equipment, Contractor shall notify Inspector of Record, the Design Consultant and Construction Manager, as well as any other persons designated by Construction Manager or whose presence is necessary or appropriate, a sufficient length of time in advance to allow for arrangements to be made for such inspection and observations.

**10.1.3**     Uncovering of Work. Contractor shall notify Construction Manager, the Design Consultant and Inspector of Record in writing at least three (3) working days in advance of the permanent concealment of any materials or Work. If any of the Work is concealed or performed without the prior notice specified above, then the Work shall be subject to such tests or exposure as may be necessary to demonstrate to the satisfaction of Inspector of Record, the Design Consultant, Construction Manager and DSA that the materials used and the Work done are in conformity with the Contract Documents. All labor and equipment necessary for exposing and testing shall be furnished by Contractor at Contractor's Own Expense or if furnished by District shall be paid by District and backcharged to Contractor as a withholding from future payments due. Contractor shall replace and/or restore, at Contractor's Own Expense, any Work or other structures, improvements or property damaged by testing or exposure, as well as any Defective Work evidenced by such exposure or testing.

**10.1.4**     Off-Hours Inspections. Whenever Contractor arranges for the Work to be performed at night, other than between the hours of 7:00 am and 4:30 pm on Monday through Friday, Saturday, Sunday, holidays or any other time when Work is not usually in progress, it shall give Construction Manager two (2) working days' notice. Unless such off-hours inspections are solely due to a breach by District of an obligation under the Contract Documents, the additional cost and expense to District of

## GENERAL CONDITIONS

inspection or observation by the Design Consultant, the District's Consultants or others assigned by Construction Manager to inspect or observe the Work, shall be borne by Contractor at Contractor's Own Expense or may be paid by District and backcharged to Contractor as a withholding from future payments due.

**10.1.5 Contractor Not Relieved of Responsibility.** Inspections or observations by District or by the Design Consultant, Construction Manager, the District Consultants, Inspector of Record or others acting on behalf of or pursuant to contracts with District, shall not in any way relieve Contractor from its sole and exclusive responsibility for full compliance with all of the terms and conditions of the Contract Documents, nor be construed to lessen, to any degree, Contractor's responsibility for providing efficient and capable superintendents as required herein or for incorporating into the Work only those items of the Work which conform to the Contract Documents. Inspector of Record is not authorized to make Changes in the Drawings or Specifications, nor shall his/her approval of the Work or of Contractor's means or methods relieve Contractor of responsibility for the correction of Defective Work. Even if Contractor's work is approved by Design Consultant, Construction Manager, the District Consultants, or the Inspector of Record, Contractor remains 100% liable and responsible for the Work to District and Contractor cannot point the fingers at others or seek to lay blame at the feet of others notwithstanding such inspection and approval.

**10.1.6 Access to the Work.** Inspector of Record shall have free access to any or all parts of the Work at any time. Contractor shall furnish Inspector of Record with a work area, furniture and telephone service inside Contractor's job trailer and with reasonable opportunities and use of required equipment (wheelbarrow, shovel, ladder, man-lift, etc.), as available or in use on Site, for obtaining such information as may be necessary to keep Inspector of Record fully informed respecting the progress, quality and character of the Work.

**10.1.7 Right to Stop Work.** Inspector of Record shall, only if and to the extent permitted by Applicable Laws, have the authority, but not the obligation, to stop the Work whenever provisions of Contract Documents are not being complied with, or the conduct of the Work poses a probable risk of harm to persons or property.

**10.1.8 Inspections by District.** Without limitation to any other provisions of the Contract Documents, Contractor shall reimburse District or District shall have the right, at its option, to withhold from payments due to Contractor, costs of inspections or testing and other Losses that are incurred for any of the following reasons: (1) Contractor has failed to execute the Work in accordance with the Contract Documents; (2) materials or equipment have been substituted by Contractor, without prior approval by Construction Manager and the Design Consultant; (3) Defective Work has been performed or furnished by Contractor or a Subcontractor; or (4) to conduct load testing of certain portions of the structure that have not fully met the requirements of the Contract Documents.

**10.1.9 No Assumed Duty.** No authority of District, Construction Manager, the Design Consultant, any District Consultant or others to inspect the Work that is conferred by the Contract Documents nor any decision made in good faith either to exercise or not exercise such authority, nor any recommendation by District, Construction Manager, the Design Consultant, any District Consultant or others shall give rise to a duty or responsibility of District, the Design Consultant or any District Consultant to Contractor or the Subcontractors, of any Tier.

## **10.2 HAZARDOUS SUBSTANCES, MOLD**

**10.2.1 Contractor Remediation.** Hazardous Substances that are specified in the Contract Documents for removal, containment or abatement by Contractor shall be removed, contained, stored and disposed of with extreme care and in accordance with the requirements of the Contract Documents and Applicable Laws.

## GENERAL CONDITIONS

**10.2.2 Contractor Responsibility.** Unless otherwise expressly required by the Contract Documents, Contractor and Subcontractors shall not generate, manufacture, store or dispose of, nor permit the introduction, use, dispersal, release, generation, storage or disposal of, Hazardous Substances on, under or about the Site or Existing Improvements, nor will any of them transport or permit the transportation of Hazardous Substances to or from the Site, except for Hazardous Substances that: (1) are specified in the Contract Documents for removal by Contractor or for use in the construction of the Work; (2) are stored, used and handled by Contractor in compliance with Environmental Laws; (3) do not contain asbestos or polychlorinated biphenyls (PCB's); and (4) do not require a permit or license from, or need be reported to, a Governmental Authority.

**10.2.3 Notice by Contractor.** Unless otherwise expressly required by the Contract Documents as part of the Work to be performed by Contractor, should Contractor or any Subcontractor at any time during performance of the Work encounter on the Site that which it reasonably believes or knows to be a Hazardous Substance or Mold, and said Hazardous Substance or Mold has not been rendered harmless, Contractor shall immediately stop the Work in the affected area and notify District and Construction Manager of the condition in writing. The Work in the affected area shall not be resumed until Construction Manager has notified Contractor in writing that the Hazardous Substance or Mold has been removed and/or made harmless.

**10.2.4 Testing, Investigation.** Unless otherwise expressly required by the Contract Documents as part of the Work to be performed by Contractor, in the event that the presence of Hazardous Substances or Mold is suspected or discovered on the Site, District shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required.

**10.2.5 Contractor's Own Expense.** Contractor shall, at Contractor's Own Expense, pay for all costs of tests, investigation, encapsulation, removal, remediation and disposal and shall compensate District for any Loss incurred as a result of either of the following: (1) a breach by Contractor of its obligation under Paragraph 10.2.2, above; or (2) a substance, pre-existing at the Site prior to commencement of the Work, that is known or suspected (or that Contractor or the Subcontractors should have, in the exercise of reasonable care, known or suspected) to be a Hazardous Substance or Mold is released or dispersed (including, without limitation, the permitting of any exposure of persons to such Hazardous Substances of Mold) due to the actions of Contractor or the Subcontractors of any Tier; provided, however, that if such release or dispersal is of Mold or Hazardous Substances which is not specified for removal or abatement by Contractor as part of the Work, then Contractor's liability under this Paragraph shall be limited to Losses resulting from or related to such release or dispersal only and shall not include the costs of remediation, removal or disposal of the pre-existing Mold or Hazardous Substances not so released or dispersed by Contractor.

### **10.3 SAFETY PRECAUTIONS AND PROGRAMS**

**10.3.1 General Safety Obligation.** Contractor shall, notwithstanding the activities of others (such as, but not limited to, Construction Manager, the Design Consultant, or the Inspector or Record), be solely responsible, on a twenty-four (24)-hour Day, seven (7) Day week basis, for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work.

**10.3.2 Contractor's Safety Program.** Prior to the start of the Work, Contractor shall submit to Construction Manager a copy of Contractor's Project Health, Safety & Environmental Plan. Such plan shall comply with the requirements of the Contract Documents and District Construction Health, Safety and Environmental Program and shall include, at a minimum, guidelines, requirements and procedures for the following: safety management policy; emergency response plan; illness and injury prevention procedures; safety meetings; accident investigation; basic accident causes; safety inspection checklist; fire prevention and control; report forms; and employee safety manual and procedures for achieving

## GENERAL CONDITIONS

compliance with safety requirements of insurers. A copy of Contractor's Health, Safety & Environmental Plan shall be maintained on Site at all times.

**10.3.3**     Applicable Laws, Safety Orders. Contractor shall comply with all Applicable Laws, including, without limitation, all safety laws, standards, orders, rules, regulations and building codes, to prevent accidents or injury to persons on, about or adjacent to the Site and to provide a safe and healthful place of employment. Contractor shall correct any violations of safety laws, rules, orders, standards or regulations occurring or threatened by conditions on the Site. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, such violation shall be corrected promptly at Contractor's Own Expense.

**10.3.4**     Safety Representative. Contractor shall designate a responsible member of its organization on the Site, who meets the qualification and competency requirements of Applicable Laws and whose duty shall be the instruction of prevention of accidents and overall job site safety, including, without limitation, posting of information regarding protection, obligations of the workers and other notices required under occupational safety and health laws, compliance with reporting and other occupational safety requirements and protection of the life, safety and health of the workers. The name of the person so designated shall be reported to Construction Manager by Contractor. If Contractor has received a Conditional Safety Record Approval from District, then such representative shall be an individual, whose qualifications are approved by District, who shall be present on the Site on a full-time basis throughout construction and who shall be dedicated exclusively to matters of safety, including, without limitation, monitoring, enforcing and reporting on matters related to safety on the Site.

### **10.4     SAFETY OF PERSONS AND PROPERTY**

**10.4.1**     Protection, Safety. Contractor shall take all necessary precautions for safety of, and shall provide all necessary protection to prevent Loss due to the activities of, Contractor or the Subcontractors, of every Tier, to:

- .1**        Persons in and around the Site, as well as their personal property and vehicles;
- .2**        The Work, materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody or control of Contractor or the Subcontractors, of any Tier, including, without limitation, heat, covering and enclosures necessary to prevent Loss due to adverse weather conditions;
- .3**        Other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, curbs, roadways, structures (including, without limitation, protection from settlement or loss of lateral support) and utilities not designated for removal, relocation or replacement in the course of construction; and
- .4**        Construction or operations by District, District, Construction Manager or the Separate Contractors.

**10.4.2**     Applicable Laws, Notices. Contractor shall give notices and comply with Applicable Laws bearing on safety of persons or property or their protection from Loss.

**10.4.3**     Safeguards, Warnings. Access for Disabled. Contractor shall erect and maintain, as required by existing conditions and performance of the Work, all necessary safeguards for safety and protection, including, without limitation, safety devices, belts, nets, barriers, safety rails, canopies, danger signs, fire protection, no smoking prohibitions, warnings against hazards, safety regulations postings and notifying owners and users of adjacent sites and utilities. Contractor shall, as required by Applicable Laws, make provision for access for, and provide assistive devices to, persons with disabilities, including, without limitation, providing safe pathways of travel around areas where construction is being performed

LEGAL:10526-0001/8093698.1

Bid No. 10(25-26)FP

Pomona Unified School District

Page 161

## GENERAL CONDITIONS

so that students, staff, visitors and others on District campus with disabilities are afforded reasonably direct and barrier-free access to areas of District campus or Site that are being occupied or used.

**10.4.4**     Explosives, Hazardous Substances. Explosives may be used or stored only when authorized in writing by Construction Manager. Explosives shall be handled, used and stored in accordance with Applicable Laws. When use or storage of explosives or other Hazardous Substances or methods of construction involving use of dangerous materials or equipment are necessary for execution of the Work, Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**10.4.5**     First Aid. Contractor shall maintain emergency first aid treatment for Contractor's and the Subcontractors' workers on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C.A., Sec. 651 et seq.) and all other Applicable Laws.

**10.4.6**     Compliance with Safety Orders. Contractor shall correct any violations of safety laws, rules, orders, standards or regulations occurring or threatened by conditions on the Site. Upon the issuance of a citation or notice of violation by any Government Authority, including, without limitation, the Division of Occupational Safety and Health, such violation shall be corrected promptly at Contractor's Own Expense.

**10.4.7**     Responsibility for Loss. Contractor shall promptly remedy Loss (other than Loss insured under property insurance required by the Contract Documents) to persons or property referred to in any of Subparagraphs 10.4.1.1 through 10.4.1.4, above, caused in whole or in part by Contractor, a Subcontractor, of any Tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which Contractor is responsible under any of Subparagraphs 10.4.1.1 through 10.4.1.4, above, except Loss attributable solely to negligent acts or omissions of District, Construction Manager, or the Design Consultant or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of Contractor or a Subcontractor, of any Tier, or the failure by Contractor to comply with the Contract Documents. The foregoing obligations of Contractor are in addition to Contractor's indemnification obligations set forth in Section 3.18, above, or elsewhere in the Contract Documents.

**10.4.8**     Loading. Contractor shall not load or permit any part of the Work or Existing Improvements to be loaded so as to endanger its safety.

## **10.5**     **EMERGENCIES**

**10.5.1**     Contractor Responsibility. In an emergency involving safety or protection of persons or property, Contractor shall act immediately, either at Construction Manager's direction or as otherwise necessary under the circumstances, to prevent any Loss. In such cases, Contractor shall immediately notify Construction Manager, which notice may be oral, followed within twenty-four (24) hours after occurrence of the incident by written confirmation of the occurrence of such emergency and Contractor's action in response thereto.

**10.5.2**     District Action. If, in the sole discretion of Construction Manager, the condition is immediately threatening life or property, Construction Manager may, with or without notice to Contractor, take whatever immediate action is necessary to correct the life-threatening condition, and the costs thereof, including, without limitation, any additional services fees or costs of Construction Manager, Inspector of Record, District Consultants or others to whom District may be liable, shall be borne by Contractor at the Contractor's Own Expense.

**10.5.3**     No District Responsibility. Nothing set forth in this Section 10.5 nor elsewhere in the Contract Documents shall be interpreted as an assumption of any responsibility on the part of District, Construction Manager or other persons or entities other than the Contractor and the Subcontractors, to

## GENERAL CONDITIONS

report such conditions to Contractor nor as relieving Contractor of any of its responsibilities under the Contract Documents.

### ARTICLE 11 INSURANCE AND BONDS

#### 11.1 INSURANCE

11.1.1 General Provisions. Contractor shall obtain and maintain, and shall require the Subcontractors of every Tier to obtain and maintain, the insurance coverages specified below:

.1 Standard Commercial Automobile Liability Insurance covering all owned, non-owned and hired automobiles, trucks, and trailers with a combined single limit of not less than \$1,000,000.

.2 Statutory Workers' Compensation and Employer's Liability insurance with statutory limits as required by law, including Maritime coverage, if appropriate, and Employer's Liability limits of not less than \$1,000,000 each accident/\$1,000,000 each employee/\$1,000,000 policy limit.

.3 Commercial General Liability Insurance in a form providing coverage not less than the standard ISO Commercial General Liability insurance policy CG 0001 ("Occurrence Form"), with the following minimum limits (including excess or umbrella liability insurance if required to achieve limits):

Each Occurrence	\$1,000,000/ \$2,000,000
General Aggregate	\$2,000,000/ \$3,000,000
Products/Completed Operations Aggregate	\$2,000,000/ \$3,000,000
Personal/Advertising Injury Aggregate	\$1,000,000/ \$2,000,000
5 Years Products & Completed Operations Extension	

.4 Excess Liability Insurance in the amount of not less than \$2,000,000 per claim.

.5 Professional Liability Insurance (if any professional services are to be provided) in the amount of not less than \$2,000,000 per claim and in the aggregate. Contractor agrees to maintain continuous coverage for professional liability applicable to Work performed for a period no less than five years after completion of the Work. Any claims-made policy used to meet the requirements of the Contract Documents shall have a retroactive date prior to commencement of the Work. If professional services are to be provided through a Subcontractor, Contractor shall insure that the Subcontractor complies with this requirement.

.6 Contractor's pollution liability insurance (for contractors or subcontractors performing Hazardous Substance remediation or as required by District) shall be written on a form acceptable to District providing coverage for liability arising out of sudden, accidental and gradual pollution. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. When this insurance is required, all activities comprising the Work shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the Site to the final disposal location, including non-owned disposal sites. Products/completed operations coverage shall extend a minimum of three (3) years after Final Completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using Subcontractors said policy must include work performed "by or on behalf" of the insured. Said policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for

LEGAL:10526-0001/8093698.1

Bid No. 10(25-26)FP

Pomona Unified School District

Page 163

## GENERAL CONDITIONS

claims or suits expressly excluded from coverage. Said policy shall specifically provide for a duty to defend on the part of the insurer. If the covered operations involve Hazardous Substances remediation under a subcontracting arrangement, Contractor shall insure that the Subcontractor performing the remediation complies with this requirement.

**.7** Builder's Risk/All Risk Insurance. During the progress of the Work and until Final Completion of the entire Work, Contractor shall maintain builder's risk, course of construction or similar first party property coverage issued on a replacement cost value basis consistent with the total replacement cost of all insurable Work included in the Contract Documents. Such coverage shall insure against all risks of accidental direct physical loss, and must include, by the basic grant of coverage or by endorsement, the perils of vandalism, malicious mischief (both without any limitation regarding vacancy or occupancy), fire, sprinkler leakage, civil authority, sonic boom, earthquake, flood, collapse, wind, lightning, smoke and riot. The coverage must include debris removal, demolition, increased costs due to enforcement of building ordinance and law in the repair and replacement of damage and undamaged portions of the property, and reasonable costs for the Design Consultant's and engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof. Such insurance shall include the District and the Design Consultant as additional named insureds, and any other person with an insurable interest as designated by the District. Contractor shall submit to the District for its approval all items deemed to be uninsurable. The risk of the damage to the Work due to the perils covered by the "Builder's Risk/All Risk" Insurance, as well as any other hazard which might result in damage to the Work, is that of the Contractor and the surety, and no claims for such loss or damage shall be recognized by the District nor will such loss or damage excuse the complete and satisfactory performance by Contractor.

**.8** Aviation and/or Watercraft Liability Insurance covering bodily injury, property damage, and passenger liability, as respects any aircraft owned, used, operated, or hired in connection with the Work. If Contractor uses aircraft or watercraft in connection with the Project, Contractor shall first consult with District regarding specific coverages and limits required.

**.9** Other Insurance as may be required by District to protect Contractor, the Subcontractors and/or District, District and other Indemnitees from hazards related to the Work or the performance thereof.

11.1.2 Additional Requirements for Contractor-Provided Coverage. The following requirements and provisions shall apply to insurance provided by Contractor and the Subcontractors pursuant to Paragraph 11.1.1, above:

**.1** Such insurance may be provided through a combination of primary and excess policies, including the umbrella form of policy. All required insurance shall be maintained without interruption from the date of commencement of the Work until the date of the Final Payment.

**.2** The workers' compensation, employer's liability, and commercial general liability insurance coverages required by Paragraph 11.1.4, above, shall be primary for all on- and off-Site activities.

**.3** Each such policy, except the workers' compensation policy and professional liability policy (if any), shall add the Indemnitees, and each of their respective officers, agents, shareholders and employees and any additional entities as District may request, as additional insureds through the issuance of Insurance Services Office form CG 20 10. If a CG 20 10 form edition with a date prior to 1990 is not available, the insurer must issue form CG 20 37, providing additional insured coverage for completed operations. No ongoing operations additional insured endorsement shall be

## GENERAL CONDITIONS

acceptable to District. Contractor shall ensure that each Subcontractor obtain such additional insured endorsement as well.

**.4** Each such policy shall state or be endorsed to state that the coverage provided to the additional insureds is primary and non-contributing with respect to any other insurance available to the additional insureds.

**.5** The insurance shall be written by a company or companies lawfully authorized to do business in the State of California and having a current A.M. Best's rating of no less than A-: VI unless otherwise approved in writing by District.

**.6** The insurance shall be written on forms that are acceptable to District.

**.7** Contractor shall provide to District, prior to contract execution and within three (3) Days of any renewal, change or replacement of coverage certificates of insurance and endorsements evidencing coverage required herein, above, to be obtained by Contractor and the Subcontractors. Upon request, certified copies of policies shall be provided to District.

**.8** If Contractor fails to provide insurance as required herein, District or its assignees shall have the right but not the obligation, to purchase such insurance. In such event, the Contract Sum Payable shall be reduced by the amount paid for such insurance.

**.9** All insurance coverage and limits required of or provided by Contractor or the Subcontractors are intended to apply to the full extent of the policies. Nothing contained in this Section 11.1 or elsewhere in the Contract Documents relating to District or its operations is intended to limit the application of such insurance coverage.

**.10** No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

**.11** District reserves the right at any time to change the amounts and types of insurance required by giving Contractor thirty (30) Days' advance written notice of such change. If such change results in substantial additional cost to Contractor, District will negotiate additional compensation for added Allowable Costs (with no additional sum for Allowable Markups) that is proportional to the increased benefit to District.

**.12** For purposes of applying insurance coverage only, the Construction Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of the Work.

**.13** Contractor acknowledges and agrees that any actual or alleged failure on the part of District to inform Contractor of non-compliance with any insurance requirement in no way imposes any additional obligations on District nor does it waive any rights hereunder in this or any other regard.

**.14** Any type of insurance or any increase of limits of liability not described in this Section 11.1, which Contractor requires for its own protection or on account of any statute, shall be Contractor's responsibility and at Contractor's Own Expense.



## GENERAL CONDITIONS

**.15** During the period following the Acceptance of the Work and prior to expiration of all warranty periods under the Contract Documents, Contractor shall maintain in full force and effect all insurance covering all Work performed during such period.

**.16** District shall have no responsibility for arranging coverage or for payment of premiums for any insurance coverage required of any Contractor or Subcontractor.

### 11.1.3 Miscellaneous Provisions.

**.1 Audits.** Contractor agrees that District may inspect, copy and audit Contractor's and the Subcontractors' payroll records, books and records, insurance policies, insurance cost data, bid documents, estimates or any other information to confirm the accuracy of any information provided to District, to verify compliance with the Contract Documents.

**.2 Contractor Oversight.** Contractor shall not violate or knowingly permit to be violated any conditions of policies of insurance required by this Section 11.1. Contractor shall ensure that all requirements imposed by such policies and the terms of this Section 11.1 shall likewise be imposed on, and assumed and performed by, each Subcontractor of every Tier.

**.3 Withholding of Payments.** In addition to any other rights of withholding that District may have under the Contract Documents, District has the right to withhold any payments otherwise due to Contractor in the event of a failure by Contractor or any Subcontractor to comply with the requirements of this Section 11.1. Such withholding by District shall not be deemed to be a default under the Construction Contract.

**.4 Notice.** All policies of insurance that Contractor or the Subcontractors are required to provide under the terms of this Construction Contract to secure and maintain shall be endorsed to provide that their insurance company shall notify District and the named insured, at least sixty (60) Days prior to the effective date of any cancellation or modification of such policies.

**.5 Remedies.** Without limitation upon any of District's other rights or remedies, any failure by Contractor or any Subcontractor comply with any provision of this Section 11.1 shall be deemed a material breach of the Construction Contract, thereby entitling District, at its option, upon notice to Contractor to suspend performance by Contractor, without any adjustment to Contract Sum Payable or Contract Time, until there is full compliance, or terminate this Construction Contract for cause.

**.6 Claims Cooperation.** Contractor and the Subcontractors shall assist and cooperate in every manner possible in connection with the adjustment of all claims arising out of their operations conducted in connection with the Work and shall cooperate with District, with the adjustment, settlement, mediation, arbitration or litigation of all said claims, including, without limitation, providing light or modified duty for injured workers, appearances in mediation, arbitration or court proceedings and/or participating in settlement meetings, as may be required.

**.7 Waiver of Subrogation.** Contractor hereby waives all rights of recovery under subrogation because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or any other reason against the Indemnitees, Design Consultant, District Consultants, Separate Contractors and any other contractor, subcontractor and consultant performing

## GENERAL CONDITIONS

Work or rendering services in connection with the planning, development and construction of the Project, including without limitation, the officers, directors, agents, shareholders and employees of each of them. Contractor shall require that the Subcontractors of every Tier require that all insurance policies provided, with the exception of workers' compensation, that relate to the Work include clauses providing that each insurer waives all of its rights of recovery by subrogation against the same parties referenced immediately above in this Subparagraph 11.1.6.7. The waivers of subrogation provided for in this Subparagraph 11.1.6.7 shall be deemed effective as to any individual or entity even if such individual or entity: (1) would otherwise have a duty of indemnification, contractual or otherwise; (2) did not pay the insurance premium directly or indirectly; or (3) has or does not have an insurable interest in the property damaged.

**.8 Waiver of Rights.** Contractor waives all rights against the Indemnitees, Design Consultant, District Consultants, Separate Contractors and any other contractor, subcontractor and consultant performing Work or rendering services in connection with the planning, development and construction of the Project, including without limitation, the officers, directors, agents, shareholders and employees of each, for loss or damage caused by fire or other perils to the extent covered by the Builder's Risk or other property policy applicable to the Work, except such rights as they may have to the proceeds of such insurance held by District. This waiver applies only to the extent that proceeds are, in fact, realized as a result of a claim against such policy. Contractor shall require such waivers from the Subcontractors of every Tier.

**.9 No Release.** The procurement of such insurance shall in no way be interpreted as relieving Contractor or any Subcontractor of any responsibility or liability under the Contract Documents, Applicable Laws, including, without limitation, Contractor's and Subcontractor's responsibilities relative to indemnification and their obligation to exercise due care in the performance of the Work and to complete the Work in strict compliance with the Contract Documents.

### **11.2 DISTRICT'S LIABILITY INSURANCE**

District shall be responsible for purchasing and maintaining District's usual liability insurance. Optionally, District may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract Documents. District's procurement of any insurance shall in no way lessen Contractor's obligations under the Contract Documents.

### **11.3 PERFORMANCE BOND AND PAYMENT BONDS**

**11.3.1 Bonds.** Prior to commencing the Work, Contractor shall file with District good and sufficient labor and material payment bond (Payment Bond) and performance bond (Performance Bond) in the form required by the Bidding Documents.

**11.3.2 Amount.** The Performance Bond and Payment Bond shall each be issued for a penal amount of one hundred percent (100%) of the Contract Sum Payable. The penal amounts of the Payment Bond and Performance Bond shall be increased as, when and in the amount of any Change Orders that are executed increasing the Contract Sum Payable, Contractor shall, upon request by Construction Manager, provide evidence of such increases.

**11.3.3 Insufficiency.** If a Payment Bond or Performance Bond, or Surety issuing same, is determined by District to be insufficient, then such Payment Bond or Performance Bond shall be replaced within ten (10) Days with a Payment Bond or Performance Bond issued by a Surety that fully complies with the requirements of this Section 11.3.

**11.3.4 Duration.** The Payment Bond shall remain in effect until Acceptance of the Work and payment of all stop notices and Claims by Contractor or the Subcontractors, of any Tier, have been satisfied. The Performance Bond shall remain in effect and assure faithful performance of all Contractor's obligations under the Contract Documents, including, without limitation, all obligations that

LEGAL:10526-0001/8093698.1

Bid No. 10(25-26)FP

Pomona Unified School District

Page 167

## GENERAL CONDITIONS

survive Final Completion or termination, such as, but not limited to, Contractor's warranty, commissioning and indemnity obligations.

11.3.5 Surety. At the time the Construction Contract is signed and at all times thereafter until Final Payment has been made by District, the Surety on the Payment Bond shall be an Admitted Surety and the Surety on the Performance Bond shall be an Admitted Surety having an A.M. Best's Insurance Rating of not less than B+:VIII.

11.3.6 Premiums. The premiums for all bonds are included in the Contractor's Bid and Contract Sum Payable and shall be paid by Contractor. The costs of all bonds that Contractor requires be provided by any Subcontractor, including, without limitation, the increased cost thereof due to Compensable Changes, shall be deemed to be at Contractor's Own Expense.

11.3.7 Oblige. The Payment Bond and Performance Bond shall each name District as obligee. All bonds purchased by the Subcontractors shall name Contractor and District as dual obligees.

11.3.8 Payment. No payments or further payment to Contractor for Work performed shall be made or due unless and until Contractor has fully complied with the requirements of this Section 11.3.

11.3.9 No Exoneration. Neither Changes, Change Orders, Unilateral Change Orders, Field Orders, Modifications nor any adjustments to the Contract Sum Payable, Contract Price or Contract Time shall in any way release or exonerate a Surety from its obligations, and notice thereof shall be waived by the Surety. The foregoing provision shall be included in the terms of the Payment Bond, Performance Bond, as well as in any performance or payment bonds obtained by the Subcontractors relating to the Work.

11.3.10 Communications. District and Construction Manager shall have the right to communicate with any Surety with respect to matters that are related to Contractor's performance of its obligations under the Contract Documents. Contractor shall be provided with a copy of all such written communications. Such communications shall not create, or be interpreted as creating, any contractual relationship between District or Construction Manager, on the one hand, and the Surety, on the other hand.

11.3.11 No Limitation. The requirements of this Section 11.3 pertaining to the Performance Bond and the Payment Bond shall be without limitation to any other obligations Contractor may have under Applicable Law to provide bonding for the benefit of, and to assure payment to the Subcontractors performing the Work for, the Project.

11.3.12 Subcontractor Bonds. Each performance bond, if any, furnished by a first-Tier Subcontractor shall include a provision whereby the Surety consents to the contingent assignment of Contractor's rights under such bond to District as provided in Section 5.3, above.

## ARTICLE 12 UNCOVERING AND CORRECTION OF THE WORK

### 12.1 UNCOVERING OF THE WORK

12.1.1 Uncovering. If a portion of the Work is covered contrary to the Design Consultant's, Inspector of Record's or Construction Manager's request or direction, or contrary to the requirements of the Contract Documents, it must, if required in writing by the Design Consultant, Inspector of Record or Construction Manager, be uncovered for observation and be replaced at Contractor's Own Expense.

12.1.2 Inspection. If a portion of the Work has been covered, which is not required by the Contract Documents or Inspector of Record to be observed or inspected prior to its being covered and which the Design Consultant, Inspector of Record or Construction Manager has not specifically requested to observe prior to its being covered, the Design Consultant, Inspector of Record or Construction

## GENERAL CONDITIONS

Manager may request to see such Work, and it shall be uncovered and replaced by Contractor. If such Work is in accordance with the Contract Documents, the costs of uncovering and replacing the Work shall be added to the Contract Sum Payable by Change Order or Unilateral Change Order, and if the uncovering and replacing of the Work causes a Delay, such Delay shall be deemed a Compensable Delay and an appropriate adjustment to the Contract Time shall be made by Change Order. If such Work is not in accordance with the Contract Documents, Contractor shall pay such costs, at Contractor's Own Expense, and any resulting Delay shall be deemed an Unexcused Delay.

### **12.2 CORRECTION OF THE WORK**

Contractor shall promptly correct Defective Work, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. All such Defective Work shall be either: (1) removed, remade and replaced, and all the Work disturbed thereby shall be made good at Contractor's Own Expense; or (2) District may exercise its option pursuant to Section 12.4, below, to accept such Work and adjust the Contract Sum Payable.

### **12.3 GUARANTEE TO REPAIR PERIOD**

12.3.1 Guarantee To Repair Period. Besides guaranties required elsewhere in the Contract Documents, Contractor shall guarantee in writing all the Work for a specified period of time. This guarantee, termed "Guarantee to Repair Period," is a period of one (1) year commencing as follows:

- .1 from the date of Substantial Completion of the Work; except as to portions of the Work that are not complete on the date that the Work is generally found Substantially Complete;
- .2 for space beneficially occupied or for separate systems fully utilized prior to Substantial Completion pursuant to Section 9.10, above, from the first date of such beneficial occupancy or actual use, as established by an appropriate written authorization for beneficial occupancy; and
- .3 for all portions of the Work other than as described in Subparagraph 12.3.1.1 or 12.3.1.2, above, from the date of Final Completion of the Work.

12.3.2 Repairs. Contractor shall, at Contractor's Own Expense: (1) correct Defective Work that becomes apparent during the progress of the Work or during the Guarantee To Repair Period; and (2) replace, repair, or restore to District's satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work. District will give notice of observed Defective Work with reasonable promptness, and Contractor shall promptly commence such correction, replacement, repair or restoration upon notice from District, but in no case later than ten (10) Days after mailing of such notice to Contractor's last known address. Contractor shall diligently and continuously prosecute such correction, replacement, repair, or restoration to completion. Contractor shall bear at Contractor's Own Expense all Losses resulting from such Defective Work, including, without limitation, all costs of such correction, replacement, repair or restoration, additional testing, inspection and additional services fees and costs of the Design Consultant, Construction Manager, Inspector of Record, the District Consultants or others whose services may be made necessary thereby. Contractor shall perform corrective, replacement, repair or restoration to the Work at such times that are acceptable to District and in such a manner as to avoid, to the greatest extent practicable, disruption to District's activities. Ordinary wear and tear, unusual abuse, or neglect is excepted from this guarantee. Contractor shall notify District upon such completion of correction, replacement, repair or restoration.

12.3.3 Dangerous Conditions. If immediate correction of Defective Work is required for life safety or the protection of property or, if in the opinion of Construction Manager or the Design Consultant, Defective Work creates a dangerous condition or requires immediate correction or attention to prevent further Loss to District or to prevent interruption of operations of District, District will attempt to

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## GENERAL CONDITIONS

give immediate notice to Contractor. If Contractor cannot be contacted or does not comply with District's request for correction within a reasonable time as determined in the sole discretion of District, then District, or the Separate Contractors under District's direction, may, notwithstanding the provisions of this Article 12, proceed to make such corrections or provide such attention, and all Losses associated with such correction or attention shall be charged against Contractor. Such action by District will not relieve Contractor of the guaranties provided in this Article 12 or elsewhere in the Contract Documents. Contractor shall correct, replace, repair or restore to District's satisfaction any other parts of the Work and any other real or personal property that is damaged or destroyed as a result of such actions by District or the Separate Contractors.

**12.3.4      Removal.** Contractor shall promptly remove from the Site all the Work identified by District, Construction Manager or the Design Consultant as Defective Work, whether incorporated or not and whether discovered before or after Substantial or Final Completion. If Contractor either does not remove such Defective Work within ten (10) Days after mailing of notice from District as provided in Paragraph 12.3.2 or, after accomplishing such removal, fails to thereafter diligently prosecute such correction to completion, then District may, without prejudice to other remedies, remove and store it at Contractor's Own Expense.

**12.3.5      Sale.** If Contractor does not pay expenses of the repair, removal or re-execution and other Losses as required by Paragraphs 12.3.2 through 12.3.4, above, then within five (5) Days after written request by District, District may sell any materials removed at auction or at private sale or otherwise dispose of such materials and shall account for net proceeds thereof, after deducting all costs and expenses incurred for removal or correction as provided in Paragraphs 12.3.2 through 12.3.4, above. If such proceeds of sale do not cover the Losses from which Contractor is liable to District, the Contract Sum Payable shall be reduced by such deficiency. If there are no remaining payments due Contractor, or the remaining payments are insufficient to cover such deficiency, Contractor shall promptly pay the difference to District.

**12.3.6      No Limitation.** Contractor's obligations under this Article 12 are in addition to and not in limitation of its warranty under Section 3.5, above, or any other obligation, guaranty or warranty of Contractor or any other third party under the Contract Documents and Applicable Laws. Enforcement of Contractor's express warranties and guaranties to repair or replace contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies District may have under the Contract Documents or at law or in equity for Defective Work. Nothing contained in this Article 12 shall be construed to establish a period of limitation with respect to other obligations of Contractor under the Contract Documents that may be for longer specified periods and shall in no way lessen or reduce any applicable statute of limitation. Establishment of the Guarantee to Repair Period relates only to the specific obligation of Contractor to correct the Work and in no way limits either Contractor's liability for Defective Work or the time within which proceedings may be commenced to enforce Contractor's obligations under the Contract Documents.

## **12.4      ACCEPTANCE OF NONCONFORMING WORK**

Notwithstanding any other provisions of the Contract Documents to the contrary, District shall have the option, exercised in its sole and absolute discretion after notice to Contractor, in lieu of requiring that Defective Work be remedied or corrected, to effect a reduction in the Contract Sum Payable to reflect the reduced value of performance received by District. Such option shall be exercised solely by written notice to Contractor and shall not be implied from any act or omission by District. If there are no remaining payments of the Contract Sum Payable to be made to Contractor, or if the remaining payments and retention are insufficient to cover the amount of the reduction of the Contract Sum Payable, Contractor shall promptly pay to District the amount of any such deficiency.

**ARTICLE 13  
MISCELLANEOUS PROVISIONS**

**13.1 GOVERNING LAW**

The interpretation and enforcement of the Construction Contract and other Contract Documents and of the performance by the parties thereunder shall be governed by the laws of the State of California. The Superior Court for the County of Los Angeles shall have exclusive jurisdiction and venue over any legal proceedings arising out of or involving the interpretation or enforcement of, or other matters relating to, the Construction Contract, the other Contract Documents or the performance of the parties thereunder.

**13.2 TIME OF ESSENCE**

All time limits stated in the Contract Documents relative to Contractor's performance of obligations under the Contract Documents are of the essence.

**13.3 SUCCESSORS AND ASSIGNS**

The Construction Contract and other Contract Documents shall be binding upon District and Contractor and their respective successors and assigns. Neither the performance of the Construction Contract, other Contract Documents nor any part thereof, nor any monies due or to become due thereunder, nor any Claim thereunder, may be assigned by Contractor without the prior written consent and approval of District, which may be granted or withheld in District's sole discretion. Any assignment by Contractor in violation of this Section 13.3 shall be null and void from its inception.

**13.4 WRITTEN NOTICE**

Any notice from one party to the other or otherwise under the Contract Documents shall be in writing and shall be dated and signed by the party giving such notice or by a duly authorized representative of such party. Any such notice shall be deemed to have been duly served if served in the following manner:

13.4.1 Notice to District. If notice is given to District, by personal delivery thereof to District or by depositing same in United States mail, enclosed in a sealed envelope addressed to District at its address is shown in the Bidding Documents, and sent by registered or certified mail with postage prepaid.

13.4.2 Notice to Contractor. If notice is given to Contractor, by personal delivery thereof to Contractor or to Contractor's project manager or superintendent at the Site, or by depositing same in United States mail, enclosed in a sealed envelope addressed to Contractor at its last known address for its regular place of business and sent by registered or certified mail with postage prepaid.

13.4.3 Notice to Surety. If notice is given to the Surety, by personal delivery to the Surety or by depositing same in United States mail, enclosed in a sealed envelope, addressed to the Surety at the address of the Surety shown in the applicable Performance Bond or Payment Bond (or, if none is shown, the last known address for the Surety), and sent by registered or certified mail with postage prepaid.

**13.5 RIGHTS AND REMEDIES**

13.5.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by Applicable Law.

13.5.2 Provisions of the Contract Documents may be waived by District only in writing signed by the District stating expressly that it is intended as a waiver of specified provisions of the Contract Documents. No course of dealing, custom or practice shall constitute a waiver of any provision of the Contract Documents.

## GENERAL CONDITIONS

**13.5.3** A waiver by either party of any breach of any term, covenant, or condition contained in the Contract Documents shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein whether of the same or a different character.

### **13.6 NO NUISANCE**

Contractor shall not maintain, commit or permit the maintenance or commission of any nuisance in connection with the performance of Work.

### **13.7 EXTENT OF AGREEMENT**

The Contract Documents represent the entire integrated agreement with District and Contractor and supersede all prior negotiations, representations or agreements, either written or oral. The Contract Documents may be amended only by written instrument signed by both District and Contractor and formally approved or ratified by the Board of Education in accordance with the requirements of the Contract Documents and Applicable Laws.

### **13.8 NO THIRD-PARTY RIGHTS**

Nothing contained in the Contract Documents is intended to make any person or entity who is not a signatory to the Construction Contract a third-party beneficiary of any right created by the Contract Documents or by operation of law.

### **13.9 SEVERABILITY**

Should any part, term, portion or provision of the Contract Documents, or the application thereof to any party or circumstance, be held to be illegal, invalid or in conflict with any Applicable Laws, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions, or the application thereof to other any party or circumstances, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by Applicable Laws.

### **13.10 PROVISIONS REQUIRED BY APPLICABLE LAWS**

Each and every provision of law and clause required by Applicable Laws to be inserted in the Construction Contract or other Contract Documents shall be deemed to be inserted in these General Conditions and the Contract Documents shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or if inserted and requires correction, then upon request of either party these General Conditions shall forthwith be amended by the parties to the Construction Contract to make such insertion or correction.

### **13.11 CONFLICTS OF INTERESTS**

Contractor agrees not to accept any employment or representation which will, or is likely to, make Contractor "financially interested" (as provided in California Government Code Sections 1090 and 87100) in any decision made by District on any matter in connection with which Contractor has been retained in connection with the Project.

### **13.12 SURVIVAL**

All provisions of the Contract Documents that either expressly, or by their nature, require performance or assumption by Contractor of an obligation that extends beyond termination of the Construction Contract or Final Completion of the Work, including, without limitation, Contractor's obligations of, or relating to, indemnification, insurance, confidentiality, ownership of documents, retention and audit of books and records, warranties and guaranties and resolution of Claims shall be deemed to survive either termination of the Construction Contract or Final Completion of the Work.

## GENERAL CONDITIONS

### **13.13 FEDERAL GRANTS**

In the event of a federal grant or other federal financing participation in the funding of this Project, Contractor shall permit access to and grant the right to examine its books covering its services performed and expenses incurred under the Construction Contract or other Contract Documents. Contractor shall comply with all applicable federal agency requirements including, without limitation, those pertaining to work hours, overtime compensation, non-discrimination, and contingent fees.

### **13.14 PROHIBITED INTERESTS**

No official or employee of District who is authorized in such capacity and on behalf of District to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Project, shall become directly or indirectly interested financially in the Construction Contract or in any part thereof. No officer, employee, architect, attorney, engineer or inspector of or for District who is authorized in such capacity and on behalf of District to exercise any executive, supervisory or other similar functions in connection with construction of the Project shall become directly or indirectly interested financially in the Construction Contract or in any part thereof. Contractor shall receive no compensation and shall repay District for any compensation received by Contractor hereunder, should Contractor or any of the Subcontractors aid, abet or knowingly participate in violation of this Section 13.14.

### **13.15 ASSIGNMENT OF ANTI-TRUST ACTIONS**

California Public Contract Code Section 7103.5(b), which is hereby incorporated by this reference, provides:

"In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, contractor or the subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to Contractor, without further acknowledgement by the parties."

Contractor for itself and all the Subcontractors agrees to assign to District all rights, title and interest in and to all such causes of action Contractor and all the Subcontractors may have under the Contract Documents. This assignment shall become effective at the time District tenders Final Payment to Contractor, and Contractor shall require assignments from all the Subcontractors to comply herewith.

### **13.16 CONFIDENTIALITY**

Contractor shall treat all information and data furnished to it by District, Construction Manager, District, or any other Project Team member, or otherwise obtained or prepared by Contractor concerning the Project or the Work, as strictly confidential and shall not disclose any of the same to any other person or entity unless required to do so in connection with Contractor's performance of the Construction Contract or any filings or applications submitted to Governmental Authorities. Contractor's obligation of confidentiality hereunder shall not apply to: (1) information which is in the public domain through no action or inaction of Contractor; or (2) information proprietary to Contractor that was in the possession of Contractor prior to its preparing its Bid. Contractor shall not engage in or permit any public references or statements to the Project, District, or to Contractor's obligations, performance or the Work in connection with the Project, including, without limitation, referring to the same in advertising or promotional brochures or materials or granting interviews to broadcast, print or other media, without the prior written



## GENERAL CONDITIONS

consent of District, which may be granted or withheld in the sole discretion of District. Contractor shall instruct the Subcontractors and all of Contractor's employees of this obligation and shall be responsible for their full compliance with this Section 13.16.

### **13.17 NO WAIVER**

Provisions of the Contract Documents may be waived by District only in a writing, stating expressly that it is intended as a waiver of specified provisions of the Contract Documents. No course of dealing, custom or practice shall constitute a waiver. A waiver, by either District or Contractor, of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character. District's approval, acceptance, use or payment for any or part of Contractor's performance of the Work shall not in any way alter Contractor's obligations, or waive any of District's rights, under Contract Documents. No Certification for Payment, payment nor partial or entire use or occupancy of the Project or Work by District shall constitute acceptance of Work not in accordance with the Contract Documents.

### **13.18 Consent to photographing**

Contractor is advised that District intends, from time to time, to take photographs, videotapes and/or motion pictures of the Work, workers located on the Site and proximate settings. Contractor consents to the use of Contractor's name and likeness in instructional or training uses, news releases, advertising and/or publicity throughout the world in perpetuity, in all media now known or hereafter invented. Contractor shall include in its contracts with its Subcontractors a consent by the Subcontractor to the use of Subcontractor's name and the likeness of its employees on the same terms as provided for herein applicable to such consent by Contractor.

## **ARTICLE 14 DEFAULT, TERMINATION AND SUSPENSION**

### **14.1 DISTRICT REMEDIES FOR DEFAULT**

14.1.1 Event of Default. Each and any of the following shall be considered an Event of Contractor Default:

- .1 Contractor is adjudged bankrupt;
- .2 Contractor makes a general assignment for the benefit of its creditors;
- .3 A receiver is appointed on account of Contractor's insolvency;
- .4 Contractor defaults, by failing or refusing to perform any obligation set forth in the Construction Contract, General Conditions or elsewhere in the Contract Documents, and thereafter:  
(1) fails to commence to cure such default within three (3) Days after receipt of written notice of default; or  
(2) if the default can be cured within three (3) Days, Contractor fails or refuses after commencing to cure in accordance with Clause (1) hereof to fully cure such default within seven (7) Days after receipt of written notice of default, or  
(3) if the default cannot be fully cured within seven (7) Days, Contractor fails after commencing to cure in accordance with Clause (1) hereof to diligently and continuously prosecute and fully cure such default within ten (10) Days after receipt of such written notice;
- .5 Contractor fails or refuses to perform an obligation set forth in the Construction Contract, General Conditions or other Contract Documents that either (1) cannot be cured; or (2) cannot be cured within the 10-Day cure period set forth in Subparagraph 14.1.1.4, above;

## GENERAL CONDITIONS

**.6** A breach of any other agreement between District and Contractor as provided in Paragraph 14.1.9, below;

**.7** If Contractor was previously prequalified as a condition for its bidding the Project, Contractor's prequalification status has been revoked or cancelled due to any of the following: (1) receipt by District of new information indicating that a statement made in Contractor's Prequalification Submittal (as defined in the Prequalification Documents) was false or misleading; (2) ownership of 50% or more of the stock or assets Contractor has changed; (3) if Contractor is a Project Joint Venture, its Principal Managing Partner (as those terms are defined in the Prequalification Documents) has ceased to function, or fully function, in the capacity of a Principal Managing Partner; or (4) Contractor has failed to comply with the requirements of the Prequalification Documents pertaining to minimum safety prequalification requirements for Subcontractors;

**.8** The occurrence of a claim upon any security (including, without limitation, any letter or credit or guaranty) provided by District at the request of Contractor or a Subcontractor prior to Award to assist Contractor or Subcontractor in obtaining credit, financing or bonding needed: (1) to qualify for Award of the Construction Contract; or (2) to meet its obligations under the Contract Documents;

**.9** The occurrence of a demand by a District Materials Vendor upon a guaranty of collectability of payment made by District to the District Materials Vendor under a District Materials Contract that has been assigned to Contractor pursuant to Section 2.5, above; or

**.10** The default of Contractor, or any Subcontractor, receiving assistance under the Surety Bond and Finance Assistance Program to comply with its obligations under the Surety Bond and Finance Assistance Program.

**14.1.2 District's Remedies.** Without limitation to District's other rights or remedies under the Contract Documents or Applicable Laws, if there is an Event of Contractor Default the District shall have the right to exercise any one or combination of the following remedies:

**.1 Take Over Work.** District may, without terminating the Construction Contract and without incurring any additional liability or responsibility to Contractor (including, without limitation, any obligation to increase the Contract Sum Payable or Contract Time for any portion of the taken-over or non-taken-over Work) take over and perform, or engage others to perform, all or a portion of the Work.

**.2 Suspend Work.** District may, without terminating the Construction Contract and without incurring any additional liability or responsibility to Contractor (including, without limitation, any obligation to increase the Contract Sum Payable or Contract Time for any portion of the suspended or non-suspended Work), suspend Contractor's performance of all or a portion of the Work for as long a period of time as District determines, in its sole discretion, appropriate.

**.3 Termination.** District may, without incurring any additional liability or responsibility to Contractor, terminate the Construction Contract, the Work or any portion thereof.

**.4 Surety.** If there is an Event of Contractor Default pursuant to any of Subparagraphs 14.1.1.1 through 14.1.1.5, above, District may, with or without terminating the Construction Contract and without incurring any additional liability or responsibility to Contractor or Surety (including, without limitation, any obligation to increase the Contract Sum Payable or Contract Time for any portion of the Work), exercise its rights under the Performance Bond by giving Surety ten (10) Days' written notice of demand to perform; provided, however, that if the Surety fails, within seven

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Bid No. 10(25-26)FP

Pomona Unified School District

Page 175

## GENERAL CONDITIONS

(7) Days after receipt by Surety of written demand, to deliver to District written notice of its unconditional intention to perform or does not commence performance of the Work within ten (10) Days from receipt of such notice of demand, District may, at the expense of Contractor and Surety, and with or without terminating the Construction Contract, proceed to complete the Work by any other means District deems expedient. By executing its Performance Bond incorporating the terms of the Construction Contract, Surety shall be deemed to have agreed, without limitation, to the provisions of this Paragraph 14.1.2 as a binding obligation of Surety under its Performance Bond that shall control over any conflicting provisions set forth in the Performance Bond.

14.1.3 Contractor Tools, Equipment. Upon District's exercise of one or more of its remedies following an Event of Contractor Default, District shall have the right, but not the obligation, to perform or complete all or any portion of the Work using any means that District may deem expedient, including, without limitation, the taking possession of and utilizing any or all of the materials, equipment, appliances, tools, plant and other property belonging to Contractor as may be on the Site for District's use in performing the Work.

14.1.4 Contractor Obligations. Upon exercise by District of its remedies following an Event of Contractor Default, Contractor shall, unless Construction Manager directs in writing otherwise, do the following:

.1 Immediately discontinue performance of the Work to the extent specified in writing by Construction Manager;

.2 Remove no materials, equipment or tools from the Site unless directed to do so by Construction Manager and take all actions necessary, or that Construction Manager may direct in writing, for the protection and preservation of the Work, any materials, equipment or tools at the Site and any materials or equipment in transit to the Site;

.3 Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for Contractor to continue performance of such portion, if any, of the Work that is not discontinued or terminated by District in its written notice;

.4 Provide to Construction Manager, in writing, no later than two (2) Days after request by Construction Manager, a statement: (1) listing all subcontracts, purchase orders and contracts between Contractor and each Subcontractor that are outstanding, as well as any change orders, amendments and modifications thereto; (2) of the status of invoicing, payments and balance owing under each such subcontract, purchase order and contract; (3) of the status of performance and any claims asserted under each such subcontract, purchase order and contract; and (4) such other information as Construction Manager may determine necessary in order to decide whether to accept assignment of any such subcontract, purchase order or contract;

.5 Promptly following and in accordance with District's written direction: (1) assign to District or its designee those subcontracts, purchase orders or contracts, or portions thereof, between Contractor and a Subcontractor that District elects to accept by assignment; (2) cancel, on the most favorable terms reasonably possible, any subcontract, purchase order or contract, or portion thereof, that District does not elect to accept by assignment; and (3) if requested by District, settle, with the prior written approval of District of the terms of settlement, all outstanding liabilities to Subcontractors with respect to the Work terminated or discontinued;

.6 Not terminate any insurance required by the Contract Documents;

## GENERAL CONDITIONS

.7 Thereafter continue only such performance as may be directed by Construction Manager;

.8 Deliver to Construction Manager all Design Documents and Project Documents in the possession or control of Contractor; and

.9 At the written request and option of Construction Manager, exercised in its sole discretion, transfer title and deliver to Construction Manager any completed items materials, products, equipment or other unincorporated parts of the Work that have not been previously delivered to the Site.

### 14.1.5 Accounting and Payment

#### **.1 Full Termination or Discontinuance.**

(1) **Further Payment.** In the event of an exercise by District of any of its remedies following an Event of Contractor Default that results in a termination or discontinuance of the entire Work, then no further payment shall be due to Contractor for the Work until an accounting has been conducted in accordance with this Paragraph 14.1.5.

(2) **Time for Accounting.** Within sixty (60) Days after: (1) Final Completion of the Work by Contractor, Surety, District or others at request of District; and (2) responsibility for all actual and threatened Losses to District, including, without limitation, claims or demands by Contractor, Subcontractors or others for payment for Work performed, has been finally adjudged by a court or arbitrator in accordance with the dispute resolution provisions of the Contract Documents, an accounting shall be made pursuant to this Paragraph 14.1.5 of the amount due to Contractor or District.

(3) **Payment Amount.** If, based on the accounting conducted pursuant to this Paragraph, Contractor Amount as calculated in accordance with Part (4), below, of this Subparagraph 14.1.5.1, exceeds the District Amount as calculated pursuant to Part (5), below, of this Subparagraph 14.1.5.1, then the difference shall be paid by District to Contractor within thirty (30) Days after demand by Contractor following completion of such accounting. If the District Amount exceeds Contractor Amount, then the difference shall be paid by Contractor to District within thirty (30) Days after demand by District following completion of such accounting.

(4) **Contractor Amount.** Contractor Amount used as the basis for payment pursuant to Part (3), above, of this Subparagraph 14.1.5.1 shall be calculated as follows:

(a) take a portion of the Contract Sum Payable determined by multiplying (i) the Contract Sum Payable, by (ii) Construction Manager's good faith determination of the percentage of the Work that at the time of such termination or discontinuance was properly performed by Contractor and either in permanent place or fabricated and delivered to the Site at the written request of Construction Manager; and

(b) subtract all amounts previously paid by District for Work to Contractor or to Subcontractors.

(5) **District Amount.** The District Amount used as the basis for calculating payment pursuant to Part (3), above, of this Subparagraph 14.1.5.1 shall be the sum of all past, present and future Losses to District resulting or reasonably certain to result, directly or indirectly, from any or all of the following: (a) any failure on the part of Contractor or the Subcontractors to comply with the requirements of the Contract Documents (including, but not limited to, the Event of Contractor Default

## GENERAL CONDITIONS

that was the basis of District's termination or discontinuance); (b) District's exercise of its rights and remedies under and in accordance with the Contract Documents or Applicable Laws following the occurrence of an Event of Contractor Default; or (c) the payment by District of amounts to Contractor or any Subcontractor that were not properly reimbursable to Contractor or that were in excess of the amount to which Contractor was entitled under the Contract Documents.

**.2 Partial Termination or Discontinuance.** In the case of an exercise by District of its remedies for an Event of Contractor Default that results in a discontinuance or termination of only a portion of the Work, then the Contract Sum Payable and Contract Time shall be adjusted under the provisions of Articles 7 and 8, above, applicable to Deleted Work. Contractor shall thereafter continue to be paid for its performance of the other portions of the Work in accordance with the terms of the Contract Documents, less any amounts that District is entitled to withhold on account of any Loss resulting from, or threatened as a result of, Contractor's default.

**.3 Exclusive Compensation.** Contractor agrees to accept such amounts, if any, as allowed under this Paragraph 14.1.5 as its sole and exclusive compensation in the event of an exercise by District of its remedies permitted by the Contract Documents or Applicable Laws following an Event of Contractor Default.

**14.1.6 Surety.** Without limitation to any of District's other rights or remedies under the Performance Bond, Contract Documents or Applicable Laws, District has the right to suspend, take over or terminate the performance of the Work by Surety in the event of any of the following: (1) failure of Surety or its contractor to begin the Work within a reasonable time in such manner as to ensure full compliance with the Contract Documents within the Contract Time; (2) abandonment of the Work by Surety or its contractor; (3) if at any time District is of the good faith opinion the Work is unnecessarily or unreasonably delayed by Surety or its contractor; (4) violation by Surety or its contractor of any terms of the Contract Documents, Performance Bond or Applicable Laws; or (5) failure by Surety or its contractor to follow instructions of District or Construction Manager for performance of the Work within the Contract Time. By executing its Performance Bond incorporating the terms of the Construction Contract, Surety shall be deemed to have agreed, without limitation, to the provisions of this Paragraph 14.1.6 as a binding obligation of Surety under its Performance Bond that shall control over any conflicting provisions set forth in the Performance Bond.

**14.1.7 Conversion.** In the event of termination for cause by District that is adjudged by a court or by binding arbitration conducted in accordance with the Contract Documents to have been wrongful, District shall pay Contractor the amount due Contractor, if any, provided for in Paragraph 14.1.5, above. Contractor agrees to accept such amount, if any, as its sole and exclusive compensation and agrees to waive any right to recovery of any other compensation or Loss, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity or other consequential, direct, indirect or incidental damages, of any kind.

**14.1.8 Substantial Performance Waived.** The legal doctrine that a contractor may recover for substantial performance of a building contract is to have no application to the Construction Contract. Any Event of Contractor Default, whether occurring before or after the Work is Substantially Completed, shall be deemed material and shall give rise to the right of District to exercise any of its remedies permitted under the Contract Documents or Applicable Laws.

**14.1.9 Cross Default.** Contractor agrees that a breach of any other agreement between Contractor and District, whether related or unrelated to the Project, that is not cured in accordance with the terms of such other agreement constitutes an Event of Contractor Default under the Construction Contract, thereby entitling District to assert all its rights and remedies hereunder including, but not limited to, a specific right of set-off by District against any amounts otherwise payable to Contractor under the Construction Contract or any other agreement between Contractor and District.

## GENERAL CONDITIONS

**14.1.10 Rights Cumulative.** All of District's rights and remedies under the Contract Documents are cumulative, and shall be in addition to and not a limitation upon to those rights and remedies available under Applicable Laws. Designation in the Contract Documents of certain defaults as "material" shall not be construed as implying that other defaults not so designated are not material nor as limiting District's right to terminate or the exercise of its other rights or remedies for default to only material defaults. No termination or action taken by District after termination shall prejudice any rights or remedies of District provided by Applicable Laws or the Contract Documents, including, without limitation, the right of District to proceed against Contractor to recover all Losses suffered by reason of Contractor's default.

### **14.2 SUSPENSION BY DISTRICT FOR CONVENIENCE**

**14.2.1 Suspension Order.** Without limitation to District's rights under Section 14.1, above, District may, at any time and from time to time, without the occurrence of any Event of Contractor Default or other cause, order Contractor, in writing, to suspend, delay or interrupt performance of the Work, in whole or in part. Upon receipt of such suspension order, Contractor shall comply with its terms and take all reasonable steps to minimize costs allocable to the Work covered by the suspension order during the period of the Work stoppage.

**14.2.2 Resumption.** If a suspension order issued by District pursuant to this Section 14.2 is canceled or expires, Contractor shall resume and continue with the Work. A Change Order or Unilateral Change Order will be issued adjusting the Contract Sum Payable and the Contract Time for additional Allowable Costs and Allowable Markups thereon, and for additional compensation allowed for Compensable Delay under Article 8, above, necessarily caused by such suspension; provided, however, that no such adjustment shall be made: (1) to the extent that either performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor or any of the Subcontractors is responsible or for which Contractor would not be entitled to an adjustment of the Contract Sum Payable or Contract Time; (2) to the extent that either an adjustment to the Contract Sum Payable or Contract Time on account thereof is made or denied under another provision of the Contract Documents; or (3) for any general or specific escalation in prices of the Work.

**14.2.3 Limitation.** The provisions of this Section 14.2 shall not apply if a suspension order is not issued by District pursuant to this Section 14.2 nor shall such suspension order be required to stop the Work if such suspension or stoppage is permitted or required under any other provision of the Contract Documents.

### **14.3 TERMINATION BY DISTRICT WITHOUT CAUSE**

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

**14.3.2 Contractor Obligations.** Upon receipt of notice of termination without cause pursuant to this Section 14.3, Contractor shall, unless such notice directs otherwise, comply with all of the provisions of Paragraph 14.1.4, above.

**14.3.3 Contractor Compensation.** Following termination by District without cause and within sixty (60) Days after receipt by Construction Manager of a complete and timely Application for Payment from Contractor, an accounting shall be conducted in accordance with the accounting process set forth in Paragraph 14.1.5, above. In such event, the amount due to Contractor shall be as calculated in the same manner provided for in Paragraph 14.1.5, above, except that in the case of a full termination of the entire Work there shall be added thereto an amount for the reasonable, actual and direct Allowable Costs

## GENERAL CONDITIONS

(with no Allowable Markup or other markup or multiplier) incurred and paid by Contractor for: (1) demobilizing its facilities from the Site; and (2) administering the close out of its participation in the Project for a period of no longer than fifteen (15) Days.

**14.3.4 Exclusive Compensation.** Contractor agrees to accept the compensation allowed under Paragraph 14.3.3, above, as its sole and exclusive compensation in the event of a termination by District for convenience and waives any claim for Loss related to District's termination for convenience, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect, or incidental damages, of any kind.

**14.3.5 Subcontractors.** Contractor shall include provisions in all of its subcontracts, purchase orders and other contracts with the Subcontractors permitting termination for convenience by Contractor on terms that are consistent with, and that afford no greater rights of recovery against Contractor for termination than are afforded to Contractor under, this Section 14.3.

**14.3.6 Reinstatement of Project.** If the Construction Contract is terminated or suspended for any reason other than Contractor's default or failure of Contractor to comply with the Contract Documents and if District elects to proceed with a project at the Site which includes the elimination of portable classrooms and replacement with new classrooms or addition of classrooms, then District shall give written notice to Contractor. In such event, District and Contractor shall reinstate the Project, and District and Contractor shall enter into a new contract, with reasonable adjustments to the documentation as is appropriate to reflect the then current circumstances, including the Contract Price.

### **14.4 TERMINATION BY CONTRACTOR**

**14.4.1 Contractor's Remedies.** Subject to the provisions of Paragraphs 14.4.2 and 14.4.3, below, Contractor's sole right to terminate the Construction Contract shall be its right to terminate, for cause only, upon the occurrence of either of the following:

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

**.2** The Work is suspended by Contractor in accordance with Section 9.7, above, for a continuous period of thirty (30) Days.

**14.4.2 Notice of Intention to Terminate.** If one of the reasons to terminate as described in Paragraph 14.4.1 exists, Contractor may upon thirty (30) Days' written notice to District, terminate the Construction Contract and recover from District as its sole and exclusive compensation such sums as permitted under Paragraph 14.3.3, above.

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

### **14.5 WARRANTIES**

All obligations of Contractor and the Subcontractors under the Contract Documents with respect to warranties and guaranties of the Work will continue in force and shall apply, notwithstanding a termination or other discontinuance of the Work by District or Contractor pursuant to an exercise of its rights under this Article 14, to any portion of the Work that at the time of such termination or discontinuance is performed by Contractor to the point that it is substantially ready (exclusive of any

## GENERAL CONDITIONS

incidental work that may be needed to connect such portion to other Work to other Work or Existing Improvements or to energize such portion of the Work for operation) for use or occupancy by District.

### **ARTICLE 15 NON-DISCRIMINATION**

#### **15.1 NON-DISCRIMINATION IN SERVICES**

**15.1.1** Contractor must, in accordance with Applicable Laws, not discriminate in the provision of services hereunder because of race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability. For the purpose of this Section 15.1, discrimination in the provision of services may include, but is not limited to the following:

- .1** Denying any person any service or benefit or the availability of a facility.
- .2** Providing any service or benefit to any person which is not equivalent to, or is in a non-equivalent manner or at a non-equivalent time from, that provided to others.
- .3** Subjecting any person to segregation or separate treatment in any manner related to the receipt of any service.
- .4** Restricting any person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit.
- .5** Treating any person differently from others in determining admission, enrollment, eligibility, membership, or any other requirement or condition which persons must meet in order to be provided any service or benefit.

**15.1.2** Contractor shall ensure that services are provided without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability.

**15.1.3** Contractor shall establish and maintain written procedures under which any person, applying for, performing or receiving services hereunder, may seek resolution from Contractor of a complaint with respect to any alleged discrimination. Such persons shall be advised by Contractor of these procedures. A copy of such procedures shall be posted by Contractor in a conspicuous place, available and open to the public, in each of Contractor's facilities where services are provided hereunder.

#### **15.2 NON-DISCRIMINATION IN EMPLOYMENT**

Contractor must, in accordance with Applicable Laws, not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability. Without limitation to any other provisions of this Section 15.2, in the performance of the obligations under the Contract Documents, Contractor and the Subcontractors shall comply with all applicable provisions of the California Fair Employment Practices Act (California Government Code Sections 12940-48) and the applicable equal employment provisions of the Civil Rights Act of 1964 (42 U.S. C. 200e - 217), whichever is more restrictive. Contractor and the Subcontractors shall ensure that qualified applicants are employed and that employees are treated during employment without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability, in accordance with requirements of Applicable Laws. Such shall include, but not be limited to, the following:

- .1** Employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation.
- .2** Selection for training, including apprenticeship.



## GENERAL CONDITIONS

**15.2.1** Contractor agrees to post in conspicuous places in each of Contractor's facilities providing services hereunder, available and open to employees and applicants for employment, notices setting forth the provisions of this Section 15.2.

**15.2.2** Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability, in accordance with requirements of Applicable Laws.

**15.2.3** Contractor shall send to each labor union, or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or the workers' representative of Contractor's commitments under this Section 15.2.

**15.2.4** Contractor certifies and agrees that it will deal with the Subcontractors, bidders and vendors without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability, in accordance with the requirements of Applicable Laws.

**15.2.5** In accordance with Applicable Laws, Contractor shall allow duly authorized representatives of the County, State, and Federal government access to its employment records during regular business hours in order to verify compliance with the provisions of this Section 15.2. Contractor shall provide such other information and records as such representatives may require in order to verify compliance with the provisions of this Section 15.2.

**15.2.6** If District finds that any of the provisions of this Section 15.2 have been violated by Contractor or any of the Subcontractors, such violation shall constitute a material breach of the Construction Contract upon which District may cancel, terminate or suspend the Construction Contract. While District reserves the right to determine independently that the anti-discrimination provisions of the Construction Contract have been violated, in addition, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that Contractor or the Subcontractor has violated State or Federal anti-discrimination laws shall constitute a finding by District that Contractor or the Subcontractor has violated the provisions of this Section 15.2.

**15.2.7** Contractor hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and similar Applicable Laws relating to employment of or access to persons with disabilities, all requirements imposed by applicable Federal Regulations, and all guidelines and interpretations issued pursuant thereto, to the end that no qualified disabled person shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of Contractor receiving Federal Financial Assistance.

### END OF GENERAL CONDITIONS

**EXHIBIT "C"**

**CHANGE ORDER FORM**

Project: \_\_\_\_\_  
 Project No.: \_\_\_\_\_  
 Change Order No.: \_\_\_\_\_  
 Date: \_\_\_\_\_

**The Contract is changed as follows: [INSERT DESCRIPTION OF CHANGE AND REASON FOR CHANGE]**

Original Contract Price: \$ \_\_\_\_\_

Net change by previously authorized Change Orders: \$ \_\_\_\_\_

Contract Price prior to this Change Order: \$ \_\_\_\_\_

Contract Price will be ☐ increased ☐ decreased ☐ unchanged \$ \_\_\_\_\_

New Contract Price including this Change Order: \$ \_\_\_\_\_

Date of Substantial Completion prior to this Change Order is: \_\_\_\_\_

Contract Time will be: ☐ increased ☐ decreased ☐ unchanged by \_\_\_\_\_ days

New Date of Substantial Completion is: \_\_\_\_\_

***NOTE: By execution of this Change Order, Contractor accepts the Contract Price change and the Contract Time change, if any, and expressly waives any claims for any additional compensation, payment, damages, or time extension, in connection with the above-referenced changes.***

_____ Contractor	By	_____ Authorized Representative	_____ Date
_____ District	By	_____ Authorized Representative	_____ Date
_____ Construction Manager	By	_____ Authorized Representative	_____ Date
_____ Design Consultant	By	_____ Authorized Representative	_____ Date