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1. GENERAL PROVISIONS

1.1. Basic Definitions

1.1.1. ACCEPTANCE means the point that the Work as a whole is accepted by the Board of Trustees.

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 at the Site; provided, however, that precipitation 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 ("NOAA") according to NOAA's records of measurable precipitation and winds taken at NOAA's recording station, located within the Orange County area, that is nearest to the Site.

1.1.3. ACTION OF THE GOVERNING BOARD is a vote of a majority of the members in a lawful meeting.

1.1.4. ADDENDUM means written or graphic information (including, without limitation, Drawings or Specifications) prepared and issued by the District prior to execution of the Design-Build Contract, which modifies or interprets the Pre-Qualification Documents, RFP Documents or Contract Documents by additions, deletions, clarifications, or corrections.

1.1.5. ADMITTED SURETY means a surety insurer that is duly certified pursuant to California Insurance Code §995.120 to transact business as a surety in the State of California.

1.1.6. ADVERTISEMENT OF REQUEST FOR PRE-QUALIFICATION OF DESIGN-BUILD ENTITIES means the notice published by the District inviting Design-Build Entities to submit for pre-qualification.

1.1.7. AGREED DSA REVIEW TIME means the agreed period of time, initially proposed by Proposer in its Design-Build Proposal and thereafter accepted by District as part of terms of the Design-Build Contract, for review of the Construction Documents by DSA.

1.1.8. AGREEMENT means and includes collectively all Project Documents.

1.1.9. AGREEMENT TO PREPARE AND SUBMIT DESIGN-BUILD PROPOSAL means the agreement between the District and Proposer for preparation and submission by Proposer of its Design-Build Proposal.

1.1.10. ALLOWABLE COSTS means the costs listed in Paragraph 7.7.3, below, that are to be used in calculating Contract Adjustments.

1.1.11. ALLOWABLE MARKUPS means the percentage markups specified in Paragraph 7.7.5, below, that are to be used in calculating Contract Adjustments.

1.1.12. ALLOWANCE means an estimated amount identified by the District in the RFP Documents that Proposer is required to include in its Base Price as an assumed budget for a design element of the Project that has not yet been sufficiently developed by District to permit it to be definitively estimated by the Design-Build Entity. No portion of the Work shall constitute an Allowance unless expressly identified as an "Allowance" in the Section 4.4 of the Design-Build Contract.

1.1.13. ALTERNATE means a proposed alternative for adding or deleting a particular material, system, product, method or construction, which may consist of either: (1) a Required Alternate; or (2) a Voluntary Alternate.
1.1.14. **APPEAL COMMITTEE** means the committee appointed by the Board of Trustees to hear protests filed relative to the processes, or the District’s implementation of the processes, set forth in the Request for Pre-Qualification or Request for Proposals.

1.1.15. **APPLICABLE LAWS** means all statutes, ordinances, rules, regulations, policies and guidelines enacted by Governmental Authorities (including, without limitation, Environmental Laws and Disability Laws), codes adopted or promulgated by Governmental Authorities (including, without limitation, building and health and safety codes), lawful orders of Governmental Authorities and common law, including, but not limited to, principles of equity applied by the courts of the State of California, which are in effect at the time the Work is performed.

1.1.16. **APPLICANT** means a Design-Build Entity that has submitted a Proposal Submittal in response to the Request for Proposal issued by the District.

1.1.17. **APPLICATION FOR PAYMENT** means Design-Build Entity’s itemized application for Progress Payment or Final Payment prepared, submitted and substantiated for review and approval by District in accordance with the requirements of the Contract Documents.

1.1.18. **APPROVAL** means written authorization by District.

1.1.19. **APPROVED DEVIATION** means a deviation from the requirements of the Project Criteria, RFP Documents, Design-Build Contract or General Conditions that is either: (1) set forth in an RFP Addendum or (2) contained in Construction Documents prepared by Design-Build Entity and approved by or on behalf of District in the manner provided for in Paragraph 3.2.5, below.

1.1.20. **ARCHITECT OF RECORD** means the individual acting as the licensed architect that a Design-Build Entity proposes in its Design-Build Proposal will assume responsibility for preparing the Construction Documents and whose professional certification stamp will appear on the Construction Documents prepared by the Design-Build Entity if the Design-Build Entity receives Award of the Design-Build Contract.

1.1.21. **ARCHITECT OF RECORD’S FIRM** means, in the case of an Architect of Record who is an employee of a sole proprietorship, corporation, partnership or other association, the sole proprietorship, corporation, partnership or other association that employs the Architect of Record.

1.1.22. **ASSOCIATES** means all of the following with respect to any person, entity, or association of persons or entities about whom information is requested in the Pre-Qualification Documents: (1) the current license qualifier (such as, without limitation, the responsible managing employee or responsible managing officer) for each current and active contracting license issued by the State of California Contractors State License Board that is held by such person, entity or association; (2) in the case of an entity that is a corporation, all current officers of the corporation; (3) in the case of an association that is a partnership, all current partners of the partnership; (4) in the case of an association that is a joint venture, all current joint venturers of the joint venture; or (5) in the case of an association that is not a partnership or joint venture, all members of such association.

1.1.23. **AWARD** means the action of the Board of Trustees duly approving by resolution the District’s entering into the Design-Build Contract.

1.1.24. **BASE PRICE** means the price, expressed as a firm and fixed lump sum dollar amount, stated in a Design-Build Proposal as the Proposer’s total price to perform the Work, exclusive of adjustments for Required Alternates.

1.1.25. **BOARD OF TRUSTEES** means the governing board of the South Orange County Community College District.

1.1.26. **CADD STANDARDS** means the standards developed by the District Criteria Architect setting forth the basic requirements for production and use of electronic files of documents depicting design information.
1.1.27. **CERTIFICATION FOR PAYMENT** means the statement from the District certifying the Good Faith Determination made by District of the amount of money due to the Design-Build Entity upon an Application for Payment.

1.1.28. **CHANCELLOR** means the Chancellor of the South Orange County Community College District or his/her designee.

1.1.29. **CHANGE** means a modification, change, addition, substitution or deletion in the Work or in Design-Build Entity’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 Design-Build Entity is entitled to a Contract Adjustment on any basis other than for Compensable Change, Deleted Work or Compensable Delay.

1.1.30. **CHANGE ORDER** means a written instrument, signed in accordance with the requirements of the General Conditions, setting forth the agreement of District and Design-Build Entity on the terms of a Contract Adjustment.

1.1.31. **CHANGE ORDER REQUEST** means Design-Build Entity’s written request pursuant to Paragraph 7.6.2, below, for a Contract Adjustment.

1.1.32. **CLAIM** means a written demand or assertion by the District or Design-Build Entity 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) claims by the District for Defective Work first discovered by District after Final Payment by the District to the Design-Build Entity; (3) stop notice claims by Subcontractors or Subconsultants; or (4) the right of the District to specific performance or injunctive relief to compel performance or enjoin an action.

1.1.33. **CLAIMS DISPUTE RESOLUTION PROCESS** means the process of resolution of Claims set forth in Section 4.5, below.

1.1.34. **CLOSE-OUT DOCUMENTS** means all Record Documents, warranties, guarantees, technical information, operations manuals, replacement parts, excess and attic stock and other documents (including, without limitation, electronic versions and hard copies) and things required to be submitted by Design-Build Entity under the Contract Documents as a condition of Final Completion or Final Payment.

1.1.35. **COLLEGE** means Irvine Valley College, acting by and through the College President.

1.1.36. **COLLEGE PRESIDENT** means the person duly appointed by the Board of Trustees as President for the College or his/her designee.

1.1.37. **COMPENSABLE CHANGE** means circumstances involving the performance of Extra Work: (1) that are the result of (a) Differing Site Conditions, (b) amendments or additions to Applicable Laws which are enacted after the later of either (i) the date of submission by Design-Build Entity of its Design-Build Proposal, (c) a Change requested in a writing signed in the manner required by Article 7, below, for authorization of Compensable Changes, or (d) other circumstances involving a Change in the Work for which the Design-Build Entity is given under the Contract Documents a specific and express right to a Contract Adjustment of the Contract Sum; (2) that are not caused, in whole or in part, by (a) an act or omission of the Design-Build Entity or a Subcontractor or Subconsultant, of any Tier, constituting negligence, willful misconduct or a violation of an Applicable Law, (b) a failure by Design-Build Entity to comply with the Contract Documents, or (c) a Design Deficiency; (3) for which a Contract Adjustment is not prohibited by nor waived under the terms of the Contract Documents; and (4) that if performed would require the Design-Build Entity to incur additional and
unforeseeable Allowable Costs that would not have been required to be incurred in the absence of such circumstances.

1.1.38. **COMPENSABLE DELAY** means a Delay to the critical path of activities affecting Design-Build Entity’s ability to achieve Substantial Completion of the entirety of the Work within the Contract Time: (1) that is the result of (a) a Compensable Change, (b) the active negligence of the District, College, a District Consultant or a Separate Contractor, (c) a breach by District of an obligation under the Contract Documents, or (d) other circumstances involving Delay for which the Design-Build Entity is given under the Contract Documents a specific and express right to a Contract Adjustment to the Contract Sum; (2) that is not caused, in whole or in part, by (a) an act or omission of the Design-Build Entity or a Subcontractor or Subconsultant, of any Tier, constituting negligence, willful misconduct, or a violation of an Applicable Law, (b) a failure by Design-Build Entity to comply with the Contract Documents, or (c) a Design Deficiency; and (3) for which a Contract Adjustment to the Contract Time is neither prohibited nor waived under the terms of the Contract Documents.

1.1.39. **CONSTRUCTION DOCUMENTS** means all versions (in-progress and completed) of the Drawings and Specifications described in the Design Document Submission Standards as comprising the “Construction Documents” for the Project, including, without limitation, the Final Construction Documents.

1.1.40. **CONTRACT ADJUSTMENT** means an adjustment, additive or deductive, to the Contract Sum, Contract Time or both that is authorized in accordance with the requirements of the General Conditions.

1.1.41. **CONTRACT DOCUMENTS** means the following collection of documents governing the Design-Build Entity’s performance of the Work:

1.1.41.1. Project Criteria;
1.1.41.2. Approved Deviations;
1.1.41.3. RFP and RFQ Documents;
1.1.41.4. the Design-Build Qualifications and Proposal with the exception of Approved Deviations, the Contract Documents shall not include any portion of a Design-Build Proposal that deviates from the Project Criteria;
1.1.41.5. the Design-Build Contract;
1.1.41.6. other terms, conditions and requirements applicable to the performance of the Design-Build Contract and Work (including the General Conditions, any Supplementary and Special Conditions);
1.1.41.7. Addenda and other documents listed in the Design-Build Contract;
1.1.41.8. Final Construction Documents prepared by Design-Build Entity in accordance with the requirements and standards of the Contract Documents and approved by District; provided, however, that, with the exception of Approved Deviations, the Contract Documents shall not include any portion of the Final Construction Documents that deviates from the Project Criteria;
1.1.41.9. a Change Order issued in the manner required by the General Conditions;
1.1.41.10. a Unilateral Change Order signed in the manner required by the General Conditions;
1.1.41.11. a Field Order issued in the manner required by the General Conditions;
1.1.41.12. a written order for a Minor Change in the Work signed in the manner required by the General Conditions;
1.1.41.13. Reference Documents;
1.1.41.14. Labor Compliance Program; and;
1.1.41.15. Those documents, or portions or provisions of documents that, although not listed in Subparagraphs .1 through .16, above, are expressly cross-referenced therein or attached thereto.

1.1.42. **CONTRACT SUM** means the total amount of compensation stated in the Design-Build Contract that is payable to Design-Build Entity for the performance of the Work in accordance with the Contract Documents, as derived by taking the overall price stated by Design-Build Entity in its Design-Build Proposal, or if a Best and Final Offer is submitted, as stated by Design-Build Entity in its last submitted Best and Final Offer, as adjusted for (1) Contract Adjustments.

1.1.43. **CONTRACT TIME** means the total number of Days set forth in the RFP Documents and Design-Build Contract within which Design-Build Entity must achieve: (1) completion of the Final Construction Documents, (2) Substantial Completion of the Work and/or (3) Final Completion of the Work, as extended or shortened by Contract Adjustments.

1.1.44. **DATE OF COMMENCEMENT OF CONSTRUCTION** means the starting date set forth in the Notice to Proceed with Construction, which shall be no earlier than the first working day following issuance of the Notice to Proceed with Construction, from which is measured the Contract Time for Substantial Completion of the Work. If no Notice to Proceed with Construction is issued, then the Date of Commencement of Construction shall be the date that the Design-Build Entity actually commences Work at the Site in accordance with Paragraph 8.1.1, below.

1.1.45. **DATE OF COMMENCEMENT OF DESIGN** means the starting date set forth in the Notice to Proceed with Design, which shall be no earlier than the first working day following issuance of the Notice to Proceed with Design, from which is measured the Contract Time for completion of the Final Construction Documents. If no Notice to Proceed with Design is issued, then the Date of Commencement of Design shall be the date that the Design-Build Entity actually commences performance of the design portion of the Work following issuance by District of the Notice of Intent to Award.

1.1.46. **DAY**, whether capitalized or not, and unless otherwise specifically described as a work day or business day, means calendar day, including weekends and legal holidays.

1.1.47. **DETECTIVE WORK** means Work by Design-Build Entity or its Subcontractors or Subconsultants that contains, includes or constitutes: (1) a Design Deficiency; or (2) materials, equipment, labor, workmanship, construction services or other construction performed or provided by the Design-Build Entity or a Subcontractor or Subconsultant that is (a) faulty, omitted, incomplete, or deficient or (b) 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.

1.1.49. **DELETED WORK** means Work that is eliminated or its scope or cost reduced pursuant to a Change Order or Unilateral Change Order.

1.1.50. **DEPARTMENT OF INDUSTRIAL RELATIONS** means the Department of Industrial Relations of the State of California.

1.1.51. **DESIGN-BUILD CONTRACT** means the written contract executed between the District and the Design-Build Entity for the performance of the Work.

1.1.52. **DESIGN-BUILD ENTITY** means the person or entity under contract with the District pursuant to the Design-Build Contract as the term Design-Build Entity is defined by California Education Code §81701, et seq. .

1.1.53. **DESIGN-BUILD ENTITY MEMBER** means any and all of the individuals, corporations, partnerships, joint ventures or other associations of persons or entities that holds an ownership
interest in, or that shares in the profits and losses of, a Design-Build Entity. If a Design-Build Entity Member is itself a partnership, joint venture or other association of persons or entities, then the term Design-Build Entity Member also means and includes any and all of the individuals, corporations, partnerships, joint ventures or other associations of persons or entities that holds an ownership interest in, or that shares in the profits and losses of, such Design-Build Entity Member.

1.1.54. **DESIGN-BUILD SCHEDULE** means the detailed, critical path schedule prepared by the Design-Build Entity in accordance with the requirements of the Contract Documents showing the Design-Build Entity’s plan for performance of the Work within the Contract Time.

1.1.55. **DESIGN-BUILD TEAM** means the team assembled and proposed by a Design-Build Entity to design and build the Project, consisting of the Design-Build Entity and its proposed Architect of Record, Principal Engineers, Electrical Subcontractor, Mechanical Subcontractor and Other Subcontractors.

1.1.56. **DESIGN-BUILD ENTITY AMOUNT** means the component amount calculated on behalf of Design-Build Entity pursuant to Paragraph 14.1.5, below, that is used to determine the net amount payable to Design-Build Entity or District in the event of a partial or full termination or discontinuance of the Work.

1.1.57. **DESIGN-BUILD PROPOSAL (OR, PROPOSAL)** means the combined price and technical proposal (including, without limitation, any other documents required by the RFP Documents to be submitted with the Design-Build Proposal) initially submitted by the Proposer in response to the Request for Proposals.

1.1.58. **DESIGN-BUILD ENTITY’S OWN EXPENSE**, when used in the Contract Documents with regard to a stated circumstance, means that the Design-Build Entity agrees to pay for any Loss associated with such circumstance without reimbursement by the District and without adjustment to the Contract Sum or Contract Time. References to Design-Build Entity’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 the Design-Build Entity is responsible to bear, at its own expense, a particular risk or cost without compensation or reimbursement by the District.

1.1.59. **DESIGN CONSULTANT** means a District Consultant, if any, retained to oversee the Design-Build Entity’s performance of the design portion of the Work.

1.1.60. **DESIGN DEFICIENCY** means information contained in the Construction Documents, an Approved Deviation or a Submittal that:

1.1.60.1. constitutes a design, engineering or other technical error,

1.1.60.2. violates an Applicable Law,

1.1.60.3. violates an Applicable Law enacted after the time such information was first prepared and that Design-Build Entity fails promptly after such enactment to correct to conform to such Applicable Law,

1.1.60.4. conflicts or lacks coordination with information contained in another part of the Contract Documents, or

1.1.60.5. at the time such information was prepared conflicted or lacked coordination with other information relating to the Project, Work, Site or Existing Improvements that was either known to Design-Build Entity or that Design-Build Entity should have known in the performance of an obligation assumed by Design-Build Entity under the RFP Documents, Design-Build Contract or General Conditions; or

1.1.60.6. an omission in the Construction Documents, an Approved Deviation or a Submittal that, in some material respect, renders one or more of the details, elements or parts of the
Construction Documents, the Approved Deviation or the Submittal materially misleading or materially incomplete; or

1.1.60.7. information or an omission, not within the definitions of Design Deficiency set forth in Subparagraphs 1.1.63.1 or 1.1.63.2, above, in an Approved Deviation that when incorporated into the construction of the Work renders some other portion of the Work unsuitable to satisfy a portion or all of the requirements of the Project Criteria, other Approved Deviations or the Design Intent, unless Design-Build Entity has fully informed District in writing at the time Design-Build Entity requested approval of such information or omission as an Approved Deviation that such approval may result in rendering some other portion of the Work unsuitable to satisfy a portion or all of the requirements of the Project Criteria, other Approved Deviations or the Design Intent.

1.1.61. DESIGN DOCUMENT SUBMISSION STANDARDS means the standards set forth in the RFP Documents governing submission by Design-Build Entity of Construction Documents to the District and District Project Manager for their review and approval.

1.1.62. DESIGN DOCUMENTS means all originals, copies and drafts of plans, drawings, tracings, specifications, programs, reports, calculations, presentation materials, models and other writings or materials containing designs, specifications or engineering information prepared by Design-Build Entity or its Subconsultants or Subcontractors including, without limitation, computer aided design materials, electronic data files, and paper copies.

1.1.63. DESIGN FEE means the agreed, fixed fee that forms the basis for calculation of the compensation payable to Design-Build Entity pursuant to Article 14, below, in the event of a termination of the Design-Build Contract prior to start of physical construction at the Site.

1.1.64. DESIGN INTENT means the design intent of the Project as expressed in the Project Criteria and as further delineated in Paragraph 1.3.1, below.

1.1.65. DESIGNATION OF SUBCONTRACTORS means the list of proposed Subcontractors prepared by the Design-Build Entity pursuant to the RFP Documents, California Education Code §81704 (c), and California Public Contract Code §§4100 et seq.

1.1.66. DIFFERING SITE CONDITION means those unforeseen conditions described in Paragraph 4.4.9, below, that constitute a ground for Contract Adjustment.

1.1.67. DISABILITY 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 with respect to, or accessibility for, persons with disabilities, including, without limitation, the Americans With Disabilities Act (42 U.S.C. §§ 12101, et seq.) and the Fair Housing Amendments Act of 1988 (42 U.S.C. §§ 3604 et seq.).

1.1.68. DISCOVERY DATE generally used in reference to Design-Build Entity’s obligation to give written notice of certain facts, conditions or circumstances, means the earlier of the dates that Design-Build Entity or any Subcontractor or Subconsultant either: (1) discovered such facts, conditions or circumstances; or (2) should have discovered such facts, conditions or circumstances in the exercise of the level of care required by the terms of the Standard of Performance.

1.1.69. DISCUSSIONS means confidential, face-to-face exchanges between the District’s RFP Selection Committee and a Proposer for the purpose of: (1) validating the Design-Build Entity’s direction and philosophy; (2) clarifying Design-Build Proposals to assure a full understanding of, and responsiveness to, the requirements of the RFP Documents and (3) discussing any perceived weakness or deficiencies in a Design-Build Proposal. Discussions include both Pre-Scoring Discussions and Post-Scoring Discussions.
1.1.70. **DISTRICT** means the Governing Board of the South Orange County Community College District, for a community college district organized under the laws of the State of California, acting through its Chancellor, Vice Chancellor or their designees designated by him/her to act on his/her behalf.

1.1.71. **DISTRICT AMOUNT** means the component amount calculated on behalf of District pursuant to Paragraph 14.1.5, below, that is used to determine the net amount payable to Design-Build Entity or District in the event of a partial or full termination or discontinuance of the Work.

1.1.72. **DISTRICT CONSULTANT** means a consultant, engaged by the District to provided professional advice with respect to the design, construction or management of the Project.

1.1.73. **DISTRICT FURNISHED MATERIALS** means materials, equipment, goods, products or other items that are furnished by District to Design-Build Entity for incorporation into the Work by Design-Build Entity or a Subcontractor.

1.1.74. **DISTRICT PROJECT MANAGER** means the District Project Team member primarily responsible for management, oversight and supervision of the implementation of the Project.

1.1.75. **DISTRICT REVIEW DATE** means an end date(s) set forth in the Design-Build Schedule or Submittal Schedule for the District or a District Consultant to provide information, review documents or render decisions.

1.1.76. **DISTRICT REVIEW PERIOD** means a period of time set forth in the Design-Build Schedule or Submittal Schedule within which the Design-Build Entity has scheduled the District or a District Consultant to provide information, review documents or render decisions.

1.1.77. **DISTRICT WEBSITE** means the website maintained by the District at socccd.edu.

1.1.78. **DRAWINGS** means the graphic and pictorial portions of the Project Criteria or Construction Documents showing the design, location and dimensions of the Work, including plans, elevations, details, schedules and diagrams. The term "Drawings" is used interchangeably with "Plans."

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

1.1.80. **DSA REVIEW TIME** means the actual period of time of review by DSA of the Construction Documents, commencing from the date that the first full or incremental of Construction Documents, is first submitted by Design-Build Entity to DSA for review and ending on the date that DSA issues its final approval thereof.

1.1.81. **ELECTRICAL SUBCONTRACTOR** means the specialty contractor, holding a Class C10 (electrical) contractor’s license issued by the State of California Contractors State License Board that is current, active and in good standing at the time of the Design-Build Entity Proposal submittal and for the duration of the Work, who an Applicant or Proposer proposes to assume responsibility for the construction of the electrical trade portion of the Work.

1.1.82. **ENVIRONMENTAL LAWS** means all applicable federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any Governmental 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 Site or Existing Improvements (including, 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 Site or Existing Improvements), 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. §§ 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 [42 U.S.C. §§ 6901 et seq.]; the Clean Water Act (also known as the Federal Water Pollution Control Act) [33 U.S.C. §§ 1251 et seq.]; the Toxic

1.1.83. **ESCROW AGENT** means the entity serving as escrow agent pursuant to California Public Contract Code § 22300 in connection with the deposit of securities or retention.

1.1.84. **EVENT OF DESIGN-BUILD ENTITY DEFAULT** means events constituting default by Design-Build Entity as set forth in Paragraph 14.1.1, below.

1.1.85. **EXCUSABLE DELAY** means a Delay, other than a Compensable Delay, to Design-Build Entity’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 a Design Deficiency, an act or omission of Design-Build Entity, a Subcontractor or a Subconsultant, of any Tier, constituting negligence, willful misconduct, a violation of an Applicable Law or a failure by Design-Build Entity to comply with the Contract Documents; (2) unforeseeable, unavoidable and beyond the control of Design-Build Entity and the Subcontractors and Subconsultants, of every Tier; and (3) the result of a Force Majeure Event. Without limitation to the foregoing, neither the bankruptcy, insolvency nor financial inability of Design-Build Entity or a Subcontractor or Subconsultant, of any Tier, nor any failure by a Subcontractor or Subconsultant, of any Tier, to perform any obligation imposed by contract or Applicable Laws, shall constitute a ground for Excusable Delay.

1.1.86. **EXISTING IMPROVEMENTS** means all improvements that, as of the Final Proposal Submission Date are located above or below the surface of the ground at the Site, including but not limited to existing buildings, utilities, infrastructure improvements and other facilities.

1.1.87. **EXTRA WORK** means labor, materials, equipment, services or other work, not reasonably inferable from the design and other information set forth in the Contract Documents, the performance of which requires the expenditure by the Design-Build Entity of additional and unforeseen Allowable Costs of performance. References to Extra Work shall not be interpreted to mean or imply that the Design-Build Entity is entitled to a Contract Adjustment unless such Extra Work constitutes a Compensable Change.

1.1.88. **FACILITIES MASTER PLAN** means the master plan showing where the improvements for the Project are proposed to be located at the College and specifying, where appropriate, approximate square footages, building footprints and infrastructure.

1.1.89. **FIELD ORDER** means a written instrument signed in accordance with the requirements of Article 7 below, 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 a Contract Adjustment; or (3) establishes a mutually agreed basis for Contract Adjustment under circumstances where performance of the Compensable Change needs to proceed in advance of complete substantiation and evaluation of the impact thereof on the Contract Sum or Contract Time.
1.1.90. **Final Completion, Finally Complete** mean the point at which the following conditions have occurred with respect to the entire Work: (1) the Work is fully completed, including all minor corrective, or "punch list," items; (2); (3) the 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; (4) all conditions for Substantial Completion of the Work have been, and continue to be, fully satisfied; (5) all conditions within the control or responsibility of Design-Build Entity or its Subcontractors or Subconsultants and pertaining to the Work that are required for the release of District’s obligations to Governmental Authorities (including, but not limited to, matters involving grading, flood control, public works, transportation and traffic) have been satisfied; and (6) Final Acceptance of the Work.

1.1.91. **Final Completion Punch List** means the list of items of Work to be completed or corrected by Design-Build Entity for Final Completion.

1.1.92. **Final Construction Documents** means the 100% completed and coordinated Construction Documents prepared by Design-Build Entity that are approved by the District, including any changes and corrections required by Governmental Authorities.

1.1.93. **Final Payment** means payment by the District to the Design-Build Entity of the entire unpaid balance of the Contract Sum following Final Completion.

1.1.94. **Final Proposal Submission Date** means the date that a Proposer submitted its Design-Build Submittal.

1.1.95. **Force Majeure Event** means, and is restricted to, any the following if and to the extent not caused by a Design Deficiency, an act or omission of the Design-Build Entity or a Subcontractor or Subconsultant, of any Tier, constituting negligence, willful misconduct, a violation of an Applicable Law or a failure by Design-Build Entity to comply with the Contract Documents: (1) Acts of God occurring at the Site; (3) terrorism or other acts of a public enemy; (4) actions or inactions of Governmental Authorities (other than action or inaction of DSA in connection with its review or approval or disapproval of the Construction Documents); (5) action or inaction of DSA in connection with its review or approval or disapproval of the Construction Documents that results in the DSA Review Time exceeding the Agreed DSA Review Time; (6) epidemics or quarantine restrictions; or (7) unusual shortages in materials that are supported by documented proof that (a) the Design-Build Entity 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 on the Final Proposal Submission Date.

1.1.96. **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 Design-Build Schedule, that isolates and quantifies a time impact of a specific issue,
determines and demonstrates any such specific Delay in relation to past and/or other current Delays and provides a method for incorporating all Contract Adjustments to the Contract Time into an update of the approved Design-Build Schedule.

1.1.97. GENERAL CONDITIONS means the herein set forth general terms and conditions governing performance of the Work.

1.1.98. GENERAL CONTRACTOR means the general contractor who an Applicant or Proposer proposes to assume responsibility for the subcontracting, management, supervision and administration of the construction of the Project, holding (except as otherwise permitted by Pre-Qualification Documents or RFP Documents) a Class “B” (general contracting) contractor’s license issued by the State of California Contractors State License Board that is current, active and in good standing.

1.1.99. GENERAL REQUIREMENTS means Division 1 of the Specifications of the Contract Documents setting forth detailed procedures and standards applicable to the Work.

1.1.100. GOOD FAITH DETERMINATION means a determination made by the Executive Director of Facilities Planning, Purchasing and Material Management, which he/she believes in good faith to be a proper exercise of District’s rights and to have a reasonable basis in fact, whether or not such determination is in fact proper, reasonable or correct or adjudged to be so. Design-Build Entity shall comply with the terms of all Good Faith Determinations; but unless the Contract Documents otherwise expressly provide, a Good Faith Determination shall not be interpreted as precluding the Design-Build Entity from exercising its rights of recourse or recovery pursuant to the Claims Dispute Resolution Process as defined in Section 4.5, below.

1.1.101. GOVERNMENTAL AUTHORITY means the United States, the State of California, the County of Orange, the City in which the Project is located, any other local (other than county, regional, state or federal political subdivision, authority, 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, Design-Build Entity or District, including, without limitation, any Governmental Authorities (including, without limitation, DSA) having jurisdiction to review and approve or reject the Construction Documents, Contract Documents or the Work based on compliance or non-compliance with Applicable Laws.

1.1.102. GOVERNMENTAL AUTHORITY REVIEW PERIOD means a period of time set forth in the Design-Build Schedule or Submittal Schedule for Governmental Authority review or approval of the Work.

1.1.103. 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.

1.1.104. HAZARDOUS SUBSTANCE means either of the following: (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.

1.1.105. HOLIDAY means those Days recognized by District as being legal holidays for its staff and employees, comprised of the following, each of 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; and New Year’s (approximately two weeks surrounding dates: December 24 to January 1).

1.1.106. **ILLNESS AND INJURY PREVENTION PLAN** (or, IIPP) means the plan prepared by the Design-Build Entity setting forth the general safety policies and procedures governing the Design-Build Entity’s performance of the Work.

1.1.107. **INDEMNITEES** means those persons or entities listed in Subparagraph 3.18.1, below, as the “Indemnitees”.

1.1.108. **INSTRUCTIONS TO APPLICANTS** means that portion of the Request For Proposal Documents, so titled, issued to Applicants setting forth the requirements and procedures for Design-Build Entities seeking to participate in the Request for Proposals process for the Project.

1.1.109. **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, §§ 81130.3 et seq.) and applicable provisions of the California Code of Regulations with a class rating sufficient for the Work.

1.1.110. **INSTRUCTIONS TO PROPOSERS** means that portion of the RFP Documents, so titled, issued to Design-Build Entities who submit Design-Build Proposals, setting forth the requirements and procedures applicable to the Request for Proposals process and the Award of the Design-Build Contract.

1.1.111. **INTEGRATED PROJECT DELIVERY** means the integration of people, systems, business structures, and practices into a process that collaboratively harnesses the talents and insights of all participants through all phases of design, fabrication and construction.

1.1.112. **INTELLECTUAL PROPERTY RIGHTS** means all intellectual property rights including without limitation patent, trademark, trade dress, copyright, industrial design rights, priority rights, and trade secrets.

1.1.113. **KEY PERSONNEL, KEY PERSONS** mean those individuals employed by the Design-Build Entity for performance of the Work that are considered of essence to the consideration for and performance of the Design-Build Contract.

1.1.114. **LABOR COMPLIANCE PROGRAM** means the Labor Compliance Program, if any, that is identified in Design-Build Contract as being applicable to the Project pursuant to California Labor Code § 1771.7.

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

1.1.116. **MASTER FILES ARCHIVES SYSTEM** means the master filing system prepared by District whereby all documents (electronic and hard copy) are stored for ready access by authorized intranet login Project Team members or auditors of the District.

1.1.117. **MECHANICAL SUBCONTRACTOR** means the specialty contractor, holding a Class C20 (mechanical) contractor’s license by the State of California Contractors State License Board that is current, active and in good standing at the time of the Design-Build Entity Proposal submittal and for the duration of the Work, issued, who an Applicant or Proposer proposes to assume responsibility for the construction of the mechanical trade portion of the Work.

1.1.118. **MINOR CHANGE** means a Change in the Work that does not involve either performance of Extra Work or a Contract Adjustment.
1.1.119. **MOLD** means mold, mildew, spores or other microorganisms 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 kingdoms 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 fungi or spores (including, without limitation, aspergilius, cladosporium, penicillium and stachybotrys chartarum).

1.1.120. **NEGOTIATIONS** means as referenced in Education Code section 81703(a)(2)(c)(iv).

1.1.121. **NON-COLLUSION AFFIDAVIT** means the form, so titled, required to be submitted by a Proposer under California Public Contract Code § 7106 and the requirements of the Request for Proposals.

1.1.122. **NOTICE OF CHANGE** means a formal written notice required to be submitted by Design-Build Entity pursuant to Paragraph 7.6.1, below, notifying District of circumstances that Design-Build Entity believes may give rise to a Contract Adjustment based on Compensable Change or Deleted Work.

1.1.123. **NOTICE OF COMPLETION** means a "notice of completion" as defined in California Civil Code §3093 means the written notice by District and approved by the Board of Trustees confirming the date that the Work is Finally Completed by Design-Build Entity.

1.1.124. **NOTICE OF DELAY** means a formal written notice required to be prepared and submitted by Design-Build Entity pursuant to Paragraph 8.2.2, below, notifying District of circumstances that Design-Build Entity believes may give rise to a Contract Adjustment to the Contract Time for Excusable Delay or Compensable Delay or a Contract Adjustment to the Contract Sum for Compensable Delay.

1.1.125. **NOTICE OF INTENT TO AWARD** means the written notice by or on behalf of the District stating the District’s intent to Award the Design-Build Contract to the Design-Build Entity.

1.1.126. 

1.1.127. **NOTICE TO PROCEED WITH CONSTRUCTION** means the written notice issued by the District to the Design-Build Entity to begin physical construction of the Work at the Site. Permission granted by the District to conduct on-Site testing or investigation of the Site or other preliminary work in preparation for commencement of the Work shall not be interpreted as constituting a Notice to Proceed with Construction.

1.1.128. **NOTICE TO PROCEED WITH DESIGN** means the written notice issued by the District to the Design-Build Entity to begin the design portion of the Work.

1.1.129. **PERFORMANCE BOND, PAYMENT BOND** means the surety bonds required to be provided by the Design-Build Entity pursuant to Section 11.11, below.

1.1.130. **PLANS** means the graphic and pictorial portions of the Project Criteria or Construction Documents showing the design, location and dimensions of the Work, including plans, elevations, details, schedules and diagrams. The term "Plans" is used interchangeably with "Drawings."

1.1.131. **POST-AWARD SUBMITTALS** means the collection of documents described in the RFP Documents that is required to be submitted by the Proposer identified in the Notice of Intent to Award as the Proposer selected by District for the Award of the Design-Build Contract.

1.1.132. **POST-SCORING DISCUSSIONS** means Discussions held after the scoring by District of Design-Build Proposals.

1.1.133. **PRE-SCORING DISCUSSIONS** means Discussions held before the scoring by District of Design-Build Proposals.

1.1.134. **PRE-QUALIFICATION QUESTIONNAIRE** means the completed questionnaire submitted by an Applicant in response to the Request for Qualifications issued by the District.
1.1.135. **PRE-QUALIFIED DESIGN-BUILD ENTITY (OR, PRE-QUALIFIED PROPOSER)** means a Design-Build Entity that is pre-qualified by District, based on its Pre-Qualification Submittal.

1.1.136. **PRE-SUBMITTAL CONFERENCE** means the mandatory conference held by the District as part of the Request for Proposals process for the purpose of acquainting the Design-Build Entities with the Project and the Request for Proposals process.

1.1.137. **PRELIMINARY DESIGN DOCUMENTS** means the preliminary design documents furnished by the District to the Proposers setting forth those elements of the Project Criteria pertinent to the design and construction of the Work.

1.1.138. **PRINCIPAL ENGINEER** means a licensed engineering or design professional who Applicant proposes to provide the professional services for a Principal Engineer Discipline.

1.1.139. **PRINCIPAL ENGINEER DISCIPLINE** means Structural Engineer.

1.1.140. **PRINCIPAL ENGINEER’S FIRM** means, where a Principal Engineer is not an individual doing business as a sole proprietorship, the firm (whether a sole proprietorship, corporation, partnership or other association) that employs the Principal Engineer.

1.1.141. **PRODUCT DATA** means illustrations, standard schedules, charts, instructional brochures, diagrams and other information furnished by the Design-Build Entity to illustrate a material, product or system for the Work.

1.1.142. **PROGRAM MANAGER** means the Project Team member primarily responsible for management, oversight and supervision of the implementation of the Project.

1.1.143. **PROGRESS PAYMENT** means a payment of a portion of the Contract Sum that is based on the progress of the Work, less such amount as is authorized to be withheld therefrom as retention pending Final Completion.

1.1.144. **PROJECT** means the work of improvements designed and constructed for the District at the campus of the College commonly referred to as the, Irvine Valley College, A400 Design-Build Project of which the Work may the whole or a part.

1.1.145. **PROJECT BUDGET** means the maximum amount of money that may be proposed in a Design-Build Proposal as its Base Price for the full performance of the Work.

1.1.146. **PROJECT CRITERIA** means the District’s requirements, specifications, criteria and objectives for the Project as set forth in the RFP Documents (including, without limitation, the Preliminary Design Documents) as modified by (1) changes to the Project Criteria set forth in an RFP Addendum issued by District and (2) Approved Deviations.

1.1.147. **PROJECT COMPONENTS** means each of the phases or components comprising the Project as set forth in the Instructions to Proposers.

1.1.148. **PROJECT DOCUMENTS** means all writings (as defined by Evidence Code section 250) in the possession, custody or control of Design-Build Entity or Design Build Team at the Site or elsewhere that relate in any way to the Project or Work including but not limited to all Prequalification forms, Non-collusion Affidavit, Worker’s Compensation Certificate, Faithful Performance Bond, Payment Bond, Agreement, Escrow Agreement, Drug Free Workplace Certification, Change Order Forms, Insurance Certificates and Endorsements, Guarantee form, Contractor’s Certificate Regarding Non-Asbestos Containing Materials, General Conditions, Supplemental Conditions, if any, Special Conditions, if any, Drawings, specifications and all modifications, addenda and amendments thereto. The Project Documents are complementary and what is called for by any one shall be as binding as if called for by all.

1.1.149. **PROJECT REFERENCE** means information provided by Applicant in response to a request for project references in the Pre-Qualification Questionnaire.
1.1.150. **PROJECT REFERENCE INTERVIEW** means a telephonic interview conducted by the District of a Project Reference provided by an Applicant in its responses to the Pre-Qualification Questionnaire.

1.1.151. **PROJECT TEAM** means the College, District, District Project Manager, Design Consultant, District Consultants, Design-Build Entity, Subcontractors, Subconsultants, Separate Contractors, Inspectors of Record and other firms or individuals retained by the District, or retained by others with the District’s approval, participating in the planning, programming, design or construction of the Work.

1.1.152. **PROPOSED SUBCONTRACTOR** means a person, entity or association of persons or entities that the Applicant proposes to be considered for pre-qualification as the Electrical Subcontractor, Mechanical Subcontractor or an Other Subcontractor.

1.1.153. **PROPOSER** means a Design-Build Entity that submits a Design-Build Proposal to the District.

1.1.154. **PROPRIETARY INFORMATION** means and is limited to (in lieu of any other definitions that may exist or apply under Applicable Laws) technical information in the form of design details, construction techniques, procedures, means and methods and other technical design and construction information that: (1) is patented, or (2) is (a) only known to those persons within the Proposer’s company in whom such technical information is confided, and (b) has unique or special qualities (including, without limitation, a unique or special assembly) not generally known in the construction industry among competing contractors or Design-Build Entities designing or constructing structures of the type proposed for the Project; provided, however, that the Proposer has clearly and completely marked and identified with the words “PROPRIETARY INFORMATION” wherever and everywhere it appears in the Proposer’s Design-Build Proposal and Construction Documents. Building designs and similar aesthetic elements of a design that are displayed in the Proposer’s model shall not, under any circumstances, constitute Proprietary Information and may be disclosed and displayed by the District (including, without limitation, to the public) at any time, without prior notice to or consent of the Proposer.

1.1.155. **PROVIDE** means and shall include “provide complete in place,” that is, “furnish and install.”

1.1.156. **RECORD DOCUMENTS** means the collection of documents assembled and prepared by Design-Build Entity (including, without limitation, the Record Drawings and Specifications, warranties, guarantees, maintenance and operations manuals and other documents both hard copy and electronic format) that are to be maintained by the Design-Build Entity on the Site and delivered to the District upon Final Completion of the work showing the condition of the Work as actually built. For purposes of these Contract Documents, the Record Drawings and Specifications must utilize Building Information Modeling (BIM) technology and are defined to include both hard copy and electronic format marked by Design-Build Entity to show the condition, location and placement of the Work as actually built, including, without limitation, the locations, lengths and dimensions of mechanical, electrical, plumbing, HVAC or similar portions of the Work that are depicted diagrammatically in the Contract Documents.

1.1.157. **RFP ADDENDUM** means written information in the form of an Addendum provided as part of the RFP process which modifies or interprets the RFP Documents by additions, deletions, clarifications, or corrections.

1.1.158. **RFP DOCUMENTS** means the following collection of documents: (1) the Instructions to Proposers (including, without limitation, all attachments thereto); and (2) RFP Addenda.

1.1.159. **RFP SCHEDULE** means the schedule of events and deadlines set forth in the Instructions to Proposers, including any changes thereto made by District pursuant to RFP Addendum.
1.1.161. **RFP SELECTION COMMITTEE** means the jury of individuals appointed by the District to evaluate, score and rank the Design-Build Proposals and to issue a recommendation to the District for issuance of a Notice of Intent to Award to the Proposer whose Design-Build Proposal represents the “best value” to the District.

1.1.162. **REASONABLE ORDER OF MAGNITUDE ESTIMATE** means a general estimate prepared by Design-Build Entity, or by Design-Build Entity and the District Project Manager, without the benefit of complete or definitive pricing by Subcontractors and Subconsultants, of the projected additional cost and time associated with 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 Design-Build Entity, a Reasonable Order of Magnitude Estimate does not constitute either an authorization or agreement by District to any Contract Adjustment or a guarantee or promise by the Design-Build Entity of the maximum amount of any Contract Adjustment that may be associated with Extra Work or Deleted Work.

1.1.163. **NOT USED**

1.1.164. **NOT USED**

1.1.165. **REFERENCE DOCUMENTS** means reports, studies, surveys and other information provided by District for Design-Build Entity’s review and consideration in preparing its Design-Build Proposal, including, without limitation, information describing the Site (including surface or subsurface conditions), Existing Improvements or Hazardous Substances at the Site.

1.1.166. **REQUEST FOR CLARIFICATION** means a request for clarification of the RFP Documents.

1.1.167. Request for Extension means a formal written request submitted by Design-Build Entity pursuant to Paragraph 8.2.3, below, setting forth the justification and support for Design-Build Entity’s request for a Contract Adjustment to the Contract Time.

1.1.168. **REQUEST FOR INFORMATION** means a written request by Design-Build Entity for clarification of what it perceives to be a discrepancy in the RFP Documents or Project Criteria (including, without limitation, information in the in the RFP Documents or Project Criteria constituting errors, omissions, conflicts, ambiguities, lack of coordination, noncompliance with Applicable Laws or a variance between the such information and conditions at the Site or in Existing Improvements).

1.1.169. **REQUEST FOR PROPOSALS (OR, RFP)** means the document or collection of documents, so titled, issued by the District inviting and instructing Design-Build Entities on the procedures and requirements applicable to the Request for Proposals process and the Award of the Design-Build Contract.

1.1.170. **SAMPLES** means physical examples including mock-ups that, when approved by District, illustrate materials, equipment or workmanship by which the Work is to be evaluated and judged.

1.1.171. **SAFETY ORDERS** means those orders issued by the Division of Industrial Safety and OSHA safety and health standards for construction.

1.1.172. **SCHEDULE OF VALUES** means a detailed, itemized breakdown of the Contract Sum, which provides for an allocation of the dollar values to each of the various parts of the Work.

1.1.173. **SENSITIVE RECEPTORS** means those most susceptible to further respiratory distress such as 1) individuals: asthmatics, the elderly, very young children, people already weakened by other disease or illness and persons engaged in strenuous work or exercise and 2) uses: long term health care facilities, rehabilitation centers, retirement homes, residences, playgrounds, childcare centers and athletic facilities.

1.1.174. **SEPARATE CONTRACTOR** means a person or entity, other than the Design-Build Entity, under separate contract with the District to perform construction or supply materials or equipment to the Project.
1.1.175. **SHOP DRAWINGS** means drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Build Entity or a Subcontractor to illustrate some portion of the Work.

1.1.176. **SITE** means: (1) the parcel of land identified in the Design-Build Contract on which the Project is to be constructed and such additional parcels as may be purchased by District for such construction; (2) all areas adjacent to such parcels that may be used by Design-Build Entity or the Subcontractors for staging, storage, parking or temporary offices; and (3) all land areas, both private and public, adjacent to such parcels on which Work is required to be performed under the Contract Documents, Applicable Laws or permits relating to the Project.

1.1.177. **SPECIFICATIONS** means the portion of the Construction Documents consisting of the written requirements for materials, equipment, standards and workmanship for the Work and performance of related services.


1.1.179. **STANDARDS, RULES, AND REGULATIONS** means recognized printed standards and shall be considered as one and a part of the specifications within limits specified.

1.1.180. **STATE WATER RESOURCES CONTROL BOARD** means the State Water Resources Control Board of the State of California.

1.1.181. **STATEMENT OF DISPUTE** means a written description of a disputed Claim that is required to be submitted as part of the Claims Dispute Resolution Process.

1.1.182. **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.

1.1.183. **SUBCONSULTANT** means a person or entity, other than a Subcontractor, that has a contract to perform any design, engineering or other professional services comprising all or a portion of the Work, including, without limitation, consultants, subconsultants, architects and engineers, of any and every Tier.

1.1.184. **SUBCONTRACTOR** means a person or entity that has a contract to perform a portion of the Work, including without limitation, a contractor, subcontractor, sub-subcontractor, supplier and vendor, of any and every Tier.

1.1.185. **SUBMITTAL** means Shop Drawings, Schedules, Product Data, Samples, detailed designs, exemplars, fabrication and installation drawings, lists, graphs, operating instructions and other documents required to be submitted by the Design-Build Entity under the Contract Documents for review by District or a District Consultant.

1.1.186. **SUBMITTAL SCHEDULE** means the schedule prepared by the Design-Build Entity showing the timing for submission and review of Submittals during construction.

1.1.187. **SUBSTANTIAL COMPLETION** as used in these Contract Documents is the same as that term is used in Public Contract Code 7107. It means the occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning by the public agency, or its agent, accompanied by cessation of labor on the work of improvement. The acceptance by the public agency, or its agent, of the work of improvement. After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 30 days or more, due to factors beyond the control of the contractor. After the commencement of a work of improvement, a cessation of
labor on the work of improvement for a continuous period of 30 days or more, if the public agency files for record a notice of cessation or a notice of completion.

1.1.188. **SUBSTANTIAL COMPLETION PUNCH LIST** means the list of items of Work to be completed or corrected by Design-Build Entity for Substantial Completion.

1.1.189. **SUBSTITUTION** means a material, product or item of material or equipment proposed by the Design-Build Entity after Award of the Design-Build Contract in place of that called for by the Contract Documents.

1.1.190. **SUPPLEMENTARY AND SPECIAL CONDITIONS** means those portions of the Contract Documents that supplement, by addition, modification or deletion, a portion of the General Conditions.

1.1.191. **SURETY** means the California admitted surety(ies), as that term is defined in Code of Civil Procedure Section 995.120, issuing the Performance Bond or Payments Bond. It shall be the sole duty of the Design Build Entity to ensure that all appropriate due diligence has been performed related to the capability of the SURETY to adequately issue all necessary bonds.

1.1.192. **SUSTAINABLE BUILDING GUIDELINES** means the guidelines, titled “Sustainable Building Principles, Standards and Processes”, for sustainable building principles, standards and processes related design procedures, criteria and standards developed by the District.

1.1.193. **TIER** means the contractual level of a Subcontractor or Subconsultant with respect to the Design-Build Entity. For example, a “first-tier” Subcontractor is under contract with the Design-Build Entity. 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 application to only the first Tier or to only certain Tiers of Subcontractors or Subconsultants.

1.1.194. **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 achievement of a Substantial Completion or Final Completion of the Work or a portion of the Work designated by District within the Contract Time; (2) a Fragnet; (3) the number of Days of extension sought by Design-Build Entity as a Contract Adjustment to the Contract Time; (4) a computation of the Days of Compensable Delay multiplied times the liquidated damages payable to Design-Build Entity pursuant to Section 3.5 of the Design-Build Contract, if any, sought by Design-Build Entity; (5) a statement that Design-Build Entity 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 Design-Build Entity and Subcontractors and Subconsultants to prevent or minimize the Delay; and (7) Design-Build Entity’s recommendations for reordering or re-sequencing the Work to avoid or minimize further Delay.

1.1.195. **UNEXCUSED DELAY** means any Delay that is not a Compensable Delay or Excusable Delay or that constitutes a Compensable Delay or Excusable Delay for which Design-Build Entity is not entitled to a Contract Adjustment to the Contract Time, including, without limitation, the following: (1) Delay caused by a Design Deficiency, an act or omission of Design-Build Entity or a Subcontractor or Subconsultant, of any Tier, constituting negligence, willful misconduct, a violation of an Applicable Law or a failure by Design-Build Entity to comply with the Contract Documents; (2) Delay for which Design-Build Entity has failed to provide a timely and complete Notice of Delay and Request for Extension; or (3) Delay associated with any circumstances where the costs or risk associated with such circumstances are designated in the Contract Documents as being at Design-Build Entity’s risk or at Design-Build Entity’s Own Expense.
1.1.196. **UNILATERAL CHANGE ORDER** means documents signed by District in accordance with the General Conditions, in which District unilaterally sets forth its determination of the undisputed portion of an otherwise disputed Contract Adjustment.

1.1.197. **WORK** means all professional services (including, without limitation, architectural, engineering and other professional services), labor, materials, equipment, services, permits, licenses and taxes and all other things necessary for the Design-Build Entity to perform its obligations under the Contract Documents, 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.

1.1.198. **WORKER’S COMPENSATION CERTIFICATE** means the statement, completed by the Proposer in the form specified in the Request for Proposals, evidencing the Proposer’s compliance with the worker’s compensation insurance requirements of the Request for Proposals and Applicable Laws.

1.2. **Parties to the Design-Build Contract.** The Contract Documents shall not be construed to create a contractual relationship of any kind between: (1) the District Project Manager, on the one hand, and the Design-Build Entity or a Subcontractor or Subconsultant, of any Tier, on the other hand; (2) District Consultants, on the one hand, and the Design-Build Entity or a Subcontractor or Subconsultant, of any Tier, on the other hand; or (3) the District and a Subcontractor or Subconsultant, of any Tier.

1.3. **Correlation, Interpretation and Intent of Contract Documents**

1.3.1. **Design Intent.** The intent of the Project Criteria is for the Design-Build Entity 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 for the specific purposes set forth in the Project Criteria, including and without limitation, all equipment, casework, mechanical, electrical and similar devices of whatever nature, completely installed, hooked-up and made fully operational and functional.

1.3.2. **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.

1.3.3. **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 therefore, in accordance with first-class practices of the trade involved, unless specifically noted otherwise.

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

1.3.5. **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.

1.3.6. **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 the Design-Build Entity and shall not be deemed to be all-inclusive.

1.3.7. **Demolition.** Existing Improvements at the Site, for which no specific description is made in the Project Criteria or Approved Deviations, but which could be reasonably assumed to interfere with the satisfactory completion of the Work, shall be removed and disposed of by the Design-Build Entity without Contract Adjustment.
1.3.8. Omissions. Items missing from the Contract Documents shall nevertheless be provided by the Design-Build Entity, without Contract Adjustment, to the extent reasonably inferable from the Contract Documents as being necessary to satisfy the Project Criteria, Approved Deviations and the Design Intent.

1.3.9. Conditions Precedent. Wording used in the Contract Documents indicating that a right of the Design-Build Entity or an obligation of District (either directly or through the District Project Manager) 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 Design-Build Entity, 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, performance and exercise of such right or obligation.

1.3.10. Design Deficiencies. Statements in the Contract Documents to the effect that Design-Build Entity shall comply with or conform to the requirements of the Contract Documents shall not be interpreted as relieving the Design-Build Entity from any responsibility to correct any Design Deficiency in the Construction Documents, Approved Deviations or other Contract Documents prepared by Design-Build Entity or its Subcontractors or Subconsultants.

1.3.11. Conflicts. All conflicts in the Contract Documents shall be reported to the District Project Manager in writing before proceeding with the Work affected thereby. Notwithstanding the order of precedence provisions set forth in this Paragraph 1.2.12, in the event of conflict between any of the Contract Documents, the provision placing a more stringent requirement or greater burden on the Design-Build Entity or requiring the greater quantity or higher quality material or the workmanship shall prevail, unless otherwise directed by the District 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):

1.3.11.1. 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);

1.3.11.2. RFP Addenda;

1.3.11.3. Change Orders, Unilateral Change Orders and Field Orders;

1.3.11.4. Approved Deviations;

1.3.11.5. Project Criteria;

1.3.11.6. Other RFP Documents;

1.3.11.7. the Design-Build Entity’s Design-Build Proposal other than an Approved Deviation, that deviates from the Project Criteria;

1.3.11.8. Design-Build Contract;

1.3.11.9. General Conditions;

1.3.11.10. Supplementary and Special Conditions;

1.3.11.11. Final Construction Documents approved by District; and

1.3.11.12. Reference Documents.

1.3.12. Rehabilitation Work. If any existing conditions in Existing Improvements, such as deterioration or construction not complying with Applicable Laws, be discovered by Design-Build Entity or any Subcontractor or Subconsultant, with respect to which the Work covered by the Contract Documents does not provide for rectification of such conditions in a manner that complies with Title 24, California Code of Regulations, then a separate set of Drawings and Specifications, detailing and specifying the Work required to so rectify such conditions shall be prepared and submitted by
Design-Build Entity 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.

1.4. Ownership and Use of Documents

1.4.1. Property of District. With the exception of matters or things that are subject to a patent or copyright issued by the United States Government, all Design Documents, Contract Documents and Project Documents that are prepared by Design-Build Entity or any Subcontractor or Subconsultant, of any Tier, for use in connection with the Project, including any designs, building designs or other depictions underlying or shown in them, and the Intellectual Property Rights thereto, shall be deemed the sole and exclusive property of District and ownership thereof is irrevocably vested in District, whether Work on the Project is commenced or completed.

1.4.2. Right to Revise. Design-Build Entity shall, without further consideration, obtain and if necessary transfer in writing any and all Intellectual Property Rights in the Design Documents, Contract Documents and Project Documents prepared by Design-Build Entity or any Subcontractor or Subconsultant for use in connection with the Project, including any designs, building designs or other depictions underlying or shown in them, free and clear of any liens or other encumbrances, claims or rights of third parties, to District and cooperate with District in securing and registering such rights, such that, with the exception of matters or things that are subject to a patent or copyright issued by the United States Government, District shall own all Intellectual Property Rights and any other tangible and/or intangible property rights associated with such Design Documents, Contract Documents and Project Documents. Such transfer and assignment shall include, but are not be limited to, all rights in related plans, specifications, documentation, derivative works and moral rights. With respect to matters contained in the Design Documents, Contract Documents and Project Documents or things incorporated into the Work that are subject to a patent or copyright issued by the United States Government, the Design-Build Entity hereby grants to District a royalty-free, irrevocable, unconditional and perpetual license to use, modify and copy such matters or things for the purposes of the construction, use, maintenance or renovation of, or future additions to, the Project.

1.4.3. Design-Build Entity’s Warranty. Design-Build Entity represents and warrants that the Design Documents, Contract Documents and Project Documents prepared by Design-Build Entity or any Subcontractor or Subconsultant for use on the Project, and the use thereof in the ordinary course, are free of any claim of infringement or any other violation of any Intellectual Property Right or other right of any third party.

1.4.4. Non-Exclusive License. Without derogation of the District’s rights under this Section 1.4, Design-Build Entity, Subconsultants and Subcontractors, of every Tier, are granted a limited, non-exclusive license, revocable at will of the District, to use and reproduce applicable portions of the Design Documents, Contract Documents and Project Documents as appropriate to and for use in the execution of the Work and for no other purpose.

1.4.5. Reproduction. Design-Build Entity shall do all reproduction and distribution of such reproducible prints of Design Documents, Contract Documents and Project Documents as are necessary for the complete pricing and performance of the Work, including, without limitation, all Changes. The costs of such reproduction shall be at Design-Build Entity’s Own Expense.

1.4.6. Delivery to District. All Design Documents and Contract Documents (including originals and copies) in the possession of the Design-Build Entity or the Subcontractors or Subconsultants shall be returned to the District upon the earlier of Final Completion or termination of the Design-Build Contract; provided, however, that the Design-Build Entity shall have the right to retain one (1) copy
of the Contract Documents and Submittals as a permanent record. Design Documents prepared by Design-Build Entity or its Subcontractors or Subconsultants shall be in electronic form shall be both fully indexed and editable. One set of small scale floorplans shall be delivered to the District upon DSA approval of the project.

1.4.7. Subcontractors, Subconsultants. Design-Build Entity shall take all necessary steps to ensure that a provision is included in all contracts with Subcontractors and Subconsultants, of every Tier, who perform Work on the Project protecting and preserving District’s rights as set forth in this Section 1.4.

2. DISTRICT

2.1. Information Required of District

2.1.1. Legal Descriptions. District shall furnish, within a reasonable time after written request by Design-Build Entity, a legal description of the Site and information describing legal limitations affecting the Site that are recorded with applicable Governmental Authorities, such as, but not limited to, easements.

2.1.2. Permits. Except for permits and fees which are expressly stated to be the responsibility of the District under the Contract Documents, the Design-Build Entity shall secure and pay for all necessary approvals, easements, assessments and charges, whether related to the Work on the Site, off the Site or on public property, required for or in connection with the construction, use or occupancy of permanent structures or for permanent changes in Existing Improvements.

2.1.3. District Approvals. Information, approvals and decisions required of District or a District Consultant for which a District Review Period or District Review Date is included and accepted by District Project Manager in the Design-Build Schedule shall be provided in accordance with the Design-Build Schedule. If a District Review Period or District Review Date is not set forth in the Design-Build Schedule, then such information, approvals and decisions shall be provided upon written request by Design-Build Entity without unreasonable Delay. Failure by District or a District Consultant to provide any information, approvals or decisions shall not be considered as a basis for Contract Adjustment to the Contract Time unless or until: (1) in the case of information, approval or decision for which there is a District-accepted District Review Period or District Review Date in the District-accepted Design-Build Schedule, seven (7) Days after the District and the individual from whom such information, approval or decision is sought have received from Design-Build Entity a written notice containing all the following: (a) a detailed description of the information, approval or decision required; (b) a statement that the District Review Period or District Review Date has expired or passed; and (c) a statement, prominently displayed, that: “Pursuant to Paragraph 2.1.3 of the General Conditions, the failure to provide the requested information, approval or decision within 7 calendar days from this notice may result in a request for a contract adjustment.”; or (2) in the case of information, approval or decision for which there is no District Review Period or District Review Date set forth in the District-approved Design-Build Schedule, thirty (30) Days after the District and the individual from whom such information, approval or decision is sought have received from Design-Build Entity a written notice that includes the statements set forth Clauses (1), (a) an (b) of this Paragraph 2.1.3 and that includes a statement, prominently displayed, that: “Pursuant to Paragraph 2.1.3 of the General Conditions, the failure to provide the requested information, approval or decision within 30 calendar days from this notice may result in a request for a contract adjustment.”.
2.1.4. Communications. The District shall forward all communications to the Design-Build Entity through the District’s Authorized Representative.

2.1.5. No Warranty. District does not expressly or impliedly warrant or represent the accuracy, completeness or suitability of the surveys, data, reports or other information provided by District or District Consultants. Notwithstanding the foregoing, Design-Build Entity shall be entitled, to the extent consistent with the Standard of Performance, to rely upon the accuracy and sufficiency of such information in performing its obligations. Design-Build Entity’s sole right and remedy in the event that such District-furnished information is found to be inaccurate, incomplete or unsuitable shall Design-Build Entity's express right, if any, under the Contract Documents to receive a Contract Adjustment for Differing Site Conditions, Compensable Change or Compensable Delay. Under no circumstances shall the existence of any inaccuracy, incompleteness or unsuitability in such surveys, data, reports or other information provided by District constitute a breach of contract or breach of an express or implied warranty on the part of District.

2.2. District’s Right to Stop Work. If Design-Build Entity or any member of Design Build Team 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 immediately order Design-Build Entity to stop the Work, or any portion thereof, until the cause for such direction has been eliminated by Design-Build Entity. Design-Build Entity shall immediately comply with such notice at Design-Build Entity’s Own Expense. District shall have no duty or responsibility to Design-Build Entity or any other party to exercise its right to stop the Work.

2.3. District’s Right to Carry Out Work. If Design-Build Entity or any member of Design Build Team 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 Design-Build 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 correct such failure. In such case, District shall be entitled to recover from Design-Build Entity or deduct from payments then or thereafter due Design-Build Entity the cost of correcting such failure, including compensation for the additional services and expenses of District, District Consultants and others whose services are reasonably required and made necessary thereby. If payments then or thereafter due Design-Build Entity are not sufficient to cover such amounts, Design-Build Entity shall promptly pay the amount of the shortfall to District.

2.4. Accounting, Records and Audit

2.4.1. Accounting System. Design-Build Entity 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. Design-Build Entity shall keep, and shall require provisions to be included in all contracts entered into by Subcontractors or Subconsultants, of every Tier, requiring the Subcontractors or Subconsultants, of every Tier, 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 Design-Build 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, insurance rebates and dividends, and other documents relating in any way to any claims, charges or time extensions asserted by Design-Build Entity or any of the Subcontractors or Subconsultants, of any Tier.

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

2.4.4. Confidential Information. Nothing stated in this Section 2.4 or elsewhere in the Contract Documents shall be interpreted as a waiver by Design-Build Entity or any Subcontractor or Subconsultant of any rights of privilege or confidentiality that are provided for by Applicable Law nor as authorizing the inspection of books and records that contain information concerning estimating means or methods that is not, in whole or part, relevant to a charge or demand being asserted by Design-Build Entity or a Subcontractor or Subconsultant for additional compensation or time associated with Extra Work, Deleted Work, Delay or a Claim.

2.4.5. Withholding of Payment. In addition to and without limitation upon District’s other rights and remedies for breach, including any rights of District to withhold payment that are set forth elsewhere in the Contract Documents, District shall have the right, exercised in its sole discretion, to withhold from any payment due to Design-Build Entity under an Application for Payment a sum of up to ten percent (10%) of the total amount set forth in such Application for Payment until Design-Build Entity and the Subcontractors and Subconsultants 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 Design-Build Entity.

2.4.6. Specific Performance. Design-Build Entity agrees that any failure to provide to District access to books and records as required by this Section 2.4 will result in irreparable harm and prejudice to District and shall, without the necessity of posting of any bond or undertaking, be specifically enforceable by means of a mandatory injunctive order (temporary, preliminary, provisional or otherwise) issued by a court of competent jurisdiction, which order the District and Design-Build Entity hereby consent to being issued based upon affidavits and without the necessity of oral testimony.

2.5. District Furnished Materials

2.5.1. Supply 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 furnish directly for processing and incorporation by Design-Build Entity any of the materials, products or equipment specified in the Contract Documents to be provided by Design-Build Entity as part of the Work.

2.5.2. Deleted Work. If the District-Furnished Materials provided by District are part of the Work, then a Change Order shall be executed deleting such items from the Work along with a Contract Adjustment reducing the Contract Sum in the manner provided for in Article 7, below, applicable to Contract Adjustments for Deleted Work.

2.5.3. Delivery Deadlines. Without limitation to Design-Build Entity’s obligations under Article 8, below, upon receipt of written instruction by District of its intent to provide District-Furnished Materials pursuant to this Section 2.5, Design-Build Entity shall notify District promptly in writing of any deadlines within which such District-Furnished Materials must be received at the Site in order to avoid Delay.
2.5.4. Delivery to Site. Design-Build Entity shall properly receive and unload the District-Furnished Materials upon and after delivery at the Site.

2.5.5. Care, Custody and Control. Design-Build Entity or any member of Design Build Team assumes full and unconditional responsibility for, care, custody and control of the District-Furnished Materials that are delivered at the Site, whether or not they have been accepted by District, and assumes sole responsibility for any subsequent loss, injury or damage thereto occurring prior to Final Completion.

2.5.6. Notice of Deficiencies. Design-Build Entity shall carefully inspect the District-Furnished Materials and immediately notify District Project Manager of any defect or deficiency in the District-Furnished Materials or any nonconformity in the District-Furnished Materials with the requirements of the Contract Documents or with the requirements of the other documentation provided to Design-Build Entity setting forth the conditions of District’s purchase. Design-Build Entity shall not accept any District-Furnished Materials with respect to which Design-Build Entity has provided such notice of defect, deficiency or non-conformity unless and until instructed to do so in writing by District Project Manager.

2.5.7. Processing and Incorporation. Design-Build Entity shall provide any and all processing, fabrication, cutting, shaping, fitting, assembly and installation of such District-Furnished Materials that are required in order to fully and properly place and incorporate the District-Furnished Materials as part of the Work in full compliance with the requirements of the Contract Documents and the manufacturer’s instructions and recommendations.

2.6. District Installed Items. Design-Build Entity shall notify District Project Manager, a reasonable time in advance, of the Design-Build Entity’s scheduled dates for installation of items that are specified in the Contract Documents to be placed on, attached to or incorporated into the Work by District or Separate Contractors. In the event that Design-Build Entity fails to do so or if due to Unexcused Delay the District is unable after such notice by Design-Build Entity to so place, affix or incorporate such items, then Design-Build Entity shall be responsible, in addition to any amounts due for liquidated damages, to reimburse District for costs of storage or rental of temporary replacement items until such time as the Work is in a condition suitable for such items to be placed, affixed or incorporated.

2.7. Additional Rights. The rights stated in Articles 1-8 are in addition to and not in limitation of any other rights of District granted elsewhere in the Contract Documents or under Applicable Laws.

3. DESIGN-BUILD STATUS

3.1. Design-Build Entity Status

3.1.1. Independent Contractor. Design-Build Entity 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.

3.1.2. Agents, Employees. Design-Build Entity wholly and without reservation assumes the responsibility for the acts of its agents and employees and the agents and employees of each Subcontractor and Subconsultant, of every Tier, as they relate to the Work. Design-Build Entity, 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 Design-Build Entity or any Subcontractor or Subconsultant. District shall have the right, but not the obligation, to monitor the employment and other activities of Design-Build Entity and the Subcontractors and Subconsultants to determine compliance with the terms of the Contract Documents.
3.1.3. Licenses. Design-Build Entity or any member of Design Build Team shall maintain, and shall require the Subcontractors and Subconsultants, of every Tier, to maintain, such contracting, professional and business licenses as may be required by Applicable Laws for the duration of time that Design-Build Entity is performing the Work, including the period of any warranty provided by Design-Build Entity under the Contract Documents covering all or any portion of the Work.

3.1.4. Subcontractors, Subconsultants.
   3.1.4.1. Design-Build Entity agrees to bind every subcontractor by terms of the Contract Documents as far as such terms are applicable to the subcontractor’s work.
   3.1.4.2. Design-Build Entity is responsible to District for acts and omissions of the Subcontractors and Subconsultants and their agents and employees and other persons performing portions of the Work under a contract with a Subcontractor or Subconsultant, of any Tier.
   3.1.4.3. A copy of each subcontract giving the name of the subcontractor and the terms and conditions of such subcontract, shall be filed with the District before the subcontractor begins work. Each subcontract shall contain a reference to the Agreement between the District and the Design-Build Entity and the terms of that Agreement and all parts of the Contract Documents shall be made a part of such subcontract insofar as applicable to the work covered thereby. Each subcontract will provide for termination in accordance with the Article 14 of these General Conditions. Each subcontract shall provide for its annulment by the Design-Build Entity and the Design-Build Entity shall annul such subcontract if the subcontractor fails to comply with requirements of the Contract Documents insofar as the same may be applicable to this work. Nothing herein contained shall relieve the Design-Build Entity of any liability or obligation hereunder.
   3.1.4.4. Design-Build Entity may not permit a subcontractor who is ineligible to be awarded a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
   3.1.4.5. District’s consent to any subcontractor shall not in any way relieve Design-Build Entity of any obligation under the Contract Documents and no such consent shall be deemed to waive any provision of any Contract Document.

3.1.5. Activities of Others. Design-Build Entity shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of District, District Program Manager, Inspectors of Record or District Consultants, or by tests, inspections or approvals required or performed by persons other than the Design-Build Entity.

3.2. Design Responsibilities
   3.2.1. Design Consultation. Design-Build Entity shall on an on-going basis throughout its performance of the Work provide District Project Manager with complete, continuous and current advice and recommendations on issues related to the status and progress of the design and non-design portions of the Work, including, without limitation, matters related to design feasibility, constructability, occupancy and maintenance, and shall keep the District Project Manager apprised at all times of the full range of alternatives that are available to District for reducing construction time, lowering costs, easing long-term maintenance, minimizing adverse effects of labor or material shortages, shortening time requirements for procurement, expediting installation and construction completion and other possible economies and efficiencies. It is understood that although this consultation is a collaborative effort, District is relying upon Design-Build Entity’s expertise and experience to proactively initiate inquiries, investigate and take other steps necessary to obtain all pertinent information concerning District’s special needs and requirements so as to enable Design-Build Entity to obtain a clear understanding of the goals of the Project in terms of design, cost, quality and schedule and to provide complete and current advice to District that will enable District
to anticipate and make fully informed decisions concerning the Project. As part of this collaborative effort, Design-Build Entity shall throughout the duration of its performance of the Work attend regular meetings (as frequently as may be necessary to maintain progress of the Work or as otherwise reasonably required by District) for the purpose of reviewing the status of the Construction Documents and Work. Minutes of such meetings shall be maintained and distributed by the Design-Build Entity to all meeting participants.

3.2.2. Construction Documents. Using qualified, licensed design professionals, Design-Build Entity shall furnish all necessary and appropriate architectural, engineering and other professional services required for the preparation of the Construction Documents that incorporate designs and specifications that are complete, detailed and suitable to produce a completed construction that, without limitation to any other requirements of the Contract Documents: (1) conforms to the Project Criteria and any Approved Deviations; (2) is consistent with the Design Intent, and (3) gives due and appropriate consideration to the matters disclosed by the Reference Documents and any other information provided by District to Design-Build Entity.

3.2.3. Submissions to District. Design-Build Entity shall formally submit to District in accordance with the Design-Build Schedule, for District Project Manager’s review and approval, in-progress Construction Documents reflecting Design-Build Entity’s progress in the performance of its design portion of the Work at the following points in time: (1) completion of schematic design documents; (2) completion of design development (3) 25% completion of Construction Documents; (4) 50% completion of Construction Documents; (5) 75% completion of Construction Documents; (6) Division of the State Architect submittal and (6) completion of Final Construction Documents identifying responses to Division of the State Architect redline comments. Additional formal submissions reflecting the status of in-progress Construction Documents, if reasonably judged by District as necessary, shall be prepared and made without Contract Adjustment. All such formal submissions shall be in both hard copy and electronic format. Construction Documents submitted by the Design-Build Entity shall incorporate changes or corrections required by the District, District Project Manager or Governmental Authorities or be accompanied by a written statement as to why such changes were not incorporated. The District may, in its sole and absolute discretion, reject the Design-Build Entity’s explanation and require the Design-Build Entity to make such changes or corrections to the Construction Documents. Design-Build Entity shall at all times remain solely responsible, notwithstanding District’s or any District Consultant’s review or approval of the Construction Documents, for the accuracy, completeness, sufficiency and suitability of the Construction Documents and for their compliance with Applicable Laws and the Contract Documents.

3.2.4. Professional Certifications. All submissions of Construction Documents and Submittals to District Project Manager shall include certification by the Architect of Record, who shall be a properly licensed design professional, including such professional’s manual signature and seal. Any Construction Documents or Submittals related to the Work designed or certified by such professional, if prepared by others, shall nevertheless bear such professional’s manual signature when submitted to the District. The District and the District Consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals provided by such design professionals.

3.2.5. Approved Deviations

3.2.5.1. Notations by Design-Build Entity. Design-Build Entity shall separately identify in writing at the time of each of its formal submissions of Construction Documents required by Paragraph 3.2.3, above, any portions thereof that by reason of information contained or omitted constitute deviations from the requirements of the RFP Documents, Design-Build Contract,
General Conditions, Project Criteria, Design Intent or Approved Deviations previously approved by District pursuant to this Paragraph 3.2.5. All such formal submittals of Construction Documents to District Project Manager, including electronic submittals, shall further include a certification by Design-Build Entity as follows: “With the exception of deviations expressly identified in this submission in the manner required by Paragraph 3.2.5 of the Design-Build Contract, the submitted Construction Documents do not contain any deviations from the Design Build Contract, General Conditions, Project Criteria, Design Intent or Approved Deviations previously identified by Design-Build Entity in writing and approved by the District”.

3.2.5.2. Approval by District. District shall have the right, but not the obligation, to approve or disapprove, in the exercise of its sole and absolute discretion, any portion of the Construction Documents that constitutes a deviation from the RFP Documents, Design-Build Contract, General Conditions, Project Criteria, Design Intent or Approved Deviations previously approved by District pursuant to this Paragraph 3.2.5. Such approval shall not be effective or binding upon District unless such deviation is approved in a Change Order or Unilateral Change Order that states in bold letters “Approved Deviation”.

3.2.5.3. No Implied Approval. Under no circumstances shall any general or specific approval by District of Construction Documents that contain a deviation from the RFP Documents, Design-Build Contract, General Conditions, Project Criteria, Design Intent or Approved Deviations previously approved by District pursuant to this Paragraph 3.2.5 be interpreted as implying approval by District in the manner required by Subparagraph 3.2.5.2, above.

3.2.5.4. Design Liability. Design-Build Entity is solely responsible, notwithstanding the District’s approval of an Approved Deviation, for any Design Deficiencies in such Approved Deviation.

3.2.5.5. Corrections and Losses. All costs to make corrections in the Construction Documents due to information or an omission in the Construction Documents that constitutes a deviation from the RFP Documents, Design-Build Contract, General Conditions, Project Criteria, Design Intent or Approved Deviations previously approved by District pursuant to this Paragraph 3.2.5 that is not approved by District in the manner provided for by this Paragraph 3.2.5, as well as any resulting Loss to District from the inclusion of such deviation in the Construction Documents or as part of the Work constructed at the Site, shall be borne by Design-Build Entity at Design-Build Entity’s Own Expense.

3.2.6. Changes. Design-Build Entity shall have the right, with written approval of District not to be unreasonably withheld, without Contract Adjustment, to make Changes to the Construction Documents provided that such Changes do not result in deviations from the RFP Documents, Design-Build Contract General Conditions, Project Criteria, Design Intent and Approved Deviations. Changes in the Construction Documents, and any related Work, that is performed without such approval shall, if requested by District, be corrected, removed or replaced by Design-Build Entity at Design-Build Entity’s Own Expense.

3.2.7. Resolution of Uncertainties. District and Design-Build Entity acknowledge that questions may arise concerning the level and scope of performance required under the RFP Documents, Design-Build Contract, General Conditions, Project Criteria, Design Intent and Approved Deviations. District and Design-Build Entity will in good faith attempt to resolve such conflicts or uncertainties. In the event that they are unable, after good faith efforts, to resolve such conflicts or uncertainties, then, in recognition of their mutual desire that such questions not result in a compromise of the high standards they mutually intend be followed for design and construction of the Project, District and
Design-Build Entity agree that any such unresolved conflicts or uncertainties shall be interpreted so as to require Design-Build Entity to perform the Work, without Contract Adjustment, in a manner that resolves the conflict or uncertainty in favor of the higher or better standard indicated by the Project Criteria, Design Intent or Approved Deviations.

3.2.8. Design Deficiencies. Design Deficiencies in the Construction Documents, whether or not the Construction Documents are approved by District, are the sole responsibility of the Design-Build Entity and shall be corrected by Design-Build Entity at the Design-Build Entity’s Own Expense.

3.2.9. Title 24 Compliance. Design-Build Entity and members of the Design Build Team, where applicable, shall perform the Work in accordance with the Contract Documents, including, without limitation, the Final Construction Documents approved by District and the Submittals approved by the District Project Manager and, if required by District and the District’s Consultants. Design-Build Entity’s Architect of Record shall be responsible to comply with the requirements of the California Code of Regulations, including, without limitation Title 24, California Code of Regulations, relating to assumption of responsibilities by the architect or registered engineer responsible for submitting plans and specifications for approval by DSA and for assuming responsibility as the architect in general responsible charge of the Work.

3.2.10. Sustainable Design. Design-Build Entity shall make recommendations to District for incorporating into the Final Construction Documents the design requirements for design and construction that will, to the best of Design-Build Entity’s efforts and within the constraints of the Contract Sum and Contract Time, incorporate the elements of sustainable design and construction that are recommended in the Sustainable Building Guidelines.

3.2.11. Utilities Relocation. Subject only to Design-Build Entity’s rights to Contract Adjustment for Differing Site Conditions, Design-Build Entity shall include in its performance of the Work and as part of the Contract Sum provision for all aspects of design, permitting, relocation and construction of existing and new utilities.

3.2.12. Design-Build Entity Review of Site

3.2.12.1. Design-Build Entity Review. Design-Build Entity warrants and represents that, in order to fully familiarize itself with all conditions, restrictions, obstructions, difficulties and other matters which might affect the Design-Build Entity’s ability to complete the Work within the limitations of the Contract Sum and Contract Time, it has prior to the Final Proposal Submission Date, carefully and thoroughly inspected:

3.2.12.1.1. the Site and its surroundings, Existing Improvements and their existing uses by District or the public, 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);

3.2.12.1.2. the status of any construction at the Site concurrently under construction; and

3.2.12.1.3. all information that either has been provided by District to Design-Build Entity (including, but not limited to, the RFP Documents and Reference Documents) or reasonably available for review from the public records of the City or County in which the Project is located, concerning visible and concealed conditions above and below the surface of the ground at the Site and in Existing Improvements (including, without limitation, surveys, reports, data, as-built drawings of Existing Improvements and utility sources, capacities and locations).

3.2.12.2. No Contract Adjustment. Design-Build Entity agrees that it shall not be entitled to, and hereby conclusively waives, any right to Contract Adjustment for Loss or Delay if and to the extent such Loss or Delay is due to any of the following:
3.2.12.2.1. a failure by Design-Build Entity to so fully familiarize itself, prior to the Establishment of a GMP, with the conditions and information described in Clauses (1) through (3) of Subparagraph 3.2.12.1, above;

3.2.12.2.2. an error, omission, conflict, ambiguity, lack of coordination or noncompliance with Applicable Laws that is contained in any of the information described in Clause (3) of Subparagraph 3.2.12.1, above, that was either:

3.2.12.2.2.1. discovered by Design-Build Entity and Design-Build Entity, notwithstanding such discovery, failed to report such error, omission, conflict, ambiguity, lack of coordination or noncompliance with Applicable Laws to District in writing prior to the Establishment of a GMP; or

3.2.12.2.2.2. although not actually discovered by Design-Build Entity was, prior to the Establishment of a GMP, reasonably discoverable by Design-Build Entity exercising the Standard of Performance specified in Section 2.2 of the form of Design-Build Contract that was part of the RFP Documents.

3.2.12.3. Continuing Obligation. Design-Build Entity shall, in order to keep current its knowledge of all such conditions and information concerning the Site and Existing Improvements, throughout its performance of the Work and exercising the Standard of Performance, take steps to keep itself apprised of any additional information and changes in conditions at the Site and in Existing Improvements that affect the design or construction of the Project, promptly notify District if Changes to the Construction Documents are necessary to accommodate such new or additional information or conditions and take such matters into consideration in all aspects of Design-Build Entity’s performance of the Work.


3.2.13.1. Design-Build Entity Review. Design-Build Entity’s submission of its Design-Build Proposal and its execution of the Design-Build Contract each constitutes a separate and independent representation that it had the opportunity, prior to agreeing to the Contract Sum and Contract Time, to thoroughly and carefully review and evaluate to its satisfaction the RFP Documents, Project Criteria, Reference Documents and other documents and information provided by District to Design-Build Entity concerning the Project, Site or Existing Improvements.

3.2.13.2. No Contract Adjustment. Design-Build Entity agrees that it shall not be entitled to, and hereby conclusively waives, any right to Contract Adjustment due to additional or unforeseen Losses or Delays on the basis that the RFP Documents, Project Criteria, Reference Documents or other documents or information provided by District to Design-Build Entity concerning the Project, Site or Existing Improvements contained an error, omission, conflict, ambiguity, lack of coordination or noncompliance with Applicable Laws, if prior to the Final Proposal Submission Date such error, omission, conflict, ambiguity, lack of coordination or noncompliance with Applicable Laws was either:

3.2.13.2.1. discovered by Design-Build Entity and Design-Build Entity, notwithstanding such discovery, failed to report such error, omission, conflict, ambiguity, lack of coordination or noncompliance with Applicable Laws to District in writing prior to the Final Proposal Submission Date; or

3.2.13.2.2. although not actually discovered by Design-Build Entity was prior to the Final Proposal Submission Date reasonably discoverable by Design-Build Entity exercising the Standard of Performance specified in Section 2.2 of the form of Design-Build Contract that was part of the RFP Documents.
3.2.14. No Warranty by District. Design-Build Entity is solely responsible to satisfy itself as to the suitability, accuracy and completeness of any information provided by the District, such as but not limited to, information that is in the nature or form of design requirements, calculations, estimates, projections, budgets, studies, reports, surveys or other information describing the Project, Work, Site, Existing Improvements, Hazardous Substances or Mold (including, without limitation, opinions, data, recommendations and other information contained in the Reference Documents), and nothing stated in the RFP Documents or Contract Documents shall be construed as implying the creation or existence of any warranty, express or implied, on the part of the District with respect to the accuracy, sufficiency or completeness of such information.

3.2.15. Requests for Information

3.2.15.1. Time for Submittal. Requests for Information shall be submitted to District Project Manager no later than three (3) Days after the date Design-Build Entity learns of the circumstances giving rise to the question contained in the Request for Information.

3.2.15.2. Content. Each Request for Information shall include the following:

3.2.15.2.1. a detailed description of the discrepancy or variance discovered;

3.2.15.2.2. Design-Build Entity’s request for clarification, including, without limitation, any request for further detailing or correction of the Contract Documents; and

3.2.15.2.3. a statement of whether Design-Build Entity believes it is entitled to a Contract Adjustment by reason of such discrepancy or variance.

3.2.15.3. Form. Design-Build Entity shall submit Requests for Information using form provided or approved by District Project Manager.

3.2.15.4. Unnecessary, Multiple Requests. Design-Build Entity shall carefully review, coordinate and consolidate (where appropriate to prevent piecemeal submission) Requests for Information (whether originating with Design-Build Entity or the Subcontractors or Subconsultants) prior to submitting them in order to eliminate unnecessary and duplicative of requests.

3.2.15.5. Responses. Responses to Requests for Information 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 District or a District Consultant to a Request for Information shall not constitute grounds for a Contract Adjustment unless Design-Build Entity has complied with the requirements set forth in this Paragraph 3.2.15 and, if applicable, Paragraph 2.1.3, above.

3.2.15.6. Backcharges by District. District shall have the right to deduct from payments due to Design-Build Entity sums expended by District for the services of the District Project Manager, Design Consultant, Inspectors of Record and District Consultants due to a failure by Design-Build Entity to comply with this Paragraph 3.2.15.

3.2.15.7. Waiver by Design-Build Entity. Failure by Design-Build Entity to submit a Request for Information in accordance with this Paragraph 3.2.15 under circumstances in which a Request for Information was required by this Paragraph 3.2.15 shall result in Design-Build Entity waiving its right to a Contract Adjustment on account of any Loss or Delay that could have been avoided if such Request for Information had been timely submitted.

3.2.16. Correction of Work. Design-Build Entity shall, at Design-Build Entity’s Own Expense, correct or replace in accordance with the direction of Project Inspector any portion of the Work that is performed by Design-Build Entity or a Subcontractor or Subconsultant knowing that it involves, or that Design-Build Entity or Subcontractor or Subconsultant in the exercise of the Standard of Performance 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, without first notifying and obtaining the written approval of the District.

3.3. **Supervision and Construction Procedures**

3.3.1. **GENERAL OBLIGATION.** Design-Build Entity shall provide competent, fully qualified personnel to supervise, administer, manage and direct the Work, competently and efficiently, at all times devoting their best skill and attention to perform the Work in accordance with the Contract Documents.

3.3.2. **SUPERVISORY STAFF.** Design-Build Entity, and members of the Design Build Team, where applicable, shall employ a competent project manager, superintendent, scheduler, forepersons and necessary assistants during performance of the Work. Design-Build Entity’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 Design-Build Entity or a Subcontractor or Subconsultant is present at the Site. Design-Build Entity’s project manager and superintendent shall, unless excused from attendance by the District, attend all job meetings. Design-Build Entity’s project manager and superintendent must be able to fluently read and write in English. Design-Build Entity’s superintendent shall not perform the Work of any trade, pick up materials, or perform any Work not directly related to the supervision of the Work and shall be available twenty-four (24) hours a Day, seven (7) Days a week, to respond to emergencies.

3.3.3. **SUPPLEMENTARY PERSONNEL.** Without limitation upon any of the rights or remedies of the District under the Contract Documents or under Applicable Laws, in the event that Design-Build Entity fails to have personnel on Site to supervise the Work, the District shall have the right, but not the obligation, upon twenty-four (24) hours’ telephonic or email notice by the District Project Manager to Design-Build Entity, to provide such supervision on a temporary basis and to deduct from the sums owing to Design-Build Entity the actual costs of such temporary supervision. Design-Build Entity shall, notwithstanding the District’s providing such temporary supervision, remain solely responsible for all actions and omissions of its personnel and of the Subcontractors and Subconsultants who are on the Site.

3.3.4. **Means, Methods, Procedures.** Design-Build Entity shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work.

3.4. **Labor, Materials and Equipment**

3.4.1. **Contract Sum.** Design-Build Entity 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 incorporated or to be incorporated into the Work.

3.4.2. **Coordination.** Design-Build Entity shall provide supervision sufficient to ensure proper coordination for the timely and efficient performance and completion of the Work.

3.4.3. **Field Conditions.** Design-Build Entity shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions with the information in the Contract Documents and with other information obtained by or available to Design-Build Entity before commencing the Work or any activities on the Site.

3.4.4. **Layout.** Design-Build Entity is solely responsible for (1) the accurate layout of all portions of the Work, (2) the accuracy of the Project lines and levels, and (3) erection of the Work square, plumb, level, true to line and grade, in the exact plane, to the correct elevation and sloped to drain where needed.
3.4.5. Materials, Equipment Delivery, Storage, Inventory. Materials and equipment shall be: (1) furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work; and (2) if located on the Site shall be properly stored and protected as necessary, or as directed by District Project Manager, to prevent Loss from any cause, including, without limitation, theft. In the event that District Project Manager gives direction as to the location on the Site for storage or protection of materials or equipment, Design-Build Entity shall nonetheless remain solely responsible for its safe and secure storage and protection. No part of any such stored materials and equipment shall be removed from its place of storage except for immediate installation in the Work. Design-Build Entity shall keep an accurate inventory of all such stored materials and/or equipment in a manner satisfactory to District.

3.4.5.1. PURCHASES. Design-Build Entity shall place orders for materials and/or equipment as specified so that delivery of same may be made without Delay to the Work. Design-Build Entity shall, upon request from District Project Manager, furnish to District documentary evidence showing that orders have been placed. District reserves the right, in the event of Design-Build Entity’s failure, after three (3) Days written notice to Design-Build Entity, to comply with the requirements of this Subparagraph 3.4.5.2, to place orders for such materials or equipment as it may deem advisable in order that the Work may be completed within the Contract Time and to deduct the costs paid or payable by District associated with such purchases from the Contract Sum otherwise owing to Design-Build Entity. Design-Build Entity shall, if requested by District Project Manager, accept assignment of any such contracts entered into by District without a Contract Adjustment.

3.4.5.2. TITLE. 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. Design-Build Entity warrants good title to all material, supplies and equipment installed or incorporated in the Work and agrees upon Final Completion to deliver the Work, including the premises, land, improvements and appurtenances on or to which the Work is placed, located or affixed, to District free from any claims, liens, or charges. Design-Build Entity 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 Improvements or appurtenance thereon, except that (1) nothing stated in this Subparagraph 3.4.5.2 shall be interpreted as a waiver by Design-Build Entity or any Subcontractor or Subconsultant of its right under Applicable Laws to serve a stop notice for Work that is not paid for by District as required under the terms of the Contract Documents; and (2) Design-Build Entity 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, provided that in the event of such installation Design-Build Entity advises District Project Manager as to the owner, and the precise location, thereof.

3.4.5.3. SUBSTITUTIONS. No substitution of materials, equipment, articles, processes or other items of the Work required under the Contract Documents will be made without written approval of District. Said approval may, if the substitution involves a Change to the Project Criteria or an Approved Deviation, be granted or denied in the District’s sole and absolute discretion. In all other cases, District’s approval will not be unreasonably denied, delayed or conditioned. With respect to any such substitution made or requested by Design-Build Entity, neither the occurrence of a substitution by Design-Build Entity nor the approval or disapproval by District of a substitution that is made in accordance with this Subparagraph 3.4.5.4 shall give rise to
any right of the Design-Build Entity to a Contract Adjustment. Design-Build Entity shall, notwithstanding District’s approval, remain solely responsible for the sufficiency and suitability of all substitutions.

3.4.5.4. PARTS LIST. Design-Build Entity will provide a printed parts list for all items which might be subject to replacement and for which parts lists are either expressly required by the Contract Documents or customarily provided according to usual commercial practices.

3.4.5.5. MANUALS. Four (4) hard copies and one (1) electronic version of operations and maintenance manuals will be prepared and transmitted to District Project Manager within the Contract Time for Final Completion. Final Payment will not be due until District Project Manager has received all manuals covering the Work that are either required to be provided by the terms of the Contract Documents or if not required are customarily provided according to usual commercial practices applicable to the portion of Work involved. Operating instructions will be included within the equipment manuals and will state all information necessary for District to operate, use, maintain and service the equipment fully and efficiently.

3.4.5.6. START UP. DESIGN-BUILD ENTITY will be responsible for start-up of all systems and equipment purchased as part of the Work and has included sufficient amounts in the Contract Sum to cover contingencies arising out of the start-up of such systems and equipment. Design-Build Entity 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.

3.5. Design-Build Entity’s Warranty

3.5.1. General Representations and Warranties. Without limitation upon any of the promises, warranties or representations by Design-Build Entity contained elsewhere in the Contract Documents, the Design-Build Entity warrants and represents as follows:

3.5.1.1. SOLVENCY. DESIGN-BUILD ENTITY represents and warrants that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents.

3.5.1.2. CAPITAL. DESIGN-BUILD ENTITY represents and warrants that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations under the Contract Documents.

3.5.1.3. AUTHORIZATION TO DO BUSINESS. DESIGN-BUILD ENTITY represents and warrants that it is authorized to do business in the jurisdiction where the Work will be performed and is properly licensed by Governmental Authorities.

3.5.1.4. AUTHORITY. DESIGN-BUILD ENTITY represents and warrants that its execution of the Design-Build Contract and its performance thereof are within its duly authorized powers.

3.5.1.5. LABOR RELATIONS. DESIGN-BUILD ENTITY represents and warrants that it presently knows of no facts the existence of which might lead to a labor dispute which might affect the Work.

3.5.1.6. EXPERIENCE. DESIGN-BUILD ENTITY represents and warrants that it has performed substantial work in the past that is comparable in kind and complexity to the Work and that it is an experienced design-build firm having the ability, skill and resources necessary to perform and/or provide the Work required of it under the Contract Documents within the limitations of the Contract Sum and Contract Time.

3.5.1.7. LABOR LAWS. DESIGN-BUILD ENTITY warrants that all of the Work will be provided and produced in compliance with Applicable Laws relating to employment of labor.
3.5.1.8. OCCUPATIONAL SAFETY AND HEALTH LAWS. DESIGN-BUILD ENTITY warrants that all the Work will comply with the Applicable Laws relating to occupational safety and health.

3.5.1.9. HAZARDOUS SUBSTANCES. DESIGN-BUILD ENTITY warrants that the use and storage of all Hazardous Substances and products containing Hazardous Substances in the Work will comply with Applicable Laws.

3.5.1.10. ENVIRONMENTAL LAWS. DESIGN-BUILD ENTITY represents and warrants that it is knowledgeable regarding those Environmental Laws applicable to the Work and that it will conduct itself in full compliance therewith, notifying District in the event of any significant environmental occurrence.

3.5.2. General Warranty. In addition to other warranties and guarantees required by the Contract Documents, the Design-Build Entity shall, and hereby does, warrant and guarantee that:

3.5.2.1. the Work will conform to the RFP Documents, Project Criteria and Approved Deviations, including, without limitation, any performance standards that are part thereof;

3.5.2.2. all Work for which there is not a specific performance standard in the RFP Documents, Project Criteria or Approved Deviations shall be performed in accordance with the highest standard of care applicable to the performance of services and work of the type required by the Project Criteria and RFP Documents;

3.5.2.3. the completed Work will conform to the Design Intent;

3.5.2.4. all labor, equipment, materials and other items of Work will be when installed new and free of liens, claims and security interests;

3.5.2.5. without limitation to the other requirements of this warranty, all labor, installation and workmanship will be performed in a good and workmanlike manner;

3.5.2.6. all labor, materials, equipment, services and work shall be free of conditions constituting Defective Work for a period of two (2) years after Final Completion; and

3.5.2.7. all parts of the Work will conform to the requirements of Applicable Laws in effect at the time such Work is permanently incorporated into the Project.

3.5.3. Evidence of Compliance. If required by the District, the Design-Build Entity shall furnish satisfactory evidence as to the kind and quality of services, labor, installation, materials and equipment used. Manufactured items installed in the Work shall be installed in strict accordance with manufacturer’s current printed instructions.

3.5.4. Repair, Replacement. Without limitation upon the District’s other rights or remedies under the Contract Documents or Applicable Laws, any and all Work that, for reasons other than (1) ordinary wear and tear or (2) abuse or neglect by persons or entities other than the Design-Build Entity or the Subcontractors or Subconsultants, is not in conformance with the warranties or guarantees required by the Contract Documents or Applicable Laws shall be repaired or replaced, together with the repair or replacement of any other Work, Existing Improvements or the work of the Separate Contractors, the District’s own forces or others, which may be removed, displaced or damaged in so doing. The Design-Build Entity shall notify the District in writing upon completion of such repair or replacement. In the event of failure by the Design-Build Entity to commence and pursue with diligence said replacement or repair within ten (10) Days after being notified by the District, the District is hereby authorized to proceed with such replacement and repair as the District deems necessary and expedient and to charge such costs to Design-Build Entity at Design-Build Entity’s Own Expense.

3.5.5. No Limitation. The warranties stated in this Section 3.5 are in addition to any other warranties or guarantees that are required under any other provision of the Contract Documents or Applicable Laws. Nothing stated in this Section 3.5 shall be interpreted as a limitation upon the District’s rights.
under any warranties or guarantees provided for under any other provision of the Contract Documents or under Applicable Laws that afford the District greater rights than the rights afforded to District under this Section 3.5.

3.5.6. Assignment. Design-Build Entity does hereby unconditionally and irrevocably assign to District all warranties and guarantees issued or made by any Subcontractor or Subconsultant of any Tier (including, without limitation, any manufacturer, supplier and distributor). Such assignment shall not relieve Design-Build Entity of, or otherwise limit, any of its obligations contained in the Contract Documents, including, without limitation, the general responsibility and liability of Design-Build Entity for a breach by a Subcontractor or Subconsultant (including, without limitation, any manufacturer, supplier and distributor) of a warranty or guarantee given by such Subcontractor or Subconsultant in connection with the Work.

3.5.7. Close-Out. Unless sooner requested by the District Project Manager, the Design-Build Entity shall furnish to the District, as part of the Close-Out Documents and as a condition to Final Payment, all guarantees or warranties as are required by the terms of the Contract Documents. All such guarantees and warranties shall be: (1) in writing; (2) indexed and bound; (3) accompanied by such certifications and instruction materials as may be required by the Contract Documents; and (4) issued or assignable by their terms to District and will in the latter case be assigned to District.

3.5.8. Month Walk-Through. Design-Build Entity agrees, at no additional cost to the District, to participate with District in a walk-through of the Project during the one (1) year and eleven (11) months following Final Completion for the purpose of reviewing the Work and identifying any items of Work that may require correction under applicable warranties furnished as part of or pursuant to the Contract Documents. The Design-Build Entity shall take steps to ensure that the Architect of Record participates fully in said walk-through.

3.6. Taxes

3.6.1. General. The Design-Build Entity shall pay, at the Design-Build Entity’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 the Design-Build Entity 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 the Design-Build Entity’s employees.

3.6.2. Excise Taxes. If under federal excise tax law any transaction hereunder constitutes a sale on which a federal excise tax is imposed, and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, then the District, upon request, will execute documents necessary to show: (1) that the District is a political subdivision of the State for the purposes of such exemption; and (2) that the sale is for the exclusive use of the District. No excise tax for such materials shall be included in any price (including, without limitation, the price for the Work in the Design-Build Proposal) submitted by Design-Build Entity for the Work or for Changes in the Work.

3.6.3. Tax Exempt Status. The Design-Build Entity shall comply with Applicable Laws concerning tax-exempt construction projects.

3.6.4. Records of Taxes. The Design-Build Entity 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 the District to claim a refund for taxes for such materials, shall render the Design-Build Entity liable to the District for the amounts of such tax refund.
3.6.5. The terms of the Agreement may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to the Agreement, the private party may be subjected to the payment of property taxes levied on such interest.

3.7. Permits, Fees and Notices

3.7.1. Permits. All permits, licenses and certificates obtained by the Design-Build Entity, and members of the Design Build Team, where applicable, shall be delivered to the District prior to and as a condition to Final Completion and the Design-Build Entity’s right to Final Payment.


3.7.3. Notice of Violations. Design-Build Entity shall immediately notify the District in writing of any instruction received from the District, District Project Manager, Design Consultant or any other Project Team member that, if implemented, would cause a violation of any Applicable Law.

3.7.4. Approvals by Governmental Authorities. Where the Contract Documents state that materials, processes or procedures must be approved by a Governmental Authority, the Design-Build Entity shall be responsible for satisfying requirements and obtaining the approval of such Governmental Authority.

3.8. Design-Build Entity’s Personnel

3.8.1. Key Persons. Design-Build Entity’s employees acting as project manager, scheduler and superintendent constitute Key Persons. Individuals acting as Key Persons who are not already identified in Design-Build Entity’s Post-Award Submittals shall be identified in writing to District Project Manager prior to commencement of the Work.

3.8.2. Background Check. Design-Build Entity shall perform, prior to commencing Work on the Site, a thorough background check of each of the Key Persons and shall not, without prior written approval of District, employ any person to act as a Key Person if such background check, or other information known to Design-Build Entity, discloses a felony conviction or other matter which casts any reasonable doubt on the competency, reliability or honesty of such person.

3.8.3. Project Manager. The Key Person acting as project manager shall be deemed to have full authority to contractually bind Design-Build Entity, including, without limitation, the authority to bind Design-Build Entity to the terms of Contract Adjustments.

3.8.4. Transfer. Design-Build Entity’s Key Personnel are deemed of essence to the Design-Build Contract. No Key Person shall, for so long as he/she is employed by Design-Build Entity, 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.

3.8.5. 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.

3.8.6. Replacement. Any person proposed by Design-Build Entity as a replacement for a Key Person must be approved in advance by District, such approval not to be unreasonably withheld, after submission by Design-Build Entity to District Project Manager of complete information concerning such person’s experience and qualifications.

3.8.7. Communications. Important communications by Key Persons shall be confirmed in writing by Design-Build Entity. Other communications by Key Persons shall be confirmed on written request in each case.

3.8.8. Contact Information. Design-Build Entity 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.
3.8.9. 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 Design-Build Entity with authority to sign on behalf of and contractually bind Design-Build Entity, shall be submitted to District Project Manager.

3.8.10. Exclusion from Site. Design-Build Entity shall at all times maintain good discipline and order at the Site among its employees and the employees of the Subcontractors and Subconsultants. Any person in the employ of Design-Build Entity or any of the Subcontractors or Subconsultants whom District deems, in its sole and absolute 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 District.

3.9. Design-Build Schedule

3.9.1. Preparation. Within thirty (30) Days after receipt by Design-Build Entity of the Notice of Intent to Award, the Design-Build Entity shall prepare and submit a Design-Build Schedule for the design and non-design portions of the Work, both in hard copy and electronically, for the District’s information and District Project Manager’s acceptance. The Design-Build Schedule shall in all respects conform to and be consistent with the time requirements for the Project set forth in the RFP Documents and the executed Design-Build Contract.

3.9.2. Format. The Design-Build Schedule shall be in the form of a critical path progress schedule that shows, in graphic form, a plan for performance of the Work within the Contract Time. It shall be prepared, using Primavera P3, as a time-scaled bar chart showing: (1) continuous flow from left to right and activities and milestones that are critical to Substantial Completion and Final Completion of the Work; (2) identification of “float”; and (3) a clearly highlighted critical path. Durations and specific calendar days shall be clearly and legibly shown for the early and late start and finish of each activity. With the exception of District Review Periods and Governmental Authority Review Periods, any activity having a duration of more than fifteen (15) Days will be segmented into fifteen (15) Day increments. No more than ten percent (10%) of the activities shall be shown as critical. Techniques or methods designed to suppress depiction of available float are strictly prohibited.

3.9.3. Detail. Activities shown in the Design-Build Schedule shall be in sufficient detail to demonstrate a practical plan to complete the design, engineering, fabrication and construction within the Contract Time and shall, at a minimum, include the following:

3.9.3.1. the start and finish date of each activity;
3.9.3.2. the anticipated percent of completion at the end of each month;
3.9.3.3. the weighted cost value expressed as a percentage of the total cost of the Work for each activity;
3.9.3.4. the final labor force curves by trade, as required by District;
3.9.3.5. the anticipated purchase and delivery of major materials and equipment;
3.9.3.6. the District’s occupancy requirements;
3.9.3.7. receipt and incorporation of District-Furnished Materials, equipment or other items (if any);
3.9.3.8. District Review Periods and District Review Dates that are acceptable to and approved by District;
3.9.3.9. Governmental Authority Review Periods; and
3.9.3.10. the activities identified as being on the critical path to Substantial Completion and Final Completion of the Work.

3.9.4. Updates. Throughout the performance of the Work, weekly updates shall be delivered, in hard copy and, if required by District Project Manager, in an electronic form satisfactory to District Project Manager. In addition, Design-Build Entity shall regularly prepare and submit to District
Project Manager short term, three (3) week “look-ahead” schedules generated from the Design-Build Schedule approved by District Project Manager. Except to the extent permitted by Contract Adjustment to the Contract Time approved by District in a duly executed Change Order or Unilateral Change Order, in no event shall the Design-Build Entity’s updates or “look ahead” schedules alter the dates for Substantial Completion or Final Completion set forth in the Design-Build Schedule approved by District.

3.9.5. Governing Schedule. The governing schedule for the Work shall be the Design-Build Schedule or updated Design-Build Schedule accepted by the District and District Project Manager. Unless otherwise directed in a writing signed by District, no other schedule shall be used or relied upon by the Design-Build Entity or its Subcontractors or Subconsultants in planning or performing the Work or in connection with any request for a Contract Adjustment to the Contract Time.

3.9.6. Submittal Schedule. Within thirty (30) Days after the receipt by the Design-Build Entity of the Notice of Intent to Award, the Design-Build Entity shall prepare and submit, in accordance with the Contract Documents, a Submittal Schedule for the District’s information and District Project Manager’s acceptance. The Submittal Schedule shall be coordinated with the Design-Build Schedule and allow time for review of the Submittals as may be required by the Contract Documents, or if none is required, a reasonable time for such review. Design-Build Entity shall keep the Submittal Schedule current and updated in the same manner as required for updating of the Design-Build Schedule.

3.9.7. Schedule Responsibility. Design-Build Entity is and shall remain solely responsible, notwithstanding the District or District Project Manager’s review or acceptancethereof, for the accuracy, suitability and feasibility of all schedules it prepares for the Project, including, without limitation, the Design-Build Schedule, Submittal Schedule, “look ahead” schedules, recovery schedules and any updates thereof.

3.9.8. Condition of Payment. Compliance by Design-Build Entity with the requirements of this Section 3.9 and the other provisions of the Contract Documents pertaining to preparing, submitting, revising and updating the Design-Build Schedule and Submittal Schedule is a condition to District’s obligation to make payment to Design-Build Entity. Recognizing that scheduling is a continuing, cumulative and recurring obligation, failure by District or District Project Manager to assert a right to withhold payment under this Paragraph 3.9.8 due to a noncompliance by Design-Build Entity with its schedule obligations shall not waive or diminish the District’s right to withhold, or the District’s right to disapprove of, future payments on account of such noncompliance or any other past or future noncompliance of the same or similar nature.

3.10. Reporting, Progress Meeting, Documents and Samples at the Site

3.10.1. Contract Documents. DESIGN-BUILD ENTITY shall at all times while performing Work at the Site maintain, in good order, at the Site: (1) one legible set of the Contract Documents approved by DSA; (2) one legible copy of the current version of the other Contract Documents; and (3) one legible copy of the current version of approved Shop Drawings, Product Data, Samples and other Submittals.

3.10.2. Record Documents.

3.10.2.1. Design-Build Entity Responsibility. DESIGN-BUILD ENTITY shall maintain Record Drawings and Specifications in a satisfactory record condition by posting, on a weekly basis (or, in the case of building or site mechanical, electrical, plumbing or fire sprinkler systems, as soon thereafter as is reasonable and practical), 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, as well as any as-
built conditions noted by other District Consultants, including, without limitation, District Consultants involved in the commissioning process. Each revision, change and notation shall be coordinated with other revisions, changes and notations and accurately annotated and cross-referenced by the Design-Build Entity.

3.10.2.2. Property of District. All Record Drawings and Specifications and other Record Documents shall be deemed the sole property of the District and at the earlier of Final Completion or termination of the Design-Build Contract, shall be turned over to District Project Manager.

3.10.2.3. Final Completion. Design-Build Entity shall, as a condition to Final Completion and Final Payment, furnish the District Project Manager with one (1) mylar and one (1) Building Information Model (BIM) of the Record Drawings provided according to the requirements identified in the BIM standards and one (1) annotated hard copy and one (1) computer disk (using software format acceptable to the District) of the Record Specifications. All electronic versions shall conform to the requirements of the BIM Standards. Each page of such Record Drawings and the cover page of such Record Specifications shall prominently bear the words "Record Documents" and the Design-Build Entity’s approval by manual signature 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.

3.10.2.4. Condition of Payment. Compliance by Design-Build Entity with the requirements of this Paragraph 3.10.2 shall be deemed a condition to Design-Build Entity’s right to payment upon its Applications for Payment.

3.10.3. Daily Reports.

3.10.3.1. Delivery. At the end of each Day that Design-Build Entity performs the Work on the Site, Design-Build Entity shall submit a daily report to District Project Manager (on the form provided or approved by District), together with applicable delivery tickets for all labor, materials and equipment furnished that Day. If requested by District Project Manager, daily reports shall be delivered electronically.

3.10.3.2. Content. Daily Reports shall include the following information:

3.10.3.2.1. Labor - The names of the workers, and for each such worker his/her classification and hours worked.

3.10.3.2.2. Material - A list of the different materials used and for each different material the quantity used.

3.10.3.2.3. Equipment - The type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable.

3.10.3.2.4. 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.

3.10.3.2.5. Visitors, Guests, Dignitaries – A list of visitors and guests by name, title, company and purpose of visit.

3.10.3.2.6. 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.

3.10.3.2.7. Accidents, Delays, Defective Work – A description in detail of any injuries to the workers, accidents or delays that occurred or Defective Work that was encountered.

3.10.3.2.8. Other Services and Expenditures – A description of other services and expenditures in such detail as District may require.
3.10.3.3. Payment. Timely and complete submission of daily reports by Design-Build Entity shall be a condition to Design-Build Entity’s right to payment under the Design-Build Contract.

3.10.4. Progress Meetings. Design-Build Entity shall coordinate and attend all progress meetings at the Site, at which meetings progress of the Work shall be reported in detail with reference to the then-current updated Design-Build Schedule accepted by the District. Progress meetings shall be held weekly, or at such other time or frequency as District, in its sole and absolute discretion, deems necessary. A representative of the Architect of Record, and each Subcontractor and other Subconsultant then actively performing Work, scheduled to become active within one week (greater if determined to be in the best interest of the project) or currently a critical path activity whether or not performing, shall have a competent and knowledgeable representative present at such progress meeting to report on the condition of the Work of such Subcontractor or Subconsultant and to receive relevant information. Meeting notes shall be taken by the Design-Build Entity and draft form distributed to the District Project Manager, District, all meeting attendees and all other affected parties. Meeting Minutes will become final with incorporated comments by team members upon completion of the next regularly scheduled weekly meeting.

3.10.5. Notice Requirements. Under no circumstances shall information contained in Design-Build Entity’s daily job reports, monthly reports or job meeting minutes relieve Design-Build Entity of its obligations to comply with, serve as a substitute for, nor constitute a waiver by District of its right to insist upon, Design-Build Entity’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.

3.10.6. Availability for Review. Copies or originals of all documents required to be maintained by the Design-Build Entity at the Site or required to be submitted to the District Project Manager shall be available at any time for review by the District, District Project Manager, District Consultants, Inspectors of Record and Governmental Authorities.

3.10.7. Verified Reports. Without limitation to any of the Design-Build Entity’s other obligations under the Contract Documents or Applicable Laws, the Design-Build Entity 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 the Design-Build Entity and Architect of Record 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 Drawing, 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 the Design-Build Entity proposes to conform the Work to the designs and other information in the Contract Documents.

3.11.2. Coordination with Others. Design-Build Entity shall cooperate with District, District Project Manager and District Consultants in the coordination of Design-Build Entity’s Shop Drawings, Product Data, Samples and other Submittals with related documents submitted by the Separate Contractors.

3.11.3. Submission by Design-Build Entity.
3.11.3.1. Submission. All Shop Drawings, Product Data, Samples and other Submittals required by the Contract Documents shall be submitted to District Project Manager for its review, with a copy to College Director of Facilities and to such of District’s Consultants or Separate Contractors as District Project Manager may direct in writing. Informational Submittals (i.e., Submittals upon which no responsive action is expected) may be required and if so shall be limited to those Submittals so identified in the Contract Documents. Submittals made by Design-Build Entity which are not required by the Contract Documents may be returned without action.

3.11.3.2. Design-Build Entity Approval. The Design-Build Entity and Architect of Record shall review, stamp "approved" and submit Design-Build Entity’s Shop Drawings, Product Data, Samples and other Submittals to the District Project Manager, in accordance with the latest Submittal Schedule accepted by the District. The Design-Build Entity’s approval and submission of Submittals constitutes a representation that the Design-Build Entity has determined or 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. Submittals without evidence thereon of the Design-Build Entity’s approval shall be returned, without further consideration, for resubmission in accordance with these requirements.

3.11.3.3. Transmittal. All Submittals shall be accompanied by an accurately completed transmittal in the form required by District. With respect to Submittals of documents, 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 Design-Build Entity 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, may be returned for re-submittal without review.

3.11.3.4. Timing. Whether or not a particular Submittal has been identified for review by District Project Manager only or by College Director of Facilities and a Design Consultant, Design-Build Entity shall in all cases submit its Submittals within a time frame sufficiently early to allow review of the same by the District Project Manager and District Consultants without causing Delay to construction progress. Design-Build Entity will be responsible to pay, at Design-Build Entity’s Own Expense, additional services fees and costs incurred by District for the District Project Manager, Inspectors of Record and District Consultants in order to expedite review of Submittals which are not submitted in a timely fashion.

3.11.3.5. Content. Submittals shall consist of the appropriate combination of catalog sheets, material lists, manufacturer’s brochures, technical bulletins, specifications, diagrams and 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 Contract Documents, engineering computations shall be submitted.
3.11.3.6. Professional Certifications. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, District, District Project Manager and the District Consultants shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.11.3.7. 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.

3.11.3.8. Notation of Revisions. Design-Build Entity shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or other Submittals, to revisions other than those requested by District Project Manager or District Consultants on previous Submittals.

3.11.3.9. Duplicates. Design-Build Entity shall be responsible for delivering duplicates of Submittals to all other persons whose work is dependent thereon.

3.11.4. Review of Submittals. Review of Submittals by District, District Project Manager or District Consultants is subject to the limitations of Paragraph 4.3.8, below. Design-Build Entity shall, notwithstanding any review or approval thereof by District, District Project Manager or a District Consultant, be solely responsible for the content of all Submittals. Without limitation to the foregoing, deviations in Submittals from requirements of the Contract Documents shall remain the sole responsibility of Design-Build Entity unless Design-Build Entity has specifically informed District Project Manager in writing of such deviation at the time of submission of the Submittal and District has given specific written approval thereof.

3.11.5. Contract Adjustments. Subject to Design-Build Entity’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 a Contract Adjustment.

3.11.6. Compliance with Contract. Design-Build Entity 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 returned by the District Project Manager with an indication that it has been reviewed and that the Work addressed by the Submittal may proceed. Such Work shall be in accordance with such Submittals, unless such Submittal indicates that there are corrections to be made. If corrections are indicated to be made then the Work shall be in accordance with the re-submitted and corrected Submittal that is reviewed and returned to the Design-Build Entity by the District Project Manager.

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, Design-Build Entity shall submit its related Submittals to DSA, and District Project Manager with an original, manual signature of the professional engineer registered in the State of California responsible for preparing such Submittal.

3.12. Use of Site

3.12.1. Staging Area. Design-Build Entity will be assigned staging space on or adjacent to the Site, and all field offices, materials and equipment shall be kept within this area. Unless otherwise required by the Contract Documents, Design-Build Entity shall be responsible for restoring such areas and surrounding areas to the condition they were in prior to Design-Build Entity’s commencement of the Work.

3.12.2. Existing Improvements. During the installation of the Work, Design-Build Entity shall ensure that Existing Improvements are adequately protected. Upon Final Completion of the Work, all Existing Improvements that may have been damaged shall be restored to the condition they were in prior to Design-Build Entity’s commencement of the Work.
3.12.3. Operations at Site. Design-Build Entity shall confine operations, access and parking at the Site to areas permitted by Applicable Laws, and District and shall not unreasonably encumber the Site with materials or equipment. Design-Build Entity 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 a Contract Adjustment, 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 constraints of the Site.

3.12.4. Coordination. Design-Build Entity shall coordinate Design-Build Entity's operations with, and secure the approval of, District before using any portion of the Site.

3.12.5. Unauthorized Use. Personnel of Design-Build Entity and the Subcontractors and Subconsultants 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 approved by District.

3.12.6. College Operations. Design-Build Entity shall anticipate and take all necessary and reasonable measures to minimize and control dust and noise that might interfere with the use or enjoyment of the Site by the District and the College’s students, staff and visitors. The Design-Build Entity shall familiarize itself with the activities of the College, including, without limitation, campus functions and ceremonies and plan the Work so as to avoid interferences or disturbances therewith.

3.12.7. Site Security. Design-Build Entity is responsible for the security of the Site and all of the Work, 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.

3.12.8. Persons on Site. Design-Build Entity, or any member of Design Build Team, where applicable, shall not allow any person, other than the workers on the Project, or other individuals authorized by District, to come upon any portion of the Site where the Work is being performed. Only authorized personnel will be permitted on the Site. Design-Build Entity shall at all times maintain good discipline and order among its employees and the employees of Subcontractors and Subconsultants. Any person in the employ of Design-Build Entity or any of Subcontractor or Subconsultant whom District may deem, in its sole and absolute 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 District and all Losses to Design-Build Entity or District associated therewith shall be paid at Design-Build Entity’s Own Expense.

3.12.9. College Activities. Design-Build Entity shall, prior to performing the Work at an operating College 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. The Design-Build Entity shall enclose the working area with a substantial barricade and arrange the Work to cause minimum amount of inconvenience and danger to students, faculty, staff and visitors.

3.12.10. Dust, Fumes, Noise. Design-Build Entity and Design Build Team shall take preventive measures to minimize, and eliminate wherever reasonably possible, generation of dust, fumes and noise.
3.12.10.1. All clearing, grading, earth-moving or excavation activities shall cease when winds exceed 25 mph per SCAQMD guidelines in order to limit fugitive dust emissions.

3.12.10.2. Design-Build Entity shall ensure that all disturbed unpaved roads and disturbed areas within the Project are watered at least three times daily during dry weather. Watering, with complete coverage of disturbed areas shall occur at least three times a day, preferably in the mid-morning afternoon and after work is done for the day.

3.12.10.3. The contractor shall ensure that traffic speed on unpaved roads and Project site areas are reduced to 15 miles per hour or less to reduce PM10 and PM2.5 fugitive dust haul road emissions by approximately 44%.

3.12.10.4. The California Air Resources Board, in Title 13, Chapter 10, Section 2485, Division 3 of the California Code of Regulations, imposes a requirement that heavy duty trucks accessing the site shall not idle for greater than five minutes at any location. This measure applies to construction traffic. Prior to grading, a sign shall be posted on-site stating that workers need to shut off engines after five minutes of idling.

3.12.10.5. All Rubber Tired Dozers and Scrapers shall be CARB Tier 2 Certified or better.

3.12.10.6. Equipment and materials shall be staged in areas that will create the greatest distance between construction related noise sources and the noise sensitive receptors nearest the construction site. Construction Equipment staging areas shall be located at least 300 feet away from Sensitive Receptors.

3.12.10.7. All equipment shall be equipped with properly operating and maintained mufflers. To the extent feasible, haul routes shall not pass directly by sensitive land uses.

3.12.10.8. Confinement of Operations. Design-Build Entity shall confine apparatus, the storage of materials and the operations of the workers to limits indicated by Contract Documents or as otherwise directed by District Project Manager in writing.

3.12.10.9. Prohibited Substances. Design-Build Entity shall not permit (1) the possession or use of alcohol or controlled substances on the Site or (2) smoking in other than designated smoking areas approved by District.

3.12.10.10. Survey Markers. Design-Build Entity shall take care in accordance with the Standard of Care applicable to Design-Build Entity’s performance of the Work to prevent the disturbance or covering of any survey markers, monuments or other devices marking property boundaries or corners. If such markers are disturbed, they shall be replaced by Design-Build Entity by means of the services of a licensed land surveyor. The costs of such replacement shall be at Design-Build Entity’s Own Expense.

3.12.10.11. Drainage, Erosion. Design-Build Entity shall be responsible for changes in patterns of surface water drainage resulting from, and related erosion control made necessary by, the performance of the Work.

3.12.10.12. Land Clearing and Excavation Activities

3.12.10.13. Prior to land-clearing activities from February 1 through August 31, at the expense of the DBE from CEQA mitigation measures a qualified biologist shall first evaluate the type and extent of vegetation removal and the impact, if any on nesting birds. If determined necessary, the biologist shall conduct a survey and specify the appropriate mitigation measures for impacts which may include avoidance of occupied nests, working outside an established buffer area, modified scheduling of grading and clearing, and monitoring of active nests during construction.
3.12.15.2. Prior to any excavation, the Design-Build Entity shall compare the limits of proposed excavations with the depth and lateral extent of existing sub-surface disturbances, including foundations, utility and fill materials using information including but not limited to: as built construction plans, underground utility surveys and geotechnical information including boring and trenching logs. Should excavations exceed five feet in depth, a qualified paleontologist shall be retained to conduct additional paleontological assessment using pre-construction geotechnical surveys to better define the subsurface geological feature of the campus. Should data indicate paleontological sensitivity, District shall retain a qualified paleontologist to facilitate a preconstruction meeting and monitor all earth-moving activity with the potential to disturb previously undisturbed paleontologically sensitive sediment. Should resources be uncovered as a result of grading or excavation shallower than five feet, work shall cease until a paleontological monitor arrives.

3.12.15.3. Trenches. As required by California Labor Code §6705, if the Contract Sum exceeds Twenty-Five Thousand Dollars ($25,000) and involves the excavation of any trench or trenches five (5) feet or more in depth, Design-Build Entity shall, in advance of commencing excavation, submit to District Project 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 California Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer, employed by Design-Build Entity at Design-Build Entity’s Own Expense. Nothing in this Paragraph 3.12.15 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 District Project Manager. Nothing in this Paragraph 3.12.15 shall be construed to impose any liability, including, without limitation, any tort liability, upon the District or upon any of its officers, agents, representatives or employees and Design-Build Entity shall, notwithstanding the review or acceptance of Design-Build Entity’s plan by District Project Manager, remain solely responsible for the sufficiency of its plan prepared pursuant to this Paragraph 3.12.15.

3.13. Cutting and Patching

3.13.1. Design-Build Entity Responsibility. Design-Build Entity is responsible for all cutting, fitting or patching required to complete the Work and to make its parts fit together properly both among themselves and with any Existing Improvements and the work of the Separate Contractors and of District’s own forces.

3.13.2. DSA Review. 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 appropriate Subconsultant responsible for structural engineering and the DSA field engineer.

3.13.3. Damage. 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 prevent unnecessary damage. Design-Build Entity 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.

3.13.4. Separate Contractors. Design-Build Entity shall not cut or otherwise alter construction by Separate Contractors except with the written consent of District, which consent shall not be
unreasonably withheld, delayed or conditioned. When asked, Design-Build Entity shall not unreasonably withhold from the Separate Contractors the Design-Build Entity's consent to their cutting or other alteration of the Work as required to complete the work of the Separate Contractors.


3.14.1. Existing Utilities. Except as otherwise required by California Government Code §4215, Design-Build Entity shall contact all relevant utility providers and arrange for obtaining all available information, concerning location of subsurface utility lines. Prior to commencement of any digging Design-Build Entity 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 §§4216 et seq., except in an emergency, Design-Build Entity shall contact the appropriate regional notification center at least two (2) the 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 should be known, to contain sub-service installations, and shall obtain an inquiry identification number from the regional notification center. Design-Build Entity shall not assume, unless actual observed surface conditions at the Site indicate otherwise, that utilities are located in the same location as indicated on the as-built records or other information obtained by Design-Build Entity. Design-Build Entity shall conduct potholing in advance of digging in any areas where there are not apparent surface conditions at the Site indicating the actual location of underground utilities and be at all times vigilant in watching for any conditions encountered, above or below the surface of the ground, that might indicate that underground utilities are at locations other than those indicated by the as-built records or other information obtained by Design-Build Entity. Design-Build Entity shall perform its digging operations in a slow and meticulous manner so as to avoid wherever reasonably possible damaging existing underground utilities. Design-Build Entity shall, at Design-Build Entity’s Own Expense, make good any Loss to District or others as a result of Design-Build Entity’s failure to perform any of its obligations under this Paragraph 3.14.1.

3.14.2. District Responsibility. Pursuant to California Government Code §4215, District assumes the responsibility for removal, relocation, and protection of those existing main or trunkline utility facilities located at the Site at the time of commencement of the Work that are not identified in the Contract Documents. Design-Build Entity shall, to the extent not arising from the failure of Design-Build Entity to exercise reasonable care and to the extent permitted by Article 7, below, to a Contract Adjustment for relocating, repairing or removing any utility facilities not indicated in the Contract Documents with reasonable accuracy (including, without limitation, equipment on the Site necessarily idled thereby) and 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.

3.14.3. Use of 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 by Design-Build Entity or, if furnished by District, shall be paid for by Design-Build Entity at Design-Build Entity’s Own Expense. Upon Final Completion of the Work, Design-Build Entity shall remove all temporary distribution systems. If the Work involves an addition to an existing facility, Design-Build
Entity may, with written permission of College Director of Facilities, granted or withheld in District’s sole and absolute discretion, use District’s existing utilities by making prearranged payments to District for utilities used by Design-Build Entity. When it is necessary to interrupt any existing utility service to make connections, a coordination meeting must be held with the College Director of Facilities and a minimum of two (2) working days’ advance notice shall be given to District Project Manager. Interruptions shall be of the shortest possible duration and shall be scheduled during a time of day that minimizes its impact on the operations of the existing facility. Any Loss to District or Design-Build Entity associated with interruption of a utility service as a result of Design-Build Entity’s breach of, or failure to fully comply with, its obligations under this Paragraph 3.14.3 shall be paid for by Design-Build Entity at Design-Build Entity’s Own Expense.

3.14.4. Sanitary Facilities. Design-Build Entity 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 District Project Manager. Such facilities shall be maintained in a sanitary condition at all times. Use of existing or permanent toilet facilities shall not be permitted except by written consent of District Project Manager.

3.15. Cleaning Up

3.15.1. Design-Build Entity Responsibility. Design-Build Entity 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. Design-Build Entity shall not leave debris under, in or about the Site but shall promptly with not greater than one week between removals, remove same from the Site. Upon Final Completion, Design-Build Entity shall: (1) clean the interior and exterior of the buildings, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections and any areas where debris has collected so surfaces are free from foreign material or discoloration; (2) clean and polish all glass, plumbing fixtures, finish hardware and similar finish surfaces and equipment; and (3) remove temporary fencing, barricades, planking, sanitary facilities and similar temporary facilities from the Site.

3.15.2. Cleanup by District. If Design-Build Entity fails upon 24 hours’ notice by District Project Manager to perform its obligation to clean up, District may arrange to do so, and the cost thereof shall be chargeable to and borne by Design-Build Entity at Design-Build Entity’s Own Expense.

3.16. Access to the Work

3.16.1. District. District, District Project Manager, College Director of Facilities, Inspectors of Record, Design Consultant and District Consultants, and their representatives, and such other persons as authorized by District, shall at all times have access to the Work, either in preparation or in progress. Design-Build Entity 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 those of 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.

3.16.2.1. Design-Build Entity shall cooperate with District, District’s own forces and Separate Contractors and not interfere with other work being done by them or on their behalf. Design-Build Entity shall afford separate contractors reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly connect and coordinate its work with such separate contractors.

3.16.2.2. If any part of Design-Build Entity’s work depends for proper execution or result upon work of any separate contractor, the Design-Build Entity shall inspect and promptly report to District in writing any defects in such work that render it unsuitable for such proper execution.
and results. Design-Build Entity will be held accountable for damages to District for that work which it failed to inspect or should have inspected. Design-Build Entity failure to inspect and report shall constitute its acceptance of other contractor’s work as fit and proper for reception of its work, except as to defects which may develop in separate contractor’s work after execution of Design-Build Entity’s work.

3.16.2.3. Design-Build Entity shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by District in prosecution of the Project to the end that Design-Build Entity may perform this Agreement in light of such other contracts, if any.

3.16.2.4. If simultaneous execution of any contract for Project is likely to cause interference with performance of some other contract or contracts, District Project Manager shall decide which contractor shall cease work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously.

3.16.3. Delivery Routes. Design-Build Entity shall arrange for delivery of material over routes designated by District Project Manager.

3.17. Intellectual Property Rights. The Design-Build Entity shall pay all royalties and license fees relating to use of Intellectual Property Rights. The Design-Build Entity shall defend suits or claims for infringement of Intellectual Property Rights and shall defend, indemnify and hold harmless the Indemnitees in accordance with the terms of Section 3.18, below, from Loss on account thereof, unless a particular design, process or product that includes or utilizes Intellectual Property Rights is required by the Project Criteria or an Approved Deviation; provided, however, that if the Design-Build Entity has information leading it to believe that its use of a particular design, process or product required by the Project Criteria or an Approved Deviation would constitute an infringement of an Intellectual Property Right, then the Design-Build Entity shall nonetheless be responsible to provide such defense, indemnification and hold harmless if such information is not promptly furnished in writing to the District.

3.18. Indemnification

3.18.1. General Indemnity. To the fullest extent permitted by Applicable Laws, Design-Build Entity agrees to indemnify, immediately defend (through counsel reasonably acceptable to District) at its own expense and hold harmless, District, College, Board of Trustees, and each of their respective members, officers, employees, agents, insurers and volunteers ("Indemnitee(s)") from any and all Losses, whether real or alleged, regardless of whether caused in part by such Indemnitee or its agents, servants or independent contractors who are directly responsible to such Indemnitee, arising out of or relating to any of the following:

3.18.1.1. any act or omission of Design-Build Entity or a Subcontractor or a Subconsultant, of any Tier;

3.18.1.2. the activities of Design-Build Entity or a Subcontractor or a Subconsultant, of any Tier, on the Site or on other properties related to performance of the Work or the preparation for performance of the Work;

3.18.1.3. the payment or nonpayment of a Subcontractor or Subconsultant, of any Tier, for the Work performed, except where such nonpayment is the result of a breach by District of its payment obligations under the Contract Documents;

3.18.1.4. the existence or dispersal of any Hazardous Substances or Mold on the Site as a result of a failure by Design-Build Entity or a Subcontractor’s or Subconsultant, of any Tier, to comply with its obligations under the Contract Documents;
3.18.1.5. the violation by Design-Build Entity or a Subcontractor or a Subconsultant, of any Tier, of an obligation under Section 3.17, above, involving infringement of an Intellectual Property Right; or

3.18.1.6. the violation by Design-Build Entity or a Subcontractor or Subconsultant, 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;

PROVIDED, HOWEVER, that nothing contained herein shall be construed as obligating Design-Build Entity to indemnify an Indemnitee for Losses resulting from the sole negligence, active negligence or willful misconduct of such Indemnitee or its agents, servants or independent contractors who are directly responsible to such Indemnitee or from a defect in design furnished by such Indemnitee, where such sole negligence, active negligence, willful misconduct or design defect has been determined by agreement of Design-Build Entity and that Indemnitee 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 Indemnitee or its agents, servants or independent contractors who are directly responsible to such Indemnitee or a defect in a design furnished by such an Indemnitee accounts for only a portion or percentage of the Loss involved, the obligation of Design-Build Entity will be for that portion or percentage of the Loss not due to such active negligence, willful misconduct or design defect.

3.18.2. Indemnification of Adjacent Property Owners. In the event Design-Build Entity 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, Design-Build Entity shall fully indemnify, defend and hold harmless any person or entity which owns or has any interest in such adjacent property against any Loss resulting from the acts or omissions of the Design-Build Entity or its Subcontractors or Subconsultants. The 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 Design-Build Entity under this Section 3.18, as well as any such obligations stated elsewhere in the Design-Build Contract, General Conditions or other terms and conditions that are part of the RFP 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 an Indemnitee, District Consultants, Design-Build Entity or a Subcontractor or Subconsultant, of any Tier, 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 an Indemnitee, District Consultants, Design-Build Entity or a Subcontractor or Subconsultant, of any Tier; and (3) shall not be limited, in the event of a claim against an Indemnitee by an employee of Design-Build Entity, a Subcontractor, a Subconsultant 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 under any worker’s compensation act, disability benefit act or other employee benefit program.

3.18.4. Third Party Indemnity Agreements. Design-Build Entity agrees to obtain or cause to be obtained executed defense and indemnity agreements from each and every Subcontractor and Subconsultant, of every Tier, that include provisions identical in respect to the scope and protection they afford to the Indemnitees to that which is afforded to the Indemnitees by this Section 3.18.
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 Design-Build Entity is in no way diminished, limited or precluded by any agreement by Design-Build Entity to provide express contractual indemnity to such Indemnitee. Design-Build Entity’s obligations under this Section 3.18 shall be deemed to completely eliminate and preclude any right by Design-Build Entity to seek contractual or equitable indemnity or contribution from any Indemnitee for any Loss covered by the Design-Build Entity’s express indemnification obligations under this Section 3.18.

3.18.6. Obligation to Defend. The Design-Build Entity’s obligation to defend under this Section 3.18 includes, without limitation, the obligation to immediately 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 Design-Build Entity’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 Design-Build Entity to defend an Indemnitee against an alleged Loss that is within the scope of the Design-Build Entity’s indemnification obligation under this 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.

3.19. Labor, Wages, Payroll Records

3.19.1. Prevailing Wage Rates. Pursuant to the provisions of Article 2 (commencing at §1770), Chapter 1, Part 7, Division 2 of the Labor Code of California, the Board of Trustees 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 the District and copies will be made available to any interested party on request. The Design-Build Entity, or any member of the Design Build Team, where applicable, 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 the Design-Build Entity to inform itself as to the local labor conditions. No increase in the Contract Sum shall be allowed or authorized on account of the payment of wage rates in excess of those listed in the manner provided herein. 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. The Design-Build Entity shall utilize LCP Tracker for the submittal and coordination of Labor, Wages and Payroll Records.

3.19.2. Subsistence. The Design-Build Entity shall pay, and shall cause to be paid to each worker needed to execute the Work, travel and subsistence payments, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed with the Department of Industrial Relations.

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.
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. The Design-Build Entity shall pay or 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 the Design-Build Entity or any of the Subcontractors and such workers. Pursuant to California Labor Code §1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time and subsistence pay. Design-Build Entity represents and warrants that the Contract Sum includes funds sufficient to allow the Design-Build Entity to comply with all Applicable Laws governing the labor or services to be provided. Design-Build Entity shall defend and indemnify the Indemnities for any violation of any Applicable Law, including but not limited to California Labor Code §2810, and agrees to pay all assessments, including wages and penalties, made against the District in relation to such violations.

3.19.5. Applicable Laws. Design-Build Entity represents and warrants that the Contract Sum includes funds sufficient to allow Design-Build Entity to comply with all Applicable Laws governing the labor or services to be provided. Design-Build Entity shall defend and indemnify the Indemnities for any violation of any Applicable Law, including but not limited to California Labor Code §2810, and agrees to pay all assessments, including wages and penalties, made against the District in relation to such violations.

3.19.6. Posting at Site. The Design-Build Entity 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 §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 the Design-Build Entity or any of the Subcontractors performing the Work, or any part of the Work, shall, except as hereinafter provided, be limited and restricted by the Design-Build Entity to eight (8) hours per day, plus one-half hour unpaid lunch approximately midway through the shift, provided that the Design-Build Entity or any of the Subcontractors may establish a four day/ten-hour schedule consistent with Applicable Laws pertaining to payment of prevailing wages. A regular work week shall consist of 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.

3.19.7.1. The District limits construction to the permissible hours set forth in local noise ordinances. The City’s Noise Ordinance establishes the maximum permissible noise level that can intrude into adjoining property from a stationary source. Standards cannot be exceeded for more than 30 minutes in any hour.

3.19.7.2. According to the Irvine Municipal Code, Section 6-8-205A, construction activities may occur between the hours of 7:00 AM-7:00 PM Monday through Friday and 9:00 AM-6:00 PM on Saturdays. No construction is permitted outside of these hours or on Sundays and federal holidays without a temporary waiver. Trucks, vehicles and equipment that are making or involved with deliveries, loading or transfer of materials for any construction project are also subject to these provisions.

3.19.8. Overtime. Overtime work performed by employees of the Design-Build Entity 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 Design-Build Entity 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 §1776, Design-Build Entity 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 Design-Build Entity 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 Design-Build Entity or a Subcontractor in a given week, Design-Build Entity must keep and submit a certified “Nonperformance” payroll record, indicating “no work” for that week. Design-Build Entity shall submit all certified payroll records to District or District’s third party labor compliance officer 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 Design-Build Entity on the following basis:

3.19.9.1. 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;

3.19.9.2. a certified copy of all such payroll records shall be made available for inspection or furnished upon request to the District, the District Project Manager, District Consultant’s, 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 the District;

3.19.9.3. a certified copy of all such payroll records shall be made available upon request by the public for inspection or the copying thereof, provided that (1) 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, (2) if such requested payroll records have not previously been provided pursuant to Subparagraph 3.19.9.2, above, then the requesting individual or entity shall, prior to being provided the records, reimburse the costs of preparation by Design-Build Entity, the Subcontractors and the entity through which the request was made, and (3) the public shall not be given access to records at the principal office of Design-Build Entity;

3.19.9.4. Design-Build Entity 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;

3.19.9.5. Design-Build Entity shall provide, and shall cause each Subcontractor to provide, payroll records as defined in Title 8 California Code of Regulations §16000 to District within ten (10) Days after receipt of written request, at no cost to District;

3.19.9.6. any copy of such payroll records made available for inspection by, and copies furnished to, the public shall be redacted in a manner so as to prevent disclosure of an individual’s name, address, and social security number, except that any copy made available for inspection by, and copies furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. §175a) shall be marked or redacted only to prevent disclosure of an individual’s name and social security number, and in either event, the name and address of Design-Build Entity or the Subcontractor performing the Work shall not be so obliterated
3.19.9.7. Design-Build Entity shall inform District concurrently with the submission of its initial Application for Payment, of the location of such payroll records, including the street address, city and county, and thereafter shall, within five (5) working days, provide a notice of any change of location and address of such payroll records.

3.19.10. Apprentices. The Design-Build Entity acknowledges that 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 §1777.5, then it shall be the sole responsibility of the Design-Build Entity, for all apprentice occupations, to ensure compliance with California Labor Code §1777.5, including, without limitation, the following provisions:

3.19.10.1. Apprentices of any crafts or trades may be employed and, when required by California Labor Code §1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the California Labor Code.

3.19.10.2. 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.

3.19.10.3. Only apprentices, as defined in California Labor Code §3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing at §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.

3.19.10.4. Design-Build Entity and any of the Subcontractors employing workers in any apprentice craft or trade in performing any of the Work shall apply to the applicable joint apprenticeship committee for a certificate approving the Design-Build Entity or the Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.

3.19.10.5. Prior to commencing the Work, the Design-Build Entity 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 Design-Build Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the District or the District if requested by the District or the District.

3.19.10.6. 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 the Design-Build Entity or the Subcontractor agrees to be bound by those standards, but, except as otherwise provided in this Section 3.19, 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.

3.19.10.7. Interpretation and enforcement of California Labor Code §1777.5 shall be in accordance with the rules and procedures of the California Apprenticeship Council.
3.19.10.8. Design-Build Entity and all the Subcontractors shall comply with California Labor Code §1777.6, which forbids certain discriminatory practices in the employment of apprentices.

3.19.10.9. Design-Build Entity shall become fully acquainted with the law regarding apprentices prior to commencement of the Work, paying special attention to California Labor Code §§1777.5, 1777.6, and 1777.7 and Title 8, California Code of Regulations, §§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. The Design-Build Entity shall attend any pre-construction meetings held by the District to discuss labor requirements. The Design-Build Entity and the Subcontractors shall allow the District, District Project Manager, District Third Party Labor Compliance Officer, District Consultants and the Department of Industrial Relations, and designated representatives of each, to conduct, at their discretion, interviews of workers at the Site during working hours.


3.19.12.1. Prevailing Wage Violations. Pursuant to California Labor Code §1775, the Design-Build Entity and any of the Subcontractors shall, as a penalty, pay an amount not to exceed Two Hundred Dollars ($200) 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 the trade or craft in which such worker is employed by the Design-Build Entity or, except as provided by said §1775, by any of the Subcontractors, of any Tier, for performance of the Work. 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 the Design-Build Entity 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 the Design-Build Entity or the Subcontractor; and (2) whether the Design-Build Entity 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 the Design-Build Entity.

3.19.12.2. Working Hour Violations. Pursuant to Labor Code §1813, Design-Build Entity shall pay a penalty of Twenty-Five Dollars ($25) per worker employed in the performance of the Work by Design-Build Entity or by any of the Subcontractors for each Day during which such worker is 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 §1810), Chapter 1, Part 7, Division 2 of the California Labor Code.

3.19.12.3. Payroll Record Violations. Pursuant to California Labor Code §1776, Design-Build Entity shall in the event of a failure to comply within ten (10) Days with any written notice requesting the records enumerated in subdivision (a) of said §1776, pay a penalty of One Hundred Dollars ($100) for each Day, or portion thereof, for each worker, until Design-Build Entity 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.

3.19.12.4. Apprenticeship Violations. Pursuant to California Labor Code §1777.7, if the Design-Build Entity 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 §1777.5, the Design-Build Entity 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 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 the Design-Build Entity 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 the Design-Build Entity or the Subcontractor is a second or subsequent violation committed within a three (3) year period from a previous violation of §1777.5, the Design-Build Entity or the Subcontractor shall pay, as a civil penalty, to the District the sum of not more than Three Hundred Dollars ($300) for each full Day of noncompliance. The District shall withhold the amount of the civil penalty from contract progress payments then due or to become due. In addition, if the Design-Build Entity or the Subcontractor is determined to have knowingly committed a serious violation of any provision of §1777.5, the Chief may deny to the Design-Build Entity or the Subcontractor, and to its responsible officers, the right to bid on or be awarded or perform work as the Subcontractor on any subsequent project for the 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. The Design-Build Entity 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 the Design-Build Entity with the requirements of this Section 3.19 and each of its Paragraphs shall be a condition to the Design-Build Entity’s right to payment under its Applications for Payment. Without limitation to the foregoing, payments to the Design-Build Entity shall not be made when payroll records are delinquent or inadequate.

3.20. Labor Compliance Program

3.20.1. Application. The provisions of this Section 3.20 shall apply only if the Design-Build Contract states that a Labor Compliance Program has been approved for the Project.

3.20.2. Compliance. Design-Build Entity and its Subcontractors and Subconsultants to whom the Labor Compliance Program by its terms applies shall comply with the requirements of the Labor Compliance Program. The Labor Compliance Program includes, without limitation, provisions requiring the Design-Build Entity 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, as well as provisions for debarment, as set forth in Section 3.19, above. Design-Build Entity and all Subcontractors and Subconsultants, of every Tier, to whom the Labor Compliance Program by its terms applies are required to comply with the requirements of the Labor Compliance Program, at no additional cost to the District. Design-Build Entity shall post a “Notice of Initial Approval” of the Labor Compliance Program at the Site in accordance with Title 8 California Code of Regulations §16429. The Design-Build Entity shall utilize LCP Tracker for the submittal and coordination of Labor, Wages and Payroll Records.

3.20.3. Pre-Construction Conference. A pre-construction conference will be held for the benefit of the Design-Build Entity and the Subcontractors and Subconsultants to discuss labor requirements of the Labor Compliance Program that apply to the Project. Attendance by the Design-Build Entity at the conference is mandatory.
3.20.4. Payroll Records. Payroll records shall be certified and submitted to the labor compliance office, along with, and as a condition to, the Design-Build Entity’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 the Design-Build Entity.

3.20.5. Subcontractors, Subconsultants. The Design-Build Entity shall include, and shall require the Subcontractors and Subconsultants 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 the Work to comply with the provisions of the Labor Compliance Program at no additional cost.

3.20.6. Condition of Payment. Compliance by the Design-Build Entity with the requirements of this Section 3.20 shall be a condition to the Design-Build Entity’s right to payment under its Applications for Payment.

3.20.7. Labor Code Compliance. Design-Build Entity and its Subcontractors and Subconsultants 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 3.19.12, above, for failure to comply pursuant to the California Labor Code, including, but not limited to, §§1775, 1776, 1777.7 and 1813.

3.20.8. Costs of Compliance. The Design-Build Entity represents and warrants that it has included in the Contract Sum all costs of compliance with the requirements of this Section 3.20.

3.20.9. Not a Limitation. The requirements of this Section 3.20 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.

3.21. Labor Code §2810

3.21.1. Application. The provisions of this Section 3.21 apply only if the Design-Build Entity has not executed a collective bargaining agreement covering the workers who will be employed to perform the Work.

3.21.2. Declaration by Design-Build Entity. If a Declaration of Sufficiency of Funds has not been submitted by Design-Build Entity as part of its Post-Award Submittals, then it must be submitted prior to Award. In executing the Design-Build Contract, Design-Build Entity warrants and represents that all of the statements contained in its Declaration of Sufficiency of Funds, all of which are incorporated herein by this reference, remain true and correct as of the date of execution of the Design-Build Contract and may be relied upon by District in determining whether there appears to be sufficient funds in the Design-Build Entity’s Contract Sum to allow the Design-Build Entity to comply with all Applicable Laws governing the labor or services to be provided for the performance of the Work. The truth and accuracy of the statements contained in said Declaration and in this Paragraph 3.21.2 constitute a material part of the Design-Build Entity’s consideration for, and a material inducement to the District’s entering into, the Design-Build Contract.

3.21.3. Continuing Duty. To the extent that any of the information provided in the Declaration of Sufficiency of Funds submitted by Design-Build Entity relating to numbers of workers or independent contractors that will be employed or utilized for performance of the Work was or is based upon a best estimate, rather than actual figures or information, then the Design-Build Entity assumes the continuing duty to the District to ascertain the actual figures and information requested in the Declaration of Sufficiency of Funds and to provide such actual figures and information to the District in the form of a revised and updated Declaration of Sufficiency of Funds once the actual figures and information become known.
3.22.风暴水许可

3.22.1. 设计建造实体的责任。如果和在适用的许可、控制、遏制或排放控制要求由适用法律，设计建造实体应当（1）文件和获取风暴水许可证；（2）提供所有要求的风暴水许可证通知；（3）在开始任何工作之前准备风暴水管理和防污染计划；和（4）采取所有必要的措施进行监控、报告、对风暴水许可证、风暴水管理和防污染计划以及所有适用法律的实施和遵守有关由于排放或遏制导致的风暴水污染物排放到单独的风暴下水道系统或其他水体的，包括但不限于国家水资源控制委员会、橙县地区水质量控制委员会和市政风暴水管理计划。

3.22.2. 报告的副本。设计建造实体应当向项目经理提供所有报告和监控信息的副本。

3.22.3. 违反。设计建造实体认识到并理解，未能遵守风暴水许可证的规定违反了联邦和州法律。

3.22.4. 支付条件。设计建造实体遵守本节3.22的规定应当是设计建造实体支付权利的条件。

3.22.5. 合规成本。设计建造实体代表并保证已经包含在合同比例中所有合规成本。

3.23. 固体废物管理

3.23.1. 遵守。设计建造实体应当遵守所有适用法律（包括，但不限于州公共资源法，加州综合废物管理委员会的规定和任何特定的由设计制定的计划）适用于在现场进行建造或相关活动的合同协议。

3.23.2. 回收。除了上述规定，设计建造实体应当采取行动确保至少90%的市场材料在设计建造实体和分包商的活动中自现场回收。

3.23.3. 记录。设计建造实体应当维护，使其可以提供给项目经理的完整准确的记录。

3.23.4. 支付条件。设计建造实体遵守本节3.23的规定应当是设计建造实体支付权利的条件。

3.23.5. 合规成本。设计建造实体代表并保证已经包含在合同比例中所有合规成本。

4. 施工管理

4.1. 项目经理

4.1.1. 限制。项目经理应当对本合同规定的局限性有法定授权。不考虑合同规定的其他内容，该设计建造实体的代表接受了合同规定的职责，并且在任何情况下都应当证明其履行了其职责。
Purchasing has sole authority (absent separate written authorization by the District to: (1) obligate or commit the District to any payment of money; (2) obligate the District to any adjustment to the Contract Sum or Contract Time; (3) relieve the Design-Build Entity of any of its obligations under the Contract Documents; or (4) approve or order any Work involving Delay or Extra Work.

4.1.2. Removal by District. The District may, in its sole discretion, remove the District Project Manager, in which case all of the District Project Manager’s functions shall thereafter be performed by District or by another District Consultant designated by District.

4.1.3. Rights of District. All rights and authority conferred upon the District Project Manager constitute rights that the District may, in its discretion, exercise on its own behalf and without the advice, assistance or involvement of the District Project Manager.

4.2. District Consultants

4.2.1. Limitations on Authority. District Consultants do not have authority to: (1) obligate or commit the District to any payment of money; (2) obligate the District to any adjustment to the Contract Sum or Contract Time; (3) relieve the Design-Build Entity of any of its obligations under the Contract Documents; or (4) approve or order any Work involving Delay or Extra Work.

4.2.2. Rights of District. All rights and authority conferred upon the District Consultants constitute rights that the District may, in its discretion, exercise on its own behalf and without the advice, assistance or involvement of the District Consultants.

4.3. Administration of the Design-Build Contract

4.3.1. General Provisions. District Project Manager will provide administration of the Project as described in the Contract Documents: (1) during design and construction; (2) until no earlier than the time that Final Payment is due; and (3) with the District’s concurrence, from time to time, during the Guarantee to Repair Period.

4.3.2. Coordination of Separate Contractors. When directed to do so by District Project Manager, Design-Build Entity shall participate with the Separate Contractors and the District Project Manager in reviewing their construction schedules.

4.3.3. Observations of the Work. Observations by the District or other District Consultants of the Work shall be separate from any inspections which may be provided by others.

4.3.4. Means, Methods. Construction means, methods, techniques, sequence, procedures and safety precautions and programs in connection with the Work are the sole responsibility of Design-Build Entity. Without limitation to the foregoing, District, District Project Manager, Inspectors of Record and District Consultants 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; (2) be responsible for the Design-Build Entity's failure to carry out the Work in accordance with the Contract Documents; or (3) have control over, charge of, or responsibility for acts or omissions of the Design-Build Entity, the Subcontractors, the Subconsultants or their agents or employees, or of any other persons performing portions of the Work.

4.3.5. Communications. District Project Manager will be present on the Site during the performance of the Work for the purpose of providing contract administration and facilitating communications between the District, District Consultants, Design-Build Entity 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 the Design-Build Entity and District shall be through the District. Communications from Design-Build Entity and the Subcontractors or Subconsultants to Separate Contractors shall be through the District Project Manager. The Design-Build Entity shall not rely on oral or other non-written communications.
4.3.6. Applications for Payment. District Project Manager will review and certify all Applications for Payment by the Design-Build Entity. District Project Manager will forward the Design-Build Entity’s Applications for Payment and Certifications for Payment to District for processing for payment.

4.3.7. Rejection of Work. District Project Manager has the authority to reject the Work that does not conform to the Contract Documents, whether or not such Work is fabricated, installed or completed. District Project Manager has the authority, whenever the District Project Manager considers it necessary or advisable for implementation of the intent of the Contract Documents, to require additional inspection or testing of the Work in accordance with Article 10, below, whether or not such Work is fabricated, installed or completed. Neither District Project Manager’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 District Project Manager to Design-Build Entity, Subcontractors, Subconsultants, their agents or employees, or other persons performing any portion of the Work.

4.3.8. Review of Submittals.
4.3.8.1. District Project Manager. District Project Manager’s actions with respect to review and distribution of Submittals will be taken with such promptness as to cause no unreasonable Delay in the Work. Such review and other actions, including, without limitation, approval (if any) of Submittals, by District Project 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.

4.3.8.2. District Consultants. District shall have the right, but not the obligation, to retain District Consultants to review and/or approve Shop Drawings, Product Data and Samples and other Submittals. Such action will be taken with such promptness as to cause no unreasonable Delay in the Work. A District Consultant’s review, approval or other action upon the Design-Build Entity’s Submittals shall be for the limited purpose of checking for conformance with the Design Intent and is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Build Entity as required by the Contract Documents.

4.3.8.3. Design-Build Entity Responsibility. Design-Build Entity is solely responsible, notwithstanding District’s or any District Consultant’s review, approval or other action taken with respect to a Submittal by Design-Build Entity, for the content and sufficiency of all Submittals. Without limitation to the foregoing, any review, approval or other action taken by District or a District’s Consultant with respect to a Submittal shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. Approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.3.9. Changes. District Project Manager will prepare Change Orders, Unilateral Change Orders and Field Orders. Following consultation with each other, District and District Project Manager will take appropriate action thereon in accordance with Article 7, below.

4.3.10. Completion. District Project Manager, with the assistance if necessary of the District Consultants, will conduct reviews of the Work to determine the dates of Substantial Completion and Final Completion and will receive and forward to the District any Close-Out Documents provided by Design-Build Entity.

4.4. Claims
4.4.1. Submission of Claims. All Claims by Design-Build Entity shall be submitted in accordance with the procedures set forth in this Section 4.4.

4.4.2. Arising of Claim.

4.4.2.1. Compensable Changes, Deleted Work. A Claim by Design-Build Entity involving a Contract Adjustment due to a Compensable Change or Deleted Work arises upon issuance of a decision denying, in whole or in part, Design-Build Entity'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 4.4.3 through 4.4.5, below.

4.4.2.2. Other Claims. Claims by Design-Build Entity other than those described in Subparagraph 4.4.2.1, above, arise at the time that District Project Manager receives written notice by Design-Build Entity of Design-Build Entity's 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 Design-Build Entity 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, upon the Contract Sum and Contract Time. Failure by Design-Build Entity to submit a NOTICE OF INTENT TO FILE CLAIM IN ACCORDANCE WITH THIS SUBPARAGRAPH 4.4.2.2 shall, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4.7 OF THE GENERAL CONDITIONS, constitute a waiver by Design-Build Entity of the right to further recourse or recovery upon such Claim by means of the Claims Dispute Resolution Process or by any other legal process otherwise provided for under Applicable Laws.

4.4.3. Content of Claims. A Claim by Design-Build Entity must include the following:

4.4.3.1. a statement that it is a Claim and a request for a decision on the Claim;

4.4.3.2. a detailed description of the act, error, omission, unforeseen condition, event or other circumstance giving rise to the Claim;

4.4.3.3. supporting documentation as follows: (1) if the Claim involves a Contract Adjustment due to Compensable Change or Deleted Work, documentation demonstrating that a complete Notice of Change and Change Order Request were timely and properly submitted as required by Article 7, below; (2) if the Claim involves an adjustment to the Contract Time, documentation demonstrating that a complete Notice of Delay and Request for Extension were timely and properly submitted as required by Article 7 and Article 8, below; and (3) if the Claim does not involve a Contract Adjustment on the basis of Compensable Change or Deleted Work, documentation demonstrating that a notice of intent to file the Claim was timely and properly submitted as required by Subparagraph 4.4.2.2, above;

4.4.3.4. a detailed justification for any remedy or relief sought by the Claim, including, without limitation, all of the following: (1) a detailed cost breakdown in the form required for submittal of Change Order Requests, which complies with the prohibition on “total cost” calculations set forth in Paragraph 7.7.15, below; and (2) actual job cost records demonstrating that the costs have been incurred; and

4.4.3.5. a written certification, signed by a responsible managing officer or principal of Design-Build Entity’s organization who has the authority to sign contracts on behalf of Design-Build Entity and who has personally investigated the matters alleged in the Claim, in the following form: “I hereby certify under penalty of perjury that I am a managing officer or principal of _____________ (Design-Build Entity’s name) and that I have reviewed the Claim presented herewith on Design-Build Entity’s behalf and/or on behalf of _____________ (Subcontractor’s(s’) or Subconsultant’s(s’) name(s)) and that the following statements are, to the best of my knowledge after diligent inquiry into the circumstances of such Claim, true and
correct: the facts alleged in or that form the basis for the Claim are true and accurate; 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; 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 Design-Build Entity and by any Subcontractor and Subconsultant, of any Tier, that is asserting all or any portion of the Claim) and confirmed with reasonable certainty that the losses or damages alleged to have been suffered by Design-Build Entity and/or such Subcontractor or Subconsultant were in fact suffered in the amounts and for the reasons alleged in the Claim; 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 Design-Build Entity and by any Subcontractor and Subconsultant, of any Tier, that is asserting all or any portion of the Claim) and confirmed that the delays or disruption alleged to have been suffered by Design-Build Entity and/or such Subcontractor and Subconsultant 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, Design-Build Entity has not received payment from District for, nor has Design-Build Entity previously released District from, any portion of the Claim.

Signature: ____________________________
Name: ________________________________
Title: ________________________________
Company: _____________________________
Date: ________________________________

4.4.4. Noncompliance. Failure by Design-Build Entity to comply with Paragraph 4.4.3, above, shall give District the right, without obligation, to return the Claim without any response.

4.4.5. Submission of Claims.

4.4.5.1. Time for Filing. All Claims and supporting documentation and certifications required to be submitted by Design-Build Entity must be submitted to the District Project Manager within thirty (30) Days after the Claim arises (as “arises” is defined in Paragraph 4.4.2, above). No Claims by Design-Build Entity shall be filed after Final Payment.

4.4.5.2. Condition Precedent. Design-Build Entity’s strict compliance with the requirements of this Section 4.4 as to a Claim shall be considered a condition precedent to Design-Build Entity’s right to initiate any legal proceedings with respect to such Claim.

4.4.5.3. Transmittal. Claims by Design-Build Entity shall be first submitted to the District Project Manager via the District for decision by the District.

4.4.6. Response to Claims by Design-Build Entity.

4.4.6.1. Claims under $50,000. Claims by Design-Build Entity that are less than Fifty Thousand Dollars ($50,000) shall be responded to by District by issuance of a Good Faith Determination of the Claim 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 after receipt of the further information or documentation by issuing its Good Faith Determination of the Claim within the longer of either (1) fifteen (15) Days, or (2) the period of time taken by Design-Build Entity in producing the additional information or documentation.

4.4.6.2. Claims over $50,000. Claims by Design-Build Entity that are over Fifty Thousand Dollars ($50,000) shall be responded to by District by issuance of a Good Faith Determination of the Claim 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 after receipt of the further information or documentation by issuing its Good Faith Determination within the longer of either (1) thirty (30) Days, or (2) the period of time taken by Design-Build Entity in producing the additional information or documentation.

4.4.7. Meet and Confer. If Design-Build Entity disputes District’s Good Faith Determination of a Claim by Design-Build Entity, or if District fails to respond within the prescribed time set forth in Paragraph 4.4.6, above, Design-Build Entity may so notify District, in writing, within fifteen (15) Days of Design-Build Entity’s receipt of District’s Good Faith Determination, 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 Design-Build Entity determines that the meet and confer process has 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.

4.4.8. Finality of Decision. District’s Good Faith Determination issued pursuant to Paragraph 4.4.6, above, shall be deemed final: (1) on the fifteenth (15th) Day after Design-Build Entity’s receipt of District’s Good Faith Determination in the case of a failure by Design-Build Entity to demand an informal conference to meet and confer within the time period required by Paragraph 4.4.7, above; or (2) where Design-Build Entity has timely requested to meet and confer in accordance with Paragraph 4.4.7, above, upon receipt by either party of written notice by the other party declaring the meet and confer process closed. Except as otherwise stated in Section 4.5, below, the fact that a Good Faith Determination has become final, as described in this Paragraph 4.4.8, shall not be interpreted as meaning that the Good Faith Determination constitutes a binding and final resolution to Design-Build Entity’s rights or obligations in respect to the Claim or a waiver by the Design-Build Entity of the right to seek final resolution of the Claim in accordance with the Claims Dispute Resolution Process.

4.4.9. Claims Based on Differing Site Conditions.

4.4.9.1. Design-Build Entity Responsibility. Save and except as hereinafter provided in this Paragraph 4.4.9 for Contract Adjustments due to Differing Site Conditions, Design-Build Entity agrees at Design-Build Entity’s Own Expense to assume the risk and costs of Extra Work and Delay due to concealed or unknown conditions, surface or subsurface, at the Site or in Existing Improvements.

4.4.9.2. Differing Site Conditions. Differing Site Conditions are those conditions located at the Site or in Existing Improvements and not otherwise ascertainable by Design-Build Entity in the performance of its obligations under Paragraph 3.2.12, above, and Paragraph 3.2.13, above, that constitute: (1) hazardous materials that constitute hazardous waste, as defined in California Health and Safety Code §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; (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 Design-Build Entity prior to the Final Proposal Submission Date; or (3) unknown physical conditions at the Site or concealed conditions in Existing Improvements which are unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

4.4.9.3. Notice of Change. If Design-Build Entity encounters conditions it believes constitute Differing Site Conditions, then Design-Build Entity shall, before such conditions are disturbed, give
Notice of Change as required by Paragraph 7.6.1, below, stating, without limitation, a
detailed description and precise location of the conditions encountered.

4.4.9.4. Investigation by District. Upon receipt of notice from Design-Build Entity as required by
Subparagraph 4.4.9.3, above, District shall promptly investigate Design-Build Entity’s report
of Differing Site Conditions.

4.4.9.5. Change Order Request. If Design-Build Entity intends to seek a Contract Adjustment based
upon Differing Site Conditions, it shall submit a complete and timely Change Order Request in
accordance with Paragraph 7.6.2, below, setting forth its request for a Contract Adjustment.

4.4.9.6. Contract Adjustments. If, following Design-Build Entity’s compliance with its obligations
under this Paragraph 4.4.9, District finds that Differing Site Conditions exist, then a Contract
Adjustment shall be made for the resulting Compensable Change and Compensable Delay, in
such amounts and durations as District determines according to a Good Faith Determination
by District are reasonable and permitted by these General Conditions.

4.4.9.7. Waiver by Design-Build Entity. Failure by Design-Build Entity to strictly comply with the
requirements of this Paragraph 4.4.9 concerning the timing and content of any notice or
request for Contract Adjustment based on Differing Site Conditions shall, IN ACCORDANCE
WITH THE PROVISIONS OF SECTION 4.7 OF THE GENERAL CONDITIONS, constitute a waiver by
Design-Build Entity of the right to further recourse or recovery upon such Claim by means of
the Claims Dispute Resolution Process or by any other legal process otherwise provided for
under Applicable Laws.

4.4.9.8. Final Completion. No claim by Design-Build Entity for additional compensation for Differing
Site Conditions shall be allowed if asserted after Final Payment.

4.4.10. Continuous Work. Design-Build Entity shall, notwithstanding the existence of a Claim by Design-
Build Entity, maintain continuous performance, without interruption, suspension or slowing, of the
Work and its other obligations (1) pending issuance of a Good Faith Determination of the Claim and
(2) thereafter in compliance with the terms of such Good Faith Determination.

4.4.11. Claims by District. Claims by the District against the Design-Build Entity shall be submitted and
resolved in accordance with the provisions of Section 4.5, below.

4.4.12. Waiver of Consequential Damages. Design-Build Entity and District waive all rights and claims
against each other for consequential damages arising out of or relating to the performance or
nonperformance of any obligation under the Contract Documents. This mutual waiver includes,
without limitation, damages incurred by either the District or the Design-Build Entity for loss of use,
loss of profit or income, loss of management or services, loss of productivity, loss of financing or
funding, loss of business reputation, loss of bonding and all consequential damages due to
termination or suspension by the Design-Build Entity or District. Notwithstanding the foregoing,
nothing contained in this Paragraph 4.4.12 shall be deemed to be a waiver of or limitation on: (1)
the District’s or Design-Build Entity’s rights for recovery of liquidated damages permitted to District
or Design-Build Entity under the terms of the Design-Build Contract; (2) the District’s rights to
recovery of Losses (including, without limitation, any direct, indirect or consequential Loss) that
involves personal injury, death or damage to physical or tangible property of the District or of any
other person or entity to whom the District is or may be liable; (3) District’s or Design-Build Entity’s
rights of recovery for Loss due to willful misconduct or gross negligence; (4) District’s or Design-
Build Entity’s rights of recovery under any policy of insurance; or (5) District’s express or implied
rights of indemnification, including, without limitation, the District’s rights under Section 3.18,
above.

4.5. Claims Dispute Resolution Process
4.5.1. Resolution of Claims by Design-Build Entity. Claims by Design-Build Entity not resolved under Section 4.4, above, shall be resolved in accordance with the Claims Dispute Resolution Process set forth in this Section 4.5, which shall exhaust any administrative remedies necessary before filing any legal action.

4.5.2. Resolution of Claims by District. Claims by District shall be resolved in accordance with the Claims Dispute Resolution Process set forth in this Section 4.5. The process detailed in this section must be followed by the parties before any party may proceed to litigation related to the claims.

4.5.3. Resolution of Other Disputes. Disputes between District and Design-Build Entity that do not constitute Claims by Design-Build Entity or District shall be resolved first by utilization of the internal Claims resolution process detailed in this section. If any dispute is not fully resolved in this manner, at the discretion of either party, such resolution may occur by way of an action filed in the Superior Court of the State of California, County of Orange, only. Submission of Dispute.

4.5.3.1. By Design-Build Entity. Design-Build Entity’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 4.4.8, above. Design-Build Entity shall initiate the Claims Dispute Resolution Process by submitting a written Statement of Dispute to District Project Manager within the earlier of either (1) sixty (60) Days after the decision by District on Design-Build Entity’s Claim has become final under Paragraph 4.4.8, above, or (2) submission by Design-Build Entity of its Application for Payment requesting Final Payment. Failure by Design-Build Entity to submit a statement of dispute in respect to a Claim that has become final pursuant to Paragraph 4.4.8, above, within the earlier of said 60-day time period or Design-Build Entity’s submission of its application for payment requesting final payment shall result in the District’s Good Faith Determination of the Claim becoming final and binding upon Design-Build Entity and shall, in accordance with the provisions of section 4.7 below, constitute a waiver by Design-Build Entity of the right to further recourse or recovery upon such Claim by means of the Claims Dispute Resolution Process or by any other legal process otherwise provided for under Applicable Laws. Design-Build Entity’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 Design-Build Entity under the Design-Build 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 Design-Build Entity’s obligations relative to time of performance shall include a detailed, event-by-event description of the impact of each Delay on Design-Build Entity’s time for performance. Adequate supporting data to a Statement of Dispute submitted by Design-Build Entity involving Design-Build Entity’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.

4.5.3.2. 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 Design-Build Entity within sixty (60) Days of such discovery, which statement 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.
4.5.4. Claims Dispute Resolution Process. District and Design-Build Entity 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 and 4.5.5.2, below. Such good faith on the part of a party shall be a condition precedent to the right of that 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 Design-Build Entity to bring any litigation at the conclusion of the Dispute Resolution Process.

4.5.4.1. First Step: Stepped Negotiations.

4.5.4.1.1. Project Level Negotiations. A Project-level representative of District and a project-level representative of Design-Build Entity (consisting of Design-Build Entity’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 or Subconsultant, of any Tier, that is in turn being asserted by Design-Build Entity against District (“Pass-Through Claim”), then such Subcontractor or Subconsultant shall also have a Project-level representative present of comparable seniority to Design-Build Entity’s negotiating representative. Upon completion of the meeting, if the Claim is not resolved, Design-Build Entity and District may either continue the Project Level Negotiations or either of Design-Build Entity 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 §§1119, 1120 and 1152.

4.5.4.1.2. Mid-Management Level Negotiations. If the Project Level Negotiations fail to resolve the Claim, then a management representative of District (consisting of a representative of Program Manager) and a management representative of Design-Build Entity (consisting of a representative at the level of vice-president or general operations manager) shall meet as soon as possible, but no later than seven (7) Days after the end of the Project 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 or Subconsultant, then such Subcontractor or Subconsultant shall also have a Project representative present of comparable seniority to Design-Build Entity’s negotiating representative. Upon completion of the meeting, if the Claim is not resolved, Design-Build Entity or District may either continue the Mid-Management Level Negotiations or either of Design-Build Entity or District may declare in writing the Mid-Management Level Negotiations ended. All discussions that occur during the Mid-Management Level Negotiations and all documents prepared solely for the purpose of the Mid-Management Level Negotiations shall be confidential and privileged pursuant to California Evidence Code §§1119, 1120 and 1152.

4.5.4.1.3. Senior Management Level Negotiations. If the Mid-Management Level Negotiations fail to resolve the Claim, then a senior management representative of District (consisting of the Executive Director) and a senior management representative of Design-Build Entity (consisting of a representative at the level of owner, president or chief executive officer) shall meet as soon as possible, but 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 or Subconsultant, then such Subcontractor or Subconsultant shall also have a Project representative present of comparable seniority to Design-Build Entity’s negotiating representative. Upon completion of the meeting, if the Claim is not resolved, Design-Build Entity or District may either continue the Senior Management Level Negotiations or either of Design-Build Entity 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 §§1119, 1120 and 1152.

4.5.4.2. Second Step: Mediation. Any Claim that remains unresolved after completion of stepped negotiations conducted pursuant to Subparagraph 4.5.5.1, above, and that a party wishes to pursue further shall be submitted to non-binding mediation before a mutually acceptable third party mediator in accordance with the following provisions:

4.5.4.2.1. 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.

4.5.4.2.2. Submission and Selection. 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 the American Arbitration Association (AAA) at its Orange County Regional Office for selection of a mediator in accordance with the AAA Construction Industry Mediation Rules.

4.5.4.2.3. Location. The location of the mediation shall be at the offices of District.

4.5.4.2.4. Costs. The AAA fees and mediator’s fees and costs shall be shared equally by the parties to the mediation. If the Claim involves a Pass-Through Claim by a Subcontractor or Subconsultant, then such Subcontractor or Subconsultant shall be considered a party to such mediation for purposes of allocating responsibility for the costs of the mediation. If a Subcontractor or Subconsultant refuses to pay its allocable share, such share shall, without limitation to any right of Design-Build Entity to recover such costs from the Subcontractor or Subconsultant, be paid by the Design-Build Entity.

4.5.4.2.5. Privileges. 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 §§1119, 1120 and 1152.

4.5.4.2.6. End of Mediation. District or Design-Build Entity may, if either determines in good faith that further mediation would not be productive, declare in writing the end of the mediation.

4.5.5. 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 limitation, any defense of District that is based on the assertion that the rights of Design-Build Entity were previously waived by Design-Build Entity due to failure to comply with the Contract Documents, including, without limitation, Design-Build Entity’s failure to comply with any time periods for providing notices or for submission of Claims or supporting documentation of Claims.

4.5.6. Continuous Work. Design-Build Entity shall maintain continuous, expeditious and uninterrupted performance of the Work throughout the duration of the Claims Dispute Resolution Process.

4.6. Notice of Third Party Claims. The District shall provide notification to the Design-Build Entity within a reasonable time after receipt of any third-party claim relating to the Design-Build Contract. The District
shall be entitled to recover from the Design-Build Entity its reasonable costs of providing such notification.

4.7. **WAIVERS OF RIGHTS BY DESIGN-BUILD ENTITY.** DISTRICT AND DESIGN-BUILD ENTITY ACKNOWLEDGE THAT IT IS IN THE INTERESTS OF BOTH PARTIES THAT CHANGES, DELAYS AND CLAIMS BE IDENTIFIED, QUANTIFIED, EVALUATED AND FINALLY RESOLVED PROMPTLY, CONTEMPORANEOUSLY WITH THE CIRCUMSTANCES FROM WHICH THEY ARISE, AND THAT THERE BE CERTAINTY WITH RESPECT TO THE FINALITY OF ANY RESOLUTION OF RELATED DISPUTES. ON THOSE PREMISES, AND IN FURTHER RECOGNITION OF THE FACT THAT IT WOULD BE EXTREMELY DIFFICULT OR IMPOSSIBLE TO QUANTIFY, DEMONSTRATE OR PROVE THE HARM TO DISTRICT IF ANY OF THE FOREGOING PREMISES IS NOT ACHIEVED DUE TO A FAILURE BY DESIGN-BUILD ENTITY TO COMPLY WITH THE REQUIREMENTS OF THE CONTRACT DOCUMENTS CONCERNING TIMELY NOTICE OR SUBMISSIONS OF NOTICES AND CLAIMS RELATING TO CHANGES, DELAY AND CONTRACT ADJUSTMENTS, DISTRICT AND DESIGN-BUILD ENTITY AGREE THAT FAILURE BY DESIGN-BUILD ENTITY TO CONFORM TO SUCH REQUIREMENTS OF THE CONTRACT DOCUMENTS SHALL IN AND OF ITSELF CONSTITUTE SUFFICIENT CAUSE AND GROUNDS, WITHOUT THE NECESSITY OF DISTRICT DEMONSTRATING ANY ACTUAL HARM OR PREJUDICE, FOR IMPOSING UPON DESIGN-BUILD ENTITY A FULL AND UNCONDITIONAL WAIVER BY DESIGN-BUILD ENTITY OF ITS RIGHT TO A CONTRACT ADJUSTMENT AND OF ITS RIGHTS AND RECOURSE FOR RECOVERY OF LOSS BY MEANS OF THE CLAIMS DISPUTE RESOLUTION PROCESS OR BY ANY OTHER LEGAL PROCESS OTHERWISE PROVIDED FOR UNDER APPLICABLE LAWS.

5. **SUBCONTRACTORS AND SUBCONSULTANTS**

**Subcontracting.** In accordance with Education Code section 81704(c), all subcontracts with Subcontractors who are not Design-Build Entity Members, and who are not proposed Design-Build Entity Members, shall be awarded according to a publicly-advertised process that provides for public notice of the availability of work to be subcontracted, and a fixed date and time on which the subcontracted work will be awarded, and shall be afforded the protections contained in Chapter 4, (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code.

The Design-Build Entity has the discretion to procure each individual Subcontractor based on one of the following optional methods:

- **Option (1)** A competitive bidding process resulting in lump-sum bids by prequalified entities for an award made on the basis of the lowest responsible bid; or,

- **Option (2)** To the responsible proposer determined to be the Best Value to the Design Build Entity. “Best Value” shall be determined from the following minimum scoring criteria factors, each representing ten (10) percent of the total weight or consideration given to all criteria factors: price, technical expertise, life cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record. The remaining fifty (50) percent of the Best Value score shall be based on source selection procedures, and project specific criteria developed by the Design Build Entity. Option (3) (below) may be included as a weighted factor to allocate points to firms that qualify as small and historically underutilized businesses; or,

- **Option (3)** To meet or exceed the Design Build Entity’s outreach goals in its Subcontracting Plan for Small and Historically Underutilized Businesses, and procure and retain Subcontractors certified as or eligible for certification as a Small Business Enterprise (SBE), Disadvantaged Business Enterprise (DBE), Minority
Business Enterprise (MBE), Disabled Veteran Business Enterprise (DVBE), or Women Business Enterprise (WBE). The Design Build Entity shall provide validation to the District that such subcontracted business categorically qualifies as a small and historically underutilized business.

5.1. **Substitution**

5.1.1. Substitutions Allowed. There shall be no substitution of or addition to the Subcontractors except as permitted by Chapter 4 (§§4100 et seq.), Division 2, Part 1 of the California Public Contract Code (the “Act”).

5.1.2. Design-Build Entity’s Own Expense. Any increase in the cost or time of performance of the Work resulting from the replacement, substitution or addition of a Subcontractor or Subconsultant shall be borne solely by Design-Build Entity at Design-Build Entity’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 Design-Build Entity, if requested by District, to present complete and accurate evidence demonstrating by clear and convincing evidence that Design-Build Entity is, and all times during and after the Request for Proposal process and Award of the Design-Build Contract was, in full compliance with all of the applicable provisions of the Act. Failure by Design-Build Entity 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 Design-Build Contract or assess any penalties provided for by the Act.

5.1.4. Splitting Prohibited. Any attempt by Design-Build Entity to avoid compliance with 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.

5.1.5. Surety Bond and Finance Assistance Program. Failure of 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, shall be deemed a grounds for District to require substitution by Design-Build Entity of such Subcontractor.

5.2. **Contractual Relations**

5.2.1. Written Agreements. Design-Build Entity shall, by written agreement entered into between the Design-Build Entity and each Subcontractor and Subconsultant, require each Subcontractor and Subconsultant to the extent of the Work to be performed by the Subcontractor or Subconsultant, to be bound to Design-Build Entity by terms of the Contract Documents and to assume toward Design-Build Entity all the obligations and responsibilities which Design-Build Entity, by the Contract Documents, assumes toward District. Each subcontract agreement shall preserve and protect the rights of District under the Contract Documents with respect to the Work to be performed by the Subcontractor or Subconsultant so that subcontracting thereof will not prejudice such rights, and shall allow the Subcontractor and Subconsultant, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against Design-Build Entity that Design-Build Entity, by the Contract Documents, has against District. Design-Build Entity shall require each first-Tier Subcontractor and Subconsultant to enter into similar agreements with their sub-subcontractors and sub-subconsultants. Copies of applicable portions of the Contract Documents shall be made available by Design-Build Entity to the first-Tier Subcontractors and Subconsultants and each Subcontractor and Subconsultant of the first-Tier shall similarly make copies of such Contract Documents available to each Subcontractor and Subconsultant of a lower-Tier with which it contracts. Without limitation to the foregoing, each contract that is entered into
by a Subcontractor or Subconsultant, of any Tier, shall, without limitation, require the Subcontractor or Subconsultant:

5.2.1.1. to perform the Work in accordance with the terms of the Contract Documents;
5.2.1.2. to assume toward Design-Build Entity all the obligations and responsibilities which Design-Build Entity assumes toward District by the Contract Documents;
5.2.1.3. to preserve and protect the rights of District under the Contract Documents with respect to the Work to be performed by the Subcontractor or Subconsultant so that subcontracting thereof will not prejudice such rights;
5.2.1.4. to waive all rights (including, without limitation, rights of subrogation) that the Subcontractor or Subconsultant 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 Design-Build Entity or District, except for such rights as the Subcontractor may have to the proceeds of such insurance held by District or such other additional insured;
5.2.1.5. 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 or Subconsultant’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 or Subconsultant to preserve all such records and other items for a period of at least four (4) years after Final Completion;
5.2.1.6. to recognize the rights of the District under Section 5.3, below, including, without limitation, the District’s right to (1) accept assignment of the Subcontractor’s or Subconsultant’s agreement, (2) accept assignment of Design-Build Entity’s rights as principal under a performance bond furnished by a first-Tier Subcontractor, (3) to retain the Subcontractor or Subconsultant pursuant to the terms of its agreement with Design-Build Entity to complete the unperformed obligations under its agreement, and (4) if requested by the District, require that the Subcontractor or Subconsultant execute a written agreement on terms acceptable to the District confirming that the Subcontractor or Subconsultant is bound to the District under the terms of its agreement with Design-Build Entity;
5.2.1.7. 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 Design-Build Entity time to comply with its obligations under the Contract Documents;
5.2.1.8. to purchase and maintain insurance in accordance with the requirements of the Contract Documents;
5.2.1.9. to defend and indemnify the Indemnitees on the same terms as provided in Section 3.18, above;
5.2.1.10. to comply with the nondiscrimination (Article 15, below) and prevailing wage (Section 3.19, above) provisions of these General Conditions;
5.2.1.11. to provide for a right of termination for convenience by Design-Build Entity that limits the Subcontractor’s or Subconsultant’s right to compensation to an allocable share of the price in its agreement that corresponds to the percentage of the Work properly performed by the Subcontractor or Subconsultant, with no additional sum payable for any other Losses, including, without limitation, prospective damages, lost profits or consequential damages, of any kind;
5.2.1.12. to provide that time is of the essence to each of the Subcontractor’s or Subconsultant’s obligations; and

5.2.1.13. to require compliance with the Labor Compliance Program.

5.2.2. Copies. The Design-Build Entity shall, promptly after their execution, furnish to the District Project Manager true, complete, and executed copies of all contracts with the Subcontractors and Subconsultants and amendments, modifications and change orders thereto. Progress payments shall not be made for items of the Work for which the District has not received such documents.

5.2.3. No Brokering. The Design-Build Entity 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. Third-Party Rights. Design-Build Entity acknowledges that District is an intended third-party beneficiary to all contracts between Design-Build Entity and its first-Tier Subcontractors and Subconsultants. Such acknowledgement is without limitation to any rights that District may have under Applicable Laws as a third party beneficiary to such contracts. Notwithstanding the foregoing or anything else to the contrary in the Contract Documents, there is no intent on the part of District or Design-Build Entity to create any rights (including, without limitation, third-party beneficiary rights) in favor of any Subcontractor or Subconsultant, of any Tier, against District and nothing contained in the Contract Documents and no course of conduct, act or omission on the part of District shall be construed as creating a direct or indirect contractual right in favor of any Subcontractor or Subconsultant, of any Tier, and against District.

5.2.5. All Tiers. It is the Design-Build Entity’s obligation to see to it that all obligations of the Design-Build Entity are assumed by (or, “flow down”) to the Subcontractors and Subconsultants, of every Tier, by the inclusion of contractual provisions requiring each of the Subcontractors and Subconsultants, of every Tier, to bind not only themselves but their lower-Tier Subcontractors and Subconsultants to the obligations assumed by Design-Build Entity under the Contract Documents.

5.3. Contingent Assignment

5.3.1. Contingent Assignment. Design-Build Entity hereby assigns to District, or to such person or entity as District, in its sole and absolute discretion, designates, all of its interest in subcontracts entered into by Design-Build Entity with its first-Tier Subcontractors and Subconsultants. If a first-Tier Subcontractor has provided a performance bond, then Design-Build Entity’s rights under such performance bond are likewise hereby deemed contingently assigned to District or its designee and provision shall be made in the performance bond for surety’s consent to such contingent assignment.

5.3.2. Acceptance by District. The contingent assignments provided for by this Section 5.3 will be effective only as to those subcontracts and performance bonds which District or its designee accepts in writing. District or its designee may accept any such assignment at any time during the course of the Work and prior to Final Completion. Such contingent assignments are part of the consideration to District for entering into the Design-Build Contract with Design-Build Entity and may not be withdrawn prior to Final Completion.

5.3.3. District Obligation. District’s or its designee’s sole obligation in the event it accepts a contingent assignment of a subcontract under this Section 5.3 shall be to pay in accordance with the terms of such subcontract for Work performed after written notice of acceptance of such assignment. In the event District directs that such assignment be made to District’s designee, then such designee only, and not District, shall be solely liable under such assignment for Work performed after written notice of acceptance of such assignment.
5.4. **Communications by District.** District and the District Project Manager shall have the right to communicate, orally or in writing, with the Subcontractors and Subconsultants with respect to matters that are related to the Design-Build Entity’s performance of its obligations under the Contract Documents. Except as otherwise provided in the Design-Build Contract or these General Conditions, the Design-Build Entity shall be provided with a copy of all such communications that are in writing. Such communications shall not create, or be interpreted as creating, any contractual relationship between the District or the District Project Manager and any of the Subcontractors or Subconsultants.

5.5. **No Third Party Rights.** Nothing contained in the Contract Documents shall create any contractual relationship between any of the Subcontractors or Subconsultants and the District or the District Project Manager, except (as to the District only) when, and only to the extent that, the District elects to accept the assignment of the contract between the Design-Build Entity and such Subcontractor or Subconsultant pursuant to Section 5.3, above.

5.6. **Document Availability.** The Design-Build Entity shall make available to each proposed Subcontractor and Subconsultant with whom it enters into a contract or agreement for performance of any portion of the Work, prior to the execution of the contract or 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 or Subconsultant the terms and conditions of the proposed contract or 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 the District or the District Project Manager with respect to review or approval of the Subcontractors or Subconsultants, or their contracts or agreements, shall impose any liability or responsibility upon the District nor relieve the Design-Build Entity of its responsibilities under the Contract Documents or Applicable Laws.

6. **DISTRICT’S OWN FORCES AND SEPARATE CONTRACTORS**

6.1. **District’s Own Forces and Separate Contractors**

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 to Separate Contractors in connection with other portions of the Project or other construction or operations on the Site.

6.1.2. Separate Contractors. Design-Build Entity shall ascertain to its own satisfaction the scope of the Project and the nature of any other contracts that have been or may be awarded by District to Separate Contractors in prosecution of the Project. Except where District has negligently directed the actions of the Separate Contractors, Design-Build Entity shall look solely to such Separate Contractors, and District shall not be responsible, for any Losses for which Design-Build Entity is not provided a right or recovery by means of a right to Contract Adjustment for Compensable Change or Compensable Delay, that are suffered by Design-Build Entity or the Subcontractors or Subconsultants, of any Tier, resulting directly or indirectly from the conduct of such work by the Separate Contractors. If Design-Build Entity deems that direction from District is needed to assist Design-Build Entity in avoiding or minimizing any such Losses, Design-Build Entity shall notify District and District shall, if such request is reasonable, provide such direction to the Separate Contractor or authorize Design-Build Entity to give such direction on District’s behalf.

6.1.3. Coordination. Nothing in the Contract Documents creates or will create any duty on the part of District to coordinate the Work of Design-Build Entity with the work of Separate Contractors. Design-Build Entity and Separate Design-Build Entities will coordinate all work with the other so as to facilitate the general progress of the Project. Design-Build Entity agrees that any recovery of
Losses for which Design-Build Entity is not provided a right or recovery by means of a right to Contract Adjustment for Compensable Change or Compensable Delay, that are suffered by Design-Build Entity due to a failure by a Separate Contractor to coordinate its work with the Work of Design-Build Entity will be sought directly against the Separate Contractors as set forth elsewhere in this Article 6.

6.1.4. Disputes. Design-Build Entity and District agree that Separate Contractors in direct contractual privity with District are third party beneficiaries of the Contract Documents, but only to the extent of claims and causes of action against Design-Build Entity arising out of or resulting from Design-Build Entity’s performance or failure of performance under the Contract Documents or any act or omission of Design-Build Entity or the Subcontractors and Subconsultants causing Loss to such Separate Contractors. Design-Build Entity consents to being sued by Separate Contractors for Losses caused by Design-Build Entity or any of the Subcontractors and Subconsultants. Design-Build Entity hereby waives lack of privity of contract with such Separate Contractors as a defense to such actions.

6.1.5. Remedy. If Design-Build Entity as a result of the acts or omissions of one or more of the Separate Contractors suffers a Loss that is not compensated by means of a right given to Design-Build Entity under the Contract Documents to a Contract Adjustment, then Design-Build Entity’s sole remedy is to assert a claim or cause of action directly against the Separate Contractor(s) causing the Loss and Design-Build Entity hereby releases, acquits, holds harmless and forever discharges District of and from any and all liability for such Loss.

6.2. Mutual Responsibility

6.2.1. Use of Site. Nothing contained in the Contract Documents shall be interpreted as granting Design-Build Entity exclusive use or occupancy of the Site. Design-Build Entity 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.

6.2.2. Adjoining Work. If part of Design-Build Entity’s performance of the Work depends for proper execution or results upon construction or operations by District’s own forces or Separate Contractors, Design-Build Entity shall, prior to proceeding with that portion of the Work, carefully inspect such construction and operations and promptly report to the District Project Manager apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Design-Build Entity will be responsible, at Design-Build Entity’s Own Expense, for Losses to District resulting from any such discrepancies or defects not reported in accordance with this Paragraph 6.2.2 that were apparent or that should have been apparent to Design-Build Entity on careful inspection.

6.2.3. Damage. Design-Build Entity shall promptly remedy Loss caused by Design-Build Entity or its Subcontractors or Subconsultants to completed construction or partially completed construction on the Site, or to property of District or the Separate Contractors.

6.2.4. Disputes. Design-Build Entity shall notify the District Project 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 own forces or the Separate Contractors or in the event of any dispute with District’s own forces or a Separate Contractor.

6.2.5. Settlement of Disputes. If Design-Build Entity or any Subcontractor or Subconsultant causes a Loss to a Separate Contractor, then Design-Build Entity will promptly settle the matter directly with the Separate Contractor and will defend, indemnify and hold District and the other Indemnitees harmless from any and all effects of such Loss in accordance with the terms of Section 3.18, above.
6.3. **Allocation of Clean Up Cost.** If a dispute arises among Design-Build Entity, 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 such waste materials and rubbish and allocate the cost among those responsible as District determines to be just.

7. **CHANGES IN THE WORK**

7.1. **Changes**

7.1.1. General. District is authorized to make Changes in the Work in accordance with the provisions of this Article 7.

7.1.2. Contract Adjustments. Contract Adjustments shall only be permitted as follows: (1) the Contract Sum shall only be adjusted by means of a Change Order or Unilateral Change Order for Compensable Change, Deleted Work or Compensable Delay; and (2) the Contract Time shall only be adjusted by means of a Change Order or Unilateral Change Order for Excusable Delay, Compensable Delay or Deleted Work. All Contract Adjustments to the Contract Sum shall conform, without limitation, to the requirements of this Article 7. All Contract Adjustments to the Contract Time shall conform to the applicable requirements of this Article 7 and to the requirements of Article 8, below.

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

7.1.4. No Written Authorization. Without limitation to any other provisions of the Contract Documents expressly or impliedly requiring performance of Work at Design-Build Entity’s Own Expense, any Change performed by Design-Build Entity pursuant to any direction other than a duly authorized and executed Change Order, Unilateral Change Order or Field Order shall be paid for by Design-Build Entity at Design-Build Entity’s Own Expense.

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 §4-338, Part I, Title 24 of the California Code or Regulations.

7.1.7. Changes to Project Criteria. Project Criteria may be modified prior to execution of the Design-Build Contract only by RFP Addendum. Project Criteria may be modified after execution of the Design-Build Contract only by issuance of a Change Order or Unilateral Change Order that includes on its face page and in bold letters, the words “APPROVED DEVIATION”.

7.2. **Signatures and Authorizations**
7.2.1. Parties. A Change Order shall be executed by and between the District and Design-Build Entity. A Unilateral Change Order shall be executed by the District. Field Orders shall be executed in accordance with Section 7.5, below.

7.2.2. Form. Change Orders, Unilateral Change Orders and Field Orders shall be executed using forms furnished by District Project Manager or, if requested by District, using forms furnished by Design-Build Entity that are approved by District Project Manager.

7.2.3. Written Authorization. Design-Build Entity shall not be entitled to Contract Adjustment by Change Order or Unilateral Change Order except as authorized in a writing that is signed as follows:

7.2.3.1. Under 3%/100,000: Contract Adjustments to the Contract Sum that, in the gross aggregate (as defined in Subparagraph 7.2.3.5, below), are less than or equal to the lesser of either: (1) three percent (3%) of the Design-Build Entity's Base Price as adjusted for Alternates accepted by the District; or (2) One Hundred Thousand Dollars/no cents ($100,000.00), must be authorized in writing, prior to performance of the Work affected thereby, in a Change Order, Unilateral Change Order or Field Order that is signed by the District Project Manager and the Executive Director of Facilities Planning and Purchasing or that is authorized by means of either of the methods for authorization set forth in Subparagraph 7.2.3.2 or Subparagraph 7.2.3.3, below.

7.2.3.2. Under 5%/250,000: Contract Adjustments to the Contract Sum that, in the gross aggregate (as defined in Subparagraph 7.2.3.5, below), exceed the limit set forth in Subparagraph 7.2.3.1, above, and are less than or equal to the lesser of either: (1) five percent (5%) of the Design-Build Entity's Base Price as adjusted for Alternates accepted by the District; or (2) Two Hundred Fifty Thousand Dollars/no cents ($250,000.00), must be authorized in writing, prior to performance of the Work affected thereby, in a Change Order, Unilateral Change Order or Field Order that is signed by the District Project Manager and the Executive Director of Facilities Planning and Purchasing or that is authorized in the manner set forth in Subparagraph 7.2.3.3, below.

7.2.3.3. Over 5%/250,000: Contract Adjustments to the Contract Sum that, in the gross aggregate (as defined in Subparagraph 7.2.3.5, below), exceed the limit set forth in Subparagraph 7.2.3.2, above, must be authorized in writing, prior to performance of the Work affected thereby, in a Change Order, Unilateral Change Order or Field Order that is signed by District Project Manager and Executive Director of Facilities Planning and Purchasing.

7.2.3.4. California 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 §81655 pertaining to approval or ratification by the Board of Trustees of contracts and modifications to contracts entered into by the District. Such approval or ratification by the Board of Trustees shall not, however, constitute a condition to the Design-Build Entity's obligation to perform the Work, including any Extra Work, that Design-Build Entity is directed to perform by a Change Order or Unilateral Change Order that is signed in the manner required by the applicable provisions of Subparagraphs 7.2.3.1 through 7.2.3.3, above, or that Design-Build Entity is directed to perform by Field Order that is signed in the manner required by Section 7.5, below.

7.2.3.5. "Gross Aggregate" Defined. For purpose of calculating the threshold percentages set forth in Subparagraphs 7.2.3.1 through 7.2.3.3, above, “gross aggregate” means the total obtained by taking the deductive Contract Adjustments to the Contract Sum by Change Order, Unilateral Change Order and Field Order for Deleted Work and adding them to (rather than subtracting
them from) the additive Contract Adjustments to the Contract Sum by Change Order, Unilateral Change Order and Field Order for Compensable Changes.

7.2.3.6. Changes to Authorizations. The District reserves the right, exercised in its sole discretion by and through its Vice Chancellor, to unilaterally change the list of persons or entities set forth in this Paragraph 7.2.3 as having authority to authorize Contract Adjustments and/or to specify a separate list of persons or entities having authority to authorize Contract Adjustments. Such right shall be exercised by written notice to the Design-Build Entity specifying the particulars of such changes or additions affecting authorizations by District.

7.2.4. Written Authorization of Essence. It is of the essence to the Design-Build Contract between the Design-Build Entity and the District that all contract adjustments 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 the District has been unjustly enriched (whether or not there has been such enrichment) shall be the basis for a contract adjustment if the Design-Build entity has not obtained advance written authorization in the manner required by this Article 7.

7.3. Change Order
7.3.1. Purpose. The purpose of a Change Order is to establish the terms of the District’s and Design-Build Entity’s mutual agreement to a Contract Adjustment.

7.3.2. Content. A Change Order is a written instrument, prepared by the District, stating:
7.3.2.1. a Compensable Change or Deleted Work;
7.3.2.2. a Compensable Delay or Excusable Delay;
7.3.2.3. the amount of the Contract Adjustment, if any, to the Contract Sum; and/or
7.3.2.4. the extent of the Contract Adjustment, if any, to the Contract Time.

7.4. Unilateral Change Order
7.4.1. Purpose. The purpose of a Unilateral Change Order is to establish the District’s estimate of the undisputed amount of an otherwise disputed Contract Adjustment.

7.4.2. Good Faith Determination. The District’s estimate in a Unilateral Change Order of a Contract Adjustment shall be based upon a Good Faith Determination by District of the Contract Adjustment to the Contract Sum and/or Contract Time that is appropriate under the circumstances and consistent with the terms of the Contract Documents.

7.4.3. Claim by Design-Build Entity. If Design-Build Entity disputes any portion of the District’s Good Faith Determination of the Contract Adjustment that is set forth in a Unilateral Change Order, Design-Build Entity shall file within thirty (30) Days after issuance of the Unilateral Change Order by District a Claim pursuant to Section 4.4, above. The amount of the Contract Adjustment requested in the Claim shall not exceed the difference between the amount (either in terms of dollar amount or amount of time extension) of the Contract Adjustment requested by Design-Build Entity and the amount (either in terms of dollar amount or amount of time extension) of the Contract Adjustment granted in the Unilateral Change Order. Design-Build Entity shall have no reserved right, and hereby waives any such right that may exist under Applicable Law, to seek in such Claim a Contract Adjustment or recovery that is based upon any amount (either in terms of dollar amount or amount of time extension) that is in excess of such difference.

7.4.4. Waiver by Design-Build Entity. FAILURE BY DESIGN-BUILD ENTITY TO SUBMIT A CLAIM PURSUANT TO SECTION 4.4, ABOVE, WITHIN THIRTY (30) DAYS AFTER ISSUANCE OF A UNILATERAL CHANGE ORDER BY DISTRICT SHALL, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4.7 OF THE GENERAL CONDITIONS, CONSTITUTE A WAIVER BY DESIGN-BUILD ENTITY OF THE RIGHT TO FURTHER RECOUSE OR RECOVERY, EITHER BY MEANS OF THE CLAIMS DISPUTE RESOLUTION
PROCESS OR BY ANY OTHER LEGAL PROCESS OTHERWISE PROVIDED FOR UNDER APPLICABLE LAWS, BASED ON AN ASSERTION THAT THE AMOUNT OF THE CONTRACT ADJUSTMENT ON ACCOUNT OF THE CHANGE OR DELAY DESCRIBED IN SUCH UNILATERAL CHANGE ORDER SHOULD BE DIFFERENT THAN THE AMOUNT OF THE CONTRACT ADJUSTMENT SET FORTH IN SUCH UNILATERAL CHANGE ORDER.

7.5. Field Orders

7.5.1. Purpose. The purpose of a Field Order is to: (1) direct the performance of a Minor Change; (2) direct performance of Work or a Change with respect to which there exists a dispute or question regarding the terms of a Contract Adjustment; or (3) establish a mutually agreed basis for compensation to Design-Build Entity for a Compensable Change under circumstances where performance of the Compensable Change needs to proceed in advance of complete substantiation and evaluation of the Contract Adjustment therefore.

7.5.2. Authorization.

7.5.2.1. Contract Adjustments. Field Orders setting forth an agreement between District and Design-Build Entity on a Contract Adjustment must be authorized as provided in Paragraph 7.2.3, above.

7.5.2.2. Minor Change. A Field Order for a Minor Change may be authorized by the District Project Manager and the Executive Director of Facilities Planning and Purchasing.

7.5.2.3. Non-Change. A Field Order for the performance of Extra Work that sets forth the Design-Build Entity's agreement that the Field Order is not a Change to the Work and does not involve a Contract Adjustment to the Contract Sum or Contract Time may be authorized by either the District Project Manager or the Executive Director of Facilities Planning and Purchasing.

7.5.3. Content.

7.5.3.1. Undisputed Changes. Each Field Order involving a Compensable Change or Deleted Work with respect to which District does not dispute that the Compensable Change or Deleted Work constitutes a grounds for a Contract Adjustment shall, in order to be binding in any respect upon District, comply with the following:

7.5.3.1.1. Statement of Agreement. A statement shall be included of whether the District and Design-Build Entity are in complete agreement on all of the terms of the Contract Adjustment related to performance of such Compensable Change. To the extent the Design-Build Entity and District reach agreement, in whole or in part, on the terms of the Contract Adjustment, such agreement shall be deemed to be final and binding upon the Design-Build Entity. However, in recognition of the fact that Field Orders may be issued under circumstances in which the District may not have had access to pertinent information, expert assistance, time or the opportunity to fully evaluate the circumstances giving rise to the 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 (including, without limitation, a full or partial agreement by District) shall be interpreted as a waiver, release or settlement of any of District’s rights relating to the subject matter of the Field Order, or as creating or implying any obligation on the part of District to a Contract Adjustment on account of a Change described in the Field Order, if it is found by District upon further investigation that the circumstances giving rise to the execution of the Field Order do not in fact form the basis for a right of Design-Build Entity to a Contract Adjustment on all or any of the terms thereof.
7.5.3.1.2. Complete Agreement. If the Field Order states that there is a complete agreement on all of the terms of the Contract Adjustment, then it shall further state a full description of the terms of the Contract Adjustment, including, without limitation, its effect on the Contract Sum and Contract Time.

7.5.3.1.3. Incomplete Agreement. If the Field Order states that there is not complete agreement on all of the terms of the Contract Adjustment, then it shall further state the following:

7.5.3.1.3.1. Resolved Terms. The Field Order shall state those terms of the Contract Adjustment as to which there is agreement.

7.5.3.1.3.2. Open Terms. With respect to those terms of the Contract Adjustment as to which there is not agreement, the Field Order shall comply with the following:

7.5.3.1.3.2.1. ROM Estimate. A statement shall be included of whether a Reasonable Order of Magnitude Estimate is or is not required by District and, if required, the Field Order shall include a Reasonable Order of Magnitude Estimate prepared by Design-Build Entity, or prepared by District and acknowledged in writing as accepted by Design-Build Entity, of the probable amount of the Contract Adjustment to the Contract Sum and Contract Time associated with performance of the Compensable Change. Unless otherwise expressly stated in the Field Order and except as otherwise provided in Subparagraph 7.5.3.1 (3), (b), (ii), below, a Reasonable Order of Magnitude Estimate does not constitute a guarantee by Design-Build Entity that the amount of the Contract Adjustment to the Contract Sum or Contract Time that may be associated with the Extra Work or Deleted Work covered by such Field Order may not exceed the Reasonable Order of Magnitude Estimate nor does it constitute authorization or agreement by District to a Contract Adjustment based on the amounts set forth in such Reasonable Order of Magnitude Estimate.

7.5.3.1.3.2.2. Time and Materials. In the event that the District and Design-Build Entity agree to the “time and materials” method of calculation set forth in Subparagraph 7.7.1.1 (4), below, without their also agreeing upon a maximum price, then the total cost to District for the Work covered by the Field Order shall under no circumstances exceed a price that is reasonable, competitive and fair to District given the amount and type of Work involved and the circumstances under which the Compensable Change is performed.

7.5.3.2. Disputed Changes. Each Field Order involving a Work or a Change with respect to which District disputes that the Change is a Compensable Change or Deleted Work or with respect to which District contends that Design-Build Entity has waived or released its right to a Contract Adjustment shall, if Design-Build Entity is ordered to do so in a Field Order signed by the Executive Director, be performed by Design-Build Entity without Delay, with Design-Build Entity reserving to itself the right, if any, to submit a Claim for any Loss associated with Design-Build Entity’s compliance with such written order. A Field Order that, for any reason, does not comply with the requirements of Paragraph 7.5.3.1, above, shall be deemed to involve a disputed Change under this Paragraph 7.5.3.2.

7.5.4. Other Notices. Excepting only in cases where the Field Order includes a statement that it constitutes the complete agreement of the parties on all of the terms for a Contract Adjustment, neither issuance nor execution of a Field Order shall be interpreted as relieving Design-Build Entity
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.

7.5.5. Design-Build Entity’s Own Expense. Without limitation to other provisions of the Contract Documents, costs incurred by Design-Build Entity or any Subcontractor or Subconsultant for either of the following categories of Changes shall be paid by Design-Build Entity at Design-Build Entity’s Own Expense: (1) any Change or portion of a Change (including, but not limited, to a Compensable Change) performed before or after issuance by Design-Build Entity of a timely and complete Notice of Change or Change Order Request without Design-Build Entity having first obtained a Change Order or Unilateral Change Order prepared and signed in the manner required by Paragraph 7.2.3, above, or a Field Order prepared and signed in the manner required by Paragraphs 7.5.2 and 7.5.3, above; or (2) excepting a Compensable Change with respect to which the District and Design-Build Entity have acknowledged in writing their complete agreement in accordance with the requirements of Paragraph 7.5.3, above, any Change or portion of a Change (including, without limitation, a Compensable Change) described in a Field Order that is performed prior to receipt by the District Project Manager of a timely and complete Notice of Change or Notice of Delay under circumstances where, respectively, a Notice of Change or Notice of Delay was required.

7.6. Procedures

7.6.1. Notice of Change.

7.6.1.1. Submission. Design-Build Entity shall submit a written Notice of Change to District Project Manager if any instruction, request, drawing, specification, action, condition, omission, default or other circumstance occurs that constitutes a Compensable Change, Deleted Work, Compensable Delay or other matter that may involve or require a Contract Adjustment (additive or deductive). Such notice shall be provided prior to commencement of performance of the Work affected and no later than three (3) working days after the Discovery Date of such circumstance.

7.6.1.2. Form. Notices of Change shall be provided using forms furnished by the District Project Manager or, if requested by District, using forms furnished by Design-Build Entity that are approved by District Project Manager. Failure by District Project Manager to request or approve a particular form shall not relieve Design-Build Entity of its obligation to provide a Notice of Change in a written form that complies with the requirements specified in Subparagraph 7.6.1.3, below.

7.6.1.3. Content. Each Notice of Change in order to be considered complete shall include:

7.6.1.3.1. a general statement of the circumstances giving rise to the Notice of Change (including, without limitation, identification of any related Field Order);

7.6.1.3.2. an Reasonable Order of Magnitude Estimate by Design-Build Entity of any related Contract Adjustments (additive and deductive) to the Contract Sum; and,

7.6.1.3.3. 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 Subparagraph 8.2.2.4, below, or Subparagraph 8.2.3.4, below, Design-Build Entity shall include, if not previously provided, a complete and timely Notice of Delay.

7.6.1.4. Waiver by Design-Build Entity. FAILURE BY DESIGN-BUILD ENTITY TO PROVIDE A COMPLETE AND TIMELY NOTICE OF CHANGE UNDER CIRCUMSTANCES WHERE A NOTICE OF CHANGE INVOLVING A CHANGE IS REQUIRED BY THIS PARAGRAPH 7.6.1 SHALL, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4.7, ABOVE, CONSTITUTE A WAIVER BY DESIGN-BUILD ENTITY OF THE RIGHT TO A CONTRACT ADJUSTMENT ON ACCOUNT OF SUCH CIRCUMSTANCES AND
A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OR RELATED TO SUCH CHANGE BY MEANS OF THE CLAIMS DISPUTE RESOLUTION PROCESS OR BY ANY OTHER LEGAL PROCESS OTHERWISE PROVIDED FOR UNDER APPLICABLE LAWS.

7.6.1.5. Deductive Adjustments. Failure by Design-Build Entity to submit a timely or proper Notice of Change under circumstances in which a Notice of Change is required shall in no way affect District’s right to a deductive Contract Adjustment on account of such circumstances.

7.6.2. Change Order Request.

7.6.2.1. Submission. With respect to any matter that may involve or require a Contract Adjustment (additive or deductive) of the Contract Sum, Design-Build Entity shall, within fourteen (14) Days after receipt by District Project Manager of a Notice of Change pursuant to Paragraph 7.6.1, above, submit to District Project Manager a written Change Order Request.

7.6.2.2. Form. Change Order Requests shall be provided using forms furnished by District Project Manager or, if requested by District, using forms furnished by Design-Build Entity that are approved by the District Project Manager. Failure by District Project Manager to request or approve a particular form shall not relieve Design-Build Entity of its obligation to provide a Change Order Request in a written form that complies with the requirements in Subparagraph 7.6.2.3, below.

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

7.6.2.3.1. a detailed description of the circumstances for the Compensable Change, Deleted Work or Compensable Delay;

7.6.2.3.2. a complete, itemized cost breakdown (additive and deductive) of all of Design-Build Entity and Subcontractors’ and Subconsultants’ costs, quantities, hours, unit prices, rates and markups that form the basis for Design-Build Entity’s request for Contract Adjustment of the Contract Sum; and

7.6.2.3.3. if such circumstances involve a right to Contract Adjustment of the Contract Time due to Compensable Delay or Excusable Delay that has not been waived pursuant to Subparagraph 8.2.2.4, below, or Subparagraph 8.2.3.4, below, Design-Build Entity shall include, if not previously provided, a complete and timely Request for Extension

7.6.2.3.4. for purposes of this Subparagraph 7.6.2.3, Subcontractor and Subconsultant pricing that is in the form of a lump sum price shall fully disclose and break the lump sum price into its component parts for individual items of costs and for overhead and profit with sufficient specificity to demonstrate to District that the lump sum price is based solely on Allowable Costs and Allowable Markups. Except in the case where unit prices have been previously established by agreement of District and Design-Build Entity, and 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 Design-Build Entity or any Subcontractor or Subconsultant) other than Allowable Costs and Allowable Markups.

7.6.2.4. Waiver by Design-Build Entity. Failure by Design-Build Entity to provide a complete and timely change order request under circumstances where a CHANGE ORDER REQUEST involving a change is required by this Paragraph 7.6.2 shall, IN ACCORDANCE WITH THE PROVISIONS OF Section 4.7, ABOVE, constitute a waiver by Design-Build Entity of the right to a contract adjustment on account of such circumstances and a waiver of any right to further recourse or recovery BY REASON OR RELATED TO such change by means of the Claims Dispute Resolution Process or by any other legal process otherwise provided for under Applicable Laws.
7.6.2.5. Deductive Adjustments. Failure by Design-Build Entity to submit a timely or proper Change Order Request under circumstances in which submission of a Change Order Request is required shall in no way affect District’s right to a deductive Contract Adjustment on account of such circumstances.

7.6.3. Formal Notice of Essence. Design-Build Entity recognizes and acknowledges that timely submission of a formal Notice of Change and Change Order Request, whether or not the circumstances of the Change may be known to the District or available to District through other means, is not a mere formality but is of crucial importance to the ability of District to promptly identify, prioritize, evaluate and mitigate the potential effects of Changes. Any form of informal notice, whether verbal or written (including, without limitation, statements at regular job meetings or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal requirements of Paragraph 7.6.1, above, and Paragraph 7.6.2, above, shall accordingly be insufficient.

7.7. Pricing

7.7.1. Basis of Calculation.

7.7.1.1. Changes Not Involving Time. Contract Adjustments to the Contract Sum on account of Compensable Changes or Deleted Work, other than Contract Adjustments to the Contract Sum for Compensable Delay, shall be calculated, by one of the following methods:

7.7.1.1.1. LUMP SUM. By mutual acceptance of a lump sum proposal from Design-Build Entity based solely on Allowable Costs and Allowable Markups, that is properly itemized and supported by sufficient substantiating data to permit evaluation.

7.7.1.1.2. UNIT PRICES. By the unit prices set forth in the Design-Build Contract or such other unit prices as are subsequently and mutually agreed to in writing between the District and Design-Build Entity, with no amount added thereto for Allowable Markups.

7.7.1.1.3. Estimating Guides. For Compensable Changes with respect to which District has elected to make a unilateral and final determination pursuant to Paragraph 7.7.11, 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 but shall never be more than Design-Build Entity’s actual Allowable Costs therefore; (2) an estimate of the reasonable costs of labor, installation and other services using the lower of the estimated prices for the locale of the Project (or if prices are not reported for the locale of the Project, the estimated prices that are reported for the region in which the Project is located) as reported in the following recognized estimating guides: (a) R. S. Means Company, Inc. Building Construction Cost Data, Western Region - Latest Edition, P.O. Box 800 Kingston, MA 02364-800; or (b) Lee Saylor, Inc. Current Construction Costs - Latest Edition, 9420 Topanga Canyon Boulevard, Woodland Hills, CA 91311, and (3) the applicable Allowable Markups on the sum of the amounts derived from Clauses (1) and (2) of this Subparagraph 7.7.1.1 (3).

7.7.1.1.4. TIME AND MATERIALS. If none of the methods provided for in Subparagraphs 7.7.1.1 (1) through 7.7.1.1 (3), above, is applicable, then by the following methods, as applicable:

7.7.1.1.4.1. Compensable Changes. In the case of Compensable Changes the additive amount increasing the Contract Sum shall be calculated by taking (i) the total of the reasonable expenditures by Design-Build Entity and its Subcontractors and Subconsultants, 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 given the amount and type of Work involved and the circumstances under which the Compensable Change is performed, and (ii) adding thereto the applicable Allowable Markups.

7.7.1.4.2. Deleted Work. In the case of Deleted Work, the credit amount used to reduce the Contract Sum shall be calculated by taking: (i) the greater of either (A) the value assigned to the Deleted Work in the Schedule of Values, exclusive of all estimated markups by Design-Build Entity and any Subcontractor or Subconsultant for overhead and profit (or, if insufficient detailed information on costs, overhead and profit for the Deleted Work is explicitly assigned in the Schedule of Values, as derived from the cost, bidding and/or estimating information that formed the basis for the establishment of the values set forth in such Schedule of Values); or (B) a reasonable estimate of the value (based on savings of Allowable Costs only) of the Deleted Work (exclusive of any markups for overhead or profit) as of the date that the Design-Build Proposal was submitted by Design-Build Entity plus (ii) a credit for any overhead and profit by Design-Build Entity and its Subcontractors or Subconsultants, of every Tier, on the Deleted Work sufficient to ensure that the amount retained by Design-Build Entity or any Subcontractor or Subconsultant for the Deleted Work does not exceed the amount of Allowable Markup that is permitted to be retained by each, respectively, pursuant to the calculations of applicable credits for Allowable Markups that are set forth in Paragraph 7.7.5, below.

7.7.1.4.3. Subcontractors. If Design-Build Entity has reason to believe that a lump sum or unit price for a Subcontractor’s or Subconsultant’s performance of a portion of Extra Work authorized to be performed on a time and materials basis is available and Design-Build Entity has reason to believe such price is lower than the price that would be charged by the Subcontractor or Subconsultant on a time and material basis, then Design-Build Entity has an obligation to inform District Project Manager of that fact (along with a complete itemized breakdown in accordance with Subparagraph 7.6.2.3 (2), above) so as to afford District the opportunity, on a fully informed basis as to the component Allowable Costs and Allowable Markups that comprise such price, to avail itself of such favorable pricing.

7.7.1.2. Changes Involving Time. Contract Adjustments to the Contract Sum or Contract Time that are based on an extension of the Contract Time for Compensable Delay or a shortening of the Contract Time due to Deleted Work shall be calculated as stated in the provisions of Section 3.5 of the Design-Build Contract and Article 8, below, with no Allowable Markup thereon for Design-Build Entity or any Subcontractor or Subconsultant, of any Tier. Contract Adjustments that are based on an acceleration in performance of the Work that is ordered by District in writing to overcome a Compensable Delay for which the Design-Build Entity is entitled to an extension of the Contract Time that has been properly requested and is not granted by District due to a District decision to accelerate rather than extend the Contract Time shall be calculated as stated in the Article 8, below.

7.7.2. Time and Materials Documentation. Without limitation to any other provisions of the Contract Documents, Design-Build Entity’s right to reimbursement of Allowable Costs incurred by Design-
Build Entity or its Subcontractors or Subconsultants in the performance of a Compensable Change for which the Contract Adjustment is agreed between District and Design-Build Entity to be calculated pursuant to Subparagraph 7.7.1.1 (4), above, ("time and materials") shall be conditioned on Design-Build Entity’s compliance with the following conditions with respect to documentation of the Extra Work that is involved in the performance of the Compensable Change:

7.7.2.1. Labor. At the close of the Day on which such Extra Work is performed, Design-Build Entity shall submit to District Project Manager and, if requested, to the Inspector of Record, an Extra Work report, on forms provided by District Project Manager, that sets forth with respect to each and all of the actual hours spent in performing the Extra Work the following: the names of the workers, their classifications, hours worked and hourly rates. Such forms shall be certified in writing by Design-Build Entity’s project manager or superintendent at the time of submission that the information contained therein is complete and accurate.

7.7.2.2. Materials, Equipment. At the close of the Day on which such Extra Work is performed, Design-Build Entity shall submit to District Project Manager and, if requested, to the Inspector of Record, an Extra Work report, on forms provided by District, that sets forth with respect to each and all of the materials and equipment used or consumed in the performance of the Extra Work, the following: a list of the materials and equipment, prices or rates charged, in the case of equipment a description of the type of equipment, identification number, and hours of operation (including loading and transportation), and copies of delivery tickets, invoices or other documentation confirmatory of the foregoing.

7.7.2.3. Other Expenditures. At the close of the Day on which such Extra Work is performed, Design-Build Entity shall submit to District Project Manager and, if requested, to the Inspector of Record, an Extra Work report, on forms provided by District, that sets forth a list of other expenditures constituting Allowable Costs incurred in performance of the Extra Work on the Day that the Extra Work was performed, along with documentation verifying the amounts thereof in such detail as District may require.

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

7.7.2.5. Subcontractor, Subconsultant Costs. Extra Work performed by Subcontractors and Subconsultants shall be performed on a time and materials basis and documented in the same manner as required of Design-Build Entity under this Paragraph 7.7.2 and shall not, unless approved in writing by the District Project Manager, be based on lump sum or unit price; provided, however, that if Design-Build Entity has reason to believe that a lump sum or unit price for a Subcontractor’s or Subconsultant’s performance of all or a portion of Extra Work authorized by District to be performed by Design-Build Entity on a time and materials basis is available and Design-Build Entity has reason to believe such price is lower than the price that would be charged by the Subcontractor or Subconsultant on a time and material basis, then Design-Build Entity has an obligation to inform District Project Manager of that fact (along with a complete itemized breakdown in the accordance with Subparagraph 7.6.2.3 (2), above) so as to afford District the opportunity to avail itself of such favorable pricing. If District approves of such lump sum price, then Design-Build Entity shall submit in lieu of the documentation otherwise required by this Subparagraph 7.7.2.5, such documentation as may be requested by District Project Manager confirming the Extra Work performed on any given Day.
7.7.2.6. Authentication. In addition to the foregoing, District may require that Design-Build Entity comply with other reasonable requirements pertaining to observation and verification of time and materials work and authentication of time and material tickets and invoices by persons designated by District for such purpose.

7.7.2.7. Waiver by Design-Build Entity. The failure of Design-Build Entity to submit authentication of costs in the manner required by this Paragraph 7.7.2 shall, if District elects in its reasonable discretion to treat it as such, constitute a waiver by Design-Build Entity of any right to a Contract Adjustment to the Contract Sum for the Allowable Cost of all or that portion of the Extra Work covered by such non-authenticated costs.

7.7.3. Allowable Costs. The term “Allowable Costs” means, and is limited to, the costs that are (1) listed in this Paragraph 7.7.3 and (2) not listed in Paragraph 7.7.4, below:

7.7.3.1. Labor. Straight-time wages and overtime wages specifically authorized by District Project Manager in writing, for employees employed at the Site, or at fabrication sites off the Site. The use of labor classification which would increase the Allowable Costs for Extra Work will not be permitted unless Design-Build Entity 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 District Project 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.

7.7.3.2. Benefits. To the extent based on wages reimbursable under Subparagraph 7.7.3.1, above, net actual employer costs of payroll taxes (FICA, Medicare, SUTA, FUTA), insurance (as adjusted for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, or the like), health and welfare, pension, vacation, apprenticeship funds and benefits required by the Project Labor Agreement (if applicable), Labor Compliance Program (if applicable) or lawful collective bargaining agreements. Design-Build Entity 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.

7.7.3.3. Materials. Costs of materials used or consumed in the Work at a price that is competitive to the price charged for similar materials delivered within the general vicinity of the Site by other subcontractors, suppliers, manufacturers and distributors. Cost for any such item that is not new shall mean “fair market value” based on the estimated price a reasonable purchaser would pay to purchase the used material at the time it was used or consumed for the Work, which fair market value must be declared by Design-Build Entity and approved by District prior to such use or consumption.

7.7.3.4. Taxes. Sales taxes on the costs of the materials described in Subparagraph 7.7.3.3, above.

7.7.3.5. Equipment Rental. Rental charges for necessary machinery and equipment, exclusive of hand tools, whether rented from Design-Build Entity or others. Such rental charges shall be the lowest of at least two (2) bona fide price quotations provided to Design-Build Entity from reputable equipment suppliers to validate the reasonableness of the rental rates charged. No charge shall be allowed or credit required for items which have a replacement value of One Hundred Dollars ($100) or less. The projected usage for each item of equipment proposed to be rented and estimated total rentals therefore shall be submitted to District Project Manager in advance of usage of such equipment so that District may make an informed decision on whether to rent or purchase such equipment. 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 Design-Build Entity elects to keep it at the Site at no expense to District. Under no circumstances shall the aggregate rentals chargeable for any item of equipment that is owned by the Design-Build Entity or any company affiliated with Design-Build Entity exceed 75% of the fair market value thereof at the time of its first use for the Work, which fair market value must be declared by Design-Build Entity and approved by District Project Manager prior to the first use thereof for the Work. All equipment shall be acceptable to District, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer’s ratings and manufacturer’s approved modifications shall be used to classify equipment, and it shall be powered by a unit of at least the minimum rating recommended by the manufacturer. Cost of major repairs or overhaul of rented equipment or machinery shall be deemed a cost of business of the lessor of such equipment or machinery and shall not be reimbursable as an Allowable Cost.

7.7.3.6. Royalties, Permits. Costs of royalties and permits.

7.7.3.7. Insurance, Bonds. Costs of insurance and bonds required to be furnished by Design-Build Entity under the terms of the Contract Documents; provided, however, that such additional costs chargeable for Extra Work or credited for Deleted Work shall not exceed one percent (1%) of the costs described in Subparagraphs 7.7.3.1 through 7.7.3.6, above.

7.7.3.8. Additional Design Services. Fees and related costs added or saved related to the performance of architectural, engineering or other professional services (other than professional services required to correct, or due in whole or in part to, conditions in the Design Documents prepared by Design-Build Entity or its Subconsultants constituting errors, omissions, conflicts, ambiguities or violations of Applicable Laws); provided, however, that: (1) fees for services performed on an hourly basis shall not exceed those customarily charged by design professionals providing comparable services for public works projects; (2) hourly services shall be charged based on actual costs to the Design-Build Entity and Subconsultant without any increase or surcharge by Design-Build Entity or by any Subconsultant, for mark ups or multipliers applied to direct personnel expenses (all of which shall be deemed covered by the Allowable Markups); and (3) reimbursement of out-of-pocket costs or expenses limited to such reimbursables and such amounts as are reasonable customarily charged by the Subconsultant to its public sector clients, without any increase or surcharge, at any Tier of Subconsultant, for mark ups or multipliers.

7.7.4. Costs Not Allowed. Allowable Costs shall not include any of the costs associated with any of the following:

7.7.4.1. superintendent(s);
7.7.4.2. assistant superintendent(s);
7.7.4.3. project engineer(s);
7.7.4.4. project manager(s);
7.7.4.5. scheduler(s);
7.7.4.6. estimator(s);
7.7.4.7. drafting or detailing;
7.7.4.8. vehicles not dedicated solely to the performance of the Work;
7.7.4.9. small tools with a replacement value not exceeding One Hundred Dollars ($100);
7.7.4.10. office expenses, including staff, materials and supplies;
7.7.4.11. on-Site and off-Site trailer and storage rental and expenses;
7.7.4.12. Site fencing not added solely due to the performance of Extra Work;
7.7.4.13. utilities, including gas, electric, sewer, water, telephone, telefax and copier equipment;
7.7.4.14. computer and data-processing personnel, equipment and software;
7.7.4.15. federal, state or local business, income and franchise taxes;
7.7.4.16. costs arising from or related to Delay, whether incurred by Design-Build Entity or a Subcontractor or Subconsultant, of any Tier; and
7.7.4.17. costs and expenses of any kind or item not specifically and expressly included in Paragraph 7.7.3, above.

7.7.5. Allowable Markups. In determining the cost to the District and the extent of increase to the Contract Price resulting from a Change adding to the Work, the allowance for mark-ups on the costs of the Change for all overhead (including home office and field overhead), general conditions costs and profit associated with the Change shall not exceed the percentage set forth in Exhibit "B," regardless of the number of Subcontractors, of any tier, performing any portion of any Change to the Work.

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

7.7.7. EXCLUSIONS AND LIMITATIONS. Neither Design-Build Entity nor any Subcontractor or Subconsultant, of any Tier, is entitled as part of a Contract Adjustment to an Allowable Markup or any other markup or multiplier of any kind, on:
7.7.7.1. agreed unit prices;
7.7.7.2. District Furnished Materials;
7.7.7.3. compensation payable pursuant to Section 3.5 of the Design-Build Contract for Compensable Delay; or
7.7.7.4. any Allowable Cost or other compensation or cost with respect to which the Contract Documents state that there shall be “no Allowable Markup”, “no markup for overhead and profit” or words of similar meaning.

7.7.8. Net Allowable Costs. If any one Change or collection of Changes in the same or related portions of the Work, or in multiple portions of Work covered by a single bulletin or instruction by District, District Project Manager or a District Consultant, involves both additive adjustments (for Compensable Change or Compensable Delay) and deductive adjustments (for Deleted Work), then the computation of the Allowable Costs added or credited for purposes of calculating and applying Allowable Markups shall be based on the net difference.

7.7.9. Unit Prices. Unless otherwise stated in the Contract Documents, unit prices stated in the Contract Documents or subsequently agreed upon by District and Design-Build Entity 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 Design-Build 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, shall be made upon demand of either District or Design-Build Entity. 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.

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

7.7.11. 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 Design-Build Entity to obtain competitive fixed or not-to-exceed prices pursuant to the regular pricing processes provided for by the Contract Documents. Design-Build Entity recognizes that prompt pricing by Design-Build Entity is critical to this objective. Accordingly, in addition to and without limitation on any of the District’s other rights or remedies, including, without limitation, its right to enforce a waiver under Subparagraph 7.6.2.4, above, it is agreed that if Design-Build Entity 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: (1) any Delay to the performance of the Work associated with the performance, delayed performance or nonperformance of such Compensable Change shall be conclusively deemed to be an Unexcused Delay; and (2) the District shall have the option, exercised in its sole discretion, to unilaterally fix and determine the amount of the compensation payable to Design-Build Entity for such Compensable Change based on the “estimating guide” method set forth in Subparagraph 7.7.1.1 (3), above, which determination shall be conclusively final and binding upon Design-Build Entity.

7.7.12. Final Payment. No Claim by Design-Build Entity for adjustment to the Contract Sum shall be allowed if asserted after Final Payment.

7.7.13. Full Resolution. Except as otherwise stated in Paragraph 7.7.14, below, the signing of a Change Order by Design-Build Entity and the District shall be conclusively deemed to be a full resolution, settlement and accord and satisfaction with respect to any and all Loss and Delay related to the subject matter of the Change Order including, without limitation, all rights to recovery of costs, expenses or damages for delay, disruption, hindrance, interference, extended or extraordinary (direct and indirect) overhead, multiplicity of changes, loss of productivity, labor, wage or material cost escalations, inefficiency, legal expenses, consultant costs, interest, lost profits or revenue, bond and insurance costs, changes in taxes and other similar and related Losses. The foregoing provisions of this Paragraph 7.7.13 shall, whether or not they are expressly stated or referenced on the face of a Change Order, be deemed to be to be part of the terms of the Change Order and shall be deemed to supersede and govern over any other provision contained in any proposal, estimate or other documents attached to or referenced in such Change Order that conflicts with the provisions of this Paragraph 7.7.13.

7.7.14. Reserved Rights. Change Orders shall be executed by Design-Build Entity without any express reservation of rights by Design-Build Entity to reserve for the future the assertion of any right of recovery from the District for Loss or Delay arising out of or relating to the subject matter of the Change Order. Execution of a Change Order, Unilateral Change Order or Field Order shall not be interpreted as a waiver, release or settlement of any rights or claims that the District may have for any of the following: (1) Defective Work; (2) liquidated damages or actual Losses for Delay; or (3) recoupment by District (by way of withholding of funds, set off or recovery from Design-Build Entity) of amounts paid by District for costs or markups on costs that the District discovers, following payment of such amounts to Design-Build Entity, do not constitute proper charges to
District, or that constitute charges that are not properly substantiated, under the terms of the Contract Documents.

7.7.15. No "Total Cost" Calculations. Design-Build Entity represents and warrants that it has the ability to generate and maintain complete and accurate cost accounting records that, if required, will reflect the actual costs of the Work incurred or avoided for multiple items of Compensable Change and, on an event-by-event basis, the effect of multiple and concurrently occurring or caused Compensable Delays on the progress of the Work. Accordingly, Design-Build Entity agrees that all Change Order Requests and Claims shall be itemized in a manner that, with reasonable mathematical certainty and without reliance upon probabilities or inferences, segregates on a discrete, event-by-event basis the direct, actual Allowable Costs associated with each individual Compensable Change or Compensable Delay. Unless otherwise agreed to by District in writing in the exercise of its sole discretion, Change Order Requests and Claims shall not be based, in whole or in part, upon any methodology (such as “total cost” or “modified total cost” methodologies) that purports to establish Design-Build Entity’s entitlement to additional compensation inferentially based, solely or principally, on the difference between Design-Build Entity’s total costs for the Work or a portion of the Work and its original estimate of costs for performance of the Work.

7.7.16. Multiple Changes. The District reserves the absolute right to make whatever Changes, including, without limitation, Compensable Changes or Deleted Work, that it determines, in its sole discretion, are necessary or otherwise desirable. Under no circumstances shall the individual or cumulative number, value or scope of such Changes, or their individual and cumulative impact on the Work, become a basis for Design-Build Entity to assert any claim for breach of contract, abandonment, rescission, termination, cardinal change or reformation of the Design-Build Contract, nor shall such circumstances be the basis for Design-Build Entity, or any of the Subcontractors or Subconsultants, 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.

7.7.17. Continuous Performance. Subject to Design-Build Entity’s rights under Section 14.4, below, no dispute or disagreement with respect to any Changes or Delay, including, without limitation, disputes over Design-Build Entity’s right to or the terms of a Contract Adjustment, shall relieve or excuse Design-Build Entity from the obligation to proceed with and maintain continuous, expeditious and uninterrupted performance of the Work, including performance of any disputed Changes.

7.8. Allowances

7.8.1. Contract Sum. Design-Build Entity shall include in the Contract Sum all Allowances that are required to be included in the Work under the terms of the Contract Documents.

7.8.2. Selection by District. Items covered by Allowances shall be supplied for such amounts and by such persons or entities as District Project Manager may direct. Subject to Paragraph 2.1.3, above, selections that are required to be made by District under an Allowance shall be done promptly by District to avoid Delay in the Work.

7.8.3. Contract Adjustments.

7.8.3.1. COSTS INCLUDED IN ALLOWANCE. Unless otherwise stated in the Allowance: (1) “materials only” Allowances shall be deemed to include all costs and markups by Subcontractors for the materials only, complete and delivered at the Site, inclusive of all required taxes and less applicable trade discounts; and (2) “materials and labor” Allowances shall be deemed to include all costs and markups by Subcontractors and Subconsultants for all labor, equipment, materials and other services and work required to be expended by Subcontractors and
Subconsultants to perform the Work covered by the Allowance, inclusive of all required taxes and less applicable trade discounts.

7.8.3.2. Adjustment to Contract Sum. Whenever the Allowable Costs plus Allowable Markups thereon to perform Work covered by an Allowance are more or less than the stated amount of the Allowance, the Contract Sum shall be adjusted (increased or decreased) pursuant to a Change Order or Unilateral Change Order by the amount of such difference.

7.8.3.3. Documentation. A request by Design-Build Entity for a Contract Adjustment pursuant to this Section 7.8 shall be accompanied by documentation of the actual Allowable Costs and Allowable Markups incurred and charged for the performance of the entire body of Work covered by the Allowance, in a form sufficient to demonstrate to District Project Manager’s reasonable satisfaction the amount of the Contract Adjustment to which Design-Build Entity is entitled under the terms of this Section 7.8.

8. CONTRACT TIME

8.1. Commencement and Completion

8.1.1. Date of Commencement. The Date of Commencement shall not be postponed by the failure of Design-Build Entity or of persons or entities for whom Design-Build Entity is responsible to perform an obligation. Design-Build Entity shall not knowingly, except by agreement or instruction of the District in writing, commence operations on the Site or elsewhere prior to receipt of a Notice to Proceed with Construction. Design-Build Entity shall not commence any Work at the Site prior to its obtaining the insurance required by Section 11.1, below, and the Performance Bond and Payment Bond required by Section 11.4, below, and the Date of Commencement of the Work shall not be changed by the effective date of such insurance or bonds.

8.1.2. Contract Time. Design-Build Entity shall proceed expeditiously with adequate forces and shall achieve completion of the Final Construction Documents, 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, where appropriate, be shortened for 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 Design-Build Entity to finish the Work, or any portion of the Work, earlier than the Contract Time. Design-Build Entity has included in its Contract Sum the costs of all Design-Build Entity’s and its Subcontractors’ and Subconsultants’ direct and indirect overhead, including but not limited to all 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 Contract Sum notwithstanding Design-Build Entity’s anticipation of possibly completing the Work in fewer Days than established by the Contract Time. Under no circumstances (including, without limitation, circumstances in which the District has approved in writing of Design-Build Entity completing early) shall the District be liable to Design-Build Entity for any Losses, of any kind, due to the inability of Design-Build Entity 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 the District, College, District Project Manager, Inspectors of Record, District Consultants, Separate Contractors or others. If the Design-Build Entity anticipates completing early, it must obtain in advance District’s approval in
writing of such early completion. Approval by District of such early completion may be granted or withheld in the District’s sole and absolute discretion. If such approval is granted, it shall not entitle Design Build Entity to an adjustment or advancement of the schedule for Progress Payments or Final Payment and Design-Build Entity’s right to payment of Final Payment shall, notwithstanding the provisions of Public Contract Code 7107, not occur until sixty (60) Days after the expiration of the Contract Time for Final Completion.

8.2. Delays and Extension of Time

8.2.1. Adjustments to Contract Time.

8.2.1.1. Extensions. Provided that Design-Build Entity has complied with the provisions of this Section 8.2 (including, without limitation, the requirements pertaining to timely delivery of a Notice of Delay and Request for Extension), if, as a result of Excusable Delay or Compensable Delay to the actual, as-built critical path of activities leading to achievement of Substantial Completion, Design-Build Entity is unable to achieve Substantial Completion of the Work within the Contract Time for Substantial Completion, then the Contract Time for completion of Final Construction Documents and/or Substantial Completion of the overall Work shall be extended, either by Change Order or Unilateral Change Order, for the length of the proven, resulting Delay to Design-Build Entity’s ability to complete the Final Construction Documents and/or Substantially Complete the Work within the Contract Time. The Contract Time shall not be adjusted for Unexcused Delays.

8.2.1.2. Shortening. Design-Build Entity shall within ten (10) Days after receiving notice of Deleted Work prepare and deliver to District a Time Impact Analysis of the impact of the Deleted Work upon the critical path to determine if the Contract Time should be shortened thereby and if so the duration of the shortening. If the District and Design-Build Entity are unable to agree upon the duration of the shortening, then District shall make a Good Faith Determination of the reasonable amount of time that the Contract Time shall be shortened on account of such Deleted Work.

8.2.1.3. Prescribed Calculations.

8.2.1.3.1. DSA Review Time. The Contract Time shall be extended for Excusable Delay or Compensable Delay causing the DSA Review Time to exceed the Agreed DSA Review Time and shortened if the DSA Review Time, for any reason whatsoever, is shorter than the Agreed DSA Review Time. The calculation of such extension or shortening of the Contract Time shall be measured by the difference between (1) the actual DSA Review Time and (2) the Agreed DSA Review Time.

8.2.1.3.2. Work Day Lost Calculations. Design-Build Entity may claim an Excusable Delay or a Compensable Delay for a full Day only if all Work on a critical path activity is stopped for more than six (6) hours of a normal eight (8) hour Work Day and for a half-Day only if all Work on a critical path activity is stopped for three (3) to six (6) hours of such a normal Work Day. No Excusable Delay or Compensable Delay may be claimed if all Work on a critical path activity is stopped for less than three (3) hours of such a normal work Day. Similarly, where Deleted Work results in the projected avoidance of the need to perform more than six (6), or between three (3) and six (6) hours of all Work on a critical path activity on such a normal work day, the Contract Time shall be contracted by a full Day or half Day, respectively.

8.2.1.3.3. Dry Out Time Calculations. Contract Adjustments to the Contract Time that are based upon unusual precipitation that is an Act of God as defined in Paragraph 1.1.2, above, shall include, in addition to the number of Days of Excusable Delay to which Design-
Build Entity is entitled due to a cessation of Work that occurs at the Site while the unusual precipitation is occurring, an additional extension for the Delay to the critical path of activities affecting Substantial Completion that is the result of Design-Build Entity being unable, after cessation of the unusual precipitation at the Site, to proceed with performance of Work due to wet or muddy conditions at the Site (hereinafter referred to as “dry out” time); provided, however, that the amount of dry out time for which Design-Build Entity is entitled to an extension of time in any given calendar month shall not exceed the number of Days that is the product derived by multiplying (a) the number of Days of Excusable Delay to which Design-Build Entity is entitled due to a cessation of Work that occurs at the Site while such unusual precipitation is occurring, by (b) a fraction, the (i) numerator of which is the number of Days of Excusable Delay due to measurable unusual precipitation occurring at the Site during such calendar month that constitutes an Act of God as defined in Paragraph 1.1.2, above, and (ii) the denominator of which is the total number of Days of measurable precipitation occurring at the Site during said calendar month (including both the number of Days comprising the normal, 10-year monthly average of measurable precipitation recorded by NOAA and the excess, or unusual precipitation that constitutes an Act of God as defined in Paragraph 1.1.2, above).

8.2.2. Notice of Delay.

8.2.2.1. Submission. Design-Build Entity shall submit written Notice of Delay to District Project Manager if any instruction, request, drawing, specification, action, condition, omission, default or other circumstance occurs that constitutes an Excusable Delay or Compensable Delay or other matter that may involve or require a Contract Adjustment extending 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 circumstance.

8.2.2.2. Form. Notices of Delay shall be provided using forms furnished by District Project Manager or, if requested by District, using forms furnished by Design-Build Entity that are approved by District Project Manager. Failure by District Project Manager to request or approve a particular form shall not relieve Design-Build Entity of its obligation to provide Notice of Delay in a written form that complies with the requirements of this Paragraph 8.2.2.

8.2.2.3. Content. Each Notice of Delay in order to be considered complete shall include:

8.2.2.3.1. a general statement of the circumstances giving rise to the Notice of Delay (including, without limitation, identification of any related Field Order);

8.2.2.3.2. a Reasonable Order of Magnitude Estimate by Design-Build Entity of any related Contract Adjustments extending the Contract Time; and

8.2.2.3.3. if such circumstances involve a right to a Contract Adjustment to the Contract Sum for Compensable Change that has not been waived by Design-Build Entity, Design-Build Entity shall include, if not previously provided, a complete and timely Notice of Change.

8.2.2.3.4. Waiver by Design-Build Entity. Failure by design-build entity to provide a complete and timely Notice of Delay under circumstances where a Notice of Delay involving a delay is required by this paragraph 8.2.2 shall, in accordance with the provisions of Section 4.7, above, constitute a waiver by design-build entity of the right to a contract adjustment on account of such circumstances and a waiver of any right to further recourse or recovery by reason or related to such delay by means of the claims dispute resolution process or by any other legal process otherwise provided for under applicable laws. Adjustments Shortening Time. Failure by Design-Build Entity to submit a timely or
proper Notice of Delay under circumstances in which a Notice of Delay is required shall in no way affect District’s right to a Contract Adjustment shortening the Contract Time on account of such circumstances.

8.2.3. Request for Extension.

8.2.3.1. Submission. With respect to any matter that may involve or require an adjustment extending the Contract Time, Design-Build Entity shall, within fourteen (14) Days after receipt by District of a Notice of Delay pursuant to Paragraph 8.2.2, above, submit to District a written Request for Extension.

8.2.3.2. Form. Requests for Extension shall be provided using forms furnished by District Project Manager or, if requested by District, using forms furnished by Design-Build Entity that are approved by District Project Manager. Failure by District Project Manager to request or approve a particular form shall not relieve Design-Build Entity of its obligation to provide Requests for Extension in a written form that complies with the requirements of this Paragraph 8.2.3.

8.2.3.3. Content. Each Request for Extension in order to be considered complete shall include:

- 8.2.3.3.1. a detailed description of the circumstances giving rise to the request for Contract Adjustment to the Contract Time 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

- 8.2.3.3.2. if such circumstances involve a right to a Contract Adjustment of the Contract Sum on account of Compensable Change that has not been waived by Design-Build Entity, Design-Build Entity shall include, if not previously provided, a complete and timely Change Order Request.

8.2.3.4. Waiver by Design-Build Entity. Failure by design-build entity to provide a complete and timely request for extension under circumstances where a change involving a delay is required by this paragraph 3.2.3 shall, in accordance with the provisions of Section 4.7, above, constitute a waiver by design-build entity of the right to a contract adjustment on account of such circumstances and a waiver of any right to further recourse or recovery by reason or related to such delay by means of the claims dispute resolution process or by any other legal process otherwise available under applicable laws. Adjustments Shortening Time. Failure by Design-Build Entity to submit a timely or proper Request for Extension under circumstances in which a Request for Extension is required shall in no way affect District’s right to a Contract Adjustment shortening the Contract Time on account of such circumstances.

8.2.4. Response by District. After receipt of a timely and complete Request for Extension, District shall investigate the facts concerning the cause and extent of such Delay and, depending on whether the Request for Extension is justified, will notify Design-Build Entity, either directly or through the District Project Manager, of its approval or disapproval of all or a portion of Design-Build Entity’s request. Extensions of time approved by District 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.

8.2.5. Formal Notice of Essence. Design-Build Entity recognizes and acknowledges that timely submission of a formal Notice of Delay and a formal Request for Extension, whether or not the circumstances of a Delay may be known to District or available to District through other means, are not mere formalities but are of crucial importance to the ability of District to promptly identify, prioritize, evaluate and mitigate the potential effects of Delay. Any forms of informal notice, whether verbal or written (including, without limitation, statements at regular job meetings or entries in monthly
reports, daily logs, job meeting minutes, updated Design-Build Schedules or look-ahead schedules), that do not strictly comply with the formal requirements of Paragraph 8.2.2, above, and Paragraph 8.2.3, above, shall accordingly be deemed insufficient to satisfy the notice requirements of this Article 8.

8.2.6. Adjustments to Contract Sum.

8.2.6.1. Compensable Delay. Contract Adjustments to the Contract Sum for a Compensable Delay that involve an extension of the Contract Time shall be based, without duplication to any other Contract Adjustments to the Contract Sum, on the terms of Section 3.5 of the Design-Build Contract. Contract Adjustments to the Contract Sum for Compensable Delay that involve an acceleration of performance to overcome a Compensable Delay for which the Design-Build Entity is entitled to an extension of the Contract Time that has been properly requested and is not granted by District due to a District decision pursuant to Subparagraph 8.2.7.3, below, to accelerate rather than extend the Contract Time, shall be calculated, without duplication to any other Contract Adjustments to the Contract Sum, on accordance with the terms of Subparagraph 8.2.7.3, below. Design-Build Entity agrees to accept the Contract Adjustments provided for in the aforementioned provisions as its sole and exclusive compensation for Compensable Delay and acceleration to overcome Compensable Delay, in lieu of any other right that may exist under Applicable Laws for recovery of Losses, whether incurred by Design-Build Entity or its Subcontractors and Subconsultants, of any Tier.

8.2.6.2. Deleted Work. A credit shall be given to District reducing the Contract Sum due to Deleted Work that results in a shortening of the Contract Time. Such reduction in the Contract Sum shall be effected by means of a Contract Adjustment that is based on the product derived from multiplying (1) the number of Days that the Contract Time is shortened by (2) the amount of liquidated damages set forth in Section 3.5 of the Design-Build Contract, without any additional credit to District for Allowable Markups.

8.2.7. Acceleration of the Work.

8.2.7.1. Due to Unexcused Delay. If District makes a Good Faith Determination that Design-Build Entity’s progress in performance of the Work will not achieve Substantial Completion of the Work within the Contract Time as adjusted pursuant to Paragraph 8.2.1, above, then Design-Build Entity shall, following receipt of a written request by District Project Manager to accelerate, immediately respond in writing setting forth a detailed plan for accelerating the Work. All measures necessary, including working overtime, additional shifts, Saturdays, Sundays and holidays, to accelerate performance to ensure that the Work is performed within the Contract Time shall be taken by Design-Build Entity and the cost thereof shall be paid for by Design-Build Entity at Design-Build Entity’s Own Expense. District may also take all other necessary measures to ensure no further Delays affect achievement of Substantial Completion and Final Completion of the Work within the Contract Time and the Design-Build Entity shall reimburse District, or District may withhold from payment due to Design-Build Entity, for Losses incurred by District in taking such measures.

8.2.7.2. Due to Excusable Delay. Design-Build Entity shall have the right, exercised in its sole discretion, to accelerate performance of the Work to overcome time lost due to Excusable Delay. Such acceleration, if performed other than at the written direction of District, shall be deemed a voluntary acceleration and the cost of such accelerated performance shall paid for by Design-Build Entity at Design-Build Entity’s Own Expense. Alternatively, if District Project Manager directs in writing that the Work be accelerated to overcome an Excusable Delay that is not concurrent with an Unexcused Delay, then Design-Build Entity shall be entitled to a
Contract Adjustment to the Contract Sum for such acceleration on and subject to the same terms as provided for in Subparagraph 8.2.7.3, below, in the case of an acceleration to overcome a Compensable Delay.

8.2.7.3. Due to Compensable Delay. District shall have the right, exercised in its sole and absolute discretion, in lieu of granting a Contract Adjustment to the Contract Time for Compensable Delay, to direct in writing the acceleration of the Work by Design-Build Entity in order to recapture time lost due to such Compensable Delay. The District and Design-Build Entity shall endeavor prior to commencement of such acceleration to mutually agree upon the amount of compensation to be paid therefor. District shall have the right, in the absence of such an agreement, to direct in writing that Design-Build Entity accelerate. Design-Build Entity shall comply with such directive. Design-Build Entity’s right to a Contract Adjustment to the Contract Sum on account of such acceleration shall be limited to (1) the premium time portion of any overtime paid for labor provided by Design-Build Entity or any Subcontractor or Subconsultant, plus (2) additional supervision costs for additional shifts of supervision provided at the Site by Design-Build Entity only (not by Subcontractors or Subconsultants), plus (3) Allowable Markup thereon as provided in Paragraph 7.7.5, above. Except as directed by District in the manner stated in this Subparagraph 8.2.7.3, no statements, conduct or actions by District or District Project Manager will be construed as creating an obligation on the part of District to agree to a Contract Adjustment to the Contract Sum on account of any cost of overtime or other costs associated with an acceleration of the Work to recapture time lost due to Compensable Delay.

8.2.8. Concurrent Delays. For purposes of the calculations provided for in this Paragraph 8.2.8, the term “concurrent Delay” means the portion of two or more Delays affecting the critical path to Substantial Completion that are overlapping or co-existent. Design-Build Entity’s right to a Contract Adjustment of the Contract Time (pursuant to Subparagraphs 8.2.8.1, 8.2.8.2 and 8.2.8.3, below) and Contract Sum (pursuant to Subparagraphs 8.2.8.4, 8.2.8.5 and 8.2.8.6, below) shall, in the case of concurrent Delays, be calculated in accordance with the following:

8.2.8.1. 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.

8.2.8.2. 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.

8.2.8.3. If an Unexcused Delay occurs concurrently with both an Excusable Delay and a 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 8.2.8.1, above, exceeds the number of Days of such Unexcused Delay.

8.2.8.4. If an Unexcused Delay occurs concurrently with a Compensable Delay, the maximum period of time for which Design-Build Entity shall be entitled to a Contract Adjustment to the Contract Sum in accordance with Section 3.5 of the Design-Build Contract shall be the number of Days, if any, by which such Compensable Delay exceeds the number of Days of such Unexcused Delay.

8.2.8.5. If a Compensable Delay occurs concurrently with an Excusable Delay, the maximum period of time for which Design-Build Entity shall be entitled to a Contract Adjustment to the Contract Sum in accordance with Section 3.5 of the Design-Build Contract shall be the number of Days,
if any, by which such Compensable Delay exceeds the number of Days of such Excusable Delay.

8.2.8.6. If an Unexcused Delay occurs concurrently with both an Excusable Delay and a Compensable Delay, the maximum period of time for which Design-Build Entity shall be entitled to a Contract Adjustment to the Contract Sum in accordance with Section 3.5 of the Design-Build Contract shall be the number of Days, if any, by which such Compensable Delay exceeds the number of Days of such Unexcused Delay.

8.2.9. Delay Claims. Claims by Design-Build Entity relating to disputed Contract Adjustments due to Delay shall be made in accordance with applicable provisions of Section 4.4, above.

8.2.10. Exercise of District Rights. Notwithstanding any other provision of the Contract Documents to the contrary, District’s exercise in accordance with the Contract Documents of any of its rights or remedies permitted by Applicable Laws or the Contract Documents in response to a failure by Design-Build Entity or any Subcontractor or Subconsultant to comply with the Contract Documents shall not, under any circumstances, entitle Design-Build Entity to a Contract Adjustment.

9. PAYMENTS AND COMPLETION

9.1. Payments by District

9.1.1. Time for Payment. Subject to the rights of withholding and nullification as set forth elsewhere in this Article 9, District, shall make payment of undisputed sums due to Design-Build Entity upon Applications for Payment within thirty (30) Days after receipt of an Application for Payment that has been properly prepared and timely submitted by the Design-Build Entity in accordance with the Contract Documents and for which a Certification for Payment had been issued by the District Project Manager approving of such payment.

9.1.2. Not Acceptance. No approval, inspection or use of, or payment for, the Work by District or by any person or entity acting on District’s behalf shall constitute acceptance of Work that is not in accordance with the Contract Documents or a waiver of any of District’s rights under the Contract Documents.

9.1.3. Interest. If District fails to make payment of an undisputed sum due as a Progress Payment to the Design-Build Entity as required by this Article 9, District shall pay interest to the Design-Build Entity equivalent to the legal rate set forth in subdivision (a) of California Code of Civil Procedure §685.010. The number of Days available to the District to make payment without incurring such interest shall be reduced by the number of Days by which the District exceeds the seven (7) Day response time applicable to the District set forth in Section 9.5, below.

9.1.4. Disputed Payments. Subject to Design-Build Entity’s rights under Section 9.8, below, no good faith dispute or disagreement between District and Design-Build Entity with respect to the amount of any payment claimed due by Design-Build Entity shall relieve or excuse Design-Build Entity from the obligation to proceed with and maintain continuous, expeditious and uninterrupted performance of the Work.

9.2. Applications for Payments

9.2.1. Submission by Design-Build Entity. Applications for Payment requesting Progress Payment shall be properly prepared and submitted by Design-Build Entity to District once a month on the first (1st) Day of the month. If the first (1st) Day of the month is a weekend or Holiday, the Application for Payment shall be submitted on the next working day.
9.2.2. Period of Application. The period covered by each such Application for Payment requesting Progress Payment shall be one calendar month ending on the last day of the month immediately prior to that month in which such Application for Payment is submitted.

9.2.3. Schedule of Values. Each Application for Payment shall be accompanied by a Schedule of Values prepared and submitted in accordance with the requirements of the Contract Documents, including, without limitation, the provisions of Section 9.3, below.

9.2.4. Changes in Work. 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.

9.2.5. Progress Payments. Applications for Payment requesting Progress Payments shall be based on amounts calculated in accordance with the provisions of Section 9.4, below.

9.2.6. Percentage Completion. Applications for Payment requesting Progress Payments shall indicate the Design-Build Entity’s estimate of the percentage of completion of each line item listed in the Schedule of Values as of the end of the period covered by the Application for Payment.

9.2.7. Disagreements. In the event of a disagreement between District and Design-Build Entity over the accuracy or reasonableness of the Design-Build Entity’s percentage estimates contained in the Application for Payment, the District shall make a Good Faith Determination of the percentage, which percentage shall then be inserted by Design-Build Entity in the Application for Payment and the Application for Payment submitted, or resubmitted, incorporating such revision.

9.2.8. Substantial Completion. For the sole purpose of the percentage calculation set forth in Paragraph 9.2.6, above, and for no other purpose, the Work shall be deemed one hundred percent complete upon Substantial Completion and the amount released to Design-Build Entity shall, subject to District’s right to withhold pursuant to Section 9.6, below, be a sum sufficient to increase the total of Progress Payments to Design-Build Entity to ninety percent (90%) of the Contract Sum.

9.2.9. Certification by Design-Build Entity. Each Application for Payment that is submitted by Design-Build Entity shall be signed by Design-Build Entity with a certification by Design-Build Entity 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 Design-Build Entity's knowledge, information and belief, the Work is in accordance with the Contract Documents; (3) Design-Build Entity is entitled to payment in the amount certified; and (4) all sums previously applied for by Design-Build Entity on account of the Work performed by the Subcontractors and Subconsultants and that have been paid by District have been paid to the Subcontractors and Subconsultants performing such Work, without any retention, withholding or back charge by Design-Build Entity.

9.2.10. Stored Materials. District may, in the exercise of its sole and absolute discretion, approve or disapprove for inclusion in Design-Build Entity’s Application for Payment the cost of materials to be incorporated, but not yet incorporated, in the Work and delivered and suitably stored either at the Site or at some other appropriate location acceptable to the District. As part of any request for such approval, Design-Build Entity shall furnish evidence satisfactory to District: (1) of the cost of such materials; (2) that such materials are under the exclusive control of Design-Build Entity, or if not, that title to the materials is in the District, free of any lien or encumbrance; and (3) with respect to materials stored off-Site, that the materials are safely and suitably stored in a bonded warehouse with appropriate insurance coverage satisfactory to District. No payment or approval by District pursuant to this Paragraph 9.2.10 shall (a) be construed as an inspection or acceptance of the materials; (b) relieve Design-Build Entity of its continuing and sole responsibility for the care and protection of, and sole responsibility for any Loss to, such materials, from any cause whatsoever; or (c) operate as a waiver of rights by District.
9.2.11. Title. Design-Build Entity warrants that title to all the Work covered by an Application for Payment will pass to District no later than the time of payment. Design-Build Entity further warrants that upon submittal of an Application for Payment all Work for which approval for payment has been previously issued by District shall, to the best of Design-Build Entity's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Design-Build Entity, the Subcontractors, Subconsultants, or other persons or entities making a claim by reason of having provided labor, materials, equipment and services for the Work.

9.3. Schedule of Values

9.3.1. Initial Submission. Within thirty (30) Days after receipt by Design-Build Entity of the Notice of Intent to Award, Design-Build Entity shall submit to District a Schedule of Values, prepared in a form and incorporating a level of detail satisfactory to District, that allocates the Contract Sum to various portions of the Work, including, without limitation, each portion of the Work to be performed by Design-Build Entity or a Subcontractor or Subconsultant, discrete categories of direct (i.e., on-Site) overhead costs (sometimes referred to as “general conditions costs”), Design-Build Entity overhead and profit and amounts reserved for contingencies.

9.3.2. Balanced Allocation. The Schedule of Value shall be balanced, reflecting in each line item Design-Build Entity's estimated or actual cost commitments for the category of Work included in the line item and a proportionate share of Design-Build Entity's overhead and profit. Techniques, such as “front-end loading”, designed to create an imbalanced cash flow are strictly prohibited.

9.3.3. Line Item Estimates. Line item values stated in the Schedule of Values that are based on Design-Build Entity’s estimates, rather than actual subcontract prices, shall be identified as such and replaced with actual subcontract prices when they become available as the subcontracting process progresses.

9.3.4. Updating. The Schedule of Values shall be updated by Design-Build Entity each month as necessary to reflect the Design-Build Entity’s actual progress in subcontracting the Work. An updated Schedule of Values shall be attached to each Application for Payment.

9.3.5. Substantiation. Design-Build Entity shall provide such data as District Project Manager may reasonably require to substantiate that the Schedule of Values has been prepared in conformance with the requirements of the Contract Documents. Failure to provide such substantiation shall result in the Schedule of Values being deemed incomplete and unapproved by District Project Manager for use by Design-Build Entity in submitting its Applications for Payment.

9.3.6. Corrections. If corrections are required in order to make the Schedule of Values comply with the requirements of the Contract Documents, such corrections shall be made as a condition of the Design-Build Entity’s Application for Payment being considered properly prepared, submitted and complete.

9.3.7. Changes to Work. Costs involved in the performance of Work covered by Change Orders, Unilateral Change Orders or Field Orders shall be, at the option of District, either separately scheduled or incorporated as adjustments to the respective trade lines of Work to which they apply. Except as otherwise expressly required by Article 7, above, the Schedule of Values shall not be utilized by Design-Build Entity as a basis for calculating Contract Adjustments.

9.3.8. Applications for Payment. The Schedule of Values prepared by Design-Build Entity in accordance with the requirements of the Contract Documents shall be used as a basis for District Project Manager’s review and approval or disapproval of Applications for Payment.

9.4. Progress Payments

9.4.1. Progress Payment Amount. Subject to the other provisions of the Contract Documents, the amount of each Progress Payment requested in an Application for Payment shall be computed as follows:
9.4.1.1. take a proportional amount of the Design Fee (as a component of the Contract Sum) that has been earned for the design portion of the Work, which amount shall be based on the product derived by multiplying (1) the Design Fee by (2) the percentage completion achieved by Design-Build Entity of each phase of the design portion of the Work consistent with the following payment schedule for design services: (a) schematic design phase: 15%; (b) at 25% completion of Construction Documents: 30%; (c) 50% completion of Construction Documents: 30%; (d) completion of Final Construction Documents: 10%; and (e) approval by DSA of Final Construction Documents: 15%; less a retention of ten percent (10%).

9.4.1.2. add a proportional amount of the balance of the Contract Sum for the non-design portion of the Work (i.e., the difference of the Contract Sum less the Design Fee), that is earned, which amount shall be determined by taking a proportional amount of the dollar value assigned for each trade line item of non-design Work listed in the Schedule of Values based on the product derived by multiplying (1) said assigned dollar value by (2) the percentage completion of such trade line item of non-design Work, less a retention of ten percent (10%).

9.4.1.3. add that portion of the Contract Sum that is allocable to materials and equipment approved by District pursuant to Paragraph 9.2.10, above, and suitably stored at the Site or at a location off-Site, less a retention of ten percent (10%);

9.4.1.4. subtract the aggregate of previous payments made by the District, and

9.4.1.5. subtract amounts, if any, that District is entitled to withhold pursuant to an exercise of the right to withhold under Section 9.6, below.

9.4.2. Other Conditions and Documentation. Design-Build Entity shall submit its Applications for Payment requesting Progress Payments to District Project Manager using such forms as required by District. Without limitation to any other conditions to payment set forth elsewhere in the Contract Documents, the following shall be conditions to a proper submission, and to District Project Manager’s approval, of each Application for Payment:

9.4.2.1. submission of a Schedule of Values that complies with Section 9.3, above;

9.4.2.2. submission of Design-Build Entity’s certification required by Paragraph 9.2.9, above;

9.4.2.3. submission of: (1) forms of conditional releases of stop notice and bond rights upon progress payment, complying with California Civil Code §3262(d)(1), for all Work performed during the time period covered by the current Application for Payment, signed by Design-Build Entity and the Subcontractors and Subconsultants, of every Tier; and (2) forms of unconditional release of stop notice and bond rights upon progress payment, complying with California Civil Code §3262(d)(2), for all Work performed during the time period covered by the previous Application for Payment, signed by Design-Build Entity and the Subcontractors and Subconsultants, of every Tier;

9.4.2.4. compliance by Design-Build Entity with its obligation for daily maintenance of As Built Drawings as required by Paragraph 3.10.2, above;

9.4.2.5. compliance by Design-Build Entity with its obligation for submission of daily reports as required by Paragraph 3.10.3, above;

9.4.2.6. compliance by Design-Build Entity with its obligations for submission of scheduling information and updating of the Design-Build 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;

9.4.2.7. proper payment of prevailing wages as defined in California Labor Code §1720, et seq.;

9.4.2.8. compliance with the Labor Compliance Program;
9.4.2.9. timely submission of adequate and complete certified payroll records as required by the Contract Documents;
9.4.2.10. submission of certifications by Design-Build Entity and the Subcontractors as required by the Labor Compliance Program or Applicable Laws certifying that all employee benefit contributions due and owing have been paid in full;
9.4.2.11. submission of sales tax information as required by Paragraph 3.6.4, above; and
9.4.2.12. compliance by Design-Build Entity 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 Design-Build Entity’s right to receive payment for Work performed.

9.5. Approval/Rejection of Application for Payment

9.5.1. Review by District Project Manager. Subject to District’s rights under Paragraph 9.5.4, below, District Project Manager shall promptly review Applications for Payment submitted by Design-Build Entity and provide its Certification for Payment, approving or disapproving the Application for Payment, in whole or part, within (1) seven (7) Days after receipt by District Project Manager of an Application for Payment requesting Progress Payment, and (2) within fourteen (14) Days after receipt by District Project Manager of an Application for Payment requesting Final Payment.

9.5.2. Disapproval. A Certification for Payment by District Project Manager disapproving, in whole or in part, an Application for Payment shall be accompanied by an explanation of the reasons for such disapproval. Failure by District Project Manager to specify in its disapproval a particular grounds for disapproval of an Application for Payment shall not waive the District Project Manager’s or District’s right to assert such grounds as a basis for any future disapproval, or nullification of District Project Manager’s prior approval, of that or any other Application for Payment.

9.5.3. Resubmittal by Design-Build Entity. An Application for Payment that is disapproved by District Project Manager shall be corrected and resubmitted by Design-Build Entity after receipt by Design-Build Entity of the notice of disapproval. If resubmitted, the resubmitted Application for Payment shall be reviewed and responded to in the same manner as provided in Paragraphs 9.5.1 and 9.5.2, above. If not resubmitted, only the amount, if any, that is approved by District Project Manager for payment shall be paid until such time as a proper Application for Payment that includes the disapproved amount has been submitted in another Application for Payment and, upon such resubmittal, approved for payment.

9.5.4. District Nullification. District reserves the right to nullify any prior approval by District Project Manager of an Application for Payment that is later found to have not complied with the requirements of the Contract Documents, whether or not such noncompliance was observed or apparent on the face of the Application for Payment, and based on such nullification District may take either of the following actions, as applicable: (1) if the Application for Payment has not yet been paid by District, disapprove of that portion of the Application for Payment that is not in compliance and withhold payment of that sum until the noncompliance is fully rectified, or (2) if the Application for Payment has been paid by District, nullify the District Project Manager’s prior approval and withhold payment of such disputed amounts in response to future Applications for Payment; provided, however, that in either case the amount of the District’s nullification shall be limited to that portion of the amount requested in the Application for Payment that is in dispute and the amount of its withholding from the current or any future Application for Payment shall be limited to the amount nullified plus any additional withholding permitted under Section 9.6, below, to protect District from Loss or threatened Loss.

9.5.5. No Waiver by District. Neither approval by District or District Project Manager or, failure by District to exercise its right of nullification with respect to, nor payment by Program Manager or District...
upon, an Application for Payment or any portion thereof shall be interpreted as or constitute a waiver or release of any of District’s rights to require Design-Build Entity’s full compliance with the Contract Documents.

9.5.6. No Representation. Neither approval by District or District Project Manager or, failure by District to exercise its right of nullification with respect to, nor payment by District upon, an Application for Payment or any portion thereof shall be interpreted as a representation that District or District Project Manager has: (1) made exhaustive or continuous on-Site inspections to check the quality or quantity of the Work, (2) reviewed Design-Build Entity’s construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from the Subcontractors and Subconsultants and other data requested by District or District Project Manager to substantiate Design-Build Entity’s right to payment, or (4) made examination to ascertain how or for what purpose Design-Build Entity has used money previously paid on account of the Contract Sum.

9.6. Withholding of Certification or Payment

9.6.1. Grounds for Withholding. District Project Manager may decline to approve an Application for Payment and withhold payment requested under any unpaid Application for Payment, in whole or in part, on any of the grounds set forth in this Paragraph 9.6.1 or elsewhere in the Contract Documents to such extent that District or District Project Manager makes a Good Faith Determination that withholding is necessary to protect District from Loss or threatened Loss because of any of the following circumstances:

9.6.1.1. Third-Party Claims. Third-party claims or stop notices filed or reasonable evidence indicating the probable filing of such claims or stop notices.


9.6.1.3. Nonpayment. Failure of Design-Build Entity to make proper payments to a Subcontractor or Subconsultant for services, labor, materials or equipment or other Work.

9.6.1.4. Inability to Complete. Reasonable doubt that the Work can be completed for the then unpaid balance of the Contract Sum or within the Contract Time.

9.6.1.5. Violation of Applicable Laws. Failure of Design-Build Entity or a Subcontractor or Subconsultant to comply with Applicable Laws.

9.6.1.6. Penalty. Any penalty asserted against District by virtue of Design-Build Entity’s failure to comply with Applicable Laws.

9.6.1.7. Lack of Progress. Failure by Design-Build Entity to maintain progress in accordance with the Design-Build Schedule.

9.6.1.8. 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.

9.6.1.9. Consultant Services. Additional professional, consultant or inspection services required due to Design-Build Entity’s failure to comply with the Contract Documents.

9.6.1.10. Liquidated Damages. Liquidated damages payable to District pursuant to Section 3.4 of the Design-Build Contract.

9.6.1.11. Damage. Loss caused to District, a Separate Contractor or any other person or entity under contract to District, by Design-Build Entity or a Subcontractor or Subconsultant.

9.6.1.12. Cleanup. Cleanup performed by District and chargeable to Design-Build Entity pursuant to the terms of the Contract Documents.

9.6.1.13. Employee Benefits. Failure of Design-Build Entity to pay contributions due and owing to employee benefits funds pursuant to the Labor Compliance Program.

9.6.1.14. Required Documents. Failure of Design-Build Entity to submit on a timely basis, proper and complete documentation required by the Contract Documents, including, without
limitation, schedule updates, ‘look ahead’ schedules, pricing information, certifications and other required reports or documentation.

9.6.1.15. Labor Compliance. Failure of Design-Build Entity or any Subcontractor to properly pay prevailing wages as defined in California Labor Code §§1720 et seq. or to comply with the requirements of the Labor Compliance Program.

9.6.1.16. Nullification. Nullification by District pursuant to Paragraph 9.5.4, above, of District Project Manager’s prior approval of an Application for Payment.


9.6.2. Application of Withholding. Sums properly withheld pursuant to Paragraph 9.6.1, above, may be used by District without a prior judicial determination of District’s actual rights with respect to the grounds on which such withholding is based. Design-Build Entity agrees and hereby designates District as its agent for such purposes, and agrees that such payments shall be considered as payments made under the Design-Build Contract by District to Design-Build Entity. District shall submit to Design-Build Entity an accounting of such funds disbursed on behalf of Design-Build Entity. As an alternative to such payment, District may, in its sole and absolute discretion, elect to exercise its right to adjust the Contract Sum as provided in Section 12.4, below.

9.6.3. Final Payment. In accordance with California Public Contract Code §7107, the amount to be withheld from Design-Build Entity’s Final Payment pursuant to a withholding asserted pursuant to Paragraph 9.6.1, above, shall be limited to one hundred fifty percent (150%) of the disputed amount.

9.6.4. Release of Withholding. When the reasons for withholding of payment as set forth in Paragraph 9.6.1, above, are removed, approval by District will be promptly issued to Design-Build Entity for amounts previously withheld and payment of amounts withheld will be made by District within thirty (30) Days thereafter.

9.6.5. Additional Rights. The District’s right of withholding set forth in this Section 9.6 is in addition to, and not a limitation upon, any other rights of withhold that District may have under the Contract Documents or Applicable Laws.

9.7. Payments by Design-Build Entity

9.7.1. Subcontractors, Subconsultants. Design-Build Entity shall not include in its Applications for Payment sums on account of any of the Subcontractors’ or Subconsultants’ portion of the Work that it does not intend to pay to such Subcontractor or Subconsultant. Upon receipt of payment from District, Design-Build Entity shall pay the Subcontractors and Subconsultants performing the Work, out of the amount paid to Design-Build Entity on account of such Subcontractor’s or Subconsultant’s portion of the Work, the amount to which said Subcontractor or Subconsultant is entitled in accordance with the terms of its contract with Design-Build Entity and Applicable Laws, including, without limitation, California Public Contract Code §7107. Design-Build Entity 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 and Subconsultants who have performed the Work that is included in Design-Build Entity’s Application for Payment. Design-Build Entity shall, by appropriate agreement, require each Subcontractor and Subconsultant 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 or Subconsultants, of any Tier.

9.7.2. Payments in Trust. Any funds that Design-Build Entity receives in payment for services or Work performed by a Subcontractor or Subconsultant shall constitute assets of a trust, which trust funds
shall be used for the exclusive benefit of the Subcontractor or Subconsultant for the purpose of discharging Design-Build Entity’s financial obligations on account of labor, services, materials or equipment furnished to the Project by the Subcontractor or Subconsultant, provided that such labor, services, materials or equipment were performed in accordance with the Contract Documents, were included in an Application for Payment to District, and were paid by the District to Design-Build Entity. Design-Build Entity shall be the trustee of the trust and shall be required to deal with the trust assets for the benefit of the Subcontractor or Subconsultant. Design-Build Entity shall not be a beneficiary of the trust. Nothing herein shall be construed as an intent to require that Design-Build Entity maintain trust funds in separate bank accounts, specifically designate any third party as a beneficiary of the trust created herein, or otherwise give rise to any cause of action against the District by any third party beneficiary of the trust created herein.

9.7.3. Payment Information. District will, on request, furnish to any of the Subcontractors or Subconsultants, if practicable, information for such Subcontractor’s or Subconsultant’s review regarding percentages of completion or amounts applied for by Design-Build Entity and action taken thereon by District and District Project Manager on account of portions of the Work done by such Subcontractor or Subconsultant.

9.7.4. Joint Payment. District shall have the right, if deemed necessary in its sole and absolute discretion, to issue joint checks made payable to Design-Build Entity and any of the Subcontractors or Subconsultants, 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 or Subconsultants, of any Tier; (2) any obligation from District to any of the Subcontractors or Subconsultants; or (3) any third-party rights against District or District Project Manager.

9.7.5. Direct Negotiation of Stop Notices. District shall have the right to directly discuss, negotiate, settle or pay, without notice to or participation by Design-Build Entity, any stop notice claims asserted by the Subcontractors or Subconsultants of any Tier, and to deduct such sums paid from sums due to Design-Build Entity.

9.7.6. Release of Stop Notices. With the exception of that portion, and only that portion, of a stop notice or other claim that arises as a result of a failure by the District to make payment to Design-Build Entity under circumstances constituting a breach of the Design-Build Contract by District, if any stop notice or other claim, whether invalid or valid, is made, filed with, served upon or asserted against the District or the Site by any Subcontractor or Subconsultant, of any Tier, or their agent or employee, for money claimed due, then Design-Build Entity shall within five (5) Days after written notice by the District Project Manager procure, furnish and record appropriate releases or other instruments which under Applicable Laws will fully release, extinguish and remove such stop notice or claim, as well as any notices of pending action or other notices recorded against the Site in connection with the enforcement thereof. All costs of such actions by Design-Build Entity shall paid for by Design-Build Entity. Unless and until fully released as aforesaid, the District shall have the right to retain from any payment then due, or thereafter to become due, to Design-Build Entity an amount equal to one hundred and fifty percent (150%) of the amount necessary to satisfy, discharge and defend against any such stop notice or claim and any action or proceeding thereon. If the amount to be paid, or the amount retained, is insufficient to satisfy, discharge and defend against any such stop notice or claim and any action or proceeding thereon, then Design-Build Entity shall be liable for the difference and upon demand shall immediately deposit the same with
the District. The provisions of this Paragraph 9.7.6 are in addition to such other rights as the District may have against Design-Build Entity under the Contract Documents or Applicable Laws.

9.7.7. No District Obligation. Neither District nor District Project Manager shall have any obligation to pay or to see to the payment of money to any of the Subcontractors or Subconsultants except as may otherwise be required by Applicable Laws.

9.8. Failure of Approval or Payment. If, through no fault of Design-Build Entity or failure by Design-Build Entity to comply with its obligations under the Contract Documents either: (1) approval or disapproval by District Project Manager of an Application for Payment properly prepared and submitted by Design-Build Entity and requesting payment that is otherwise undisputed by District is not issued within the time period required therefor by the terms of this Article 9; or (2) the District does not: (a) upon an Application for Payment properly prepared and submitted by Design-Build Entity and approved by District Project Manager pay to Design-Build Entity, within the time period required for payment by District, an undisputed amount approved by District Project Manager as earned, which approval has not been, and is not thereafter, nullified by District, or (b) pay to Design-Build Entity an amount that has been awarded by arbitration or judgment of a court of competent jurisdiction, then Design-Build Entity may, following delivery to District of a written "10-day stop work order", stop the Work until, as applicable, an approval or disapproval by District Project Manager or payment by District is received by Design-Build Entity. Promptly upon receipt of such approval or disapproval, or payment, as applicable, Design-Build Entity shall resume the Work. Any resulting Delay associated with the shut down and start up of the Work as a result of Design-Build Entity's proper exercise of its right to stop work under this Section 9.8 shall constitute a Compensable Delay.

9.9. Substitution of Securities for Retention

9.9.1. Public Contract Code. Pursuant to the requirements of California Public Contract Code §22300, upon the Design-Build Entity's request, the District will make payment to the Design-Build Entity of any funds withheld from payments to ensure performance under the Contract Documents if the Design-Build Entity deposits with the District, or in escrow with a California or federally chartered bank in California acceptable to the District ("Escrow Agent"), securities eligible for the investment of State Funds under Government Code §16430, or bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Design-Build Entity and the District, upon the following conditions:

9.9.1.1. The Design-Build Entity shall be the beneficial owner of any securities substituted for monies withheld for the purpose of receiving any interest on such securities.

9.9.1.2. All expenses relating to the substitution of securities under said §22300 and under this Section 9.9, including, but not limited to the District’s overhead and administrative expenses and expenses of Escrow Agent, shall be the responsibility of the Design-Build Entity.

9.9.1.3. Securities or certificates of deposit substituted for monies withheld shall be of a value of at least equivalent to the amounts of the retention to be paid to the Design-Build Entity pursuant to the Contract Documents.

9.9.1.4. If the Design-Build Entity shall choose to deposit securities in lieu of monies withheld with an Escrow Agent, the Design-Build Entity, the District and Escrow Agent shall, as a prerequisite to such deposit, enter into an escrow agreement. Such escrow agreement shall be substantially in the form “Escrow Agreement for Security Deposits in Lieu of Retention” set forth in California Public Contract Code §22300(f).

9.9.1.5. The Design-Build Entity shall obtain the written consent of Surety to such agreement.

9.9.1.6. Securities, if any, shall be returned to the Design-Build Entity only upon satisfactory Final Completion of the Work.
9.9.2. Substitute Security. To minimize the expense caused by such substitution of securities, the Design-Build Entity shall, prior to or at the time the Design-Build Entity requests to substitute security, deposit sufficient security to cover the entire amount to be withheld. Should the current market value of such substituted security at any time fall below the amount for which it was substituted, or any other amount which the District withholds pursuant to the Contract Documents, the Design-Build Entity shall immediately and at the Design-Build Entity’s Own Expense deposit additional security qualifying under said §22300 until the current market value of the total security deposited is no less than the amount subject to withholding under the Contract Documents. Securities shall be valued as often as conditions of the securities market warrant, but in no case less frequently than once per month.

9.9.3. Deposit of Retentions. Alternatively, subject to the conditions set forth in Paragraph 9.9.1, above, upon request of the Design-Build Entity, the District shall make payment of retentions directly to Escrow Agent at the expense of the Design-Build Entity, provided that the Design-Build Entity, the District and Escrow Agent shall, as a prerequisite to such payment, enter into an escrow agreement in the same form as prescribed in Subparagraph 9.9.1.4, above. At the Design-Build Entity’s Own Expense, the Design-Build Entity may direct the investment of the payments into securities and interest bearing accounts, and the Design-Build Entity shall receive the interest earned on the investments. Escrow Agent shall hold such direct payments by the District under the same terms provided herein for securities deposited by the Design-Build Entity. Upon satisfactory Final Completion of the Work, the Design-Build Entity shall receive from Escrow Agent all securities, interest and payments received by Escrow Agent from the District, less escrow fees and charges of the Escrow Account, according to the terms of said §22300 and the Contract Documents.

9.10. Final Payment

9.10.1. Payment by District. Subject to the right of withholding as set forth in Section 9.6, above, or elsewhere in the Contract Documents, Final Payment shall be made by District not more than sixty (60) Days after completion of the Work as defined in California Public Contract Code §7107(c), (1) or (2), whichever definition is earlier satisfied.

9.10.2. Application for Final Payment. Upon issuance by District of the Notice of Final Completion pursuant to Paragraph 9.13.5, below, Design-Build Entity shall submit to District Project Manager its Application for Payment requesting Final Payment.

9.10.3. Review by District. District Project Manager will review and approve or disapprove of the Application for Payment requesting Final Payment as provided in Section 9.5, above.

9.10.4. Conditions to Final Payment. Without limitation to any other conditions to payment set forth elsewhere in the Contract Documents, the following shall be conditions to a proper submission, and to District Project Manager’s approval, of Design-Build Entity’s Application for Payment requesting Final Payment:

9.10.4.1. submission of Design-Build Entity certification as required by Paragraph 9.2.9, above;

9.10.4.2. submission of consent of Surety, if any, to Final Payment;

9.10.4.3. submission of a certificate evidencing that the insurance required by the Contract Documents is in force;

9.10.4.4. submission of conditional releases and waivers of stop notice and bond rights upon final payment in the form required by California Civil Code §3262(d)(3) executed by Design-Build Entity and by all the Subcontractors and Subconsultants, of every Tier;

9.10.4.5. submission of all Close-Out Documents (including, without limitation, complete, accurate As-Built Drawings and Specifications certified by Design-Build Entity as required by Paragraph 3.10.2, above);
9.10.4.6. timely submission of adequate and complete certified payroll records as required by the Contract Documents for any time period that Work was performed, which have not been submitted by Design-Build Entity in connection with its previous Applications for Payment;
9.10.4.7. proper payment of prevailing wages as defined in California Labor Code §1720, et seq.;
9.10.4.8. compliance with the Labor Compliance Program;
9.10.4.9. submission of certifications by Design-Build Entity and each Subcontractor, as required by the Labor Compliance Program (if applicable), or Applicable Laws, certifying that all employee benefit contributions due and owing have been paid in full; and
9.10.4.10. submission of any other documents or information required by the Contract Documents as a condition of Final Payment or Final Completion.
9.10.5. 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 Design-Build Entity's failing to fully satisfy the conditions of Final Completion and Final Payment.
9.10.6. Waiver by Design-Build Entity. Acceptance of Final Payment by Design-Build Entity or a Subcontractor or Subconsultant 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 Design-Build Entity in the manner required by Section 4.4, above, prior to or at the time of Design-Build Entity's submission of its Application for Payment requesting Final Payment.
9.11. Substantial Completion
9.11.1. Contract Time. Design-Build Entity 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.
9.11.2. Request for Inspection. Design-Build Entity shall notify the District Project Manager when Design-Build Entity believes that the Work, or portion thereof designated by the District or in the Contract Documents for separate delivery, is Substantially Complete.
9.11.3. Substantial Completion Inspection. When Design-Build Entity gives notice to District Project Manager that it has achieved Substantial Completion of the Work, or a District-designated portion thereof, unless the District Project Manager determines that the Work or District-designated portion thereof is not sufficiently complete to warrant an inspection to determine Substantial Completion, District Project Manager, Inspector of Record, Design Consultant and such others as may be designated by District will inspect the Work, or such District-designated portion thereof.
9.11.4. Substantial Completion Punch List. At the conclusion of such inspection, District Project Manager shall prepare and give to Design-Build Entity (or, District Project Manager may request that Design-Build Entity prepare and provide to District Project Manager) a Substantial Completion Punch List of items, if any, to be completed or corrected for Substantial Completion. If Design-Build Entity disputes any of the items included, it shall so note its objection on the Substantial Completion Punch List. Design-Build Entity shall proceed within forty-eight (48) hours after preparation of the Substantial Completion Punch List to commence correction and completion of the items on the Substantial Completion Punch List. Design-Build Entity shall proceed within forty-eight (48) hours after preparation of the Substantial Completion Punch List to commence correction and completion of the items on the Substantial Completion Punch List, including, without limitation, any disputed items, and all such items of Work shall be completed by Design-Build Entity before the Work will be considered as Substantially Complete. Failure by District, District Project Manager, Inspector of Record, Design Consultant or Design-Build Entity to include an item on the Substantial Completion Punch List does not alter the responsibility of Design-Build Entity to perform the Work in
accordance with the Contract Documents. Items of Work necessary for Substantial Completion that, for any reason, have been omitted from the Substantial Completion Punch List shall be added to the Substantial Completion Punch List and shall be promptly completed by Design-Build Entity upon request by District, District Project Manager, Design Consultant or Inspector of Record made at any time prior to Final Payment.

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

9.11.6. Notice of Substantial Completion. When District Project Manager determines that the Work or such District-designated portion thereof, is Substantially Complete, District will prepare a Notice of Substantial Completion on the District’s form, which shall state the date of Substantial Completion. If the Notice of Substantial Completion is for the entire Work, then the District Project Manager will attach to it the Final Completion Punch List prepared in accordance with Paragraph 9.13.2, below. Regardless of the date the Notice of Substantial Completion is issued, Substantial Completion shall be deemed to have occurred on the date stated in the Notice of Substantial Completion.

9.12. Partial Occupancy or Use. District reserves the right to beneficially occupy all or any portion of the Work at any time before Substantial Completion of the entire Work. Beneficial occupancy means that District has assumed physical occupancy and use of such portion of the Work. Commencement of improvements or other work by Separate Contractors in order to ready the Work for use or occupancy by District shall be unconditionally permitted in all cases prior to Substantial Completion and shall not constitute a taking of beneficial occupancy by District. Exercise by District in accordance with the provisions of this Section 9.12 of its right to take beneficial occupancy shall not constitute grounds for a Contract Adjustment. The District’s right of beneficial occupancy of all or a portion of the Work prior to Substantial Completion shall be subject to the following conditions:

9.12.1. District Project Manager and such others as District deems necessary will make an inspection of the portion of the Work to be beneficially occupied and prepare a list of items to be completed or corrected in the same manner as required by and subject to the same conditions as set forth in Section 9.11, above.

9.12.2. Beneficial occupancy by District shall not be construed as Acceptance of that portion of the Work which is to be occupied.

9.12.3. Except as otherwise provided in this Section 9.12, beneficial occupancy by District shall not constitute a waiver of rights of the District against Design-Build Entity. Notwithstanding anything stated in this Section 9.12 or elsewhere in the Contract Documents to the contrary, beneficial occupancy by District shall not constitute a waiver of rights of District relating to Defective Work in the area beneficially occupied or in any other portion of the Work.
9.12.4. Prior to the District’s taking beneficial occupancy, Design-Build Entity shall submit to District Project Manager an itemized list of each piece of equipment located in or serving the area to be occupied stating the date operation of such piece of equipment commenced, together with operating instructions, manuals and other information required by the Contract Documents. Design-Build Entity shall provide, in the areas beneficially occupied, on a continual basis, utility services, elevator service, and heating and cooling systems in operable condition commencing at the time of beneficial occupancy and until Final Completion of the entire Work. District shall be responsible, from and after taking occupancy, for utility consumption, regular operation and regular maintenance of such systems or equipment.

9.12.5. 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 and contained entirely within that portion of the Work which is beneficially occupied, will commence upon the first date of actual beneficial occupancy or use of such occupied portions of the Work by District.

9.12.6. District shall pay all normal operating and maintenance costs resulting from its use of equipment in areas beneficially occupied.

9.12.7. District shall pay all utility costs that arise out of its beneficial occupancy.

9.12.8. Design-Build Entity shall not be responsible for providing security in areas beneficially occupied.

9.12.9. District shall use its best efforts to prevent its beneficial occupancy from interfering with the conduct of Design-Build Entity’s remaining Work.

9.12.10. Design-Build Entity shall not be required to repair damage caused solely by District’s beneficial occupancy.

9.12.11. Design-Build Entity shall continue to maintain all insurance required by the Contract Documents in full force and effect.

9.13. Final Completion

9.13.1. Contract Time. Design-Build Entity 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.

9.13.2. Final Completion Punch List. Design-Build Entity shall prepare and submit to District Project Manager at the time that Design-Build Entity requests inspection for Substantial Completion of the entire Work pursuant to Paragraph 9.11.2, above, a draft proposed Final Completion Punch List of items of Work that will be required to be completed or corrected for Final Completion. Items identified in the course of any inspection for Substantial Completion that are required to Finally Complete the Work following Substantial Completion shall be added to the proposed Final Completion Punch List and the revised Final Completion Punch List attached to the Notice of Substantial Completion. If Design-Build Entity disputes any of the items included, it shall so note its objection on the Final Completion Punch List. When Design-Build Entity considers the Final Completion Punch List to be complete, it shall promptly sign and deliver the Final Completion Punch List to the District Project Manager. Failure by District, District Project Manager, Design Consultant, Inspector of Record or Design-Build Entity to include an item on the Final Completion Punch List does not alter the responsibility of Design-Build Entity to perform the Work in accordance with the Contract Documents. Items of Work necessary for Final Completion that, for any reason, have been omitted from the Final Completion Punch List shall be added to the Final Completion Punch List upon request by District, District Project Manager, Inspector or Record or Design Consultant made at any time prior to Final Payment.
9.13.3. Performance of Punch List. Design-Build Entity shall proceed promptly and in accordance with the Contract Time to correct and complete the items on the Final Completion Punch List, including, without limitation, any disputed items, and all such items of Work shall be completed by Design-Build Entity before the Work will be considered as Finally Complete.

9.13.4. Request for Final Inspection. Design-Build Entity shall notify District Project Manager when Design-Build Entity believes that the Work, or portion thereof designated by District for separate delivery, is Finally Complete. District Project Manager, Inspector of Record, Design Consultant and such others as District deems necessary or appropriate will then make a further inspection to determine whether such Work is Finally Complete. If such inspection, or any subsequent re-inspection required pursuant hereto, discloses any item, whether or not included on the Final Completion Punch List, which must be completed or corrected before Final Completion, Design-Build Entity shall, as a condition of Final Completion, complete or correct such item, which shall then be re-inspected to confirm that such Work is Finally Completed. Design-Build Entity shall reimburse District, or District may at its option withhold from Design-Build Entity’s payments, amounts incurred by District to the Inspector of Record, Design Consultant, District Consultants or others whose services, for reasons within the control or responsibility of Design-Build Entity or the Subcontractors or Subconsultants, are necessary for more than two (2) inspections to determine Final Completion.

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

9.13.6. Acceptance by District. Acceptance may be exercised by District, in its sole and absolute discretion, either after Final Completion or, without waiving or releasing Design-Build Entity from any of its obligations under the Contract Documents, at any time after Substantial Completion and prior to Final Completion.

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

9.13.8. No Waiver by District. No inspections conducted pursuant to this Article 9 nor any approvals or certificates issued by District, District Project Manager, Design Consultant or Inspector of Record shall be deemed to be a waiver or limitation on District’s right to insist on Final Completion and full performance of all other conditions to Final Payment under the Contract Documents prior to issuance of Final Payment to Design-Build Entity.

10. INSPECTION, 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 and will be assigned to the Work. 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 Design-Build Entity shall be responsible, at Design-Build Entity’s Own Expense, to remove and replace any Work performed without such inspection by the appropriate Inspector of Record.
10.1.2. Coordination. Design-Build Entity shall schedule, arrange, and coordinate its activities with the activities of the District, District Project Manager, Inspectors of Record, Design Consultant, District Consultants and others designated by District to inspect or observe the Work. Design-Build Entity understands and agrees that the Inspector of Record for the Project may also serve concurrently as inspector for other District projects and may not therefore be available on site during the entire work day. It shall be the responsibility of Design-Build Entity to notify the Inspector not less than twenty-four (24) hours in advance of materials and equipment deliveries and required inspections. When, in order to comply with the intent of the Contract Documents, inspection or observation must be made at the plant or mill of the manufacturer or fabricator of material or equipment, Design-Build Entity shall notify the District Project Manager, as well as any other persons identified by District as assigned by it to inspect or observe the Work, a sufficient length of time and no less than 72 hours in advance to allow for arrangements to be made for such inspection or observation.

10.1.3. Uncovering of Work. District Project Manager or an Inspector or Record shall have the right to request that any portion of the Work be uncovered by Design-Build Entity for inspection. Except as otherwise provided in Paragraph 10.1.1, above, if such Work is found to be in accordance with the Contract Documents, then all of the additional costs incurred in uncovering, replacing and re-covering the Work shall constitute grounds for Design-Build Entity, upon proper notice and request pursuant to Article 7, above, to receive a Contract Adjustment for Compensable Change and if such uncovering, replacing and re-covering of the Work causes a Delay, such Delay shall constitute grounds for Design-Build Entity, upon proper notice and request pursuant to Article 8, above, to receive a Contract Adjustment for Compensable Delay. If such Work is not in accordance with the Contract Documents, then such costs of uncovering, replacing and re-covering shall be paid for by Design-Build Entity at Design-Build Entity’s Own Expense and any resulting Delay shall be considered an Unexcused Delay.

10.1.4. Off-Hours Inspections. Design-Build Entity shall request approval by District Project Manager before arranging any inspections either: (1) before 6:00 am or after 6:00 pm on Monday through Friday, or (2) on any Saturday, Sunday, holiday or any other time when Work is not usually in progress. Such request shall be delivered to District Project Manager at least two (2) working days in advance of the inspection being performed. Approval or disapproval of such request is in the sole and absolute discretion of District, which approval will be communicated to Design-Build Entity by the District Project Manager. Except where such off-hours inspections are due to a breach by District of an obligation under the Contract Documents, the additional cost (over and above that which would be required for inspections during regular business hours) to District of the inspection shall be paid for by Design-Build Entity at Design-Build Entity’s Own Expense.

10.1.5. Off Site Inspections, Design-Build Entity shall be responsible for any inspection cost due to fabrication of materials being performed outside of Orange County.

10.1.6. Access to the Work. Design-Build Entity shall make available for use by District, District Project Manager, Inspectors of Record, Design Consultant, District Consultants and others assigned to inspect or observe the Work, any equipment (wheelbarrow, shovel, ladder, man-lift, etc.) that is available or in use on Site, and is required to assist in such inspections or observations.

10.1.7. Right to Stop Work. Inspectors 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. No District Duty. No authority of the District, District Project Manager, Inspectors of Record, Design Consultant, District Consultants or others designated by District to inspect the Work that is
conferred by the Contract Documents nor any decision made by any of them in good faith either to
exercise or not exercise such authority, nor any recommendation by any of them, shall give rise to a
duty or responsibility on the part of any of them to Design-Build Entity or to the Subcontractors or
Subconsultants, of any Tier.

10.1.9. Design-Build Entity Responsibility. Inspections or observations by the District, District Project
Manager, Inspectors of Record, District Consultants or others shall not in any way relieve Design-
Build Entity from its sole responsibility for full compliance with all of the terms and conditions of the
Contract Documents, nor be construed to lessen, to any degree, Design-Build Entity’s responsibility
for providing efficient and capable superintendence as required herein or for incorporating into the
Work only those items of the Work that conform to the Contract Documents.

10.1.10. Reimbursement to District. Without limitation to any other provisions of the Contract
Documents, Design-Build Entity shall reimburse the District at Design-Build Entity’s Own Expense, or
District shall have the right, at its option, to withhold from payments due to Design-Build Entity,
costs of inspections, observations or testing and other Losses that are incurred for any of the
following reasons: (1) Design-Build Entity has failed to execute the Work in accordance with the
Contract Documents; (2) materials or equipment have been substituted by Design-Build Entity,
without prior approval by the District; (3) Defective Work; or (4) to conduct load testing of certain
portions of the structure that have not fully met the requirements of the Contract Documents.

10.2. Safety Precautions and Programs

10.2.1. General Safety Obligation. Design-Build Entity and any member of the Design Build Team shall,
notwithstanding the activities of others (such as, but not limited to, the District, District Project
Manager, Design Consultant, Inspectors of Record, District Consultants or others designated by
District to inspect or observe the Work), be solely responsible, on a twenty-four (24) hours a Day,
seven (7) Days a week basis, for initiating, maintaining and supervising all safety precautions and
programs in connection with the performance of the Work.

10.2.2. Illness and Injury Prevention Plan. Prior to the start of the Work, Design-Build Entity shall
prepare and submit to District Project Manager an Illness and Injury Prevention Plan, which shall
comply with the requirements of the Contract Documents 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 compliance with safety requirements of
insurers. A copy of the Illness and Injury Prevention Plan shall be maintained on Site at all times
and provided to the District Project Manager upon request. Design-Build Entity, and any member of
the Design Build Team, where applicable, is solely responsible for monitoring activities at the Site
for compliance with the Illness and Injury Prevention Plan and for the enforcement thereof.

10.2.3. Safety Orders. Design-Build Entity 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. Design-Build Entity shall, at Design-Build Entity’s Own Expense, correct any
violations of Applicable Laws occurring or threatened by conditions on the Site.

10.2.4. Safety Representative. Design-Build Entity shall designate a responsible member of its
organization on the Site, who meets the qualification and competency requirements of Applicable
Laws and whose sole duty shall be giving safety instructions, prevention of accidents and overall job
site safety (including, without limitation, posting of information and other notices regarding safety
that are required under occupational safety and health laws and compliance with reporting and
other occupational safety requirements pertaining to the protection of the life, safety and health of the workers). The name of the person so designated shall be reported to the District Project Manager by Design-Build Entity prior to the commencement of any of the Work on the Site.

10.2.5. Protection, Safety. Design-Build Entity shall be solely and completely responsible for initiating, maintaining and supervising all safety precautions and programs on the Site in connection with the preparation, performance, observation or inspection of the Work, including all necessary precautions for the safety of and protection to:

10.2.5.1. persons in and around the Site, as well as their personal property and vehicles;
10.2.5.2. the Work, materials and equipment to be incorporated therein under care, custody or control of Design-Build Entity or the Subcontractors or Subconsultants, of any Tier, whether in storage on or off the Site, including, without limitation, the provision of temperature control, covering and enclosures necessary to prevent Loss due to adverse weather conditions;
10.2.5.3. 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
10.2.5.4. construction and operations by the District, Design Consultant, District Project Manager and Inspectors of Record.

10.2.6. Protection. As part of the Design-Build Entity’s obligation under Paragraph 10.2.5, above, Design-Build Entity shall take reasonable precautions to protect the Work and all building materials, equipment, temporary field offices, storage sheds, and other public and private real and personal property that might be affected, directly or indirectly, by Design-Build Entity’s activities associated with performance of the Work, and shall make good, at Design-Build Entity’s Own Expense, all Loss due to failure to provide such reasonable precautions.

10.2.7. Safeguards, Warnings, Disabled Access. Design-Build Entity 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 notifications to owners and users of adjacent sites and utilities, and 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 so that staff, students, visitors, the public and others on the Site with disabilities are afforded reasonably direct and barrier-free access to areas of the Site and Existing Improvements.

10.2.8. Fire, Explosives, Hazardous Substances. Design-Build Entity shall take all necessary precautions to guard against and eliminate possible fire hazards. Explosives may be used or stored only when authorized in writing by the District. 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, Design-Build Entity shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

10.2.10. Unsafe Conditions. Design-Build Entity shall immediately correct any condition that exists on the Site, or that District’s Project Manager, in its reasonable judgment, determines to exist on the Site, that is unsafe or potentially unsafe to persons or property. If, in the sole and absolute discretion of District or District Project Manager, the condition is potentially life-threatening, the District or District Project Manager may, with or without notice to Design-Build Entity, take whatever immediate action is necessary to correct the life-threatening condition, and the costs thereof, including, without limitation, any additional service fees or costs of the District Project Manager, Design Consultant, Inspectors of Record, District Consultants or others to whom District may be liable, shall be reimbursed to District by Design-Build Entity at Design-Build Entity’s Own Expense. Nothing set forth in this Paragraph 10.2.10 shall be interpreted as an assumption of any obligation on the part of the District, District Project Manager, Inspectors of Record, Design Consultant, District Consultants or other persons or entities other than Design-Build Entity and the Subcontractors and Subconsultants, to report such conditions to Design-Build Entity nor as relieving Design-Build Entity of any of its responsibilities under the Contract Documents.

10.2.11. Responsibility for Loss. Design-Build Entity shall promptly remedy Loss to any property or person caused in whole or in part by the failure of Design-Build Entity, the Subcontractors or Subconsultants, of any Tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable to fully comply with the requirements of this Article 10, except Loss attributable solely to the negligent acts or omissions of the District, District Project Manager, Inspectors of Record, Design Consultant, District Consultants 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, in whole or in part, to the negligence, willful misconduct or violation of Applicable Laws by Design-Build Entity or a Subcontractor or Subconsultant, of any Tier, or the failure by Design-Build Entity to comply with the Contract Documents. The foregoing obligations of Design-Build Entity are in addition to and not a limitation upon Design-Build Entity's indemnity obligations under Section 3.18, above.

10.2.12. Loading, Storage. Design-Build Entity shall be responsible for coordinating the storage and staging of materials and equipment on-Site and off-Site and shall not load or store or permit any part of the Work or the Site to be loaded or stored so as to endanger the safety of persons or property.

10.2.13. Emergency.

10.2.13.1. Design-Build Entity Responsibility. In an emergency involving safety or protection of persons or property, Design-Build Entity shall act immediately, either at District’s or District Project Manager’s direction or as otherwise necessary under the circumstances, to prevent any Loss. In such cases, Design-Build Entity shall immediately notify District Project 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 Design-Build Entity’s action in response thereto.

10.2.13.2. District Action. If, in the sole discretion of District or District Project Manager, the condition is immediately threatening life or property, District or District Project Manager may, with or without notice to Design-Build Entity, 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 District Project Manager, Inspector of Record, District Consultants or others to whom District may be liable, shall be borne by Design-Build Entity at the Design-Build Entity’s Own Expense.
10.2.13.3. No District Responsibility. Nothing set forth in this Paragraph 10.2.13 nor elsewhere in the Contract Documents shall be interpreted as an assumption of any responsibility on the part of District, District Project Manager, Inspectors of Record, Design Consultant or other persons or entities other than the Design-Build Entity and the Subcontractors and Subconsultants to report such conditions to Design-Build Entity nor as relieving Design-Build Entity of any of its responsibilities under the Contract Documents.

10.2.14. Separate Contractors. With respect to work of Separate Contractor being performed within an area of the Site that is under the responsibility or control of the Design-Build Entity, Design-Build Entity shall: (1) provide copies of the IIPP to the Separate Contractors; (2) protect the Separate Contractors’ work and workers from Loss due to the actions or inactions of Design-Build Entity and the Subcontractors; and (3) notify the Separate Contractor and District of any observed violation by the Separate Contractor of the IIPP or of any violations by the Separate Contractor of Applicable Laws governing safety on the Site. Nothing herein shall be interpreted as relieving the Separate Contractors from their obligations to comply with the Design-Build Entity’s IIPP, as excusing any failure by a Separate Contractor from performing its obligations under its contracts with District or Applicable Laws or as obligating Design-Build Entity to directly supervise or enforce the obligations of the Separate Contractors to comply with the requirements of the IIPP or Applicable Law relating to safety.

10.3. Hazardous Substances, Mold

10.3.1. Hazardous Substances.

10.3.1.1. Release on Site.

10.3.1.1.1. Existing Conditions.

10.3.1.1.1.1. The District has evaluated the potential presence of hazardous substances and made available the associated reports. Prior to structural demolition, Design-Build Entity shall abate hazardous material in compliance with all applicable State and Federal rules and regulations.

10.3.1.1.1.2. In the event Design-Build Entity or its Subcontractors or Subconsultants encounter materials existing or otherwise present at the Site that are reasonably believed to be Hazardous Substances that have not been rendered harmless, Design-Build Entity and Subcontractors and Subconsultants shall, except in cases where the removal, encapsulation or abatement of such Hazardous Substances is indicated by the Contract Documents to be part of the Work to be performed by Design-Build Entity, immediately stop Work in the area affected and report the condition to District Project Manager in writing. Design-Build Entity and Subcontractors and Subconsultants shall continue Work in unaffected areas reasonably believed safe. District Project Manager shall then promptly arrange for the sampling, testing and profiling of such suspected Hazardous Substances to confirm the nature, quantity or concentration thereof. In the event that such suspected Hazardous Substances are determined not to be Hazardous Substances or to be Hazardous Substances but not of sufficient nature, quantity or concentration to trigger handling and manifesting of the same as a hazardous waste upon disturbance and removal, then Design-Build Entity and its Subcontractors and Subconsultants shall, without any Contract Adjustment, be obligated to resume the portion of the Work that was suspended and shall proceed to handle and dispose of such materials pursuant to the Contract Documents, taking all reasonable precautions that are applicable under the
circumstances. If, alternatively, the suspected Hazardous Substances are determined to be Hazardous Substances of sufficient nature, quantity or concentration to trigger handling and manifesting of the same as hazardous waste upon disturbance and removal, the parties shall determine what, if any, action to take with respect to such Hazardous Substances, whether to resume Work with respect to such Hazardous Substances, taking all reasonable precautions that are applicable under the circumstances, and what, if any, Contract Adjustment is appropriate and mutually agreed in order to account for any increased cost of, or Delay in connection with, handling or disposal of Hazardous Substances not already contemplated and provided for in the Contract Documents.

10.3.1.1.2. Design-Build Entity Release. Design-Build Entity and its Subcontractors and Subconsultants shall not cause the introduction, discharge, release, emission, spill, storage, treatment or disposal of any Hazardous Substance on or adjacent to the Site. Should Design-Build Entity or its Subcontractors or Subconsultants introduce, discharge, release, emit, spill, treat, store or dispose of any Hazardous Substance on the Site in violation of the foregoing obligation or otherwise in violation of Applicable Laws, Design-Build Entity shall at Design-Build Entity’s Own Expense and without limitation to District’s other rights or remedies for default immediately (1) inform District Project Manager in writing of such event, (2) advise District Project Manager with respect to any release reporting or notification requirement that may apply as a result of such event, (3) assist District and District Project Manager in complying with any such reporting or notification requirement as determined by District or District Project Manager, and (4) perform any investigation, remediation, removal or other response that is necessary or desirable in order to abate or clean up the condition resulting from such event to the full satisfaction of District and any applicable Governmental Authority. Such Hazardous Substances shall be removed and properly disposed of as soon as they can be accepted at an appropriate disposal facility, and in no event later than sixty (60) Days after such waste is generated, unless a longer time is approved by District Project Manager.

10.3.1.2. Remediation by Design-Build Entity.

10.3.1.2.1. Application. The provisions of this Paragraph 10.3.1.2 shall apply only if the Work to be performed by Design-Build Entity includes within its scope the removal, abatement, moving, handling, containment, disposal or transport of Hazardous Substances.

10.3.1.2.2. Advance Submissions. Before Design-Build Entity or any of its Subcontractors or Subconsultants moves, removes, or transports Hazardous Substances to a facility for the receipt, treatment, storage or disposal of the Hazardous Substances (“Hazardous Substances Facility”), Design-Build Entity shall cause the person or entity who will be moving, removing or transporting the Hazardous Substances to provide to District Project Manager the following: (1) verification of the Hazardous Substance Facility’s or other transporter’s licensed status to haul such materials; (2) verification of the Hazardous Substance Facility’s licensed status, including a current permit to receive the specific materials to be transported there; (3) certification that the Hazardous Substance Facility is not under enforcement action by the U.S. Environmental Protection Agency (“EPA”) or applicable State Government Authority or listed on any
applicable EPA or applicable State Government Authority list of violating facilities; (4) verification of the Hazardous Substances Facility's EPA Identification Number (if applicable); and (5) original executed letter(s) of indemnity from the Hazardous Substances Facility bearing the Hazardous Substance Facility's letterhead. Design-Build Entity further warrants that the selected Hazardous Substance Facility is appropriately licensed and permitted to store, treat and dispose of Hazardous Substances waste in connection with the Work.

10.3.1.2.3. Design-Build Entity Responsibility. Design-Build Entity warrants that it is aware of and understands the hazards which are presented to persons, property and the environment in performance of the transportation, storage and disposal of Hazardous Substances. Design-Build Entity and its Subcontractors, Subconsultants and agents shall be responsible for the following: (1) processing the application for, and receiving on behalf of the District or appropriate entity, an EPA or state-equivalent generator identification number (if required); (2) preparing manifests and other shipping documents; (3) making all necessary arrangements (after consultation with District Project Manager or District Consultant) for any off-Site transportation, treatment, storage and disposal of Hazardous Substances in accordance with Applicable Laws; (4) ensuring the proper and lawful transportation and disposal of Hazardous Substances, even if such services are performed by other entities under contract with Design-Build Entity or its Subcontractors or Subconsultants; and (5) taking any necessary actions to ensure such proper transport and disposal of Hazardous Substances in the event of any contingency, such as the rejection of the Hazardous Substances as nonconforming by any waste disposal facility. Design-Build Entity shall promptly provide to District Project Manager copies of all manifests and other shipping documents confirming the receipt and proper disposal of all waste at the Hazardous Substances Facility, even if such services are performed by other entities under contract with Design-Build Entity or its Subcontractors or Subconsultants.

10.3.1.2.4. Reporting Requirements. Design-Build Entity shall comply with any Hazardous Substances release reporting requirements to Governmental Authorities directly applicable to Design-Build Entity. Notice of such reporting must be provided in advance to District Project Manager or concurrently in the event of an emergency.

10.3.1.2.5. Samples. Design-Build Entity and its Subcontractors and Subconsultants shall retain all media samples for the longer of (1) the longest holding period specified in any federal, state or local laboratory analytical procedures or guidance for the analyses performed; or (2) three months for soil samples and thirty (30) Days for water samples. Further storage or transfer of samples will be made at District’s expense upon District Project Manager’s written request of Design-Build Entity. Design-Build Entity shall require by contract that each and every Subcontractor and Subconsultant and agent of Design-Build Entity who performs testing of samples in connection with the Work properly disposes of such samples in accordance with Applicable Laws after completion of testing and notice to District Project Manager. Regarding any such samples which may remain on-Site, provided District Project Manager or District Consultant has approved of such on-Site storage in advance, District agrees to pay all costs associated with the storage, transport, and disposal of such samples.

10.3.1.2.6. Verification. Upon Final Completion of the Work, Design-Build Entity shall confirm by a writing delivered to District Project Manager or District Consultant that:
(1) all Hazardous Substances specified for removal in the Contract Documents have been removed; and (2) all Hazardous Substances wastes removed from the Site as part of the Work have been disposed of in accordance with this Subparagraph 10.3.1.2 and Applicable Laws in a Hazardous Substances Facility.

10.3.2. Mold. Design-Build Entity is responsible to immediately notify District Project Manager in writing if any conditions in the construction materials incorporated or to be incorporated into the Work or present in Existing Improvements are encountered at the Site that Design-Build Entity or any Subcontractor or Subconsultant knows or, in the exercise of due care, should know indicate the presence of Mold or if untreated are likely to result in the growth of Mold. Design-Build Entity shall thereafter take such precautions as are reasonably required to prevent the exposure of persons to such conditions until they have been evaluated. Except as otherwise authorized by the Contract Documents or as are usual and customary according to prevailing standards of the construction industry in the vicinity of the Project, Design-Build Entity shall not allow water or moisture to come into contact with materials in Existing Improvements or with materials located at the Site that are incorporated or to be incorporated into the Work and if such contact occurs, the areas affected shall be inspected by Design-Build Entity, using appropriate consultants experienced in testing and evaluating Mold, for the presence of Mold and evaluated for the potential of future growth of Mold. All portions thereof that are found to indicate the presence of Mold, or that are found to be in a condition that has the potential for becoming a source of Mold, shall be removed and replaced. Costs incurred by Design-Build Entity due to its failure to perform its obligation under this Paragraph 10.3.2 shall be borne by Design-Build Entity at Design-Build Entity's Own Expense.

10.3.3. Release of District Liability. Design-Build Entity assumes the risk that its employees or the employees of its Subcontractors and Subconsultants, and other persons that they cause or permit to be present on the Site, may be exposed to known or unknown Hazardous Substances or Mold. Under no circumstances shall District be liable for, and Design-Build Entity hereby fully and unconditionally releases District and the other Indemnitees from, and agrees to defend and indemnify District and the other Indemnitees on the terms set forth in Section 3.18, above, against, any and all known and unknown Loss resulting from or relating to the exposure of any employee of Design-Build Entity or its Subcontractors or Subconsultants, or other person that they cause or permit to be present on the Site, to: (1) Hazardous Substances or Mold encountered in connection with or as a result of the performance of the Work, or (2) Hazardous Substances or Mold not necessarily encountered in connection with the performance of the Work, but to which any of them may nevertheless be exposed as a result of their being present on the Site.

10.3.4. Governmental Authorities. Design-Build Entity shall provide to District Project Manager copies of all written communications with Governmental Authorities or others relating to Hazardous Substances or Mold (other than privileged communications); provided, however, that non-disclosure of privileged communications shall not limit Design-Build Entity’s obligation to otherwise comply with the terms of the Contract Documents, including, without limitation, this Section 10.3.

10.3.5. Subcontractors, Subconsultants. Design-Build Entity shall include provisions in all contracts it enters into with Subcontractors and Subconsultants for the Work requiring them to assume toward Design-Build Entity and District the same obligations that Design-Build Entity assumes toward District under this Section 10.3. Design-Build Entity shall require the Subcontractors and Subconsultants to ensure that such provisions are included in all contracts they enter into with all lower-Tier Subcontractors and Subconsultants.

11. INSURANCE AND BONDS
11.1. Insurance Requirements

11.2. Worker's Compensation Insurance. The Design Build Entity shall purchase and maintain Workers' Compensation Insurance as will protect the Design Build Entity from claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed, whether such operations be by the Design Build Entity, and member of the Design Build Team or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

11.3. Employer's Liability Insurance. Design Build Entity shall purchase and maintain Employer's Liability Insurance covering bodily injury (including death) by accident or disease to any employee that arises out of the employee's employment by Design Build Entity. The Employer's Liability Insurance required of Design Build Entity hereunder may be obtained by Design Build Entity as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance required to be obtained and maintained by Design Build Entity hereunder. The limits of liability required hereunder shall be as set forth in the Special Conditions.

11.4. Commercial General Liability and Property Insurance. The Design Build Entity shall purchase and maintain Commercial General Liability and Property Insurance as will protect the Design Build Entity from the types of claims set forth below which may arise out of or result from Design Build Entity's operations under the Contract Documents and for which the Design Build Entity may be legally responsible: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than the Design Build Entity's employees; (ii) claims for damages insured by usual personal injury liability coverage which are sustained (a) by a person as a result of an offense directly or indirectly related to employment of such person by the Design Build Entity, or (b) by another person; (iii) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (iv) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; (v) contractual liability applicable to the Design Build Entity's obligations under the Contract Documents, and (vi) completed operations. The limits of liability required hereunder shall be as set forth in the Special Conditions.

11.5. Builder's Risk "All-Risk" Insurance. When required in the Special Conditions, the Design Build Entity, during the progress of the Work and until Final Acceptance of the Work by the District upon completion of the entire Contract, shall maintain Builder's Risk "All-Risk" Completed Value Insurance Coverage on all insurable Work included under the Contract Documents which coverage is to provide extended coverage and insurance against, including but without limitation, vandalism, theft and malicious mischief, perils of fire, sprinkler leakage, civil authority, sonic boom, collapse, and flood upon the entire Work which is the subject of the Contract Documents, and including completed Work and Work in progress to the full insurable value thereof. Design Build Entity's Builders Risk Insurance shall include coverage and insurance against the perils of earthquake, if so indicated in the Special Conditions. Such insurance shall include the District as an additional named insured and any other person with an insurable interest designated by the District as an additional named insured.

The Design Build Entity shall submit to the District for its approval all items deemed to be uninsurable. The risk of 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 Design Build Entity and the Surety, and no claims for such loss or damage shall be recognized by the District, nor shall such loss or damage excuse the complete and satisfactory performance of the Contract by the Design Build Entity.

11.6. Coverage Amounts: Insurer Qualifications. The insurance required of the Design Build Entity hereunder shall be written for not less than any limits of liability specified in the Contract Documents, including the
Special Conditions, or required by law, whichever is greater. In the event of any loss or damage covered by a policy of insurance required to be obtained and maintained by the Design Build Entity hereunder, the Design Build Entity shall be solely and exclusively responsible for the payment of the deductible, if any, under such policy of insurance, without adjustment to the Contract Price on account thereof. All policies of insurance required hereunder shall be issued by an insurer authorized to issue insurance under the laws of the State of California and who at the time of issuance of a policy of insurance is rated at least A minus (A-), #VI or VII, by A.M. Best Key Rating.

11.7. Evidence of Insurance; Subcontractor’s Insurance.

11.7.1. Prior to commencement of the Work, Design Build Entity shall deliver to the District Certificates of Insurance evidencing the insurance coverage required by the Contract Documents. Failure or refusal of the Design Build Entity to so may be deemed by the District to be a default of a material obligation of the Design Build Entity under the Contract Documents, and thereupon the District may proceed to exercise any right or remedy provided for under the Contract Documents or at law. The Certificates of Insurance and the insurance policies required by the Contract Documents shall contain a provision that coverage afforded under such policies shall not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the District.

11.7.2. The insurance policies required of Design Build Entity hereunder shall also name the District, members of the District’s board of trustees, and the officers, agents, employees and volunteers of the District, the State Allocation Board, if applicable, the Architect and the Architect’s consultants as additional insured as its interests may appear. Should any policy of insurance be canceled before Final Acceptance of the Work by the District and the Design Build Entity fails to immediately procure replacement insurance as required, the District reserves the right to procure such insurance and to deduct the premium cost thereof and other costs incurred by the District in connection therewith from any sum then or thereafter due the Design Build Entity under the Contract Documents. The Design Build Entity shall, from time to time, furnish the District, when requested, with satisfactory proof of coverage of each type of insurance required by the Contract Documents; failure of the Design Build Entity to comply with such request may be deemed by the District to be a default of a material obligation of the Design Build Entity under the Contract Documents.

11.7.3. Design Build Entity shall require that every Subcontractor, of any tier, performing or providing any portion of the Work, obtain and maintain the policies of insurance set forth in Articles 11.2, 11.3, and 11.4 of these General Conditions; the coverage and limits of liability of such policies of insurance to be obtained and maintained by Subcontractors shall be as set forth in the Special Conditions. The policies of insurance to be obtained and maintained by Subcontractors hereunder are in addition to, and not in lieu of, Design Build Entity obtaining and maintaining such policies of insurance.

Each of the policies of insurance obtained and maintained by a Subcontractor hereunder shall conform to the requirements of this Article 11. Upon request of the District, Design Build Entity shall promptly deliver to the District Certificates of Insurance evidencing that the Subcontractors have obtained and maintained policies of insurance in conformity with the requirements of this Article 6. Failure or refusal of the Design Build Entity to provide the District with Subcontractors' Certificates of Insurance evidencing the insurance coverage required hereunder shall be deemed a material default of Design Build Entity hereunder.

11.8. Maintenance of Insurance. Any insurance bearing on the adequacy of performance of Work shall be maintained after the District’s Final Acceptance of all of the Work, or from the date of Substantial
Completion as provided in Article 9.11 herein, for the full two years correction of Work period and any longer specific guarantee or warranty periods set forth in the Contract Documents. Should such insurance be canceled before the end of any such periods and the Design Build Entity fails to immediately procure replacement insurance as specified, the District reserves the right to procure such insurance and to charge the cost thereof to the Design Build Entity. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Design Build Entity's responsibility for payment of damages resulting from its operations or performance of the Work under the Contract Documents, including without limitation the Design Build Entity's obligation to pay Liquidated Damages. In no instance shall the District's exercise of its option to occupy and use completed portions of the Work relieve the Design Build Entity of its obligation to maintain insurance required under this Article until the date of Final Acceptance of the Work by the District, or such time thereafter as required by the Contract Documents. The insurer providing any insurance coverage required hereunder shall be to the reasonable satisfaction of the District.

11.9. Design Build Entity's Insurance Primary. All insurance and the coverage thereunder required to be obtained and maintained by Design Build Entity hereunder, if overlapping with any policy of insurance maintained by the District, shall be deemed to be primary and non-contributing with any policy maintained by the District and any policy or coverage thereunder maintained by District shall be deemed excess insurance. To the extent that the District maintains a policy of insurance covering property damage arising out of the perils of fire or other casualty covered by the Design Build Entity's Builder's Risk Insurance or the Comprehensive General Liability Insurance of the Design Build Entity or any Subcontractor, the District, Design Build Entity and all Subcontractors waive rights of subrogation against the others. The costs for obtaining and maintaining the insurance coverage required herein shall be included in the Contract Price.

11.10. Indemnity. 11.10.1. Unless arising solely out of the active negligence, gross negligence or willful misconduct of the Indemnified Parties, the Design Build Entity shall indemnify, defend and hold harmless the Indemnified Parties who are: (i) the District and its Board of Trustees, officers, employees, agents and representatives (including the District’s Project Inspector, and District Project Manager); and (ii) the Architect and its consultants for the Work and their respective agents and employees. The Design Build Entity’s obligations hereunder include indemnity, defense and hold harmless of the Indemnified Parties from and against any and all damages, losses, claims, demands or liabilities whether for damages, losses or other relief, including, without limitation costs which arise, in whole or in part, from the Work, the Contract Documents or the acts, omissions or other conduct of the Design Build Entity or any Subcontractor or any person or entity engaged by them for the Work. The Design Build Entity’s obligations under the foregoing include without limitation: (i) injuries to or death of persons; (ii) damage to property; or (iii) theft or loss of property; (iv) stop notice claims asserted by any person or entity in connection with the Work; and (v) other losses, liabilities, damages or costs resulting from, in whole or part, any acts, omissions or other conduct of the Design Build Entity, any Subcontractor, of any tier, or any other person or entity employed directly or indirectly by Design Build Entity in connection with the Work and their respective agents, officers or employees.

11.10.2. If any action or proceeding, whether judicial, administrative or otherwise, shall be commenced on account of any claim, demand or liability subject to Design Build Entity's obligations hereunder, and such action or proceeding names any of the Indemnified Parties as a party thereto, the Design Build Entity shall, at its sole cost and expense, defend the Indemnified Parties in such action or
proceeding with counsel reasonably satisfactory to the Indemnified Parties named in such action or proceeding.

11.10.3. In the event that there shall be any judgment, award, ruling, settlement, or other relief arising out of any such action or proceeding to which any of the Indemnified Parties are bound by, Design Build Entity shall pay, satisfy or otherwise discharge any such judgment, award, ruling, settlement or relief; Design Build Entity shall indemnify and hold harmless the Indemnified Parties from any and all liability or responsibility arising out of any such judgment, award, ruling, settlement or relief. The Design Build Entity's obligations hereunder are binding upon Design Build Entity's Performance Bond Surety and these obligations shall survive notwithstanding Design Build Entity's completion of the Work or the termination of the Contract.

11.11. Performance Bond and Payment Bonds

11.11.1. Performance and Payment Bonds. Within fourteen (14) Days after the later of (1) receipt of Notice of Intent to Award, or (2) completion of Negotiations (if requested), Design-Build Entity shall deliver to District a good and sufficient labor and material payment bond ("Payment Bond") and a good and sufficient performance bond ("Performance Bond"), each in the amount of one hundred percent (100%) of the difference of the Contract Sum less the Design Fee.

11.11.2. Changes. The penal amounts of the Performance Bond and Payment Bond shall be increased on account of Change Orders and Unilateral Change Orders increasing the Contract Sum. If requested by District Project Manager, Design-Build Entity shall deliver to District evidence of the increases of such penal amounts.

11.11.3. Replacement. Should any bond required hereunder or any Surety on such bond become or be determined by District to be insufficient, it shall be replaced within ten (10) Days by a bond that fully complies with the requirements of this Section 11.4.

11.11.4. Duration. The Payment Bond shall remain in effect until Acceptance of the Work and all Claims of Design-Build Entity and the Subcontractors and Subconsultants, of any Tier, have been fully and finally resolved. The Performance Bond shall remain in effect and assure faithful performance of all Design-Build Entity's obligations under the Contract Documents, including, without limitation, warranty obligations.

11.11.5. Condition of Payment. No payments to Design-Build Entity for Work performed shall be made or due until there has been full compliance with the requirements of this Section 11.4.

11.11.6. Surety Rating. Any Surety company issuing the Payment Bond or Performance Bond shall be, at all times while such bonds are in effect, listed in the latest published United States Treasury Department list of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” and have a current A.M. Best rating of A VIII or better.

11.11.7. Premiums. The premiums for the Performance Bond and Payment Bonds are included in the Contract Sum and shall be paid by Design-Build Entity at Design-Build Entity's Own Expense.

11.11.8. Obligee. A Performance Bond shall name District as obligee. All performance bonds, if any, purchased by Subcontractors shall name District as a dual obligee with Design-Build Entity.

11.11.9. No Exoneration. The Performance Bond and Payment Bond shall contain provisions to the effect that Change Orders, Unilateral Change Orders, Field Orders, Modifications, Changes and Contract Adjustments shall in no way release or exonerate Design-Build Entity or its Surety from their obligations and that notice thereof is waived by the Surety.

11.11.10. Communications. District and District Project Manager shall have the right to communicate with Surety with respect to matters that are related to performance of the Work. Design-Build Entity shall be provided with a copy of all such communications that are in writing.
Such communications shall not create or be interpreted as creating any contractual obligation of District to Surety.

11.11.11. No Limitation. The requirements of this Section 11.4 pertaining to the Performance Bond and the Payment Bond shall be without limitation to any other obligations Design-Build Entity may have under Applicable Laws to provide bonding for the benefit of, and to assure payment to the Subcontractors performing the Work for, the Project.

11.11.12. 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 Design-Build Entity’s rights under such bond to District as provided in Section 5.3, above.

12. UNCOVERING AND CORRECTION OF THE WORK

12.1. Uncovering of the Work. If a portion of the Work is covered contrary to the request or direction of District, District Project Manager, Inspector of Record or Design Consultant, or contrary to the requirements of the Contract Documents, it must, if required by the any of them, be uncovered for observation and be re-covered by Design-Build Entity at Design-Build Entity’s Own Expense.

12.2. Correction of the Work. Design-Build Entity 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) replaced and all the Work disturbed thereby made good by Design-Build Entity at Design-Build Entity’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.

12.3. Guarantee to Repair Period

12.3.1. Guarantee To Repair Period. Besides guarantees and warranties required elsewhere in the Contract Documents, Design-Build Entity guarantees the Work as provided herein below. The period of this guarantee, termed the “Guarantee to Repair Period,” is for Two (2) years commencing as follows:

12.3.1.1. for any portion of the Work that, upon Substantial Completion of the overall Work, is fully and finally complete and usable in all respects independent of other portions of the Work that are not fully and finally complete, on the date of Substantial Completion of such portion of the Work;

12.3.1.2. for space beneficially occupied or for separate systems fully utilized prior to Substantial Completion, from the first date of such beneficial occupancy or full utilization, as established by an appropriate written notice by District of intent to take beneficial occupancy; or

12.3.1.3. for all Work other than that described in Subparagraph 12.3.1.1 or Subparagraph 12.3.1.2, above, from the date of Final Completion of the Work.

12.3.2. Repairs. Design-Build Entity shall do the following: (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 the 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. The District or District Project Manager will give notice of observed Defective Work with reasonable promptness, and Design-Build Entity shall promptly commence such correction, replacement, repair or restoration upon notice from the or District or District Project Manager, but in no case later than ten (10) Days after mailing of such notice to Design-Build Entity’s last known address. Design-Build Entity shall diligently and continuously prosecute such correction, replacement, repair, or restoration to completion. All Losses resulting from such Defective Work, including, without limitation, all costs of such correction, replacement, repair or
restoration, additional testing, inspection and additional service fees and costs of the District Project Manager, Inspector of Record, Design Consultant, District Consultants or others whose services may be made necessary thereby, shall paid for by Design-Build Entity at Design-Build Entity’s Own Expense. Design-Build Entity shall correct, replace, repair or restore the Work at such times as are acceptable to the District and in such a manner as to avoid, to the greatest extent practicable, disruption to the activities of the District or the staff, students, visitors, public and others on the Site. Ordinary wear and tear, abuse, or neglect are excepted from this guarantee. Design-Build Entity shall notify the District Project Manager in writing upon the completion of such correction, replacement, repair or restoration.

12.3.3. Dangerous Conditions. If immediate correction of Defective Work during the Guarantee to Repair Period is required for life, safety or the protection of property or if, in the opinion of the District, Defective Work creates a dangerous condition or requires immediate correction or attention to prevent further Loss to the District or to prevent interruption of operations of the District, the District or District Project Manager will attempt to give immediate notice to Design-Build Entity. If Design-Build Entity cannot be contacted or does not comply with District’s request for correction within a reasonable time as determined in the sole and absolute discretion of District Project Manager, then District, or the Separate Contractors under the District’s direction, may, notwithstanding any other provisions of this Article 12, proceed to make such corrections or provide such attention, and all costs associated with such correction or attention shall be paid by Design-Build Entity at Design-Build Entity’s Own Expense. Such action by District or District Project Manager will not relieve Design-Build Entity of the guarantees provided in this Article 12 or elsewhere in the Contract Documents. Design-Build Entity shall correct, replace, repair or restore to District’s satisfaction and at Design-Build Entity’s Own Expense any other parts of the Work and any other real or personal property that are damaged or destroyed as a result of such actions by District, District Project Manager or the Separate Contractors.

12.3.4. Removal. Design-Build Entity shall promptly remove from the Site all the Work identified by the District or District Project Manager as Defective Work, whether incorporated or not and whether discovered before or after Substantial or Final Completion. If Design-Build Entity either does not remove such Defective Work within ten (10) Days after mailing of notice from the District as provided in Paragraph 12.3.2, above, then the District may, without prejudice to other remedies, remove it and may store the material. The costs of such storage shall be paid by Design-Build Entity at Design-Build Entity’s Own Expense.

12.3.5. Sale. If Design-Build Entity does not pay the expenses of the repair, correction or removal of the Defective Work and other Losses as required by Paragraphs 12.3.2 through 12.3.4, above, then within five (5) Days after notice by the District or District Project Manager, the District may sell any materials removed at auction or at private sale or otherwise dispose of such materials and shall account for the 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, and all costs of sale. If such net proceeds of sale do not cover the Losses for which Design-Build Entity is liable to the District, the Contract Sum shall be reduced by such deficiency. If there are no remaining payments due Design-Build Entity, or the remaining payments are insufficient to cover such deficiency, Design-Build Entity shall promptly pay the difference to the District.

12.3.6. Not a Limitation. Design-Build Entity’s obligations under this Article 12 are in addition to, and not in limitation of, its warranty under Section 3.5, above, and any other obligation, guaranty or warranty of Design-Build Entity or any other third party under the Contract Documents. Nothing contained in this Article 12 shall be construed to shorten any periods of limitation with respect to
other obligations of Design-Build Entity under the Contract Documents that are for longer specified periods. Establishment of the Guarantee to Repair Period relates only to the specific obligation of Design-Build Entity to correct the Work and in no way limits either Design-Build Entity’s liability for Defective Work or the time within which proceedings may be commenced to enforce Design-Build Entity’s obligations under the Contract Documents.

12.4. Acceptance of Nonconforming Work. Notwithstanding any other provisions of the Contract Documents to the contrary, the District shall have the option, exercised in its sole and absolute discretion after notice by District or District Project Manager to Design-Build Entity, in lieu of requiring that Defective Work be remedied or corrected, to reduce the Contract Sum to reflect the reduced value of the performance received by District. Such option shall be exercised solely by written notice to Design-Build Entity and shall not be implied from any act or omission by District or District Project Manager. If there are no remaining payments of the Contract Sum to be made to Design-Build Entity, or if the remaining payments and retention are insufficient to cover the amount of the reduction of the Contract Sum, Design-Build Entity shall promptly pay to District the amount of any such deficiency.

13. MISCELLANEOUS PROVISIONS

13.1. Governing Law. The interpretation and enforcement of the Design-Build Contract and other Contract Documents and of the performance by the parties thereunder shall, notwithstanding application of the principles of conflicts of laws, be governed by the laws of the State of California. The Superior Court for the County of Orange 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 Design-Build 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 Design-Build Entity’s performance of obligations under the Contract Documents are of the essence.

13.3. Successors and Assigns. This Design-Build Contract and other Contract Documents shall be binding on successors, assigns and legal representatives of District and Design-Build Entity, respectively. Design-Build Entity shall not assign, sublet or transfer an interest in or claim under this Design-Build Contract without advance written approval of District, which approval may be granted or withheld by District in its sole and absolute discretion, and any assignment, subletting or transfer without written approval by District shall be deemed void from its inception. Any assignment, subletting or transfer, whether or not approved by District, will not release Design-Build Entity from any of its obligations under the Contract Documents to District. District shall have the right to assign, sublet or transfer its interest in or any claim under this Design-Build Contract upon written notice to Design-Build Entity.

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 and District Project Manager or by depositing same in United States mail, enclosed in a sealed envelope addressed to District at its address shown in the Request for Proposal Documents and to District Project Manager at its last known address, and sent by registered or certified mail with postage prepaid.

13.4.2. Notice to Design-Build Entity. If notice is given to Design-Build Entity, by personal delivery thereof to Design-Build Entity or to Design-Build Entity’s project manager or superintendent at the Site, or by depositing same in United States mails, enclosed in a sealed envelope addressed to...
Design-Build Entity 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. District Rights. Rights and remedies available to the District under the Contract Documents are in addition to and not a limitation of District’s rights and remedies otherwise available under Applicable Laws.

13.5.2. Writing Required. Provisions of the Contract Documents may be waived by District only in writing signed by the Director stating expressly that it is intended as a waiver of specified provisions of the Contract Documents.

13.5.3. Subsequent Breach. 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 therein whether of the same or a different character.

13.6. No Nuisance. Design-Build Entity 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 full and complete understanding of every kind or nature between the parties and all preliminary negotiations and prior representations, proposals and contracts, of whatever kind or nature, are merged herein and superseded hereby. No verbal agreement or implied covenant shall be held to vary the provisions of the Contract Documents. Any modification of this Design-Build Contract or the other Contract Documents will be effective only by written instrument signed by both District and Design-Build Entity and shall, if required by Applicable Laws, be formally approved or ratified by the Board of Trustees.

13.8. No Third-Party Rights. Nothing contained in this Design-Build Contract or the other Contract Documents is intended to make any person or entity who is not a signatory to this Design-Build Contract a third-party beneficiary of any right of Design-Build Entity (including, without limitation, any right of Design-Build Entity to a benefit derived from, or to the enforcement of, an obligation assumed by District) that is expressly or impliedly created by the terms of the Contract Documents or by operation of Applicable Laws.

13.9. Severability. Should any part, term, portion or provision of the Design-Build Contract or the other Contract Documents, or the application thereof to any party or circumstance, be held to be illegal, invalid or in conflict with Applicable Laws, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions, or the application thereof to any other 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 Design-Build Contract or other Contract Documents shall be deemed to be inserted in 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 Design-Build Contract to make such insertion or correction.
13.11. **Survival.** All provisions of the Contract Documents that either expressly, or by their nature, require performance or assumption by Design-Build Entity of an obligation that extends beyond termination of the Design Contract or Final Completion of the Work, including, without limitation, Design-Build Entity’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 Design-Build Contract or Final Completion of the Work.

13.12. **Federal Grants.** In the event of a federal grant or other federal financing participation in the funding of the Project, Design-Build Entity shall, as required in connection with, or as a condition to, such federal grant or other federal financing participation, permit access to and grant the right to examine its books covering its services performed and expenses incurred under the Design-Build Contract or other Contract Documents and comply with all applicable federal agency requirements including, without limitation, those pertaining to work hours, overtime compensation, non-discrimination, and contingent fees.

13.13. **Prohibited Interests.** Design-Build Entity agrees not to accept any employment or representation which will, or is likely to, make Design-Build Entity "financially interested" (as provided in California Government Code §§1090 and 87100, hereinafter "financially interested") in any decision made by District on any matter in connection with which Design-Build Entity has been retained in connection with the Project. Without limitation to the foregoing, transactions and interests prohibited by this Section 13.13 include the following: (1) 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 financially interested in the performance of the Design-Build Contract or in any part thereof; (2) 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 financially interested in the performance of the Design-Build Contract or in any part thereof; and (3) Design-Build Entity shall receive no compensation hereunder, and shall repay District for any compensation received by Design-Build Entity hereunder, should Design-Build Entity or any of the Subcontractors or Subconsultants aid, abet or knowingly participate in violation of this Section 13.13.

13.14. **Assignment of Anti-Trust Actions.** California Public Contract Code §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."

Design-Build Entity for itself and all the Subcontractors and Subconsultants agrees to assign to District all rights, title and interest in and to all such causes of action Design-Build Entity and all the Subcontractors and Subconsultants may have under the Contract Documents. This assignment shall become effective at
the time District tenders Final Payment to Design-Build Entity, and Design-Build Entity shall require assignments from all the Subcontractors and Subconsultants to comply herewith.

13.15. **No Waiver.** District’s approval, acceptance, use or payment for any or part of Design-Build Entity’s performance of the Work shall not in any way alter Design-Build Entity’s obligations, or waive any of District’s rights, under Contract Documents.

13.16. **Consent to Photographing.** Design-Build Entity is advised that District intends, from time to time, to take photographs, videotapes and/or motion pictures of the Work, and workers located on the Site and proximate settings. Design-Build Entity consents to the use of Design-Build Entity'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. Design-Build Entity shall include in its contracts with its Subcontractors and Subconsultants a consent by the Subcontractor or Subconsultants to the use of Subcontractor’s or Subconsultant’s name and the likenesses of its employees on the same terms as provided for herein applicable to such consent by Design-Build Entity.

### 14. TERMINATION OR 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 Design-Build Entity Default:

14.1.1.1. Design-Build Entity files a petition, or has filed against it a petition, for Bankruptcy or is adjudged bankrupt;

14.1.1.2. Design-Build Entity makes a general assignment for the benefit of its creditors;

14.1.1.3. A receiver is appointed on account of Design-Build Entity’s Insolvency;

14.1.1.4. Design-Build Entity defaults, by failing or refusing to perform any obligation set forth in the Design-Build Contract, General Conditions or elsewhere in the Contract Documents (including, without limitation, the performance or installation of Defective Work), and thereafter: (1) fails to commence to cure such default within two (2) working days after receipt of written notice of default; (2) if the default can be cured within three (3) Days, Design-Build Entity fails or refuses after commencing to cure in accordance with Clause (1) hereof to fully cure such default within three (3) Days after receipt of written notice of default; or (3) if the default cannot be fully cured within three (3) Days, Design-Build Entity 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;

14.1.1.5. Design-Build Entity fails or refuses to perform an obligation set forth in the Design-Build 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;

14.1.1.6. Failure by Design-Build Entity to timely submit a Post-Award Submittal in accordance with the requirements of the RFP Documents:

14.1.1.7. Design-Build Entity’s pre-qualification status has been revoked or cancelled for any for the reasons for which such revocation or cancellation is permitted under the terms of the Pre-Qualification Documents;

14.1.1.8. the occurrence of a claim upon any security (including, without limitation, any letter or credit or guaranty) provided by District at the request of Design-Build Entity or a Subcontractor prior to Award to assist Design-Build Entity or a Subcontractor in obtaining
credit, financing or bonding needed: (1) to qualify for Award of the Design-Build Contract; or
(2) to meet its obligations under the Contract Documents;
14.1.1.9. the default of Design-Build Entity, 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; or
14.1.1.10. a breach of any other agreement between District and Design-Build Entity as provided in
Paragraph 14.1.9, below;
14.1.2. District’s Remedies. Without limitation to the District’s other rights or remedies under the
Contract Documents or Applicable Laws, if there is an Event of Design-Build Entity Default, District
shall have the right to exercise any one or more of the following remedies:
14.1.2.1. Take Over Work. District may, without terminating the Design-Build Contract and
without incurring any additional liability or responsibility to Design-Build Entity (including,
without limitation, any obligation to agree to a Contract Adjustment 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.
14.1.2.2. Suspend Work. District may, without terminating the Design-Build Contract and without
incurring any additional liability or responsibility to Design-Build Entity (including, without
limitation, any obligation to agree to a Contract Adjustment for any portion of the suspended
or non-suspended Work), suspend Design-Build Entity’s performance of all or a portion of the
Work for as long a period of time as the District determines, in its sole discretion, is
appropriate.
14.1.2.3. Termination. District may, without incurring any additional liability or responsibility to
Design-Build Entity, terminate the Design-Build Contract, the Work or any portion thereof.
14.1.2.4. Surety. If there is an Event of Design-Build Entity Default pursuant to any of
Subparagraphs 14.1.1.1 through 14.1.1.9, above, District may, with or without terminating
the Design-Build Contract and without incurring any additional liability or responsibility to
Design-Build Entity or Surety (including, without limitation, any obligation to agree to a
Contract Adjustment), exercise its rights under the Performance Bond furnished by Design-
Build Entity by giving Surety ten (10) Days’ written notice of demand to perform; provided,
however, that if the Surety fails, within seven (7) Days after receipt by Surety of written
demand, to deliver to the District and District Project Manager 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, the District may, at Design-Build Entity’s
Own Expense and/or the expense of the Surety, and with or without terminating the Design-
Build Contract, proceed to complete the Work by any other means District deems expedient.
By executing its Performance Bond incorporating the terms of the Design-Build Contract,
Surety shall be deemed to have agreed, without limitation, to the provisions of this Paragraph
14.1.2 as constituting 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. Design-Build Entity Tools, Equipment. Upon District’s exercise of one or more of its remedies
following an Event of Design-Build Entity 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, taking possession and utilization of any or all of the
materials, equipment, appliances, tools, plant and other property not owned by Design-Build Entity
that are on the Site for District’s use in performing the Work.
14.1.4. Design-Build Entity Obligations. Upon exercise by District of its remedies following an Event of Design-Build Entity Default, Design-Build Entity shall, unless District directs in writing otherwise, do the following:

14.1.4.1. immediately discontinue performance of the Work to the extent specified in writing by District Project Manager;

14.1.4.2. remove no materials, equipment or tools (other than those owned by Design-Build Entity and not necessary for performance of a portion of the Work not terminated or discontinued) from the Site unless directed to do so by District or District Project Manager and take all actions necessary or appropriate, or that the District or District Project 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;

14.1.4.3. place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for Design-Build Entity to continue performance of such portion, if any, of the Work that is not discontinued or terminated by District in its written notice;

14.1.4.4. provide to the District and District, in writing, no later than two (2) Days after request by District Project Manager, a statement listing or providing: (1) all subcontract agreements, purchase orders and contracts that are outstanding, as well as any change orders, amendments and modifications thereto; (2) the status of invoicing, payments and balance owing under each such subcontract agreement, purchase order and contract; (3) the status of performance and any claims asserted under each such subcontract agreement, purchase order and contract; and (4) providing such other information as the District or District Project Manager may determine to be necessary in order to decide whether to accept assignment of any such subcontract agreement, purchase order or contract;

14.1.4.5. promptly following and in accordance with District’s or District Project Manager’s written direction: (1) assign to the District or its designee those subcontract agreements, purchase orders or contracts, or portions thereof, that the District elects to accept by assignment; (2) cancel, on the most favorable terms reasonably possible, any subcontract agreement, purchase order or contract, or portion thereof, that the 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, outstanding liabilities to Subcontractors and Subconsultants with respect to the Work terminated or discontinued;

14.1.4.6. not terminate any insurance required by the Contract Documents;

14.1.4.7. thereafter continue only such performance as may be directed by District or District Project Manager;

14.1.4.8. deliver to the District or District Project Manager the documents required to delivered pursuant to Paragraph 1.4.6, above; and

14.1.4.9. at the option of District, exercisable in its sole discretion, and written request of District or District Project Manager, deliver to the District, and transfer title to the District 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

14.1.5.1. Full Termination or Discontinuance.

14.1.5.1.1. Further Payment. In the event of an exercise by District of any of its remedies following an Event of Design-Build Entity Default that results in a termination or discontinuance of the entire Work, then no further payment shall be due to Design-
Build Entity for the Work until an accounting has been conducted in accordance with this Paragraph 14.1.5.

14.1.5.1.2. Time for Accounting. Within forty-five (45) Days after Final Completion of the Work by Design-Build Entity, Surety, District or others at request of District or District Project Manager, an accounting shall be made pursuant to this Paragraph 14.1.5 of the amount due to Design-Build Entity or District.

14.1.5.1.3. Payment Amount. If, based on the accounting conducted pursuant to this Paragraph 14.1.5, the Design-Build Entity Amount exceeds the District Amount, then the difference shall be paid by District to Design-Build Entity within fifteen (15) Days after demand by Design-Build Entity following completion of such accounting. If the District Amount exceeds the Design-Build Entity Amount, then the difference shall be paid by Design-Build Entity to District within fifteen (15) Days after demand by District or District Project Manager following completion of such accounting. Payment by Design-Build Entity of the amount due to District pursuant to such accounting shall not be construed as a release of Design-Build Entity’s obligation to District for, or District’s right to recover from Design-Build Entity, any Losses, of any kind whatsoever, not part of the calculation of the District Amount (including, without limitation, additional Losses related to circumstances that formed the basis for calculation of the District Amount) that may be then or thereafter owing to or recoverable by District under Applicable Laws or the Contract Documents.

14.1.5.1.4. Design-Build Entity Amount. The Design-Build Entity Amount used as the basis for payment pursuant to the accounting under this Paragraph 14.1.5 shall be calculated as follows:

14.1.5.1.4.1. take one of the following, as applicable:

14.1.5.1.4.1.1. if the Design-Build Contract is terminated prior to completion of the Final Construction Documents, then take a portion of the Design Fee based on a percentage of completion achieved that is calculated in a manner consistent with the percentages set forth in Subparagraph 9.4.1.1 of the General Conditions, based on the product derived by multiplying the Design Fee by the percentage completion of the Construction Documents achieved as of the date of such termination; or,

14.1.5.1.4.1.2. if the Design-Build Contract is terminated after completion of Final Construction Documents, the full amount of Design Fee;

14.1.5.1.4.2. if the Design-Build Contract is terminated after completion of Final Construction Documents, then add thereto the product derived by multiplying (i) the difference of the Contract Sum less the Design Fee by (ii) the District’s Good Faith Determination of the percentage of the Work properly performed by Design-Build Entity and (I) in permanent place, (II) previously fabricated and delivered to the Site or (III) fabricated and en route for delivery to the Site and delivered to the Site within a reasonable time after Design-Build Entity’s receipt of such written notice;

14.1.5.1.4.3. subtract there from all amounts previously paid by District to Design-Build Entity or to Subcontractors or Subconsultants.

14.1.5.1.5. District Amount. The District Amount used as the basis for payment pursuant to the accounting under this Paragraph 14.1.5 shall be calculated based on 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 negligence, willful misconduct, or Defective Work on the part of Design-Build Entity or any Subcontractor of Subconsultant; (b) any Event of Design-Build Entity Default, whether or not constituting the basis of the District’s termination or discontinuance; (c) the 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 Design-Build Entity Default; and (d) the payment by District of amounts to Design-Build Entity or any Subcontractor or Subconsultant that were not owing to Design-Build Entity or that were in excess of the amount to which Design-Build Entity was entitled under the Contract Documents.

14.1.5.2. Partial Termination or Discontinuance. In the case of an exercise by District of its remedies for an Event of Design-Build Entity Default that results in a discontinuance or termination of only a portion of the Work, then the Contract Sum and Contract Time shall be adjusted under the provisions of Article 7 and Article 8, above, applicable to Deleted Work. Design-Build Entity 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 or threatened as a result of Design-Build Entity’s default.

14.1.5.3. Exclusive Compensation. Design-Build Entity 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 Design-Build Entity Default.

14.1.6. Surety. Without limitation to any of the District’s other rights or remedies under a Performance Bond furnished by Design-Build Entity, Contract Documents or Applicable Laws, the 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 contractors 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 contractors; (3) if at any time the District makes a Good Faith Determination that the Work is unnecessarily or unreasonably delayed by Surety or its contractors; (4) violation by Surety or its contractors of any terms of the Contract Documents, Performance Bond or Applicable Laws; or (5) failure by Surety or its contractors to follow instructions of the District or District Project Manager for performance of the Work or for performance of the Work within the Contract Time. By executing its Performance Bond incorporating the terms of the Design-Build Contract, Surety shall be deemed to have agreed, without limitation, to the provisions of this Paragraph 14.1.6 as constituting 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 a termination for cause by the District is adjudged by a court or by binding arbitration conducted in accordance with the Contract Documents to have been wrongful, such termination shall be deemed converted to a termination for convenience pursuant to Section 14.3, below, in which case Design-Build Entity agrees to accept such amount, if any, as permitted by Paragraph 14.3.3, below, 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 Design-Build Contract. Any Event of Design-Build Entity 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 its remedies permitted under the Contract Documents or Applicable Laws.

14.1.9. Cross Default. Design-Build Entity agrees that a breach of any other agreement between Design-Build Entity 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 Design-Build Entity Default under the Design-Build Contract, thereby entitling District to assert all its rights and remedies hereunder including, but not limited to, a specific right of offset by District against any amounts otherwise payable to Design-Build Entity under the Design-Build Contract or any other agreement between Design-Build Entity and District.

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 those rights and remedies available under Applicable Laws.

14.1.11. Materiality. 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 exercise its other rights or remedies for default to only material defaults.

14.1.12. District Action. No termination or action taken by District after termination shall prejudice any rights or remedies of District provided by Applicable Laws or by the Contract Documents, including, without limitation, the right of District to proceed against Design-Build Entity to recover all Losses suffered by reason of Design-Build Entity’s default.

14.2. Suspension by District for Convenience.

14.2.1. Suspension Order. Without limitation to the 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 Design-Build Entity Default or other cause, order Design-Build Entity, in writing, to suspend, delay or interrupt performance of the Work, in whole or in part. Upon receipt of such an order, Design-Build Entity shall comply with its terms and take all reasonable steps to minimize additional costs that are incurred applicable to the portion of the Work suspended, delayed or interrupted by District.

14.2.2. Resumption. If an order issued by the District pursuant to this Section 14.2 is canceled or expires, Design-Build Entity shall resume and continue with the previously suspended portion of the Work. In such event, Design-Build Entity shall be entitled to a Contract Adjustment for additional Allowable Costs necessarily caused by such suspension and compensation allowed under Section 3.5 of the Design-Build Contract for Compensable Delay; provided, however, that no such Contract Adjustment shall be made: (1) to the extent that performance either is, was or would have been so suspended, delayed or interrupted by another cause for which Design-Build Entity or any of the Subcontractors or Subconsultants is responsible or for which Design-Build Entity would not be entitled to a Contract Adjustment; (2) to the extent that a Contract Adjustment 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 unless a written order is issued by District pursuant to this Section 14.2.

14.3. Termination by District for Convenience.

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 Design-Build Entity Default or any other cause, to terminate the Design-Build Contract or Work, in whole or in part, by giving five (5) Days written notice to Design-Build Entity.

14.3.2. Design-Build Entity Obligations. Upon receipt of notice of termination for convenience pursuant to this Section 14.3, Design-Build Entity shall, unless such notice directs otherwise, comply with all of the provisions of Paragraph 14.1.4, above.

14.3.3. Design-Build Entity Compensation. Following termination without cause pursuant to this Section 14.3 and within sixty (60) Days after receipt of a complete and timely Application for Payment from Design-Build Entity, an accounting shall be conducted in accordance with the process set forth in Paragraph 14.1.5, above. In such event, the amount due to Design-Build Entity shall be the Design-Build Entity Amount as calculated in the same manner provided for in Paragraph 14.1.5, above, except that there shall be added to the calculation of the Design-Build Entity Amount an amount for: (1) the reasonable, actual and direct Allowable Costs incurred and paid by Design-Build Entity (and not Subcontractors or Subconsultants) for (a) demobilizing Design-Build Entity’s facilities from the Site, and (b) Design-Build Entity’s administering the close out of its participation in the Project for a period of no longer than fifteen (15) Days; plus (2) a markup to Design-Build Entity on the Design-Build Entity’s Allowable Costs incurred under Clause (1) of this Paragraph that is based on the percentage for Allowable Markup that Design-Build Entity is permitted to charge pursuant to Article 7, above, for Compensable Changes involving Extra Work that is self-performed by Design-Build Entity.

14.3.4. Exclusive Compensation. Design-Build Entity 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 Owner for convenience and waives any claim for Loss related to Owner’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, Subconsultants. Design-Build Entity shall include provisions in all of its subcontracts, purchase orders and other contracts with the Subcontractors and Subconsultants permitting termination for convenience by Design-Build Entity on terms that are consistent with, and that afford no greater rights of recovery against Design-Build Entity for termination than are afforded to Design-Build Entity under, this Section 14.3.

14.4. Termination by Design-Build Entity

14.4.1. Design-Build Entity’s Remedies. Subject to the provisions of Paragraph 14.4.2 and Paragraph 14.4.3, below, Design-Build Entity’s sole right to terminate the Design-Build Contract shall be its right to terminate, for cause only, upon the occurrence of either of the following:

14.4.1.1. the entire Work is stopped for one hundred sixty (160) consecutive Days, through no act or fault of Design-Build Entity or any of the Subcontractors or Subconsultants, 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

14.4.1.2. the entire Work is suspended by Design-Build Entity in accordance with a proper exercise by Design-Build Entity of its rights under Section 9.8, 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, above, exists, Design-Build Entity may, upon thirty (30) Days written notice to District Project Manager, terminate the Design-Build Contract and recover from District as its sole and exclusive compensation such sums as are permitted under Paragraph 14.3.3, above.
14.4.3. Continuous Performance. Provided that Design-Build Entity is paid undisputed sums due in accordance with the requirements of the Design-Build Contract, Design-Build Entity shall not stop, delay or interrupt continuous performance of the Work by reason of any dispute or disagreement with District Project Manager, including, without limitation, any disputes or disagreements over payments of money claimed due under the Contract Documents.

14.5. Warranties. All obligations of Design-Build Entity and the Subcontractors and Subconsultants under the Contract Documents with respect to warranties and guarantees of the Work will continue in force and shall apply, notwithstanding a termination or other discontinuance of the Work by District or Design-Build Entity 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 has been completed or partially completed by Design-Build Entity to the point that it is substantially ready (exclusive of any incidental work that may be needed to connect such portion to other Work to other Work or Existing Improvements or to energize such portion of the Work for operation) for use or occupancy by District.

15. NON-DISCRIMINATION

15.1. Non Discrimination in Services

15.1.1. Design-Build Entity and any member of Design Build Team 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:

15.1.1.1. Denying any person any service or benefit or the availability of a facility.

15.1.1.2. 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.

15.1.1.3. Subjecting any person to segregation or separate treatment in any manner related to the receipt of any service.

15.1.1.4. Restricting any person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit.

15.1.1.5. 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. Design-Build Entity 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. Design-Build Entity shall establish and maintain written procedures under which any person applying for, performing or receiving services hereunder, may seek resolution from Design-Build Entity of a complaint with respect to any alleged discrimination. Such persons shall be advised by Design-Build Entity of these procedures. A copy of such procedures shall be posted by Design-Build Entity in a conspicuous place, available and open to the public, in each of Design-Build Entity's facilities where services are provided hereunder.

15.2. Non Discrimination in Employment. Design-Build Entity and any member of the Design Build Team 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, Design-Build Entity and the Subcontractors and Subconsultants shall comply with all applicable provisions of the California Fair Employment Practices Act.
(California Government Code §§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. Design-Build Entity and the Subcontractors and Subconsultants 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:

- Employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation.

- Selection for training, including apprenticeship.

15.2.1. Design-Build Entity agrees to post in conspicuous places in each of Design-Build Entity'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. Design-Build Entity shall, in all solicitations or advertisements for employees placed by or on behalf of Design-Build Entity, 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. Design-Build Entity 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 Design-Build Entity's commitments under this Section 15.2.

15.2.4. Design-Build Entity certifies and agrees that it will deal with the Subcontractors, 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, Design-Build Entity shall allow duly authorized representatives of the District, 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. Design-Build Entity 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 Design-Build Entity or any of the Subcontractors or Subconsultants, such violation shall constitute a material breach of the Design-Build Contract for which District may cancel, terminate or suspend the Design-Build Contract. While District reserves the right to determine independently that the anti-discrimination provisions of the Design-Build Contract have been violated, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that Design-Build Entity or the Subcontractor or Subconsultant has violated State or Federal anti-discrimination laws shall constitute a finding by District that Design-Build Entity or the Subcontractor or Subconsultant has violated the provisions of this Section 15.2.

15.2.7. Design-Build Entity hereby agrees that it will comply with §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 Design-Build Entity or any member of Design Build Team receiving Federal Financial Assistance.