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Santa Ana College • Santiago Canyon College

**REQUEST FOR QUALIFICATIONS (RFQ) / REQUEST FOR PROPOSAL (RFP) #1718-178**

**FAN COIL UNIT REPLACEMENT – BUILDING D**

**AT**

**SANTIAGO CANYON COLLEGE**

**Addendum #1**

**Issued: November 20, 2017**

The following changes, additions, deletions, or corrections shall become part of the above-mentioned RFQ/RFP:

1. Per Section 5.2.8 of the original RFQ/RFP #1718-178, Respondents must comment on the draft agreement, hereby attached as ADDENDUM #1.

“Tab 5; Agreement Comments. Respondents must indicate in Tab 5 acceptance of all terms and conditions of the Agreement, without conditions, qualifications or reservations or identify any term or condition of the Agreement which the Respondent requests modification, by amendment to existing provisions, addition of additional provisions or deletion of existing provisions. Where any requested modification consists of amendments to existing provisions or additional provisions, the RFQ/RFP Response must set forth the complete text of the requested amendment or addition. Any Respondent who’s RFQ/RFP Response does not identify modifications to terms or conditions of the attached Agreement will be deemed to have agreed to and accepted all terms and conditions set forth therein, if the Respondent is awarded the Agreement”

*Attachments: 171120\_DRAFT\_AGREEMENT*

*End of Addendum #1*

**Friday, November 17, 2017**

## **ENERGY SERVICES AGREEMENT**

THIS AGREEMENT is entered into January 28 2018, in the City of Orange, County of Orange, State of California, by and between RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT, a California Community College District hereinafter “District” and \_\_\_\_\_ (“Contractor”).

WITNESSETH, that the District and the Contractor in consideration of the mutual covenants contained herein agree as follows:

- 1. Contractor Selection.** Pursuant to Government Code §4217.10, *et seq.*, the District has selected Contractor, on the basis of its experience, type of technology employed by the Contractor, cost to the District, and other relevant considerations.

**Project Description.** Santiago Canyon College, one of the state’s newest community colleges is a typical community college part of the Rancho Santiago Community College District. The campus, with address 8045 East Chapman Avenue, City of Orange, falls within California Climate Zone 8 (CZ08). Building D is a two-story 42,136 square feet academic building built in the year 1995. Building D has a variety of spaces including but not limited to classrooms, private offices, mechanical rooms, and electrical rooms. The building houses the college’s counseling program, arts and digital arts program, math program and instructional support program. Santiago Canyon College intends to replace the existing fan coil units as these units are at the end of life. The units have multiple problems ranging from electrical wiring issues, motor failures, inefficient cooling and heating coils, inadequate outside air, condensate drain problems, drain pan failures, damper issues, utility piping problems, and maintenance accessibility problems. Given the age and maintenance problems with the mechanical equipment, the District allocated 2017/2018 state scheduled maintenance funds to replace the fan coils at Building D. The objective of the fan coil unit replacement is to improve energy efficiency, increase performance, lower maintenance, increase system reliability, and improve system stability. TRC Engineers, Inc. was hired to identify potential energy efficiency measures associated with this project. TRC Engineers, Inc, findings and recommendations identified three key energy efficiency measures (EEM) with a target yearly energy savings amount of 92,113 kWh/yr or 9.28 kW/yr. The full report is enclosed herewith this RFQ/RFP.

- 2. The Work.** Design-build fan coil replacement at building D located at Santiago Canyon College, including without limitation, planning, design, procurement, installation, construction, testing, commissioning and all related services required by the Contract Documents, including all professional engineering, labor, materials, equipment or services provided or to be provided by the Contractor to fulfill the Contractor’s obligations under the Contract Documents.

2.1. Fan Coil Units: ESCO shall remove forty-two (42) existing fan coils of various sizes and replace with new high efficiency units of the same weight or less. All units shall have ease of access for routine maintenance. The FCUs must include variable airflow capabilities using Electronically Controlled Motors (ECMs) (refer to EEM 1 and EEM # 2). A high delta temperature (delta-t) across the cooling and heating coil for maximum efficiency is required

and must not exceed the operating weights of the existing FCUs due to structural deck loading considerations (refer to MHP Structural Study included herewith this RFP).

- 2.2. Utility Pipe Systems (HHW and CHW): The 4-pipe fan coil piping system for chilled water (CHW) and heated hot water (HHW) operations shall be replaced with new piping. Strainers, hoses, and flex connections shall be new. The utility pipe replacement shall be no more than 5 foot from the nearest shut-off valve. The CHW and HHW Belimo valves and actuators are new and shall be removed and reused. Condensate piping shall be checked for flow to ensure adequate flow to destination drains and sinks.
- 2.3. Controls: Vintage 2016 Alerton controllers are mounted on existing FCUs and communicates to Vykon-branded JACE600 integration devices storing information such as sequence of operation program, alarms, and trends. The JACE is connected via the District intranet to a centralized Supervisor, Niagara 4 Tridium EMS. The Alerton field controllers shall be removed and reinstalled. Available points shall be used to control ECM fan speeds and provide occupant-based air flow setbacks, based on three modes of operations; regular occupied mode, occupied-standby mode, and unoccupied mode. The District requests a value-engineering option to install Original Equipment Manufacturer (OEM) factory-installed BACnet controls (if available) to review the costs options.
- 2.4. Ceiling Repairs: The ceiling grid shall be removed and repaired, in kind, and acoustical tiles shall be replaced at FCUs locations. The grid shall be repaired in accordance with the DSA approved plans and details.
- 2.5. Balancing: A dry and wet side balance is required. Balance water pressure and air balance zones and review findings with the District's Project Manager.
- 2.6. Commissioning: The project will require third party commissioning. ESCO shall provide commissioning support. The commissioning authority will be assigned around early 2018.
- 2.7. Structural Study: The FCUs hangers and 45-degree braces are in good condition and will remain in place so that they are reused once FCUs are installed. If structural modifications are required, please advise the District through an RFI. Modifications are strictly prohibited due to agency review requirements.
- 2.8. Other considerations: FCU construction phasing may be required. The proposed phasing plan will require coordination with the college and Facilities PM. The goal is to minimize the impact to campus operations and allow for functional systems during construction. Temporary cooling will be required and the District will allocate an allowance for this purpose.
  - 2.8.1. Optimized performance – ARI-440 certified and labeled; chilled-water coil for cooling, hot-water coil for heating
  - 2.8.2. Exposed (Art labs and Counseling area) and concealed cabinet; 4-pipe coils
  - 2.8.3. Piping packages - Factory-assembled piping packages
  - 2.8.4. Choice of controls –Controls shall be interfaced with an existing building automation system (Alerton controller integrated into Tridium).
  - 2.8.5. OEM controls (Value Engineer option)
  - 2.8.6. Excellent IAQ – Low sound levels; sloped drain pans that are cleanable; cabinets can be insulated with foil-faced fiberglass or closed-cell foam

- 2.8.7. Superior serviceability –Removable filters; fan deck, removable drain pan, and removable coils for servicing
- 2.8.8. Maintain 68 - 74 degree space setpoints range with 72 optimum.
- 2.8.9. Manufacturers include Trane, York, Carrier, or District equal.

3. **Contract Time.** The Work shall be commenced on the date stated in the District’s Notice to Proceed. The Contractor shall achieve Substantial Completion of the Work no later than **ONE HUNDRED EIGHTY-TWO (182) CONSECUTIVE CALENDAR DAYS**.
4. **Contract Price.** The District shall pay the Contractor as full consideration for the Contractor’s full, complete and faithful performance of the Contractor’s obligations under the Contract Documents, subject to adjustments of the Contract Price in accordance with the Contract Documents, the Contract Price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The Contract Price is based upon the Contractor’s Price Proposal for the Work **that includes a District Allowance of Fifty Thousand Dollars (\$50,000.00)** and the following Alternate Proposal Items, if any: \_\_\_\_\_. The District’s Progress Payments of the Contract Price shall be subject to retention withholdings equal to five percent (5%) of each Progress Payment (“Retention”). Retention withheld by the District shall be disbursed to the Contractor as part of the Final Payment due the Contractor.
5. **Payment of the Contract Price.** The District will make payment of the Contract Price upon completion of the Work, the Contractor’s full performance of all other obligations under this Contract and the Contractor’s submission of a properly itemized invoice. Upon receipt of the Contractor’s invoice, the District Representative will promptly verify that the Work has been completed and that the Contractor has performed all other obligations hereunder. Within thirty (30) days of the District Representative’s confirmation of the completion of Work and the Contractor’s performance of other obligations hereunder, the District will make payment of the Contract Price. If the Contract Time is a duration of sixty (60) days or more, the Contractor may submit invoices on a monthly basis for the value of Work completed in the prior month, whereupon the District Representative will promptly verify that the Work has been completed as indicated in the Contractor’s invoice. Within thirty (30) days of the date of such verification, the District will make payment equal to ninety-five percent (95%) of the value of the Work completed. Within sixty (60) days of completion of all Work and all other of the Contractor’s obligations hereunder, amounts previously retained from prior invoices will be released to the Contractor. The District may, in its sole discretion, condition payment of the Contract Price, or any portion thereof, upon: (a) the Contractor’s preparation of a Schedule of Values for review and acceptance by the District’s Representative; (b) the submittal of executed Waivers and Releases (on Progress Payment or Final Payment, as applicable) for the Contractor and all Subcontractors receiving any portion of the Contract Price; and/or (c) confirmation of submission of Certified Payroll records of the Contractor and Subcontractors to the DIR. The District may also withhold payment of the Contract Price if: (a) there are claims or the probability of claims being submitted by Subcontractor, Material Suppliers or others in connection with the Work; (b) defective or non-conforming Work which is not remedied; or (c) there are any uncured Contractor defaults.

- 5.1. **District's Right to Disburse Progress Payments by Joint Checks.** Provided that the District is in receipt of the applicable Subcontract or Purchase Order, the District, may in its sole discretion, issue joint checks to the Contractor and such Subcontractor or Material Supplier in satisfaction of its obligation to make Progress Payments or the Final Payment due hereunder.
- 5.2. **No Waiver of Defective or Non-Conforming Work.** The approval of any Application for Progress Payment or the disbursement of any Progress Payment to the Contractor shall not be deemed nor constitute acceptance of defective Work or Work not in conformity with the Contract Documents.
- 5.3. **Progress Payments for Changed Work.** The Contractor's Applications for Progress Payment may include requests for payment on account of Changes in the Work which have been properly authorized and approved by the Facilities Project Manager, Commissioning Agent (CxA), and all other governmental agencies with jurisdiction over such Change in accordance with the terms of the Contract Documents and for which a Change Order has been issued. Except as provided for herein, no other payment shall be made by the District for Changes in the Work

**6. Section Not Used**

- 7. **Projected Energy Savings.** This Project, as designed, is projected to generate energy savings of 92,113 kilowatt hours per year.
- 8. **Liquidated Damages.** The Contractor shall be subject to assessment of Liquidated Damages if the Contractor: (i) fails to achieve Substantial Completion of the Work within the Contract Time, including adjustments thereto authorized by the Contract Documents; or (ii) fails to achieve Final Completion within the time established to achieve Final Completion. The per diem rate of Liquidated Damages assessed for each of the foregoing events is set forth in the Contract Documents. Failure to complete the work within the time set forth herein will result in the imposition of liquidated damages for each consecutive calendar day of delay per building in the amount of **ONE THOUSAND DOLLARS (\$1,000)**. (Government Code Section 53069.85)
- 9. **Limitation on Damages.** If the District breaches or defaults in its performance of its obligations under the Contract Documents, the damages, if any, recoverable by the Contractor shall be limited to general damages which are directly and proximately caused by said breach or default of the District and shall exclude any and all special or consequential damages. By executing this Agreement, the Contractor expressly acknowledges the foregoing limitation to the recovery only of general damages from the District if the District is in breach or default of its obligations under the Contract Documents. The Contractor expressly waives any right to and foregoes the recovery of any special or consequential damages from the District including, without limitation, damages for: (i) lost or impaired bonding capacity; and/or, (ii) lost profits arising out of or in connection with any past, present, or future work of improvement, except for the Project which is the subject of the Contract Documents.

**10. The Contract Documents.** The documents forming a part of the Contract Documents consist of the following, all of which are component parts of the Contract Documents:

Request for Qualifications/ Proposals  
Subcontractors List

Statement of Qualification  
Price Proposal

Certificate re DIR Verification  
Addenda Nos. \_\_\_\_\_  
Energy Services Agreement  
Terms and Conditions  
Non-Collusion Affidavit  
Certification of Workers' Compensation  
Insurance

Drug-Free Workplace Certificate  
Certificate re Alcoholic Beverage and Tobacco-  
Free Campus Policy  
Certificates re DVBE  
Guarantee  
Performance Bond  
Labor & Material Payment Bond

**11. Notices.** Notices of the District and Contractor to the other shall be transmitted in accordance with the Contract Documents. The effective date of notices transmitted in accordance with the Contract Documents shall be as set forth in the Contract Documents. Notices under the Contract Documents shall be addressed as follows:

If to the District:

Carri M. Matsumoto  
Facility Planning, District Construction and  
Support Services  
Rancho Santiago Community College  
District  
2323 N. Broadway, Room 112  
Santa Ana, CA 92706

If to the Contractor:

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

**12. Authority to Execute.** The individual(s) executing this Agreement on behalf of the Contractor is/are duly and fully authorized to execute this Agreement on behalf of Contractor and to bind the Contractor to each and every term, condition and covenant of the Contract Documents.

**CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 2600, SACRAMENTO, CALIFORNIA 95826**

**IN WITNESS WHEREOF,** this Agreement has been duly executed by the District and the Contractor as of the date set forth above.

**DISTRICT”**  
**Rancho Santiago Community College District**

**“CONTRACTOR”**  
**[Contractor Name]**

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

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

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

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

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

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

DRAFT

**TERMS AND CONDITIONS OF  
CONTRACT FOR LABOR AND MATERIALS**

**1. COMMISSIONING AGENT'S ADMINISTRATION OF THE CONTRACT .**

**1.1 Project Oversight.** The Commissioning Agent (CxA) shall provide Project administrative oversight on behalf of the District to ensure that the Contractor's design and implementation meets the project requirements detailed in the RFQ/RFP. The CxA will advise and consult with the District Representative with respect to the administration of the Contract and the Work. The CxA is authorized to act on behalf of the District to the extent provided for in the Contract Documents; and shall have the responsibilities and authority established by the Laws.

**1.2 Design and Pre-construction Phase Administration.**

**1.2.1** CxA shall provide design oversight on behalf of the District to ensure the ESCO Firm's design meets the project requirements detailed in the RFP/RFQ and meet the District's Design Standards for energy management systems and infrastructure.

**1.2.2** The CxA shall perform design review of the ESCO Firm's design submittal package during the schematic design, design development, and construction document phases. The design shall be reviewed against the Owner Project Requirements and the Facility Design Standards.

**1.2.3** Specific design elements to be reviewed include proposed sequence of operations, controller locations, proposed t-stats locations and mounting heights, proposed wiring details, proposed field components, proposed global controllers, Tridium integration design, historical and trend configuration, alert set configuration, lighting controller design, and proposed graphics packages.

**1.2.4** The CxA shall provide a detailed design review of the lighting control systems including the controller locations, relay quantities and locations, scheduling configuration, alerting configuration, trending configuration, and proposed graphics packages.

**1.3 Design and Pre-Construction Phase Commissioning**

**1.3.1** Once the design is approved the CxA shall review all equipment and components submittals required to determine the quality of products submitted meet the Facility Design Standards requirements. The CxA review all others submittals applicable to systems being commissioned for compliance with commissioning needs concurrent with the Owner Project Requirements.

**1.3.2** Once the design is accepted, the CxA shall develop commissioning



specifications that includes: a detailed description of the responsibilities of all parties; details of the commissioning process; reporting and documentation requirements, including formats; alerts to coordination issues; deficiency resolution; construction checklist and startup requirements; the functional testing process; and specific functional test requirements, including testing conditions and acceptance criteria for each piece of equipment being commissioned.

- 1.3.3** The CxA shall coordinate a controls integration meeting where the ESCO Firm and the District discusses integration issues between equipment, systems and disciplines to ensure that integration issues and responsibilities outlined for all team members.

#### **1.4 Construction Phase Administration**

- 1.4.1 Periodic Site Inspections.** The CxA will visit the Site, as necessary, to observe component and system installations. Attend selected planning and job-site meetings to obtain information on construction progress. Review construction meeting minutes for revisions/substitutions relating to the commissioning process. Assist in resolving any discrepancies. The CxA is not required to make exhaustive or continuous Site inspections to check quality or quantity of the Work. On the basis of Site observations as a CxA, the CxA will keep the District informed of the progress of the Work, and will endeavor to guard the District against defects and deficiencies in the Work.
- 1.4.2 Contractor Responsibility for Construction Means, Methods, Schedule and Sequences.** The CxA will not have control over or charge of and will not be responsible for construction means, methods, techniques, schedule, sequences or procedures, or for safety precautions and programs in connection with the Work, these being solely the Contractor's responsibility. The CxA will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.
- 1.4.3 Review of Applications for Payment.** The CxA will review the Contractor's Payment Applications and for Application for Final Payment, evaluate the extent of Work performed and verify to the District the amount properly due the Contractor.
- 1.4.4 Rejection of Work.** The CxA is authorized to reject Work which is defective or does not conform to the requirements of the Contract Documents. Whenever the CxA considers it necessary or advisable, for implementation of the intent of the Contract Documents, the CxA is authorized to require additional inspections or testing of the Work, whether or not such Work is fabricated, installed or completed. Neither this

authority of the CxA nor a decision made in good faith by the CxA to exercise or not to exercise such authority shall modify requirements of the Contract Documents or any obligation of the Contractor under the Contract Documents.

**1.4.5 Submittals.**

**1.4.5.1 Processing of Submittals.** The Contractor shall submit to the CxA, all shop drawings, product data and other submittals (collectively “Submittals”) required by the Contract Documents promptly and in an orderly sequence while allowing sufficient time for review and comment, which review time shall be no less than fifteen (15) calendar days. No portion of the Work requiring Submittals shall be performed until the required Submittals have been reviewed and accepted by the District and its CxA.

**1.4.5.2 CxA’s Review.** The CxA will review and approve or take other appropriate action upon the Contractor’s Submittals, but only for the limited purpose of checking for general conformance with information given and the design concept expressed in the Contract Documents. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The CxA’s review of the Contractor’s Submittals shall not relieve the Contractor of its obligations under the Contract Documents. The CxA’s review of Submittals shall not constitute approval of safety measures, programs or precautions or, unless otherwise specifically stated by the CxA, of any construction means, methods, techniques, sequences or procedures. The CxA’s approval of a specific item in a Submittal shall not indicate approval of an assembly of which the item is a component with the Submittal(s) required and relating to such assembly have been reviewed by the CxA.

**1.4.6 Issuance of Construction Change Directive.** The CxA is not authorized to issue Construction Change Directives.

**1.4.7 Changes to the Work; Change Orders.** The CxA will review Change Orders for impact on commissioning and District objectives. The CxA will advise the District regarding minor Changes in the Work which do not result in adjustment of the Contract Time or the Contract Price.

**1.4.8 Request for Information.** If the Contractor encounters any condition which the Contractor believes, in good faith and with reasonable basis, is the result of an unforeseen condition or ambiguity, conflict, error or

omission in the Scope of Work (hereinafter referred to as “Condition”), Contractor shall timely notify the CxA, in writing, of the Condition encountered and to request information from the CxA necessary to address and resolve any such conditions before proceeding with any portion of the Work affected or which may be affected by such Condition. If the Contractor fails to timely notify the CxA in writing of any Condition encountered and the Contractor proceeds to perform any portion of the Work containing or affected by such Condition, the Contractor shall bear all costs associated with or required to correct, remove, or otherwise remedy any portion of the Work affected thereby without adjustment of the Contract Time or the Contract Price. In requesting information of the CxA to address and resolve any Condition, the Contractor shall act with promptness in submitting any such written request so as to allow the CxA a reasonable period of time to review, evaluate and respond to any such request and in no event less than fifteen (15) days, taking into account the then current status of the progress and completion of the Work and the actual or potential impact of any such Condition upon the completion of the Work within the Contract Time. The Contract Time shall not be subject to adjustment in the event that the Contractor shall fail to timely request information from the CxA. The foregoing provisions notwithstanding, if the CxA reasonably determines that any of Contractor’s request(s) for information: (i) does not reflect adequate or competent supervision or coordination by the Contractor or any Subcontractor; (ii) does not reflect the Contractor’s adequate or competent knowledge of the requirements of the Work or the Contract Documents, including those prepared by Contractor; or (iii) is not justified for any other reason, Contractor shall be liable to the District for all costs incurred by the District associated with the processing, reviewing, evaluating and responding to any such request for information, including without limitation, fees of the CxA. In responding to any of Contractor’s request(s) for information, the CxA shall, in the response, indicate if the CxA has made the determination pursuant to the preceding sentence and, if so, the costs to be borne by the Contractor for the processing, review, evaluation and response to the request for information. Thereafter, the District is authorized to deduct such costs from any portion of the Contract Price then or thereafter due the Contractor.

**1.4.9 Communications; CxA’s Role.** All communications regarding the Work, the performance thereof or the Contract Documents shall be in writing; verbal communications between the Contractor and the CxA and/or District shall be reduced to writing and shall be through the CxA. Communications between separate contractors, if any, shall also be reduced to writing, with copies forwarded to the CxA.

**1.4.10 Completion.** In conjunction with the District, the Contractor and the CxA will conduct observations of the Work to determine the date(s) of Substantial Completion and Final Completion. The CxA shall: (i) be

authorized to enforce the Contractor's close-out obligations; and (ii) receive from the Contractor and the records, written warranties and related close-out materials assembled by the Contractor in accordance with the Contract Documents.

## **1.5 Construction Phase Commissioning**

- 1.5.1** The CxA will coordinate and direct the commissioning activities in a logical, sequential and efficient manner using consistent protocols and forms, centralized documentation, clear and regular communications and consultations with all necessary parties, frequently updated timelines and schedules and technical expertise.
- 1.5.2** The CxA will coordinate the commissioning work with the ESCO Firm to ensure that commissioning activities are being incorporated into the master schedule.
- 1.5.3** The CxA will, as necessary, the construction phase commissioning plan developed during design, including scope and schedule.
- 1.5.4** The CxA will plan and conduct commissioning meetings as needed and distribute minutes.
- 1.5.5** The CxA will request and review additional information required to perform commissioning tasks, including O&M materials, ESCO Firm start-up and checkout procedures. Before startup, gather and review the current control sequences and interlocks and work with ESCO Firm until sufficient clarity has been obtained to be able to write detailed testing procedures.
- 1.5.6** The CxA will perform the following pre-functional tasks:
  - 1.5.6.1** Witness HVAC piping pressure test and flushing, sufficient to be confident that proper procedures were followed. Include testing documentation in the Commissioning Record.
  - 1.5.6.2** Witness any ductwork testing and cleaning sufficient to be confident that proper procedures were followed. Include documentation in the Commissioning Record.
  - 1.5.6.3** Document construction checklist completion by reviewing completed construction checklists and by selected site observation.
  - 1.5.6.4** Document systems startup by reviewing start-up reports and by selected site observation.
  - 1.5.6.5** Approve air and water systems balancing by spot testing and by reviewing completed reports and by selected site observation.
- 1.5.7** With necessary assistance and review from installing ESCO Firm, the CxA will write the functional performance test procedures for equipment and systems. This will include manual functional testing, energy management

control system trending and may include stand-alone datalogger monitoring.

- 1.5.8** The CxA will coordinate, witness and document manual functional performance tests performed by the ESCO Firm. Coordinate retesting as necessary until satisfactory performance is achieved. The functional testing shall include operating the system and components through each of the written sequences of operation, and other significant modes and sequences, including startup, shutdown, occupied mode, occupied-standby, unoccupied mode, manual mode, temperature reset, and air flow reset, staging, miscellaneous alarms, power failure, security alarm when impacted and interlocks with other systems or equipment. Sensors and actuators shall be calibrated during construction check listing by the installing ESCO Firm, and spot-checked by the CxA during functional testing. Analyze functional performance trend logs and monitoring data to verify performance.
- 1.5.9** Tests on respective HVAC equipment shall be executed, if possible, during both the heating and cooling season. However, some overwriting of control values to simulate conditions shall be allowed. Functional testing shall be done using conventional manual methods, control system trend logs, and read-outs or stand-alone dataloggers, to provide a high level of confidence in proper system function, as deemed appropriate by the CxA and the District.
- 1.5.10** The CxA will prepare test plans for, assist with execution of, and document tests of commissioned equipment overseen by regulatory authorities and ensure that such tests meet the testing rigor desired by the District.
- 1.5.11** The CxA will maintain a master issues log and a separate record of functional testing. Report all issues as they occur directly to the District's Representative. Provide directly to the District's Representative written progress reports and test results with recommended actions.

## **1.6 Post-Acceptance Administration**

### **The CxA will complete the following tasks:**

- 1.6.1** Review equipment warranties to ensure that the District's responsibilities are clearly defined.
- 1.6.2** Oversee and review the training of the District's operating personnel.
- 1.6.3** Oversee the digital recording of this training.
- 1.6.4** Review O&M manuals for commissioned equipment.
- 1.6.5** Compile a Commissioning Record, which shall include:
- 1.6.6** A brief summary report that includes a list of participants and roles, brief building description, overview of commissioning and testing scope, and a general description of testing and verification methods. For each piece of commissioned equipment, the report should contain the disposition of the CxA regarding the adequacy of the equipment, documentation and training meeting the contract documents in the following areas:

- A. Equipment meeting the equipment specifications,
- B. Equipment installation,
- C. Functional performance and efficiency
- D. Equipment documentation, and
- E. Operator training.

**1.6.7** All outstanding non-compliance items shall be specifically listed. Recommendations for improvement to equipment or operations, future actions, commissioning process changes, etc. shall also be listed. Each non-compliance issue shall be referenced to the specific functional test, inspection, trend log, etc. where the deficiency is documented.

## **1.7 Post-Construction Commissioning**

**1.7.1** The CxA will return to the site 10 months after warranty initiation to review with facility staff the current building operation. CxA will interview facility staff and identify problems or concerns they have with operating the building as originally intended. Make suggestions for improvements to and for recording these changes in the O&M manuals. Identify areas that may come under warranty or under the original construction contract. Assist facility staff in developing reports, documents, and requests for services to remedy outstanding problems.

**1.7.2** The CxA will coordinate and supervise required seasonal testing and develop a deficiency list in coordination with the ESCO Firm who installed the original system. The CxA will work with the ESCO Firm to review the deficiency list and develop recommended corrections. The CxA will provide final testing documentation and incorporate into the Commissioning Record and O&M manuals as a formal deliverable.

**1.7.3** The CxA will provide trend data requirements and review. Provide a summary report of issues and concerns associated with trend analysis and coordinate with installing ESCO Firm to correct deficiencies.

**2. DISTRICT REPRESENTATIVE.** The District representative assigned to work with Commissioning Agent in the performance of this Agreement is Joe M. Melendez.

**3. CONTRACT DURATION.** Contractor is to commence work on the date identified in the District's Notice to Proceed. All tasks specified in the Scope of Work, EXHIBIT A, shall be substantially completed no later than **ONE HUNDRED EIGHTY-TWO (182) CONSECUTIVE CALENDAR DAYS** from the Notice to Proceed date.

**4. Payment Bond; Performance Bond.** Prior to commencement of Work, the Contractor shall obtain and deliver to the District a Labor and Materials Payment Bond and a Performance Bond. Bonds required hereunder will be accepted by the District only if: (a) they are in the form and content included in the Contract Documents; (b) the Bonds are issued by and Admitted Surety Insurer under California law; and (c) in a penal sum equal to one hundred percent (100%) of the Contract Price

## 5. SCHEDULE; CONTRACT TIME

**5.1 Construction Schedule.** The Contractor shall prepare a Construction Schedule in such form and format as directed by the District, which shall be submitted to the District for its approval. The Construction Schedule shall reflect all activities necessary to complete the Work and shall be in such detail as required by the District. The Contractor shall update the Approved Construction Schedule monthly or more frequently as directed by the District or required by the circumstances of the Work. If the progress of the Work is behind the Approved Construction Schedule, the Contractor shall indicate what measures will be taken to place the Work back on schedule. The District's approval of a Construction Schedule shall be for the sole and limited purpose of determining conformity with the requirements of the Contract Documents. By the Approved Construction Schedule, the District shall not be deemed to have exercised control over, or approval of, construction means, methods or sequences, all of which remain the responsibility and obligation of the Contractor in accordance with the terms of the Contract Documents. Further, the Approved Construction Schedule shall not operate to limit or restrict any of Contractor's obligations under the Contract Documents nor relieve the Contractor from the full, faithful and timely performance of such obligations in accordance with the terms of the Contract Documents. The activities, commencement and completion dates of activities, and the sequencing of activities depicted on the Approved Construction Schedule shall not be modified or revised by the Contractor without the prior consent, or direction, of the District. Updates to the Approved Construction Schedule shall not be deemed revisions to the Approved Construction Schedule. In the event that the Approved Construction Schedule shall depict completion of the Work in a duration shorter than the Contract Time, the same shall not be a basis for an adjustment of the Contract Time or the Contract Price in the event that actual completion of the Work shall occur after such the time depicted in such Approved Construction Schedule. In such event, the Contract Price shall not be subject to adjustment on account of any additional costs incurred by the Contractor to complete the Work prior to the Contract Time, as adjusted in accordance with the terms of the Contract Documents. Any adjustment of the Contract Time or the Contract Price shall be based upon the Contract Time set forth in the Contract Documents and not any shorter duration which may depicted in the Approved Construction Schedule. The District may, from time to time, and in the District's sole and exclusive discretion, transmit to the Contractor's Performance Bond Surety the Approved Construction Schedule, any updates thereof and the narrative statement described hereinabove. The District's election to transmit, or not to transmit such information, to the Contractor's Performance Bond Surety shall not limit the Contractor's obligations under the Contract Documents.

**5.2 Substantial Completion of the Work Within Contract Time.** Unless otherwise expressly provided in the Contract Documents, the Contract Time is the period of time, including authorized adjustments thereto, allotted in the Contract Documents for achieving Substantial Completion of the Work. The date for commencement of the Work is the date established by the Notice to Proceed issued by the District

pursuant to the Agreement, which shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible. The date of Substantial Completion is the date certified by the CxA and the District as such in accordance with the Contract Documents.

### **5.3 Progress and Completion of the Work.**

**5.3.1 Time of Essence.** Time limits stated in the Contract Documents are of the essence. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing and achieving Substantial Completion of the Work. The Contractor shall employ and supply a sufficient force of workers, material and equipment, and prosecute the Work with diligence so as to maintain progress, to prevent Work stoppage and to achieve Substantial Completion of the Work within the Contract Time.

**5.3.2 Substantial Completion.** Substantial Completion is that stage in the progress of the Work when the Work or any designated portion thereof (whether described as milestones, phases, segments or other similar terms) is complete in accordance with the Contract Documents so the District can occupy or use the Work or designated portion thereof for its intended purpose. Substantial Completion shall be determined by the CxA and the District upon request by the Contractor in accordance with the Contract Documents. The good faith and reasonable determination of Substantial Completion by the CxA shall be controlling and final.

#### **5.3.3 Correction or Completion of the Work After Substantial Completion.**

**5.3.3.1 Punchlist.** Upon achieving Substantial Completion of the Work, the District, the CxA and the Contractor shall jointly inspect the Work and prepare a comprehensive list of items of the Work to be corrected or completed by the Contractor (“the Punchlist”). The exclusion of, or failure to include, any item on the Punchlist shall not alter or limit the obligation of the Contractor to complete or correct any portion of the Work in accordance with the Contract Documents.

**5.3.3.2 Time for Completing Punchlist Items.** In addition to establishing the Punchlist items pursuant to Article 5.5.3.1, the CxA shall, after the joint inspection, establish a reasonable time for Contractor’s completion of all Punchlist items. If mutual agreement is not reached to establish the time for the Contractor’s completion of Punchlist items, the CxA shall determine such time, and in such event, the time determined by the CxA shall be final and binding upon the District and Contractor so long as the CxA’s determination is made in good faith. The Contractor shall promptly and diligently proceed to complete all Punchlist items within the time established. If the Contractor fails or refuses, for any reason, to complete all Punchlist items within the time established for the Final Completion, Contractor shall be subject to assessment of



Liquidated Damages in accordance with Article 6 hereof. The foregoing notwithstanding, if the Contractor fails or refuses to complete all Punchlist items, the District may in its sole and exclusive discretion and without further notice to Contractor, elect to cause the completion of all remaining Punchlist items provided, however that such election by the District is in addition to and not in lieu of any other right or remedy of the District under the Contract Documents or at law. If the District elects to complete Punchlist items of the Work, pursuant to the foregoing, Contractor shall be responsible for all costs incurred by the District in connection herewith and the District may deduct such costs from the Contract Price then or thereafter due the Contractor, if these costs exceed the remaining Contract Price due to the Contractor, the Contractor and the Performance Bond Surety are jointly and severally liable to District for any such excess costs.

**5.3.4 Final Completion.** Final Completion is that stage of the Work when all Work has been completed in accordance with the Contract Documents, including without limitation, all Punchlist items noted upon Substantial Completion, and the Contract has been otherwise fully performed by the Contractor. Final Completion shall be determined by the CxA, and the District upon request of the Contractor. The good faith and reasonable determination of Final Completion by the CxA shall be controlling and final.

**5.3.5 Contractor Responsibility for Multiple Inspections.** If the Contractor requests determination of Substantial Completion or Final Completion by the CxA and it is determined by the CxA that the Work does not then justify certification of Substantial Completion or Final Completion and re-inspection is required at a subsequent time to make such determination, the Contractor shall be responsible for all costs of such re-inspection, including without limitation, the fees of the CxA. The District may deduct such costs from the Contract Price then due or thereafter due to the Contractor.

**5.3.6 Final Acceptance.** Final Acceptance of the Work shall occur upon approval of the Work by the District's Board of Trustees; such approval shall be submitted for adoption at the next regularly scheduled meeting of the District's Board of Trustees after the determination of Final Completion. The commencement of any warranty or guarantee period under the Contract Documents is the date upon which the District's Board of Trustees approves of the Final Acceptance of the Work.

**6. LIQUIDATED DAMAGES.** The per diem rate of Liquidated Damages for delayed Substantial Completion and delayed Final Completion shall be as set forth herein.

**6.1 Delayed Substantial Completion.** If Substantial Completion is not achieved on or before expiration of the Contract Time, the Contractor shall be liable to the District for Liquidated Damages from the date of expiration of the Contract Time to the date

that the Contractor achieves Substantial Completion of the Work at the rate of One Thousand Dollars (\$1,000.00) per day. .

- 6.2 Delayed Final Completion.** If the Contractor fails to achieve Final Completion within the time established pursuant to the Contract Documents, the Contractor shall be liable to the District for Liquidated Damages from the date established for Final completion until the date that Final Completion is actually achieved at the rate of One Thousand Dollars (\$1,000.00) per day.
- 6.3 Surety Liability.** Subject only to limitations established by the penal sum of the Performance Bond, the Surety issuing the Performance Bond shall be jointly and severally liable to the District for Liquidated Damages due from the Contractor.

**7. CHANGES.**

- 7.1 Basis for Adjustment of Contract Price.** If Changes in the Work require an adjustment of the Contract Price, the basis for adjustment of the Contract Price shall be as follows:

**7.1.1 Allowable Labor Costs.** Except in the event adjustment of the Contract Price for a District authorized Change is computed by unit prices, the labor costs allowable for incorporation into a Contract Price adjustment for a Change shall be limited as set forth herein.

**7.1.1.1 Limitation to Field Labor and Prevailing Wage Rates.** The Contract Price adjustment for labor necessary to complete a Change shall be limited to the laborers of the Contractor or Subcontractors actually and necessarily engaged in the performance of the Change and for which there is a prevailing wage rate classification. Wage rates for laborers shall not exceed the applicable prevailing wage rate in the locality of the Site for the classification(s) of labor necessary to complete a Change. Use of a prevailing wage rate classification which increases the costs of a Change shall not be allowed. Overtime labor charges for performing any part of the Change shall only be allowed if authorized in writing by the District prior to Contractor's performance of the overtime labor. Use of a labor classification which would increase labor costs associated with any Change shall not be permitted.

**7.1.1.2 Fringe Benefits, Payroll Taxes and Labor Burdens.** The Contractor or Subcontractor may adjust the prevailing wage rate for allowable labor costs to reflect fringe benefits, payroll taxes and labor burdens actually incurred by Contractor and provided to such labor directly engaged in performing a Change. The allowable adjustment for fringe benefit payments, payroll taxes and labor burdens shall not, however, exceed fifteen percent (15%) of the applicable prevailing wage rate and shall not be subject to the additional mark-up set forth in Article 7.1.4.

**7.1.1.3 Excluded Labor Costs.** The Contract Price adjustment for labor costs on account of a Change shall exclude costs: (i) for preparing estimate(s) of the costs of the Change; (ii) to maintain

records relating to the costs of the Change; (iii) for coordination and assembly of materials and information relating to the Change or performance thereof; (iv) to supervise, coordinate or manage the Work of a Change; or (v) any other general administrative overhead or general conditions costs associated with the Change or performance thereof as such costs are incorporated into the overhead and general conditions mark-up costs set forth in Article 7.1.4.

**7.1.2 Materials and Equipment.** Contractor shall be compensated for the costs of materials and equipment necessarily and actually used or consumed in connection with the performance of Changes. Costs of materials and equipment may include reasonable costs of transportation from a source closest to the site of the Work and delivery to the Site. If discounts by Material Suppliers are available for materials necessarily used in the performance of Changes, they shall be credited to the District. If materials and/or equipment necessarily used in the performance of Changes are obtained from a supplier or source owned in whole or in part by the Contractor, compensation therefor shall not exceed the current wholesale price for such materials or equipment. If, in the reasonable opinion of the District, the costs asserted by the Contractor for materials and/or equipment in connection with any Change is excessive, or if the Contractor fails to provide satisfactory evidence of the actual costs of such materials and/or equipment from its supplier or vendor of the same, the costs of such materials and/or equipment and the District's obligation for payment of the same shall be limited to the then lowest wholesale price at which similar materials and/or equipment are available in the quantities required to perform the Change. The District may elect to furnish materials and/or equipment for Changes to the Work, in which event the Contractor shall not be compensated for the costs of furnishing such materials and/or equipment or any mark-up thereon.

**7.1.3 Construction Equipment.** Contractor shall be compensated for the actual cost of the necessary and direct use of Construction Equipment in the performance of Changes to the Work. Use of such Construction Equipment in the performance of Changes to the Work shall be compensated in increments of fifteen (15) minutes. Rental time for Construction Equipment moved by its own power shall include time required to move such Construction Equipment to the site of the Work from the nearest available rental source of the same. If Construction Equipment is not moved to the Site by its own power, Contractor will be compensated for the loading and transportation costs in lieu of rental time. The foregoing notwithstanding, neither moving time or loading and transportation time shall be allowed if the Construction Equipment is used for performance of any portion of the Work other than Changes to the Work. Unless prior approval in writing is obtained by the Contractor from the District, no costs or compensation shall be allowed for time while Construction Equipment is inoperative, idle or on standby, for any reason. The Contractor shall not be entitled to an allowance

or any other compensation for Construction Equipment or tools used in the performance of Changes to the Work where such Construction Equipment or tools have a replacement value of \$500.00 or less. Construction Equipment costs claimed by the Contractor in connection with the performance of any Change to the Work shall not exceed rental rates established by distributors or construction equipment rental agencies in the locality of the Site; any costs asserted which exceed such rental rates shall not be allowed or paid. Unless otherwise specifically approved in writing by the District, the allowable rate for the use of Construction Equipment in connection with Changes to the Work shall constitute full compensation to the Contractor for the cost of rental, fuel, power, oil, lubrication, supplies, necessary attachments, repairs or maintenance of any kind, depreciation, storage, insurance, labor (exclusive of labor costs of the Construction Equipment operator), and any all other costs incurred by the Contractor incidental to the use of such Construction Equipment.

**7.1.4** Mark-Ups on Changes to the Work. In the event of Changes to the Work, pursuant to this Article, the mark-up for all overhead (including home and field office overhead), general conditions costs and profit, shall not exceed the percentage of allowable direct actual costs for performance of the Change as set forth below.

**7.1.4.1** Subcontractor Performed Changes. For the portion of any Change performed by Subcontractors of any tier, the percentage mark-up on allowable actual direct labor and materials costs incurred by all Subcontractors of any tier shall be Ten Percent (10%). In addition, for the portion of any Change performed by a Subcontractor of any tier, the Contractor may add an amount equal to Five Percent (5%) of the allowable actual direct labor and materials costs of Subcontractors performing the Change; the foregoing mark-up shall not be applied to the Subcontractor mark-up.

**7.1.4.2** Contractor Performed Changes. For the portion of any Change performed by the Contractor's own forces, the mark-up on the allowable actual direct labor and materials costs of such portion of a Change shall be Fifteen Percent (15%).

**7.1.4.3** Bond Premium Costs. In addition to the foregoing mark-ups on the direct costs of labor and materials, a bond premium expense in an amount equal to the lesser of the Contractor's actual bond premium rate or one percent (1%) of the total actual direct costs of labor and materials (before Subcontractor and Contractor mark-ups) will be allowed.

**7.1.4.4** Exclusions From Mark-Up of Actual Costs. Mark-ups on the actual cost of materials/equipment incorporated into a Change or for purchase/rental of Construction Equipment shall not be applied to any portion of such costs which are for sales, use or other taxes arising out of the purchase of materials/equipment and/or for purchase/rental of Construction Equipment.

**7.1.5** Contractor Maintenance of Records. If the Contractor is directed to perform any Changes to the Work pursuant to Article 7, or should the Contractor encounter conditions which the Contractor, pursuant to Article 7.5, believes would obligate the District to adjust the Contract Price and/or the Contract Time, the Contractor shall maintain detailed records on a daily basis. Such records shall include without limitation hourly records for labor and Construction Equipment and itemized records of materials and equipment used that day in connection with the performance of any Change to the Work. In the event that more than one Change to the Work is performed by the Contractor in a calendar day, Contractor shall maintain separate records of labor, Construction Equipment, materials and equipment for each such Change. If any Subcontractor provides or performs any portion of any Change to the Work, the Contractor shall require that each such Subcontractor maintain records in accordance with this Article. Each daily record maintained hereunder shall be signed by Contractor's Superintendent or Contractor's authorized representative; such signature shall be deemed Contractor's representation and warranty that all information contained therein is true, accurate, complete and relate only to the Change referenced therein. All records maintained by a Subcontractor, of any tier, relating to the costs of a Change to the Work shall be signed by such Subcontractor's authorized representative or Superintendent. All records maintained hereunder shall be subject to inspection, review and/or reproduction by the District, upon request. If the Contractor fails or refuses, for any reason, to maintain or make available for inspection, review and/or reproduction such records and the adjustment to the Contract Price on account of any Change to the Work is determined pursuant to this Article, the District's reasonable good faith determination of the extent of adjustment to the Contract Price on account of such Change shall be final, conclusive, dispositive and binding upon the Contractor. The Contractor's obligation to maintain records hereunder is in addition to, and not in lieu of, any other Contractor obligation under the Contract Documents with respect to Changes to the Work. Contractor

**7.1.6** Contractor Record of Documentation. Contractor agrees to provide the District with all information requested to substantiate the cost of the change order and to inform the District whether the Work will be done by the ESCO or a subcontractor. ESCO shall maintain detailed records on a daily basis. Such records shall include without limitation hourly records for labor and Construction Equipment and itemized records of materials and equipment used that day in connection with the performance of any Change to the Work. In the event that more than one Change to the Work is performed by the ESCO in a calendar day, ESCO shall maintain separate records of labor, Construction Equipment, materials and equipment for each such Change. In the event that any Subcontractor, of any tier, shall provide or perform any portion of any Change to the Work, ESCO shall require that each such Subcontractor maintain records in accordance with this Article. Each daily record maintained hereunder shall be signed by ESCO's Superintendent or

ESCO's authorized representative; such signature shall be deemed ESCO's representation and warranty that all information contained therein is true, accurate, complete, and relate only to the Change referenced therein. All records maintained by a subcontractor, of any tier, relating to the costs of a Change to the Work shall be signed by such subcontractor's authorized representative or superintendent. All records maintained hereunder shall be subject to inspection, review and/or reproduction by the District upon request. In the event that ESCO shall fail or refuse, for any reason, to maintain or make available for inspection, review and/or reproduction such records and the adjustment to the Total Services Price on account of any Change to the Work is determined pursuant to this Article, the District's reasonable good faith determination of the extent of adjustment to the Total Services Price on account of such Change shall be final, conclusive, dispositive and binding upon ESCO.

**7.2 Change Orders.** If the District approves of a Change, a written Change Order prepared by the District shall be forwarded to the Contractor describing the Change and setting forth the adjustment to the Contract Time and the Contract Price, if any, on account of such Change. All Change Orders shall be in full payment and final settlement of all claims for direct, indirect and consequential costs including, without limitation, costs of delays or impacts related to, or arising out of, items covered and affected by the Change Order, as well as any adjustments to the Contract Time. Any claim or item relating to any Change incorporated into a Change Order not presented by the Contractor for inclusion in the Change Order shall be deemed waived. The Contractor shall execute the Change Order prepared pursuant to the foregoing; once the Change Order has been prepared and forwarded to the Contractor for execution, without the prior approval of the District which may be granted or withheld in the sole and exclusive discretion of the District, the Contractor shall not modify or amend the form or content of such Change Order, or any portion thereof. The Contractor's attempted or purported modification or amendment of any such Change Order, without the prior approval of the District, shall not be binding upon the District; any such unapproved modification or amendment to such Change Order shall be null, void and unenforceable. Unless otherwise expressly provided for in the Contract Documents or in the Change Order, any Change Order issued hereunder shall be binding upon the District only upon action of the District's Board of Trustees approving and ratifying such Change Order. In the event of any amendment or modification made by the Contractor to a Change Order for which there is no prior approval by the District, in accordance with the provisions of this Article, unless otherwise expressly stated in its approval and ratification of such Change Order, any action of the Board of Trustees to approve and ratify such Change Order shall be deemed to be limited to the Change Order as prepared by the District; such approval and ratification of such Change Order shall not be deemed the District's approval and ratification of any unapproved amendment or modification by the Contractor to such Change Order.

**7.3 Unilateral Change Orders.** A Unilateral Change Order is a Change Order issued by the District before the Contractor and District have agreed on the price and/or

time of performance for the Change. The District may, in its sole reasonable discretion, issue a Unilateral Change Order for Changes in the Work approved by the District notwithstanding any objection of the Contractor to the District's determination of the extent of any adjustment to the Contract Price or Contract Time. The District shall issue a Unilateral Change Order only in the event that the District has notified the Contractor in writing of the District's determination, and the Contractor has notified the District in writing, not more than fifteen (15) calendar days from the date of the District's written notice of its objection to the District's determination, or the District's determination has been deemed accepted by the Contractor and the Contractor has waived its right to protest or otherwise object to District's determination by failing to notify the District in writing, not more than fifteen (15) calendar days from the date of the District's written notice of its objection to the District's determination. A Unilateral Change Order shall describe the Change and set forth the adjustment to the Contract Time and Contract Price, if any, and may include, without limitation, direct costs, indirect costs, and/or costs of delay or impact related to, or arising out of, items covered and/or affected by the Change Order. The District shall forward to the Contractor for information only a copy of the proposed Unilateral Change Order at least five (5) calendar days prior to the Board of Trustees' review and consideration of the Unilateral Change Order. Any Unilateral Change Order issued hereunder shall be binding upon the District and Contractor only upon action of the District's Board of Trustees' approval or ratification of same. Any and all claims by the Contractor arising out of such Unilateral Change Order, and/or the Change giving rise to such Unilateral Change Order, shall accrue as of the date of the Board of Trustees' approval or ratification of each such Unilateral Change Order and shall be subject to the claim provisions set forth herein.

**7.4 Construction Change Directive.** A Construction Change Directive is a written instrument issued by the District directing a Change to the Work prior to the Contractor and District reaching full agreement on an adjustment of the Contract Time and/or Contract Price on account of such Change. The Contractor shall promptly commence and diligently complete any Change to the Work subject to a Construction Change Directive issued hereunder. The Contractor shall not be relieved or excused from its prompt commencement and diligent completion of any Change subject to a Construction Change Directive by virtue of the absence or inability of the Contractor and the District to agree upon the extent of any adjustment to the Contract Time or the Contract Price for such Change. The issuance of a Change Order pursuant to this Article in connection with any Change authorized by the District under this Article shall not be deemed a condition precedent to Contractor's obligation to promptly commence and diligently complete any such Change authorized by a Construction Change Directive hereunder. Upon completion of the Work such Change, if the Contractor and District have not agreed on the Contract Time and Contract Price for such Change, District shall issue a Unilateral Change Order pursuant to Article 7.3 hereof.

**7.5 Contractor Notice of Changes.** If the Contractor should claim that any instruction, request, the Drawings, the Specifications, action, condition, omission, default, or

other situation obligates the District to increase the Contract Price or to extend the Contract Time, the Contractor shall notify the District, in writing, of such claim within ten (10) calendar days from the date of its actual or constructive notice of the factual basis supporting the same. The District shall consider any such claim of the Contractor only if sufficient supporting documentation is submitted with the Contractor's notice to the District. Time is of the essence in Contractor's written notice pursuant to the preceding sentence so that the District can promptly investigate and consider alternative measures to the address such instruction, request, Drawings, Specifications, action, condition, omission, default or other situation. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice (with sufficient supporting documentation to permit the District's review and evaluation) within ten (10) calendar days of its actual or constructive knowledge of any instruction, request, Drawings, Specifications, action, condition, omission, default or other situation for which the Contractor believes there should an adjustment of the Contract Time or the Contract Price shall be deemed Contractor's waiver, release, discharge and relinquishment of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of any such instruction, request, Drawings, Specifications, action, condition, omission, default or other situation. In the event that the District determines that the Contract Price or the Contract Time are subject to adjustment based upon the events, circumstances and supporting documentation submitted with the Contractor's written notice under this Article, any such adjustment shall be determined in accordance with the provisions of Article 7.

- 7.6 Unit Price Items.** If the Price Proposal for the Work includes proposal(s) for Unit Price Item(s), during Contractor's performance of the Work, the District may elect to add or delete any such Unit Price Item(s). If the District elects to add or delete any such Unit Price Item(s) pursuant to the foregoing, the debit or credit for such Unit Price Item(s) shall be in accordance with the amount(s) set forth in the Contractor's Unit Price Item(s) Proposal.
- 7.7 Addition or Deletion of Alternate Proposal Item(s).** If the Price Proposal for the Work includes proposal(s) for Alternate Proposal Item(s), during Contractor's performance of the Work, the District may elect, pursuant to this Article to add any such Alternate Proposal Item(s) if the same did not form a basis for award of the Contract or delete any such Alternate Proposal Item(s) if the same formed a basis for award of the Contract. If the District elects to add or delete any such Alternate Proposal Item(s) pursuant to the foregoing, the cost or credit for such Alternate Proposal Item(s) shall be as set forth in the Contractor's Price Proposal. If any Alternate Proposal Item is added or deleted from the Work pursuant to the foregoing, the Contract Time shall be adjusted by the number of days allocated for the added or deleted Alternate Proposal Item in the Contract Documents; if days are not allocated for any Alternate Proposal Item added or deleted pursuant to the foregoing, the Contract Time shall be equitably adjusted to the extent that the addition or deletion of an Alternate Proposal Item actually affects Work on the critical path of the



Construction Schedule as of the date upon which an Alternate Proposal Item is added to or deleted from the Work.

- 7.8 Allowances.** Any and all sums designated as an “Allowance” and included in the Contract Price shall be expended only as directed by the District for the District's purposes. No expenditure for the Work shall be charged against an Allowance without the prior written consent of the District. Allowance Items shall be included in the Schedule of Values, are subject to the Terms and Conditions re Submittals, and shall be processed as Changes in accordance with this Article 7. At Project closeout, any portion of an Allowance not expended for the Work shall be credited to the District by Change Order.
- 7.9 Substitutions.** No substitution of any specified item, product, material or system (“Specified Items”) will be considered unless the Contractor submits a request to substitute Specified Items along with data substantiating the equivalency of the proposed substitution with the Specified Items in accordance with the time limitations set forth in the District’s Request for Proposals. The Contractor shall reimburse the District for all costs and expenses incurred by the District to review a proposed substitution for Specified Items. The District’s acceptance or rejection of a proposed substitution shall be final. No substitution accepted by the District shall increase the Contract Price or the Contract Time; provided, however, if the cost to furnish/install an approved substitution is less than the specified Item, the Contract Price shall be reduced by such cost difference. If any Specified Items are identified in any portion of the Contract Documents as “District Standard Materials/Equipment” “match existing in use” or similar words/phrases, in accordance with Public Contract Code §3400, the District shall be deemed to have made a finding that such Specified Items are designated as “sole source” items designed to match existing and in use items. In accordance with Public Contract Code §3400, the District will not consider or accept alternatives or substitutions for any Specified Items so identified.
- 7.10 Disputed Changes.** In the event of any dispute or disagreement between the Contractor and the District regarding the characterization of any item as a Change to the Work or as to the appropriate adjustment of the Contract Price or the Contract Time on account thereof, the Contractor shall promptly proceed with the performance of such item of the Work, subject to a subsequent resolution of such dispute or disagreement in accordance with the terms of the Contract Documents. The Contractor’s failure or refusal to so proceed with such Work shall be deemed to be Contractor’s default of a material obligation of the Contractor under the Contract Documents.
- 7.11 Adjustment of Contract Time.** If Substantial Completion is delayed, adjustment, if any, to the Contract Time on account of such delay shall be in accordance with this Article.
- 7.11.1 Excusable Delays.** If Substantial Completion of the Work is delayed by Excusable Delays, the Contract Time shall be subject to adjustment for such

reasonable period of time as determined by the District; Excusable Delays shall not result in any increase in the Contract Price. Excusable Delays refer to unforeseeable and unavoidable casualties or other unforeseen causes beyond the control, and without fault or neglect, of the Contractor, any Subcontractor, Material Supplier or other person directly or indirectly engaged by the Contractor in performance of any portion of the Work. Excusable Delays include unanticipated and unavoidable labor disputes, unusual and unanticipated delays in transportation of equipment, materials or Construction Equipment reasonably necessary for completion and proper execution of the Work, unanticipated unusually severe weather conditions or DSA directive to stop the Work. Neither the financial resources of the Contractor or any person or entity directly or indirectly engaged by the Contractor in performance of any portion of the Work shall be deemed conditions beyond the control of the Contractor. If an event of Excusable Delay occurs, the Contract Time shall be subject to adjustment hereunder only if the Contractor establishes: (i) full compliance with all applicable provisions of the Contract Documents relative to the method, manner and time for Contractor's notice and request for adjustment of the Contract Time; (ii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time are outside the reasonable control and without any fault or neglect of the Contractor or any person or entity directly or indirectly engaged by Contractor in performance of any portion of the Work; and (iii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time directly and adversely impacted the critical path of the Work as indicated in the Approved Construction Schedule or the most recent updated Approved Construction Schedule relative to the date(s) of the claimed event(s) of Excusable Delay. The foregoing provisions notwithstanding, if the Terms and Conditions set forth a number of "Rain Days" to be anticipated during performance of the Work, the Contract Time shall not be adjusted for rain related unusually severe weather conditions until and unless the actual number of Rain Days during performance of the Work shall exceed those noted and agreed upon in the Approved Construction Schedule and such additional Rain Days shall have directly and adversely impacted the critical path of the Work as depicted in the Approved Construction Schedule or the most recent updated Approved Construction Schedule relative to the date(s) of such additional Rain Days.

**7.11.1.1** Rain Days. The Project Construction Schedule shall include 0 Rain Days. Rain Days are those days on which the Contractor is prevented by inclement weather or conditions resulting immediately therefrom adverse to the current controlling operation or operations, as determined by the District or the District, from proceeding with at least 75 percent of the normal labor and equipment force engaged on that operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations.

**7.11.2** Compensable Delays. If Substantial Completion of the Work is delayed

and such delay is caused by the acts or omissions of the District or separate contractor employed by the District (collectively “Compensable Delays”), upon Contractor’s request and notice, in strict conformity with set forth herein, the Contract Time will be adjusted by Change Order for such reasonable period of time as determined by the District. In accordance with California Public Contract Code §7102, if the Contractor’s progress is delayed by any of the events described in the preceding sentence, Contractor shall not be precluded from the recovery of damages directly and proximately resulting therefrom, provided that the District is liable for the delay, the delay is unreasonable under the circumstances involved and the delay was not within the reasonable contemplation of the District and the Contractor at the time of execution of the Agreement. In such event, Contractor’s damages, if any, shall be limited to direct, actual and unavoidable additional costs of labor, materials or Construction Equipment directly resulting from such delay, and shall exclude indirect or other consequential damages. Except as expressly provided for herein, Contractor shall not have any other claim, demand or right to adjustment of the Contract Price arising out of delay, interruption, hindrance or disruption to the progress of the Work. Adjustments to the Contract Price and the Contract Time, if any, on account of Changes to the Work or Suspension of the Work shall be governed by the applicable provisions of the Contract Documents.

**7.11.3 Inexcusable Delays.** Inexcusable Delays refer to any delay to the progress of the Work caused by events or factors other than those specifically identified in Articles 7.11.1 and 7.11.2 above. Neither the Contract Price nor the Contract Time shall be adjusted on account of Inexcusable Delays.

**7.11.4 Adjustment to Contract Time.** In the event of any Change(s) to the Work pursuant to this Article, the Contract Time shall be extended or reduced by Change Order for a period of time commensurate with the time reasonably necessary to perform such Change. If any Change requires an extension of the Contract Time, the Contractor shall not be subject to Liquidated Damages for such period of time.

## **8. WAGE RATES; EMPLOYMENT OF LABOR.**

### **8.1.1 Prevailing Wage Rates.**

**8.1.1.1 Prevailing Wage Rate Schedules.** Pursuant to the provisions of Division 2, Part 7, Chapter 1, Article 2 of the California Labor Code at §§1770 et seq., the District has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the prevailing rate for holiday and overtime work in the locality in which the Work is to be performed. Holidays shall be as defined in the collective bargaining agreement applicable to each particular craft, classification or type of worker employed under the Contract.

Per diem wages include employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided in California Labor Code §1773.8, apprenticeship or other training programs authorized by California Labor Code §3093, and similar purposes when the term “per diem wages” is used herein. Holiday and overtime work, when permitted by law, shall be paid for at the rate of at least one and one-half (1½) times the above specified rate of per diem wages, unless otherwise specified. The Contractor shall post, at appropriate and conspicuous locations on the Site, a schedule showing all determined general prevailing wage rates.

**8.1.1.2** Payment of Prevailing Rates. There shall be paid each worker of the Contractor and Subcontractors, of any tier, engaged in the Work, not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor, of any tier, and such worker.

**8.1.1.3** Prevailing Rate Penalty. The Contractor shall, as a penalty, forfeit not more than Two Hundred Dollars (\$200.00) to the District for each calendar day or portion thereof, for each worker paid less than the prevailing rates for such work or craft in which such worker is employed for the Work by the Contractor or by any Subcontractor, of any tier, in connection with the Work. The amount of the penalty for failure to pay applicable prevailing wage rates shall be determined and assessed in accordance with the standards established pursuant to Labor Code §1775(a)(2). The amount of the penalty shall be determined based on consideration of both of the following: (i) whether the failure of the Contractor or Subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the Contractor or Subcontractor; and (ii) whether the Contractor or Subcontractor has a prior record of failing to meet its prevailing wage obligations. The penalty may not be less than forty dollars (\$40) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the Contractor or Subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor. The penalty may not be less than eighty dollars (\$80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Contractor or Subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned. The

penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1. When the penalty amount due hereunder is collected from the Contractor or Subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that Contractor or Subcontractor shall be satisfied before applying that amount to the penalty imposed on that Contractor or Subcontractor hereunder. The difference between prevailing wage rates and the amount paid to each worker each calendar day, or portion thereof, for which each worker paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

**8.1.1.4** Prevailing Wage Rate Monitoring and Enforcement. During the Work and pursuant to Labor Code §1771.4(a)(4), the Department of Industrial Relations shall monitor and enforce the obligation of the Contractor and Subcontractors of every tier to pay laborers performing any portion of the Work the Prevailing Wage Rate established for the classification of work/labor performed.

**8.1.2** Payroll Records.

**8.1.2.1** Certified Payroll Records. Pursuant to California Labor Code §1776, the Contractor and each Subcontractor, of any tier, shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each person employed for the Work.

**8.1.2.2** Certified Payroll Records Submittal to Labor Commissioner. The Contractor and all Subcontractors shall prepare and submit Certified Payroll Records to the Labor Commissioner in compliance with requirements established in Labor Code §1771.4. The form and content of Certified Payroll Records shall be as established by the Labor Commissioner and the frequency of Certified Payroll Records submittal to the Labor Commissioner shall be pursuant to Labor Code §1771.4.

**8.1.2.3** Inspection and Copies of Certified Payroll Records. The payroll records shall be certified and available for inspection at all reasonable hours at the principal office of the Contractor on the following basis: (i) a certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request; (ii) a certified copy of all payroll records shall be made available for inspection or furnished upon request to the District, the Division of Labor Standards Enforcement ("DLSE") and the Division of Apprenticeship Standards of the Department of

Industrial Relations (“Apprenticeship Council”); (iii) a certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, DLSE and the Apprenticeship Council. If the requested payroll records have not been provided, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, Subcontractors and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor; (iv) the Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; (v) any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Apprenticeship Council or DLSE shall be marked or obliterated in such a manner as to prevent disclosure of an individual’s name, address and social security number. The name and address of the Contractor or any Subcontractor, of any tier, performing a part of the Work shall not be marked or obliterated. The Contractor shall inform the District of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change or location and address. In the event of noncompliance with the foregoing requirements, the Contractor shall have ten (10) days in which to comply, subsequent to receipt of written notice specifying in what respects the Contractor must comply herewith. Should noncompliance still be evident after such ten (10) day period, the Contractor shall, as a penalty to the District, forfeit One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Apprenticeship Council or DLSE, such penalties shall be withheld from any portion of the Contract Price then or thereafter due the Contractor. The Contractor is solely responsible for compliance with the foregoing provisions.

**8.1.3** Hours of Work.

**8.1.3.1** Limits on Hours of Work. Pursuant to California Labor Code §1810, eight (8) hours of labor shall constitute a legal day’s work. Pursuant to California Labor Code §1811, the time of service of any worker employed at any time by the Contractor or by a Subcontractor, of any tier, upon the Work or upon any part of the Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereafter provided. Notwithstanding the foregoing provisions, Work performed by employees of

Contractor or any Subcontractor, of any tier, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

**8.1.3.2** Penalty for Excess Hours. The Contractor shall pay to the District a penalty of Twenty-five Dollars (\$25.00) for each worker employed on the Work by the Contractor or any Subcontractor, of any tier, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

**8.1.3.3** Contractor Responsibility. Any Work performed by workers necessary to be performed after regular working hours or on Saturdays, Sundays or other holidays shall be performed without adjustment to the Contract Price or any other additional expense to the District. The Contractor shall be responsible for costs incurred by the District which arise out of Work performed by the Contractor at times other than regular working hours and regular working days. Upon determination of such costs, the District may deduct such costs from the Contract Price then or thereafter due the Contractor.

**8.1.4** Section Not Used

**8.1.5** Apprentices.

**8.1.5.1** Employment of Apprentices. Any apprentices employed to perform any of the Work shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code §3077 who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code §§3070 et seq. are eligible to be employed for the Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

**8.1.5.2** Apprenticeship Certificate. When the Contractor or any Subcontractor, of any tier, in performing any of the Work employs workers in any Apprenticeshipable Craft or Trade, the Contractor and such Subcontractor shall apply to the Joint Apprenticeship Committee administering the apprenticeship

standards of the craft or trade in the area of the site of the Work for a certificate approving the Contractor or such Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected, provided, however, that the approval as established by the Joint Apprenticeship Committee or Committees shall be subject to the approval of the Administrator of Apprenticeship. The Joint Apprenticeship Committee or Committees, subsequent to approving the Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or such Subcontractor in order to comply with California Labor Code §1777.5. Prior to the commencement of the Work, the Contractor and Subcontractors shall submit contract award information (on Form DAS-140) to the applicable Joint Apprenticeship Committee which shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. Concurrently with submission of contract information on Form DAS-140 to the Apprenticeship Council, the Contractor shall deliver a copy of its completed DAS-140 to the District and the Project Manager. There shall be an affirmative duty upon the Joint Apprenticeship Committee or Committees, administering the apprenticeship standards of the crafts or trades in the area of the site of the Work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. Contractors or Subcontractors shall not be required to submit individual applications for approval to local Joint Apprenticeship Committees provided they are already covered by the local apprenticeship standards.

### 8.1.5.3

Ratio of Apprentices to Journeymen. The ratio of Work performed by apprentices to journeymen, who shall be employed in the Work, may be the ratio stipulated in the apprenticeship standards under which the Joint Apprenticeship Committee operates, but in no case shall the ratio be less than one hour of apprentice work for each five hours of labor performed by a journeyman, except as otherwise provided in California Labor Code §1777.5. The minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeymen. Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the Joint Apprenticeship Committee, is employed at the site of the Work and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The Contractor shall employ apprentices for the number of hours computed as above before the completion of the Work. The Contractor shall,



however, endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the site of the Work. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a Joint Apprenticeship Committee, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification. The Contractor or any Subcontractor covered by this Article and California Labor Code §1777.5, upon the issuance of the approval certificate, or if it has been previously approved in such craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the Contractor that it employs apprentices in such craft or trade in the State of California on all of its contracts on an annual average of not less than one apprentice to each five journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the Contractor from the 1-to-5 ratio as set forth in this Article and California Labor Code §1777.5. This Article shall not apply to contracts of general contractors, or to contracts of specialty contractors not bidding for work through a general or prime contractor, involving less than Thirty Thousand Dollars (\$30,000.00) or twenty (20) working days. The term "Apprenticeable Craft or Trade," as used herein shall mean a craft or trade determined as an Apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

#### **8.1.5.4**

Exemption From Ratios. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions are met: (i) unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%) or; (ii) the number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen, or; (iii) the Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis, or; (iv) if assignment of an apprentice to any Work performed under the Contract Documents would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman. When such exemptions

from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

**8.1.5.5**

Contributions to Trust Funds. The Contractor or any Subcontractor, of any tier, who, performs any of the Work by employment of journeymen or apprentices in any Apprenticeable Craft or Trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the site of the Work, to which fund or funds other contractors in the area of the site of the Work are contributing, shall contribute to the fund or funds in each craft or trade in which it employs journeymen or apprentices in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept such funds, contractors not signatory to the trust agreement shall, using California Apprenticeship Council Training Fund Contributions Form CAC-2, pay a like amount to the California Apprenticeship Council. The Division of Labor Standards Enforcement is authorized to enforce the payment of such contributions to such fund(s) as set forth in California Labor Code §227. Such contributions shall not result in an increase in the Contract Price.

**8.1.5.6**

Contractor's Compliance. The responsibility of compliance with this Article for all Apprenticeable Trades or Crafts is solely and exclusively that of the Contractor. All decisions of the Joint Apprenticeship Committee(s) under this Article are subject to the provisions of California Labor Code §3081. If the Contractor willfully fails to comply with the provisions of this Article and California Labor Code §1777.5, pursuant to California Labor Code §1777.7, the Contractor shall: (i) be denied the right to bid on any public works contract for a period of one (1) year from the date the determination of non-compliance is made by the Administrator of Apprenticeship; and (ii) forfeit, as a civil penalty, Fifty Dollars (\$50.00) for each calendar day of noncompliance. Notwithstanding the provisions of California Labor Code §1727, upon receipt of such determination, the District shall withhold such amount from the Contract Price then due or to become due. Any such determination shall be issued after a full investigation, a fair and impartial hearing, and reasonable notice thereof in accordance with reasonable rules and procedures prescribed by the California Apprenticeship Council. Any funds withheld by the District pursuant to this Article shall be deposited in the General

Fund or other similar fund of the District. The interpretation and enforcement of California Labor Code §§1777.5 and 1777.7 shall be in accordance with the rules and procedures of the California Apprenticeship Council.

**8.1.6** Employment of Independent Contractors. Pursuant to California Labor Code §1021.5, Contractor shall not willingly and knowingly enter into any agreement with any person, as an independent contractor, to provide any services in connection with the Work where the services provided or to be provided requires that such person hold a valid contractors' license issued pursuant to California Business and Professions Code §§7000 et seq. and such person does not meet the burden of proof of his/her independent contractor status pursuant to California Labor Code §2750.5. If the Contractor employs any person in violation of the foregoing, Contractor shall be subject to the civil penalties under California Labor Code §1021.5 and any other penalty provided by law. In addition to the penalties provided under California Labor Code §1021.5, Contractor's violation of this Article 8.1.6 or the provisions of California Labor Code §1021.5 shall be deemed an event of Contractor's default under Article 14 of these Terms and Conditions. The Contractor shall require any Subcontractor or Sub-Subcontractor performing or providing any portion of the Work to adhere to and comply with the foregoing provisions.

**9. ASSIGNMENT OF ANTITRUST CLAIMS.** Pursuant to California Government Code §4551, the Contractor and its Subcontractor(s), of any tier, hereby offers and agrees to assign to the District all rights, title and interest in and to all causes of action they may have under Section 4 of the Clayton Act, (15 U.S.C. §15) or under the Cartwright Act (California Business and Professions Code §§16700 et seq.), arising from purchases of goods, services or materials hereunder or any Subcontract. This assignment shall be made and become effective at the time the District tenders Final Payment to the Contractor, without further acknowledgment by the parties. If the District receives, either through judgment or settlement, a monetary recovery in connection with a cause of action assigned under California Government Code §§4550 et seq., the assignor thereof shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the District any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the District as part of the Contract Price, less the expenses incurred by the District in obtaining that portion of the recovery. Upon demand in writing by the assignor, the District shall, within one year from such demand, reassign the cause of action assigned pursuant to this Article if the assignor has been or may have been injured by the violation of law for which the cause of action arose: and (i) the District has not been injured thereby; or (ii) the District declines to file a court action for the cause of action.

**10. NOT USED**

**11. SUBCONTRACTORS**

**11.1 Subcontracts.** Any Work performed for the Contractor by a Subcontractor shall be pursuant to a written agreement between the Contractor and such Subcontractor which specifically incorporates by reference the Contract Documents and which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents, including without limitation, the policies of insurance required under Article 13 of the Terms and Conditions and obligates the Subcontractor to assume toward the Contractor all the obligations and responsibilities of the Contractor which by the Contract Documents the Contractor assumes toward the District. The foregoing notwithstanding, no contractual relationship shall exist, or be deemed to exist, between any Subcontractor and the District, unless the Contract is terminated and District, in writing, elects to assume the Subcontract. Each Subcontract for a portion of the Work shall provide that such Subcontract may be assigned to the District if the Contract is terminated by the District pursuant to Article 14 hereof, subject to the prior rights of the Surety if the District terminates the Contract for the Contractor's default. The Contractor shall provide to the District copies of all executed Subcontracts and Purchase Orders to which Contractor is a party within thirty (30) days after Contractor's execution of the Agreement. During performance of the Work, the Contractor shall, from time to time, as and when requested by the District, provide the District with copies of any and all Subcontracts or Purchase Orders relating to the Work and all modifications thereto. The Contractor's failure or refusal, for any reason, to provide copies of such Subcontracts or Purchase Orders in accordance with the two preceding sentences is Contractor's default of a material term of the Contract Documents.

**11.2 Subcontractors' Work.** Whenever the Work of a Subcontractor is dependent upon the Work of the Contractor or another Subcontractor, the Contractor shall require the Subcontractor to: (i) coordinate its Work with the dependent Work; (ii) provide necessary dependent data and requirements; (iii) supply and/or install items to build into the dependent Work of others; (iv) make appropriate provisions for dependent Work of others; (v) carefully examine and understand the portions of the Contract Documents (including Drawings, Specifications and Field Clarifications) and Submittals relating to the dependent Work; and (vi) examine the existing dependent Work and verify that the dependent Work is in proper condition for the Subcontractor's Work. If the dependent Work is not in a proper condition, the Subcontractor shall notify the Contractor in writing and not proceed with the Subcontractor's Work until the dependent Work has been corrected or replaced and is in a proper condition for the Subcontractor's Work.

**11.3 Subcontractor DIR Contractor Registration**

**11.3.1 No Subcontractor Performance of Work Without DIR Registration.** No portion of the Work is permitted to be performed by a Subcontractor unless the Subcontractor is a DIR Registered contractor. The foregoing DIR contractor registration requirement is applicable for all Subcontractors, including without limitation, lower tier Subcontractors and Subcontractors who are not identified in the Contractor's Subcontractors List.

**11.3.2 Contractor Obligation to Verify Subcontractor DIR Registration Status.** An

affirmative and on-going obligation of the Contractor under the Contract Documents is the Contractor's verification that all Subcontractors are at all times during performance of the Work in full and strict compliance with DIR contractor registration requirements. The Contractor shall not permit or allow any Subcontractor to perform any Work without the Contractor's verification that the Subcontractor is in full and strict compliance with DIR contractor registration requirements.

**11.3.3 Contractor Obligation to Request Substitution of Listed Subcontractor Who Is Not DIR Registered Contractor.** If any Subcontractor identified in the Contractor's Subcontractors List submitted with the Contractor's proposal for the Work is not a DIR registered contractor at the time of opening of proposals for the Work or if a Subcontractor's DIR contractor registration lapses prior to or during a Subcontractor's performance of Work, the Contractor shall request the District's consent to substitute the Subcontractor who is not a DIR registered contractor pursuant to Labor Code §1771.1(c)(3) and/or Labor Code §1771.1(d).

#### **11.4 Substitution of Listed Subcontractor**

**11.4.1 Substitution Process.** Request of the Contractor to substitute a listed Subcontractor will be considered only if in strict conformity with this Article 11.4 and California Public Contract Code §4107. All costs incurred by the District, including attorney's fees in the review and evaluation of a request to substitute a listed Subcontractor shall be borne by the Contractor; such costs may be deducted by the District from the Contract Price then or thereafter due the Contractor.

**11.4.2 Responsibilities of Contractor Upon Substitution of Subcontractor.** The District's consent to Contractor's substitution of a listed Subcontractor shall not relieve Contractor from its obligation to complete the Work within the Contract Time and for the Contract Price. The substitution of a listed Subcontractor shall not, under any circumstance, result in, or give rise to any to any increase of the Contract Price or the Contract Time on account of such substitution. If the District consents to substitution of a listed Subcontractor, the District shall determine the extent to which, if any, revised or additional Submittals will be required of the newly substituted Subcontractor ("Substituted Subcontractor"). If the District determines that revised or additional Submittals are required of a Substituted Subcontractor, the District shall promptly notify the Contractor, in writing, of such requirement. In such event, revised or additional Submittals shall be submitted to District not later than thirty (30) days following the date of the District's written notice to the Contractor pursuant to the foregoing sentence; provided that if in the reasonable and good faith judgment of the District, the progress of the Work or completion of the Work requires submission of additional or revised Submittals by a Substituted Subcontractor in less than thirty (30) days, the District shall so state in its written notice to the Contractor. If the revised or additional Submittals are not submitted by Contractor within thirty (30) days, or such earlier time as

determined by the District pursuant to the preceding sentence, following the District's written notice of the requirement for revised or additional Submittals, Contractor shall be subject to the per diem assessments for delayed Substantial Completion as set forth in Article 6.1 of the Terms and Conditions. Any revised or additional Submittals required pursuant to this Article 11.3.2 shall conform to the requirements of Article 3 of the Terms and Conditions. Contractor shall reimburse the District for all fees and costs, including the District's administrative costs and DSA fees, incurred or associated with the processing, review and evaluation of any revised or additional Submittals required pursuant to this Article 11.3.2; the District may deduct such fees and costs from any portion of the Contract Price then or thereafter due the Contractor. In the event that additional or revised Submittals are required pursuant to this Article 11.3.2, such requirement shall not result in an increase to the Contract Time or the Contract Price.

## **11.5 District Right to Takeover Work.**

**11.5.1 Progress of Work.** If the Contractor fails or refuses, for any reason and at any time, to provide sufficient materials, labor, equipment, tools and services to maintain progress of the Work in accordance with the then current Construction Schedule, the District may correct such failure(s), after forty-eight (48) hour advance written notice of same from the District to the Contractor. Upon such notice, District may, in its sole discretion, takeover the Work and thereafter diligently continue to completion or, in the alternative, supplement Contractor's materials, labor, equipment, tools and services to maintain progress of the Work in accordance with the then current Construction Schedule.

**11.5.2 District's Right to Withhold.** All costs, expenses or other charges incurred by the District in connection with completing or supplementing the Work under this Article 11.5 shall be at the sole cost of the Contractor. District shall be entitled to deduct from the Contract Price then or thereafter due Contractor, all such costs, expenses, and charges, including costs for any additional services the District's representatives and consultants made necessary thereby. If the Contract Price then or thereafter due the Contractor is insufficient to cover such amounts, Contractor shall pay the additional sum to the District promptly upon demand therefore. The assessment and/or withholding of the amount of such costs, expenses, and/or other charges shall be in addition to, and not in lieu of, any liquidated damages assessed and/or withheld from Contractor under Article 11.5 hereof. If the District takes action pursuant to the preceding sentence, the Contractor shall be solely responsible for all fees, costs or expenses incurred by the District.

**11.5.3 Non-exclusive Remedy.** The District's exercise of rights pursuant to the foregoing shall not be deemed a waiver or limitation of any other right or remedy of the District under the Contract Documents.

## 12. UNCOVERING AND CORRECTION OF WORK

- 12.1 Uncovering of Work.** If any portion of the Work is covered contrary to the request of the CxA or the requirements of the Contract Documents, it must, if required by the CxA, be uncovered for observation by the CxA and be replaced at the Contractor's expense without adjustment of the Contract Time or the Contract Price.
- 12.2 Rejection of Work.** Prior to the District's Final Acceptance of the Work, any Work or materials or equipment forming a part of the Work or incorporated into the Work which is defective or not in conformity with the Contract Documents may be rejected by the District or the CxA. The Contractor shall correct such rejected Work without any adjustment to the Contract Price or the Contract Time, even if the Work, materials or equipment have been previously inspected by the CxA or even if they failed to observe the defective or non-conforming Work, materials or equipment.
- 12.3 Correction of Work.** The Contractor shall promptly correct any portion of the Work rejected by the District or the CxA for failing to conform to the requirements of the Contract Documents, or which is determined by them to be defective, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for the services and expenses of the District and the CxA made necessary thereby. The Contractor shall bear all costs of correcting destroyed or damaged construction, whether completed or partially completed, of the District or separate contractors, caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents, or which is defective.
- 12.4 Removal of Non-Conforming or Defective Work.** The Contractor shall immediately, at its sole cost and expense, remove from the Site all portions of the Work which are defective or are not in accordance with the requirements of the Contract Documents which are neither corrected by the Contractor nor accepted by the District; failure of the Contractor to comply with this Article 12 may be deemed by the District to be a default of a material obligation of the Contractor under the Contract Documents.
- 12.5 Failure of Contractor to Correct Work.** If the Contractor fails to commence to correct defective or non-conforming Work within 3 days of notice of such condition and promptly thereafter complete the same within a reasonable time, the District may correct it in accordance with the Contract Documents. If the Contractor does not proceed with correction of such defective or non-conforming Work within the time fixed herein, the District may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage after written notice, the District may sell such materials or equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including without limitation compensation for the CxA's services, attorneys' fees and other expenses made necessary thereby. If such proceeds of sale do not cover the costs which the

Contractor should have borne, the Contract Price shall be reduced by the deficiency. If payments of the Contract Price then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor and the Surety shall promptly pay the difference to the District.

**12.6 Acceptance of Defective or Non-Conforming Work.** The District may, in its sole and exclusive discretion, elect to accept Work which is defective or which is not in accordance with the requirements of the Contract Documents, instead of requiring its removal and correction, in which case the Contract Price shall be reduced as appropriate and equitable.

**12.7 Safety.**

**12.7.1 Safety Programs.** Notwithstanding any action by the District, the Contractor shall be solely responsible for initiating, maintaining and supervising all safety programs required by the Laws or governmental orders in connection with the performance of the Contract, or otherwise required by the type or nature of the Work. The Contractor's safety program shall include all actions and programs necessary for compliance with California or federally statutorily mandated workplace safety programs including, without limitation, compliance with the California Drug Free Workplace Act of 1990 (California Government Code §§8350 et seq.). Without limiting or relieving the Contractor of its obligations hereunder, the Contractor shall require that its Subcontractors similarly initiate and maintain all appropriate or required safety programs. Prior to commencement of Work at the Site, the Contractor shall provide the District with the Contractor's proposed safety program for the Work for review and acceptance and the District's records. Without adjustment of the Contract Price or the Contract Time, the Contractor shall modify and resubmit its proposed safety plan to incorporate modifications thereto requested by the District. The District is authorized to enforce the Contractor's obligation to implement the safety program.

**12.7.2 Safety Precautions.** The Contractor shall be solely responsible for initiating and maintaining reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (i) employees on the Work and other persons who may be affected thereby; (ii) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and (iii) other property or items at the site of the Work, or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Contractor shall take adequate precautions and measures to protect existing roads, sidewalks, curbs, pavement, utilities, adjoining property and improvements thereon (including without limitation, protection from settlement or loss of lateral support) and to avoid damage thereto. Without adjustment of the Contract Price or the Contract Time, the Contractor shall repair, replace or restore any damage or destruction of the foregoing items



as a result of performance or installation of the Work.

- 12.7.3 Safety Signs, Barricades.** The Contractor shall erect and maintain, as required by existing conditions and conditions resulting from performance of the Contract, reasonable safeguards for safety and protection of property and persons, including, without limitation, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Districts and users of adjacent sites and utilities.
- 12.7.4 Safety Notices.** The Contractor shall give or post all notices required by applicable law and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
- 12.7.5 Safety Coordinator.** The Contractor shall designate a responsible member of the Contractor's organization at the Site whose duty shall be the prevention of accidents and the implementation and maintenance safety precautions and programs. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the District.
- 12.7.6 Emergencies; First Aid.** In an emergency affecting safety of persons or property, the Contractor shall act, to prevent threatened damage, injury or loss. The Contractor shall maintain stocked emergency first aid kits at the Site which comply with applicable Laws.
- 12.7.7 Hazardous Materials.**
- 12.7.7.1 General.** In the event that the Contractor, any Subcontractor or anyone employed directly or indirectly by them shall use, at the Site, or incorporate into the Work, any material or substance deemed to be hazardous or toxic under any law, rule, ordinance, regulation or interpretation thereof (collectively "Hazardous Materials"), the Contractor shall comply with all Laws applicable thereto and shall exercise all necessary safety precautions relating to the use, storage or disposal thereof.
- 12.7.7.2 Prohibition on Use of Asbestos Construction Building Materials ("ACBMs").** Notwithstanding any provision of the Drawings or the Specifications to the contrary, it is the intent of the District that ACBMs not be used or incorporated into any portion of the Work. In the event that any portion of the Work depicted in the Drawings or the Specifications shall require materials or products which the Contractor knows, or should have known with reasonably diligent investigation, to contain ACBMs, Contractor shall promptly notify the District of the same so that an appropriate alternative can be made in a timely manner so as not to delay the progress of the Work. Contractor warrants to the District that there are no materials or products used or incorporated into the Work which contain ACBMs. Whether before or after completion of the Work, if it is discovered that any product or material forming a part of the Work or incorporated into the Work contains ACBMs, the Contractor

shall at its sole cost and expense remove such product or material in accordance with any laws, rules, procedures and regulations applicable to the handling, removal and disposal of ACBMs and to replace such product or material with non-ACBM products or materials and to return the affected portion(s) of the Work to the finish condition depicted in the Drawings and Specifications relating to such portion(s) of the Work. Contractor's obligations under the preceding sentence shall survive the termination of the Contract, the warranty period provided under the Contract Documents, the Contractor's completion of the Work or the District's acceptance of the Work. In the event that the Contractor shall fail or refuse, for any reason, to commence the removal and replacement of any material or product containing ACBMs forming a part of, or incorporated into the Work, within ten (10) days of the date of the District's written notice to the Contractor of the existence of ACBM materials or products in the Work, the District may thereafter proceed to cause the removal and replacement of such materials or products in any manner which the District determines to be reasonably necessary and appropriate; all costs, expenses and fees, including without limitation fees and costs of consultants and attorneys, incurred by the District in connection with such removal and replacement shall be the responsibility of the Contractor and the Contractor's Performance Bond Surety.

**12.7.7.3** Disposal of Hazardous Materials. Contractor shall be solely and exclusively responsible for the disposal of any Hazardous Materials on or about Site resulting from the Contractor's performance of Work and other activities. The Contractor's obligations hereunder shall include without limitation, the transportation and disposal of any Hazardous Materials in strict conformity with any and all applicable laws, regulations, orders, procedures or ordinances.

- 13. Insurance; Indemnity.** The Contractor and its Subcontractors shall, at all times during the Work, maintain Workers Compensation, Employers Liability, and Commercial General Liability Insurance in the minimum coverage amounts set forth in the Contract. The Contractor's Commercial General Liability Insurance shall name the District as an Additional Insured. All policies of insurance shall include provisions that the policy of insurance will not be materially modified, cancelled or allowed to expire without at least thirty (30) days advance notice to the District. Prior to commencing the Work, the Contractor shall deliver Certificates of Insurance of itself and its Subcontractors evidencing the required insurance coverages. No Work at the Site by the Contractor or any Subcontractor will be permitted unless the Contractor and Subcontractor, as applicable has/have submitted Certificates of Insurance evidencing the required insurance policies hereunder to the District Representative.

**13.1 Insurance Requirements for Contractors.** Pursuant to Article 13 of the Terms and Conditions, the Contractor shall obtain and maintain the following insurance coverage with the following minimum coverage amounts:

Workers Compensation Insurance	In accordance with applicable law
Employers Liability Insurance	\$1,000,000
Commercial General Liability Insurance	
(including coverage for bodily injury, death, property damage and motor vehicle liability)	
Per Occurrence	\$1,000,000
Aggregate	\$2,000,000

**13.2 Builders Risk Insurance.** In accordance with Article 13 of the Terms and Conditions, coverage shall be provided for the full insurable value of the Work. Coverage for the perils of earthquakes **is not** to be included within the scope of coverage under the Builders Risk Insurance Policy.

**13.3 Subcontractor's Insurance.** In accordance with Article 13 of the Terms and Conditions, each Subcontractor shall obtain and maintain the following insurance coverages in the following minimum coverage amounts:

Workers Compensation Insurance	In accordance with applicable law
Employers Liability Insurance	\$1,000,000
Commercial General Liability Insurance	
(including coverage for bodily injury, death, property damage and motor vehicle liability)	
Per Occurrence	\$1,000,000
Aggregate	\$1,000,000

**13.4 Indemnification.** Unless arising solely out of the active negligence or willful misconduct of the District, the Contractor shall indemnify, defend and hold harmless the District, the District's Board of Trustees and all members thereof and the District's employees, officers, agents and representatives ("Indemnified Parties") from all claims, demands and liabilities, judgments and/or settlement including without limitation, attorneys' fees and costs, which arise out of or related in any manner to this Contract or the Work. The Contractor's obligations hereunder include without limitation: (a) injury to, or death of, Contractor's employees, subcontractor's employees, or other persons; (b) damage to property; (c) theft or loss of property; (d) Stop Notice claims; and (e) other losses, damages, claims, judgments, or costs arising out of, in whole or in part, of the acts, omissions or other conduct of the Contractor or Subcontractors. The Contractor's obligations hereunder shall survive termination of the Contract and/or completion of the Work, and are deemed incorporated into and made a part of the obligations of the Surety issuing the Performance Bond.

**14. District Right to Terminate.** The Contractor's failure to comply with any term or condition of the Contract Documents shall constitute default of the Contractor; in such event, the District may terminate the Contract upon seven (7) days written notice to the Contractor. Unless the Contractor shall have commenced, and diligently thereafter

prosecute to completion, all required actions to cure such default(s), this Contract shall be deemed terminated without further action of the District; such termination shall be effective the seventh (7th) day after the date of the District's written notice. If the District terminates the Contract for default of the Contractor, the Contractor and the Performance Bond Surety shall be liable to the District for all losses, costs and damages arising out of the Contractor's default and costs to complete the Work which exceeds the remaining Contract Price at the time of termination. In addition to the preceding, the District may terminate this Contract at any time for the convenience of the District upon seven (7) days written notice to the Contractor, in which case, the payment of the Contract Price shall be limited to the value of the Work in place or in progress at the time of the termination for the District's convenience.

**15. Warranty.** If within two (2) years, or such other period set forth in the Contract Documents, any of the Work or workmanship is found defective or not in compliance with the Contract Documents, the Contractor shall upon the District's demand, promptly take all measures necessary to correct, repair or replace such Work or workmanship. If the Contractor fails to do so, the District may take necessary action to correct, replace or repair such Work or workmanship at the cost and expense of the Contractor. The surety issuing the Performance Bond shall be liable to the District for correction, repair or replacement of defective/non-conforming Work if the Contractor fails or refuses to perform in accordance with the preceding.

**16. Tests/Inspections/Commissioning of the Work.** The Work shall be subject to tests/inspections/commissioning as required by the Contract Documents. The costs of all required tests/inspections/commissions shall be covered by the District. The Contractor shall be liable excessive costs of tests/inspections/commissioning which result from the Work not being ready for tests/inspections/commissioning or the failure of the Work to comply with the applicable test/inspection/commissioning standards. The District shall have access at all times to the Work, whether in place or in progress; the Contractor shall provide such access without adjustment of the Contract Price or the Contract Time.

**17. DISPUTE RESOLUTION.**

**17.1 Disputes; Continuation of Work.** Notwithstanding any claim, dispute or other disagreement between the District and the Contractor regarding performance under the Contract Documents, the scope of Work thereunder, or any other matter arising out of or related to, in any manner, the Contract Documents, the Contractor shall proceed diligently with performance of the Work in accordance with the District's written direction, pending any final determination or decision regarding any such claim, dispute or disagreement.

**17.2 Dispute Resolution; Arbitration.**

**17.2.1 Claims Under \$375,000.00.** Claims between the District and the Contractor of \$375,000.00 or less shall be resolved in accordance with the procedures established in Part 3, Chapter 1, Article 1.5 of the California

Public Contract Code, §§20104 et seq.; provided however that California Public Contract Code §20104.2(a) shall not supersede the requirements of the Contract Documents with respect to the Contractor's notification to the District of such claim or extend the time for the giving of such notice as provided in the Contract Documents. The term "claims" as used herein shall be as defined in California Public Contract Code §20104(b)(2).

- 17.2.2 JAMS Arbitration.** Except as provided in Article 18.2.1, any other claims, disputes, disagreements or other matters in controversy between the District and the Contractor arising out of, or related, in any manner, to the Work, the Contract Documents, or the interpretation, clarification or enforcement thereof shall be resolved by binding arbitration conducted by JAMS before a retired judge arbitrator identified as having expertise in public works construction matters and in accordance with the Comprehensive Arbitration Rules and Procedures of JAMS in effect as of the date that a Demand for Arbitration is filed, except as expressly modified herein. The locale for any arbitration commenced hereunder shall be the regional office of JAMS closest to the Site.
- 17.2.3 Demand for Arbitration.** A Demand for Arbitration shall be filed and served within a reasonable time after the occurrence of the claim, dispute or other disagreement giving rise to the Demand for Arbitration, but in no event shall a Demand for Arbitration be filed or served after the date when the institution of legal or equitable proceedings based upon such claim, dispute or other disagreement would be barred by the applicable statute of limitations. If either the District or the Contractor assert that the other filed a Demand for Arbitration after expiration of the applicable statute of limitations and/or prior to exhausting the requisite administrative remedies, no arbitration proceeding shall be commenced until an action is filed in the Orange County Superior Court seeking an adjudication of whether or not matters raised in the Demand for Arbitration are barred by the applicable statute of limitations and/or the California Government Code, and a judgment or an order in such action is rendered by the Orange County Superior Court.
- 17.2.4 Consolidation of Multiple Demands for Arbitration.** In the event more than one Demand for Arbitration is made by either the District or the Contractor, all such controversies shall be consolidated into a single arbitration proceeding, unless otherwise agreed to by the District and the Contractor.
- 17.2.5 Third Parties.** The Contractor's Surety, a Subcontractor or Material Supplier to the Contractor and other third parties may be permitted to join in and be bound by an arbitration commenced hereunder if required by the terms of their respective agreements with the District and/or Contractor, except to the extent that such joinder would unduly delay or complicate the expeditious resolution of the claim, dispute or other disagreement between the District and the Contractor, in which case an appropriate severance order shall be issued by the arbitrator.
- 17.2.6 Discovery.** In connection with any arbitration proceeding commenced

hereunder, the discovery rights and procedures provided for in California Code of Civil Procedure §1283.05 shall be applicable, and the same shall be deemed incorporated herein by this reference.

- 17.2.7 Arbitrator's Award.** Notwithstanding Rule 24 of JAMS Comprehensive Arbitration Rules and Procedures, in accordance with California Code of Civil Procedure §1296, in any arbitration commenced hereunder, the arbitrator's award shall be supported by law and substantial evidence; the District and Contractor hereby expressly agree that a court shall, subject to California Code of Civil Procedure §1286.4, vacate the arbitrator's award if after review of the arbitrator's award it determines either that the arbitrator's award is not supported by substantial evidence or that it is based on an error of law. Any arbitration award that does not include written findings of fact and conclusions of law in conformity with California Code of Civil Procedure §1296 shall be invalid and unenforceable. Subject to the foregoing provisions, the arbitrator's award shall be final, binding and conclusive upon the District and the Contractor.
- 17.2.8 Costs.** The expenses and fees of the arbitration and the arbitrator shall be divided equally among the parties to the arbitration. Each party to any arbitration commenced hereunder shall be responsible for and shall bear its own attorneys' fees, witness fees and other cost and expense incurred in connection with such arbitration. The foregoing notwithstanding, the arbitrator may award arbitration costs, consisting of arbitration expenses and the arbitrator's fees but excluding attorneys' fees, to the prevailing party.
- 17.2.9 Confirmation of Arbitration Award.** The confirmation, enforcement, vacation or correction of an arbitration award rendered hereunder shall be the Riverside County Superior Court. The substantive and procedural rules for such post-award proceedings shall be as set forth in California Code of Civil Procedure §1285 et seq.
- 17.2.10 Limitation on Damages.** In the event of the District's breach or default of its obligations under the Contract Documents, the damages, if any, recoverable by the Contractor shall be limited to general damages which are proximately and directly caused by the breach or default of the District and shall exclude any and all special or consequential damages, if any. By executing the Agreement, the Contractor expressly acknowledges the foregoing limitation to recovery of only general damages from the District if the District is in breach or default of its obligations under the Contract Documents; the Contractor expressly waives and relinquishes any recovery of special or consequential damages from the District including, without limitation, damages for: (i) lost or impaired bonding capacity; and/or, (ii) lost profits arising out of or in connection with any past, present, or future work of improvement, except for the Project which is the subject of the Contract Documents.
- 17.2.11 Government Code Claims.** All claims, demands, disputes, disagreements or other matters in controversy asserted by the Contractor against the District in a demand for arbitration filed pursuant to Article 18.2.3 or

asserted by the Contractor against the District in any arbitration proceeding commenced pursuant to Article 17.2.3 above, shall be deemed a “suit for money or damages” under Government Code §900 et seq. An express condition precedent to the Contractor’s commencement of any legal action, including arbitration proceedings under Article 18.2.3, is the Contractor’s compliance with and exhaustion of remedies and procedures under Government Code §900, et seq, including without limitation, §§945.4, 945.6 and 946. Notwithstanding the dispute resolution and arbitration provisions set forth in Article 17.2 herein, all claims demands, disputes, disagreements or other matters in controversy asserted by the Contractor against the District seeking money or damages in any sum shall first be presented to the District’s Board of Trustees and acted upon or deemed rejected by the Board of Trustees in accordance with Government Code §900 et seq.

18. **Hours and Days of Work at the Site.** Subject to limitations set forth elsewhere in the Contract Documents and below, the hours/days of Work at the Site are: 7am – 7 am Mondays through Fridays and Saturdays except for holiday days. All work hours shall be coordinated with District PM. Contractor acknowledges and agrees that any and all work performed on Saturdays shall not be subject to additional compensation, and is included in the Contract Price.
19. **Contractor Personnel Parking.** Personnel of the Contractor, Subcontractors and others performing Work at the Site will be allowed to park, with a valid District parking permit, in the parking spaces at a location designated by the District. The District will provide adequate parking for the Contractor at the time of construction.
20. **District Provided Temporary Utilities.** During the Contractor’s performance of the Work, the District will provide utility services for electrical and water. The connection and placement, relocation and removal of temporary distributions of the utility services provided by the District or the installation of utility services and distribution lines from a utility point of connection provided by the District will be by the Contractor at its cost and expense without adjustment of the Contract Price. The foregoing notwithstanding: (i) the District may discontinue, limit or condition use of such services by a Contractor if the District reasonably determines that the Contractor has wasted such utilities, and (ii) the District shall not be liable to the Contractor, nor shall the Contract Time or the Contract Price be increased if any District provided temporary utility service is discontinued, limited or disrupted for any reason other than the District’s non-payment of undisputed utility charges. Notwithstanding any provision of the Contract Documents to the contrary, the Contractor shall not use District provided water supply in connection with any earthwork or grading operations; water supply for earthwork or grading operations shall be obtained by the Contractor, without adjustment of the Contract Time or the Contract Price, from an off-site source or mobile water delivery service. Further, notwithstanding the District’s provision of a point of connection for the Contractor’s telephone/data service at the Site,

the Contractor is solely responsible for the payment of utility service charges therefor.

## 21. Miscellaneous

- 21.1 Successors.** This Contract shall be binding upon and inure to the benefit of the respective successors-in-interest of the District and the Contractor. The foregoing notwithstanding, the Contractor shall not assign this Contract, any right or obligation hereunder or any portion thereof.
- 21.2 Cumulative Rights and Remedies; No Waiver.** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not in lieu of or otherwise a limitation or restriction of duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the District shall constitute a waiver of a right or remedy afforded it under the Contract Documents or the Laws nor shall such an action or failure to act constitute approval of or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 21.3 Non-Discrimination.** The Contractor and its Subcontractors shall not discriminate against any active or prospective employee based upon race, color, ancestry, national origin, religion, sex, age, sexual preference or marital status. The Contractor and its Subcontractors shall comply with all applicable laws, ordinances, rules and regulations prohibiting workplace discrimination and/or discriminatory employment practices.
- 21.4 Permits; Approvals.** Unless otherwise expressly provided in the Contract Documents, the Contractor shall obtain and pay for all fees, permits or approvals necessary to complete the Work.
- 21.5 Site Maintenance.** Contractor shall at all times shall keep Site free from debris such as waste, dust, excess water, storm water runoffs, rubbish, and excess materials and equipment. Contractor shall not leave debris under, in, or about the premises, but shall promptly remove same from the premises and dispose of same offsite in a lawful manner.
- 21.6 Environmental Attributes and Energy Credits.** District shall own all right, title, and interest associated with or resulting from the development, construction, installation and ownership of the Services, and to the completed Work and each of its component parts, without limitation.
- 21.7 No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
- 21.8 Grants/Rebates/Incentives.** Contractor shall use commercially reasonable efforts to support and assist the District in obtaining or maintaining grants/rebates/incentives available for the Work. Contractor shall use commercially



reasonable efforts to support and assist the District in obtaining an extension for the rebates, if allowed and if necessary.

- 21.9 Local Hire and Local Business Participation.** As a condition precedent to District's release of retention to Contractor in accordance with Public Contract Code § 7107, Contractor shall complete, execute and submit to District the LOCAL HIRE AND LOCAL BUSINESS CONTRACTOR CLOSEOUT CERTIFICATION form attached as Exhibit B to this Agreement.
- 21.10 Days.** Unless otherwise stated in the Contract Documents, all references to "days" shall be deemed references to calendar days.
- 21.11 Severability.** If any term, condition or provision of this Contract is deemed invalid, illegal or unenforceable by a Court of competent jurisdiction, such term, condition or provision shall be deemed severed herefrom, but all other terms, conditions and provisions hereof shall remain unaffected and in full force and effect.
- 21.12 Attorneys' Fees.** Except as expressly provided for under limited circumstances set forth in the Contract Documents, or as authorized by law, neither the District nor the Contractor shall recover from the other any attorneys' fees or other costs associated with or arising out of any legal, administrative or other proceedings filed or instituted in connection with or arising out of the Contract Documents or the performance of either the District or the Contractor thereunder. California Civil Code § 1717 shall neither void nor expand the attorneys' fees provisions set forth in the Contract Documents.
- 21.13 Provisions Required by the Laws Deemed Inserted.** Each and every provision of law and clause required by the Laws to be inserted in the Contract Documents is deemed to be inserted herein and the Contract Documents shall be read and enforced as though such provision or clause are included herein, and if through mistake, or otherwise, any such provision or clause is not inserted or if not correctly inserted, then upon application of either party, the Contract Documents shall forthwith be physically amended to make such insertion or correction.
- 21.14 Entire Agreement.** The Contract Documents contain the entire agreement and understanding between the District and the Contractor concerning the subject matter hereof, and supersedes and replaces all prior negotiations, proposed agreements or amendments, whether written or oral. No amendment or modification to any provision of the Contract Documents shall be effective or enforceable except by an agreement in writing executed by the District and the Contractor.

**[END OF SECTION]**

**Information regarding Contractor:**

Proper Name: \_\_\_\_\_  
License No.: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

Type of Business Entity:

- \_\_\_ Individual
- \_\_\_ Sole Proprietorship
- \_\_\_ Partnership
- \_\_\_ Limited Partnership
- \_\_\_ Corporation,

State: \_\_\_\_\_

\_\_\_ Limited Liability Company

\_\_\_ Other: \_\_\_\_\_

\_\_\_\_\_  
Employer Identification and/or Social Security Number

**NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, the District requires the Contractor to furnish the information requested in this section.**

## EXHIBIT A – SCOPE OF WORK

*This Exhibit shall be modified based on a detailed scope of work from the Contractor. The scope of work outlined herein is the general scope of work*

- 1.1. Fan Coil Units: ESCO shall remove forty-two (42) existing fan coils of various sizes and replace with new high efficiency units of the same weight or less. All units shall have ease of access for routine maintenance. The FCUs must include variable airflow capabilities using Electronically Controlled Motors (ECMs) (refer to EEM 1 and EEM # 2). A high delta temperature (delta-t) across the cooling and heating coil for maximum efficiency is required and must not exceed the operating weights of the existing FCUs due to structural deck loading considerations (refer to MHP Structural Study included herewith this RFP).
- 1.2. Utility Pipe Systems (HHW and CHW): The 4-pipe fan coil piping system for chilled water (CHW) and heated hot water (HHW) operations shall be replaced with new piping. Strainers, hoses, and flex connections shall be new. The utility pipe replacement shall be no more than 5 foot from the nearest shut-off valve. The CHW and HHW Belimo valves and actuators are new and shall be removed and reused. Condensate piping shall be checked for flow to ensure adequate flow to destination drains and sinks.
- 1.3. Controls: Vintage 2016 Alerton controllers are mounted on existing FCUs and communicates to Vykon-branded JACE600 integration devices storing information such as sequence of operation program, alarms, and trends. The JACE is connected via the District intranet to a centralized Supervisor, Niagara 4 Tridium EMS. The Alerton field controllers shall be removed and reinstalled. Available points shall be used to control ECM fan speeds and provide occupant-based air flow setbacks, based on three modes of operations; regular occupied mode, occupied-standby mode, and unoccupied mode. The District requests a value-engineering option to install Original Equipment Manufacturer (OEM) factory-installed BACnet controls (if available) to review the costs options.
- 1.4. Ceiling Repairs: The ceiling grid shall be removed and repaired, in kind, and acoustical tiles shall be replaced at FCUs locations. The grid shall be repaired in accordance with the DSA approved plans and details.
- 1.5. Balancing: A dry and wet side balance is required. Balance water pressure and air balance zones and review findings with the District's Project Manager.
- 1.6. Commissioning: The project will require third party commissioning. ESCO shall provide commissioning support. The commissioning authority will be assigned around early 2018.
- 1.7. Structural Study: The FCUs hangers and 45-degree braces are in good condition and will remain in place so that they are reused once FCUs are installed. If structural modifications are required, please advise the District through an RFI. Modifications are strictly prohibited due to agency review requirements.
- 1.8. Other considerations: FCU construction phasing may be required. The proposed phasing plan will require coordination with the college and Facilities PM. The goal is to minimize the impact to campus operations and allow for functional systems during construction.

Temporary cooling will be required and the District will allocate an allowance for this purpose.

District required fan coil unit features and manufacturers:

- Optimized performance – ARI-440 certified and labeled; chilled-water coil for cooling, hot-water coil for heating
- Exposed (Art labs and Counseling area) and concealed cabinet; 4-pipe coils
- Piping packages - Factory-assembled piping packages
- Choice of controls –Controls shall be interfaced with an existing building automation system (Alerton controller integrated into Tridium).
- OEM controls (Value Engineer option)
- Excellent IAQ – Low sound levels; sloped drain pans that are cleanable; cabinets can be insulated with foil-faced fiberglass or closed-cell foam
- Superior serviceability –Removable filters; fan deck, removable drain pan, and removable coils for servicing
- Maintain 68 - 74 degree space setpoints range with 72 optimum.
- Manufacturers include Trane, York, Carrier, or District equal.

### **Energy Efficiency Measure # 1**

This measure requires removal and replacement existing fan coils with similar sized fan coil with better efficiency and provide sufficient cooling, heating, and ventilation to the building spaces. The unit shall include electronically controlled motors (ECM) technology.

### **Energy Efficiency Measure # 2**

This measure requires operating the new installed fan coil units as a variable volume unit by providing additional programming to control the ECM motor speeds. The airflow requirement at each zone will be based on the zone temperature condition. Also minimum zone airflow of 20% or as decided by the controls/designer needs to be set through the Energy Management System (EMS).

### **Energy Efficiency Measure # 3**

The measure requires installation of occupancy sensors in all the buildings areas/zones and operate the units based on occupancy.

**EXHIBIT B**  
**LOCAL HIRE AND LOCAL BUSINESS CONTRACTOR CLOSEOUT CERTIFICATION**

*(To be submitted upon Completion of the Project and as a Precondition to Final Payment)*

The Contractor shall complete this form for purposes of reporting participation by Local Hires and Local Businesses on the Project. At the end of the Project and as a precondition for receipt of Final Payment, the Contractor shall provide a final written analysis and evaluation of the final percentage of Local Hires and Local Businesses on the entire Project. The percentage for Local Hire participation shall be calculated by taking the ratio of the total number of workers performing work on the Project that are Local Hires, compared against the total number of all workers performing work on the Project.

The percentage for Local Business participation shall be calculated by taking the ratio of the total number of businesses providing any labor, materials or services for the Project authorized by the Contractor or their subcontractors that are Local Businesses, compared against the total number of all businesses providing any labor, materials or services for the Project authorized by the Contractor or their subcontractors.

**LOCAL HIRES ON THE PROJECT**

Total Number of Workers on Project: \_\_\_\_\_

Total Number of Local Hires on Project: \_\_\_\_\_

<b>Breakdown of Local Hires by Classification: <input type="checkbox"/> check this box if meets multiple categories</b>			
<b>How many are local residents by zip code?</b>	How many are U.S. veterans?	How many are current students?	How many are former student?

**LOCAL BUSINESSES ON THE PROJECT**

Total Number of Businesses on Project: \_\_\_\_\_

Total Number of Local Businesses on Project: \_\_\_\_\_

<b>Breakdown of Local Businesses by Classification: <input type="checkbox"/> check this box if meets multiple categories</b>					
<b>How many local businesses are by zip code?</b>	How many businesses are MBE?	How many businesses are WBE?	How many businesses are DVBE?	How many businesses participated in the District's approved internship programs?	How many businesses participated in the District's approved apprenticeship programs?

**Note: Please reference of "LOCAL HIRES AND LOCAL BUSINESSES PARTICIPATION STATEMENT" for Goals and Definitions.**

In submitting this form, the Contractor certifies that it has independently verified that all Local Hires and Local Businesses noted in this form meet the definitions for Local Hires and Local Businesses as set forth in the Local Hires and Local Businesses Participation Statement. The District may request the Contractor to provide additional information or documents to support the numbers listed above. The Contractor agrees to provide all additional information or documents requested by the District. Failure to provide any requested information may result in the District delaying Final Payment to the Contractor and the Contractor agrees that it shall have no claim for additional costs or days resulting from or in any way related to providing the information in this form.

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

\_\_\_\_\_  
 Company's Name

\_\_\_\_\_  
 Authorized Representative Name

**EXHIBIT C**  
**ADDITIONAL EXHIBITS**

The following exhibits are part of the RFQ/RFP #1718-182 – TRC Engineer Study, Existing As-builts Plans and Control Drawings, and will be included in the final agreement.

Division 01 Specifications are also part of the final agreement. These will be issued via an ADDENDUM as part of the RFQ/RFP process.

DRAFT