AGREEMENT

FOR

DESIGN AND CONSTRUCTION (DESIGN-BUILD)

OF

LIBERTY MIDDLE SCHOOL HVAC REPLACEMENT

BETWEEN

LEMOORE UNION ELEMENTARY SCHOOL DISTRICT

AND

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

**DESIGN-BUILD AGREEMENT**

The Lemoore Union Elementary School District (“Owner”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a California licensed general contractor (“Contractor” or “Design-Builder”), by and upon entering into this agreement and all Attachments (collectively, “Agreement”), acknowledge and agree to the following:

1. The Owner desires to have Design-Builder design and construct the Liberty Middle School HVAC Replacement (“Project”) located at , Lemoore, CA (“Site”) in accordance with this Agreement and all supporting Attachments referenced herein.
2. Design-Builder has represented to the Owner that it has entered into a direct contract with an architect duly licensed in the state of California and that such design and engineering services for the Project will be provided by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Architect” or “Design Professional”). A copy of the contract between the Design-Builder and Architect shall be provided to the Owner prior to providing any design and engineering services set forth in **Attachment 2**. Design-Builder and Architect hereby agree to work and communicate as a team in all interactions with the Owner. Notwithstanding the other parties that will provide services and materials for the Project or which entity performs or fails to perform the services and requirements set forth in this Agreement, Design-Builder shall be solely, ultimately and singularly liable to the Owner for all services and requirements set forth in this Agreement.
3. Documents attached hereto and incorporated herein, and integrated together, herein by reference comprise:

a) Breakdown of the Guaranteed Maximum Price, details regarding savings and applicable contingencies are set forth in **Attachment 1**.

b) Design-Builder shall provide the Owner with complete design and engineering services for the Project pursuant to the attached Design & Engineering Services Provisions set forth in **Attachment 2**.

c) Design-Builder shall provide the Owner with complete construction services for the Project pursuant to the attached Construction Provisions and forms set forth in **Attachment 3**.

d) Design-Builder shall provide all services in accordance with the milestones set forth in **Attachment 4**.

e) A description of the Project and scope of work is attached hereto as **Attachment 5**. The scope of work in **Attachment 5** shall be complementary to all other requirements set forth in this Agreement and other Attachments and shall not be construed as an comprehensive scope of work for the Project.

f) A list of the applicable plans for the Project is set forth in **Attachment 6**. All corresponding approved Specifications and any utility and underground surveys, reports or plans prepared by the Design Professional shall be deemed incorporated into **Attachment 6** and this Agreement.

g) General Conditions are set forth in **Attachment 7**.

D. Each term defined in this Agreement or in any Attachment hereto shall have uniform meaning, as defined, throughout this Agreement and each Attachment hereto.

1. Upon completion of the construction documents for the Project pursuant to the Design Services Agreement, including a complete plans and specifications (“Construction Documents”), and approval thereof by DSA, such Construction Documents shall be, and are deemed incorporated herein by this reference.
2. Design-Builder has reviewed the soils report for the Site and the Design-Builder will construct the Project for the Guaranteed Maximum Price (“GMP”) set forth herein, and Design-Builder will not seek any additional compensation whatsoever for existing soils conditions that are reflected in or reasonably inferable from the soils report. In the event that investigation of the Site by the Design-Builder prior to commencement of construction reveals soils conditions substantially different than those reflected in, or reasonably inferable from the soils reports known to Design-Builder prior to execution of this Agreement that would substantially increase the cost of construction of the Project, Design-Builder may be entitled to payment as Extra Work/Modifications as set forth in **Attachment 3**.
3. Design-Builder is experienced in the design and construction of the type of facility desired by Owner, as reflected in the Construction Documents, and possesses all necessary licenses and qualifications which are required to design, build and deliver the Project.
4. Design-Builder shall prepare and submit for the Owner’s approval a schedule for the design and construction of the Project (“Project Schedule”). Such schedule shall include milestones as requested by the Owner and shall include, without limitation, the milestones set forth in **Attachment 4**. This overall Project Schedule shall be in addition to any scheduling requirements set forth in **Attachments 2 and 3**. Design-Builder shall provide a preliminary Project Schedule for the Owner’s review within 30 days of the date of this Agreement and a final Project Schedule within 60 days of the date of this Agreement, or as otherwise agreed in writing by the parties and approved by the Owner.
5. Guaranteed Maximum Price. The Owner shall pay the Design-Builder in accordance with **Attachments 1 and 3** an amount not to exceed the Guaranteed Maximum Price (“GMP”) of \_\_\_\_\_\_\_\_\_\_\_\_\_ for all costs including, but not limited to, all services, labor, materials, equipment, general conditions, overhead, profit, and contingency (as defined below) to design and construct the Project in accordance with the approved Construction Documents. The GMP shall not be exceeded and no other costs shall be paid to Design-Builder except as allowed under Article 5 of the Construction Provisions in **Attachment 3**. A detailed breakdown of the GMP is set forth in **Attachment 1**.
6. Contingency. Details regarding any contingencies for this Project are set forth in **Attachment 1**.
7. Before commencing construction work on the Project, the Design-Builder shall complete and submit all required forms and documents set forth in **Attachment 3**. All forms and documents must be approved by the Owner before Design-Builder commences any construction work on the Project.
8. Payments. Payments for design and engineering services shall be based on the actual level of completion as approved by the Owner and the Owner’s representative and in accordance with **Attachment 1**.

 For construction services, Design-Builder shall on or before the fifth (5th) day of each calendar month during the progress of the work, submit for review by the Owner the application for payment for that month. Prior to commencing any construction services, the Design-Builder shall prepare and submit for approval by the Owner a detailed breakdown of the Cost of the Work and the GMP (hereinafter “Schedule of Values”) for the Project. During construction, the Design-Builder shall submit to the Owner an itemized Application for Progress Payment for work completed in accordance with the Schedule of Values. Such application shall supported by the following or such portion thereof as the Owner or Inspector requires including, but not limited to:

1. The amount paid to the date of the Application for Payment to the Design-Builder;
2. The amount being requested under the Application for Payment by the Design-Builder related to the Project;
3. Itemized breakdown of work done for the purpose of requesting partial payment;
4. Any changes in the Cost of the Work from the last Application for Payment and any costs allocated to the Construction Contingency or the Cost of the Work Project Savings defined in **Attachment 1**;
5. A summary of the retentions held;
6. The percentage of completion of the Design-Builder’s work by line item;
7. An updated Schedule of Values from the preceding Application for Payment if applicable; and
8. Any other information or documents reasonably requested by the Owner or the Owner’s representative.

The Owner shall, within ten (10) days after receipt of the Design-Builder’s Application for Payment, either approve such payment or notify the Design-Builder in writing of the Owner’s reason(s) for withholding approval in whole or in part. The review of the Design-Builder’s Application for Payment by the Inspector is based on the Inspector’s observations at the Site and the data comprising the Application for Payment that the work has progressed to the point indicated and that, to the best of the Inspector’s knowledge, information, and belief, the quality of the work is in accordance with the Construction Documents. The foregoing representations are subject to (1) an evaluation of the work for conformance with the Construction Documents, (2) results of subsequent tests and inspections, (3) minor deviations from the Construction Documents correctable prior to completion, and (4) specific qualifications expressed by the Inspector.

Payments for approved construction services shall be made within thirty (30) calendar days after approval by the Owner and the Inspector of the monthly Request for Payment from the Design-Builder. Design-Builder shall be paid a sum equal to ninety-five percent (95%) of the value of the construction work performed (as approved by the Owner and Inspector and verified by Design-Builder) up to the last day of the previous month, less the aggregate of previous payments. The value of the work completed shall be the Design-Builder’s best estimate. Work completed as estimated shall be an approximation or estimate only and no mistake, inaccuracy, error or falsification in any approved estimate shall operate to release the Design-Builder, or any surety upon any bond, from damages arising from such work, or from the Owner’s enforcement of this Agreement. The Owner shall have the right to subsequently to correct any mistake, inaccuracy, error or falsification made or otherwise set forth in any approved Request for Payment and such correction may occur in any future Payment Application or in the final payment to the Design-Builder. No Surety upon any bond shall be relieved, released or exonerated of its obligations under this Contract or any applicable bond when the Owner is unable to correct an overpayment to the Design-Builder due to any abandonment by the Design-Builder or termination by the Owner.

The Design-Builder is required to order, obtain, and store materials and equipment sufficiently in advance of its work at no additional cost or advance payment from the Owner to assure that there will be no delays.

 Owner may withhold from any Application for Payment any amount(s) in dispute, including without limitation the estimated value of work determined by Owner to be incomplete, non-conforming, defective, or damaged unless satisfactorily corrected or remedied.

1. Final Completion/Substantial Completion. The Project shall only be considered complete after the Owner’s Facilities Director formally accepts completion through a written report to the Board and the Owner records a Notice of Completion for the Project (“Final Completion”). Owner shall have no obligation to accept completion of the Project until the entire work, including Punch List, has been completed to the satisfaction of the Owner. Project Inspector, Construction Manager or any other approved representative of the Owner, shall determine when the work is complete. Subject to this Agreement, Owner will release any retention within thirty-five (35) days of recordation of the Notice of Completion.

 The Project shall only be considered substantially complete when each of the following four (4) conditions have been met (“Substantial Completion” or Substantially Complete”): (1) all contractually required items have been installed with the exception of only minor and incomplete Punch List items; (2) all fire/life safety systems have been installed, and are working and signed off on the DSA Form 152 Inspection Card and approved by all authorities having jurisdiction over the Project, and all building systems including mechanical, electrical and plumbing are all functioning; (3) all other items DSA Form 152 Inspection Card for the Project have been approved and signed off; and (4) the Project is fit for occupancy and its intended use.

1. Indemnity and Hold Harmless. Design-Builder’s indemnity and hold harmless obligations for design and engineering services are set forth in **Attachment 2**. Design-Builder’s indemnity and hold harmless obligations for construction and related services are set forth in **Attachment 3**.
2. Termination.

14.1 Termination by Design-Builder. The Design-Builder may terminate the Agreement if the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

a) Issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;

b) An act of government, such as a declaration of national emergency which requires all Work to be stopped; or

c) The Owner has substantially failed to make approved payments to the Design-Builder in accordance with the Agreement.

If one of the reasons described above exists, the Design-Builder may, upon seven days’ written notice to the Owner, terminate the Agreement and recover from the Owner payment for approved Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

14.2 Termination by the Owner for Cause. The Owner may terminate the Agreement if the Design-Builder:

a) Is in breach of the Design & Engineering Services Provisions;

b) Persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

c) Persistently or repeatedly is absent, without excuse, from the Site;

d) Fails to make payment to Subcontractors, suppliers, materialmen, etc. in accordance with their respective agreements;

e) Persistently disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;

f) Becomes bankrupt or insolvent, including the filing of a general assignment for the benefit of creditors;

g) Is debarred from performing any work; or

g) Otherwise is in substantial breach of a provision of the Construction Documents or the Agreement.

When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder’s surety, if any, written notice of seven (7) days, terminate the Design-Builder and/or the Agreement and may, subject to any prior rights of the surety:

a) Take possession of all Construction Documents and other documents prepared by the Design Professional;

b) Take possession of the Project and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;

c) Accept assignment of Subcontracts. Design-Builder acknowledges and agrees that if the Owner (in its sole and absolute discretion) decides to takeover completion of the Project, the Design-Builder agrees to immediately assign all subcontracts to the Owner which the Owner has chosen to accept; and

d) Complete the Project by any reasonable method the Owner may deem expedient, including contracting with a replacement contractor or contractors.

If the Owner terminates the Agreement for cause or default of the Design-Builder, the Design-Builder shall not be entitled to receive further payment until the Work is complete. All costs associated with the termination and completion of the Project shall be the responsibility of the Design-Builder and/or its surety.

If the unpaid balance of the GMP exceeds costs of completing the Work, including compensation for professional services and expenses made necessary thereby, such excess shall be Project Savings and shall belong to the Owner. If the costs to complete the Work including, but not limited to, compensation for professional services and expenses made necessary thereby exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. This payment obligation shall survive completion of the Project.

14.3 Termination by the Owner for Convenience. The Owner may, at any time, terminate the Agreement for the Owner’s convenience and without cause. Upon receipt of written notice from the Owner of such termination for the Owner’s convenience, the Design-Builder shall:

a) Cease operations as directed by the Owner in the notice;

b) Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

c) Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing contracts and purchase orders and enter into no further contracts and purchase orders.

In the event of termination for the Owner’s convenience prior to commencement of construction, the Design-Builder shall be entitled to receive payment for Owner-approved design services performed and approved costs incurred by reason of such termination. In case of termination for the Owner’s convenience after commencement of construction, the Design-Builder shall be entitled to receive payment for Work executed and approved costs incurred by reason of such termination.

14.4 Termination for Non-Appropriation of Funds/ Insufficient Funds. In the event that sufficient funds are not appropriated to complete the Project or the Owner determines that sufficient funds are not available to complete the Project, Owner may terminate or suspend the completion of the Project at any time by giving written notice to the Design-Builder. In the event that the Owner exercises this option, the Owner shall pay for any and all work and materials completed or delivered onto the Site for which value is received, and the value of any and all work then in progress and orders actually placed which cannot be canceled up to the date of notice of termination. The value of work and materials paid for shall include a factor of four and one-half percent (4.5%) for the Design-Builder’s fee, overhead and profit and there shall be no other costs or expenses paid to Design-Builder. All work, materials and orders paid for pursuant to this provision shall become the property of the Owner. Owner may, without cause, order Design-Builder in writing to suspend, delay or interrupt the Project in whole or in part for such period of time as Owner may determine. Adjustment shall be made for increases in the cost of performance of the Agreement caused by suspense, delay or interruption.

1. In the event of a dispute between the parties as to performance of the work or the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute. Pending resolution of this dispute, Design-Builder agrees to continue the work diligently to completion. If the dispute is not resolved, Design-Builder agrees it will neither rescind the Agreement nor stop the progress of the work, but Design-Builder’s sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the Project has been completed, and not before.
2. Design-Builder, in the performance of this Agreement, shall be and act as an independent contractor. Design-Builder understands and agrees that Design-Builder and all of Design-Builder’s employees shall not be considered officers, employees, or agents of the Owner, and are not entitled to benefits of any kind or nature normally provided employees of the Owner and/or to which Owner’s employees are normally entitled, including but not limited to, State Unemployment Compensation or Worker’s Compensation. Design-Builder assumes the full responsibility for the acts and/or omissions of Design-Builder’s employees or agents as they relate to the services to be provided under this Design Services Agreement. Design-Builder shall assume full responsibility for payment of all federal, state, and local taxes or contributions, including unemployment insurance, social security, and income taxes for the respective Design-Builder’s employees.
3. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the Owner or Design-Builder. The Parties, by entering into this Agreement, do not intend to create any benefit for any stranger to this Agreement.
4. The Owner and Design-Builder, respectively, bind themselves, their partners, officers, successors, assigns, and legal representatives to the other party to this Agreement with respect to the terms of this Agreement. Design-Builder shall not assign this Agreement without the prior written consent of the Owner.
5. This Agreement shall be governed by the laws of the Superior Court for the State of California. All disputes between Owner and Design-Builder venue shall be in San Bernardino County, California.
6. This Agreement comprises the entire agreement between the Owner and Design-Builder and supersedes all prior negotiations, representations, or agreements, either written or oral. The parties acknowledge that they have not relied upon any representations not expressly incorporated into this Agreement as consideration therefor, and hereby waive and forego every consideration and condition of every kind and nature not expressly stated or incorporated in either or both of this Agreement.
7. Neither delay in enforcing, nor failure to enforce any provision of this Agreement shall operate as a waiver by either party of its right to enforce any provision of this Agreement, subject only to the statutory period of limitations applicable to any such claim for enforcement.
8. This Agreement may be amended or modified only by an agreement in writing signed by both the Owner and the Design-Builder.

The parties, through their authorized representatives, have executed this Agreement and made it effective as of \_\_\_\_\_\_\_\_\_\_\_\_\_, 2019.

LEMOORE UNION ELEMENTARY SCHOOL DISTRICT

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

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

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

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

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

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

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

**ATTACHMENT 1**

**Cost of the Work & Guaranteed Maximum Price**

1 **Guaranteed Maximum Price Breakdown**.

1.1 The components of the Guaranteed Maximum Price outlined in the Agreement are summarized in 1.2 below, herein called the Guaranteed Maximum Price Breakdown. The Guaranteed Maximum Price Breakdown shall be used as a basis for: the Schedule of Values; determination of fixed and non-fixed costs; the Cost of the Work, and the overall components of the Guaranteed Maximum Price.

1.2 **Phase 1 (Preconstruction)**

 Fixed Architectural & Engineering Fees (Architect of Record) **$**
To be paid as follows based on actual level of completion:

Schematic Design 10%

Design Development 15%

Construction Documents 40%

DSA & Agency Approval 5%

Construction Administration 25%

DSA & Agency Close-Out and

 Certification of Project 5%

 **Phase 2 (Construction)**

 Fixed Design-Builder Fee $

 Fixed Design-Builder General Conditions $

 (Refer to Attachment 7 for breakdown)

 Construction Cost (“Cost of the Work”) $

 SUBTOTAL $

 NTE Maximum Escalation Amount through Dec. 31, 2019
 (4% of Construction Cost/ Cost of the Work) $

 Fixed Construction Contingency $

 SUBTOTAL **$**

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 Guaranteed Maximum Price (Phase 1 + Phase 2) **$**

2. **Reconciliation of Non-Fixed Amounts and** **Project Savings**

2.1 The “Construction Cost”/ “Cost of the Work” and the “Maximum Escalation Amount” outlined in the Guaranteed Maximum Price Breakdown are both non-fixed amounts subject to final reconciliation between the Owner and the Design-Builder.

2.2 The reconciliation of the Cost of the Work amount shall occur in two phases as follows:

 Cost of the Work Reconciliation Phase 1: Phase 1 shall incrementally occur when the design is sufficiently developed to accommodate bidding of the work with the various Subcontractors and issuance of subcontract agreements; however, this shall not occur later than after the completion of the DSA and Agency Approval Phase. After the Design-Builder has completed the Subcontractor bidding and/or re-bidding process in accordance with Education Code section 17250.35, has evaluated each Subcontractor bid, and has made the appropriate cost adjustment(s) to address any exclusion, clarification, or qualifications that would affect the final amount of the bid, the Design-Builder shall present such Subcontractor bids to the Owner for review and approval, along with a recommendation for subcontract award. The Owner shall not unreasonably withhold subcontract award approval and the Design-Builder’s recommendation for award shall govern the final award decision unless a reasonable objection to such award is presented by the Owner or if the selection of all Subcontractors does not comply with Education Code section 17250.35. The summation of all approved subcontract awards shall be used to calculate the Phase 1 Cost of the Work reconciled figure.

 Should the reconciled Phase 1 Cost of the Work figure be less than the initial Cost of the Work figure, the difference shall become Project Savings which shall be documented and reserved in account until all Cost of the Work figures are known at the completion of Phase 2. Such Project Savings shall belong to the Owner.

 Should the reconciled Phase 1 Cost of the Work figure be greater than the initial Cost of the Work figure, the Design-Builder shall either complete the Project without change in the GMP, or initiate a re-design/re-bid cycle within the time constraints as set forth in the approved Project Schedule and to accommodate budget constraints in the GMP without additional cost to the Owner. If, however, the Design-Builder can demonstrate to the Owner’s satisfaction through the production of subcontractor bids, quotes, invoices or other supporting documents and evidence, that the reconciled Phase 1 Cost of the Work figure is greater than the initial Cost of the Work figure due to escalation in construction costs, the Owner may approve increasing the reconciled Phase 1 Cost of the Work figure by an amount not to exceed the Maximum Escalation Amount set forth in the Guaranteed Maximum Price Breakdown supported by such reasonable evidence and documents. If reconciled Phase 1 Cost of the Work figure with the additional approved Escalation Amount is still greater than the initial Cost of the Work figure, the Design-Builder shall either complete the Project without change in the GMP, or initiate a re-design/re-bid cycle within the time constraints as set forth in the approved Project Schedule and to accommodate budget constraints in the GMP without additional cost to the Owner.

 Cost of the Work Reconciliation Phase 2. Phase 2 represents the determination of the Final Cost of the Work figure and shall occur when all costs of the work are known near Project Completion. Should the Final Cost of the Work amount, plus any approved Escalation Costs, be greater than the initial Cost of the Work figure outlined in the Guaranteed Maximum Price Breakdown, then the Design-Builder shall be responsible for such additional costs. Should the Final Cost of the Work amount, plus any approved Escalation Costs, be less than the initial Cost of the Work figure outlined in the Guaranteed Maximum Price Breakdown, then the difference shall become Project Savings which shall belong to the Owner.

2.3 Fixed Construction Contingency. The Fixed Construction Contingency is for the use of the Design-Builder, as approved by the Owner, to pay for miscellaneous work items which are required to complete the Project including to cover trade scope gaps, missed work, areas of damage that may occur between trades during construction, Subcontractor coordination problems, and Design-Builder coordination errors. The Design-Builder shall not use the Construction Contingency to pay for costs related to the following: (a) errors or omissions in the Construction Documents by the Design Professional; (b) discrepancies with the Construction Documents pertaining to applicable building code requirements; (c) enhancements or additions to the Scope of Work desired by the Owner or (d) other items requested by the Design-Builder if approved by the Owner in writing and in the Owner’s sole discretion. In no case shall the Construction Contingency be used to finance Changes in the Work addressed in Construction Provisions (Attachment 3). If upon Substantial Completion of the Project, funds are remaining in the Construction Contingency, such funds shall remain unspent and allocated fully to the Owner. Should the final Construction Contingency amount be greater than the initial Construction Contingency figure outlined in the Guaranteed Maximum Price Breakdown, then the Design-Builder shall be responsible for such additional costs.

ATTACHMENT 2

DESIGN & ENGINEERING SERVICES PROVISIONS

# **DESIGN-BUILDER’S SERVICES AND RESPONSIBILITIES**

1. The Design-Builder’s services shall consist of those services performed by the Design-Builder, Design-Builder’s employees, and Design-Builder’s consultants as enumerated in Articles II and III hereof.
2. Wherever these Design & Engineering Services Provisions states that the Design-Builder shall perform any function appropriate to a licensed professional architect, engineer or other design professional (“Architect” or “Design Professional”), or that must be performed by a Design Professional as a matter of applicable law, regulation, or policy or procedure of any agency having jurisdiction over the Project including, without limitation, the Division of the State Architect (“DSA”), the Design-Builder shall cause such Design Professional to perform such task(s). The Design Professional shall be designated by Design-Builder as in general responsible charge of the Project for purposes of all DSA requirements, including, without limitation, Section 4-341 of Title 24 of the California Code of Regulations. Any references to the Design-Builder in these Design & Engineering Services Provisions shall mean to include the Design Professional. Notwithstanding the above, the Design-Builder shall be solely responsible to the Owner for any defects, deficiencies, negligence, errors or omissions of the Design Professional and Design-Builder shall ensure that the Design Professional complies with all requirements in the Agreement.
3. The Design-Builder’s services including, without limitation, those performed by any Design Professional, shall be performed in a manner which is consistent with professional skill and care and the orderly progress of the work. The Design-Builder represents that it and the Design Professional will follow the appropriate standards of care in the applicable architectural or engineering profession in performing all services under these Design & Engineering Services Provisions. The Design-Builder shall have all obligations, or substantially the same obligations as set forth hereof in each of its contracts with each Design Professional, and shall designate the Owner as an express, intended third party beneficiary of each of Design-Builder’s contracts with each Design Professional. The Design-Builder shall be fully responsible and liable to the Owner for Design Professional’s failure to comply with any provisions or requirements of this Agreement.
4. The Design-Builder shall submit for the Owner’s approval a Project Schedule for the performance of all of the Design-Builder’s services. The Project Schedule may be adjusted during the Design & Engineering phase of services by mutual written agreement of the parties and shall include allowances for time required for the Owner’s review and for approval by authorities having jurisdiction over the Project.
5. In order to ensure timely completion of all services pursuant to these Design & Engineering Services Provisions, the Design-Builder agrees to perform all obligations under these Design & Engineering Services Provisions as expeditiously as required to comply with all time limitations and tasks outlined in the approved Project Schedule. The Design-Builder and Design Professional shall attend and participate in any scheduling meetings for the Project.
6. Time is of the essence and the services covered by these Design & Engineering Services Provisions shall be completed in a timely manner consistent with **Attachment 4** and the approved Project Schedule. All necessary and appropriate plans, specifications, and calculations required for a complete set of Construction Documents shall be submitted to the Division of the State Architect for review and approval as expeditiously as required to comply with all time limitations and DSA goals outlined in approved Project Schedule.
7. In all instances that these Design & Engineering Services Provisions provides for the Design-Builder to take action with regard to any third party, the Owner may at any time unilaterally designate a different third party with regard to whom the Design-Builder shall take any given action. Such a changed designation shall only be effective upon the Owner providing written notice of such changed designation to the Design-Builder.
8. The Design-Builder shall coordinate its services with the Project Inspector, its consultants and other parties to ensure that all requirements under DSA’s Inspection Card (Form 152) and any subsequent revisions, supplements or updates thereto issued or required by DSA, or any other/alternate processes are being met in compliance with DSA requirements and in compliance with the Project Schedule. The Design-Builder and its consultants shall take all action necessary as to not delay progress in meeting any DSA requirements. The Design-Builder shall meet all requirements set forth in DSA’s Construction Oversight Process Procedure (PR 13-01) and any subsequent revisions, supplements or updates thereto issued or required by DSA. Any references to the DSA requirements, DSA forms, documents, manuals applicable to the Project shall be deemed to include and incorporate any revisions or updates thereto.

# **BASIC SERVICES**

1. The Design-Builder’s Basic Services include those described in this Article, and include structural, civil, mechanical, and electrical engineering, audio visual, landscape architecture services, storm water pollution prevention plan services, water quality management services and any other services necessary to produce a reasonably complete and accurate set of Construction Documents reflecting all work, workmanship, materials, finishes, and equipment required for the Project. Construction Documents is defined for purposes of these Design & Engineering Services Provisions as including, but not limited to, the following: complete Project Manuals, including General and Supplementary Conditions of all necessary conditions for construction, drawings, plans, specifications, addenda, and other documents to be prepared by the Design-Builder pursuant to these Design & Engineering Services Provisions, and any modifications thereto.
2. The Design-Builder shall assist the Owner in obtaining required approvals from governmental agencies (for both on and off-site approvals) and any other entities including, but not limited to, those responsible for electrical, gas, water, sanitary or storm sewer, telephone, cable/TV, antenna-based services (e.g., Dish Network), internet providers, public utilities, the fire department, as well as the County Health Department, California Department of Education (“CDE”), the Office of Public School Construction (“OPSC”), State Water Resources Control Board (SWRCB), and DSA. If necessary, the Design-Builder shall secure preliminary agency approvals and notify the Owner in writing as to the actions the Owner must take to secure formal approvals.
3. The Design-Builder shall be responsible for determining the capacity of existing utilities, and/or for any design or documentation required to make points of connection to existing utility services that may be located on or off the Project Site and which are required for the Project.
4. The Design-Builder shall schedule strategic meetings as it believes is necessary to ensure effective decision making between the Design-Builder, its consultants, the Owner’s representative(s), and other consultants of the Owner during development of the Project, or as requested by the Owner or its representative. The Design-Builder shall document and distribute meeting minutes no later than 72 hours after each meeting.
5. The Design-Builder shall make revisions to drawings, plans, specifications, the Project Manuals, or other documents when such revisions are necessary to be consistent with approvals or instructions previously given by Owner.
6. If applicable, the Design-Builder shall provide Basic Services in connection with the work of a project manager, construction manager, or other consultants retained by Owner to provide management, administrative, or consulting services to the Project (“Construction Manager”).
7. The Design-Builder shall provide detailed quantity surveys which provide inventories of material, equipment, and labor consistent with OPSC requirements for such surveys or estimates.
8. The Design-Builder shall consider operating or maintenance costs when selecting systems for the Project.
9. The Design-Builder shall assume responsibility for interior design and other services required for or in connection with graphics and signage.
10. The Design-Builder shall cooperate and consult with the Owner in the use and selection of manufactured items on the Project, including, but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials, and floor coverings. All such manufactured items shall be reviewed and approved by the Owner. Design-Builder shall provide mock-up of products and/or materials for Owner review and approval when requested to assure compliance with original concept design. Where economically viable, the Owner may, in its sole discretion, elect to provide certain items and have them installed by the Design-Builder (Owner Furnished Design-Builder Installed “OFCI”) or under separate contract(s) or through the Owner’s own maintenance staff (Owner Furnished Owner Installed “OFOI”). Should Owner elect to provide OFCI or OFOI items and such election increases or decreases the scope of the work for the Project, it shall be addressed under the Extra Work/ Modification provisions of the Construction Provisions (**Attachment 3**).
11. The Design-Builder shall certify to the best of its information pursuant to 40 Code of Federal Regulations § 763.99(a)(7), that no asbestos-containing material was specified as a building material in any Construction Document for the Project and will require its Design Professional, consultants, Subcontractors and suppliers provide Owner with certification that all materials used in the construction of each element of the Project are free from any asbestos-containing building materials (“ACBM’s”). Design-Builder shall include statements in specifications that materials containing asbestos are not to be included. This certification shall be submitted to the Owner upon completion of the Project.
12. The Design-Builder and Design Professional shall prepare for and make formal presentations to the Governing Board of the Owner, attend public hearings and other public meetings. The Design-Builder and Design Professional shall be prepared to address concept and programmatic requirements for the Project in such presentations, public hearings and public meetings. In addition, the Design-Builder and Design Professional shall attend and assist in legal proceedings that arise from the errors or omissions of the Design Professional.
13. The duties, responsibilities, and limitations of authority of the Design-Builder shall not be restricted, modified, or extended without written agreement between the Owner and Design-Builder.
14. The Design-Builder shall comply with all federal, state, and local laws, rules, regulations, and ordinances that are applicable to the Project.
15. The Design-Builder and Design Professional shall have access to the work at all times.
16. Schematic Design Phase
	1. The Design-Builder shall review the program and concept design documents furnished by the Owner to ascertain the requirements of the Project and shall review the understanding of such requirements with the Owner.
	2. The Design-Builder shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings, plans and other documents illustrating the scale and relationship of Project components. These documents shall comply with all laws, statutes, ordinances, codes, rules, and regulations which are applicable to these documents.
	3. The Design-Builder shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings, plans, renderings, programmatic outlines, and other documents illustrating the scale and relationship of the Project’s components. These documents shall be prepared with the understanding that Design Development and Construction Documents Phases shall be completed in accordance with the realistic understanding of and adherence to the Schematic Design. The Schematic Design Documents shall comply with all applicable laws, statutes, ordinances, codes, rules, and regulations of the State and local governmental agencies and/or authorities having jurisdiction over the Project, including, but not limited to, the OPSC, the CDE, DSA, the County Health Department and the local fire marshal/department, which are required for the final approval of the Project’s completed Construction Documents.
	4. Design-Builder shall submit a list of qualified engineers for the Project for the Owner’s approval in conformance with Article VII hereof. Design-Builder shall require that each engineer place his or her name, seal, and signature on all drawings, plans and specifications prepared by said engineer, as required by law.
	5. The Design-Builder shall investigate and confirm existing conditions and facilities and verify any record drawings of such conditions or facilities on the Project Site. The Design-Builder shall participate in any Site meetings to review the requirements for the Project with the Owner and/or the Construction Manager.
	6. The Design-Builder shall provide the Owner with a complete set of all Schematic Design Documents in electronic formats (CADD and PDF format) at no additional cost.
	7. The Design-Builder shall perform Schematic Design Services to keep the Project within all budget and scope constraints set by the Owner, unless otherwise modified by written authorization from the Owner.
17. Design Development Phase (Preliminary Plans)
	1. Upon approval by the Owner of the Schematic Design services set forth above, the Design-Builder shall prepare Design Development Documents based on the Schematic Design and based on the Program that has been approved by the Owner. Such documents shall consist of site and floor plans, elevations, cross-sections, and other documents necessary to depict the design of the Project, and shall outline specifications to fix and illustrate the size, character, and quality of the entire Project as to the Program requirements, landscapes, architecture, civil, structural, mechanical, and electrical systems, materials, and such other essentials as may be appropriate.
	2. The Design-Builder shall prepare the Design Development Documents to comply with the requirements of all governmental agencies having jurisdiction over the Project including, but not limited to, the OPSC, the CDE, DSA, the County Health Department and the local fire marshal/department.
	3. The Design-Builder shall establish and prepare an estimated Project Construction Cost and shall advise the Owner, in writing, of any adjustments to the estimate of Construction Cost.
	4. The Design-Builder shall perform Design Development Services to keep the Project within all budget and scope constraints set by the Owner, unless otherwise modified by written authorization by the Owner.
18. Construction Document Phase (Final Plans)
	1. The Design-Builder shall prepare, from the Design Development Documents approved by the Owner, Construction Documents in an electronic format approved by Owner including, but not limited to, all drawings, plans and specifications for the Project setting forth, in detail, the requirements for the construction of the entire Project in conformity with all applicable (on and off site) governmental and code requirements including, but not limited to, the requirements of the OPSC, DSA, the local fire marshal/department, the County Health Department and any other governmental agency having jurisdiction over the Project. The Construction Documents shall show all the work to be done, as well as the materials, workmanship, finishes, and equipment required for the completion of the Project. All Construction Documents prepared by the Design-Builder shall be properly coordinated including, but not limited to, the various disciplines, dimensions, terminology, details, etc
	2. The Design-Builder shall prepare and file all documents required for, and obtain the required approvals of, all governmental agencies having jurisdiction over the Project including, but not limited to, the OPSC, CDE, DSA, local fire marshal/department, City Design Review, County Health Department, Department of Public Works, and any other governmental agencies or authorities which have jurisdiction over the Project.
	3. Design-Builder shall, whenever feasible, establish beforehand the exact costs due to governmental agencies and submit this cost information to Owner so payments may be prepared by Owner and delivered to Design-Builder for timely submission. If Design-Builder fails to timely notify Owner to facilitate payment by Owner, and Design-Builder submits the payment, Design-Builder shall not charge a mark-up on costs associated with governmental agency fees. In the event Design-Builder timely notifies Owner but Owner fails to prepare the payment such that Design-Builder is compelled to prepare and submit the payment, Design-Builder shall be entitled to two percent (2%) of the amount advanced by Design-Builder.
	4. The Design-Builder shall verify that all design review comments and revisions provided by the Owner are thoroughly integrated into the Construction Documents. Design-Builder shall provide written explanations to the Owner in a timely manner for all design review comments not incorporated into the Construction Documents. The Design-Builder shall perform all services related to changes in the Design-Builder’s scope of work required to integrate design review comments and revisions provided by the Owner into the Construction Documents, provided such changes are consistent with the **Attachments 5 and 6**.
19. DSA and Agency Approval Phase
	1. Upon approval by the Owner of the Construction Documents, Design-Builder shall submit to DSA and any other authorities or agencies having jurisdiction over the Project, all Construction Documents for the Project. The Design-Builder and its appropriate Design Professional shall incorporate all notes, comments, revisions, and changes to the plans prior to their submittal to DSA and any other authorities or agencies having jurisdiction over the Project.
	2. Upon receipt of comments from DSA and any other authorities or agencies having jurisdiction over the Project, Design-Builder, at no additional cost, shall promptly make the modifications required and schedule further plan checks until approvals by all agencies are secured. Design-Builder shall make every reasonable effort to expedite the plan check and approval process.
	3. Design-Builder shall promptly notify Owner of any plan check or new agency requirements which would affect the Cost of the Work, the Project Schedule, or the schedule for performance of Design-Builder’s services under these Design & Engineering Services Provisions.
20. Construction Phase
	1. The Construction Phase will commence with the issuance of a Notice to Proceed by the Owner to the Design-Builder.
	2. Prior to the start of construction, the Design Professional shall certify that the following documents have been submitted to DSA:
		1. Contract Information Form DSA-102
		2. Inspector Qualification Record Form DSA-5 should be submitted 10 days prior to the time of starting construction
	3. The Design-Builder shall reproduce three (3) full-size sets of the final DSA approved Construction Documents and in PDF format for the Owner’s use at the Design-Builder’s expense.
	4. During the Construction Phase, once every week, the Owner’s representative will conduct an “all hands” meeting wherein all relevant parties as requested by the Owner’s representative (including each of Design-Builder’s consultants as applicable) will meet to review the status of construction and the overall Project requirements. The frequency of such meetings may be adjusted as mutually agreed upon by the parties.
	5. The Design Professional shall provide technical direction to a full-time Project Inspector employed by, and responsible to, the Owner, as required by applicable law. The Design Professional shall direct and monitor the work of the Laboratory of Record as required by applicable law and provide code required supervision of Special Inspectors not provided by the Laboratory of Record. The Design Professional shall confirm that the Project Inspector has the necessary Project Inspection Cards (“PIC”) (Form DSA 152) from the DSA that are needed for the Project Inspector’s use in approving and signing off work on the Project as it is completed by the Design-Builder during construction. The Design Professional shall verify that the Project Inspector has the appropriate amount of PIC’s that are needed for the inspection and completion of the entire Project prior to the commencement of any construction work on the Project. The Design Professional shall provide the Project Inspector, Laboratory of Record and each Special Inspector with a copy of the DSA approved Construction Documents including, but not limited to, the approved Statement of Structural Tests and Special Inspections (Form DSA 103) prior to the commencement of any work on the Project at the Design Professional’s expense.
	6. The Design Professional shall meet with the Project Inspector, Owner, Laboratory of Record and Special Inspectors as needed throughout the completion of the Project to verify, acknowledge and coordinate the testing and special inspection program required by the DSA approved Construction Documents.
	7. The Design Professional shall prepare Interim Verified Reports (Form DSA 6-AE) and submit such Interim Verified Reports to DSA, the Project Inspector and the Owner prior to the Project Inspector’s approval and sign off of any of the following sections of the Project’s PIC’s as applicable:

i. Initial Site Work and Foundations Preparation;

ii. Vertical and Horizontal Framing;

iii. Appurtenances;

iv. Finish Site Work and Other Work;

v. Final.

If the Design Professional has delegated responsibility for any portion of the Project’s design to other engineers, the Design Professional shall ensure that such engineers submit the necessary Interim Verified Reports (Form DSA 6-AE) to DSA, the Project Inspector and the Owner during the course of construction and prior to the Project Inspector’s approval and sign off of the above sections of the DSA Form 152 as they relate to the portions of the Project that were delegated to such engineers.

* 1. Design-Builder and Design Professional shall provide general administration of the Construction Documents including, but not limited to:
		1. Conducting construction observation services through such personal contact with the Project as is necessary to assure themselves that the work work is being completed, in every material respect, in compliance with the DSA approved Construction Documents (in no case shall the number of visits be less than once every week or as necessary to observe work being completed in connection with each block/section of a PIC so the Design Professional can verify that the work does or does not comply with the DSA approved Construction Documents, whichever is greater) in order to:

(1) Become familiar with, and to keep DSA and Project Inspector informed about, the progress and quality of the portion of the work completed and for the preparation of the necessary Interim Verified Reports the Design Professional will prepare and submit to DSA and Project Inspector as necessary for the timely inspection of the Project and for the approval and sign off of each block/section of the PIC’s during the course of the Project’s construction;

(2) Endeavor to guard against nonconforming work and deficiencies in the work;

(3) Determine if the work is being performed in a manner indicating that the work, when fully completed, will be in accordance with the approved DSA Construction Documents;

(4) Attend weekly on-site construction meetings, and being otherwise available to the Owner and the Project Inspector for site meetings on an “as-needed” basis; and

(5) Examine Design-Builder applications for payment and to issue certificates for payment in amounts approved by the necessary parties.

* + 1. Making regular reports as may be required by all governmental agencies or authorities having jurisdiction over the Project;
		2. Keeping the Owner informed of the progress of construction;
		3. Reviewing schedules and shop drawings for compliance with the Construction Documents;
		4. Evaluating substitution of materials, equipment, and the laboratory reports thereof for conformance to the Owner’s standards subject to Owner knowledge and approval;
		5. Responding to DSA field trip notes;
		6. Preparing change orders/ construction change documents for written approval of the Owner and approval by DSA as required;
		7. Issuing certificates for payment in amounts approved by the Owner;
		8. Determining the date of Substantial Completion of the Project as defined in Section 12 of the Design-Build Agreement;
		9. Assembling and delivering to the Owner all required written guarantees, instruction books, diagrams, and charts; and
		10. Providing any other architectural services to fulfill the requirements of the Construction Documents and the Agreement.
	1. Design Professional shall make recommendations to the Owner on claims relating to the execution and progress of the work and all matters and questions relating thereto.
	2. Design Professional shall promptly inform the Owner, whenever, in the Design-Builder’s opinion, it may be necessary to stop the work to avoid the improper performance of the Project work.
	3. Design Professional shall at no additional cost provide services made necessary by defects or deficiencies in the work of the Design-Builder, which through reasonable professional observation and care should have been discovered by the Design Professional and promptly reported to the Owner and Design-Builder, but which Design Professional failed to do so.
	4. Design Professional shall advise the Owner to reject work which does not conform to the Construction Documents. The Design Professional shall promptly inform the Owner whenever, in the Design Professional’s opinion, it may be necessary to stop the work to avoid non-compliance with the Construction Documents.
	5. Design-Builder shall submit for review by the Design Professional shop drawings, product data, and samples for the purpose of checking for conformance with the Construction Documents. The Design-Builder’s action shall not delay the work, but should allow for sufficient time to permit adequate review and approval.
	6. All changes to the DSA approved Construction Documents shall be made by means of a Construction Change Document (“CCD”) unless otherwise approved by the Owner in writing. The Design Professional shall be responsible for preparing each CCD related to the Project and shall determine which changes affect the Structural, Access or Fire & Life Safety (collectively “SAFLS”) portions of the Project and ensure that such changes are documented and implemented through a written CCD-Category A (Form DSA 140). All CCD-Category A’s must be submitted to DSA by the Design Professional with all supporting documentation and data and must be approved by DSA before such work can commence on the Project. The Design Professional shall obtain the Owner’s approval of all CCD-Category A’s before they are submitted to DSA for review and approval. All other changes to the DSA approved Construction Documents not involving SAFLS portions of the Project are not required to be submitted to DSA unless DSA specifically requires such changes to be submitted to DSA in the form of a written CCD-Category B (Form DSA 140) inclusive of all supporting documentation and data. Changes that are not determined by the Design Professional and/or DSA to require documentation through an approved CCD-Category A/B shall be documented through an alternative CCD form or other document approved by the Owner.
	7. Design Professional shall review the list of minor defects, deficiencies, and/or incomplete items (hereinafter the “Punch List”) and the fully executed Verified Report (Form DSA-6) when the Project is determined to be Substantially Complete. The Design Professional shall inspect the Project, in conjunction with the Design-Builder, in order to verify the Design-Builder’s Punch List, add any other items to the Punch List and to confirm that Substantial Completion has been reached on the Project. The Design Professional shall notify the Owner when all Punch List items have been completed.
	8. Once the Design Professional has verified the Substantial Completion of the Project, the Design Professional shall issue a Certificate of Substantial Completion to the Owner. Upon the issuance of the Certificate of Substantial Completion, the Design Professional shall prepare and submit to DSA, Project Inspector and the Owner a written Verified Report, on Form DSA 6AE, pursuant to Section 4-336 of Title 24 of the California Code of Regulations. The Design Professional shall also submit a signed Verified Report to DSA, Project Inspector and the Owner upon any of the following events:
		1. Work on the Project is suspended for a period of more than one month;
		2. The services of the Design Professional are terminated for any reason prior to the completion of the Project;
		3. DSA requests a Verified Report.
	9. The Design Professional and its consultants shall verify that all defective, deficient, or incomplete work identified in any Notice(s) of Deviation or similar notice(s) issued by the Design Professional, Project Inspector, Special Inspector(s), Laboratory of Record and/or any governmental agency or authority, is fully corrected and closed before the Design Professional approves any final Punch List. Design Professional shall direct the applicable Inspectors, Special Inspectors, and/or engineers on the Project to visually verify that each defective, deficient and/or incomplete item of work referenced in each Notice of Deviation have been rectified and closed prior to the approval of the final Punch List and the issuance of any Certificate of Substantial Completion by the Design Professional. In the event the Design Professional and/or its consultants fail to verify that such work has been corrected before the Design Professional approves the final Punch-List and such work has in fact not been corrected, the Design Professional shall be responsible for performing all the architectural and/or engineering services necessary, at no additional cost to the Owner, to ensure such open and outstanding items in the Notice(s) of Deviation are addressed accordingly and that all work related to such notices is corrected in a manner acceptable to the Owner and DSA.
	10. During construction, the Design-Builder, by and through the Design Professional, shall prepare As-Built Documents which shall be a complete set of drawings/plans, so marked as to show all significant changes from the original contract requirements and the locations of major concealed systems, main conduit runs, or other main services embodied in the completed structures or on the Site.
	11. The Design-Builder shall receive and forward to the Owner for the Owner’s review all written warranties and related documents required by the Construction Documents and issue a final application for payment upon compliance with all requirements of the Construction Documents.
	12. The Design-Builder, by and through the appropriate Design Professional, shall make all revisions to drawings, plans, specifications, and other documentation resulting from any substitutions approved by the Owner.
	13. The Design-Builder shall provide, and cause the appropriate Design Professional to provide, all reasonable assistance toward the commissioning and utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
1. Project Close-Out
	1. The Design-Builder shall be responsible for gathering information and processing forms required by applicable governing authorities, such as building departments and DSA, in a timely manner and ensure proper Project close-out.
	2. Within thirty (30) days after the completion of the Project’s construction, the Design Professional will revise the record drawings, plans and specifications so that they include all material changes made necessary by CCD’s, change orders, RFI’s, change order requests, bulletins, clarifications as noted in the As-Built Documents and/or any other Owner approved document which details the changes that were made to the DSA approved Construction Documents. The Design Professional shall incorporate such changes into a complete AutoCAD As-Built file, in the original, executable, software format, and PDF files, and provide all such documents, including three (3) hard copies, to the Owner at no additional cost.
	3. The Design-Builder shall assure delivery of the following documents described below to DSA for review prior to issuance of a “Certificate of Completion.”
	4. During the period the Project is under construction, the Design-Builder and Design Professional shall certify that the following documents have been submitted to DSA:

i. Addenda, deferred approvals and revisions;

ii. Copies of the Project Inspector’s semi-monthly reports;

iii. Construction deviation notices;

iv. Copies of the laboratory reports on all tests or laboratory inspections as returned and done on the PROJECT;

v. Special inspection reports;

vi. Construction Change Directives;

vii. Copies of all the necessary PIC’s which have been approved and signed off by the Project Inspector for the submission to and certification by DSA; and

viii. All other documents required to be submitted to DSA in accordance with Title 24 and the Construction Oversight Process Procedure set forth in DSA’s PR 13-01.

* 1. Upon completion of construction of the Project, the following reports are required:
		1. Copy of the Notice of Completion.
		2. Final Verified Report Form DSA-6A/E certifying all work is 100% complete from structural engineer, mechanical engineer, and electrical engineer.
		3. Final Verified Report Form DSA-6 certifying all work is 100% complete from the Design-Builder, Project Inspector, and Special Inspector(s).
		4. Verified Reports of Testing and Inspections as specified on the approved drawings, plans and specifications, i.e., Final Laboratory Report, Welding, Glued-Laminated Timber, etc.
		5. Weigh Master’s Certificate (if required by approved drawings, plans and specifications).
		6. Copies of the signature page of all Addenda as approved by DSA.
		7. Copies of the signature pages of all deferred approvals as approved by DSA.
		8. Copies of the signature page of all change orders/ CCD’s as approved by DSA.
		9. Verification by the Project Inspector that each item noted on any “Field Trip Notes” has been corrected.
		10. The Design-Builder shall obtain all information required for a Certification & Close of File for the DSA Application number(s) for the Project. Until such time as the Owner is in possession of said Certification, the Owner shall not make final payment to the Design-Builder. Such final payment shall not be unreasonably withheld due to the non-performance of third parties not directly under the control and responsibility of the Design-Builder.
	2. The Design Professional shall notify the Owner, in writing, if any of the above items are not promptly submitted to the Design Professional and/or the Owner by the responsible parties for submittal to DSA. If necessary, the Design Professional shall assist the Owner in obtaining the above documents for delivery to DSA.
1. Design-Builder guarantees and warrants that the Construction Documents shall reflect a complete scope of work that, if faithfully executed by the Design-Builder, shall result in a complete Project that conforms in all material respects with the Agreement.

# **ADDITIONAL SERVICES**

1. Design-Builder shall notify the Owner in writing of the need for Additional Services required due to circumstances beyond the Design-Builder’s control. Design-Builder shall obtain written authorization from the Owner before rendering such services. The Owner shall incur no obligation to pay the Design-Builder any compensation for such services until the scope of Additional Services and compensation therefor has been negotiated between the Owner and the Design-Builder and approved in writing by the Owner. Such services may include:
	1. Making material revisions in drawings, plans, specifications, or other documents when such revisions are required by the enactment or revision of laws, rules, or regulations subsequent to the preparation and completion of the Construction Documents not reasonably foreseeable by the Design-Builder.
	2. Providing consultation concerning replacement of work damaged by fire and furnishing services required in connection with the replacement of such work.
	3. Providing any other services not otherwise included in these Design & Engineering Services Provisions or not customarily furnished in accordance with generally accepted architectural and engineering practice for design-build projects.

# **OWNER’S RESPONSIBILITIES**

1. The Owner shall provide to the Design-Builder information regarding Owner’s requirements for the Project, including information regarding the Owner’s objectives, schedule, constraints, and criteria.
2. The Owner shall notify the Design-Builder of administrative procedures required and name a representative authorized to act on its behalf. The Owner shall promptly render decisions pertaining thereto to avoid unreasonable delay in the progress of the Project.
3. The Owner shall give prompt written notice to the Design-Builder if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Construction Documents. However, the Owner’s failure or omission to do so shall not relieve the Design-Builder of Design-Builder’s and Design Professional’s responsibilities under these Design & Engineering Services Provisions, Title 21 of the California Code of Regulations, Title 24 of the California Code of Regulations, or the Field Act. The Owner shall be entitled to and shall rely completely on the representations of Design-Builder, Design Professional, Owner’s approved representative, and the Project Inspector as to the condition of the Project and the presence or absence of any defects, of any kind or degree, or any failure(s) to conform, to any degree in any way, with the Construction Documents.

# **DRAWINGS AND SPECIFICATIONS**

1. All documents including, but not limited to, plans, drawings, specifications, record drawings, models, mock-ups, renderings and other documents (including all computer file and/or AutoCAD files) prepared by the Design-Builder, the Design-Builder’s consultants or Design Professional for this Project, shall be and remain the property of the Owner pursuant to Education Code section 17316 for the purposes of repair, maintenance, renovation, modernization or other purposes as they relate to the Project. The Owner, however, shall not be precluded from using the Design-Builder’s, Design-Builder’s consultants’ or Design Professional’s documents enumerated above for the purposes of additions, alignments or other development on the Project Site.

# **ACCOUNTING RECORDS OF THE DESIGN-BUILDER**

1. Records of the Design-Builder’s direct personnel and expenses pertaining to the Additional Services on this Project and records of accounts between the Owner and Design-Builder shall be kept on a generally recognized accounting basis and shall be available to the Owner or its authorized representative for review, inspection, and copying at mutually convenient times.

# **EMPLOYEES AND CONSULTANTS**

1. The Design-Builder shall furnish the consultant services necessary to complete the Project including, but not limited to: structural, civil, mechanical, and electrical engineering, landscape architecture services, storm water pollution prevention plan services, and any other necessary design professionals and/or consultants. All consultant services shall be provided at the Design-Builder’s sole expense. The Design-Builder shall be responsible for the coordination and cooperation of all architects, engineers, experts or other consultants employed by the Design Professional.
2. The Design-Builder shall ensure that its architects, engineers, and/or other consultants file the required Interim Verified Reports, Verified Report and other documents that are necessary for the Project’s timely inspection and close-out as required by the applicable governmental agencies and/or authorities having jurisdiction over the Project including, but not limited to, DSA. The Design-Builder shall ensure that its architects, engineers and consultants observe the construction of the Project during the course of construction, at no additional cost to the Owner, to maintain such personal contact with the Project as is necessary to assure such engineers and consultants that the Design-Builder’s work is being completed, in compliance with the DSA approved Construction Documents (in no case shall the number of visits be less than once every week or as necessary to observe work being completed in connection with each block/section of a PIC so such engineers and consultants can verify that the work does or does not comply with the DSA approved Construction Documents, whichever is greater).
3. The Design-Builder shall submit, for written approval by the Owner, the names of the consultant firms proposed for the Project. Nothing in these Design & Engineering Services Provisions shall create any contractual relation between the Owner and any consultants employed by the Design-Builder under the terms of these Design & Engineering Services Provisions.
4. Design-Builder’s consultants shall be licensed to practice in California in their respective disciplines and have relevant experience with school design and construction during the last five years. If any employee or consultant of the Design-Builder is not acceptable to the Owner then that individual shall be replaced with an acceptable competent person at the Owner’s request.
5. The construction administrator or field representative assigned to this Project by Design-Builder shall be licensed as a California Architect or Professional Engineer, able to make critical Project decisions in a timely manner, and shall be readily available, and shall provide by phone, facsimile, and through correspondence, design direction and decisions when not present at the Site.

# **DESIGN PROFESSIONAL INSURANCE**

### The Design Professional shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to Owner which will protect Design Professional and Owner from claims which may arise out of or result from Design Professional’s actions or inactions relating to the Agreement, whether such actions or inactions be by themselves or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

* 1. Workers’ Compensation and Employers Liability Insurance in accordance with the laws of the State of California. However, such amount shall not be less than One Million Dollars ($1,000,000).
	2. Commercial general and auto liability insurance, with limits of not less than Two Million Dollars ($2,000,000.00) combined single limit, bodily injury and property damage liability per occurrence, including:
		1. Owned, non-owned, and hired vehicles;
		2. Blanket contractual;
		3. Broad form property damage;’
		4. Products/completed operations; and
		5. Personal injury.
	3. Professional liability insurance, including contractual liability, with limits of Two Million Dollars ($2,000,000.00) per claim. Such insurance shall be maintained during the term of this Agreement and renewed for a period of at least five (5) years thereafter and/or at rates consistent with the time of execution of this Agreement adjusted for inflation. In the event that Design Professional subcontracts any portion of Design Professional’s duties, Design Professional shall require any such subcontractor to purchase and maintain insurance coverage as provided in this Section. Failure to maintain professional liability insurance is a material breach of this Agreement and grounds for immediate termination.
	4. Valuable Document Insurance. The Design Professional shall carry adequate insurance on all drawings, plans and specifications as may be required to protect the Owner in the amount of its full equity in those drawings and specifications, and shall file with the Owner a certificate of that insurance. The cost of that insurance shall be paid by the Design Professional, and the Owner shall be named as an additional insured.
	5. Each policy of insurance required under Article VIII shall name the Owner and its officers, agents, and employees as additional insureds; shall state that, with respect to the operations of Design Professional hereunder, such policy is primary and any insurance carried by Owner is excess and non-contributory with such primary insurance; shall state that not less than thirty (30) days’ written notice shall be given to Owner prior to cancellation; and, shall waive all rights of subrogation. Design Professional and Design-Builder shall notify Owner in the event of material change in, or failure to renew, each policy. Prior to commencing work, the Design Professional shall deliver to Owner certificates of insurance as evidence of compliance with the requirements herein. In the event the Design Professional and/or Design-Builder fails to secure or maintain any policy of insurance required hereby, the Owner may, at its sole discretion, secure such policy of insurance in the name of, and for the account of, Design Professional, and in such event Design-Builder shall reimburse Owner upon demand for the cost thereof.
	6. In the event that the Design Professional subcontracts any portion of the Design Professional’s duties, the Design Professional shall require any such subcontractor to purchase and maintain insurance coverage for the types of insurance referenced in Article VIII, Sections 3(a), (b), (c) and (d), in amounts which are appropriate with respect to that subcontractor’s part of work which shall in no event be less than $500,000 per occurrence. The Design Professional shall not subcontract any portion of the Design Professional’s duties under this Agreement without the Owner’s prior written approval. Specification processing consultants are the only subcontractors exempt from maintaining professional liability insurance.
	7. All insurance coverage amounts specified hereinabove shall cover only risks relating to, or arising out of, the Project governed by this particular Agreement. The insurance and required amounts of insurance specified above shall not be reduced or encumbered on account of any other projects of the Design Professional

# **MISCELLANEOUS**

1. The Design-Builder shall make a written record of all meetings, conferences, discussions, and decisions made between or among the Owner and Design-Builder during all phases of the Project and concerning any material condition in the requirements, scope, performance, and/or sequence of the work. The Design-Builder shall provide a copy of such records to the Owner.
2. To the fullest extent permitted by law, Design-Builder and Design Professional agree to indemnify, defend and hold Owner entirely harmless from all liability arising out of:

## A. Workers’ Compensation. Any and all claims under Workers’ Compensation acts and other employee benefit acts with respect to Design Professional’s employees or Design Professional’s subcontractor’s employees arising out of Design Professional’s work under this Agreement; and

## B. General Liability. Design Professional shall indemnify and hold the Owner harmless from any liability for damages for (1) death or bodily injury to person; (2) injury to, loss or theft of property; (3) any failure or alleged failure to comply with any provision of law; or (4) any other loss, damage or expense arising under either (1), (2), or (3) above, sustained by the Design Professional or the Owner, or any person, firm or corporation employed by the Design Professional or the Owner upon or in connection with the Project, except for liability resulting from the sole or active negligence, or willful misconduct of the Owner, its officers, employees, agents, or independent Architects who are directly employed by the Owner. The Design Professional, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the Owner (other than professional negligence covered by Section c below), its officers, agents, or employees, and shall pay or satisfy any judgment that may be rendered against the Owner, its officers, agents, or employees, in any action, suit or other proceedings as a result thereof; and

## C. Professional Liability. Design Professional shall indemnify and hold the Owner harmless from any loss, injury to, death of persons, or damage to property caused by any act, neglect, default, or omission of the Design Professional, or any person, firm, or corporation employed by the Design Professional, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm, or corporation, including the Owner, arising out of, or in any way connected with, the Project, including injury or damage either on or off Owner property; but not for any loss, injury, death, or damages caused by sole or active negligence, or willful misconduct of the Owner. With regard to the Design Professional’s obligation to indemnify for acts of professional negligence, such obligation does not include the obligation to provide defense counsel or to pay for the defense of actions or proceedings brought against the Owner, but rather to reimburse the Owner for attorneys’ fees and costs incurred by the Owner in defending such actions or proceedings brought against the Owner.

ATTACHMENT 3

**CONSTRUCTION PROVISIONS**

**LIST OF SUBCONTRACTORS**

| **Description & Portion of Work** | **Name of Subcontractor** | **Location & Place of Business** | **License Number** | **DIR Registration Number** |
| --- | --- | --- | --- | --- |
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**PAYMENT BOND**

**(CALIFORNIA PUBLIC WORK)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the LEMOORE UNION ELEMENTARY SCHOOL DISTRICT (sometimes referred to hereinafter as “Obligee”) has awarded to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter designated as the “Principal” or “Contractor”), an agreement for the work described as follows: Lemoore Union Elementary School District Liberty Middle School HVAC Replacement (hereinafter referred to as the “Public Work”); and

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

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

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

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

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

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

PRINCIPAL/CONTRACTOR:

By:

SURETY:

By:

Attorney-in-Fact

IMPORTANT: THIS IS A REQUIRED FORM.

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

Any claims under this bond may be addressed to:

|  |  |
| --- | --- |
| (Name and Address of Surety) | (Name and Address of agent or representative for service for service of process in California) |
|   Telephone:  |   Telephone:  |

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

STATE OF CALIFORNIA )
 ) ss.
COUNTY OF )

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

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

WITNESS my hand and official seal.

|  |  |
| --- | --- |
|  Notary Public in and for said StateCommission expires:  | (SEAL) |

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

**CONTRACT PERFORMANCE BOND**

**(CALIFORNIA PUBLIC WORK)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the LEMOORE UNION ELEMENTARY SCHOOL DISTRICT (sometimes referred to hereinafter as “Obligee”) has awarded to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter designated as the “Principal” or “Contractor”), an agreement for the work described as follows: Lemoore Union Elementary School District Liberty Middle School HVAC Replacement (hereinafter referred to as the “Public Work”); and

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

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

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

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

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

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

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

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

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

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

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

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

PRINCIPAL/CONTRACTOR:

By:

SURETY:

By:

Attorney-in-Fact

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

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

IMPORTANT: THIS IS A REQUIRED FORM.

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

Any claims under this bond may be addressed to:

|  |  |
| --- | --- |
| (Name and Address of Surety) | (Name and Address of agent or representative for service for service of process in California) |
|   Telephone:  |   Telephone:  |

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

STATE OF CALIFORNIA )
 ) ss.
COUNTY OF )

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

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

WITNESS my hand and official seal.

|  |  |
| --- | --- |
|  Notary Public in and for said StateCommission expires:  | (SEAL) |

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

**GUARANTEE**

Guarantee for Lemoore Union Elementary School District. We hereby guarantee that all work for the , has been done in accordance with the Contract Documents, including without limitation, the drawings, plans and specifications, and that the work as installed will fulfill the requirements included in the Agreement. The undersigned and its surety agree to repair or replace any or all such work, together with any other adjacent work, which may be displaced in connection with such replacement, that may prove to be defective in workmanship or material within a period of two (2) years from the date of the Notice of Completion of the above-mentioned structure, ordinary wear and tear and unusual abuse or neglect excepted.

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

|  |  |
| --- | --- |
|  | Countersigned |
|  (Proper Name) |  (Proper Name) |
| By:  | By:  |
|  (Signature of Subcontract or Contractor) |  (Signature of General Contractor if for Subcontractor) |
| Representatives to be contacted for service: |  |
| Name:  |  |
| Address:   |  |
| Phone Number:  |  |

**INSURANCE DOCUMENTS & ENDORSEMENTS**

The following insurance endorsements and documents must be provided to Lemmore Union Elementary School District prior to commencing any construction services.

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

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

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

 2. Workers’ Compensation/ Employer’s Liability Insurance: Certificate of Workers’ Compensation Insurance meeting the coverages and requirements set forth in the Construction Provisions, minimum of 30 days’ cancellation notice, proper Project description, waiver of subrogation and any applicable endorsements.

 3. Automobile Liability Insurance: Certificate of Automobile Insurance meeting the coverages and requirements set forth in Construction Provisions, minimum 30 days’ cancellation notice, any applicable endorsements and a statement that the insurance provided is primary to any insurance obtained by the Owner.

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

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

|  |  |
| --- | --- |
| DATE:  |  DESIGN-BUILDER |
|  | By: Signature |

**DESIGN-BUILDER’S CERTIFICATE REGARDING DRUG-FREE WORKPLACE**

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

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

## Publishing a statement, notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person’s or organization’s workplace, and specifying actions which will be taken against employees for violations of the prohibition;

## Establishing a drug-free awareness program to inform employees about all of the following:

# The dangers of drug abuse in the workplace;

# The person’s or organization’s policy of maintaining a drug-free workplace;

# The availability of drug counseling, rehabilitation and employee-assistance programs; and

# The penalties that may be imposed upon employees for drug abuse violations;

## Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of Government Code Section 8355 listed above and will (a) publish a statement notifying employees concerning the prohibition of controlled substance at the workplace, (b) establish a drug-free awareness program, and (c) require each employee engaged in the performance of the contact be given a copy of the statement required by section 8355(a) and require such employee agree to abide by the terms of that statement.

I also understand that if the Owner determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of Section 8355, that the contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of Sections 8350 et seq.

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

|  |  |
| --- | --- |
| DATE:  |  DESIGN-BUILDER |
|  | By: Signature |

**DESIGN-BUILDER’S CERTIFICATE REGARDING ALCOHOLIC BEVERAGE and TOBACCO-FREE CAMPUS POLICY**

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

|  |  |
| --- | --- |
| DATE:  |  DESIGN-BUILDER |
|  | By: Signature |

DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) DESIGN-BUILDER CLOSE-OUT STATEMENT

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

Project Name: Lemoore Union Elementary School District Professional Learning Center

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

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

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

Company:

Name:

Title:

Signature:

Date:

**GENERAL CONDITIONS**

1. DESIGN-BUILDER’S DUTIES AND STATUS

Design-Builder shall be responsible for furnishing and completing the construction of the Project pursuant to the Agreement and the Construction Documents. Design-Builder further agrees to furnish efficient business administration and superintendence and to furnish at all times an adequate supply of professionals, workers, and materials and to perform the work appropriately, expeditiously, and economically, consistent with the interests of Owner.

1. DEFINITIONS
	1. Construction. The term “construction” as used herein includes all labor and services necessary for the construction and delivery of the Project, and all materials, equipment, tools, supplies, and incidentals incorporated or to be incorporated in such construction as fully described in the Scope of Work for Construction Services set forth in Article 4. Unless otherwise expressly stipulated, Design-Builder shall perform all work and provide and pay for all materials, labor, tools, equipment, utilities, and licenses, including but not limited to, light, water, and power, necessary for the proper execution and completion of the Project pursuant to the Construction Documents and the terms of the Agreement. Owner and Design-Builder represent and warrant that the Guaranteed Maximum Price (“GMP”) consists of progress payments to be paid by Owner during the course of construction pursuant to an approved Schedule of Values.
	2. Subcontractor shall mean any person or entity that has a contract with Design-Builder to perform any of the construction for the Project.
	3. Construction Documents means the plans, specifications and other documents prepared by Design-Builder/ Design Professional pursuant to the Design & Engineering Provisions to the Agreement, as approved by DSA and the Owner.
	4. Contract Documents consist of the Agreement between Owner and Design-Builder (hereinafter the Agreement or Contract), Conditions of the Contract (General, Supplementary and other Conditions), Construction Documents, and Modifications (Change Orders, Construction Change Document, etc.) issued after execution of the Agreement. The Contract Documents collectively form the Contract. The Contract represents the entire and integrated Agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification.
2. NOTICE TO PROCEED WITH CONSTRUCTION SERVICES

After DSA approval of the Construction Documents and upon Design-Builder providing all required forms in these Construction Provisions to the satisfaction of the Owner, Owner shall issue to Design-Builder a Notice to Proceed with the construction of the Project pursuant to the terms hereof.

1. SCOPE OF WORK FOR CONSTRUCTION SERVICES
	1. Design-Builder shall complete the Construction of the Project in accordance with the Construction Documents and the Agreement, supplying all labor, tools, machinery, equipment, and equipment transportation to the Project appropriately, expeditiously, and economically, with the highest standard of quality with respect to material, assembly, finishes, and workmanship. All Construction shall be pursuant to DSA approved Construction Documents.
	2. Design-Builder shall establish procedures for the protection of the Project and all existing structures, equipment, utilities, and other existing improvements, both on-Site and off-Site.
	3. Design-Builder shall develop, within 15 days of receipt of the Notice to Proceed, a mutually agreed upon program with the Owner to comply with any mitigation measures adopted for the Project pursuant to the California Environmental Quality Act (“CEQA”) and to abate and minimize noise, dust, and disruption to normal activities at the Project, including procedures to control noise, dust, and pollution during construction.
	4. Design-Builder shall perform any required site mitigation or remediation.
	5. Design-Builder shall keep the Site clean and orderly throughout the duration of construction. All trash and rubbish shall be disposed of off-site by licensed waste disposal companies and in accordance with applicable law.
	6. Design-Builder shall be responsible for storage, safety, security, and maintenance of all uninstalled equipment as well as all tools, machinery, equipment, and materials for the Project, including but not limited to, warehouse space, temporary parking, staging, or laydown areas.
	7. Design-Builder will control all internal and external correspondence related to the Project, and all Project documents, drawings, plans, contracts, change orders (if applicable), submittals, and shop drawings.
	8. Design-Builder shall be responsible for organizing, scheduling, and conducting weekly Project meetings, to include representatives of the Design-Builder, all Subcontractors, Design Professional, as well as Owner representatives and Project Inspector. Design-Builder shall document and distribute minutes from weekly meetings and other meetings for which minutes are kept. Minutes shall be delivered to the Owner and each Subcontractor not later than three (3) business days after each Project Meeting.
	9. Design-Builder shall prepare, file, and distribute a Project Status Report as may be requested by the Owner, as well as Verified Reports required by Title 24 as may be required by the Owner.
	10. Design-Builder shall be responsible for coordinating with and responding to all reasonable requests for information and/or documentation from and shall provide construction services in connection with the work of a Project manager, construction manager, or other consultants retained by Owner to provide management, administrative, or consulting services to the Project (“Construction Manager”).
2. EXTRA WORK/MODIFICATIONS
	1. The Owner may prescribe additional work or a modification of requirements or methods of performing the Construction of the Project which differ from the work or requirements set forth in the Construction Documents (“Modifications”); and for such purposes, the Owner may, at any time during the Project, by written order, make such changes as it shall find necessary in the design, line, grade, form, location, dimensions, plan, or material of any part of the work or equipment specified herein or in the Construction Documents, or in the quantity or character of the work or equipment to be furnished.
	2. Prior to Design-Builder commencing any work with respect to any Modifications, Owner and Design-Builder must agree upon the cost or savings of such Modifications, which shall be added to the GMP. In the event that Design-Builder commences work with respect to any requested Modifications without the Owner and Design-Builder agreeing upon the cost for such Modifications or mutually acceptable method for determining the cost for such Modifications, Design-Builder shall, for all purposes, be deemed to have waived any rights to compensation with respect to such requested Modifications.
	3. All Modifications approved in writing shall be funded as directed by Owner. This applies only to Owner initiated additional work, and work performed based on pre-approved contingencies. Modifications or additional work, time or expense incurred by the Design-Builder, and not as a result of defects in the actual construction work or negligence on the part of the Design-Builder, their consultants and Subcontractors, may be addressed with the Construction Contingency outlined in accordance with **Attachments 1 and 2** as determined by the Owner. No modifications or additional work shall be funded or allocated to be paid under the Construction Contingency without written approval by the Owner. All other costs associated with additional work or time shall be borne by the Design-Builder.
3. TIME OF COMPLETION OF CONSTRUCTION SERVICES

Once the Owner has issued a Notice to Proceed pursuant to Article 3 hereof, Design-Builder shall proceed with the Construction of the Project with due diligence in accordance with the approved Project Schedule and Progress Schedule. The date of Final Completion may be equitably adjusted for any delays, but only in the event that Design-Builder has diligently carried out all of its obligations under the Agreement and due to: (i) events beyond the reasonable control of Design-Builder, or (ii) failure of the Owner to perform its material obligations under the Agreement within a reasonable and customary time for a California public school to do so.

1. PROGRESS SCHEDULE
	1. Progress Schedule. Prior to Owner’s issuance of a Notice to Proceed with Construction Services, shall submit a practical schedule showing the order in which the Design-Builder proposes to perform the work, and the dates on which the Design-Builder contemplates starting and completing the salient categories of the work (“Progress Schedule”). If the Design-Builder fails to submit the Progress Schedule as required, the Owner may withhold processing and approval of progress payments.
	2. The Progress Schedule shall not exceed time limits and shall comply with all of the scheduling requirements set forth in the Contract Documents.
	3. Submittals Must Be Incorporated. Design-Builder shall include submittals as line items in the Progress Schedule. Submittals shall not delay the work, milestones, or the completion date. Failure to include submittals in the Progress Schedule shall be deemed a valid basis to withhold payment from the Design-Builder.
	4. No Early Completion. Design-Builder shall not submit a schedule showing early completion without indicating float time through the date set for Project completion by the Owner. Design-Builder’s Progress Schedule shall account for all days past early completion as float which belongs to the Project. Usage of float shall not entitle Design-Builder to any delay claim or damages due to delay.
	5. Use of Schedule Provided in RFP. In some cases, the RFP will include a preliminary schedule indicating milestones and construction sequences for the Project along with general timing for the Project. The preliminary schedule is not intended to serve as the Progress Schedule utilized for construction. It is up to the Design-Builder to study and develop a Progress Schedule to address the actual durations and sequences of work that is anticipated while maintaining the milestones provided by the Owner. Design-Builder shall obtain information from Design-Builder’s Subcontractors and vendors on the planning, progress, delivery of equipment, coordination, and timing of availability of Subcontractors so a practical plan of work is fully developed and represented in the Progress Schedule.
	6. Incorrect Logic, Durations, Sequences, or Critical Path. The Owner may reject or indicate durations, sequences, critical path or logic are not acceptable and request changes. The electronic copy of the Progress Schedule shall have adequate information so logic ties, duration, sequences and critical path may be reviewed electronically. Design-Builder is to diligently rebuild and resubmit the Progress Schedule to represent the Design-Builder’s plan to complete the work and maintain milestones at the next Progress meeting, or before the next progress meeting. If Design-Builder is not able to build a schedule that is acceptable to the Owner, the Owner reserves the right to utilize the unapproved originally submitted Progress Schedule and the comments submitted to hold Design-Builder accountable for timely delivery of work and maintenance of milestones. Furthermore, Design-Builder’s representations in the Progress Schedule, if unacceptable, may also be used as a basis for termination of the Contract if Design-Builder fails to adequately maintain the schedule and falls significantly behind without undertaking the efforts to either submit and follow a recovery schedule or fail to submit a recovery schedule and make no effort toward recovery on the Project.
	7. Design-Builder Responsibility Even if Schedule Issues Are Not Discovered. Failure on the part of the Owner to discover errors or omissions in schedules submitted shall not be construed to be an approval of the error or omission and a flawed schedule is not grounds for a time extension.
	8. Failure to Meet Requirements. Failure of the Design-Builder to provide proper schedules as required by this Article is a material breach of the Contract and grounds for termination. The Owner, at its sole discretion, may choose, instead, to withhold, in whole or in part, any progress payments or retention amounts otherwise payable to the Design-Builder.
	9. Use of an Unapproved Progress Schedule. If Progress Schedule submitted is unacceptable to the Owner (i.e. failing to meet the requirements of this Article) and Design-Builder does not incorporate or address the written comments to the schedule and a Progress Schedule is not approved, but due to extreme necessity, the Owner moves forward without an approved Progress Schedule, Design-Builder shall diligently revise and meet schedule update requirements of this Article and incorporate all comments in all updates. However, for purposes of termination, the schedule initially submitted shall be treated as a Progress Schedule with durations shortened to accommodate all float and other mandatory schedule requirements under this Article as well as incorporating all revisions from the Owner that are noted.
	10. Updates Shall Be Based on Approved Progress Schedule. Except in the case where there has not been agreement as to a Progress Schedule, after there has been agreement as to the Progress Schedule, the Progress Schedule shall be used to build future schedule updates. Schedule updates shall be a CPM based schedule consistent with the Progress Schedule requirements of this Article. In the case where no Progress Schedule has been approved, schedule updates shall be provided monthly and each update shall incorporate all comments and revisions noted as not complying with the requirements of this Article. Design-Builder shall be held to the unapproved Progress Schedule in Paragraph I above, inclusive of all milestones, adjusted for comments and all required Progress Schedule inclusions under this Article.
	11. Schedule Updates. Design-Builder shall update the schedule each month to address actual start dates and durations, the percent complete on activities, actual completion dates, estimated remaining duration for the work in progress, estimated start dates for work scheduled to start at future times and changes in duration of work items.
	12. Recovery Schedule. In addition to providing a schedule update every thirty (30) days, the Design-Builder, if requested by the Owner, shall take the steps necessary to improve Design-Builder’s progress and demonstrate to the Owner that the Design-Builder has seriously considered how the lost time, the Completion Date, or the milestones that are required to be met within the terms of the Contract. Design-Builder shall immediately provide a recovery schedule showing how the Completion Date will be met. In no case, shall a recovery schedule be provided later than ten (10) days following the request for a recovery schedule from the Owner
2. LIQUIDATED DAMAGES

IF THE PROJECT IS NOT SUBSTANTIALLY COMPLETED WITHIN THE TIME PERIOD SET FORTH IN **ATTACHMENT 4** AND THE APPROVED PROJECT SCHEDULE AND ANY EXTENSIONS TO THE TIME PERIOD PURSUANT TO THE AGREEMENT, IT IS UNDERSTOOD THAT THE OWNER WILL SUFFER DAMAGE. IT BEING IMPRACTICAL AND UNFEASIBLE TO DETERMINE THE AMOUNT OF ACTUAL DAMAGE, IT IS AGREED THAT DESIGN-BUILDER SHALL PAY TO OWNER, AS FIXED AND LIQUIDATED DAMAGES, AND NOT AS A PENALTY, ONE THOUSAND FIVE HUNDRED DOLLARS ($1,500.00) FOR EACH CALENDAR DAY OF DELAY IN SUBSTANTIAL COMPLETION OF THE PROJECT.

In the event that the performance and/or completion of the Project is delayed at any time by any act or omission of Owner or by any employee or agent of Owner, by strikes, lockouts, fire, embargoes, flood, earthquake, acts of war or nature, or any other cause beyond the reasonable control of Design-Builder, the aforesaid date for completion of the Project shall be extended for a reasonable period as approved in writing by the Owner as a consequence of such delay.

1. TITLE TO MATERIALS

Title to new materials and/or equipment to be installed as part of the Project, on a continuous basis while the Project is being completed, shall vest in the Owner. However, responsibility for such new material and/or equipment shall remain with Design-Builder until incorporated into the work approved by the Project Inspector and accepted by Owner; no part of said materials and/or equipment shall be removed from its place of storage except for immediate installation in the work of this Contract; and Design-Builder shall keep an accurate inventory of all materials and/or equipment in a manner satisfactory to the Owner or its authorized representative. References to equipment herein include equipment to become fixtures on the Project, or otherwise provided for the Project pursuant to the Construction Documents, and do not include Design-Builder’s construction equipment or tools.

1. RETENTION

The Owner shall withhold not less than 5% of each approved progress payment until Final Completion of the Project, and may withhold any amount(s) otherwise allowable, or required by law.

1. PAYMENTS BY DESIGN-BUILDER

Design-Builder shall make all payments to Subcontractors and suppliers as expeditiously and timely as possible, consistent with any applicable law so as to prevent any stop notices, liens, or claims from being filed against the Owner or any of the Sites. Design-Builder shall indemnify, defend, and hold Owner harmless from any claims or actions which allege that Design-Builder failed to pay any Subcontractor, supplier, or other claimant with respect to the Project.

1. DESIGN-BUILDER’S SUPERVISION
	1. Design-Builder shall supervise and direct the Construction and completion of the Project using Design-Builder’s best skill and attention. Design-Builder shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, quality control, and quality assurance, and for coordinating all portions of the Project. Specific duties of Design-Builder shall be in accordance all applicable Sections of Title 24 of the California Code of Regulations which relate to the duties of a contractor. Design-Builder shall construct the Project in accordance with the Construction Documents and all requirements which are applicable with respect to the following: DSA, local grading, and special local requirements, California Building Code, Title 24, and the Field Act. Design-Builder shall correct any deficiencies which are caused by Design-Builder or its Subcontractors’ work noted by Project Inspector, DSA, or other applicable agencies before or during construction, so that the Project upon completion shall be fit for occupancy for any and all school purposes.
	2. Design-Builder shall be responsible to the Owner for acts and omissions of Design-Builder’s employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing or completing portions of the Project under direct or indirect contract with Design-Builder or any of them.
	3. Design-Builder shall not be relieved of obligations to complete the Project in accordance with the Contract Documents by tests, inspections, or approvals required or performed by persons other than Design-Builder unless such tests, inspections or approvals are unreasonably withheld or untimely.
	4. Design-Builder shall provide competent superintendents and assistants acceptable to Owner that shall be in attendance at the Project Site during construction of the Project during the entire life of the Project.
	5. Design-Builder and each Subcontractor shall furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Project, organize the procurement of all materials and equipment so that they will be available at the time they are needed for the Project, and keep an adequate force of skilled and fit workers on the job to complete the Project in accordance with all requirements of the Construction Documents.
	6. Design-Builder shall enforce strict discipline and good order among Design-Builder’s and Subcontractor’s employees and any other persons carrying out the work. Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.
	7. Owner shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of Design-Builder, Subcontractor, material or equipment supplier, etc., for cause.
2. DOCUMENTS ON SITE

Design-Builder shall keep one copy of all Construction Documents (as well as the Agreement) including addenda, change orders, and Titles 21 and 24 of the California Code of Regulations on the job at all times. Said documents shall be kept in good order and available to Owner representatives. Design-Builder shall be acquainted with and comply with the provisions of Titles 21 and 24 as they relate to the Project. (See particularly the Duties of Design-Builder, Title 21, California Code of Regulations, §§ 42 and 43).

1. PROVISION OF TEMPORARY UTILITIES

All temporary utilities, including but not limited to, gas, electrical, water, telephone, and internet shall be provided and paid for by Design-Builder. Design-Builder shall furnish and install adequate temporary distribution systems, including meters, if necessary, from distribution points to points on Site where any utility is necessary to carry on the work. Upon completion of work on the Project, Design-Builder shall remove all temporary distribution systems.

1. TEMPORARY SANITARY FACILITIES

Design-Builder shall provide sanitary temporary toilet facilities for use of all workmen. The facilities shall be maintained in a sanitary condition at all times and shall be left at the Site until Substantial Completion of the Project.

1. PROTECTION OF WORK AND PROPERTY
	1. Design-Builder shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of the Project and shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by Owner. All work with respect to the Project shall be solely at Design-Builder’s risk. Design-Builder shall adequately protect adjacent property from settlement or loss of lateral support as provided by law and the Construction Documents. Design-Builder shall take all necessary precautions for safety of employees on the work site and shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where work is being performed. Design-Builder shall erect and properly maintain at all times, as required by conditions and progress of work, all necessary safeguards, signs, barriers, light, and watchmen for protection of workmen and the public and shall post danger signs warning against hazards created by such features in the course of construction and shall designate a responsible member of Design-Builder on the worksite, whose duty shall be prevention of accidents. The name and position of person so designated shall be reported to the Owner by Design-Builder.
	2. In an emergency affecting safety of life or limb, or of the Project or of adjoining property, Design-Builder, without special instruction or authorization from Owner, is hereby permitted to act, at its discretion, to prevent loss of or injury to life or limb, the Project or adjoining property and shall so act with all due diligence.
	3. Design-Builder shall provide reasonable drainage, heat, covering, structures, and enclosures as are necessary to protect all work, materials, equipment, appliances, and tools against damage by weather conditions.
	4. Design-Builder shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, adjoining property, and structures, and to avoid damage thereof, and repair any damage thereto caused by Design-Builder’s construction operations.
	5. Design-Builder shall:
		1. At all times, take preventive measures to eliminate objectionable dust throughout the duration of the Project so as to not affect the ongoing school operations and activities existing on the Project Site, and especially during grading and demolition activities.
		2. Confine any apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of Owner and shall not unreasonably encumber any of the Sites with its materials, and enforce all instructions of Owner regarding signs, advertising, fires, danger signals, barricades, and smoking and require that all persons employed on the work comply with all regulations while on the Site.
		3. Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved civil engineer at no cost to the Owner.
2. CLEAN UP
	1. Design-Builder at all times shall keep the Site reasonably free from debris such as waste, rubbish, and excess materials and equipment caused by work on the Project. Design-Builder shall not leave debris under, in, or about the Site for extended periods of time. Upon completion of work, Design-Builder shall clean exterior of all buildings, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal Projections, and any areas where debris has collected so surfaces are free from foreign material or discoloration. Upon completion of work, Design-Builder shall remove all temporary fencing, barricades, planking, and sanitary facilities and similar temporary facilities from the Site.
	2. If Design-Builder fails to clean up at the completion of the work, Owner may do so and the cost of such clean up shall be charged back to Design-Builder.
3. CORRECTION OF WORK BEFORE ACCEPTANCE
	1. Design-Builder shall promptly remove from the Site all work condemned by Owner, Owner’s approved representative, or Project Inspector as failing to conform to Construction Document requirements, the Agreement, building codes, ADA, Title 24, or Field Act requirements, whether incorporated or not. Design-Builder shall promptly replace and re-execute its own work to comply with the Construction Documents without change in the GMP and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.
	2. If Design-Builder does not remove such condemned work within a reasonable time, fixed by written notice, Owner may remove it and may store the material at Design-Builder’s expense. If Design-Builder does not pay expenses of such removal within sixty (60) days thereafter, Owner may, upon thirty (30) days written notice, sell such materials at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by Design-Builder.
	3. If Design-Builder fails to correct any damaged work, items of poor quality, or improperly performed work within a reasonable period of time, in no case exceeding ten (10) days after written notice by Owner, Owner may deem it inexpedient to correct such work and at the Owner’s sole discretion, the value of such work shall be deducted from any payments due Design-Builder and the Owner shall not be responsible for the payment of such amount.
4. CONTRACT CLOSE-OUT
	1. Punch List and Final Completion
		1. Upon Substantial Completion of the Project, the Design-Builder and Design Professional shall prepare a Punch List of items which is an inspection report of the Work, if any, required in order to complete the Contract Documents and ensure compliance with the DSA Construction Documents so the Project may reach Final Completion and obtain final DSA close-out certification. The Punch List must be approved by the Inspector and the Inspector may modify or supplement the Punch List as needed. When all work for the Project is fully completed, including Punch Lists and all work complies with the approved Contract Documents and Change Orders, and the Owner’s Executive Director formally accepts completion through a written report to the Board, and the Owner records a Notice of Completion for the entire Project, the Project has reached Final Completion.
		2. Design-Builder shall only be given a period of no more than thirty (30) days to complete the Punch List for the Project. During the Punch List period, the Project Superintendent and Project Manager shall remain engaged on the Project and shall not be removed or replaced. If the Punch List is not fully completed at the end of the Punch List time, the Design-Builder and the Design Professional shall issue a valued Punch List within 5 days after the date the Punch List time ends to be reviewed and approved by the Owner and Inspector. If Design-Builder does not issue such a list or the list is not approved by the Owner and Inspector, the Owner or Inspector may issue a valued Punch List to the Design-Builder and withhold up to 150% of the value of any Punch List work not fully completed.
	2. Record Drawings
		1. Design-Builder shall keep one complete set of blue line prints of all drawings and plans in good order and available for inspection. They shall be used only for the purpose intended. Drawings and plans shall be kept up to date as the work progresses and shall be available at all times for inspection.
		2. In addition to keeping the set of blue line prints discussed above, Design-Builder shall prepare for Owner an exact “As-Built” record of the work that records the “As-Built” conditions of the work throughout the duration of the Project and a final set of “As-Built” drawings upon completion of the Project. The following information shall be carefully and correctly drawn on the prints and all items shall be accurately located and dimensioned from finished surfaces of building walls or other fixed points on all record drawings:
			1. Any significant work not installed as indicated on drawings.
			2. The exact location and elevations of all covered utilities, including valves, cleanouts, etc.
			3. All CCDs, ASIs, Owner changes, and other modifications to the Project shall be incorporated into the “As Built” documents.
			4. Upon completion of the Project and as a condition precedent to approval of the Project by the Owner, Design-Builder shall obtain the Owner’s Project Inspector’s approval of the “As-Built” prints and require the Design Professional to transfer the “As-Built” information to a complete set of “Record Documents” in a format approved by the Owner. When completed, Design-Builder shall have one complete set of “Record Documents” made from the corrected drawings of “As-Built” documents and conditions, and both sets shall be delivered to Owner, along with an electronic form of such documents in pdf or other approved format to the Owner.
			5. Design-Builder shall deliver to Owner three (3) complete sets of operating manuals, repair parts lists, service instructions for all electrical and mechanical equipment, and equipment warranties.
	3. Maintenance Manuals. At least ten (10) days prior to final inspection, three (3) copies of complete operations and maintenance manuals shall be submitted for review. All installation, operating, and maintenance information and drawings shall be bound in 8½” x 11” binders. Design-Builder shall provide a table of contents and all items shall be indexed with tabs. Each manual shall also contain a list of Subcontractors, with their addresses and the names of persons to contact in case of emergencies. Identifying labels shall provide names of manufacturers, their addresses, ratings, and capacities of equipment and machinery.
	4. DSA Close-Out Reporting Requirements. Design-Builder shall assist the Owner to prepare and submit the final Project accounting and all close-out reports including, but not limited to, all DSA and CDE forms. Design-Builder shall be required to execute a Form 6-C and Form 6-AE as required under Title 24 Sections 4-343. The Design-Builder understands that the filing with DSA of a Form 6-C and Form 6-AE is a requirement to obtain final DSA Approval of the Construction by Design-Builder and utilized to verify under penalty of perjury that the Work performed by Design-Builder complies with the DSA approved Contract Documents
	5. Post Construction Follow-up Requirements. Design-Builder shall, prior to the expiration of any warranties or guarantees, provide the Owner with post construction follow-up for Design-Builder warranty and guarantee items. Owner, or its authorized representative, shall provide Design-Builder notice of any known warranty or guarantee items associated with the Project to be addressed by the Design-Builder.
5. ACCESS TO WORK

Owner and its representatives shall at all times have access to the work of the Project. Design-Builder shall provide safe and proper facilities for such access. Owner representatives shall check in with the Design-Builder’s designated Project Superintendent and observe all safety requirements of Design-Builder. All persons entering the Project Site shall comply with Design-Builder’s safety requirements as defined in Design-Builder’s job Site specific safety plan, Injury and Illness Prevention Plan, and Subcontractor Injury Prevention Plan, while any of the Project Sites are under the control of Design-Builder.

1. OCCUPANCY

Owner reserves the right to occupy portions of the Project before completion of the Project, and such occupancy shall not constitute final acceptance of any part of work covered by this contract. Design-Builder shall schedule, coordinate, and assist the Owner in occupancy of the completed Project or portions thereof.

1. OWNER’S INSPECTOR
	1. One or more inspectors employed by Owner (“Project Inspector” or “Inspector”) in accordance with requirements of Title 21 and Title 24 of the California Code of Regulations will be assigned to the work. The Inspector’s duties are specifically defined in Title 21 and Title 24.
	2. Inspector and special inspection personnel shall have access to all operations involving work under this contract and shall be provided reasonable advance notice, but in no event less than 24 hours notice, of the time and place of operations which he desires to observe. Such inspectors shall be provided with all necessary samples of materials and work for testing purposes.

All work shall be under observation of the Inspector. Inspector shall have free access to any or all parts of work at any time. Inspection of work shall not relieve Design-Builder from any obligation to fulfill this contract. Owner’s Inspector shall have authority to reject work whenever there is a violation of the Building Code, Title 24, the Field Act, or if provisions of the Contract Documents are not being complied with, and Design-Builder shall instruct its employees or Subcontractors accordingly. Inspector may also recommend DSA issue a stop work notice on the Project.

Design-Builder shall coordinate the activities of the Inspector for the Project, as well as the activities of other technical inspections and testing agencies.

1. INSPECTOR’S FIELD OFFICE

Design-Builder shall provide a field office for use of the Inspector with the following characteristics. It shall be of adequate size for use of the Inspector and any assistant inspectors, at the Site and maintained until removal is authorized by the Owner. The office shall be of substantial waterproof construction with adequate natural light and ventilation. The door shall have a key-type lock or padlock hasp. A table satisfactory for study of plans and two chairs shall be provided by Design-Builder. Design-Builder shall provide and pay for adequate electric lights, local telephone service (not a pay phone), and adequate heat for the field office until authorized removal. Design-Builder shall also provide Inspector with the reasonable use of a copy machine and a fax machine.

1. PERFORMANCE/PAYMENT BONDS

Prior to commencement of any Construction services, Design-Builder shall furnish performance and payment bonds as set forth herein, each in an amount equal to the GMP, less the costs for architectural design and engineering services. All bonds shall be provided by a California admitted surety as defined in Code of Civil Procedure § 995.120. Personal sureties and unregistered sureties are unacceptable.

1. PERMITS AND LICENSES

Permits necessary for prosecution of work shall be secured by the Design-Builder and paid for by the Owner. Design-Builder shall do all other things reasonably necessary to secure the approvals of such agencies. All necessary contractor licenses shall be secured and paid for exclusively by Design-Builder and Subcontractors.

1. EXCISE TAXES

Design-Builder shall pay all applicable local, state, and federal taxes on all labor, materials, and services provided for the Project.

If under federal excise tax law any transaction hereunder constitutes a sale on which a federal excise tax is imposed and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the Owner, upon request, will execute a certificate of exemption which will certify (1) that the Owner is a political subdivision of the state for the purposes of such exemption, and (2) that the sale is for the exclusive use of the Owner.

1. PATENTS AND ROYALTIES

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

1. TESTS AND INSPECTIONS

With respect to any work which is required to be specially tested or approved, Design-Builder shall give notice in accordance with such authority of its readiness for observation or inspection at least five (5) working days prior to being tested or covered up. If inspection is by authority other than Owner, Design-Builder shall inform Owner of the date fixed for such inspection. Required certificates of inspection shall be secured by Design-Builder. Observations by Owner shall be promptly made, and where practicable at source of supply. If any work should be covered up without approval or consent of Owner, it must, if required by Owner, be uncovered for examination and satisfactorily reconstructed at Design-Builder’s expense in compliance with contract. Costs of tests of any materials found to be not in compliance with contract shall be paid for by Design-Builder. Other costs for tests and inspections of materials shall be paid by Owner.

Where such inspection and testing are to be conducted by an independent laboratory or agency, such materials or samples of materials to be tested shall be selected by such laboratory or agency or Owner’s representative, and not by Design-Builder.

Design-Builder shall notify Owner a sufficient time in advance of manufacture of materials to be supplied under contract, which must by terms of contract be tested, in order that Owner may arrange for testing of same at source of supply. Any materials shipped by Design-Builder from source of supply prior to having satisfactorily passed such testing and inspection, or prior to receipt of notice from said representative that such testing and inspection will not be required, shall not be incorporated in the work without prior approval of Owner and subsequent testing and inspection.

Re-examination of questioned work may be ordered by Owner and, if so ordered, work must be uncovered by Design-Builder. If such work is found in accordance with contract documents, Owner shall pay costs of re-examination and replacement. If such work is not found to be in accordance with contract documents, Design-Builder shall pay such costs.

1. MATERIALS
	1. Except as otherwise specifically stated in this contract, Design-Builder shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to complete the Project within the specified time.
	2. Unless otherwise specified, all materials shall be new and meet or exceed the quality of materials specified and all workmanship shall be of good quality.
	3. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of work and shall be stored properly and protected as required.
	4. No materials, supplies, or equipment for work under this contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which any interest therein, or in any part thereof, is retained by seller or supplier. Design-Builder warrants good title to all material, supplies, and equipment installed or incorporated in the work and agrees upon completion of all work to deliver the premises, together with all improvements and appurtenances constructed or placed thereon, to Owner free from any claim, liens, or charges. Design-Builder further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any work covered by the Agreement shall have any right to lien the premises or any improvement of appurtenances thereon, except that Design-Builder may install metering devices or other equipment of the utility companies or of political subdivisions, title to which is commonly retained by the utility company or political subdivision. In the event of installation of any such metering device or equipment, Design-Builder shall advise Owner of the owner thereof.
	5. Nothing contained in this Article, however, shall defeat or impair the rights of persons furnishing material or labor under any bond given by Design-Builder for their protection or any rights under any law permitting such persons to look to funds due Design-Builder held by Owner, and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing material for the work when no formal contract is entered into for such material.
	6. Materials shall be stored on the premises in such a manner so as not to interfere with the work and so that no portion of the structure shall be overloaded.
	7. Materials or work required or necessary to be tested shall be tested under supervision of, as directed by, and at such places as may be convenient to the Owner. The required testing of all structural materials shall be done by an approved testing laboratory.
2. CONSTRUCTION CLAIMS PROCEDURES & REQUIREMENTS

Pursuant to the remedies under Public Contract Code section 9201 and Government Code section 930.2, Design-Builder, through execution of this Agreement, also agrees to comply with the Claims requirements of this Article to quickly and efficiently resolve disputes and Claims. Further, to provide a level of accuracy to the records submitted, the Owner shall have the right to audit books and records based on the actual costs incurred and to reduce the uncertainty in resolving disputes and Claims with limited information.

* 1. Procedures and Requirements Applicable to all Claims
		1. Definition of Claim: A “Claim” means a separate demand by the Design-Builder for: (a) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by the Owner under the Contract; (b) payment by the Owner of money or damages arising from work done by, or on behalf of, the Design-Builder pursuant to the Contract and payment for which is not otherwise expressly provided for or to which the Design-Builder is not otherwise entitled to; or (3) an amount of payment disputed by the Owner.
		2. Filing Claim is Not Basis to Discontinue Work: The Design-Builder shall promptly comply with work under the Contract or work requested by the Owner even though a written Claim has been filed. The Design-Builder and the Owner shall make good faith efforts to resolve any and all Claims that may arise during the performance of the work covered by this Contract.
		3. Claim Notification: The Design-Builder shall, within ten (10) calendar days of a Claim arising, submit a notification in writing sent by registered mail or certified mail with return receipt requested, with the Owner (and the Owner’s CM) stating clearly the basis for the Claim and including all relevant and required documents. If the notification is not submitted as required herein, the Design-Builder shall be deemed to have waived all right to assert the Claim, and the Claim shall be denied. Claims submitted after an application for retention payment shall also be considered null and void by the Owner. The Formal Notification of Claim must be presented as follows:

1. The term “Claim” must be at the top of the page in no smaller than 20 point writing.

2. All documentation required pursuant to this Article shall be submitted with the Claim.

3. A stack of documents, copy of all Project documents, or the submission of random documents shall not constitute an adequate reference to supporting documentation.

4. Any additional or supporting documentation that Design-Builder believes is relevant should be submitted at this time.

* + 1. Reasonable Documents to Support Claim: The Design-Builder shall furnish reasonable documentation to support the Claim. The Design-Builder shall provide all written detailed documentation which supports the Claim, including but not limited to: arguments, justifications, cost, estimates, Schedule analysis and detailed documentation. The format of the required reasonable documentation to support the Claim shall include, without limitation:

1. Cover letter.

2. Summary of factual basis of Claim and amount of Claim.

3. Summary of the basis of the Claim, including the specific clause and section under the Contract under which the Claim is made.

4. Documents relating to the Claim, including:

(i) Specifications sections in question.

(ii) Relevant portions of the plans/drawings.

(iii) Applicable Clarifications (RFI’s).

(iv) Other relevant information, including responses that were received.

(v) Design-Builder analysis of Claim merit including Design-Builder’s analysis of any Subcontractor Claims that are being passed through, any analysis performed by outside consultants, and any legal analysis that Design-Builder deems relevant.

(vi) Breakdown of all costs associated with the Claim. For Claims relating to time extensions, an analysis and supporting documentation evidencing any effect upon the critical path in conformance with the requirements of Article 7 shall be included along with a chronology of events and related correspondence.

(vii) Applicable daily reports and logs. If the daily reports or logs are not available, lost or destroyed, there shall be a presumption that the lost documentation was unfavorable to the Design-Builder. See California Civil Jury Instruction 204.

(viii) For Claims involving overhead, cost escalation, acceleration, disruption or increased costs, a full version of job costs reports organized by category of work or Schedule of Values with budget information tracked against actual costs. Any and all supporting back-up data, including the original bid (and associated original unaltered metadata). The metadata and bid information shall be provided confidentially and subject to a protective order to prevent dissemination to other contractors or to the public. However, the bid documentation should remain intact and available for review and inspection in case of this type of increased cost Claim. This data on the bid shall be made available to any Owner attorneys or experts and shall also be utilized as evidence for any legal proceedings. If the bid documentation is not available, lost or destroyed, there shall be a presumption that the lost bid documentation was unfavorable to the Design-Builder. See California Civil Jury Instruction 204.

* + 1. Certification: The Design-Builder (and subcontractors, if applicable) shall submit with the claim a certification under penalty of perjury:

1. That the Design-Builder has reviewed the Claim and that such Claim is made in good faith;

2. Supporting data are accurate and complete to the best of the Design-Builder’s knowledge and belief;

3. The amount requested accurately reflects the amount of compensation for which the Design-Builder believes the Owner is liable; and

4. That the Design-Builder is familiar with Government Code section 12650 et seq. and Penal Code section 72, and that false claims can lead to substantial fines and/or imprisonment.

* + 1. Signature of Certification: If the Design-Builder is not an individual, the certification shall be executed by an officer or general partner of the Design-Builder having overall responsibility for the conduct of the Design-Builder’s affairs.
		2. Upon receipt of a Claim and all supporting documents as required above, the Owner shall conduct a reasonable review of the Claim and, within a period not to exceed 45 days, shall provide the Design-Builder a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the Owner and Design-Builder may, by mutual agreement, extend the time period provided in this paragraph.
		3. If the Owner needs approval from its governing Board to provide the Design-Builder a written statement identifying the disputed portion and the undisputed portion of the Claim, and the governing Board does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, the Owner shall have up to three days following the next duly publicly noticed meeting of the governing Board after the 45-day period, or extension, expires to provide the Design-Builder a written statement identifying the disputed portion and the undisputed portion.
		4. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the Owner issues its written statement. If the Owner fails to issue a written statement, paragraph o below shall apply.
		5. If the Design-Builder disputes the Owner’s written response, or if the Owner fails to respond to a Claim issued pursuant to this Article within the time prescribed, the Design-Builder may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the Owner shall schedule a meet and confer conference within 30 days for settlement of the Claim.
		6. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the Owner shall provide the Design-Builder a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the Owner issues its written statement. Any disputed portion of the Claim, as identified by the Design-Builder in writing, shall be submitted to nonbinding mediation, with the Owner and the Design-Builder sharing the associated costs equally. The Owner and Design-Builder shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to applicable procedures in Article 30.D below.
		7. For purposes of this Article, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.
		8. Unless otherwise agreed to by the Owner and the Design-Builder in writing, the mediation conducted pursuant to this Article shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.
		9. This Claims process does not preclude the Owner from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this Article does not resolve the parties’ Claim. This Claims process does not preclude the Owner from submitting individual Claims to binding arbitration pursuant to Article 30.C below.
		10. Failure by the Owner to respond to a Claim from the Design-Builder within the time periods described in this subdivision or to otherwise meet the time requirements of this Article shall result in the Claim being deemed rejected in its entirety. A Claim that is denied by reason of the Owner’s failure to have responded to a Claim, or its failure to otherwise meet the time requirements of this Article, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the Design-Builder.
		11. If a subcontractor or a lower tier subcontractor lacks legal standing to assert a Claim against the Owner because privity of contract does not exist, the Design-Builder may present to the Owner a Claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Design-Builder present a Claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the Claim be presented to the Owner shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, the Design-Builder shall notify the subcontractor in writing as to whether the Design-Builder presented the Claim to the Owner and, if the Design-Builder did not present the Claim, provide the subcontractor with a statement of the reasons for not having done so.
		12. Upon receipt of a Claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable.
		13. The Design-Builder’s Claim shall be denied if it fails to follow the requirements of this Article.
		14. Within thirty (30) days of receipt of the Claim and the information under this Article, the Owner may request in writing any additional documentation supporting the Claim or documentation relating to defenses to the Claim which the Owner may assert. If additional documents are required, the time in which the Claim is evaluated may be extended by a reasonable time so the Claim and additional documents may be reviewed.
	1. Claims Procedures in Addition to Government Code Claim: Nothing in the claims procedures set forth in this Article 30 shall act to waive or relieve the Design-Builder from meeting the requirements set forth in Government Code section 900 et seq.
	2. Binding Arbitration of Individual Claim Issues: At the Owner’s sole option, the Owner may submit individual disputes, or claims, to binding arbitration and Design-Builder agrees to the resolution determined for each individual dispute by Arbitrator, including resolution of time and delays. If binding arbitration is utilized, such resolution is a full and final resolution of the particular claim or dispute. Under no circumstances may the Design-Builder stop work, rescind its contract or otherwise slow the progress of work during resolution of individual claims in binding Arbitration. This individual dispute arbitration process is not an arbitration clause and shall not be construed as an agreement to arbitrate. This individual disputes arbitration process is for the sole purpose of streamlining and resolving disputes or Claims during construction and shall be requested on specific individual items by the Owner prior to Completion of the Project.
	3. Resolution of Claims in Court of Competent Jurisdiction: Pending final resolution of any Claim, including, negotiation, mediation, arbitration, or litigation, the Design-Builder shall proceed diligently with performance of the Contract, and the Owner shall continue to make any undisputed payments in accordance with the Contract (less any withholdings or offsets). If Claims are not resolved under the procedure set forth and pursuant to this Article, Design-Builder agrees it will neither rescind the Contract nor stop the progress of the work, but Design-Builder’s sole remedy shall be to submit such controversy to determination by a court of competent jurisdiction in the county where the Project is located, after the Project has been completed, and not before.
	4. Warranties, Guarantees and Obligations: The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Design-Builder by the General Conditions and amendments thereto; and all of the rights and remedies available to the Owner thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Article will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.
1. WORKERS AND PUPIL SAFETY
	1. Design-Builder shall at all times enforce strict discipline and good order among Design-Builder’s employees, Subcontractors, suppliers, and all other invitees to the Site and shall not employ or allow the employment on the work of any unfit person or anyone not skilled in work assigned to Design-Builder.
	2. Design-Builder shall remove from the Site any person in the employ of Design-Builder or any Subcontractor or supplier whom Owner may deem incompetent or unfit and such worker shall not again participate in the work and shall not again be employed on it except with written consent of Owner.
	3. Design-Builder shall take all reasonable steps necessary to ensure that any employees of Design-Builder or any of its Subcontractors report for work in a manner fit to do their job. Such employees: (i) shall not utilize tobacco on the Project Site, and (ii) shall not be under the influence of or in possession of any alcoholic beverage or of any controlled substance (except a controlled substance as prescribed by a physician so long as the performance or safety at the Project Site is not affected thereby). Design-Builder shall advise its employees, Subcontractors, suppliers, and invitees of these requirements before they enter on the Site and shall immediately remove from the Site any person in violation of these requirements as determined by Design-Builder or by the Owner. Design-Builder shall impose these requirements on its Subcontractors, suppliers, and other invitees.
	4. Design-Builder shall comply with the applicable requirements of Education Code §§ 45125.1 and 45125.2 with respect to fingerprinting of employees who may have contact with the Owner’s pupils. Design-Builder shall also ensure that its Subcontractors (regardless of tier) and any other workers or persons on the Project also comply with the requirements of Education Code §§ 45125.1 and 45125.2.
2. WAGE RATES, TRAVEL AND SUBSISTENCE
	1. Wage Rates. Pursuant to the provisions of Article 2 (commencing at § 1720), Chapter 1, Part 7, Division 2, of the Labor Code, the Owner has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public works project is to be performed for each craft, classification, or type of worker needed for this Project from the Director of the Department of Industrial Relations (“Director”). These rates are on file at the administrative office of the Owner and are also available from the Director of the Department of Industrial Relations. Copies will be made available to any interested party on request. The Design-Builder shall post a copy of such wage rates at appropriate, conspicuous, weatherproof points at the Site.
	2. Holiday and Overtime Pay. Holiday and overtime work, when permitted by law, shall be paid for at the rate set forth in the prevailing wage rate determinations issued by the Director of the Department of Industrial Relations or at least one and one-half (1½) times the specified basic rate of per diem wages, plus employer payments, unless otherwise specified in the contract documents or authorized by law.
	3. Wage Rates Not Affected by Subcontracts. The Design-Builder shall pay and shall cause to be paid each worker engaged in the execution of the work on the Project not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Design-Builder or any Subcontractor and such workers.
	4. Per Diem Wages. The Design-Builder shall pay and shall cause to be paid to each worker needed to execute the work on the Project per diem wages including employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided for in Labor Code §1773.1.
	5. Forfeiture and Payments. Pursuant to Labor Code §1775, the Design-Builder shall forfeit to the Owner, not more than Two Hundred Dollars ($200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing wages rates as determined by the Director of the Department of Industrial Relations, for the work or craft in which the worker is employed for any work done under the Agreement by the Design-Builder or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on consideration of: (1) whether the Design-Builder or Subcontractor’s failure to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily correct upon being brought to the attention of the Design-Builder or Subcontractor; and (2) whether the Design-Builder or Subcontractor has a prior record of failing to meet its prevailing wage obligations.
	6. Monitoring and Enforcement by Labor Commissioner. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE). The Design-Builder and all Subcontractors shall be required to furnish, at least monthly, certified payroll records directly to the Labor Commissioner in accordance with Labor Code section 1771.4. All payroll records shall be furnished in a format required by the Labor Commissioner. The Design-Builder and all Subcontractors must sign up for, and utilize, the Labor Commissioner’s electronic certified payroll records submission system. The Owner will have direct and immediate access to all CPRs for the Project that are submitted through the Labor Commissioner’s system. The Owner can use this information for any appropriate purpose, including monitoring compliance, identifying suspected violations, and responding to Public Records Act requests.

The Labor Commissioner and DLSE may conduct various compliance monitoring and enforcement activities including, but not limited to, confirming the accuracy of payroll records, conducting worker interviews, conducting audits, requiring submission of itemized statements prepared in accordance with Labor Code section 226, and conducting random in-person inspections of the Project site (“On-Site Visits”). On-Site Visits may include inspections of records, inspections of the work site and observation of work activities, interviews of workers and others involved with the Project, and any other activities deemed necessary by the Labor Commissioner/DLSE to ensure compliance with prevailing wage requirements. The Labor Commissioner/DLSE shall have free access to any construction site or other place of labor and may obtain any information or statistics pertaining to the lawful duties of the Labor Commissioner/DLSE.

Any lawful activities conducted or any requests made by the Labor Commissioner/DLSE shall not be the basis for any delays, claims, costs, damages or liability of any kind against the Owner by the Design-Builder. Design-Builder and all Subcontractors shall cooperate and comply with any lawful requests by the Labor Commissioner/ DLSE. The failure of the Labor Commissioner, DLSE, or any other entity related to the Department of Industrial Relations to comply with any requirement imposed by the California Code of Regulations, Title 8, Chapter 8 shall not of itself constitute a defense to the failure to pay prevailing wages or to comply with any other obligation imposed by Division 2, Part 7, Chapter 1 of the Labor Code.

Prior to commencing any work on the Project, the Design-Builder shall post the required notice/poster required under the California Code of Regulations and Labor Code section 1771.4 in both English and Spanish at a conspicuous, weatherproof area at the Project site. The required notice/poster is available on the Labor Commissioner’s website.

1. PAYROLL RECORDS
	1. Pursuant to §1776 of the Labor Code, each Design-Builder and Subcontractor shall keep an accurate payroll record showing the name, address, social security number, work classification and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the Project.
	2. All payroll records as specified in Labor Code §1776 of the Design-Builder and all Subcontractors of any tier shall be certified and furnished directly to the Labor Commissioner in accordance with Labor Code §1771.4(a)(3) on a monthly basis (or more frequently if required by the Owner or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. Payroll records as specified in Labor Code §1776 shall be certified and submitted to the Owner with each application for payment. All payroll records shall be available for inspection at all reasonable hours at the principal office of the Design-Builder on the following basis:
		1. A certified copy of an employee’s payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
		2. A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of Owner, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.
		3. A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through the Owner, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to Paragraph (2) above, the requesting party shall, prior to being provided the records, reimburse the costs of the preparation by the Design-Builder, 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 Design-Builder.
	3. The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.
	4. The Design-Builder or Subcontractor(s) shall file a certified copy of all payroll records with the entity that requested such records within 10 days after receipt of a written request.
	5. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the Owner, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual’s name, address and social security number. The name and address of the Design-Builder awarded the Contract or the Subcontractor(s) performing the Contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent disclosure of an individual’s name and social security number. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.
	6. The Design-Builder shall inform the Owner of the location of all payroll records, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
	7. The Design-Builder or Subcontractor(s) shall have 10 days in which to comply subsequent to receipt of a written notice requesting payroll records. In the event that the Design-Builder or Subcontractor(s) fails to comply within the 10-day period, the Design-Builder or Subcontractor(s) shall, as a penalty to the Owner, forfeit One Hundred Dollars ($100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. The Design-Builder is not subject to a penalty due to the failure of a Subcontractor to comply with this section. The responsibility for compliance with this Article shall rest upon the Design-Builder.
2. WITHHOLDING OF CONTRACT PAYMENTS & PENALTIES
	1. The Owner may withhold or delay contract payments to the Design-Builder and/or any Subcontractor if:
		1. The required prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations is not paid to all workers employed on the Project; or
		2. The Design-Builder or Subcontractor(s) fail to submit all required certified payroll records with each application for payment, but not less than once per month; or
		3. The Design-Builder or Subcontractor(s) submit incomplete or inadequate payroll records; or
		4. The Design-Builder or Subcontractor(s) fail to comply with the Labor Code requirements concerning apprentices; or
		5. The Design-Builder or Subcontractor(s) fail to comply with any applicable state laws governing labor on public works projects.
3. APPRENTICES
	1. Apprentice Wages and Definitions. All apprentices employed by the Design-Builder to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and as determined by the Director of the Department of Industrial Relations, and shall be employed only at the work of the craft or trade to which he or she is registered. Only apprentices, as defined in §3077 of the Labor Code, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprenticeship agreements under Chapter 4 (commencing with §3070) of Division 3, are eligible to be employed under this Contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training or in accordance with the rules and regulations of the California Apprenticeship Council.
	2. Employment of Apprentices. Design-Builder agrees to comply with the requirements of Labor Code §1777.5. The Design-Builder awarded the Project, or any Subcontractor under him or her, in performing any of the work under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Design-Builder and Subcontractor shall employ apprentices in the ratio set forth in Labor Code §1777.5 and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the Project site for a certificate approving the Design-Builder or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the Design-Builder or Subcontractor, shall arrange for the dispatch of apprentices to the Design-Builder or Subcontractor. The Design-Builder or Subcontractor covered by an apprenticeship program’s standards shall not be required to submit any additional application in order to include additional public works contracts under that program. “Apprenticeable craft or trade” as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The ratio of work performed by apprentices to journeyman employed in a particular craft or trade on the Project shall be in accordance with Labor Code §1777.5.
	3. Submission of Contract Information. Prior to commencing work on the Project, the Design-Builder and Subcontractors shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the Project and make the request for the dispatch of apprentices in accordance with the Labor Code. The information submitted shall include an estimate of journeyman hours to be performed under the Contact, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the Owner if requested. Within 60 days after concluding work on the Project, the Design-Builder and Subcontractors shall submit to the Owner, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Project.
	4. Apprentice Fund. The Design-Builder or any Subcontractor under him or her, who, in performing any of the work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the Project. The Design-Builder and Subcontractors may take as a credit for payments to the Council any amounts paid by the Design-Builder or Subcontractor to an approved apprenticeship program that can supply apprentices to the Project. The Design-Builder and Subcontractors may add the amount of the contributions in computing his or her bid for the Contract.
	5. Design-Builder Compliance. The responsibility of compliance with this Article and §1777.5 of the Labor Code for all apprenticeable occupations is with the Design-Builder. Any contractor or Subcontractor that knowingly violates the provisions of this Article or Labor Code §1777.5 shall be subject to the penalties set forth in Labor Code §1777.7.
4. WORKERS’ COMPENSATION INSURANCE

Design-Builder shall provide, at all times in which it is providing or performing any work on the Project, at its sole cost and expense, workers’ compensation insurance for all of the employees engaged in work under the terms hereof. In case any of Design-Builder’s work is sublet, Design-Builder shall require the Subcontractor similarly to provide workers’ compensation insurance for all the latter’s employees. Any class of employee or employees not covered by a Subcontractor’s insurance shall be covered by Design-Builder’s insurance. In case any class of employees engaged in work under this contract, on or at the Site of the Project is not protected under Workers’ Compensation laws, Design-Builder shall provide or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of such employee, not otherwise protected. Design-Builder shall file with the Owner certificates of its insurance protecting workmen. Design-Builder is required to secure payment of compensation to its employees in accordance with the provisions of Section 3700 of the Labor Code.

1. CERTIFICATE OF DESIGN-BUILDER PURSUANT TO LABOR CODE § 1861

An authorized officer of Design-Builder shall sign under penalty of perjury, date, and notarize a certificate which states the following: “I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of the Agreement.”

1. ASSIGNMENT

Design-Builder shall not assign Design-Builder’s obligations set forth in the Agreement or any part thereof.

1. CHANGE IN NAME AND NATURE OF DESIGN-BUILDER’S LEGAL ENTITY

Should a change be contemplated in the name or nature of Design-Builder’s legal entity, Design-Builder shall first notify the Owner in writing in order that proper steps may be taken to have the change reflected in all corresponding legal documents.

1. WARRANTY
	1. The Design-Builder warrants to the Owner that material and equipment furnished under the Contract will be of the highest quality and new unless otherwise required or permitted by the Contract Documents, that the work will be free from defects not inherent in the quality required or permitted, and that the work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Design-Builder’s warranty to Owner includes, but is not limited to the following representations:

#### In addition to any other warranties provided elsewhere, Design-Builder shall, and hereby does, warrant all work after the date of Substantial Completion of Work by Owner and shall repair or replace any or all such work, together with any other work, which may be displaced in so doing that may prove defective in workmanship or materials within a two (2) year period from date of the Notice of Completion without expense whatsoever to Owner, ordinary wear and tear, unusual abuse or neglect excepted. Owner will give notice of observed defects with reasonable promptness. Design-Builder shall notify Owner upon completion of repairs.

#### In the event of failure of Design-Builder to comply with above mentioned conditions within one week after being notified in writing, Owner is hereby authorized to proceed to have defects repaired and made good at expense of Design-Builder who hereby agrees to pay costs and charges therefore immediately on demand.

#### If, in the opinion of the Owner, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the, the Owner will attempt to give the notice required by this Article. If the Design-Builder cannot be contacted or does not comply with the Owner’s requirements for correction within a reasonable time as determined by the Owner, the Owner may, notwithstanding the provisions of this article, proceed to make such correction or attention which shall be charged against Design-Builder. Such action by the Owner will not relieve the Design-Builder of the guarantee provided in this Article or elsewhere in this Contract.

#### This Article does not in any way limit the guarantee on any items for which a longer warranty is specified or on any items for which a manufacturer gives a guarantee for a longer period. Design-Builder shall furnish Owner all appropriate guarantee or warranty certificates upon completion of the Project.

1. SUBCONTRACTING

Design-Builder agrees to bind every Subcontractor by the terms of this contract as far as such terms are applicable to Subcontractor’s work. If Design-Builder shall subcontract any part of this contract, Design-Builder shall be as fully responsible to Owner for acts and omissions of each Subcontractor and of persons either directly or indirectly employed by Subcontractor, as Design-Builder is for acts and omissions of persons directly employed by it. Nothing contained herein shall create any contractual relation between any Subcontractor and Owner.

1. [NOT USED]
2. AUDITING

In the event that the Owner is audited by any third party claiming authority to do so, Design-Builder also shall cooperate fully, completely, and timely with any auditing or accounting person or entity designated by the Owner with regard to any kind of analysis of the final accounting, to include any outside auditor or accountant with which the Owner is cooperating, and shall produce any additional documentation reasonably required by such persons for their work.

1. LAYOUT AND FIELD ENGINEERING

All field engineering and surveying required for laying out the Project and establishing grades for earthwork operations shall be furnished by Design-Builder at its expense. Such work shall be done by a qualified engineer. Any required “As-Built” drawings of Site development shall be prepared by a qualified engineer at Design-Builder’s expense. The Owner shall confirm the location of the corners of the Site and benchmarks.

1. CUTTING AND PATCHING

Design-Builder shall do all cutting, fitting, or patching of work as required to make its several parts come together properly.

1. SOILS INVESTIGATION REPORT

Design-Builder acknowledges that it will make a further thorough visual examination of the Site. Design-Builder will review the Project and any available geotechnical report for any of the Sites. Except as provided in these Construction Provisions, no claims for allowances or damages because of Design-Builder’s failure to adequately acquaint itself with the known conditions of any of the Sites will be recognized. Design-Builder shall not be responsible for unforeseen soils conditions.

1. TRENCH EXCAVATION

This Article shall pertain to all Construction comprising the excavation of any trench or trenches four (4) feet or more in depth.

Design-Builder shall submit to the Owner, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches four (4) feet or more in depth. Design-Builder’s plan shall be prepared by a registered civil or structural engineer. As a part of the plan, a note shall be included stating that Design-Builder’s registered civil or structural engineer certifies that the plan complies with the current and applicable CAL-OSHA Construction Safety Orders, or stating that Design-Builder’s registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the Safety Orders.

All shoring submittals shall include surcharge loads from adjacent embankments, construction loads, and spoil bank. Submittals shall indicate minimum horizontal distance from top of trench to edge of all surcharge loads for all cases of shoring and side slopes.

Nothing in this Article shall relieve Design-Builder of the full responsibility for providing shoring, bracing, sloping, or other provisions adequate for worker protection. Pursuant to Labor Code § 6705, nothing in this Article shall impose tort liability upon Owner, its Board, the Executive Director or any of its employees.

In relation to digging trenches or other excavations that extend deeper than four (4) feet below the surface of the ground, Design-Builder shall comply with the following requirements, and include similar provisions in any contract for the Project, which involves digging trenches or other excavations:

* 1. That the Design-Builder shall promptly, and before the following conditions are disturbed, notify the Owner, in writing, of any:
		1. Material that the Design-Builder believes may be material that is hazardous waste, as defined in § 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
		2. Subsurface or latent physical conditions at the Site differing from those indicated.
		3. Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.
	2. That the Owner shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Design-Builder’s cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the contract.
	3. That, in the event a dispute arises between the Owner and the Design-Builder, whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Design-Builder’s cost of, or time required for, performance of any part of the work, the Design-Builder shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract.  The Design-Builder shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.
1. REGIONAL NOTIFICATION CENTER

Design-Builder, except in an emergency, shall contact the appropriate regional notification center at least two (2) working days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the Owner, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and carried out by Design-Builder unless such an inquiry identification number has been assigned to Design-Builder or any Subcontractor of Design-Builder and the Owner has been given the identification number by Design-Builder.

Emergency shall be defined as a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage (Government Code § 4216).

1. UTILITIES - REMOVAL AND RESTORATION

No excavations were made to verify the locations of any underground utilities. Design-Builder shall be responsible for the investigation of the Site with respect to any underground utilities including, without limitation, trunk, mainline, and service utilities. It shall be the responsibility of Design-Builder to determine, within reason, the exact location of all utilities. Design-Builder shall make its own reasonable investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing work which could result in damage to such utilities.

1. LAWS AND REGULATIONS

Design-Builder shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on conduct of work as indicated and specified. If Design-Builder performs any work which is contrary to any law, ordinance, rule, or regulation, Design-Builder shall bear all costs and expenses arising therefrom. The Agreement and the relationship of the parties shall be governed by California law. Venue for any action or proceeding shall rest in the County where the Project is located.

1. NOTICE AND SERVICE
	1. Any notice from one party to the other under the Agreement shall be in writing and shall be dated and signed by party giving such notice or by a duly authorized representative of such party. The Owner’s representative is the Owner’s Director of Facilities Planning and Construction or his or her designee. Any such notice shall not be effective for any purpose whatsoever unless served in one of the following manners:
		1. If notice is given to Owner, by personal delivery thereof to Owner or by depositing same in the United States mail, enclosed in a sealed envelope addressed to Owner, postage prepaid and registered.
		2. If notice is given to Design-Builder, by personal delivery thereof to said Design-Builder or to its foreman at any of the Sites, or by depositing same in the United States mail, enclosed in a sealed envelope, addressed to said Design-Builder at its regular place of business or at such other address as may have been established for the conduct of work under this contract, postage prepaid and registered.
2. INSURANCE REQUIREMENTS
	1. Before the commencement of the work, the Design-Builder shall purchase from and maintain in a company or companies lawfully authorized to do business in California with a financial rating of at least an A-VIII status as rated in the most recent edition of Best’s Insurance Reports or as amended by the Supplementary General Conditions, such insurance as will protect the Owner from claims set forth below, which may arise out of or result from the Design-Builder’s work under the Contract and for which the Design-Builder may be legally liable, whether such work are by the Design-Builder, by a Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Any required insurance shall not contain any exclusion that applies to the type of work performed by the Design-Builder under the Contract Documents:
		* 1. Claims for damages because of bodily injury, sickness, disease, or death of any person Owner would require indemnification and coverage for employee claim;
			2. Claims for damages insured by usual personal injury liability coverage, which are sustained by a person as a result of an offense directly or indirectly related to employment of such person by the Design-Builder or by another person;
			3. Claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents;
			4. Claims for damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under their own power and engaged in the Work;
			5. Claims involving contractual liability applicable to the Design-Builder’s obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Design-Builder and the Subcontractors;
			6. Claims involving Completed Operations, Independent Design-Builders’ coverage, and Broad Form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, and excavating. (XCU); and
			7. Claims involving sudden or accidental discharge of contaminants or pollutants.
	2. Specific Insurance Requirements. Design-Builder shall take out and maintain and shall require all Subcontractors, if any, whether primary or secondary, to take out and maintain:
		* 1. Comprehensive General Liability Insurance with a combined single limit per occurrence of not less than $2,000,000.00 or Commercial General Liability Insurance (including automobile insurance) which provides limits of not less than:

Per occurrence (combined single limit): $1,000,000.00

Project Specific Aggregate (for this project only): $1,000,000.00

Products and Completed Operations: $1,000,000.00

Personal and Advertising Injury Limit: $1,000,000.00

b. The following Special hazards shall be covered by riders or riders to above mentioned public liability insurance or property damage insurance policy or policies of insurance, in amounts as follows:

Automotive and truck where operated in amounts: $1,000,000.00

Material Hoist where used in amounts: $1,000,000.00

Explosion, Collapse and Underground: $1,000,000.00

Hazardous Materials: $1,000,000.00

c. In addition, provide Excess Liability Insurance coverage in the amount of Two Million Dollars ($2,000,000.00).

E. Subcontractor Insurance Requirements. The Design-Builder shall require its Subcontractors to take out and maintain public liability insurance and property damage insurance required under Article 52.A in like amounts. A “claims made” or modified “occurrence” policy shall not satisfy the requirements of Article 52.A without prior written approval of the Owner.

D. Additional Insured Endorsement Requirements. The Design-Builder shall name, on any policy of insurance required under Article 52.A, the Owner, Inspector, the State of California, their officers, employees, agents, volunteers and independent contractors as additional insureds. Subcontractors shall name the Design-Builder, the Owner, Inspector, the State of California, their officers, employees, agents, volunteers and independent contractors as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall be an ISO CG 20 10 (04/13), or an ISO CG 20 38 (04/13), or their equivalent as determined by the Owner in its sole discretion, and must state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The insurance provided by the Design-Builder pursuant to Article 52.A must be designated in the policy as primary to any insurance obtained by the Owner. The amount of the insurer’s liability shall not be reduced by the existence of such other insurance.

E. Workers’ Compensation Insurance. During the term of this Contract, the Design-Builder shall provide workers’ compensation insurance for all of the Design-Builder’s employees engaged in work under this Contract on or at the Site of the Project and, in case any of the Design-Builder’s work is subcontracted, the Design-Builder shall require the Subcontractor to provide workers’ compensation insurance for all the Subcontractor’s employees engaged in work under the subcontract. Any class of employee or employees not covered by a Subcontractor’s insurance shall be covered by the Design-Builder’s insurance. In case any class of employees engaged in work under this Contract on or at the Site of the Project is not protected under the Workers’ Compensation laws, the Design-Builder shall provide or cause a Subcontractor to provide adequate insurance coverage for the protection of those employees not otherwise protected. The Design-Builder shall file with the Owner certificates of insurance as required under Article 52.J and in compliance with Labor Code section 3700. Workers’ compensation limits as required by the Labor Code, but not less than $1,000,000 and employers’ liability limits of $1,000,000 per accident for bodily injury or disease.

F. Builder’s Risk/ “All Risk” Insurance. The Design-Builder, during the progress of the work and until final acceptance of the work by Owner upon completion of the entire Contract, shall maintain Builder’s Risk, Course of Construction or similar first party property coverage issued on a replacement cost value basis consistent with the total replacement cost of all insurable work and the Project included within the Contract Documents. Coverage is to insure against all risks of accidental direct physical loss, and must include, by the basic grant of coverage or by endorsement, the perils of vandalism, malicious mischief (both without any limitation regarding vacancy or occupancy), fire, sprinkler leakage, civil authority, sonic boom, earthquake, flood, collapse, wind, lightning, smoke and riot. The coverage must include debris removal, demolition, increased costs due to enforcement of building ordinance and law in the repair and replacement of damage and undamaged portions of the property, and reasonable costs for any design services and expenses required as a result of any insured loss upon the work and Project which is the subject of the Contract Documents, including completed work and work in progress, to the full insurable value thereof. Such insurance shall include the Owner as additional named insureds, and any other person with an insurable interest as designated by the Owner.

The Design-Builder shall submit to the Owner for its approval all items deemed to be uninsurable. The risk of the damage to the work due to the perils covered by the “Builder’s Risk/All Risk” Insurance, as well as any other hazard which might result in damage to the work, is that of the Design-Builder and the Surety, and no Claims for such loss or damage shall be recognized by the Owner nor will such loss or damage excuse the complete and satisfactory performance of the Contract by the Design-Builder.

G. Fire Insurance. Before the commencement of the work, the Design-Builder shall procure, maintain, and cause to be maintained at the Design-Builder’s expense, fire insurance on all work subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project against loss or damage in full until the work is accepted by the Owner. This requirement may be waived upon confirmation by the Owner that such coverage is provided under the Builder’s Risk Insurance being provided.

H. Automobile Liability. The Owner, Inspectors, their directors, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Design-Builder or for which the Design-Builder is responsible. Such insurance coverage shall be primary and non-contributory insurance as respects the Owner, Inspector, their directors, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Design-Builder’s scheduled underlying coverage. Any insurance or self-insurance maintained by the Owner, Inspector, their directors, officers, employees, agents and volunteers shall be excess of the Design-Builder’s insurance and shall not be called upon to contribute with it. The insurer shall agree to waive all rights of subrogation against the Owner, Inspector, their directors, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy that arise from work performed by the Design-Builder. Insurance Services Office Business Auto Coverage Form Number CA 0001, Code 1 (any auto) is required. Comprehensive Automobile Liability insurance is to include all autos, owned, non-owned, and hired, with limits of $1,000,000 per accident for bodily injury and property damage.

I. Other Insurance. The Design-Builder shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.

J. Proof of Insurance. The Design-Builder shall not commence work nor shall it allow any Subcontractor to commence work under this Contract until all required insurance and certificates have been obtained and delivered in duplicate to the Owner for approval subject to the following requirements:

#### Certificates and insurance policies shall include the following clause:

“This policy and any coverage shall not be suspended, voided, non-renewed, canceled, or reduced in required limits of liability or amounts of insurance or coverage until notice has been mailed via certified mail to the Owner. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice.”

* + - 1. Certificates of insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices.
			2. Certificates of insurance shall clearly state that the Owner is named as an additional insured under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by Owner.
			3. The Design-Builder and its Subcontractors shall produce a certified copy of any insurance policy required under this Section upon written request of the Owner.

K. Compliance. In the event of the failure of any contractor to furnish and maintain any insurance required by this Article, the Design-Builder shall be in default under the Contract. Compliance by Design-Builder with the requirement to carry insurance and furnish certificates or policies evidencing the same shall not relieve the Design-Builder from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify the Owner.

L. Waiver of Subrogation. Design-Builder waives (to the extent permitted by law) any right to recover against the Owner for damages to the work, any part thereof, or any and all claims arising by reason of any of the foregoing, but only to the extent that such damages and/or claims are covered by property insurance and only to the extent of such coverage (which shall exclude deductible amounts) by insurance actually carried by the Owner.

The provisions of this Section are intended to restrict each party to recovery against insurance carriers only to the extent of such coverage and waive fully and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier. The Owner and the Design-Builder shall each obtain in all policies of insurance carried by either of them, a waiver by the insurance companies thereunder of all rights of recovery by way of subrogation for any damages or claims covered by the insurance.

1. CONTINUANCE OF WORK

In the event of a dispute between the parties as to performance of the work or the interpretation of the Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute. Pending resolution of this dispute, Design-Builder agrees to continue the work diligently to completion. If the dispute is not resolved, Design-Builder agrees it will not stop the progress of the work on the Project.

1. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

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

1. NON-DISCRIMINATION

Pursuant to the provisions of Labor Code § 1735, Design-Builder and its Subcontractor’s shall not unlawfully discriminate in the employment of persons on this Project because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex.

1. LIEN RELEASES
	1. If a lien or stop notice of any nature should at any time be filed against any of the Projects, the Sites or any Owner property, or both of them, by an entity which has supplied material or services at the request of Design-Builder or Subcontractor or supplier to Design-Builder, Design-Builder shall promptly, on demand by Owner and at Design-Builder’s own expense, take any and all action necessary to cause any such lien or stop notice to be released or discharged immediately therefrom, or secure and file a security bond covering one hundred twenty-five percent (125%) of the amount of such lien or stop notice.
	2. If Design-Builder fails to furnish satisfactory evidence to the Owner within ten (10) calendar days after demand by the Owner that a lien or stop notice has been so released, discharged, or secured, then Owner may discharge such indebtedness and deduct the amount required therefor, together with any and all losses, costs, damages, attorney’s fees, and expenses incurred or suffered by Owner from any sum payable to Design-Builder.
	3. Design-Builder shall, at its own cost, defend, indemnify, and hold harmless the Owner, its officers, agents, employees, assigns, and successors in interest, from and against any and all liability, damages, losses, claims, demands, actions, causes of action, and costs including attorney’s fees and expenses, arising from or attributable to a lien or stop notice filed and/or severed in connection with the Project.
2. LABOR/EMPLOYMENT SAFETY

Design-Builder shall maintain emergency first aid treatment for its employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 USC, § 651, et seq.) and all applicable CAL-OSHA Regulations and Construction Safety Orders. In addition, Design-Builder shall be solely responsible in every respect for adherence to and implementation of all construction site safety measures necessary and appropriate according to prevailing industry practices.

1. NOTICE OF TAXABLE POSSESSORY INTEREST

The terms of this document may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this document, the private party may be subjected to the payment of personal property taxes levied on such interest.

1. COMPLIANCE WITH STATE STORM WATER POLLUTION PREVENTION
	1. Application. This Article addresses the preparation, implementation and monitoring of a Storm Water Pollution Prevention Plan (SWPPP) for the purpose of preventing the discharge of pollutants from the construction site. This includes the elimination of pollution discharges such as improper dumping, spills or leakage from storage tanks or transfer areas. The Owner will not issue a Notice to Proceed for construction work until Design-Builder has prepared by a qualified individual and obtained approval of the Permit Registration Documents (“PRDs”) that include a Notice of Intent, Construction Risk Calculation, Site Map, SWPPP, Annual Fee and any additional required documents from all applicable Local Governing Agencies including the Regional Water Quality Control Board. The Design-Builder shall also secure a certification that the construction project has met all of the conditions of the General Construction Activity Storm Water Permit (GCASP) and comply with all applicable local, state and federal regulations governing storm water pollution prevention.
	2. Reference and Materials

- California Stormwater Quality Association New Development and Redevelopment Best Management Practice Handbook

- 2009 California Stormwater Quality Association Construction BMP Handbook .

- State Water Resources Control Board (2009). Order 2009-0009-DWQ, NPDES General Permit No. CAS000002: Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction and Land Disturbing Activities. Available on-line at:

- http://www.waterboards.ca.gov/water\_issues/programs/stormwater/construction.shtml.

- Use materials of a class, grade and type needed to meet the performance described in the BMP Handbook.

* 1. Preparation and Approval. The Design-Builder shall prepare by a qualified individual the PRDs that include a Notice of Intent, Construction Risk Calculation, Site Map, SWPPP, Annual Fee and any additional required documents. The Design-Builder’s Qualified SWPPP Developer (“QSD”) shall prepare the Storm Water Pollution Prevention Plan (SWPPP) as required to comply with storm water pollution regulations for project sites with storm water discharges associated with construction activity such as clearing or demolition, grading, excavation and other land disturbances. The SWPPP shall apply to all areas that are directly related to construction activity, including but not limited to staging areas, storage yards, material borrow areas, and access roads.

 The Design-Builder shall prepare and submit to the Local Governing Agencies and the Owner the SWPPP for review and approval if the Site, new or existing, with land disturbance of 1 or more acres (or less than 1 acres if part of a common plan of development); the construction activity that results in land surface disturbances of less than one acre is part of a larger common plan of development or sale of one or more acres of disturbed land surface; or the construction activity associated with Linear Underground/Overhead Projects (“LUPs”) including, but not limited to, those activities necessary for the installation of underground and overhead linear facilities (e.g., conduits, substructures, pipelines, towers, poles, cables, wires, connectors, switching, regulating and transforming equipment and associated ancillary facilities) and include, but are not limited to, underground utility mark-out, potholing, concrete and asphalt cutting and removal, trenching, excavation, boring and drilling, access road and pole/tower pad and cable/wire pull station, substation construction, substructure installation, construction of tower footings and/or foundations, pole and tower installations, pipeline installations, welding, concrete and/or pavement repair or replacement, and stockpile/borrow locations.

 The Design-Builder shall also pay annual renewal fee(s) until the contract is completed and make all such checks payable to the State Water Resources Control Board. The Notice of Intent must be submitted at least two weeks prior to the commencement of construction activities.

 The Design-Builder shall prepare the SWPPP by following the format in Sections 2, 3, 4 and Appendices A through F of the California Stormwater BMP Handbook - Construction, January 2009 edition, published by the California Stormwater Quality Association. The publication is available from:

California Stormwater
Quality Association
P.O. Box 2105
Menlo Park, CA 94026-2105
Phone: (650) 366-1042
E-mail: info@casqa.org

or

https://www.casqa.org/store/products/tabid/154/p-167-construction-handbookportal-initial-subscription.aspx

Where land disturbance is less than 1 acre, any BMPs indicated in the BMP Handbook needed to prevent or minimize storm water pollution shall be implemented at no extra cost to the Owner.

Prior to commencing any construction activities, the Design-Builder shall submit to the Owner one copy of the PRDs including the SWPPP for review. After the Owner’s approval, the Design-Builder shall provide approved copies of the SWPPP to the Inspector and to the Owner.

* 1. Implementation. The Design-Builder shall implement the Storm Water Pollution Prevention Plan by doing the following:

## a. Obtain a Waste Discharger Identification (WDID) number from the SWRCB before beginning construction. This number will be issued once your PRDs are administratively accepted and fee is received.

## b. Keep the SWPPP, REAPs, monitoring data on the construction Site.

## c. Employ a Qualified SWPPP Practitioner (QSP) to implement the SWPPP during construction and develop Rain Event Action Plans (“REAPs”).

## d. Install, inspect, maintain and monitor BMPs required by the General Permit.

## e. Install perimeter controls prior to starting other construction work at the Site.

## f. Contain on-site storm water at the jobsite. Do not drain on-site water directly into the storm drain.

## g. Implement the SWPPP.

## h. Provide SWPPP and BMP implementation training for those responsible for implementing the SWPPP.

## i. Designate trained personnel for the proper implementation of the SWPPP.

## j. Conduct monitoring, as required, and assess compliance with the Numeric Action Levels (NALs) or Numeric Effluent Limitations (NELs) appropriate to your project.

## k. Report monitoring data:

i. Maintain a paper or electronic copy of all required records for three years from the date generated or date submitted, whichever is last. These records must be available at the construction Site until construction is completed.

ii. Have a QSD revise the SWPPP as needed to reflect the phases of construction and to suit changing Site conditions and instances when properly installed systems are ineffective.

iii. Assist the Owner with entering any necessary data or information into the Stormwater Multi-Application and Reporting System (“SMARTS”) system.

## l. At the end of Construction Contract:

i. Submit Notice of Termination (NOT) into the SMARTS when construction is complete and conditions of termination listed in the NOT have been satisfied. A copy of the NOT can be found at: http://www.waterboards.ca.gov/water\_issues/programs/stormwater/construction.shtml.

ii. Leave in place storm water pollution prevention controls needed for post-construction storm water management and remove those that are not needed as determined by the Owner. Thereafter, left-in-place controls will be maintained by the Owner.

iii. Provide Site Monitoring Reports, SWPPP revisions, Compliance Certifications and related documents to the Owner. Post-construction storm water operation and management plan as mentioned in the compliance certifications are considered to be in place at the end of the Construction Contract.

* 1. Monitoring. The Design-Builder shall conduct examination of storm water pollution prevention controls as required by the State Water Resources Control Board (2009). Order 2009-0009-DWQ, NPDES General Permit No. CAS000002: Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction and Land Disturbing Activities. This includes properly qualified personnel performing all required monitoring, testing, inspections and monitoring. The Design-Builder shall also conduct examination of storm water pollution prevention controls, as well as before and after each storm event in compliance with the State Water Resources Control Board Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction and Land Disturbance Activities (General Permit) (SWRCB, 2009).and at least once each 24-hour period during extended storm events to identify BMP effectiveness and implement repairs or BMP changes as soon as feasible. All maintenance related to a storm event should be completed within 48 hours of the storm event. The Contactor shall also prepare and maintain, at the jobsite, a log of each inspection using Site Monitoring Report forms.
	2. Liabilities and Penalties
		+ 1. Review of the SWPPP and inspection logs by the Owner shall not relieve the Design-Builder from liabilities arising from non-compliance with storm water pollution regulations.
			2. Payment of penalties for non-compliance by the Design-Builder shall be the sole responsibility of the Design-Builder and will not be reimbursed by the Owner.
			3. Compliance with the Clean Water Act pertaining to construction activity is the sole responsibility of the Design-Builder. For any fine(s) levied against the Owner due to non-compliance by the Design-Builder, the Owner will deduct from the final payment due the Design-Builder the total amount of the fine(s) levied on the Owner, plus legal and associated costs.
			4. The Design-Builder shall submit to the Owner a completed NOI for change of information (Construction Site Information and Material Handling/Management Practices).
1. COMPLIANCE WITH DTSC GUIDELINES - IMPORTED SOILS

If the Project requires the use of imported soils, Design-Builder shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with California Law and the California Health and Safety Code. The Owner reserves the right to reject any imported material that has come from agricultural or commercial land issues. Design-Builder must notify the Owner of the source of material and comply with all local applicable regulations, and when applicable, with the guidelines of the Department of Toxic Substances Control (“DTSC”).

1. NO ASBESTOS
	1. Design-Builder shall execute and submit a Certificate Regarding Non-asbestos Containing Materials.
	2. Should asbestos containing materials be installed by Design-Builder in violation of this certification, or if removal of asbestos containing materials is part of the Project, decontaminations and removals will be performed in accordance with the requirements of all applicable laws and will meet the following criteria:
		1. Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement, and accredited by the Environmental Protection Agency (“EPA”).
		2. The asbestos removal Design-Builder shall be an EPA accredited Design-Builder qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.
		3. The asbestos consultant shall be chosen and approved by the Owner which shall have sole discretion and final determination in this matter.
		4. The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.
	3. If removal of asbestos containing materials is part of the Project, the costs of all asbestos removal, including but not necessarily limited to, the cost of the asbestos removal sustained by Design-Builder, the costs of the asbestos consultant, analytical and laboratory fees, time delays, and additional costs that may be incurred by the Owner shall be borne entirely by Design-Builder.
2. HOLD HARMLESS/INDEMNITY

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

B. Furthermore, Design-Builder agrees to and does hereby defend, indemnify and hold harmless Owner, Inspector, the State of California and their officers, employees, agents and independent contractors from every claim or demand made, and every liability, loss, damage, expense or attorneys’ fees of any nature whatsoever, which may be incurred by reason of:

a. Liability for (1) death or bodily injury to persons; (2) damage or injury to, loss (including theft), or loss of use of, any property; (3) any failure or alleged failure to comply with any provision of law or the Contract Documents; or (4) any other loss, damage or expense, sustained by any person, firm or corporation or in connection with the Work called for in this Agreement or the Contract Documents, except for liability resulting from the sole or active negligence, or the willful misconduct of the Owner.

b. Any bodily injury to or death of persons or damage to property caused by any act, omission or breach of Design-Builder or any person, firm or corporation employed by Design-Builder, either directly or by independent contract, including all damages or injury to, loss (including theft), or loss of use of, any property, sustained by any person, firm or corporation, including the Owner, arising out of or in any way connected with Work covered by this Agreement or the Contract Documents, whether said injury or damage occurs either on or off Owner property, but not for any loss, injury, death or damages caused by the sole or active negligence or willful misconduct of the Owner.

c. Any dispute between Design-Builder and Design-Builder’s Subcontractors/ supplies/ sureties, including, but not limited to, any failure or alleged failure of the Design-Builder (or any person hired or employed directly or indirectly by the Design-Builder) to pay any Subcontractor or Materialman of any tier or any other person employed in connection with the Work and/or filing of any stop notice or mechanic’s lien claims.

d. Any claims, allegations, penalties, assessments, or liabilities to the extent caused by the Design-Builder’s failure or the failure of any Subcontractor of any tier, to fully comply with the DIR registration requirements under Labor Code section 1725.5 at all times during the performance of any Work on the Project and shall reimburse the Owner for any penalties assessed against the Owner arising from any failure by the Design-Builder or any Subcontractor of any tier from complying with Labor Code sections 1725.5 and 1771.1. Nothing in this paragraph, however, shall require the Design-Builder or any Subcontractor to be liable to the Owner or indemnify the Owner for any penalties caused by the Owner in accordance with Labor Code section 1773.3 (g).

C. Design-Builder, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the Owner, its officers, agents or employees, on account of or founded upon any cause, damage, or injury identified in this Section 18 and shall pay or satisfy any judgment that may be rendered against the Owner, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

1. SKILLED AND TRAINED WORKFORCE

A. Design-Builder and all Subcontractors of any tier must comply with the requirements set forth in Education Code section 17250.25(c) and Public Contract Code sections 2601 and 2602, including providing an enforceable commitment that the Design-Builder and all Subcontractors of any tier will use a “Skilled and Trained Workforce” as defined in Public Contract Code section 2601(d). Design-Builder and all Subcontractors are to carefully review all requirements set forth in Education Code section 17250.25(c) and Public Contract Code sections 2601 and 2602. The Contractor's commitment that a Skilled and Trained Workforce will be used to perform Work on the Project and the Contract shall be established by the following:

a. Design-Builder shall include in all of its subcontracts, and Subcontractors shall require in its subcontracts of any tier, mandatory compliance with Education Code section 17250.25(c) and Public Contract Code sections 2601 and 2602.

b. Design-Builder shall provide to the Owner’s Governing Board, on a monthly basis while the Project or Contract is being performed, a written report demonstrating that the Design-Builder and all Subcontractors of any tier are complying with the requirements set forth in Education Code section 17250.25(c) and Public Contract Code sections 2601 and 2602. If the Design-Builder fails to provide the monthly report required herein, or provides a report that is incomplete, the Owner shall withhold further payments until a complete report is provided. If a monthly report does not demonstrate compliance with Public Contract Code sections 2601 and 2602, the Owner shall withhold further payments until the Design-Builder provides a plan to achieve substantial compliance with Public Contract Code sections 2601 and 2602, with respect to the relevant apprenticeable occupation, prior to completion of the Project.

c. The monthly report provided to the Owner’s Governing Board as required above shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), and shall be open to public inspection.

B. The requirements under this Article shall not apply if any of the following requirements are met:

a. The Owner has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the Project or Contract to use a skilled and trained workforce, and the Design-Builder agrees to be bound by that project labor agreement.

b. The Project or Contract is being performed under the extension or renewal of a project labor agreement that was entered into by the Owner prior to January 1, 2017.

c. The Design-Builder has entered into a project labor agreement that will bind the Design-Builder and all its Subcontractors at every tier performing the Project or Contract to use a skilled and trained workforce.

For purposes of this subdivision, “project labor agreement” has the same meaning as in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

C. If the Contractor or Subcontractor of any tier is not in compliance with all of the applicable Skilled and Trained Workforce, the Owner shall exercise any rights or remedies allowed under Public Contract Code section 2602 or other applicable law.

**ATTACHMENT 4**

**PROJECT MILESTONES**

Project Schedule Milestones to be included in the Design-Builder’s Project Schedule to be provided by the Design-Builder to the Owner for approval. The milestones noted below shall not be construed as an exhaustive list and the Owner may request additional milestones to be included in the Design-Builder’s Project Schedule.

Minimum Milestones to be Included in Project Schedule:

Execute Design-Build Agreement: TBD

Total Project Duration: \_\_\_\_ Calendar Days

DSA and Agency Approvals: Within \_\_\_\_ calendar days after execution of Design-Build Agreement

Commence Construction Services: Within \_\_\_\_\_ weeks after DSA and Agency Approvals

Substantial Completion: Within \_\_\_\_\_ calendar days after execution of Design-Build Agreement. (Parking expansion must be completed prior to the start of building construction)

Final Completion: \_\_\_\_ calendar days after Substantial Completion

DSA Close-Out and Certification: Within 60 calendar days after Substantial Completion

Design-Builder shall prepare and submit a preliminary Project Schedule within \_\_\_ days of the date of the Agreement and a final Project Schedule within \_\_\_ days of the date of the Agreement to the Owner for review and approval.

Design-Builder is not entitled to make any claim upon the Owner for damages or delays arising from the delays caused by DSA unless such DSA delays are caused solely by the Owner.

**ATTACHMENT 5**

**PROJECT SPECIFICATIONS AND SCOPE OF WORK**

Refer to all documents including but not limited to concept drawings, geotechnical reports, underground utilities issued as part of the RFQ/RFP documents.

**ATTACHMENT 6**

**REFERENCE PLANS**

 The listing of documents herein is incorporated herein for reference to supplement Attachment 5 and to further convey the general scope of work for the Project.

Refer to all documents including, but not limited to, concept drawings, geotechnical reports, underground utilities issued as part of the RFQ/RFP documents.

**ATTACHMENT 7**

**GENERAL CONDITIONS**

|  |  |  |  |
| --- | --- | --- | --- |
| **Description** | **Months** | **Rate/Unit Cost** | **Subtotal** |
| Principal-In-Charge |  |  |  |
| Project Manager |  |  |  |
| Superintendent |  |  |  |
| Project Engineer |  |  |  |
| Clerical |  |  |  |
| Safety |  |  |  |
| Temporary Barricade |  |  |  |
| Engineering Layout |  |  |  |
| CPM Schedule |  |  |  |
| Temporary Toilets |  |  |  |
| Temporary Trailer |  |  |  |
| Cell Phone |  |  |  |
| Temp Water and Power |  |  |  |
| As-Built |  |  |  |
| Auto& Gas |  |  |  |
| Cleanup |  |  |  |
| Security |  |  |  |
| Bonds |  |  |  |
| GL Insurance |  |  |  |
| COC Insurance |   |   | Included Above |
| **SUBTOTAL** |   |   |  |

All items set forth in this Attachment 7 are subject to a final audit and review by the Owner. If requested, the Design-Builder shall provide all costs, information and documents to reasonably support the costs to the Owner so the Owner can perform the audit.