

CONTRACT FOR HVAC DESIGN AND CONSTRUCTION SERVICES

This contract is entered into and effective on September 14, 2022 (“**Contract**”), by and between **Azusa Unified School District**, a California public school district (“**District**” or “**Owner**”), and **Willdan Energy Solutions** (“**Designer/Builder**”). District and Designer/Builder may be referred to herein individually as a “**Party**” or collectively as the “**Parties**”.

RECITALS

WHEREAS, the scope of the Project is to design and build Heating, Ventilation, and Air Conditioning (“**HVAC**”) improvements and systems on multiple District sites, as detailed in Exhibit A, Article 6 to this Contract (collectively as the “**Project**”); and

WHEREAS, the District’s Board authorized the District to enter into an energy conservation contract for HVAC design and construction services with Designer/Builder who represents that it is able to provide appropriately licensed contracting, and engineering services to design and construct the Project based on detailed design and construction documents prepared by the Designer/Builder and pre-approved by the Division of the State Architect (“**DSA**”) where applicable and the District within the Contract Price indicated herein; and

WHEREAS, this Contract contemplates that the District will receive funding from third-party sources (collectively, “**3rd Party Funding**”) to offset project costs, including:

- Elementary and Secondary School Emergency Relief (ESSER)

WHEREAS, based on the District’s review and evaluation of the proposal submitted by Designer/Builder, and subsequent negotiations by and between the District and Designer/Builder, the District determined that Designer/Builder is the firm offering the best value to the District for the Project; and

WHEREAS, District desires that Designer/Builder design and construct, and Designer/Builder desires to design and construct, the scope of work and services as described in **Exhibit A**, attached hereto (“**Services**” or “**Work**”) for the Contract Price and within the time reflected in the Project Schedule attached in **Exhibit B** to this Contract; and

WHEREAS, the Designer/Builder certifies and warrants that it has the experience, expertise, capability, training, and any certification(s) and/or license(s) necessary to design and construct the Project based on and including, but not limited to, the DSA approved plans and specifications, for the Contract Price as reflected in the Detailed Project Cost Values and Other Pricing Components in the Contract Time / Project Schedule / Contract Price section of this Contract, and the District’s Rules and Regulations as reflected in **Exhibit C** to this Contract, all within the Project Schedule indicated in this Contract, and that, if it is not sufficiently licensed to design any portion of the Work as required by applicable law, Designer/Builder shall directly hire a consultant or subcontractor with the lawfully appropriate license(s) to design that portion of the Work.

NOW THEREFORE, for and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

AGREEMENT

1. **Contract Price.** The Designer/Builder shall furnish the Services or Work described in **Exhibit A** to the District for a total price **not to exceed Eleven Million, Seven Hundred Twenty-Four Thousand, Nine Hundred Thirty-Six Dollars (\$11,724,936)** (“**Contract Price**”) as more specifically indicated in the Contract Time / Project Schedule / Contract Price below. The Contract Price shall be Designer/Builder’s total compensation to perform the Work described in **Exhibit A**, and summarized below to engineer, design, procure, demolish, construct, install, program, field test and commission the Work, and train District staff, as follows:

- **Design.** Design of a comprehensive plan to install and field test the Work at the twelve (12) locations (“**Site(s)**”), described in Exhibit A, Article 6. The Designer/Builder shall perform this scope of work based on the mutually agreed documents provided by Designer/Builder and approved by the DSA and District, which shall be attached hereto without further need to amend

this agreement as **Exhibit D** upon completion and are incorporated herein by this reference.

- **Build.** Construction, programming, field testing and commissioning of the Work, including incorporating and ensuring compatibility of all appurtenant and necessary components for a complete and fully operational system, and training District staff on the operation and maintenance of the Work and related systems. All the work of the Project shall be based on the plans prepared by the Designer/Builder that are to be reviewed by the District and approved by the DSA.
 - **3rd Party Funding.** The District is seeking the 3rd Party Funding as indicated in the Recitals to fund the Project. Therefore, the District reserves its right to suspend and/or terminate the Project as allowable herein if the 3rd Party Funding does not equal or exceed the amounts that the District expects; provided, however, that if the Designer/Builder has commenced any Work under this Contract, the District shall pay for all Work completed prior and up to suspension or termination of this Contract. If a lump sum is specified for a Phase as set out in Contract Time / Project Schedule / Contract price below and the District terminates this Contract prior to completion of such Phase, the amount due and owing shall be pro-rated and agreed upon between the parties to reflect the Work completed to that point.
2. **Contract Time / Project Schedule / Contract Price.** The Work will be performed in Phases identified in **Exhibit B**. The District shall make payment as set forth in Article 22 of the General Conditions, however, the District is authorized to withhold 5% retention for each site until completion is achieved at all sites. '

The Design Phase and 100% Construction Documents Phase shall be referred to collectively as “**Design Phase Services.**”

Work shall be completed within the time specified in **Exhibit B (“Project Schedule”)**, attached hereto and incorporated herein by this reference, from the date specified in the District’s Notice(s) to Proceed (as defined below), as indicated in the Project Schedule. This shall be the “**Contract Time.**”

3. **NTP(s):** The District will issue one or more Notice(s) to Proceed for each phase or a portion of each phase of the Project, at which time Designer/Builder shall proceed with the Work. The District shall obtain approval for any Work which requires California Department of General Services, Division of the State Architect (“**DSA**”) prior to issuing a Notice to Proceed for any such Work. Designer/Builder shall only be authorized to perform Work as indicated in the particular Notice to Proceed. The time to complete the Work authorized by a particular Notice to Proceed shall be as agreed between the Parties and indicated in the Notice to Proceed. The District will issue a Notice to Proceed for the Design Phase Services, and a Notice(s) to Proceed for Construction Phase Services. For Construction Phase Services, the District reserves the right to issue a Notice to Proceed for construction for each Site individually, for a group of Sites, or for all Sites, in its sole discretion. If the District issues a Notice to Proceed for each Site individually or for a group of Sites, the Parties shall make necessary adjustments to the Project Schedule, and amend this Contract accordingly.
4. **Liquidated Damages:** All Work shall be performed in accordance with the Schedule as set out in the Project Schedule, as may be modified by agreement between the Parties from time to time. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that District will sustain in the event of and by reason of Designer/Builder's delay; therefore, pursuant to Government Code section 53069.85 and Public Contract Code section 7203, Designer/Builder shall forfeit and pay to District the following sum(s) as liquidated damages (“**Liquidated Damages**”):

Project Completion: Five Hundred Dollars (\$250) per day as Liquidated Damages for each and every day's delay beyond the Contract Time to complete all the Work at **each** Site. If there are different deadlines for completion of the Work at an individual Site(s), or group of Sites, as set forth in the Project Schedule, the District may assess liquidated damages cumulatively as set forth below if Designer/Builder fails to complete all the Work for the individual Site(s), or group of Sites, within the Contract Time as applicable.

- a. It is hereby understood and agreed that neither the total cumulative Liquidated Damages amount nor

any portion of the Liquidated Damage amount are penalties.

- b. District may deduct Liquidated Damages from money due or that may become due Designer/Builder under this Contract. Designer/Builder's forfeiture of Liquidated Damages to District, and District's right to retain Liquidated Damages, are as indicated in Government Code section 53069.85 and as indicated herein and in the General Conditions.
- c. Designer/Builder and its surety shall be liable for and pay to District the entire amount of Liquidated Damages including any portion that exceeds the amount of the Contract Price then held, retained or controlled by District.
- d. Liquidated Damages shall be in addition, and not in lieu of, District's right to charge Designer/Builder for the District's cost of completing or correcting items of the Work.

Initials: District _____ Designer/Builder GAM

- 5. **Insurance/Bonds.** The Designer/Builder shall not commence the Work under this Contract until the Designer/Builder has submitted and the District has approved the endorsement(s) of insurance required under the Terms and Conditions to this Contract and the District has issued a Notice to Proceed. The Designer/Builder shall not commence procurement, installation, and construction portions of the Work until the Designer/Builder has submitted and the District has approved the performance bond and the payment (labor and material) bond(s) in the forms attached to this Contract.
- 6. **CEQA.** The District and Designer/Builder recognize that the Project activities contemplated by this Contract are subject to environmental review under the California Environmental Quality Act ("**CEQA**"), and that the District, as a lead agency for the Project and its future use, must comply with the CEQA requirements as set forth in CEQA and in 14 California Code of Regulations sections 15000, et seq. ("**CEQA Guidelines**"). Pursuant to CEQA Guidelines Section 15004(b)(2)(A), the Parties acknowledge that (i) approval and execution of this Contract by the Parties does not constitute the District authorizing, approving, or awarding a "project" as defined by CEQA, and (ii) the Project shall not commence until the District provides Designer/Builder with a specific notice to proceed authorizing construction activity. In the event District does not issue such a Notice to Proceed authorizing construction activity and instead issues a notice of suspension or notice of termination, District will pay for Designer/Builder's undisputed and documented design and/or planning services rendered to the date of that notice.
- 7. **Terms and Conditions.** This Contract incorporates by this reference the Terms and Conditions attached hereto. The Designer/Builder, by executing this Contract, agrees to comply with all the Terms and Conditions herein.
- 8. **DSA.** Designer/Builder hereby acknowledges that the DSA and the District's DSA Project Inspector(s) ("**Inspector**" or "**IOR**"), to the extent applicable, have authority to approve and/or stop Work if the Designer/Builder's Work does not comply with the requirements of the Contract, Title 24 of the California Code of Regulations, or all applicable laws. The Designer/Builder shall be liable for any delay caused (through liquidated damages) and extra work required by its non-compliant Work. Designer/Builder shall not be liable for any delay to the extent caused by the District or by the DSA and the District's DSA Project Inspector(s) failure to provide approvals, or the construction manager's failure to provide authorizations or approvals in a timely manner.
- 9. **Inspection of Work.** Inspection and acceptance of the Work shall be performed by:
 - a. The Inspector with whom the District will contract at or prior to the Designer/Builder's commencement of construction of the Project;
 - b. The District's Director of Maintenance and Transportation and/or designee ("**District Representative**");
 - c. The District's program architect ("**Architect**"), if applicable.

10. **Construction Management.** Designer/Builder recognizes that the District reserves the right to obtain the services of a construction manager for this Project. The construction manager, if any, would be authorized to give Designer/Builder Services authorizations, and issue written approvals and Notices to Proceed on behalf of District. The District reserves the right to designate a different construction manager at any time. The District shall provide forty-eight (48) hours' notice to Designer/Builder if District designates a different construction manager. Any task, including, but not limited to, reviews or approvals that the District may perform pursuant to this Contract may be performed by the construction manager, unless that task indicates it shall be performed by the District's Board.
11. **[RESERVED]**
12. **Guarantee.** Unless otherwise indicated herein for a longer period of time, the Designer/Builder shall guarantee all labor and material used in the performance of this Contract for a period of one (1) year from the date of the District's written approval of the Work.
13. **Classification of Designer/Builder's License.** Designer/Builder hereby acknowledges that it currently holds valid Contractor's license(s) issued by the State of California, Contractor's State Licensing Board, in accordance with division 3, chapter 9, of the Business and Professions Code and in the classification called for in the Contract Documents to perform the Work.
14. **Authority of Designer/Builder's Representative.** Designer/Builder hereby certifies that its legal representative(s) on the Project is the Project Director and that the Project Director has the authority to legally bind the Designer/Builder.
15. The Contract includes only the following documents which are incorporated herein by this reference ("**Contract Documents**"):

- | | |
|--|---|
| <input checked="" type="checkbox"/> Terms and Conditions to Contract | <input checked="" type="checkbox"/> Performance Bond (District's Form) |
| <input checked="" type="checkbox"/> Noncollusion Declaration | <input checked="" type="checkbox"/> Payment Bond (District's Form) |
| <input checked="" type="checkbox"/> Prevailing Wage Certification | <input checked="" type="checkbox"/> Exhibit A (Scope of Work) |
| <input checked="" type="checkbox"/> Workers' Compensation Certification | <input checked="" type="checkbox"/> Exhibit B (Project Schedule) |
| <input checked="" type="checkbox"/> Criminal Background Investigation Certification | <input checked="" type="checkbox"/> Exhibit C (District's Rules and Regulations) |
| <input checked="" type="checkbox"/> Drug-Free Workplace / Tobacco-Free Environment Certification | <input checked="" type="checkbox"/> Exhibit D (List of Plans and Specifications) |
| <input checked="" type="checkbox"/> Asbestos & Other Hazardous Materials Certification | <input type="checkbox"/> Exhibit E (Operation and Maintenance) |
| <input checked="" type="checkbox"/> Lead-Product(s) Certification | <input type="checkbox"/> Exhibit F (Design Criteria) |
| <input checked="" type="checkbox"/> Conflict of Interest Certification | <input checked="" type="checkbox"/> Exhibit G (Federal Contract Provisions) |
| | <input checked="" type="checkbox"/> Insurance Certificates and Endorsements |

16. **Integration/ Modification.** Except as changed or amended, the Contract Documents and any documents specifically incorporated by reference are completely integrated as the complete and exclusive statement of the terms of this Contract. This Contract supersedes all previous contracts, agreements, and/or communications, both oral and written, and constitutes the entire understanding of the District and Designer/Builder. No extrinsic evidence whatsoever shall be admissible or used to explain or supplement the terms of this Contract, Contract Documents, or any items incorporated by reference. No changes, amendments or alterations shall be effective unless in writing, signed by both Parties, and shall be incorporated into the Contract Documents.

17. **Certification.** By signing the Contract, the Parties certify, under penalty of perjury, that all the information provided in the Contract is true, complete, and correct, to the best of its knowledge at the time it signs the Contract. If, at any time after signing the Contract, it becomes known that the information provided in the Contract is no longer true, complete, and correct, each Party shall have a duty to provide the updated or differing information.

18. **Information regarding Designer/Builder.**

Type of Business Entity: <input type="checkbox"/> Individual <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Partnership <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Other: _____	56-2417519 <hr/> Employer Identification and/or Social Security Number NOTE: United States Code, title 26, sections 6041 and 6109 require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The United States Code also provides that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these rules, the District requires your federal tax identification number or Social Security number, whichever is applicable.
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ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 2022

Azusa Unified School District

Signature: _____

Print Name: _____

Print Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Dated: September 6, 2022

Willdan Energy Solutions

Signature: _____

Print Name: Garth McCann

Print Title: Vice President of Operations

CA Contractor License No.: 922232

Mech Engineer License: 38889

Engineer License: _____

DIR Registration No.: _____

Designer/Builder Local Representative:

Address: 2401 E. Katella Ave, Suite 300

Telephone: 800-424-9144

Facsimile: _____

E-Mail: _____

Notice. Any notice required or permitted to be given under this Contract shall be deemed to have been given, served, and received if given in writing and either personally delivered or sent by overnight delivery service addressed as follows:

DISTRICT

Azusa Unified School District
546 S. Citrus Avenue
Azusa, CA 91702
ATTN: Latasha Jamal,
Assistant Superintendent of
Business Services

With a copy to:

F3 Law
520 Capitol Mall St 400
Sacramento, CA 95814
ATTN: James Traber

DESIGNER/BUILDER

Willdan Energy Solutions
2401 E. Katella Avenue, Suite 300
Anaheim, CA 92806
ATTN: Aaron Etzkorn,
Vice President of Engineering

With a copy to:

Willdan Energy Solutions
Attn: Micah Chen
2401 East Katella Ave, #300
Anaheim, CA 92806

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice provided electronically shall be sent with a "Read" receipt, and shall be effective when the sender of the electronic notice receives the Read receipt from the recipient.

TERMS AND CONDITIONS TO CONTRACT

1. **SITE EXAMINATION:** Designer/Builder has examined the Sites and certifies that it accepts all measurements, specifications and conditions affecting the Work to be performed at the Site. By submitting its quote, Designer/Builder warrants that it has made all Site examination(s) that it deems necessary as to the condition of the Sites, their accessibility for materials, workers and utilities, and Designer/Builder's ability to protect existing surface and subsurface improvements. With the exception of hazardous materials, no claim for allowance of time or money will be allowed as to any other undiscovered condition on the Sites that could and should have been discovered through reasonable investigation. Notwithstanding the aforementioned, should the Designer/Builder discover any latent or unknown conditions or hazardous conditions (including asbestos- containing materials), which will materially affect the performance of the Work, Designer/Builder shall immediately inform the District of such fact in writing and shall not proceed until written instructions are received from the District. District shall issue such written instructions in a timely manner, and Designer / Builder shall not be liable for any delays arising out of District's failure to do so.
2. **EQUIPMENT AND LABOR:**
 - 2.1. The Designer/Builder shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the Work herein described, the Work to be performed at such times and places as directed by and subject to the approval of the authorized District representative indicated in the Work specifications attached hereto.
3. **SUBCONTRACTORS:** All subcontractors will be afforded the protections of State and federal law, and all Work is subject to applicable prevailing wage laws.
 - 3.1. Subcontractors, if any, engaged by the Designer/Builder for any Service or Work under this Contract shall be subject to the approval of the District, which shall be provided in a timely manner and shall not be unreasonably withheld. If the District unreasonably withholds approval of a proposed subcontractor, any additional costs for related to a substitution subcontractor shall be paid by the District.
 - 3.2. Designer/Builder agrees to bind every subcontractor by the terms of the Contract as far as such terms are applicable to subcontractor's work, including, without limitation, all indemnification, insurance, bond, and warranty requirements.
 - 3.3. Designer/Builder shall be responsible for all Work performed under this Contract. All persons engaged in the Work of the Project are the responsibility and under the control of Designer/Builder. Designer/Builder shall give personal attention to fulfillment of this Contract and shall keep the Work under Designer/Builder's control. In no event shall Designer/Builder refer District to any subcontractor or consultant of Designer/Builder for response or resolution of any matters related to this Contract, the Work or any obligations of Designer/Builder hereunder. If Designer/Builder shall subcontract any part of this Contract, Designer/Builder shall be fully responsible to the District for acts and omissions of subcontractors and of persons either directly or indirectly employed by Designer/Builder.
 - 3.4. Nothing contained in the Contract shall create any contractual relations between any subcontractor and the District. Designer/Builder expressly acknowledges that its subcontractors are not third-party beneficiaries of this Contract.
4. **TERMINATION:** If Designer/Builder fails to perform Designer/Builder's duties as required by this Contract, or if Designer/Builder fails to fulfill in a timely and professional manner Designer/Builder's material obligations under this Contract, or if Designer/Builder shall violate any of the material terms or provisions of this Contract, the District shall have the right to terminate this Contract, in whole or in part, unless such failures and violations are caused by the District, effective immediately upon the District giving fourteen (14) days prior written notice thereof to the Designer/Builder, during which time the Designer/Builder may attempt to correct such failures and violations to the District's reasonable satisfaction. Alternatively, should such correction not be feasible during such 14-day period, the Designer/Builder may present a plan to the District for approval, which District may give, or may in its sole discretion elect to terminate this Agreement. In the event of a termination pursuant to this subdivision, Designer/Builder may invoice District for all Work performed and all materials delivered until the date of termination, but District shall have the right to withhold payment and deduct any amounts equal to the District's costs because of Designer/Builder's actions, errors, or omissions that caused the District to terminate the Designer/Builder. The District may, at its discretion, provide the Designer/Builder additional time to cure its default or breach.

4.1. District shall have the right in its sole discretion to terminate the Contract with respect to one or all

- of the affected Sites for its own convenience with fourteen (14) days prior written notice. In the event of a termination for convenience, Designer/Builder may invoice District and District shall pay all undisputed invoice(s) for Work performed and all undisputed costs incurred, including the reasonable costs of termination, from the District's Notice to Proceed until the date of termination.
- 4.2. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of termination.
- 4.3. The Designer/Builder has the right to terminate this Contract if the District does not fulfill its material obligations under this Contract. Termination shall be effective upon fourteen (14) days prior written notice to the District. Designer/Builder may invoice District and District shall pay all undisputed invoice(s) for Work performed and costs incurred until the date of termination.
- 4.4. If, at any time in the progress of the Work, the District's Board determines that the Project should be terminated, the Designer/Builder, upon fifteen (15) days' written notice of termination, shall immediately cease the Work on the Project. The District shall pay the Designer/Builder only the fee associated with any services provided or materials delivered from the date of the last paid invoice to the notice of termination.
- 4.5. If the District suspends the Project for more than one hundred eighty (180) consecutive days, the Designer/Builder shall be compensated for Services performed prior to the notice of suspension plus the reasonable costs of demobilization. When the Project is resumed, the schedule shall be adjusted and Designer/Builder's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Services. If the District suspends the Project for more than two (2) years, the Designer/Builder may terminate this Contract by giving written notice and shall receive compensation as if District terminated the Contract for its own convenience as described above. If the District suspends this Contract because the District does not have sufficient funds to pay for the Work resulting from the District's budget for the succeeding fiscal year being reduced, and/or the State reducing funding to the District, then Designer/Builder shall not be entitled to an adjustment in compensation and the Designer/Builder may elect to either: (1) after one hundred and twenty (120) consecutive days of suspension, terminate the Contract and invoice the District for any actual costs incurred by Designer/Builder as of the date of suspension, exclusive of any delay costs; but inclusive of any cancellation fees or restocking charges demonstrably incurred by Designer/Builder; or (2) after one hundred and twenty (120) consecutive days of suspension, elect to maintain the contract and demobilize from the School Site(s) until the District gives written notice to Design/Builder to recommence the Work, except that Designer/Builder shall not be entitled to any delay costs, but may invoice the District for the reasonable costs of demobilization and mobilization.
5. **SAFETY AND SECURITY:**
- 5.1. Designer/Builder is responsible for maintaining safety in its performance of this Contract. Designer/Builder shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present, as per the requirements of **Exhibit C**, District's Rules and Regulations, if and as applicable. Designer/Builder shall coordinate with the District regarding the applicability of the rules and regulations set forth in **Exhibit C**. In the event the District's Rules and Regulations conflict with the terms of this Contract, the terms of this Contract shall prevail.
- 5.2. **COVID-19.** Designer/Builder is responsible for complying with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with COVID-19, and/or any similar virus or derivative strain. Designer/Builder shall ensure it has supervisor employees onsite that are trained and knowledgeable of all of these requirements to ensure full compliance on Project Site(s). The compliance requirements hereunder shall apply to any federal, state, and/or local statute, order, rule, regulation, ordinance, and/or directive adopted after the execution of the Contract. If the District suffers any damages in any way related to Designer/Builder's failure to comply with the requirements of this section, Designer/Builder shall indemnify and defend the District to the fullest extent permitted by the "Indemnification / Hold Harmless Clause" section hereunder.
6. **CHANGE IN SCOPE OF WORK:**
- 6.1. Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition, or deletion is approved in advance and in writing by a valid, mutually-agreed change order or amendment executed by the Parties.
- 6.2. Designer/Builder specifically understands, acknowledges, and agrees that the District shall have the

- right to request any reasonable alterations, deviations, reductions, or additions to the Project which are consistent with the agreed Scope of Work, and the cost thereof shall be added to or deducted from the amount of the Contract Price by mutual agreement.
- 6.3. Designer/Builder also agrees to provide the District in the form of a PCO with all information requested to substantiate the cost of the Change Order or amendment and to inform the District whether the Work will be done by the Designer/Builder or a subcontractor. In addition to any other information requested, Designer/Builder shall submit, prior to approval of the Change Order or amendment, its request for a time extension (if any), as well as all information necessary to substantiate any alleged delay in the completion of the Work.
- 6.4. Designer/Builder shall, within thirty (30) calendar days of any delay impacting the critical path in completing the Work, notify the District in writing of the causes of the delay including documentation and facts explaining the delay. The complete time impact analysis (“TIA”), with all backup documentation, is required within thirty (30) days. If Designer/Builder fails to submit its request for a time extension or the necessary supporting information within thirty (30) days of Designer/Builder becoming aware of the need for the time extension, including without limitation, the complete TIA, Designer/Builder shall be deemed to have waived its right to request an extension and any compensation associated therewith. A TIA utilizing the approved Project schedule shall be provided with all time extension requests.
- 6.5. **Proposed Change Order**
- 6.5.1. **Definition of Proposed Change Order.** A Proposed Change Order (“PCO”) is a written request prepared by the Designer/Builder requesting that the District issue a Change Order based upon a proposed change to the Work. Design/Builder shall notify the District in the event of a change event within five (5) business days. A PCO shall be submitted by the Designer/Builder to the District within ten (10) business days of the event giving rise to the PCO.
Designer/Builder’s failure to submit a PCO, after notification and within 10 (10) business days of the event giving rise to the PCO shall be a complete waiver all rights to additional compensation or time otherwise resulting from the events giving rise to the PCO.
- 6.5.2. **Changes in Contract Price.** A PCO shall include breakdowns pursuant to the revisions herein to validate any change in Contract Price.
- 6.5.3. **Changes in Contract Time.** A PCO shall also include any changes in time required to complete the Project. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Construction Schedule as defined in the Contract Documents. If Designer/Builder fails to request a time extension in a PCO, then the Designer/Builder is thereafter precluded from requesting time and/or claiming a delay.
- 6.5.4. **Unknown and/or Unforeseen Conditions.** If the Designer/Builder encounters conditions at the Project Sites that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Designer/Builder shall promptly provide notice to the District before conditions are disturbed and in no event later than three (3) working days after first observance of the conditions. The District will promptly investigate the conditions and, if the District determines that they differ materially and cause an increase or decrease in the Designer/Builder’s cost of, or time required for, performance of any part of the Work, Designer/Builder shall be entitled to an equitable adjustment in the Contract Price or Contract Time, or both. If the District determines that the conditions at the Project Sites are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the District shall promptly notify the Designer/Builder in writing, stating the reasons. If Designer/Builder disputes the District’s determination, the Designer/Builder shall perform the Work without any increase in Contract Price and/or Contract Time and may proceed under a reservation of rights; provided, however, where Designer/Builder reasonably believes that proceeding with the Work would constitute a safety hazard for its employees or subcontractors, in which case Designer/Builder shall be authorized to suspend work until an independent third party selected by agreement of the District and Designer/Builder has assessed the conditions. Any delay due to such investigation shall result in a day-for-day extension of the Project

Schedule.

- 6.5.5. **Format for Proposed Change Order.** The following format shall be used as applicable by the District and the Designer/Builder (e.g. Change Orders, PCO's) to communicate proposed

additions and deductions to the Contract, supported by attached documentation.

	<u>SUBCONTRACTOR PERFORMED WORK</u>	ADD	DEDUCT
(a)	Material (attach itemized quantity and unit cost plus sales tax)		
(b)	Add Labor (attach itemized hours and rates, fully encumbered)		
(c)	Add Equipment (attach suppliers' invoice)		
(d)	<u>SUBTOTAL</u>		
(e)	Add Subcontractor's overhead and profit , not to exceed ten percent (10%) of item (d)		
(f)	<u>SUBTOTAL</u>		
(g)	Add Designer/Builder's fee, overhead, profit & general conditions , not to exceed fifteen percent (15%) of the sum of item (f)		
(h)	SUBTOTAL		
(i)	Add Bond and Insurance , not to exceed one and one half percent (1.5%) of Item (h)		
(j)	<u>TOTAL</u>		
(k)	Time		_____ Days

	<u>DESIGNER/BUILDER PERFORMED WORK</u>	ADD	DEDUCT
(a)	Material (attach itemized quantity and unit cost plus sales tax)		
(b)	Add Labor (attach itemized hours and rates, fully encumbered)		
(c)	Add Equipment (attach suppliers' invoice)		
(d)	<u>SUBTOTAL</u>		
(e)	Add Designer/Builder's fee, overhead, profit & general conditions , not to exceed ten percent (10%) of the sum of item (d)		
(f)	SUBTOTAL		
(i)	Add Bond and Insurance , not to exceed one and one half percent (1.5%) of item (f)		
(j)	TOTAL		
(k)	Time		_____ Days

6.5.6. **Time to Submit PCO.** Designer/Builder shall submit its PCO within ten (10) business days of the date Designer/Builder discovers the circumstances giving rise to the proposed change order, unless additional time to submit a proposed change order is granted in writing by the District. Designer/Builder's timely written notice pursuant to the preceding sentence so that the District can promptly investigate and consider alternative measures to the address the

basis for the PCO. Accordingly, Designer/Builder acknowledges that its failure, for any reason, to give written notice within 5 days (with Supporting Documentation within 10 days to permit the District's review and evaluation) shall be deemed Designer/Builder's waiver, release, discharge and relinquishment of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of the circumstances giving rise to the PCO.

- 6.5.7. **Requirement to Substantiate.** PCOs must include documentation reasonably necessary to substantiate all material, labor, and equipment included in Designer/Builder's request for an increase or decrease to the Contract Price. If the District believes that Designer/Builder failed to adequately substantiate the PCO, the District may require Designer/Builder to provide additional reasonable substantiation for the PCO. Designer/Builder's failure to respond to the District's request for additional substantiation within a reasonable time shall constitute a waiver of Designer/Builder's claim for additional compensation for the work included in the PCO.
- 6.5.8. **Deleted Work.** All deductive change orders must be prepared pursuant to the provisions herein. Where a portion of the Work is deleted from the Contract, the value submitted on the Schedule of Values shall be used to calculate the credit. If the deleted work was to be performed by Designer/Builder, the deduction shall include a minimum of ten (10) percent for the total profit and overhead to be deducted with the value of the work. If the deleted work was to be performed by Designer/Builder's subcontractors, the deduction shall include a minimum of five (5) percent for the total profit and overhead to be deducted with the value of the work.
- 6.5.9. **Delay.** Any request for an extension to the Contract Price or Contract Time relating to any alleged delay shall be included in a PCO and conform to the following requirements:
- 6.5.9.1. **Designer/Builder's Notice of Delay**
- 6.5.9.2. In addition to the requirements indicated in this subsection, Designer/Builder shall submit any request for an adjustment of the Contract Price or the Contract Time through the Change Order provisions.
- 6.5.9.3. Designer/Builder shall, within **FIVE (5)** calendar days of any delay impacting the critical path in completing the Work, notify District in writing of the causes of the delay including documentation and facts explaining the delay.
- 6.5.9.4. Any request by Designer/Builder for an adjustment of the Contract Price or the Contract Time for a delay shall be submitted in a PCO. When requesting time, requests must be submitted with full justification and documentation. Such justification must be based on the official approved Project Schedule and any applicable School Site Schedule of Work as updated and approved by the District at the time of occurrence of the delay or execution of Work related to any changes to the Work.
- 6.5.9.5. Any claim for delay must include the following information as support, without limitation:
- 6.5.9.5.1. **Duration.** The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform the activities within the stated duration.
- 6.5.9.5.2. **Logical Ties / Fragnets.** Specific logical ties to the Project Schedule for the proposed changes and/or delay showing the activity/activities in the Project Schedule that are affected by the change and/or delay (A portion of any delay of seven (7) days or more must be provided). Include a "fragnet" analysis for the portion of the schedule and the activities the Designer/Builder contends are impacted by the delay.
- 6.5.9.5.3. **Updated Project Schedule.** A recovery or updated Project Schedule and any affected School Site Schedule(s) of Work must be submitted.
- 6.5.9.6. District shall review the facts and extent of any noticed delay and may grant Contract Time extension(s) of time for completing Work when, in the District's judgment, the findings of fact justify an extension.

- 6.5.9.7. Extension(s) of time shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected.
- 6.5.9.8. An extension of time may only be granted if Designer/Builder has timely submitted the updated Project Schedule and applicable School Site Schedule(s) of Work as required herein.
- 6.5.9.9. Following submission of a notice of delay, the District may determine whether the delay is to be considered:
 - 6.5.9.9.1. Excusable and Compensable, Excusable and Non-Compensable, or Unexcused;
 - 6.5.9.9.2. How long the delay continues; and
 - 6.5.9.9.3. To what extent the prosecution and Completion of the Work might be delayed thereby.
- 6.5.9.10. Designer/Builder's failure to request adjustment(s) of the Contract Time in strict conformity with applicable provisions herein shall be deemed Designer/Builder's waiver of its right to assert a claim for a delay.
- 6.5.9.11. **Limitations Upon Adjustment of Contract Time on Account of Delays.** Any adjustment of the Contract Time on account of an Excusable Delay or a Compensable Delay shall be limited as set forth herein. No adjustment of the Contract Time shall be made on account of any Excusable Delays or Compensable Delays unless those delay(s) actually and directly impact Work or Work activities on the critical path of the then current and updated approved Project Schedule as of the date on which a delay first occurs. The District shall not be deemed in breach of, or otherwise in default of any obligation hereunder, if the District shall deny a request by the Designer/Builder for an adjustment of the Contract Time for any delay that does not actually and directly impact Work on the then current and updated approved Project Schedule. In submitting a request for an adjustment of Contract Time, and as a condition precedent to the District's review of that request, Designer/Builder shall insert into the then current and updated approved Project Schedule, and any applicable School Site Schedule(s) of Work, a "fragnet" analysis representing the event that Designer/Builder claims to result in delay to the critical path as depicted in the updated approved Project Schedule. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first delay to the cessation of the delay that ends last. If an Unexcused Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, which the Excusable Delay or the Compensable Delay exceeds the period of time of the Unexcused Delay.
- 6.5.10. **Excusable and Compensable Delay(s)**
 - 6.5.10.1. Designer/Builder is **not** entitled to additional compensation for any delay, even a delay caused by an Excusable Delay, unless **all** of the following conditions are met:
 - 6.5.10.1.1. The District is responsible for the delay; or
 - 6.5.10.1.2. The delay is unreasonable under the circumstances involved and impacts the critical path of the Work and extends the most current Contract Completion date;
 - 6.5.10.1.3. The delay was not within the contemplation of District and Designer/Builder;
 - 6.5.10.1.4. Designer/Builder complies with the Change Order procedures, and if necessary, the Claims procedures of the Contract;
 - 6.5.10.1.5. The delay could not have been avoided or mitigated by the Designer/Builder's care, prudence, foresight, and diligence;
 - 6.5.10.1.6. The delay extends the most current Completion date (either for the Project or School Site); and
 - 6.5.10.1.7. The delay is not concurrent with a Designer/Builder -caused delay

or other type of Excusable Delay.

- 6.5.10.2. In accordance with California Public Contract Code section 7102, if the Designer/Builder's progress is delayed by the events described in the preceding subsection, Designer/Builder shall not be precluded from the recovery of damages directly and proximately resulting therefrom. In that event, Designer/Builder's damages, if any, shall be limited to direct, actual and unavoidable additional costs of labor, materials or construction equipment as well as any cancellation charges for subcontracts and demobilization/remobilization charges directly resulting from that delay, and shall exclude special, indirect or consequential damages. In no event shall Designer/Builder seek costs or damages for delays, interruptions, hindrances or disruptions to the Work for on-Site or off-Site costs or damages based upon formulas, e.g. Eichleay or other formula. Except as expressly provided for herein, Designer/Builder shall not have any other claim, demand or right to adjustment of the Contract Price arising out of delay, interruption, hindrance or disruption to the progress of the Work. Designer/Builder shall only be entitled to the actual costs to Designer/Builder for any Compensable Delay, and Designer/Builder shall not be entitled to calculate those costs by any other formula including, without limitation, jury verdict method, total cost method, or modified total cost method.
- 6.5.11. **Excusable and Non-Compensable Delay(s)**
- 6.5.11.1. An "Excusable Delay" shall mean an interruption of the Work beyond the reasonable control of the Designer/Builder and that:
- 6.5.11.1.1. Could have not been avoided by the Designer/Builder exercising care, prudence, foresight, and diligence, and
- 6.5.11.1.2. Actually extended the most current Project Completion date.
- 6.5.11.2. The Designer/Builder may be entitled to an extension of the Project Completion date if there is an Excusable Delay, but the Designer/Builder shall not be entitled to additional compensation for an Excusable Delay unless such Excusable Delay arises under subsection 6.5.11.3 or under Section 20.1 and exceeds 60 days in duration, in which case Designer / Builder shall be entitled to reasonable additional compensation for demobilization/remobilization charges as well as for any increases in costs for materials and labor.
- 6.5.11.3. Excusable Delays are limited to interruptions that satisfy the above requirements and that are acts of God; acts of a public enemy; fires; floods; windstorms; tornadoes; earthquakes; wars; riots; insurrections; epidemics; pandemics; quarantine restrictions; strikes; lockouts; fuel shortages; freight embargoes; uncontrollable material delivery; and Adverse Weather that satisfies the requirements herein.
- 6.5.11.4. Designer/Builder is aware that governmental agencies and utilities, including, without limitation, the DSA, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies may have to approve Designer/Builder -prepared drawings or approve a proposed installation. Designer/Builder has included in the Contract Price and design schedule, time for possible review of its drawings and for reasonable delays and damages that may be caused by such agencies. Designer/Builder is not entitled to make a claim for damages or delays or an Excusable Delay arising from the review of Designer/Builder's drawings or other approvals from the DSA, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies.
- 6.5.11.5. Neither the financial resources of the Designer/Builder or any person or entity directly or indirectly engaged by the Designer/Builder in performance of any portion of the Work shall be deemed conditions beyond the control of the Designer/Builder. If an event of Excusable Delay occurs, the Contract Time shall be subject to adjustment hereunder only if the Designer/Builder establishes: (i) full compliance with all applicable provisions of the Terms and Conditions relative to the method, manner and time for Designer/Builder's

notice and request for adjustment of the Contract Time; (ii) that the event(s) forming the basis for Designer/Builder's request to adjust the Contract Time are outside the reasonable control and without any fault or neglect of the Designer/Builder or any person or entity directly or indirectly engaged by Designer/Builder in performance of any portion of the Work; and (iii) that the event(s) forming the basis for Designer/Builder's request to adjust the Contract Time directly and adversely impacted the critical path of the Work as indicated in the approved Project Schedule or the most recent updated approved Project Schedule relative to the date(s) of the claimed event(s) of Excusable Delay.

6.5.12. **COVID-19**

6.5.12.1. Designer/Builder agrees that the Contract Price and the Contract Time are based on the Designer/Builder's full compliance with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with COVID-19, and/or any similar virus or derivative strain at the time of Contract award. Therefore, any cost or delay associated with COVID-19, or any derivative or similar strain thereof, or any federal, state, or local order relating thereto, shall not be considered compensable unless:

6.5.12.1.1. It occurred after the date of the award of the Contract to Designer/Builder;

6.5.12.1.2. It materially increases the Contract Price or the Contract Time; and

6.5.12.1.3. Designer/Builder notifies the District within 10 business days of notice of any a new derivative, strain, or new public health order(s), including the anticipated increase to the Contract Price or Contract Time due to the new derivative, strain, or new public health order(s), and Designer/Builder substantiates those costs with detailed supporting documentation as required for a PCO.

6.5.13. **Unexcused Delay(s) – Liquidated Damages**

6.5.13.1. Unexcused Delays refer to any delay to the progress of the Work caused by events or factors other than those specifically identified in the "Excusable and Compensable Delay(s)" or the "Excusable and Non-Compensable Delay(s)" sections above. Neither the Contract Price nor the Contract Time shall be adjusted on account of Unexcused Delays.

6.5.13.2. Designer/Builder and District hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood that the District will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed the Designer/Builder shall forfeit and pay to District as fixed and liquidated damages, and not as a penalty, the amount set forth in the Contract for each calendar day of delay in Completion. Designer/Builder and its Surety shall be liable for the amount thereof pursuant to Government Code section 53069.85.

6.5.13.3. Designer/Builder shall not forfeit or pay liquidated damages for an Excusable Delay or an Excusable and Compensable Delay.

6.5.14. **Adverse Weather.** Designer/Builder may obtain an extension of time in the event of Adverse Weather.

6.5.14.1. "Adverse Weather" shall be only weather that satisfies all of the following conditions: (1) unusually severe precipitation, sleet, snow, hail, heat, or cold conditions in excess of the norm for the location and time of year it occurred, (2) unanticipated, and (3) at the Project at a location that has a direct or indirect impact on the project or its supply chain.

6.5.14.2. The Designer/Builder will only be allowed a non-compensable time extension for Adverse Weather conditions if requested by Designer/Builder and only if all the following conditions are met:

- 6.5.14.2.1. The weather conditions constitute Adverse Weather, as defined herein;
- 6.5.14.2.2. Designer/Builder can verify that the Adverse Weather caused delays in excess of five hours of the indicated labor required to complete the scheduled tasks of Work on the day affected by the Adverse Weather;
- 6.5.14.2.3. The Designer/Builder's crew is dismissed as a result of the Adverse Weather; and
- 6.5.14.2.4. The number of days of delay for the month exceed those indicated in this table:

January	11	July	0
February	10	August	0
March	10	September	1
April	6	October	4
May	3	November	7
June	1	December	10

A day-for-day extension will only be allowed for those days in excess of those indicated in this table.

- 6.5.14.3. The Contract Time has been determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located.
7. **TRENCH SHORING (if applicable):** If this Contract is in excess of \$25,000 and is for the excavation of any trench deeper than five (5) feet, Designer/Builder must submit and obtain District acceptance, in advance of excavation, of a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.
 8. **EXCAVATIONS OVER FOUR FEET (if applicable):**
 - 8.1. If this Contract includes excavations over four (4) feet, Designer/Builder shall in compliance with Public Contract Code section 7104, promptly, and before the following conditions are disturbed, notify the District, in writing, of any: (1) Material that the Designer/Builder suspects may be hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (2) Subsurface or latent physical conditions at the Sites that differ from those indicated in the plans or specifications; or (3) Unknown physical conditions at the Sites of any unusual nature, or materially different from conditions ordinarily encountered and generally recognized as inherent in the character of the Work. The District shall promptly investigate the conditions, and if it finds that the conditions do materially differ, or involve hazardous waste, and cause a decrease or increase in the Designer/Builder's cost of, or the time required for, performance of any part of the Work, District shall issue a change order or amendment as provided herein.
 - 8.2. In the event that a dispute arises between the District and the Designer/Builder regarding whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Designer/Builder's cost of, or time required for, performance of any part of the Work, if possible, the Designer/Builder shall proceed with other Work to be performed under the Contract which is not subject to the dispute. The Designer/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 Parties.
 - 8.3. Notwithstanding the above, the Work does not include directly or indirectly performing or arranging for the detection, monitoring, handling, storage, removal, transportation, disposal or treatment of Hazardous Materials, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the regulations promulgated thereunder, and other applicable federal, state or local law ("**Hazardous Materials**"). The Work has been contemplated and priced based on the absence of Hazardous Materials at the Sites. Designer/Builder will notify the District immediately if it discovers or suspects the presence of any Hazardous Materials, and such discovery shall entitle Designer/Builder to suspend the Work until the District can arrange proper remediation and the Parties can negotiate mutually-agreeable terms to complete the rest of the Work, if feasible.
 9. **LEAD-BASED PAINT (if applicable):** Pursuant to the Lead-Safe Schools Protection Act (Education Code Section 32240 et seq.)

and other applicable law, no lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall be utilized on this Project, and only trained and state-certified contractors, inspectors and workers shall undertake any action to abate existing risk factors for lead. Designer/Builder must execute the Lead-Based Paint Certification, if applicable.

10. WORKERS:

- 10.1. Designer/Builder shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of the Designer/Builder or a subcontractor whom the District, acting reasonably, may deem incompetent or unfit shall be dismissed from the Sites and shall not again be employed at the Sites without written consent from the District.
- 10.2. Designer/Builder's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by the Designer/Builder or any subcontractor. The Designer/Builder shall be knowledgeable of and comply with all Labor Code sections including 1727, 1773.5, 1775, 1777, 1777.5, 1810, 1813, 1860, including all amendments; each of these sections is incorporated by reference into this Contract. The responsibility for compliance with these provisions for all apprenticeable occupations rests with the Designer/Builder. Knowing violations of Section 1777.5 will result in forfeiture not to exceed \$100 for each calendar day of non-compliance pursuant to Section 1777.7.
- 10.3. **COVID-19.** Designer/Builder shall ensure that all its employees and employees of its subcontractors shall comply with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with COVID-19, and/or any similar virus or derivative strain.
11. **CORRECTION OF ERRORS:** During the performance of the Contract, Designer/Builder shall perform, at its own cost and expense and without reimbursement from the District, any work necessary to correct errors or omissions which are caused by the Designer/Builder's failure to comply with the Contract.
12. **SUBSTITUTIONS:** No substitutions of material from those specified in the approved final design shall be made without the prior written approval of the District, which shall not be unreasonably withheld.
13. **DESIGNER/BUILDER SUPERVISION:** Designer/Builder shall provide competent supervision of personnel employed on the Sites, use of equipment, and quality of workmanship. Designer/Builder shall provide a [full- or part-time] Project manager and a [full- or part-time], on-Site, non-working Project superintendent subject to acceptance of the District.
14. **CLEAN UP:** Debris from the Work shall be removed from the Sites by the Designer/Builder. The Sites shall be in order at all times when Work is not being performed and shall at all times be maintained in a reasonably clean condition.
15. **ACCESS TO WORK:** District shall provide Designer/Builder with the required Site access. District representatives shall at all times have access to the Work. Designer/Builder shall provide safe and proper facilities for District's access.
16. **PROTECTION OF WORK AND PROPERTY:** Designer/Builder shall erect and properly maintain all necessary safeguards, signs, barriers, lights, and security persons for protection of workers, the public and the Work and shall post clear and conspicuous notice warning of any hazards created by the Work. In an emergency affecting life, safety, Work, or adjoining property, Designer/Builder, without special instruction or authorization from District, is permitted to take any action Designer/Builder thinks necessary to prevent such threatened loss or injury.
17. **OTHER CONTRACTS/CONTRACTORS:** Designer/Builder acknowledges that it shall not have exclusive occupancy of the Sites or of the Project. District reserves the right to let other contracts, and/or to perform other work with its own forces at the Sites. Designer/Builder shall afford District's contractors reasonable opportunity for introduction and storage of materials and execution of contractor's work at the Sites. If applicable, Designer/Builder shall properly coordinate and connect the Work with the work of District's contractors. In addition to Designer/Builder's obligation to protect its own Work, Designer/Builder shall use its best efforts to protect the work of any other contractor that Designer/Builder encounters while working on the Project. Designer/Builder shall not cause any unnecessary hindrance or delay to the use and/or school operation(s) of the Sites and/or to District or any other contractor working on the Project. If simultaneous execution of any contract or school operation is likely to cause interference with performance of Designer/Builder's Contract, Designer/Builder shall coordinate with those contractor(s), person(s), and/or entity(s) and shall notify the District of the resolution.

18. **ASSIGNMENT OF CONTRACT:** The Designer/Builder shall not assign or transfer in any way any or all of its rights, burdens, duties, or obligations under this Contract without the prior written consent of the District. This provision shall not limit the Designer/Builder's right to subcontract portions of its Work to other entities and assign this Contract and all related contracts without the consent of the District (i) to direct affiliate of Designer/Builder; (ii) to an entity that is controlled by, controls, or is under common control with Designer/Builder; or (iii) pursuant to a merger, consolidation, transfer of substantially all its assets, or by operation of law. This Contract will be binding on, enforceable by, and inure to the benefit of, the Parties and their respective successors and permitted assigns. Any assignment made in contravention of this clause shall be void and unenforceable.
19. **COMPLETION:**
- 19.1. **Design Phase:** Designer/Builder shall be complete with this phase upon District's acceptance and/or approval of Designer/Builder's performance of all the Services in this phase.
- 19.2. **100% Construction Documents:** Designer/Builder shall be complete with this phase upon District's acceptance of final Construction Documents and Designer/Builder's submittal of those documents to DSA.
- 19.3. **Construction Phase 1:** Designer/Builder shall be complete with this phase upon the District's acceptance and/or approval of all equipment being on Site.
- 19.4. **Construction Phase 2:** Designer/Builder shall be complete with this phase upon the District's acceptance and/or approval of all equipment being installed.
- 19.5. **Construction Phase 3:**
- 19.5.1. **Walk-Through as Prerequisite to Determination of Completion**
- 19.5.1.1. Designer/Builder shall notify the District when it thinks that the Work is complete except for minor corrective items. Designer/Builder shall provide to District a preliminary list of all minor corrective items that must be corrected. District and Designer/Builder shall then schedule a final walk-through of the Project to be attended by the Designer/Builder, the District, and the Inspector to determine whether and to what extent the Work is complete. Any erroneous claims of completion by the Designer/Builder resulting in a premature walk-through shall be at the Designer/Builder's sole cost and expense, and the District shall be entitled to reduce its payments to the Designer/Builder under the Contract by an amount equal to any costs incurred by the District due to the erroneous claims by the Designer/Builder that the Project is complete.
- 19.5.1.2. Designer/Builder's preliminary list of all minor corrective items will be used by Designer/Builder to prepare a corrective items list ("**Punch-List**") that shall be identified in the final walk-through of the Project. The District shall approve the Punch-List and may add omitted or missing items and provide a copy of an updated Punch-List to Designer/Builder.
- 19.5.1.3. District may, at its sole discretion, accept as complete partial scopes or phases of Work as each is completed prior to completion of the entire Work or Project.
- 19.5.1.4. If the Designer/Builder and the District (through its District Representative) determine that the Work is eligible for Completion, then the date of that determination shall constitute the final day of the construction phase of the Project as relates to liquidated damages ("**Staff Determination**"). Additionally, the District shall promptly include the approval and acceptance of the Project and Notice of Completion on the District's Board's next available agenda.
- 19.5.1.5. The Designer/Builder shall attend a post-construction interview with the District and provide a narrative of lessons learned for the Project.
- 19.5.2. **District's Acceptance of Work.** District may either:
- 19.5.2.1. Accept the Work as complete notwithstanding Punch List items (as distinguished from incomplete Work), if the Work has otherwise been completed to the satisfaction of the District and the Inspector; or
- 19.5.2.2. Refrain from accepting the Work as complete until the entire Work and all portions thereof, including all Punch-List items, have been completed to the satisfaction of the District and the Inspector.
- 19.5.3. The Work shall be accepted as complete by an action of the District's Board ("**Completion**" or "**Complete**").

- 19.5.4. **Notice of Completion.** Once the District accepts the Work, District may thereafter cause a Notice of Completion to be recorded in the County Recorder's Office.
- 19.5.5. **Designer/Builder's Failure to Correct Punch-List Items.** If District elects to accept Work with incomplete Punch List items, and the Designer/Builder fails to complete the Punch List items within thirty-five (35) days of Completion, the District shall withhold from the final payment due Designer/Builder an amount equal to one hundred and ten percent (110%) of the estimated cost, as reasonably determined by the District, of each Punch List item and all portions related thereto, until the item is complete.

20. FORCE MAJEURE CLAUSE:

- 20.1. The term "**Force Majeure**" shall mean those events caused beyond the control of the affected Party and which by the exercise of due diligence the Party could not reasonably avoid and which it has been unable to overcome, including acts of God and public enemy; fire; epidemic, pandemic, disease, strike; loss or shortage of transportation facilities; lock-out; commandeering of materials, product, plant, or facilities by the government; relocation or construction of transmission facilities or the shutdown of such facilities for the purpose of necessary repairs; work by local utility directly impacting the Project; flood; earthquake; tsunami, tornado; severe storm; insurrections; epidemics; pandemics; quarantine restrictions; strikes; civil disobedience; sabotage; restraint by court order or public authority (whether valid or invalid); which is beyond the control of the affected Party and which by the exercise of due diligence the Party could not reasonably have been expected to avoid and which it has been unable to overcome.
- 20.2. Neither Party shall be considered to be in default in the performance of any material obligation of the Contract during the time and to the extent that the Party is prevented from obtaining delivery or performing by a Force Majeure event. Neither Party shall be relieved of its obligation to perform if its failure is due to causes arising out of the Party's negligence or due to removable or remediable causes which the Party fails to remove or remedy with the exercise of all best efforts within a reasonable time period. Either Party rendered unable to fulfill its obligations under the Contract by reason of an event of Force Majeure shall give prompt written notice of the fact to the other Party. Notwithstanding a Force Majeure event, the Party claiming a Force Majeure event shall provide the other Party satisfactory evidence that the event caused the delay or lack of performance and was not due to the fault or neglect of the Party claiming a Force Majeure event.
- 20.3. Designer/Builder is aware that governmental agencies and utilities, including, without limitation, the DSA, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies ("**Review Agencies**") may have to approve Designer/Builder-prepared drawings, plans or approve a proposed installation. Designer/Builder shall include in the Project Schedule time for possible review of its drawings, plans, and proposed installation and for reasonable delays or damages that may be caused by the Review Agencies. Designer/Builder shall be entitled to additional time in the Project Schedule for review of Designer/Builder's drawings, plans or proposed installation or other approvals from the Review Agencies, if all of the following conditions have been satisfied:
- 20.3.1. The time for this review is in excess of the time expressly allocated for this review in the Project Schedule; and
- 20.3.2. Designer/Builder has diligently pursued approval from the Review Agencies; and
- 20.3.3. The delay in Review Agencies' approval is not related to an uncured defect, error, or omission in Designer/Builder's drawings, plans, or proposed installation.

21. INDEMNIFICATION / HOLD HARMLESS CLAUSE:

- 21.1. To the furthest extent permitted by California law, Designer/Builder shall defend, indemnify, and hold harmless the District, its trustees, members, representatives, officers, consultants, employees, and volunteers (the "**Indemnified Parties**") from any and all third party demands, losses, liabilities, claims, suits, and actions (the "**Claims**") of any kind, nature, and description, including, but not limited to, reasonable attorneys' fees and costs, directly or indirectly arising from personal or bodily injuries, death, property damage, or otherwise arising out of, connected with, or resulting from the performance of this Contract to the extent the Claims are caused by the negligence, recklessness, or willful misconduct of Designer/Builder. The District shall have the right to accept or reject any legal representation that Designer/Builder proposes to defend the District. However, such acceptance shall not be unreasonably withheld. This indemnification, defense, and hold harmless obligation includes any failure or alleged failure by Designer/Builder to: (1) comply with any provision of federal, state, and/or local law, and (2) timely and properly fulfill all of its obligations under the Contract, including, without limitation, any stop payment notice actions or liens, including liens by the California Department of Labor Standards Enforcement.

- 21.2. Further, Designer/Builder shall be directly liable to the Indemnified Parties for and, to the furthest extent permitted by California law, shall defend, indemnify, and hold harmless the Indemnified Parties from any Claims of any kind, nature, and description arising out of, connected with, or resulting from the design component of the Project.
- 21.3. The Designer/Builder's duty to defend under either of the above provision shall begin upon the District's notification to the Designer/Builder of a Claim. At that time, the Designer/Builder shall pay for that defense at its sole cost. Designer/Builder's duty to indemnify and defend under this Contract shall apply during the term of this Contract and shall survive any expiration or termination of this Contract until any such Claim(s) are barred by the applicable statute of limitations and is in addition to any other rights or remedies that the District may have under the law or under this Contract.
- 21.4. In no event shall Designer/Builder be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with the Contract for the Work.

22. PAYMENT:

22.1. Design Phase Services:

- 22.1.1. Invoices shall be on a form approved by the District and are to be submitted to the District via the District's authorized representative.
- 22.1.2. Designer/Builder shall submit to District on a monthly basis documentation showing proof that payments were made to its consultant(s).
- 22.1.3. Designer/Builder shall submit to the District for approval a copy of the Designer/Builder's monthly pay request format.
- 22.1.4. Upon receipt and approval of Designer/Builder's invoices, the District agrees to make payments within thirty (30) days of receipt of the invoice.

22.2. Construction Phase:

- 22.2.1. On a monthly basis, Designer/Builder shall submit an application for payment based upon the estimated value for materials delivered or Services and Work performed under the Contract as of the date of submission ("**Application for Payment**"). Designer/Builder shall certify each Application for Payment and the District and Inspector shall verify that the materials, Services, or Work were delivered or performed.
- 22.2.2. **Schedule of Values.** The Designer/Builder shall provide a preliminary schedule of values for all of the Work, which must include quantities and prices of items aggregating the Contract Price and must subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. This preliminary schedule of values shall include, at a minimum, the following information and the following structure:
- 22.2.2.1. Divided into at most the following categories:
- 22.2.2.1.1. Overhead and profit;
 - 22.2.2.1.2. Design, engineering and submittals;
 - 22.2.2.1.3. Construction labor and supervision;
 - 22.2.2.1.4. Bonds and insurance;
 - 22.2.2.1.5. System hardware and materials installation;
 - 22.2.2.1.6. Punchlist, commissioning and acceptance.
 - 22.2.2.1.7. Closeout documentation;
- 22.2.2.2. **Closeout Documentation.** Closeout Documentation shall have a value in the preliminary schedule of not less than 5%. Closeout Documentation shall include the following, without limitation:
- 22.2.2.2.1. A full set of final As-Built Drawings, as further defined herein.
 - 22.2.2.2.2. All Operations & Maintenance Manuals and information, as further defined herein.
 - 22.2.2.2.3. All Warranties, as further defined herein.
 - 22.2.2.2.4. Verified report(s) for all scope(s) of work (DSA –6-C Verified Report, Rev 10/14, or more recent revision if available).
- 22.2.2.3. Notwithstanding any provision of the Contract Documents to the contrary, payment of the Designer/Builder's overhead, supervision, general conditions costs, and profit, as reflected in the Cost Breakdown, shall be paid by the District in equal installments, based on percentage complete, with the disbursement of progress payments and the final payment.
- 22.2.2.4. Designer/Builder shall certify that the preliminary schedule of values as

submitted to the District is accurate and reflects the costs as developed in preparing Designer/Builder's bid. The preliminary schedule of values shall be subject to the District's review and approval of the form and content thereof.

In the event that the District objects to any portion of the preliminary schedule of values, the District shall notify the Designer/Builder, in writing, of the District's objection(s) to the preliminary schedule of values. Within five (5) calendar days of the date of the District's written objection(s), Designer/Builder shall submit a revised preliminary schedule of values to the District for review and approval. The foregoing procedure for the preparation, review and approval of the preliminary schedule of values shall continue until the District has approved the entirety of the preliminary schedule of values.

- 22.2.2.5. Once the preliminary schedule of values is approved by the District, this shall become the Schedule of Values. The Schedule of Values shall not be thereafter modified or amended by the Designer/Builder without the prior consent and approval of the District, which may be granted or withheld in the sole discretion of the District.
- 22.2.3. Within thirty (30) days after District's receipt of the Application for Payment, Designer/Builder shall be paid a sum equal to **ninety-five percent (95%)** of the value of the Work performed (assuming the value of the Work performed is verified by Inspector and certified by Designer/Builder) up to the last day of the previous month, less the aggregate of previous payments and amounts to be withheld. District shall retain **five percent (5%)** from all amounts owing Designer/Builder as retention. Retention shall be paid pursuant to Public Contract Code sections 7107 and 7200.
- 22.2.4. Upon Designer/Builder's request, the District will make payment of funds withheld from progress payments to ensure performance under the Contract pursuant to the requirements of Public Contract Code section 22300 subject to the following conditions:
 - 22.2.4.1. Designer/Builder shall bear the expense of the District and the escrow agent, either the District or the bank, in connection with the escrow deposit made.
 - 22.2.4.2. Securities or certificates of deposit to be placed in escrow shall be of a value at least equivalent to the amounts of retention to be paid to Designer/Builder pursuant to this Section.
 - 22.2.4.3. Designer/Builder shall enter into an escrow agreement satisfactory to the District, which agreement shall include provisions governing inter alia:
 - 22.2.4.3.1. The amount of securities to be deposited,
 - 22.2.4.3.2. The providing of powers of attorney or other documents necessary for the transfer of the securities to be deposited,
 - 22.2.4.3.3. Conversion to cash to provide funds to meet defaults by Designer/Builder, including, but not limited to, termination of Designer/Builder's control over the work, stop payment notices filed pursuant to law, assessment of liquidated damages or other amounts to be kept or retained under the provisions of the contract,
 - 22.2.4.3.4. Decrease in value of securities on deposit
 - 22.2.4.4. The termination of the escrow upon completion of the contract.
 - 22.2.4.5. Designer/Builder shall obtain the written consent of the surety to such agreement.
 - 22.2.4.6. As an alternative to Designer/Builder depositing into escrow securities of a value equivalent to the amounts of retention to be paid to the Designer/Builder, upon Designer/Builder's request, District will make payment of retentions earned directly to the escrow agent at the expense of Designer/Builder pursuant to and in accordance with Public Contract Code section 22300.
- 22.2.5. After advance written notice and thirty (30) days opportunity to cure, the District may deduct from any payment an amount reasonably necessary to protect the District from loss due to: (1) liquidated damages which have accrued as of the date of the Application for Payment; (2) any reasonable sums expended by the District in performing any of Designer/Builder's obligations under the Contract which Designer/Builder has failed to

perform or has performed inadequately; (3) defective Work not remedied; (4) stop payment notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Contract Price or by the scheduled Project completion date; (6) unsatisfactory prosecution of the Work by Designer/Builder; (7) unauthorized material deviations from the Contract; (8) failure of the Designer/Builder to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract during the performance of the Work; (9) knowingly false estimates submitted by the Designer/Builder of the value of the Work performed; (10) any sums representing expenses, losses, or damages reasonably incurred by the District for which Designer/Builder is liable under the Contract; and (11) any other sums which the District is entitled to recover from Designer/Builder under the terms of the Contract or pursuant to state law, including section 1727 of the California Labor Code. The failure by District to deduct any of these sums from Designer/Builder's progress payment shall not constitute a waiver of the District's right to the sums.

Payment for materials stored on or off the Sites may be allowed at the sole discretion of the District. If allowed, proof of off-site material purchases (invoices and checks and/or bills of lading) and appropriate insurance coverage shall be required. Designer/Builder shall furnish to District written consent from Designer/ Builder's Surety approving the advanced payment for materials stored off Site. The maximum prepayment allowed by District shall be one hundred percent (100%) of the actual value of the material being considered. Designer/Builder shall protect stored materials from damage and shall be liable for any damage thereto. Damaged materials, even though paid for, shall not be incorporated into the Work. Designer/Builder shall be responsible to replace any damaged stored materials at its sole cost and expense.

23. **LOGISTIC PLAN:** Designer/Builder shall provide a staging and logistics plan identifying laydown areas, loading and unloading areas, storage facilities, crane locations, fence locations, temporary utility connections, trailer locations, and emergency evacuation meeting area. This Logistics Plan must be approved by the District prior to the Designer/Builder mobilizing on the Site(s). Designer/Builder's Logistics Plan must be updated and provided to the District at each Phase and as required by the applicable Notice to Proceed. Should the District not be able to provide any of the above enumerated areas in accordance with the Logistics Plan, Design/Builder shall be entitled to claim compensation, via a change order, for any costs in incurs as a result of the District's inability to do so.

24. **PERMITS, APPROVALS, AND LICENSES:**

24.1. Designer/Builder and its employees, agents, and subcontractors shall secure and maintain in force, at Designer/Builder's sole cost and expense, all licenses and permits as are required by law, in connection with the furnishing of materials, supplies, Services or Work.

24.2. Designer/Builder is responsible for obtaining on behalf of the District and at Designer/Builder's expense, local and county permits and approvals (including DSA approval), required for the building, installation, and start-up of the Work which are required to complete the Project.

24.3. District will cooperate and assist Designer/Builder in obtaining all permits required by the Contract or to perform the Work.

24.4. District shall be responsible for obtaining any other permits or approvals that may be required, including annual operating permits as applicable and the District shall do so in a timely manner as to not delay Designer/Builder's performance under this Contract. Designer/Builder shall not be liable for any damages, liquidated or otherwise, that arise due to the District's failure to act timely.

25. **INDEPENDENT CONTRACTOR STATUS:** While performing the Services, Designer/Builder is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the District. Designer/Builder and District agree that the Designer/Builder is an independent contractor or business entity that is: (i) free from the control and direction of the District in connection with the performance of the Services, (ii) performing Services that are outside the usual course of the District's business, and (iii) customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the Services performed. Designer/Builder shall be solely responsible for its Worker's Compensation insurance, taxes, and other similar charges or obligations. Designer/Builder shall be liable for its actions, including Designer/Builder's negligence or gross negligence, and shall be liable for the acts, omissions, or errors of Designer/Builder's agents or employees.

26. **ANTI-DISCRIMINATION:** It is the policy of the District that in connection with any work performed under contract with District, there be no discrimination against any employee engaged in the work because of race, national origin, ancestry, religion, age, physical or mental disability, sex, or sexual orientation of persons. Designer/Builder shall comply, and require compliance by all Designer/Builder subcontractors, with applicable Federal and California laws including, but not limited to, the California Fair Employment and

Housing Act, Government Code section 12900 et seq., and Labor Code section 1735.

27. **DISABLED VETERAN BUSINESS ENTERPRISES (DVBE):** Pursuant to section 17076.11 of the Education Code, the District has a participation goal for disabled veteran business enterprises (DVBEs) of at least three (3) percent, per year, of funds expended each year by the District on projects that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act (the “Act”). This Project may use funds allocated under the Act. Therefore, to the extent feasible and pertaining to future hirings, the Designer/Builder, before it executes the Contract, shall provide to the District certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount paid to DVBEs in conjunction with the Contract, and documentation demonstrating the Designer/Builder’s good faith efforts to meet these DVBE goals.
28. **PAYMENT BOND AND PERFORMANCE BOND:** Designer/Builder shall not commence Work until it provides the District, in the form provided by District herein, and agreed by Designer/Builder and its surety company, a Payment (Labor and Material) Bond and a Performance Bond, each in an amount equivalent to one hundred percent (100%) of the Contract Price. The Payment and Performance Bonds must be issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the District.
29. **DESIGNER/BUILDER’S INSURANCE:** During the entire term of the Contract, Designer/Builder shall have and maintain in force, the minimum policy limits indicated in this Article. Designer/Builder shall not commence Work, nor allow any subcontractor, employee, or agent to commence Work until the insurance required of the Designer/Builder, subcontractor, or agent has been obtained. Designer/Builder’s policy(ies) shall be primary and any insurance carried by District shall be secondary and supplemental. All policies shall contain waivers of subrogation against the District. Excess/Umbrella policies can be used to satisfy the insurance required of Designer/Builder.
- 29.1. All of Designer/Builder’s insurance shall be placed with insurers **ADMITTED** in California with a current A.M. Best’s rating of no less than **A—** or **A:VII**. Designer/Builder shall provide documentation to the District demonstrating this rating.
- 29.2. The limits of insurance shall not be less than the following amounts:

Commercial General Liability	Includes: Personal & Advertising Injury, Product Liability and Completed Operations	\$1,000,000 each occurrence; \$10,000,000 general aggregate
Automobile Liability – Any Auto	Combined Single Limit	\$1,000,000 per occurrence
Excess Liability (Umbrella)		\$10,000,000 per occurrence; \$10,000,000 aggregate
Workers Compensation		Statutory limits pursuant to State law
Employers’ Liability		\$1,000,000 each accident, each disease; \$2,000,000 policy limit
Builder’s Risk (Course of Construction)		Issued for the value and scope of Work indicated herein.
Property of Others	Combined Single Limit General Aggregate	Issued for the value and scope of Work stored off-site.
Professional and Cyber Security Liability		\$1,000,000 each occurrence; \$2,000,000 general aggregate

- 29.3. **Commercial General Liability Insurance.** Coverage to be written on an occurrence form. Coverage to be at least as broad as ISO form CG 0001 (04/13), without endorsements that limit the policy terms with respect to: (1) the definition of an Insured Contract, (2) provisions for severability of interest, (3) explosion, collapse, underground hazard. District shall be named as an additional insured on Designer/Builder’s Commercial General Liability policy for any liability arising out of the Work.
- 29.4. **Automobile Liability.** Coverage to be written on an occurrence form. District shall be named as an additional insured on Designer/Builder’s Automobile Liability policy for any liability arising out of the Work.
- 29.5. **Excess Liability Insurance.** Coverage to be written on an occurrence form. Coverage terms and limits to apply excess of the per occurrence and/or aggregate limits provided for Commercial General

Liability, Auto Liability and Professional Liability. Coverage terms and limits to also apply in excess of those required for Employers' Liability Insurance.

District, by way of policy language, shall be an additional insured on the Designer/Builder's Excess Liability Insurance which follows the underlying insurance policy.

29.6. **Workers' Compensation:** Statutory limits.

29.7. **Employer's Liability:** As indicated above.

29.8. **Professional Liability Insurance.**

29.8.1. Coverage to be written on a claims-made form and shall cover all non-construction Services including, without limitation, all programming, design, and engineering services performed by Designer/Builder.

29.8.2. **Subcontractors / Subconsultants.** Subcontractors who perform non-construction services for the Project shall carry professional liability insurance at the same limits required of the Designer/Builder to cover that subcontractor's work.

29.9. **Waiver of Subrogation.**

29.9.1. Except for Workers' Compensation, Designer/Builder waives (to the extent permitted by law) any right to recover against the District 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 Builder's Risk insurance and only to the extent of such coverage (which shall exclude deductible amounts) by insurance actually carried by the District.

29.9.2. 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. With the exception of Workers' Compensation insurance, the District and the Designer/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.

29.10. **Additional Insured Endorsement Requirements.** On those policies described in this section where an additional insured requirement is included, Designer/Builder shall name the District, its trustees, members, officers, and employees as additional insureds. Subcontractors shall name the Designer/Builder, the District, its trustees, members, officers, and employees 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 District 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 Designer/Builder pursuant to this section must be designated in the policy as primary to any insurance obtained by the District. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.

30. **SUBCONTRACTOR INSURANCE REQUIREMENTS.** Designer/Builder shall require its Subcontractor(s) to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance, and Umbrella Liability Insurance with limits equal to the amounts required of the Designer/Builder, unless the District and Designer/Builder agree otherwise. Designer/Builder shall require its Subcontractor(s) to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance and Umbrella Liability Insurance.

31. **CERTIFICATES OF INSURANCE AND ENDORSEMENTS.** The Designer/Builder shall provide to the District certificate(s) of insurance and endorsements satisfactory to the District. The certificate of insurance shall provide that should any of the above-described policies be cancelled while the Work is in progress (except if cancellation is due to non-payment of premiums), before the expiration date thereof, notice will be delivered in accordance with the policy provisions, pursuant to ISO ACORD Form 25 (01/2014). Designer/Builder shall provide District at least thirty (30) days' prior written notice of the cancellation, or non-renewal of the insurance. Furthermore, Designer/Builder shall indemnify District for any loss suffered by District to the extent that the loss is attributable to Designer/Builder's failure to provide District with thirty (30) days' prior written notice. Excess/Umbrella policies can be used to satisfy the insurance required of Designer/Builder.

32. **WARRANTY/QUALITY:** Except for any longer warranty called for elsewhere in the Contract, Designer/Builder, manufacturer, or assigned agents shall guarantee the Work or Services performed against defective workmanship, defects or failures of materials for a minimum period of **ONE (1)** year from date that all components of the Project commissioned and verified by Designer/Builder as being fully functional and operative, or when the District accepts Beneficial Use, whichever occurs first. If the District accepts Beneficial Use, Designer/Builder shall prepare a list of exceptions for specific items or components for which the period

of warranty shall not commence (“**Exception List**”). District shall approve the Exception List. The period of warranty for any item on the Exception List shall commence upon District’s acceptance of that item’s Beneficial Use or completion of that item, whichever comes first. All workmanship and merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards. This warranty shall not apply to (a) equipment that has been repaired or altered by other than Designer/Builder so as to affect the same adversely, or (b) equipment that has been subject to negligence, accident, or damage by circumstances beyond Designer/Builder’s control, or improper operation, maintenance or storage, or other than normal use and service.

32.1. At the District’s sole option, Designer/Builder shall repair or replace any and all of that Work, together with any other Work that may be displaced in so doing, that may prove defective in workmanship and/or materials within the warranty period described above, without expense whatsoever to District. In the event of failure of Designer/Builder and/or Surety to commence and pursue with diligence said replacements or repairs within **TEN (10)** business days after being notified in writing, Designer/Builder and Surety hereby acknowledge and agree that District is authorized to proceed to have defects repaired and made good at expense of Designer/Builder and/or Surety who hereby agree to pay reasonable costs and charges therefore immediately on demand.

32.2. If, in the reasonable opinion of District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to District or to prevent interruption of operations of District, District will attempt to give the notice required above. If Designer/Builder or Surety cannot be contacted or neither complies with District’s request for correction within a reasonable time as agreed between the Parties, District may, notwithstanding the above provision, proceed to make all corrections and/or provide attentions District believes are necessary. The costs of correction or attention shall be charged against Designer/Builder and Surety of the guarantees provided in this Section or elsewhere in the Contract Documents.

32.3. The above provisions do not in any way limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Designer/Builder shall furnish to District all appropriate guarantee or warranty certificates as indicated in the Specifications or upon request by District.

32.4. Nothing herein shall limit any other rights or remedies available to District.

32.5. THE FOREGOING EXPRESS WARRANTIES ARE THE DISTRICT’S SOLE AND EXCLUSIVE REMEDIES. THE IMPLIED WARRANTIES OF USAGE OF TRADE, FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY ARE HEREBY EXPRESSLY DISCLAIMED.

33. **CONFLICT OF INTEREST:** Designer/Builder understands that its professional responsibility is solely to the District. Designer/Builder warrants that it and its employees and/or subcontractors presently have no interest and will not acquire any direct or indirect interest that would conflict with its performance under the Contract, including, without limitation, any direct and/or indirect interest with: (a) entity(ies) performing construction in the same discipline and in competition with any contractor on a District project; (b) entity(ies) connected or related to a trade union or joint labor management committee; or (c) the District.

34. **COMPLIANCE WITH LAWS:** Designer/Builder shall give all notices and comply with all federal, state, and local laws, ordinance, rules and regulations bearing on conduct of the Work as indicated or specified. If Designer/Builder observes that any of the Work is at variance with any laws, ordinance, rules or regulations, Designer/Builder shall notify the District, in writing, and, at District’s option, any necessary changes to the scope of the Work shall be made and the Contract shall be appropriately amended in writing, or the Contract shall be terminated effective upon Designer/Builder’s receipt of a written notice of termination. If Designer/Builder performs any Work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Designer/Builder shall bear all costs or expenses arising therefrom.

35. **STANDARD OF CARE:** Designer/Builder shall perform the Work and Services to the standard of care of an entity performing similar work for California school districts in or around the same geographic area of the District, as follows:

35.1. For all non-construction Services, the standard of care of professional engineers; and

35.2. For all construction Services, the standard of care of licensed contractors.

35.3. If Designer/Builder has not met this standard of care, Designer/Builder shall be held liable consistent with the “Indemnification/Hold Harmless Clause” herein.

36. **DISTRICT’S RIGHT TO AUDIT:** District retains the right to review and audit, at District’s sole cost and expense, and the reasonable right of access to Designer/Builder’s and any subcontractor’s non-confidential and non-proprietary records to review and audit the Designer/Builder’s compliance with the provisions of the Contract (“**District’s Right**”). The District’s Right includes the right to inspect, photocopy, and to retain copies of any

and all non-confidential and non-proprietary Project-related records with appropriate safeguards. The District shall keep this information confidential, as allowed by applicable law.

- 36.1. The District's Right includes the right to examine any and all non-confidential and non-proprietary Project books, records, documents and any other evidence of Project-related procedures and practices that are reasonably necessary to discover and verify that the Designer/Builder is in compliance with all requirements of the Contract.
- 36.2. If there is a claim for additional compensation or for extra services or work, the District's Right includes the right to examine non-confidential and non-proprietary Project-related books, records, documents, and accounting procedures and practices that are reasonably necessary to discover and verify all Project-related direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.
- 36.3. The Designer/Builder shall maintain complete and accurate Project-related records in accordance with generally accepted accounting practices in the industry, and in no event for less than five (5) years after Completion. The Designer/Builder shall make available to the District for review and audit all Project-related accounting records and documents, and any other financial data. Upon District's request, the Designer/Builder shall submit exact duplicates of originals of all requested records to the District.
- 36.4. The Designer/Builder shall include these audit provisions in any and all of its subcontracts, and shall ensure that these sections are binding upon all subcontractors.
- 36.5. Designer/Builder shall comply with these provisions within fifteen (15) days of the District's written request to review and audit any or all of Designer/Builder's Project-related records and information.

37. CLAIMS RESOLUTION:

37.1. **Exclusive Remedy.**

- 37.1.1. Compliance with the claim resolution process and timelines described in this Claims Resolution section as well as the notice provisions of the Contract are express conditions precedent to Designer/Builder's right to commence litigation or arbitration, file a claim under the California Government Code, or commence any other legal action related to the Project ("**Claims Resolution Process**").
- 37.1.2. Designer/Builder acknowledges that its failure, for any reason, to provide written notice and all required supporting documentation to permit the District's review and evaluation within the time frame required by this Claims Resolution Process, shall be deemed Designer/Builder's waiver, release, discharge and relinquishment of any right to assert, request, or demand any entitlement to an adjustment of the Contract Time or the Contract Price on account of any instruction, request, drawings, specifications, action, condition, omission, default or other situation.
- 37.1.3. To the extent any provision(s) of this Claims Resolution Process conflict with or otherwise impair the timeframes and procedures of Public Contract Code section 9204, the provisions of Section 9204 shall control. If provisions of this Claims Resolution Process are supplementary and/or in addition to the requirements of Section 9204, but do not conflict with or otherwise impair the timeframes and procedures of Section 9204, the provisions of this Claims Resolution Process and the Contract shall control.

37.2. **Performance during Claim Resolution Process.** The Designer/Builder shall diligently proceed with Work on the Project at the same time that Claims are addressed under the Claims Resolution Process. It is the intent of District to resolve Claims with the Designer/Builder as close to the events giving rise to the Claims as possible, and to avoid stale or late Claims and the late documenting of Claims.

Designer/Builder's failure to diligently proceed in accordance with the District's instructions or the Contract terms will be considered a material breach of the Contract and a waiver of Designer/Builder's rights under this Contract.

37.3. **Waiver.** If Designer/Builder fails to timely submit any written notices required under the terms of the Contract or in this Claims Resolution section, Designer/Builder waives and releases its rights regarding further review of its Claim, unless Designer/Builder and District mutually agree in writing to other time limits. Nothing herein shall modify or alter the Designer/Builder's obligation to comply with statutory notice requirements, including but not limited to, Government Code section 910 *et seq.*

37.4. **Intention.** The Claims Resolution Process required herein is intended to provide a concise mechanism for resolving Claims as they arise during the Project, while requiring accurate documentation related to contested issues as to those Claims that are not

contemporaneously resolved.

37.5. **Other Provisions.** If portions of the Contract, other than this Claims Resolution Process, establish a specific process regarding a specific subject, then that process shall govern and control the resolutions of any disagreements thereunder. Otherwise, the provisions in this Claims Resolution Process shall control the resolution of all Claims.

37.6. **Claim Presentation**

37.6.1. **Claim:** A claim is a written demand by Designer/Builder (or by Designer/Builder on behalf of a subcontractors) that the Designer/Builder must submit by **registered mail or certified mail return receipt requested** for:

37.6.1.1. An extension to the Contract Time, including relief from damages or penalties assessed by the District for delay;

37.6.1.2. Payment of money or damages arising from work done by, or on behalf of, the Designer/Builder pursuant to the Contract and payment that is not otherwise expressly provided for in the Contract Documents or the Designer/Builder is not otherwise entitled; or

37.6.1.3. Payment that is disputed by the District.

("Claim")

37.7. **Subcontractors.**

37.7.1. Public Contract Code section 9204(d)(5) states that the Designer/Builder may present to the District 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 Designer/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 District shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, the Designer/Builder shall notify the subcontractor in writing as to whether the Designer/Builder presented the claim to the District and, if the Designer/Builder did not present the Claim, provide the subcontractor with a statement of the reasons for not having done so.

37.7.2. Designer/Builder is responsible for providing this Claims Resolution Process to its subcontractors and for ensuring that all subcontractors or others who may assert Claims by and through subcontractors and/or the Designer/Builder are informed of this Claims Resolution Process. No Claim submitted by any party that fails to follow the provisions of this Claims Resolution Process will be considered. Designer/Builder shall indemnify, keep and hold harmless the District and its consultants, against all suits, claims, damages, losses, and expenses, including but not limited to attorney's fees, caused by, arising out of, resulting from, or incidental to, the failure to provide this Claims Resolution Process to its subcontractors or others who may assert Claims by and through subcontractors and/or the Designer/Builder.

37.8. **Designer/Builder Must Timely Identify, Present and Document Any Claim**

37.8.1. Every Claim shall be stated with specificity in writing and signed by Designer/Builder under penalty of perjury and presented to the District within ten (10) business days from the date Designer/Builder discovers or reasonably should discover, that an act, error or omission of District, its agents or employees, or action, condition or other situation has occurred that may entitle Designer/Builder to make a Claim. This shall include the Designer/Builder's actual or constructive knowledge of any instruction, request, drawings, specifications, action, condition, omission, default or other situation for which the Designer/Builder believes there should an adjustment of the Contract Price or Contract Time. Designer/Builder shall provide this writing even if Designer/Builder has not yet been damaged, delayed, or incurred extra cost when Designer/Builder discovers, or reasonably should discover, the act, error, omission, action, condition or situation giving rise to the incidents giving rise to the Claim. The writing shall:

37.8.1.1. Identify all of the issues, events, conditions, circumstances and/or causes giving rise to the Claim;

37.8.1.2. Identify all pertinent dates and/or durations and all actual and/or anticipated effects on the Contract Price, milestones and/or Contract Time adjustments; and

37.8.1.3. Identify in detail line-item costs if the Claim seeks money.

37.8.1.4. If the Claim involves extra work, a detailed cost breakdown of the amounts the

Designer/Builder is seeking, including actual cost records (including without limitation, payroll records, material and rental invoices and the like) demonstrating that those costs have actually been incurred. To the extent costs have not yet been incurred at the time the Claim is submitted, actual cost records must be submitted on a current basis not less than once a week during any periods costs are incurred. A cost record will be considered current if submitted within seven (7) days of the date the cost reflected in the record is incurred. At the request of District, extra costs may be subject to further verification procedures (such as having an inspector verify the performance of alleged extra work on a daily basis).

- 37.8.1.5. Include an affirmative representation under penalty of perjury by Designer/Builder and any affected subcontractor and suppliers that the error or omission was not discovered prior to submitting a proposal for the Work, and
- 37.8.1.6. Include a detailed statement demonstrating that the error or omission reasonably should not have been discovered, by Designer/Builder, its subcontractors and suppliers, prior to submitting a proposal for the Work.
- 37.8.2. Designer/Builder shall not be entitled to compensation for escalation of materials costs unless Designer/Builder demonstrates to the satisfaction of the District that such cost escalation is the result of unusual, unforeseeable market conditions, not the fault of the Designer/Builder, and were not reasonably foreseeable at the time of the award of the Contract. Designer/Builder shall provide evidence to District of the costs included in the Contract for those materials and that those costs were reasonable at the time and that Designer/Builder timely ordered the materials at issue.
- 37.8.3. The writing shall be accompanied by all documents substantiating Designer/Builder's position regarding the Claim.
- 37.8.4. A Claim that asserts an effect on any schedule milestones and/or Contract Time shall include all pertinent scheduling data demonstrating the impact(s) on the critical path(s), milestone(s) and/or Contract Time.
- 37.9. **Certification.** Each copy of the Claim Documentation shall be certified by a responsible officer of the Designer/Builder in accordance with the requirements of the Contract Documents. This certification shall be under penalty of perjury and must include the following language immediately above or before the Designer/Builder's signature: ***"I declare under penalty of perjury under the laws of the State of California that the information provided and statements made in this Claim are true and correct, substantiated and of merit."*** The Designer/Builder acknowledges that this requirement is not a mere formality but is intended to ensure that the Designer/Builder only submits Claims that it believes are true and correct, substantiated and have merit. Should Designer/Builder fail to submit the foregoing written statement signed under penalty of perjury, Designer/Builder waives and releases its Claim, including all rights and remedies in connection therewith. This certification must include a certification of any portion of the Claim from Subcontractors(s) or others who are asserting Claims by and through Subcontractors and/or the Designer/Builder.
- 37.10. **District's Written Statement/Decision on Claim.** The District shall issue a written statement/decision regarding the Claim to the Designer/Builder within forty-five (45) days of receipt of the written Claim from the Designer/Builder, or three (3) days after the District's first regular Board meeting after that 45-day period if the District's Board does not meet within that first 45-day period. If the District fails to timely provide a written statement/decision regarding the Claim, the Claim shall be deemed accepted in its entirety.
- 37.11. **Designer/Builder Must Demand an Informal Meet and Confer Conference if Designer/Builder Pursues Any Claim**
 - 37.11.1. **FAILURE OF A DESIGNER/BUILDER TO TIMELY DEMAND A MEET AND CONFER CONFERENCE IS A WAIVER OF ITS RIGHT TO PURSUE ALL OR A PORTION OF ITS CLAIM.**
 - 37.11.2. **Where There Is No Agreement:** If there is no agreement between Designer/Builder and the District on a Claim, then within ten (10) business days of the date of the District's written statement/decision in response to a Claim or PCO, if Designer/Builder pursues that Claim, then Designer/Builder must demand, by **registered mail or certified mail return receipt requested**, a meet and confer conference with District staff. A meet and confer conference with District staff shall be a condition precedent to Designer/Builder seeking any further relief, including a mediation as indicated below.

- 37.11.3. **Where There Is Partial Agreement:** If Designer/Builder and the District partially agree on a Claim but do not reach complete agreement, then the Parties shall complete a change order or amendment, if applicable, for the issues and/or amounts agreed to. For those issues not agreed to, if Designer/Builder pursues those issues from that Claim, then Designer/Builder must demand, by **registered mail or certified mail return receipt requested**, a meet and confer conference with District staff regarding those issues. A meet and confer conference with District staff shall be a condition precedent to Designer/Builder seeking any further relief, including a mediation as indicated below, in connection with the District's rejection.
- 37.11.4. **Meet and Confer Conference.** District and Designer/Builder shall schedule the meet and confer conference as soon as reasonably possible after Designer/Builder's written demand for a meet and confer conference, but in no case later than thirty (30) days after Designer/Builder's demand.
- 37.11.5. **District's Written Decision.** Within ten (10) **business** days of the meet and confer conference, the District shall issue a written decision. If the District fails to timely provide a written statement/decision after the meet and confer conference, all Claim issues that were part of the meet and confer conference shall be deemed rejected in their entirety.
- 37.11.5.1. If the District's decision completely resolves the Claim, then the Parties shall complete a change order or amendment, if applicable, for the issues and/or amounts agreed to.
- 37.11.5.2. If the District rejects the Designer/Builder's Claim in whole or in part or does not issue a timely written response, then the parties shall mediate the remaining issues of the Claim.
- 37.11.5.3. Designer/Builder's costs incurred in seeking relief for Claims are not recoverable from District.
- 37.12. **Mediation.**
- 37.12.1. At the District's sole discretion, this mediation may be a multiple-party mediation with the Construction Manager, the Inspector, and/or other District consultants.
- 37.12.2. The District and Designer/Builder shall mutually agree to a mediator within ten (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.
- 37.13. **Designer/Builder's Obligation to File a Government Code Claim.** Nothing in this Contract, including this Claims Resolution Process, waives, modifies or tolls the Designer/Builder's obligation to present a timely claim under Government Code section 910, et seq. Therefore, in addition to complying with this Claims Resolution Process, the Designer/Builder is required to present claims to the District pursuant to Government Code section 910, et seq. If after the requirements of this Claims Resolution Process are satisfied, and all or a portion of the Claim remains unresolved, and if the Government Code claim is rejected by the District, the Designer/Builder may proceed under the post-mediation provisions of this Claims Resolution Process.
- 37.14. **Post Mediation Provisions**
- 37.14.1. **Claims of \$375,000 or Less:** The provisions of Public Contract Code § 20104.4 shall apply. Pursuant to Public Contract Code § 20104.4(a), within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. Pursuant to Public Contract Code § 9204(d)(2)(D), a mediation conducted pursuant to this Claims Resolution Process shall excuse the obligation under Public Contract Code § 20104.4(a) to mediate after litigation has been commenced unless otherwise agreed to by the parties in writing.
- 37.14.2. **Litigation of Claims in Excess of \$375,000.** If, after a mediation as indicated above, the Parties have not resolved the Claim, either Party may commence an action in a court of competent jurisdiction to contest that decision within ninety (90) days following the conclusion of that mediation or one (1) year following the accrual of the cause of action, whichever is later. By mutual agreement, the Parties can agree to instead resolve the Claim through arbitration.
- 37.15. The District shall be entitled to remedy any false claims, as defined in California Government Code

- section 12650 *et seq.*, made to the District by the Designer/Builder or any subcontractors under the standards set forth in Government Code section 12650 *et seq.* Any Designer/Builder or subcontractors who submits a false claim shall be liable to the District for three times the amount of damages that the District sustains because of the false claim. A Designer/Builder or subcontractor who submits a false claim shall also be liable to the District for (a) the costs, including attorney fees, of a civil action brought to recover any of those penalties or damages, and (b) a civil penalty of up to \$11,000 for each false claim.
- 37.16. **Documentation of Resolution.** If a Claim is resolved, the District shall determine if that resolution shall be documented in an Agreement and Release of Any and All Claims form or other document, as appropriate. If the District determines that an Agreement and Release of Any and All Claims form or other document is appropriate, Designer/Builder shall cooperate and execute that form and/or other document.
- 37.17. **Claim Resolution Process – Non-Applicability.** The procedures and provisions in this Claims Resolution section shall **not** apply to:
- 37.17.1. District’s determination of what Work is or will be constructed, or whether the Work complies with the Contract Documents for purposes of accepting the Work;
- 37.17.2. District’s rights and obligations as a public entity, such as, but without limitation, the revocation of pre-qualified or qualified status, barring a Designer/Builder from District contracts, the imposition of penalties or forfeitures prescribed by statute or regulation; provided, however, that penalties imposed against a public entity by statutes such as Section 7107 of the Public Contract Code, shall be subject to the mandatory dispute resolution provisions of this Claims Resolution section and the Contract;
- 37.17.3. Personal injury, wrongful death or property damage claims;
- 37.17.4. Latent defect or breach of warranty or guarantee to repair;
- 37.17.5. Stop notices or stop payment notices; or
- 37.17.6. Any other District rights as set forth herein.
- 37.18. The District’s failure to respond to a Claim from the Designer/Builder within the time periods described herein or to otherwise meet the time requirements of Public Contract Code section 9204 shall automatically result in the Claim being deemed rejected in its entirety, with no admission by the District as to the merits of the Claim.
- 37.19. If District fails to timely issue payment for any Claim or portion of a Claim as required pursuant to these Claim Resolution Procedures, the Designer/Builder is permitted to assess interest indicated in Public Contract Code section 9204. Notwithstanding this provision, and in accordance with California Public Contract Code §7107, the District is entitled to withhold up to 150% of disputed amounts and the District shall not be liable for payment of interest on such disputed amounts pending final adjudication of such disputes.
38. **LABOR CODE REQUIREMENTS:** Designer/Builder represents that Designer/Builder and all Subcontractors shall not be presently debarred, suspended, proposed for disbarment, declared ineligible or excluded pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7. Pursuant to sections 1770 *et seq.* of the California Labor Code, Designer/Builder and all subcontractors under the Designer/Builder shall pay all workers on all Work performed pursuant to the Contract not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the State of California Department of Industrial Relations (DIR) for the type of Work performed and the locality in which the Work is to be performed within the boundaries of the District. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by the DIR, are available from the District or on the internet (<http://www.dir.ca.gov>). For any specific labor classification employed on this Project, the higher of the State Prevailing Wage or Federal Prevailing Wage (Davis-Bacon) must be paid. In addition, the Designer/Builder and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the California Labor Code, beginning with Section 1720, and including Section 1735, 1777.5 and 1777.6, forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Designer/Builder or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts.
- 38.1. Designer/Builder shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its Certified Payroll Records electronically using California Department of Industrial Relations’ (DIR) eCPR System by uploading the CPRs by electronic XML file or entering each record manually using the DIR’s iform (or current form) online directly to the DIR on no less than every 30 days while Work is being performed and within 30 days after the final day of Work performed on the Project, and within ten (10) days of any request by the District or Labor

Commissioner at <http://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html> or current application and URL, showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Designer/Builder and/or each subcontractor in connection with the Work and complying with any applicable enforcement by the Department of Industrial Relations. Labor Code section 1771.1(a) states the following:

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

- 38.2. Designer/Builder acknowledges that, for purposes of Labor Code section 1725.5, this Work is a public work to which Labor Code section 1771 applies. Designer/Builder shall comply with Labor Code section 1725.5, including without limitation the registration requirements. Additionally, all “subcontractors” (as defined by Labor Code section 1722.1) shall comply with Labor Code section 1725.5 to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of the Contract. Designer/Builder represents to the District that all “subcontractors” (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5.
- 38.3. Within 30 days of the award of contract or prior to commencing the Work under this Contract, whichever occurs first, Designer/Builder shall provide District all information required by Labor Code section 1773.3, as amended by Stats. 2017, Ch. 28, Sec. 21, for Designer/Builder and all tiers of Subcontractors to enable District to provide notice to the Department of Industrial Relations (DIR) of the Contract (PWC-100 form). Designer/Builder shall submit and maintain an updated Registered Subcontractor List including all Subcontractors of any tier furnishing labor, material, or equipment to the Project.
- 38.4. Designer/Builder shall perform the Work of the Project while complying with all the applicable regulations, including section 16000, et seq., of Title 8 of the California Code of Regulations and is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Designer/Builder shall post job site notices, as prescribed by regulation. Designer/Builder shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.
39. **ANTI-TRUST CLAIM:** Designer/Builder and its subcontractor(s) agree to assign to the District all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or a subcontract. This assignment shall be made and become effective at the time District tenders final payment to the Designer/Builder, without further acknowledgment by the Parties.
40. **GOVERNING LAW:** The Contract shall be governed by and construed in accordance with the laws of the State of California with venue of any action in a County in which the District administration office is located.
41. **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 this Contract shall be read and enforced as though it were included therein.
42. **BINDING CONTRACT:** This Contract shall be binding upon the Parties and upon their successors and permitted assigns, and shall inure to the benefit of said parties and their successors and assigns.
43. **WAIVER:** Waiver by either Party of any term, condition, covenant or waiver of a breach of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant or the waiver of a breach of any other term, condition or covenant.
44. **INVALID TERM:** If any provision of this Contract is declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be a part of this Contract.
45. **ENTIRE CONTRACT:** The Contract sets forth the entire Contract between the Parties and fully supersedes any and all prior agreements, understanding, written or oral, between the Parties pertaining to the subject matter herein. The Contract may be modified only by a writing evidencing mutual consent of the Parties.

46. **OWNERSHIP OF CERTAIN PROPRIETARY PROPERTY RIGHTS:** District shall not, by virtue of the Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Project. Designer/Builder shall grant to District a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for District to continue to operate, maintain, and repair all equipment that is part of the Project in a manner consistent with its continued use.
47. **OWNERSHIP OF ANY EXISTING EQUIPMENT:** Ownership of any equipment and materials existing at the Sites at the time the Contract is executed, shall remain the property of the District even if it is replaced or its operation made unnecessary by Work performed by Designer/Builder. If applicable, Designer/Builder shall advise District in writing of all equipment and materials that will be replaced at the Sites and District shall, within five (5) business days of Designer/Builder' notice, designate in writing to Designer/Builder which replaced equipment and materials should not be disposed of off-Site by Designer/Builder (the "Retained Items"). It is understood and agreed to by both Parties that District shall be responsible for and designate the location and storage for the Retained Items. Designer/Builder shall be responsible for the disposal of replaced equipment and materials, except for the Retained Items. Designer/Builder shall use commercially reasonable efforts to remove the Retained Items in such a manner as to avoid damage thereto, or if it is unreasonable to avoid damage altogether, to minimize any damage.
48. **RESPONSIBILITIES OF THE DISTRICT**
- 48.1. District shall examine the documents submitted by the Designer/Builder and shall render decisions so as to avoid unreasonable delay in the performance of Work.
- 48.2. District shall verbally and in writing promptly advise the Designer/Builder if the District becomes aware of any fault or defect in the Project, including any errors, omissions, or inconsistencies in the Designer/Builder's documents. Failure to provide such notice shall not relieve Designer/Builder of its responsibility therefore, if any.
- 48.3. In the event Hazardous Materials are present at the Site, and unless the District and the Designer/Builder agree that a Hazardous Materials consultant shall be a consultant of the Designer/Builder, the District shall furnish the services of a Hazardous Materials consultant or other consultants when the services are requested in writing by Designer/Builder and deemed necessary by the District or are requested by the District. These services shall include: asbestos and lead paint survey; abatement documentation; and specifications related to said matters which are to be incorporated into documents prepared by Designer/Builder. If the hazardous materials consultant is furnished by the District and not a consultant of the Designer/Builder, the specifications shall include a note to the effect that they are included in the Designer/Builder's documents for the District's convenience and have not been prepared or reviewed by the Designer/Builder. The note shall also direct questions about the specifications to its preparer. District shall be responsible for the abatement and certification of identified hazardous materials, as applicable.
- 48.4. District personnel and/or its designated representatives shall coordinate with Designer/Builder as may be requested and desirable for the coordination or management of work related to the Project.
- 48.5. District shall provide Designer/Builder all relevant information in District's possession regarding the Project that Designer/Builder needs to perform its Services. District shall provide this information in a timely manner.
- 48.6. Review the Designer/Builder's proposed schedule throughout the project.
- 48.7. Oversee the Designer/Builder's quality assurance/control program.
- 48.8. Select Project Inspector with approval by the Designer/Builder.
- 48.9. Review and approve payment applications from the Designer/Builder.
- 48.10. Review construction progress and adherence to the schedule (and any recovery schedules).
- 48.11. Assist with the resolution of any disagreements.
- 48.12. Periodically report project status to Facilities Subcommittee and Board of Education.
- 48.13. Assist with preparation of report to Legislative Analyst Office, 60 days after completion of project.
- 48.14. Facilitate Project Post-Construction Interview (Lessons Learned/Best Practices).
49. **LIABILITY OF DISTRICT**
- 49.1. Other than as provided in the Contract, District's financial obligations under the Contract shall be limited to the payment of the Contract Price as may be adjusted by Change Order. In no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with the Contract for the Work.
- 49.2. District shall not be responsible for any damage to persons or property as a result of the use, misuse,

or failure of any equipment used by Designer/Builder, or by its employees, even though such equipment be furnished or loaned to Designer/Builder by District.

50. EPACT 179D

- 50.1 To encourage implementation of a more energy efficient system, Section 179D of the Internal Revenue Code provides for the allocation of a tax deduction based on the efficiency of the design. Since a public entity is exempt from paying taxes, the Code permits this allocation to be passed along to the designer of the system as an additional incentive to incorporate the most efficient system affordable. Accordingly, once the building/system is placed into service, it is understood and agreed that the tax deduction granted pursuant to Section 179D of the Internal Revenue Code will be allocated to Willdan, in consideration of which Willdan will use its best efforts to maximize the energy efficiency of the design being contracted.

NON-COLLUSION DECLARATION
Public Contract Code Section 7106

TO BE EXECUTED BY DESIGNER/BUILDER

The undersigned declares:

I am the _____ **[PRINT YOUR TITLE]**

of _____ **[PRINT FIRM NAME]**,

the party making the foregoing Contract.

The Contract is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Contract is genuine and not collusive or sham. The Designer/Builder has not directly or indirectly induced or solicited any other Design-Build Entity ("Designer/Builder") to put in a false or sham Contract. The Designer/Builder has not directly or indirectly colluded, conspired, connived, or agreed with any proposer or anyone else to put in a sham Contract, or to refrain from proposing. The Designer/Builder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Contract price of the Designer/Builder or any other proposer, or to fix any overhead, profit, or cost element of the Contract price, or of that of any other proposer. All statements contained in the Contract are true. The Designer/Builder has not, directly or indirectly, submitted his or her Contract price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, Contract depository, or to any member or agent thereof, to effectuate a collusive or sham Contract, and has not paid, and will not pay, any person or entity for such purpose.

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on the following date:

Date: _____

Proper Name of Designer/Builder: _____

Signature: _____

Print Name: _____

Title: _____

(ATTACH NOTARIAL ACKNOWLEDGMENT FOR THE ABOVE SIGNATURE)

PREVAILING WAGE CERTIFICATION

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours' notice, payroll records, and apprentice and trainee employment requirements, for all Work on the Project, including, without limitation, labor compliance monitoring and enforcement by the Department of Industrial Relations.

I hereby certify that I will also conform to the Federal Labor Standards Provisions regarding minimum wages, withholding, payrolls and basic records, apprentice and trainee employment requirements, equal employment opportunity requirements, Copeland Act requirements, Davis-Bacon and Related Act requirements, Contract Work Hours and Safety Standards Act requirements, and any and all other applicable requirements for federal funding for all Work on the above Project.

Date: _____

Proper Name of Designer/Builder: _____

Signature: _____

Print Name: _____

Title: _____

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

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

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.

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

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

Date: _____

Proper Name of Designer/Builder: _____

Signature: _____

Print Name: _____

Title: _____

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

CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

The undersigned does hereby certify to the governing board of the District that (1) he/she is a representative of the Designer/Builder, (2) he/she is familiar with the facts herein certified, (3) he/she is authorized and qualified to execute this certificate on behalf of Designer/Builder; and (4) that the following is true and correct:

1. **Education Code.** Designer/Builder has taken at least one of the following actions with respect to the Project (check all that apply):

_____ The Designer/Builder, who is not a sole proprietor, has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Designer/Builder's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the California Department of Justice has determined (A) that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). When the Designer/Builder performs the criminal background check, it shall immediately provide any subsequent arrest and conviction information it receives to the District pursuant to the subsequent arrest service. No work shall commence until the Department of Justice ascertains that Designer/Builder's employees and any subcontractors' employees have not been convicted of a felony as defined in Government Code Section 45122.1.. A complete and accurate list of Designer/Builder's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto as ATTACHMENT "A;" and/or

_____ The Designer/Builder is a sole proprietor and intends to comply with the fingerprinting requirements of Education Code section 45125.1(h) with respect to all Designer/Builder's employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and hereby agrees to the District's preparation and submission of fingerprints such that the DOJ may determine (A) that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). No work shall commence until the Department of Justice ascertains that Designer/Builder's employees and any subcontractors' employees have not been convicted of a felony as defined in Government Code Section 45122.1.

_____ Pursuant to Education Code section 45125.2(a), Designer/Builder has installed or will install, prior to commencement of work, a physical barrier at the Project site, that will limit contact between Designer/Builder's employees, Subcontractors or suppliers and District pupils at all times; and/or

_____ Pursuant to Education Code section 45125.2(a), Designer/Builder certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Designer/Builder who the California Department of Justice has ascertained, or will ascertain, has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Designer/Builder's employees and its subcontractors' or suppliers' employees is:

Name: _____

Title: _____

NOTE: If Contractor is a sole proprietor, and elects the above option, Contractor must have the above-named employee's fingerprints prepared and submitted by District for submission to the DOJ, in accordance with Education Code section 45125.1(h). No work shall commence until such determination by DOJ has been made.

_____ Pursuant to Education Code section 45125.2(a), the District will take appropriate steps to protect the safety of any pupils that may come in contact with Designer/Builder's employees, subcontractors or suppliers so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.2 shall not apply to Designer/Builder under the Contract.

_____ The Work on the Contract is at either: (i) an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils, or (ii) if Designer/Builder's employees or any subcontractor or supplier of any tier of the Contract interacts with pupils, such interaction shall only take place under the immediate supervision and control of the pupil's parent or guardian or a school employee, so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Designer/Builder under the Contract. .

2. **Megan's Law (Sex Offenders)**. I have verified and will continue to verify that the employees of Designer/Builder that will be on the Project site and the employees of the subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

Designer/Builder's responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent Designer/Builders of the Designer/Builder.

[CONTINUED ON NEXT PAGE]

ATTACHMENT "A"

List of Employees/Subcontractors

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

If further space is required for the list of employees/subcontractors, attach additional copies of this page.

Date: _____

Proper Name of Designer/Builder: _____

Signature: _____

Print Name: _____

Title: _____

DRUG-FREE WORKPLACE / TOBACCO-FREE ENVIRONMENT CERTIFICATION

Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990 (“Act”), 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 doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a state agency may be subject to suspension of payments or termination of the contract or grant, and the Designer/Builder or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred. The District is not a “state agency” as defined in the applicable section(s) of the Government Code, but the District is a local agency and public school district under California law and requires all Designer/Builders on District projects to comply with the provisions and requirements of the Act. Designer/Builder shall certify that it will provide a drug-free workplace by doing all of the following:

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

I understand that if the District determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of section 8355, 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 section 8350 et seq.

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

In addition, and pursuant to, without limitation, 20 U.S.C. section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq. and District Board Policies, all District sites, including the Project Site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes school buildings, school grounds, school owned vehicles and vehicles owned by others while on District property. I acknowledge that I am aware of the District’s policy regarding tobacco-free environments and hereby certify that I will adhere to the requirements of that policy and not permit any of my firm’s employees, agents, subcontractors, or my firm’s subcontractors’ employees or agents to use tobacco and/or smoke on the Project site

Date: _____

Proper Name of Designer/Builder: _____

Signature: _____

Print Name: _____

Title: _____

ASBESTOS & OTHER HAZARDOUS MATERIALS CERTIFICATION

Designer/Builder hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations (“New Hazardous Material”) shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Designer/Builder's Work on the Project for District.

Designer/Builder further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.

Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure. The costs of any such tests shall be paid by Designer/Builder if the material is found to be New Hazardous Material.

All Work or materials found to be New Hazardous Material or Work or material installed with “New Hazardous Material”-containing equipment will be immediately rejected and this Work will be removed at Designer/Builder's expense at no additional cost to the District.

Designer/Builder has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

Date: _____

Proper Name of Designer/Builder: _____

Signature: _____

Print Name: _____

Title: _____

LEAD-PRODUCT(S) CERTIFICATION

[TO BE USED FOR THIS PROJECT ONLY]

California Occupational Safety and Health Administration (CalOSHA), Environmental Protection Agency (EPA), California Department of Health Services (DHS), California Department of Education (CDE), and the Consumer Product Safety Commission (CPSC) regulate lead-containing paint and lead products.

Because the Designer/Builder and its employees will be providing Services for the District, Designer/Builder is hereby notified of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school buildings built prior to 1993 are presumed to contain some lead-based paint until sampling proves otherwise, and it is assumed by the District that all painted surfaces (interior as well as exterior) within the Facilities contain some level of lead.

The CDE mandates that school districts utilize DHS lead-certified personnel when a lead-based hazard is identified. Examples of lead-certified personnel include: project designers, inspectors, and abatement workers. The Parties acknowledge and agree that Designer/Builder does not perform such lead-based work, nor does it employ lead-certified personnel. Accordingly, if Designer/Builder suspects the Work may result in the disturbance of lead-containing building materials, Designer/Builder will immediately cease work in that area and notify the District so that the District can test and arrange for proper remediation if required.

The California Education Code also prohibits the use or import of lead-containing paint, lead plumbing and solders, or other potential sources of lead contamination in the construction of any new school facility or in the modernization or renovation of any existing school facility. If requested, the Designer/Builder shall provide the District with any sample results of the Work to confirm that Designer/Builder is not using lead-based materials.

If Designer/Builder brings lead-based materials to the Work Site, the Designer/Builder will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify and hold harmless the District, pursuant to the indemnification provisions of the Contract, for all damages and other claims to the extent arising therefrom.

THE UNDERSIGNED HEREBY ACKNOWLEDGES THAT HE OR SHE HAS RECEIVED NOTIFICATION OF POTENTIAL LEAD-BASED MATERIALS ON THE DISTRICT'S PROPERTY, AND THAT DESIGNER/BUILDER AGREES TO COMPLY WITH THE REQUIREMENTS OF THIS CERTIFICATION. THE UNDERSIGNED ALSO WARRANTS THAT HE OR SHE HAS THE AUTHORITY TO SIGN ON BEHALF OF AND BIND THE DESIGNER/BUILDER.

Date: _____

Proper Name of Designer/Builder: _____

Signature: _____

Print Name: _____

Title: _____

CONFLICT OF INTEREST CERTIFICATION

I, _____, _____
Name Name of Designer/Builder

am the authorized representative of _____ (“Designer/Builder”), which hereby certifies that no employee, officer, agent, consultant, or subcontractor of Designer/Builder has any financial interest or business relationship with the District, District’s staff or any individual member of the District’s governing board; nor does Designer/Builder have any actual knowledge or reason to know that any such District board member(s) or staff will obtain a financial interest or present or anticipated benefit from the agreement contemplated by this Project that would constitute a conflict of interest under California Public Contract Code section 10365.5; Government Code sections 1090 et seq. or 87100 et seq., pertaining to conflicts of interest in public contracting.

Date: _____

Proper Name of Designer/Builder: _____

Signature: _____

Print Name: _____

Title: _____

IRAN CONTRACTING ACT CERTIFICATION (Public Contract Code § 2204)

Pursuant to Public Contract Code (PCC) section 2204, an Iran Contracting Act certification is required for solicitations of goods or services of one million dollars (\$1,000,000) or more.

Designer/Builder shall complete **ONLY ONE** of the following two paragraphs.

1. Designer/Builder’s Proposal is less than one million dollars (\$1,000,000).

OR

2. Designer/Builder’s Proposal is one million dollars (\$1,000,000) or more, but Designer/Builder is **not** on the current list of persons engaged in investment activities in Iran created by the California Department of General Services (“DGS”) pursuant to Public Contract Code § 2203(b), and Designer/Builder is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

OR

3. Designer/Builder’s Proposal is one million dollars (\$1,000,000) or more, but the District has given prior written permission to Designer/Builder to submit a proposal pursuant to PCC 2203(c) or (d). **A copy of the written permission from the District is included with this Contract.**

I certify that I am duly authorized to legally bind the Designer/Builder to this certification, that the contents of this certification are true, and that this certification is made under the laws of the State of California.

Date: _____
Proper Name of Designer/Builder: _____
Signature: _____
Print Name: _____
Title: _____

END OF DOCUMENT

PERFORMANCE BOND
(100% of Contract Price)

(Note: Designer/Builder must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the Governing Board (“Board”) of **Azusa Unified School District**, (“District”) and _____, (“Principal”) have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

HVAC Design & Contraction Project (“Project” or “Contract”)

which Contract dated _____, 2022, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

WHEREAS, said Principal is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract;

NOW, THEREFORE, the Principal and _____ (“Surety”) are held and firmly bound unto the Board of the District in the penal sum of _____ Dollars (\$ _____), lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents, to:

- Perform all the work required to complete the Project with persons, firms, and or entities acceptable to the District; and
- Pay to the District all damages the District incurs as a result of the Principal’s failure to perform all the Work required to complete the Project.

The condition of the obligation is such that, if the above bounden Principal, his or its 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 the Contract and any alteration thereof made as therein provided, on his or its part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warranties of materials and workmanship, and shall indemnify and save harmless the District, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period equal to the warranty period of the Contract, during which time Surety’s obligation shall continue if Designer/Builder shall fail to make full, complete, and satisfactory repair, replace, and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Designer/Builder remains. Nothing herein shall limit the District’s rights or the Designer/Builder’s or Surety’s obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

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

Any claims under this bond may be addressed to the Surety at the following address. This cannot be the Designer/Builder's broker for this bond, but must be an employee of the Surety or the Surety's legal counsel:

Attention: _____

Telephone No.: (_____) _____ - _____

Fax No.: (_____) _____ - _____

E-mail Address: _____

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the ____ day of _____, 2022.

(Affix Corporate Seal)

Principal

By

Surety

By

Name of California Agent of Surety

Address of California Agent of Surety

Telephone Number of California Agent of Surety

Designer/Builder must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

PAYMENT BOND
(Labor & Material Bond)
(100% of Contract Price)

(Note: Designer/Builder must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the Governing Board (“Board”) of the **Azusa Unified School District**, (or “District”) and _____, (“Principal”) have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to

HVAC Design and Construction Project (“Project” or “Contract”)

which Contract dated _____, 2022, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

WHEREAS, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to 100 percent (100%) of the Contract price, to secure the claims to which reference is made in sections 3179 through 3214 and 3247 through 3252 of the Civil Code of California, and division 2, part 7, of the Labor Code of California.

NOW, THEREFORE, the Principal and _____, (“Surety”) are held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in the sum of _____ Dollars (\$ _____), lawful money of the United States, being a sum not less than the total amount payable by the terms of Contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the Principal or any of his or its subcontractors, of the heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, provender, 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 Act with respect to such work or labor, that the Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay a reasonable attorney's fee to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under sections 3179 through 3214 and 3247 through 3252 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise it shall be and remain in full force and affect.

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of Contract or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the ____ day of _____, 2022.

(Affix Corporate Seal)

Principal

By

Surety

By

Name of California Agent of Surety

Address of California Agent of Surety

Telephone Number of California Agent of Surety

Designer/Builder must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

Exhibit A

SCOPE OF WORK

The Parties acknowledge and agree that the Designer/Builder’s Proposal for this Project is not incorporated into this Contract.

This scope of work includes replacing aging (15 yrs. and older) HVAC equipment which are individually controlled using standalone web enabled Thermostats in Twelve (12) buildings. The equipment types include, but are not limited to, packaged rooftop units, packaged residential style DX split systems and Wall Mounted Package Units. The new equipment will be sized same as the existing and will be more efficient. Scope of work includes replacement of all existing thermostats serving the existing and proposed new HVAC units with new web enabled programmable thermostats.

Refer to Attachment "B" for details of each equipment to be replaced and the ones that are not being replaced. Willdan shall provide all labor, materials and equipment required to complete the mechanical scope. This includes receiving equipment, offloading, inspection, temporary storage, and all equipment handling. The contract sum is based on construction during the 2023 school summer break and all work will be done during normal business hours. Below are the facilities included:

#	Facility Name	Address
1	Azusa High School	240 N Cerritos Ave, Azusa, CA 91702
2	Dalton Elementary School	500 E 10th St, Azusa, CA 91702
3	Foothill Middle school	151 N Fenimore Ave, Azusa, CA 91702
4	Sierra High	1040 E Gladstone St. Azusa, CA 91702
5	Gladstone High School	1340 N Enid Ave, Covina, CA 91722
6	Hodge Elementary School	700 W 11th St. Azusa, CA 91702
7	Lee Elementary School	550 N Cerritos Ave, Azusa, CA, 91702
8	Longfellow Elementary School	245 W 10th St, Azusa, CA 91702
9	Magnolia Elementary School	945 E Nearfield St, Azusa, CA 91702
10	Murray Elementary School	505 E Renwick Rd, Azusa, CA 91702
11	Paramount Elementary School	409 W Paramount St, Azusa, CA 91702
12	Valleydale Elementary School	700 S Lark Ellen Ave, Azusa, CA 91702

Article 1. DESIGN SERVICES (ALL SITES)

- 1.1. During the Design Phase Services and during the Construction Phase of the Project, Designer/Builder will meet with District to review Project specifications, Design and Construction Schedule, Conceptual documents, Quality Assurance Plan and basis of design.
- 1.2. During the Design Phase Services and during the Construction Phase of the Project, Designer/Builder will meet with District to review equipment, scope of work, and installation plans that relate to the design and construction of the Project.
- 1.3. During the course of the Work, and at least weekly as needed, Designer/Builder will meet so that Designer/Builder may provide reports to the District of the general status and progress of the Work, and to review the general status and progress of the Work.
- 1.4. Although the Parties acknowledge that the Designer/Builder’s Services are not completely severable between design, procurement, installation, construction, commissioning, and training, the following scope of services will be generally referred to as the Services that the Designer/Builder shall perform during the Design Phase Services and during the Construction Phase of the Project, for the scope of work for which Designer/Builder is designing the Project, which shall be as indicated in the

1.5. Scope, Responsibilities, and Services of Designer/Builder

- 1.5.1. Designer/Builder shall provide Services that shall comply with applicable professional standards, recognized industry standards professional skill and judgment, and applicable requirements of federal, state, and local law.
- 1.5.2. Designer/Builder agrees to design and construct the Project in consideration for the District's payment up to the Contract Price, which may only be adjusted pursuant to the provisions of this Contract.
- 1.5.3. Designer/Builder shall prepare and update at each document submittal milestone, detailed estimates of cost of construction to substantiate that the Project will not exceed the Contract Price.
- 1.5.4. Prepare and update monthly the detailed construction schedule to confirm the Project delivery within the Milestone Dates.
- 1.5.5. Designer/Builder acknowledges that all California school districts are now obligated to develop and implement storm water requirements.
- 1.5.6. Designer/Builder is responsible to include in its schedule District quality assurance reviews of contract documents.
- 1.5.7. During the course of the Work, and at least bi-weekly unless otherwise needed, Designer/Builder shall provide reports to the District of the general status and progress of the Work appropriate for dissemination to community and end-users. Report shall include Budget, Schedule, Scope, Quality and Communication.
- 1.5.8. Designer/Builder shall maintain consistency of formatting all documents during the Design Phase Services and during the Construction Phase throughout for all engineering disciplines and subcontractors.
- 1.5.9. Designer/Builder shall contract for or employ at Designer/Builder's expense, consultant(s) to the extent deemed necessary for completion of its Services on the Project including, but not limited to, electrical, structural, low voltage, acoustical, data, and energy, consultants as necessary, licensed as required by the State of California. Nothing in the foregoing procedure shall create any contractual relationship between the District and any consultant employed by the Designer/Builder under terms of the Contract.
- 1.5.10. Designer/Builder is responsible for all areas of contract administration, including but not limited to Document Controls, Project Cost Controls, Project Scope control, Schedules, Communication, Quality Assurance and Control, and Value-Engineering Studies. All documents shall be available to the District in PDF digital format. The Designer/Builder to review on-going contract administration and deliverables during construction with the District prior to commencement of work. The Designer/Builder to provide the District with any and all software required to review its documentation and/or submittals.
- 1.5.11. The District shall provide to Designer/Builder information and documentation that the District currently has related to the Sites including electrical as-built drawings, geotechnical reports, topographic surveys, and related items. If Designer/Builder believes that the information or documentation the District provides is insufficient for purposes of design or if the Designer/Builder believes it needs additional information, including a topographical survey; geotechnical report; electrical, structural, mechanical, and/or chemical tests; tests for air and/or water pollution; test borings; test pits; determinations of soil bearing values; determinations of the location of all subsurface utilities; percolation tests; ground corrosion tests; resistivity tests; tests for hazardous materials; tests for anticipating subsoil conditions; and/or other tests reasonably related to performance of the Project, the Designer/Builder shall inform the District of that fact and the Parties shall mutually agree on the items required and the process and responsibility to procure those items.
- 1.5.12. Designer/Builder shall coordinate with District personnel and/or its designated representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination, or management of other work on

the Site.

- 1.5.13. Where applicable, Designer/Builder shall identify the regulatory agencies that have jurisdiction over essential building and design elements and coordinate with and implement the requirements of the regulatory agencies or their authorized agents, including, without limitation, California Department of Education (CDE), the Office of Public School Construction (OPSC), the Department of General Services (DGS), DSA Fire/Life Safety, DSA Access Compliance Section, DSA Structural Safety, State and local Fire Marshal, County and City Health Inspectors and any regulatory office or agency that has authority for review and supervision of school district construction projects.
- 1.5.14. As required, Designer/Builder shall provide Services required to obtain local agencies' (e.g., City, County, etc.) approval for off-Site work related to the Project including review by regulatory agencies having jurisdiction over the Project, if applicable.
- 1.5.15. Designer/Builder shall coordinate with the District's DSA Project Inspector(s).
- 1.5.16. Designer/Builder shall use its best efforts to provide pictures downloaded to computer files, updated as requested by the District, that the District may use on its website. Pictures shall be limited to Designer/Builder's Project scope.
- 1.5.17. Designer/Builder Deliverables shall include but are not limited to (for applicable phases):
 - 1.5.17.1. Pre-Construction Deliverables
 - 1.5.17.1.1. Monthly Project Status Report
 - 1.5.17.1.2. Issues Log
 - 1.5.18.1.3. Schematic Design Documents with Basis of Design Documents
 - 1.5.18.1.4. Construction Documents at 90% and at time of DSA submittal based on approved schedule
 - 1.5.18.1.5. DSA Stamped Construction Documents
 - 1.5.18.1.5.1. Review and approved by the District
 - 1.5.18.1.5.2. Schedule updates at each phase of design submittal
 - 1.5.17.2. Construction Deliverables
 - 1.5.17.2.1. Project Management Plan
 - 1.5.17.2.1.1. Update as required
 - 1.5.18.2.2. Safety Plan
 - 1.5.18.2.2.1. Safety Site Inspections
 - 1.5.18.2.2.2. Site Inspections
 - 1.5.18.2.3. Monthly Project Status with progress photos
- 1.5.18. As part of the Services, Designer/Builder is NOT responsible for the following, however, it shall coordinate and integrate its Work with any of the following information and/or services provided by District:
 - 1.5.18.1. Ground contamination or hazardous material analysis.
 - 1.5.18.2. Any asbestos and/or lead testing, design or abatement.
 - 1.5.18.3. Compliance with the California Environmental Quality Act ("CEQA").

1.6. Designer/Builder Staff

- 1.6.1. The Designer/Builder has been selected to perform the Services herein because of its skills and expertise.

- 1.6.2. The Designer/Builder shall not change any of the key personnel without prior written approval by District, unless said personnel cease to be employed by Designer/Builder. In either case, District shall be allowed to interview and approve replacement personnel. Such approval shall not be unreasonably withheld or delayed.
- 1.6.3. If any designated lead or key person fails to perform to the reasonable satisfaction of the District, then upon written notice the Designer/Builder shall have five (5) days to remove that person from the Project and replace that person with one reasonably acceptable to the District.
- 1.6.4. Designer/Builder shall comply with Education Code section 17302(a) and agrees that any plans and/or specifications included in the Services shall be prepared under the supervision of licensed personnel, and that licensed personnel shall be in "responsible charge" of persons who observe the construction.

1.7. Ownership of Data

- 1.7.1. Pursuant to Education Code section 17316, the Contract creates a non-exclusive and perpetual license for District to use, at its discretion, all plans, including, but not limited to, record drawings, specifications, and estimates that the Designer/Builder or its consultants, prepares or causes to be prepared pursuant to this Contract, limited to this Work.
- 1.7.2. The Designer/Builder retains all rights to all copyrights, designs and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that the Designer/Builder or its consultants prepares or causes to be prepared pursuant to this Contract.
- 1.7.3. The Designer/Builder shall perform the Services and prepare design documents under the Contract with the assistance of Computer Aided Design Drafting (CADD) (e.g., AutoCAD) Technology. The Designer/Builder shall deliver the design documents to the District, on request, in a "thumb" drive, and/or compact disc format, and compatible with AutoCAD 2020 (not .pdf), or a more recent version if available. As to any drawings that Designer/Builder provides in a CADD file format, the District acknowledges that anomalies and errors may be introduced into data when it is transferred or used in a computer environment, and that the District should rely on hard copies of all documents.
- 1.7.4. Only if directed in writing by the District, Designer/Builder will use BIM for managing the coordination/conflicts with major building and structural systems. The Designer/Builder will include Revit® to optimize building performance early in the design process, run cost estimates and monitor performance changes over the project's and building's lifetime.
- 1.7.5. In order to document exactly what CADD information was given to the District, Designer/Builder and District shall each sign a "hard" copy of reproducible documents that depict the information at the time Designer/Builder produces the CADD information. District agrees to release Designer/Builder from all liability, damages, and/or claims that arise due to any changes made to this information by anyone other than the Designer/Builder or Consultant(s) subsequent to it being given to the District.
- 1.7.6. Following the termination of the Contract, for any reason whatsoever, the Designer/Builder shall promptly deliver to the District upon written request the following items (hereinafter "Instruments of Service") in electronic format (Microsoft Word), assuming the District has made all payments to Designer/Builder as required by the termination provisions in this Contract.
 - 1.7.6.1. One set of the Contract, including the bidding requirements, specifications, and all existing cost estimates for the Project, in hard copy, reproducible format.
 - 1.7.6.2. Where applicable, one set of fixed image CADD files in DXF format of the drawings that are part of the Contract.
 - 1.7.6.3. Where applicable, one set of non-fixed image CADD drawing files in DXF and/or DWG format of the site plan (structural and electrical), roof plan, sections and exterior elevations of the Project.

- 1.7.6.4. All finished or unfinished documents, studies, reports, calculations, drawings, maps, models, photographs, and reports prepared by the Designer/Builder under the Contract.
- 1.7.7. In the event the District changes or uses any fully or partially completed documents without the Designer/Builder's knowledge and participation, the District agrees to release Designer/Builder of responsibility for such changes, and shall indemnify, defend and hold the Designer/Builder harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including, but not limited to, reasonable attorneys' fees, on account of any damages or losses to property or persons, including injuries or death, or economic losses, arising out of that change or use except to the extent the Designer/Builder is found to be liable in a forum of competent jurisdiction. In the event District uses any fully or partially completed documents without the Designer/Builder's full involvement, the District shall remove all title blocks and other information that might identify the Designer/Builder and the Designer/Builder's consultants.
- 1.8. **Certificate of Designer/Builder.** Designer/Builder certifies that the Designer/Builder is properly licensed under the laws and regulations of the State of California to provide the professional Services that it has herein agreed to perform.
- 1.9. **Site Development.** Designer/Builder agrees to provide the services described below:
- 1.9.1. Designer/Builder shall be responsible for the professional quality and technical accuracy of all studies, reports, projections, master plans, designs, drawings, specifications and other Services furnished by Designer/Builder under the Contract, as well as coordination with all Master plans, studies, reports and other information provided by District. Designer/Builder shall, without additional compensation, correct or revise any errors or omissions in its studies, reports, projections, master plans, design, drawings, specifications and other Services.

- 1.9.2. The District shall provide all information available to it to the extent the information relates to Designer/Builder's scope of work. This information shall include, if available,
 - 1.9.2.1. Physical characteristics;
 - 1.9.2.2. Legal limitations and utility locations for the Project site(s);
 - 1.9.2.3. Written legal description(s) of the Project site(s);
 - 1.9.2.4. Grades and lines of streets, alleys, pavements, and adjoining property and structures;
 - 1.9.2.5. Adjacent drainage;
 - 1.9.2.6. Rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, and boundaries and contours of the Project site(s);
 - 1.9.2.7. Locations, dimensions and necessary data with respect to existing buildings, other improvements and trees;
 - 1.9.2.8. Information concerning available utility services and lines, mechanical and other services, both public and private, above and below grade, including inverts and depths;
 - 1.9.2.9. Surveys, reports, as-built drawings;
 - 1.9.2.10. Subsoil data, chemical data, and other data logs of borings;
 - 1.9.2.11. DSA Numbers for all buildings, as necessary to obtain DSA approval of plans to be submitted by Designer/Builder under the contracted scope of Work.
- 1.9.3. Designer/Builder shall Visually Verify this information and all existing utilities and systems related to the Project, including capacity, and document the location of existing utility lines, vents, telephone, water, sewage, storm drains and other lines on or around the Project to the extent determinable by the documents provided by the District. "Visually Verify" means to verify to the fullest extent possible by physical inspection and reasonable investigation and without any destructive action.
- 1.9.4. Designer/Builder shall review all information provided the District and shall perform all Services to ensure compliance with all applicable building codes and requirements of the local jurisdiction related to air-space, overhang restrictions, etc.
- 1.9.5. **Technology Backbone.** Designer/Builder shall be responsible for the coordination of the design and the layout of the technology backbone system of the Work with the District's Information Technology Department and/or the District's technology consultant, and lay out any included technology backbone system. The coordination effort shall include location and routing of any required raceways, conduits and outlets and the required spaces to accommodate electrical, data and communication wiring. Designer/Builder and consultant(s) shall prepare and be responsible for documents prepared by the Designer/Builder based on the information provided by the District's technology consultant as appropriate to the level of design completion.
- 1.9.6. **Structural**
 - 1.9.6.1. Structural drawing with all major members located and sized.
 - 1.9.6.2. Preliminary specifications.

Identify foundation requirement (including fill requirement, piles) with associated soil pressure, water table and seismic center requirements.
- 1.9.7. **Electrical**

- 1.9.7.1. All major electrical equipment should be scheduled indicating size and capacity.
- 1.9.7.2. Complete electrical distribution including a single line diagram indicating final location of switchboards, communications, controls (high and low voltage), motor control centers, panels, transformers, and emergency generators, if required. Low voltage system includes fire alarm system, security system, clock and public address system, voice data system, and telecom/technology system.
- 1.9.7.3. Legend showing all symbols used on drawings.
- 1.9.7.4. More developed and detailed Outline Specifications indicating quality level and manufacture.
- 1.9.7.5. Further evaluation and confirmation of the load requirements of all equipment and systems, the impact of those on existing facilities, and the requirements to increase these loads to accommodate the increase.
- 1.9.8. **[RESERVED]**
- 1.9.9. **[RESERVED]**
- 1.9.10. **Deliverables and Numbers of Copies**
 - 1.9.10.1. Two copies of Design Development 50% complete construction drawing set from all professional disciplines necessary to deliver the Project;
 - 1.9.10.2. Two copies of continued proposed revision to Specifications;
 - 1.9.10.3. Two copies of DSA file, including all correspondence and meeting notes to date, or notification in writing that Designer/Builder has not met or corresponded with DSA;
 - 1.9.10.4. Two copies of Cost Estimate;
 - 1.9.10.5. Two copies of Schedule;
 - 1.9.10.6. The Design Development deliverables shall be revised within the accepted program parameters until a final concept within the accepted Construction Cost Budget.
 - 1.9.10.7. Design Development will be reviewed and approved after Quality Assurance review by the District. Designer/Builder to include Quality Assurance Review in its schedule.
 - 1.9.10.8. Designer/Builder to maintain both a Risk Management Plan and Issues Log. All risks shall be reviewed by the District. Both perceived risks and issues shall be reviewed and approved by the District before proceeding to the Construction Documents Phase.
 - 1.9.10.9. Narrative resolving any/all outstanding quality issues from the Schematic Design Quality Assurance review.
- 1.9.11. **Meetings.** During this Phase, Designer/Builder shall attend, take part in, and, when requested, conduct meetings, site visits, and workshops as indicated below.

1.10. Construction Document Development

Upon District's acceptance of Designer/Builder's Work in the previous Phase and assuming District has not delayed or terminated the Contract, Designer/Builder shall prepare a set of 90% complete construction documents for review by the District. Upon approval by District, said construction documents shall be completed and then submitted to, as required, local planning or inspection office, DSA, or other agency with approval jurisdiction over the Project. The Designer/Builder shall prepare from the accepted deliverables from the Design Development Phase the Construction

Documents consisting of the following for each proposed system within Designer/Builder's scope of Work:

- 1.10.1. **General.** Verify lead times and availability of all Project equipment, materials, supplies, and furnishings and ensure that all of these will be available to the contractor(s) in a timely fashion so as to not delay the Project and/or delay the District's Beneficial Use of the Project. The Designer/Builder shall also provide other options to the District regarding other possible and more available equipment, materials, supplies, or furnishings.
- 1.10.2. **Structural**
 - 1.10.2.1. Structural calculations completed.
Completed cover sheet with general notes, symbols and legends.
- 1.10.3. **Electrical**
 - 1.10.3.1. Distribution information on all power consuming equipment, including lighting, power, signal, and communication device(s) branch wiring completed.
 - 1.10.3.2. All electrical equipment schedules completed.
 - 1.10.3.3. Special system components plans completed.
 - 1.10.3.4. Electrical load calculations completed.
- 1.10.4. **[RESERVED]**
- 1.10.5. **[RESERVED]**
- 1.10.6. **[RESERVED]**
- 1.10.7. **Specifications**
 - 1.10.7.1. Complete proposed revisions to the technical specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.
 - 1.10.7.2. No part of the specifications shall call for a designated material, product, thing, or service by specific brand or trade name unless the District has given prior approval.
- 1.10.8. **Quality Assurance Review.** The District and/or its designee shall conduct a construction review of the Construction Documents. The Quality Assurance review will include program scope, space checklist validation of spacing, materials and product verification of sole source materials/equipment along with inter and intra-disciplinary coordination. A report shall be given to the Designer/Builder who shall make necessary changes along with providing written comments for each item listed in the report.
- 1.10.9. The Designer/Builder is responsible to conduct its own Quality Assurance prior to submission to the District.
- 1.10.10. **Deliverables and Numbers of Copies.** Designer/Builder shall provide to the District a hard copy of the following items produced in this phase, together with one copy of each item in electronic format:
 - 1.10.10.1. Two copies of reproducible copies of working drawings;
 - 1.10.10.2. Two copies of proposed revisions to specifications;
 - 1.10.10.3. Two copies of engineering calculations;
 - 1.10.10.4. Two copies of statement of requirements for testing and inspection of service for compliance with Contract Documents and applicable codes;
 - 1.10.10.5. Two copies of DSA file including all correspondence, meeting, back check comments, checklists to date;

- 1.10.10.6. Two copies of Schedule;
- 1.10.10.7. The Construction Document Phase will be reviewed and approved after Quality Assurance Review by the District. Designer/Builder is responsible for code compliance quality assurance review;
- 1.10.10.8. Designer/Builder to maintain both a Risk Management Plan and Issues Log. All risks shall be reviewed by the District. Both perceived risks and issues shall be reviewed and approved by the District before proceeding to the Bidding Documents phase;
- 1.10.10.9. Narrative resolving any/all outstanding quality issues from the Design Development Quality Assurance review.
- 1.10.11. **Construction Documents (CD) Final Back-Check Stage (where applicable)**
 - 1.10.11.1. The Construction Documents final back-check stage shall be for the purpose of Designer/Builder incorporating all regulatory agencies' comments into the drawings, specifications, and schedules. All changes made by the Designer/Builder during this stage shall be at no additional cost to the District.
 - 1.10.11.2. The final Construction Documents delivered to the District upon completion of the Designer/Builder's Work shall be the final set and shall consist of the original drawings with designers' and engineers' State license stamp.
 - 1.10.11.3. **Meetings.** Designer/Builder shall attend, take part in, and, as requested conduct meetings and site visits as required for the Work and Services at no additional cost to the District.
- 1.11. **Record Drawings.** During construction, Designer/Builder shall incorporate all information on As-BUILTs, sketches, details, and clarifications, and prepare one set of final Record Drawings for the District. The Record Drawings shall incorporate onto one set of electronic drawings, changes from As-BUILTs, sketches, details, and clarifications. The Designer/Builder shall deliver the Record Drawings to the District at completion of the construction and it shall be a condition precedent to the District's approval of the Designer/Builder's final payment.
- 1.12. **O&M Manuals / Warranties.** Designer/Builder shall review equipment, operation and maintenance manuals, and a complete set of warranty documents for all equipment and installed systems, to ensure that they meet the requirements of the plans and specifications. The Designer/Builder shall deliver one hard copy sets and electronic PDF set of the O&M Manuals / Warranties to the District at completion of the construction and it shall be a condition precedent to the District's approval of the Designer/Builder's final payment.
 - 1.12.1. Training shall be provided for all major equipment installation.
 - 1.12.2. All products and equipment will include manufacturer's warranty and labor installation guarantee.
 - 1.12.3. O&M Manuals and Warranties will be in PDF digital format packaged for the Project with an outline of information included in the package and a schedule of warranty periods for each product or equipment determined at beneficial occupancy or filing of Notice of Completion.
- 1.13. **Design Errors.** Designer/Builder shall be solely responsible for all design errors and for the correction of same at no additional cost to District, including, but not limited to, errors, inconsistencies or omissions in the Construction Documents, and errors, omissions and inconsistencies that do not conform to the standards established within Contract Documents.

Article 2. DESCRIPTION OF CONSTRUCTION SERVICES WORK (ALL SITES)

2.1. General.

- 2.1.1. The installation, construction, and commissioning of the Work at the Site through Project Completion shall be referred to as "Construction Phase Services."
- 2.1.2. Designer/Builder shall design, install, and construct the Work at the Site. The Work shall be installed and constructed to conform to Division of the State Architect ("DSA") requirements

and all applicable building codes. Designer/Builder's Work shall include meetings and discussions as needed with DSA and others as needed to achieve project approval.

- 2.1.3. Construction Services shall commence only upon the District's issuance of a Notice to Proceed for Construction Phase services. The District may issue more than one Notice to Proceed for Construction Phase Services depending on the phasing of those services.
- 2.1.4. In addition to all other requirement herein, the Designer/Builder shall comply with all requirements of the Plans and Specifications referenced herein in **Exhibit D**.

2.2. DSA Approvals & Permits

- 2.2.1. Designer/Builder, its designers, contractors, and inspectors shall provide documentation required for all approvals by DSA.
- 2.2.2. Designer/Builder shall notify the District and the District's Project Inspector(s) of required inspections and shall provide reasonable access and accommodations for inspections.

2.3. Protection of Existing Structures and Utilities

- 2.3.1. The Sites have above-grade and below-grade structures, utility lines, and other installations that are known or believed to exist in the area of the Work. Designer/Builder shall locate these existing installations before proceeding with demolition and other operations that could damage same; maintain them in service, where appropriate; and repair damage to them caused by the performance of the Work. Should damage occur to these existing installations, then the costs of repair shall be at the Designer/Builder's expense and made to the District's satisfaction.
- 2.3.2. Designer/Builder shall be alert to the possibility of the existence of additional structures and utilities. If Designer/Builder encounters additional structures and utilities, Designer/Builder will immediately report to the District for disposition of same as indicated in the Terms and Conditions to Contract.
- 2.3.3. Designer/Builder shall conduct an engineering evaluation to determine whether any undergrounding power lines will create the potential for electrolytic corrosion of any other underground utilities near such power lines. Where the potential for electrolytic corrosion exists, Designer/Builder shall also design and install a cathodic protection system to protect such utilities.

2.4. Specific measures include:

- 2.4.1. Written Designer/Builder Safety Plans, signs and temporary fencing as needed.
- 2.4.2. Written Designer/Builder Quality Management Plan.
- 2.4.3. Engineering and stamped drawings for District and DSA approval.
- 2.4.4. Layout drawings for Fire Department review.
- 2.4.5. Single line and electrical drawings for Pacific Gas & Electric.
- 2.4.6. Layout drawings for District Technology Department review.

2.5. Commissioning

2.5.1. Summary

- 2.5.1.1. Commissioning is a process for validating and documenting that the facility and its systems are constructed and perform in conformity with the Contract and shall be done in compliance with the schedule herein below and pursuant to **Exhibit B**.
- 2.5.1.2. The objective of the commissioning process is to verify that the performance of the facility and its systems meet or exceed the design intent.
- 2.5.1.3. Commissioning includes special facility start-up processes used to bring the facility to a fully operational state, free of deficiencies in an efficient and timely manner.

2.5.1.4. Training on related systems and equipment operation and maintenance shall be scheduled to commence only after start-up is complete and systems are verified to be 100% complete and functional.

2.5.2. Description

2.5.2.1. Designer/Builder Startup: prior to District's acceptance of Work, Designer/Builder shall perform a program of activities including starting, testing, inspecting, adjusting balancing, correcting deficiencies and other similar activities.

2.5.2.1.1. The District and the DSA Project Inspector (IOR) shall be present to observe, inspect, and identify deficiencies in Building Systems Operations.

2.5.2.2. The completion of startup means the entire Project including startup and fine tuning has been performed to the requirements of the Contract and is verified in writing by the District and the IOR.

2.5.2.3. Fine Tuning: Fine tuning is the responsibility of Designer/Builder after District occupancy and ending one year after District occupancy. During this time, the Designer/Builder is responsible for optimizing systems and correcting deficiencies arising under normal operating conditions.

2.5.2.3.1. Includes a period after occupancy where systems are optimized under "live" operating conditions and any outstanding construction deficiencies are corrected.

2.5.2.3.2. Fine Tuning shall extend from date of District occupancy to one year after occupancy.

2.5.2.3.3. The Designer/Builder is to include in its Building Life Cycle Cost Analysis the Commissioning scope of work.

2.5.3. Definition of Terms

2.5.3.1. Designer/Builder's Pre-Commissioning Checklists: Includes installation and start-up items as specified to be completed by the appropriate contractors prior to operational verification through the functional testing process.

2.5.3.2. Installation Verification Process: Includes the on-site inspection and review of related system components for conformance to the Contract. The Designer/Builder shall verify systems readiness for functional testing procedures prior to the start of functional testing. Deficiencies will be documented by the District and the IOR for future resolution.

2.5.3.3. Functional Performance Testing Process: Includes the documented testing of system parameters, under actual or simulated operating conditions. Final performance commissioning of systems will begin only after the appropriate Designer/Builder certifies that systems are 100% complete and ready for functional testing. The contractors will be required to schedule, coordinate and perform device tests, calibration and functional performance test procedures.

2.5.3.4. Deficiencies and Resolutions List: Includes a list of noted deficiencies discovered as a result of the commissioning process. This list also includes the current disposition of issues, and the date of final resolution as confirmed by the District and the IOR. Deficiencies are defined as those issues where products execution or performance does not satisfy the Contract and/or the design intent.

2.5.4. Commissioning Duties and Responsibilities

2.5.4.1. Designer/Builder Duties and Responsibilities:

2.5.4.1.1. Assure the participation and cooperation of subcontractors and suppliers under their jurisdictions as required to complete the

commissioning process.

2.5.4.1.2. Complete Commissioning Report Forms. Reports are to be completed in a neat easily readable condition.

2.5.4.1.3. Complete the respective start-up and check out procedures and insure readiness of equipment and systems prior to the start of the functional performance testing. Written confirmation of system readiness for performance testing is required.

2.5.4.1.4. Provide qualified representatives for the functional performance commissioning process.

2.5.4.2. Assure that all subcontractors and suppliers include in their respective contracts cost necessary to participate in and complete the commissioning process.

2.5.4.3. Duties and responsibilities of others for Commissioning: The commissioning process requires the active participation of the District and the IOR, and any other related Consultants on the project.

Article 3. GENERAL MECHANICAL SCOPE OF WORK

Mechanical

Demolition

1. Demo and remove existing equipment/systems listed in Exhibit A.
2. Demo and modify existing curbs as needed.
3. Demo existing refrigerant line sets as necessary.
4. Where a condensate pump exists, demo condensate piping from unit to condensate pump. Existing condensate pump to remain, if in operational condition.

New Work

Install and commission New HVAC Units listed in Exhibit A. This scope shall include:

1. All new HVAC equipment manufactured by Carrier and BARD.
2. New units shall be of same size as existing, unless otherwise noted.
3. New units shall use R410A refrigerant.
4. Coordinate new duct connections to connect with the existing ductwork configuration. Connect to existing ductwork using a flexible ductwork connection. Repair of existing ductwork is not included.
5. Canvas connections and any vibration isolation needed to properly isolate the new units is to be provided and installed.
6. Reuse existing curbs, platforms, sheet metal caps, ductwork, controls, sensors, conduit, and wiring. Provide new where identified and deemed necessary.
7. Reconnect new units to existing condensate drain piping; provide new where necessary, and all new condensate drain piping to be PVC.
8. Provide new condensate piping and drywells for 13 HVAC units at Longfellow and 4 units at Magnolia schools.
9. All roof mounted units will be pre-manufactured roof curbs/rails or pre-approved rail and will be installed per roofing manufacturer recommendations in order to maintain the roofing warranty, if valid. If existing curb/rail is sufficient, provide new galvanized steel cap and re-use with roofing manufacturer's recommended fasteners. Install new curbs/curb adapters if needed. Patch/repair as required.
10. Provide labor and material to install a fused disconnect.
11. All new line sets to be installed to meet manufacturer's requirements.
12. Seal all wall penetrations or roof penetrations abandoned or created as a part of this work and make watertight.
13. Duct detectors are included, where required. Duct detectors are assumed to be installed in all existing equipment. New work includes connecting new duct detectors to existing fire alarm wiring.
14. Existing fire alarm wiring for existing duct detectors are assumed to be in good working order.

Controls

1. Provide and install (598) new wireless web enabled programable thermostats required to perform the sequence of operation for the new and existing HVAC units.
2. Thermostat installation to include CO2 and occupancy sensors and associated wiring on all newly provided thermostats.

Electrical Scope

Demolition:

1. Disconnect and safe off all existing HVAC units to be removed.
2. Disconnect, label the unit & individually bag the GPS NBPI Ionizer device, transformer & associated components from the existing HVAC units which are expected to be replaced with new HVAC units. The disconnected ionizer shall be reconnected to the new HVAC units.

New Work:

1. Reconnect new equipment and provide electrical components as required to re-establish power to replacement equipment.
2. Provide labor to install new disconnects.
3. Install the label on new web enabled programable thermostats for all HVAC units listed in Exhibit A.
4. Reconnect and label existing GPS NBPI Ionizer device, transformer & associated components on the new HVAC unit.

Article 4. OPERATING MODES TESTING (ALL SITES)

Designer/Builder technical personnel, with the assistance of the equipment manufacturer(s) as needed, will perform a complete commissioning of the Facility pursuant to standard tests, inspections, safety and quality checks. All testing and commissioning will be conducted in accordance with the manufacturer's specifications. Owner reserves the right to have the testing and commissioning results verified by a commissioning engineer.

Willdan shall conduct a thorough and systematic performance test of the installed equipment to ensure desired operation. The commissioning approach will include the development of a commissioning plan, review of construction documents, development of functional test procedures, coordination of commissioning activities, verification of start-up tests and performance of functional tests. An observation log will be maintained to track any identified deficiencies from identification through resolution. A final commissioning report summarizing the results of the start-up and commissioning efforts will be developed.

1. The replacement equipment included in the commissioning scope includes the rooftop units, split systems, and wall mounted heat pumps detailed in Exhibit A.
2. The commissioning scope does not include existing distribution systems such as ductwork or equipment downstream of the installed units.

Article 5. DSA APPROVAL SCOPE

Some HVAC equipment selected by Willdan will not require DSA review. However, there are several units which do not meet DSA review exemption criteria and require DSA approvals, Willdan Scope includes processing DSA approvals as required for installation of HVAC units listed below at (12) school facilities.

1. Roof mounted units (heavier than existing)
 - a. 223 New Package Rooftop units
 - b. 15 split units
2. Wall Mounted units (heavier than existing)
 - a. 76 units in total

DSA approval process under Willdan Scope will include:

1. Develop site plans to indicate location of proposed units (heavier than existing); all other units will be shown as "not part of DSA review."
2. Include structural engineering drawings/documents for DSA submittal.
3. Process applications and submit to DSA for each site.
4. Assist in closing/certifying these projects, by requesting documentation, uploading documents, and pursuing final closeout for DSA only.

Article 6. CLIENT ALLOWANCE

The following client allowances have been included in the contract sum. The allowances are rough order of magnitude values. Upon completion of the design, the actual cost of the allowances will be reconciled against actual costs of the work. The final cost of all allowances shall include all labor, equipment and materials required

to complete the listed scope of work. Costs that exceed the estimates mentioned below are the responsibility of the client. Any funds remaining from the allowance will be credited to the client.

Client Allowance (\$)	Category	Description
\$440,000	Structural upgrades	Includes structural upgrade costs & seismic restraints.
\$50,000	Safety	Includes anchor point fall protection system for specific HVAC units which presently do not meet safety requirements.
\$120,000	Roofing	This includes roof repair and patch work.
\$80,000	New thermostat control wiring	New control wiring for up to 60 thermostats
\$690,000	Total Client Allowance	

Article 7. GENERAL INCLUSIONS AND EXCLUSIONS

1. Willdan is required to have the school operational by the start of school. HVAC units will not be removed/replaced if the units have not been received and cannot be operational by the first day of school. Any equipment that has not been installed in the summer of 2023 will be installed in the summer of 2024. If the District decides to explore installing equipment during the school year Willdan will strategize with the district develop a plan. If a piece of equipment does not startup correctly, Willdan will work diligently to correct the issues or provide temporary cooling.
2. Design, furnish, install, and commission the HVAC units listed in Exhibit A.
3. Remove existing units and materials and properly dispose as per code.
4. The new units will be installed in same location(s) as the existing units.
5. All core drilling, saw cutting, and sleeving for piping through walls/floors with required fire ratings.
6. Includes Prevailing wages.
7. All testing and inspections.
8. A 1-year workmanship and material warranty are included.
9. Parts-only warranty is included for additional 4 years.
10. Provide all labor, materials, and documentation required by current building code and DSA regulations as applicable.
11. All necessary inspection fees and permit fees.
12. Modifications to or balancing of existing air distribution system is excluded.
13. Duct Cleaning of any existing ductwork is excluded
14. Repair or replacement of any existing roofing conditions is excluded
15. Modification to existing electrical distribution, gear, and raceways is excluded
16. Work related to existing non-code compliant conditions not associated with this scope of work is excluded
17. Work related to any requirements by AHJ that are above established building codes is excluded
18. Replacement of existing fire alarm wiring is excluded
19. Premium wages associated with afterhours work is excluded unless required due to fault of Contractor
20. Calibration, commissioning, certification, refurbishment, or repair of existing GPS NBPI Ionizer devices (Scope will cover salvage and re-installation GPS NBPI Ionizer devices in their current condition.) is excluded
21. Anything not reasonably inferable from the scope of work is excluded.
22. Modification or repair to existing gas service, gas piping, gas meters, regulators, and insulation is excluded.

ATTACHMENT B

[REMINDER OF PAGE INTENTIONALLY BLANK; ATTACHMENT FOLLOWS]

Exhibit B

**ESTIMATED PROJECT SCHEDULE – ALL SITES COMBINED
(MILESTONE SCHEDULE)**

The days indicated below will begin once the District issues a Notice to Proceed for the Project. The Parties acknowledge the following. The District intends to issue a Notice to Proceed for the Project on or before

September 14, 2022__.

- Except for the Project Completion milestone date indicated herein, the other milestone dates are for reference only. Any delay in achieving the milestone dates indicated herein shall not be a basis upon which Designer/Builder can request an extension of the last milestone – Project Completion.
- Designer/Builder shall have no right to request additional time to perform the Work unless the condition(s) constitute a Force Majeure event as defined in the Contract or Adverse Weather as indicated in this Exhibit.

Milestone	Date to Complete	Liquidated Damages per Calendar Day
District Issues a Notice to Proceed for Design Phase Services	September 14, 2022	n/a
District Issues a Notice(s) to Proceed for Construction Phase Services	September 14, 2022	n/a
Construction Mobilization & Delivery of Materials (aka Construction Phase 1)	June 5, 2023	n/a
Mechanical Completion (hardware installed) (aka Construction Phase 2)	August 11, 2023	n/a
Final Completion (punch list complete) and commissioning (aka Construction Phase 3)	December 31, 2023	\$250/day

- The Contract Time has been determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located.

Exhibit C

DISTRICT'S RULES AND REGULATIONS

1. **Access.** Access to the school buildings and entry to buildings, classrooms, restrooms, mechanical rooms, electrical rooms, or other rooms, for construction purposes, must be coordinated with District and onsite District personnel before Work is to start. Unless agreed to otherwise in writing, only a school custodian will be allowed to unlock and lock doors in existing building(s). The custodian will be available only while school is in session. If a custodian is required to arrive before 7:00 a.m. or leave after 3:30 p.m. to accommodate Designer/Builder's Work, the overtime wages for the custodian will be paid by the Designer/Builder, unless, at the discretion of the District, other arrangements are made in advance.
2. **Maintaining Services.** The Designer/Builder is advised that Work is to be performed in spaces regularly scheduled for instruction. Interruption and/or periods of shutdown of public access, electrical service, water service, lighting, or other utilities may be required in connection with the Project. These shall be only as arranged in advance with the District. Designer/Builder shall provide temporary services to all facilities interrupted by Designer/Builder's Work.
3. **Maintaining Utilities.** The Designer/Builder shall maintain in operation during duration of Contract, drainage lines, storm drains, sewers, water, gas, electrical, steam, and other utility service lines within working area.
4. **Alcohol & Firearms.** Designer/Builder shall ensure that no alcohol, firearms, weapons, or controlled substances enter or are used at the Site. Designer/Builder shall immediately remove from the Sites and terminate the employment of any employee(s) found in violation of this provision.
5. **Work during Instructional Time.** Designer/Builder affirms that Work may be performed during ongoing instruction in existing facilities. If so, Designer/Builder agrees to cooperate to the best of its ability to minimize any disruption to the school up to, and including, rescheduling specific work activities, at no additional cost to District.
6. **No Work during Student Testing.** Designer/Builder shall, at no additional cost to the District and at the District's request, coordinate its Work to not disturb District students including, without limitation, not performing any Work when students at the Sites are taking State-required tests.
7. **Badge Policy For Designer/Builders.** All Designer/Builders doing Work for the District will provide their workers with identification badges. These badges will be worn by all members of the Designer/Builder's staff who are working in a District facility.
 - 7.1. Badges must be filled out in full and contain the following information:
 - 7.1.1. Name of Designer/Builder
 - 7.1.2. Name of Employee
 - 7.1.3. Designer/Builder's address and phone number
 - 7.2. Badges are to be worn when the Designer/Builder or his/her employees are on site and must be visible at all times. Designer/Builders must inform their employees that they are required to allow District employees or the Project Inspector to review the information on the badges upon request.
 - 7.3. Failure to display identification badges as required by this policy may result in the assessment of fines against the Designer/Builder.
8. **Language.** Unacceptable and/or loud language will not be tolerated, "cat calls" or other derogatory language toward students or public will not be allowed.
9. **Disturbing the Peace (Noise and Lighting).**

- 9.1. Designer/Builder shall observe the noise ordinance of the Sites at all times including, without limitation, all applicable local, city, and/or state laws, ordinances, and/or regulations regarding noise and allowable noise levels.
- 9.2. The use of radios, etc., shall be controlled to keep all sound at a level that cannot be heard beyond the immediate area of use. The District reserves the right to prohibit the use of radios at the Site, except for handheld communication radios (e.g., Nextel phones or radios).
- 9.3. If portable lights are used after dark, all light must be located so as not to direct light into neighboring property.
- 9.4. Equipment and impact tools shall have intake and exhaust mufflers.
- 9.5. Designer/Builder shall cooperate with District to minimize and/or cease the use of noisy and vibratory equipment if that equipment becomes objectionable by its longevity.
- 9.6. Designer/Builder acknowledges that adjacent facilities may remain in operation during all or a portion of the Work period, and it shall take all reasonable precautions to minimize noise as required by applicable laws and the Contract Documents.
- 9.7. Notice of proposed noisy operations, including without limitation, operation of pneumatic demolition tools, concrete saws, and other equipment, shall be submitted to the District a minimum of forty-eight (48) hours in advance of their performance.

10. Utility Shutdowns And Interruptions.

- 10.1. Designer/Builder shall give the District a minimum of three (3) days written notice in advance of any need to shut off existing utility services or to effect equipment interruptions. The District will set exact time and duration for shutdown, and will assist Designer/Builder with shutdown. Work required to re-establish utility services shall be performed by the Designer/Builder.

11. Traffic.

- 11.1. Driving on the Premises shall be limited to periods when students and public are not present. If driving or deliveries must be made during the school hours, two (2) or more ground guides shall lead the vehicle across the area of travel. In no case shall driving take place across playgrounds or other pedestrian paths during recess, lunch, and/or class period changes. The speed limit on-the Premises shall be five (5) miles per hour (maximum) or less if conditions require.
- 11.2. All paths of travel for deliveries, including without limitation, material, equipment, and supply deliveries, shall be reviewed and approved by District in advance. Any damage will be repaired to the pre-damaged condition by the Designer/Builder.
- 11.3. The District shall designate a construction entry to the Site. If Designer/Builder requests, the District determines it is required, and to the extent possible, the District shall designate a staging area so as not to interfere with the normal functioning of school facilities. Location of gates and fencing shall be approved in advance with the District and at Designer/Builder's expense.
- 11.4. Parking areas shall be reviewed and approved by District in advance. No parking is to occur under the drip line of trees or in areas that could otherwise be damaged.

12. Barriers and Enclosures.

- 12.1. Designer/Builder shall obtain the District's written permission for locations and types of temporary barriers and enclosures, including fire-rated materials proposed for use, prior to their installation.

- 12.2. Designer/Builder shall provide and maintain temporary enclosures to prevent public entry and to protect persons using other buildings and portions of the Sites and/or Premises, the public, and workers. Designer/Builder shall also protect the Work and existing facilities from the elements, and adjacent construction and improvements, persons, and trees and plants from damage and injury from demolition and construction operations.
- 12.3. Designer/Builder shall provide site access to existing facilities for persons using other buildings and portions of the Site, the public, and for deliveries and other services and activities.

13. Tree and Plant Protection.

- 13.1. Designer/Builder shall preserve and protect existing trees and plants on the Premises that are not designated or required to be removed, and those adjacent to the Premises.
- 13.2. Designer/Builder shall provide barriers to a minimum height of 4'-0" around drip line of each tree and plant, around each group of trees and plants, as applicable, in the proximity of demolition and construction operations.
- 13.3. Designer/Builder shall not park trucks, store materials, perform Work or cross over landscaped areas. Designer/Builder shall not dispose of paint thinners, water from cleaning, plastering or concrete operations, or other deleterious materials in landscaped areas, storm drain systems, or sewers. Plant materials damaged as a result of the performance of the Work shall, at the option of the District and at Designer/Builder's expense, either be replaced with new plant materials equal in size to those damaged or by payment of an amount representing the value of the damaged materials as determined by the District.
- 13.4. Designer/Builder shall remove soil that has been contaminated during the performance of the Work by oil, solvents, and other materials which could be harmful to trees and plants, and replace with good soil, at Designer/Builder's expense.

14. Excavation around Trees.

- 14.1. Excavation within drip lines of trees shall be done only where absolutely necessary and with written permission from the District.
- 14.2. Where trenching for utilities is required within drip lines, tunneling under and around roots shall be by hand digging and shall be approved by the District. Main lateral roots and taproots shall not be cut. All roots 2 inches in diameter and larger shall be tunneled under and heavily wrapped with wet burlap so as to prevent scarring or excessive drying. Smaller roots that interfere with installation of new work may be cut with prior approval by the District. Roots must first be cut with a Vermeer, or equivalent, root cutter prior to any trenching.
- 14.3. Where excavation for new construction is required within drip line of trees, hand excavation shall be employed to minimize damage to root system. Roots shall be relocated in backfill areas wherever possible. If encountered immediately adjacent to location of new construction, roots shall be cut approximately 6 inches back from new construction.
- 14.4. Approved excavations shall be carefully backfilled with the excavated materials approved for backfilling. Backfill shall conform to adjacent grades without dips, sunken areas, humps, or other surface irregularities. Do not use mechanical equipment to compact backfill. Tamp carefully using hand tools, refilling and tamping until Final Acceptance as necessary to offset settlement.
- 14.5. Exposed roots shall not be allowed to dry out before permanent backfill is placed. Temporary earth cover shall be provided, or roots shall be wrapped with four layers of wet, untreated burlap and temporarily supported and protected from damage until permanently relocated and covered with backfill.

14.6. Accidentally broken roots should be sawed cleanly 3 inches behind ragged end.

15. Security.

15.1. The Designer/Builder shall be responsible for Project security for materials, tools, equipment, supplies, and completed and partially completed Work.

16. Dust and Dirt.

16.1. Designer/Builder shall conduct demolition and construction operations to minimize the generation of dust and dirt, and prevent dust and dirt from interfering with the progress of the Work and from accumulating in the Work and adjacent areas including, without limitation, occupied facilities.

16.2. Designer/Builder shall periodically water exterior demolition and construction areas to minimize the generation of dust and dirt.

16.3. Designer/Builder shall ensure that all hauling equipment and trucks carrying loads of soil and debris shall have their loads sprayed with water or covered with tarpaulins, and as otherwise required by local and state ordinance.

16.4. Designer/Builder shall prevent dust and dirt from accumulating on walks, roadways, parking areas, and planting, and from washing into sewer and storm drain lines.

17. Job Sign(s). Signs other than a District-approved Project sign and/or signs required by law, for safety, or for egress, shall not be permitted, unless otherwise approved in advance by the District.

18. Publicity Releases. Designer/Builder shall not release any information, story, photograph, plan, or drawing relating information about the Project to anyone, including press and other public communications medium, including, without limitation, on website(s).

19. COVID-19. Designer/Builder shall comply with all of the “COVID-19” provisions in the Contract Documents related to the Designer/Builder’s staffing requirements and its compliance with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with COVID-19, and/or any similar virus or derivative strain.

Exhibit D

LIST OF PLANS AND SPECIFICATIONS

The Parties agree to amend the Contract and replace this **Exhibit D** after execution of the Contract to include applicable technical plans, drawings, or specifications relevant to Designer/Builder's Scope of Work and required for plan check and permitting as generally included below.

Plans:

Specifications:

Exhibit E

[RESERVED]

Exhibit F

[RESERVED]

Exhibit G

REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS – 2 CFR PART 200

The following provisions are required and apply when federal funds are expended for any contract resulting from this procurement process.

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

The Parties recognize and agree that the Uniform Administrative Requirements, Cost Principles, and Audit Requirements (2 C.F.R. section 200, the “Uniform Guidance”) require that certain contracting terms be included in contracts funded by federal grants. The Parties further acknowledge that the District intends to use federal grant funds to make the payments to the Contractor that are required by this Agreement, and that such use of federal funds may subject the District to certain additional requirements, including the contracting and procurement standards set forth in the Uniform Guidance. Accordingly, the terms set forth below are included in order to comply with such specific federal requirements, and the Parties hereby agree to comply with such requirements, as well as those requirements addressed in the certifications in the Project Forms, as applicable.

a. **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Does Contractor agree? Yes _____ Initials of Authorized Representative

c. **PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.323)**

A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Does Contractor agree? Yes _____ Initials of Authorized Representative

d. **EQUAL EMPLOYMENT OPPORTUNITY**

The Parties may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, or because of age, disability, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position(s) do not require distinction on the basis of age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood. The Parties shall take affirmative action to insure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, disability, age, sex, marital status, changes in marital status, pregnancy or parenthood. The Parties shall comply with all applicable laws regarding equal employment opportunities.

Does Contractor agree? Yes _____ Initials of Authorized Representative

e. COPELAND ACT

All contracts and subgrants in excess of \$2,000 for construction or repair awarded by recipients and subrecipients of federal grants shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

Does Contractor agree? Yes _____ Initials of Authorized Representative

f. DAVIS-BACON ACT

When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination.

Does Contractor agree? Yes _____ Initials of Authorized Representative

g. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

All contracts awarded by federal grant recipients in excess of \$2,000 for construction contract and in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Does Contractor agree? Yes _____ Initials of Authorized Representative

h. REMEDIES

(A) Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulation Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Pursuant to Federal Rule (A) above, when federal funds are expended by Azusa Unified School District, the District reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does Contractor agree? Yes _____ Initials of Authorized Representative

i. CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387)

(C) Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended – Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to Federal Rule (C) above, when federal funds are expended by the District, the Contractor certifies that during the term of an award for all contracts resulting from this procurement process, the Contractor agrees to comply with all applicable requirements as referenced in Federal Rule (C) above.

Does Contractor agree? Yes _____ Initials of Authorized Representative

j. RECORD RETENTION REQUIREMENT (2 CFR § 200.333)

When federal funds are expended by the District for any contract resulting from this procurement process, the Contractor certifies that it will comply with the record retention requirement detailed in 2 CFR § 200.334. The Contractor further certifies that it will retain all records as required by 2 CFR § 200.334 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Does Contractor agree? Yes _____ Initials of Authorized Representative

k. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE

When federal funds are expended by the District for any contract resulting from this procurement process, the Contractor certifies that it will be in compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.; Pub. L. 94-163, 89 Stat.871).

Does Contractor agree? Yes _____ Initials of Authorized Representative

l. DEBARMENT AND SUSPENSION

Contractor shall certify that neither it nor its principals or subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency as required by Executive Order 12549 and 12689.

Does Contractor certify? Yes _____ Initials of Authorized Representative

m. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED

(E) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) – Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to Federal Rule (E) above, when federal funds are expended by the District, the Contractor certifies that during the term and after the awarded term of an award for all contracts by the District

resulting from this procurement process, the Contractor certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

The undersigned further certifies that:

(1) No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions. See Disclosure of Lobbying Activities.

(3) The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Does Contractor agree? Yes _____ Initials of Authorized Representative

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.