



**RFP 23-24-16  
REQUEST FOR PROPOSALS  
for  
TK Portable Buildings**

**Submittal Due on or Before:**  
April 1st, 2024 at 1:00 PM

**Deliver To:**  
**Oro Grande School District**  
19900 National Trails Hwy  
Oro Grande, CA 92368  
Attention: Purchasing Department

**For Additional Information Contact:**  
**Nick Higgs | Executive Director  
of Maintenance/Operations**  
[Nick.Higgs@orogrande.org](mailto:Nick.Higgs@orogrande.org)

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**NOTICE TO BIDDERS**

NOTICE IS HEREBY GIVEN that the Oro Grande School District of San Bernardino County, California, acting by and through its Board of Education, hereinafter referred to as the District, will receive up to, but no later than, **1:00 PM, on 4/1/2024**, sealed bids for the purchase of:

**TK Portable Buildings**

**Bid No. 23-24-16**

Oro Grande School District ("District") is requesting proposals from qualified providers for TK Portable Buildings to include Delivery and Installation. The selected Vendor will be responsible for meeting or exceeding all specifications listed in this Request for Proposal (RFP).

Proposals must be submitted in a sealed envelope, and returned by mail or in person to the Oro Grande School District, Purchasing Department, 19900 National Trails Hwy, Oro Grande, Ca 92368 or via email to [bids@orogrande.org](mailto:bids@orogrande.org). All proposals must be clearly marked with bid number and title.

It is the Respondent's sole responsibility to ensure that its documents have been received in the Purchasing Department prior to the scheduled closing time for receipt of the Request For Proposals. Proposals received later than the designated time and specified will be returned to the bidder unopened. Facsimile submittals of the proposal will not be accepted.

The District reserves the right to accept or reject any or all proposals or any combination thereof and to waive any informality in the bidding process.

Copies of the bid documents may be obtained from the Oro Grande School District website: [https://www.orogrande.net/departments/business\\_services/purchasing](https://www.orogrande.net/departments/business_services/purchasing) or by contacting April Lara in our Purchasing Department via email to [bids@orogrande.org](mailto:bids@orogrande.org). Please note the Bid No in your email.

**TIMELINE**

Initial RFP Posting & Official Notice on 3/18/2024

**RFP Questions Due from Proposers at 10:00 AM on 3/25/2024**

Districts Response to Questions by 2:00 PM on 3/27/2024

**RFP Responses Due/Public Bid Opening 1:00 PM on 4/1/2024**

Notification of Selected Vendor on or before 4/5/2024

*\* Subject to change at District discretion*

## **PURPOSE**

Oro Grande School District is seeking proposals from qualified providers to deliver and install Portable Buildings to the Oro Grande School District for Transitional Kindergarten.

## **BACKGROUND**

Oro Grande School District empowers students and their families through extraordinary educational choice, excellence in education, a safe environment to learn, rigor in all endeavors, and high expectations. We create schools where all students belong, thrive, and succeed. The Oro Grande School district is located in the town of Oro Grande, California and is composed of four schools, all of which are charter schools or academies that take in students from outside the district. Oro Grande Elementary School, Riverside Preparatory School, and Mojave River Academy. Oro Grande Elementary School serves grades Kindergarten through six in a college preparatory setting. It is the only non-charter school. Riverside Preparatory School comprises of three schools. Riverside Preparatory Elementary, Riverside Preparatory Middle School, Riverside Preparatory High School; all located within the city of Oro Grande. Mojave River Academy serves grades Kindergarten through grade twelve in an Independent Study program. Under the Mojave River Academy Charter system, Oro Grande School District has offices 11 cities outside of Oro Grande located in Bakersfield, Barstow, Beaumont, Colton, Desert Hot Springs, Fontana, Hesperia, Palm Springs, Phelan, Tehachapi, Victorville.

## **INSTRUCTIONS TO BIDDERS**

1. Preparation of BID Proposal: The Oro Grande School District (“DISTRICT”) invites bids on the form attached to be submitted at the time and place stated in the Notice Inviting Bids. Bids (“Bid” or “Bids”) shall be submitted on the prescribed bid form, completed in full. All bid items and statements shall be properly filled out. Numbers shall be stated both in words and in figures where so indicated, and where there is a conflict in the words and the figures, the words shall govern. The signatures of all persons signing the Bid shall be in longhand and in permanent blue ink. Prices, wording and notations must be in ink or typewritten. Erasures or other changes shall be noted over by the signature of the person signing the Bid.

### 2. Questions

1. In order for Bidder to receive answers to questions or addenda, DISTRICT must receive the information by the date specified in the timeline. If Bidder does not receive confirmation from DISTRICT that its information has been received, Bidder must contact DISTRICT to ensure DISTRICT received the information.
2. All questions raised by Bidders will be answered with an Addendum to the bid, each Addendum will be posted on the District website.

3. Form and Delivery of Bids: The Bid shall be made on the bid form provided, and the complete Bid together with any and all additional materials as required by the Contract Documents, as defined in the Agreement, shall be enclosed in a sealed envelope, addressed and delivered or mailed to DISTRICT’s Purchasing Department Attn: April Lara, mailing address: PO Box 386, Oro Grande, Ca 92368 and must be received on or before the time set forth in the Notice Inviting Bids for the opening of bids. The envelope shall be plainly marked with Bidder’s name, address, the Bid # and the date and time for opening of bids. It is the Bidder’s sole responsibility to ensure that its Bid has been received in the Purchasing Department prior to the scheduled closing time for receipt of bids. In accordance with Government Code section 53068, any Bid received after the scheduled closing time for receipt of bids or after any extension due to material changes shall be returned to the Bidder unopened. At the time set forth in the Notice Inviting Bids for the opening of bids, the sealed Bids will be opened and read out loud.

4. Signature: Any signature required on the Contract Documents must be signed in the name of Bidder, must bear the signature of the person or persons duly authorized to sign the documents, and must be in permanent blue ink. If Bidder is a corporation, the legal name of the corporation shall first be set forth, together with either: (a) two signatures: one from among the chairman of the board, president or any vice president (collectively, the “Operational Officers”) and one from among the secretary, any assistant secretary, chief financial officer, or any assistant treasurer (collectively, the “Financial Officers”); or (b) one signature, provided that the corporate officer holds at least one office as an Operational Officer and one office as a Financial Officer for the corporation; or (c) one signature of an officer or agent, provided that a properly executed corporate resolution authorizing such person to sign on behalf of and bind the corporation is submitted with the Bid. Such documents shall include the title of such signatories below the signature and shall bear the corporate seal. If Bidder is a joint venture or partnership, there shall be submitted with the Bid, certifications signed by authorized officers of each of the parties to the joint venture or partnership, naming the individual who shall sign all necessary documents for the joint venture or partnership and, should the joint venture or partnership be the successful bidder, the individual who shall act in all matters relative to the Contract resulting therefrom for the joint venture or partnership. If Bidder is an individual, his/her signature shall be placed on such documents.

5. Modifications: Bidder shall not modify the Bid Form. Bidder shall not submit to the District a re-formatted, re-typed, altered, modified, or otherwise recreated version of the Bid Form or other District-provided documents. Changes in or additions to the bid form, recapitulations of the work bid upon, alternative proposals, or any other modification of the bid form which is not specifically called for in the Contract Documents may result in DISTRICT's rejection of the Bid as not being responsive to the invitation to bid. No oral or telephonic modification of any Bid submitted will be considered.

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

7. Examination of Contract Documents: At its own expense and prior to submitting its Bid, each Bidder shall examine the Contract Documents; familiarize itself with all federal, state and local laws, ordinances, rules, regulations and codes affecting the performance of the Bid; determine the character, quality, and quantity of the equipment, materials and/or supplies to be provided; and correlate its observations, investigations, and determinations with the requirements of the Contract Documents. The failure or omission of any Bidder to receive or examine any contract document, form, instrument, addendum, or other document shall in no way relieve any Bidder from any obligation with respect to its Bid or to the Contract. The submission of a Bid shall be incontrovertible evidence that the Bidder has complied with all the requirements of this provision of the Instructions to Bidders. Bidders shall not at any time after submission of the Bid, dispute, complain, or assert that there were any misunderstandings with regard to the nature or quantity of equipment, materials and/or supplies to be provided. EXECUTION OF CONTRACT – ISSUANCE OF A PURCHASE ORDER SHALL BE EVIDENCE.

8. Award of Contract: DISTRICT reserves the right to reject any or all Bids, or to waive any irregularities or informalities in any Bid or in the bidding. If two identical low Bids are received from responsible Bidders, DISTRICT will determine which Bid will be accepted pursuant to Public Contract Code section 20117. The award of the Contract, if made by DISTRICT, will be by action of the Governing Board and to the lowest responsible Bidder therefore from among those Bidders responsive to the call for bids. Each Bid must conform and be responsive to the Contract Documents.

9. Competency of Bidders: In selecting the lowest responsible Bidder, consideration will be given not only to the financial standing but also to the general competency of Bidder for the performance of the work or the supply of equipment and/or supplies covered by the Bid. By submitting a Bid, each Bidder agrees that DISTRICT, in determining the successful Bidder and its eligibility for the award, may consider Bidder's experience and facilities, conduct and performance under other contracts, financial condition, reputation in the industry, and other factors which could affect Bidder's performance of the work or the supply of equipment and/or supplies. To this end, each Bid shall be supported by a completed and pre-approved pre-qualification packet. Packets shall be completed online and will be accepted up until the date specified in the timeline. In addition, DISTRICT may conduct such investigations as DISTRICT deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidder to do the work and/or supply equipment and/or supplies in accordance with the Contract Documents to DISTRICT's satisfaction within the prescribed time; and DISTRICT reserves the right to reject the Bid of any Bidder who does not pass any such evaluation to the

satisfaction of DISTRICT. If the work or supply of equipment and/or supplies requires a license, no Bid will be accepted from a Bidder who is not licensed in accordance with applicable State law.

10. Workers' Compensation: In accordance with the provisions of Section 3700 of the Labor Code, Bidder shall secure the payment of compensation to all employees. Bidder shall sign and file with DISTRICT together with the executed Agreement the following certificate prior to performing the work or providing the equipment and/or supplies under the Contract: "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 prior to the execution of the Agreement." The form of such certificate is included as a part of the Contract Documents.

11. Anti-Discrimination: It is the policy of DISTRICT that in connection with all work performed under contracts, there be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, age, physical disability, mental disability, medical condition, or marital status. Bidder agrees to comply with applicable federal and California laws including, but not limited to, the California Fair Employment and Housing Act, beginning with Government Code section 12900, and Labor Code section 1735.

12. Hold Harmless: Bidder shall indemnify and hold harmless DISTRICT, its officers, agents, and employees from every claim or demand made, and every liability, loss, damage, or expense, of any nature whatsoever, which may be incurred by reason of:

3. Liability for damages for (1) death or bodily injury to persons; (2) injury to, loss or theft of property; or (3) any other loss, damage or expense arising under either (1) or (2) above, sustained by Bidder or any person, firm or corporation employed by Bidder upon or in connection with the work and/or delivery of equipment and/or supplies called for in the Agreement, except for liability resulting from the sole negligence, or willful misconduct of DISTRICT, its officers, employees, agents or independent contractors who are directly employed by DISTRICT.
4. Any injury to or death of persons or damage to property caused by any act, neglect, default or omission of Bidder, or any person, firm, or corporation employed by Bidder, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm or corporation, including DISTRICT, arising out of, or in any way connected with the work and/or delivery of equipment and/or supplies covered by the Agreement, whether said injury or damage occurs either on or off DISTRICT property, if the liability arose from the negligence or willful misconduct of anyone employed by Bidder, either directly or by independent contract, and not by the active negligence of DISTRICT.
5. Any failure or alleged failure to comply with any provision of law or the Contract Documents.
6. Any dispute between Bidder and its subcontractors/ suppliers/ sureties, including, but not limited to, any failure or alleged failure of Bidder (or any person hired or employed directly or indirectly by Bidder) to pay any subcontractor or materialman of any tier or any other person employed in connection with the work and/or delivery of equipment and/or supplies and/or filing of any stop notice or mechanic's lien claims.
7. Bidder, at Bidder's own expense, cost and risk shall defend any and all actions, suits, or other proceedings that may be brought or instituted against DISTRICT, its officers, agents or employees, or any such claim or liability, and shall pay or satisfy any judgment that may be rendered against DISTRICT, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

13. Excise Taxes.

8. Bidder will pay all applicable federal, state and local taxes on all materials, labor, or services furnished by it; and all taxes arising out of its operations under the Contract Documents.
9. If under federal excise tax law any transaction hereunder constitutes a sale on which a federal excise tax is imposed and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, DISTRICT, upon request, will execute documents necessary to show (1) that DISTRICT is a political subdivision of the State of California for the purposes of such exemption and (2) that the sale is for the exclusive use of DISTRICT. No excise tax for such materials shall be included in any Bid price.

14. Sales Tax: Bidder shall include San Bernardino County, California sales tax in its Bid (7.75%) as outlined on the Bid Form.

15. Delivery Charges: Bids must be priced F.O.B. destination unless the Contract Documents invite quotations for delivery and freight to be set apart or as separate cost items.

16. Status of Bidder: Bidder is, and shall at all times be deemed to be, an independent contractor and shall be wholly responsible for the manner in which it performs the work or services required of it by the terms of the Agreement. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between DISTRICT and Bidder or any of Bidder's agents or employees. Bidder assumes exclusively the responsibility for the acts of its employees as they relate to the work or services to be provided during the course and scope of their employment. Bidder, its agents and employees shall not be entitled to any rights or privileges of DISTRICT employees and shall not be considered in any manner to be DISTRICT employees. DISTRICT shall be permitted to monitor the activities of the Bidder to determine compliance with the terms of the Agreement.

17. Prohibited Interests: No DISTRICT official who is authorized in such capacity and on behalf of DISTRICT to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving the Contract, shall become directly or indirectly interested financially in the Contract or in any part thereof. Bidder shall receive no compensation and shall repay DISTRICT for any compensation received by Bidder hereunder, should Bidder aid, abet or knowingly participate in violation of this section.

18. District's Right to Terminate Contract:

a. Termination for Cause

10. If Bidder refuses or fails to deliver the equipment or supplies with such diligence as will insure its complete delivery within the time specified or any extension thereof, or if Bidder should be adjudged bankrupt, or if Bidder should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or if it should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to perform work or deliver equipment and/or supplies as to ensure complete delivery within the time specified, or if Bidder persistently disregards laws, ordinances or instructions of DISTRICT, or if Bidder should otherwise be guilty of a substantial violation of any provision of the Agreement, then Bidder shall be deemed to be in default of the Agreement and DISTRICT may, without prejudice to any other right or remedy, serve written notice upon Bidder of DISTRICT's intention to terminate the Agreement. The notice shall contain the reasons for such intention to terminate, and unless within ten (10) days after the service of such notice such condition shall cease or such violation shall cease and arrangements satisfactory to DISTRICT for the correction thereof be



made, the Agreement shall upon the expiration of said ten (10) days, cease and terminate. In such case, Bidder shall not be entitled to receive any further payment until performance is completed.

11. In the event of any such termination, DISTRICT shall immediately serve written notice thereof upon surety and Bidder, and surety shall have the right to take over and perform the Agreement, provided, however, that if surety within seven (7) days after service upon it of said notice of termination does not give DISTRICT written notice of its intention to take over and perform the Agreement or does not commence performance thereof within fifteen (15) days from date of serving such notice of termination by DISTRICT on surety, DISTRICT may take over the work and prosecute same to completion by contract or by any other method it may deem advisable for the account and at the expense of Bidder. Bidder and its surety shall be liable to DISTRICT for any excess cost or other damages occasioned DISTRICT thereby. Time is of the essence in the Agreement. If DISTRICT takes over the work as hereinabove provided, DISTRICT may, without liability for so doing, take possession of and utilize in completing the work such materials, appliances, plant, and other property belonging to Bidder as may be on the site of the work and necessary therefor.

iii. If the unpaid balance of the Contract price shall exceed the expense of completing performance under the Agreement, including compensation for additional services, such excess shall be paid to Bidder. If such expense shall exceed such unpaid balance, Bidder shall pay the difference to DISTRICT.

b. Termination for Convenience.

12. DISTRICT may, at any time, terminate the Contract for DISTRICT's convenience and without cause.
13. Upon receipt of written notice from DISTRICT of such termination for DISTRICT's convenience, Bidder shall:
  - 13.1. Cease operations as directed by DISTRICT in the notice;
  - 13.2. Take actions necessary, or that DISTRICT may direct, for the protection and preservation of the work; and
  - 13.3. Not terminate any insurance provisions required by the Contract Documents.
14. In case of such termination for DISTRICT's convenience, Bidder shall be entitled to receive payment from DISTRICT for work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including overhead and profit for that portion of the work completed, and reasonable proven damages.

c. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to DISTRICT.

19. Substitution for Specified Items: Whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specification shall be deemed to be used for the purpose of facilitating the description of the material, process or article desired and shall be deemed to be followed by the words "or equal," and Bidder may, under the provisions of Public Contract Code section 3400, unless otherwise stated, offer any material, process, or article which shall be substantially equal or better in every respect to that so indicated or specified. If the material, process or article offered by Bidder is not, in the opinion of DISTRICT, substantially equal or better in every respect to that specified, then Bidder shall furnish the material, process, or article specified.

15. With respect to major equipment or material items listed in the bid, unless Bidder clearly indicates in its Bid that it is proposing to use an "equal" product, its Bid shall be considered as offering a product referred to by the brand name specified for the equipment or material items

listed in the bid. The brand name, if any, of the proposed substitute product shall be inserted in the space provided in the Bid Proposal. The awarding of the Contract to a Bidder who has indicated in its Bid that it is proposing to use an “equal” product shall not constitute an admission by DISTRICT of the equality of that product. It is expressly understood and agreed by Bidder that, in so awarding the Contract, DISTRICT reserves the right to reject any such proposed substituted product. It is further expressly understood and agreed by Bidder that in the event DISTRICT rejects a proposed “equal” product, Bidder will then supply either a product designated by brand name in the specifications or a substitute therefore which meets with the approval of DISTRICT.

16. With respect to all proposed substitutions of “equal” products, both items of equipment and that of any materials, process, or article specified in the Contract Documents, no substitutions shall be made until approved, in writing, by DISTRICT. The burden of proof as to equality of major equipment or any material, process, or article shall rest with Bidder. Bidder shall submit with its Bid any request for substitution, together with complete manufacturer’s catalogs, brochures, drawings, samples, certified copies of test reports and other substantiating data for substitution of an “or equal” item. In this regard, Bidder should note that DISTRICT is not responsible for locating or securing any information which is not included in such substantiating data. The provisions included in this section authorizing submission of “or equal” justification data shall not in any way authorize an extension of time for performance of the Agreement. Unless extended by mutual agreement of the parties, DISTRICT shall notify the Bidder of its decision concerning the proposed substitution of “equal” items within five (5) days after the Contract has been awarded. Such a decision shall be final and conclusive.
17. The time limitations contained in this section shall be complied with strictly. Should Bidder fail to request the substitution of an alternative item at the times and in the manner set forth herein, the Bid submitted by Bidder shall be considered as offering the product(s) referred to by the brand name(s) specified for the equipment or material, process or article listed in the Contract Documents.
18. In the event that Bidder furnishes equipment, supplies or materials more expensive than that specified, the difference in cost of such equipment, supplies or materials so furnished shall be borne by the Bidder.
19. By making requests for substitutions, Bidder:
  - 19.1. represents that Bidder has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
  - 19.2. represents that Bidder will provide the same warranty for the substitution that Bidder would for that specified;
  - 19.3. certifies that the cost data presented is complete and includes all related costs under the Agreement except DISTRICT’s costs, and waives all claims for additional costs related to the substitution which subsequently become apparent;
  - 19.4. will coordinate the installation of the accepted substitute, making such changes as may be required for completing performance under the Agreement in all respects.

20. Delivery of Equipment and/or Supplies: All work required by the Contract Documents must be completed within the time limits set forth in the Notice Inviting Bids. Should Bidder fail to complete all such work in a timely manner, Bidder shall be deemed to be in default and DISTRICT may avail itself of any or all legal or equitable remedies.

21. Drug-Free Workplace Certification: Pursuant to Government Code sections 8350 et seq., Bidder will be required to execute a Drug-Free Workplace Certificate upon execution of the Agreement. Bidders will be required to take positive measures outlined in the certificate in order to ensure the presence of a

drug-free workplace. Failure to abide with the conditions set forth in the Drug-Free Workplace Act could result in penalties including termination of the Agreement or suspension of payment thereunder.

22. Patents, Royalties, and Indemnities: Bidder shall hold and save DISTRICT and its officers, agents, and employees harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by DISTRICT, unless otherwise specifically provided in the Contract Documents, and unless such liability arises from the sole negligence, or active negligence, or willful misconduct of DISTRICT or its officers, agents, or employees.

23. Protection of Persons and Property: Bidder has been advised and is aware that DISTRICT has adopted Board Policy which prohibits the use of tobacco products, including smokeless tobacco, anywhere on DISTRICT property. Bidder shall be responsible for the enforcement of DISTRICT's tobacco-free policy among all Bidder's employees and subcontractors while on DISTRICT property. Bidder understands and agrees that should any employee or subcontractor of Bidder violate Board Policy, after having already been warned once for violating DISTRICT's tobacco-free policy, Bidder shall remove the individual from the Project for the duration of the Agreement. Bidder shall not be entitled to any additional compensation and/or time in completing performance of the Agreement as a result of such removal.

20. Bidder shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of the Contract and shall take all necessary measures and be responsible for the proper care and protection of all materials delivered until completion and final acceptance by DISTRICT.
21. Bidder shall provide evidence of insurance with the following minimum limit of liability:
  - 21.1. Public Liability Insurance for injuries, including accidental death, to any one person in an amount not less than \$1,000,000, and subject to the same limit for each person on account of one accident, in an amount not less than \$1,000,000. Excess Liability (Umbrella) Insurance in an amount not less than \$2,000,000.
  - 21.2. Property Damage Insurance in an amount not less than \$1,000,000.
  - 21.3. Automobile and Truck Insurance in an amount not less than \$1,000,000 per person, per accident.
  - 21.4. Workers' Compensation with statutory limits and Employer's Liability Insurance with limits of liability of not less than \$1,000,000 for bodily injury by accident; \$1,000,000 per employee for bodily injury by disease, and \$1,000,000 for bodily injury by disease.
22. Bidder shall name DISTRICT as an additional insured in all policies, all of which shall be open to inspection by all parties in interest. A minimum 30-day notice of cancellation is required. The Insurance Certificate/Additional Insured section shall be project specific. Bidder shall not commence performance of the Contract without such proof of insurance. Bidder shall provide proof of insurance coverage to DISTRICT within 72 hours subsequent to the submission of the Bid or shall be deemed non responsive.

24. Bidder Claims: If Bidder shall claim compensation for any damage sustained by reason of the acts of DISTRICT or its agents, Bidder shall, within five (5) days after sustaining such damage, make to DISTRICT a written statement of the damage sustained. On or before the fifteenth (15th) day of the month succeeding that in which such damage shall have been sustained, Bidder shall file with DISTRICT an itemized statement of the details and amount of such damage, and unless such statement shall have been made as thus required, Bidder's claims for compensation shall be forfeited and invalidated and it shall not be entitled to consideration for payment on account of any such damage.

25. Non-Conforming Equipment and Supplies: Bidder shall promptly remove from the premises all equipment or supplies delivered by Bidder and identified by DISTRICT as failing to conform to the Contract, whether incorporated or not. Bidder shall promptly replace the non-conforming equipment and supplies to comply with the Contract Documents without additional expense to DISTRICT and shall bear the expense of making good all property destroyed or damaged by such removal or replacement. If Bidder does not remove such equipment or supplies within a reasonable time, fixed by written notice, DISTRICT may remove it and store the material at Bidder's expense. If Bidder does not pay the expenses of such removal within ten (10) days thereafter, DISTRICT may, upon ten (10) days written notice, sell such materials at auction or at private sale and shall account for the net proceeds thereof, after deducting all costs and expenses that should have been borne by the Bidder.

26. Assignment of Antitrust Actions: Section 7103.5(b) of the Public Contract Code provides:

i. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body [DISTRICT] all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

Bidder agrees to assign to DISTRICT all rights, title, and interest in and to all such causes of action Bidder may have under the Contract. This assignment shall become effective at the time DISTRICT tenders final payment to Bidder.

27. Notice and Service Thereof: Any notice from one party to the other or otherwise under the Contract shall be in writing and shall be dated and signed by the party giving such notice or by a duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in one of the following manners:

23. If notice is given to DISTRICT, by personal delivery thereof to DISTRICT or by depositing same in the United States mail, enclosed in a sealed envelope addressed to DISTRICT, and sent by registered or certified mail with postage prepaid;
  24. If notice is given to Bidder, by personal delivery thereof to said Bidder or by depositing same in the United States mail, enclosed in a sealed envelope addressed to said Bidder at its regular place of business or at such other address as may have been established for the conduct of work under the Contract, and sent by registered or certified mail with postage prepaid; or
  25. If notice is given to surety or other persons, by personal delivery to such surety or other person or by depositing same in the United States mail, enclosed in a sealed envelope, addressed to such surety or person at the address of such surety or person last communicated by surety or other person to party giving notice, and sent by registered or certified mail with postage prepaid.
26. 28. No Assignment: Bidder shall not assign, transfer, convey, sublet or otherwise dispose of the Contract or of its rights, obligations, title or interest in or to the same or any part thereof, without the previous written consent of DISTRICT; and Bidder shall not assign, by power of attorney or otherwise, any of the monies to become due and payable under the Contract unless by and with the like consent signified in like manner. If Bidder shall, without previous written consent, assign, transfer, convey, sublet or otherwise dispose of the Contract or its rights, obligations, title or interest therein, or of any of the monies to become due under the Contract, to any other person,

company, or other corporation, such attempted or purported assignment, transfer, conveyance, sublease or other disposition shall be null, void and of no legal effect whatsoever; and the Contract may, at the option of DISTRICT, be terminated, revoked and annulled, and DISTRICT shall thereupon be relieved and discharged from any and all liability and obligations growing out of the same to Bidder, and to its purported assignee or transferee. No right under the Contract, nor any right to any money to become due hereunder, shall be asserted against DISTRICT in law or equity by reason of any purported assignment of the Contract, or any part thereof, or by reason of the purported assignment of any monies to become due hereunder, unless authorized as set forth herein by written consent of DISTRICT. Any assignment of money due or to become due under the Contract shall be subject to a prior lien for services rendered or material supplied for performance of work called for under the Contract in favor of all persons, firms or corporations rendering such services or supplying such materials to the extent that the claims are filed pursuant to the Civil Code, Government Code and/or Code of Civil Procedure and shall also be subject to withholding of payments as determined by DISTRICT in accordance with the Contract.

27. 29. No Waiver: The failure of DISTRICT in any one or more instances to insist upon strict performance of any of the terms of the Agreement or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.
28. 30. Bid Protest. A bidder may protest a bid award if he/she believes that the award is not in compliance with law, Board policy, or the bid specification.
  - 28.1. A protest must be filed in writing with the Superintendent or designee within (5) five working days after receipt of notification of the contract award and shall include all documents supporting or justifying the protest.
  - 28.2. A bidder's failure to file the protest documents in a timely manner shall constitute a waiver of his/her right to protest the award of the contract.
  - 28.3. Only a Bidder who has actually submitted a bid, and who could be awarded the Contract if the bid protest is upheld, is eligible to submit a bid protest.
  - 28.4. A Bidder may not rely on the bid protest submitted by another Bidder.
  - 28.5. A bid protest must contain a complete statement of any and all bases for the protest and all supporting documentation. Materials submitted after the bid protest deadline will not be considered.
  - 28.6. The protest must refer to the specific portions of all documents that form the basis for the protest.
    - 28.6.1. Without limitation to any other basis for protest, an inadvertent error in listing the California Vendor's license number on the Designated SubVendors List shall not be grounds for filing a bid protest or grounds for considering the bid non responsive if the correct Vendor's license number is submitted to the District within 24 hours after the bid opening and the corrected number corresponds with the submitted name and location for that subVendor.
    - 28.6.2. Without limitation to any other basis for protest, an inadvertent error listing an unregistered sub Vendor shall not be grounds for filing a bid protest or grounds for considering the bid non responsive provided that any of the following apply:
      - 28.6.2.1. The sub Vendor is registered prior to the bid opening.
      - 28.6.2.2. The sub Vendor is registered and has paid the penalty registration fee within 24 hours after the bid opening.
      - 28.6.2.3. The sub Vendor is replaced by another registered sub Vendor pursuant to

Public Contract Code section 4107.

- 28.6.3. The protest must include the name, address and telephone number of the person representing the protesting party.
- 28.6.4. The party filing the protest must concurrently transmit a copy of the protest and any attached documentation to all other parties with a direct financial interest that may be adversely affected by the outcome of the protest. Such parties shall include all other bidders or proposers who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.
- 28.6.5. The procedure and time limits set forth in this paragraph are mandatory and are each bidder's sole and exclusive remedy in the event of bid protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the bid protest, including filing a Government Code Claim or legal proceedings.
- 28.6.6. The Superintendent or designee shall review the documents submitted with the bidder's claims and render a decision in writing within 30 working days. The Superintendent or designee may also convene a meeting with the bidder in order to attempt to resolve the problem.
- 28.6.7. The bidder may appeal the Superintendent or designee's decision to the Board. The Superintendent or designee shall provide notice to the bidder of the date and time for Board consideration of the protest at least three business days before the Board meeting. The Board's decision shall be final.

**SCOPE**

- Three (3) Portable Buildings
  - Must be DSA Approved
  - Used/Refurbished
- Delivery
- Installation
- Dimensions
  - 40' Long
  - 24' Wide
- Flooring
  - Substandard/wood
- Steps & Ramps
  - Access Ramp
- Foundation to be Installed on
  - Asphalt
- Payment Terms
  - 12 Month Lease
  - Option to Extend 1 year each

**REQUIRED BID FORMS**

The following forms must be completed and submitted with the bid. Failure to provide all documents enumerated below may result in the bidder's bid being deemed non-responsive.

- ☐ Bid Form
- ☐ Designation of Subcontractor
- ☐ Substitution Request Form
- ☐ Bid Bond
- ☐ Non-Collusion Affidavit



**BID FORM**

TO: ORO GRANDE SCHOOL DISTRICT, acting by and through its Governing Board, herein called the "DISTRICT"

FROM:

---

Proper Name of Bidder ("Bidder")

1. Pursuant to your Notice Inviting Bids and the other documents relating thereto, the undersigned Bidder, having become familiarized with the terms of the complete Contract Documents, as defined in the Agreement, the local conditions affecting the performance of the Contract, as defined in the Agreement, and the cost of the work at the place where the work is to be done, hereby proposes and agrees to be bound by all the terms and conditions of the Contract Documents and agrees to perform, within the time stipulated, the Contract, including all of its component parts, and everything required to be performed, and to provide and furnish any and all of the labor, materials, tools, expendable equipment, and all applicable taxes, utility and transportation services necessary to perform the Contract and complete in a good workmanlike manner all of the work required in connection with **Bid No: 23-24-16 TK Portable Buildings**, all in strict conformity with the Contract Documents.

2. **ADDENDA:** The undersigned has thoroughly examined any and all Addenda (if any) issued during the bid period and is thoroughly familiar with all contents thereof and acknowledges receipt of the following Addenda: (Bidder to list all addenda).

ADDENDUM NO. \_\_\_\_\_ DATE RECEIVED \_\_\_\_\_

ADDENDUM NO. \_\_\_\_\_ DATE RECEIVED \_\_\_\_\_

ADDENDUM NO. \_\_\_\_\_ DATE RECEIVED \_\_\_\_\_

ADDENDUM NO. \_\_\_\_\_ DATE RECEIVED \_\_\_\_\_

3. **LEASE COST PER MONTH PER BUILDING (1 YEAR LEASE):**

\_\_\_\_\_ Dollars and \_\_\_\_\_ Cents.  
(\$\_\_\_\_\_). Said sums include all applicable taxes and costs.

**WARRANTIES** (Please provide warranty information, attach separate page(s) as needed)

4. **INSTALLATION:** \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents. (\$\_\_\_\_\_). Said sums include all applicable taxes and costs.

5. **DELIVERY:** \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents. (\$\_\_\_\_\_). Said sums include all applicable taxes and costs.

6. In submitting this Bid, the Bidder acknowledges that the Instructions to Bidders is an

integral part of the Contract Documents and that the Instructions to Bidders has been read, understood and accepted by Bidder. Bidder understands and agrees not to disclaim knowledge of the meaning and effect of any term or provision of the Instructions to Bidders and agrees to strictly abide by their meaning and intent.

7. It is understood that DISTRICT reserves the right to reject this Bid and that this Bid shall remain open and not be withdrawn for the period specified in the Notice Inviting Bids
8. The required Information Required of Bidder is hereto attached.
9. The required Non-collusion Affidavit is hereto attached.
10. The required Substitution Request Form is hereto attached.
11. It is understood and agreed that if written notice of the acceptance of this Bid is mailed or delivered to the undersigned after the opening of the Bid, and within the time this Bid is required to remain open, or at any time thereafter before this Bid is withdrawn, the undersigned will execute and deliver to DISTRICT a contract in the form attached hereto in accordance with the Bid as accepted, and that the undersigned will also furnish and deliver to DISTRICT all other documents specified in Section 3 of the Instructions to Bidders within five (5) calendar days after receipt of notification of award, and that the work under the Contract shall be commenced by the undersigned Bidder, if awarded the Contract on the date to be stated in DISTRICT's Notice to Proceed delivered to Bidder, and shall be completed by Bidder in the time specified in the Contract Documents.
12. Communications conveying acceptance of bids, requests for additional information or other correspondence should be addressed to the undersigned at the address stated below.

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13. The name of all persons interested in the foregoing proposal as principals are as follows:
- 
- 

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

14. Pursuant to Government Code section 4552, in submitting this Bid, Bidder offers and agrees

that if the Bid is accepted, it will assign to DISTRICT all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Business & Professions Code section 16700 et seq.) arising from the purchase of goods, materials, or services by Bidder for sale to DISTRICT pursuant to the Bid. Such assignment shall be made and become effective at the time DISTRICT tenders final payment to Bidder.

15. If Bidder is a corporation, the undersigned hereby represents and warrants that the corporation is duly incorporated and is in good standing in the State of \_\_\_\_\_ and that \_\_\_\_\_ whose title is \_\_\_\_\_ and \_\_\_\_\_ whose title is \_\_\_\_\_ is/are authorized to act for and bind the corporation. See Section 4 of the Instructions to Bidders for additional information.
16. It is understood and agreed that, should Bidder fail or refuse to return executed copies of the Agreement, each of the certificates specified in Section 3 of the Instructions to Bidders and required bonds to DISTRICT within five (5) calendar days of receiving notice of the award of the Contract to Bidder, the successful bidder shall be deemed to be in default, and the DISTRICT may award the Contract to the next lowest bidder.
17. Bidder hereby certifies that it is, and at all times during the performance of work hereunder shall be, in full compliance with the provisions of the Immigration Reform and Control Act of 1986 ("IRCA") in the hiring of its employees, and Bidder shall indemnify, hold harmless and defend DISTRICT against any and all actions, proceedings, penalties or claims arising out of Bidder's failure to comply strictly with IRCA.
18. It is understood and agreed that, if requested by DISTRICT, Bidder shall furnish a notarized financial statement, references, and other information sufficiently comprehensive to permit an appraisal of its current financial condition.

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

\_\_\_\_\_  
Proper Name of Company

\_\_\_\_\_  
Name of Bidder Representative

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, and Zip

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

\_\_\_\_\_  
EMail Address

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

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

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

**All signatures must be made in permanent blue ink.**

**DESIGNATED SUBCONTRACTORS LIST**

1. Bidder must list hereinafter the name and location of each subcontractor who will be employed, and the scope of Work that each will perform if the Contract is awarded to the Bidder. Bidder acknowledges and agrees that under Public Contract Code section 4100, et seq., it must clearly identify the name and location of each subcontractor who will perform work or labor or render service to the Bidder in or about the construction of the Work in an amount in excess of one-half of one percent (0.5%) of Bidder's total Bid.
2. As to any Work that Bidder fails to list, Bidder agrees to perform that portion itself or be subjected to penalty under applicable law.
3. If alternate bids are called for and Bidder intends to use Subcontractors different from or in addition to those Subcontractors listed for work under the base Bid, Bidder must list Subcontractors that will perform Work in an amount in excess of one half of one percent (0.5%) of Bidder's total Bid, including alternates.
4. In case more than one subcontractor is named for the same scope of Work, state the portion that each will perform.
5. Bidder need not list entities that are only vendors or suppliers of materials.
6. All listed first-tier subcontractors must be prequalified.
7. Bidder must provide the Contactor State License Board number ("CSLB No.") for all listed subcontractors and indicate the License Classification that the subcontractor will perform their scope of work under.
8. Bidder must provide the Department of Industrial Relations registration number ("DIR No.") for all listed subcontractors.
9. Bidder must provide the Bid Amount (\$) for all listed subcontractors.
10. If further space is required for the list of proposed subcontractors, additional sheets showing the required information, as indicated below, shall be attached hereto and made a part of this document.

**Subcontractor Name:**\_\_\_\_\_ **Location:**

Scope of  
Work:\_\_\_\_\_

CSLB No.:\_\_\_\_\_ License  
Classification:\_\_\_\_\_

DIR No.:\_\_\_\_\_ Bid  
Amount:\_\_\_\_\_

**Subcontractor Name:**\_\_\_\_\_ **Location:**

Scope of  
Work:\_\_\_\_\_

CSLB No.:\_\_\_\_\_ License  
Classification:\_\_\_\_\_

DIR No.:\_\_\_\_\_ Bid  
Amount:\_\_\_\_\_

**Subcontractor Name:**\_\_\_\_\_ **Location:**

Bid No. 23-24-16 TK Portable Buildings

Scope of

Work: \_\_\_\_\_

CSLB No.: \_\_\_\_\_ License

Classification: \_\_\_\_\_

DIR No.: \_\_\_\_\_ Bid

Amount: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_ **Location:**

\_\_\_\_\_

Scope of

Work: \_\_\_\_\_

CSLB No.: \_\_\_\_\_ License

Classification: \_\_\_\_\_

DIR No.: \_\_\_\_\_ Bid

Amount: \_\_\_\_\_

I certify and declare under penalty of perjury under the laws of the State of California that all the foregoing information is complete, true, and correct.

Date:

\_\_\_\_\_

Proper Name of Contractor:

\_\_\_\_\_

Signature:

\_\_\_\_\_

Print Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

**SUBSTITUTION REQUEST FORM**

Pursuant to Public Contract Code Section 3400, bidder hereby requests substitution of the following articles, devices, equipment, products, materials, fixtures, patented processes, forms, methods, or types of construction:

Specified Item	Requested Substituted Items	Agree to Provide Specific Item in the Event Request is Denied <sup>1</sup> (Circle One)		District Decision (Circle One)	
1. _____	_____	Yes	No	Grant	Deny
2. _____	_____	Yes	No	Grant	Deny
3. _____	_____	Yes	No	Grant	Deny
4. _____	_____	Yes	No	Grant	Deny
5. _____	_____	Yes	No	Grant	Deny
6. _____	_____	Yes	No	Grant	Deny

<sup>1</sup> Bidder must state whether bidder will provide the Specified Item in the event that District denies the request for substitution. If bidder states that bidder will not provide the Specified Item in the event their request for substitution is denied, bidder's bid will be considered non responsive. However, if bidder states that bidder will provide the Specified Item in the event that bidder's request for substitution is denied, bidder shall execute the Agreement and provide such Specified Item(s).

This Request Form must be accompanied by evidence as to whether the proposed substitution (1) is equal in quality, service, and ability to the Specified Item; (2) will entail no change in detail, construction, and scheduling of related work; (3) will be acceptable in consideration of the required design and artistic effect; (4) will provide no cost disadvantage to the DISTRICT; (5) will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts; and (6) will require no change of the delivery schedule.

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

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Bid No. 23-24-16 TK Portable Buildings

7.	_____	_____	Yes	No	Grant	Deny
8.	_____	_____	Yes	No	Grant	Deny

This Request Form must be signed and submitted at the time of bid opening. Bidder must indicate "N/A" if the bidder is not requesting a substitution.



**BID BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned, \_\_\_\_\_ as Principal ("Principal"),  
and \_\_\_\_\_ as Surety ("Surety"), a corporation organized  
and existing under and by virtue of the laws of the State of \_\_\_\_\_ and authorized to do business as a  
surety in the State of California are held and firmly bound unto the Oro Grande School District ("District") of  
\_\_\_\_\_ County, State of California as Obligee, in the sum of  
\_\_\_\_\_ (\$ \_\_\_\_\_) lawful  
money of the United State of America, for the payment of which sum well and truly to be made, we and each of us,  
bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by  
these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted a bid to the District for  
all Work specifically described in the accompanying bid;

NOW, THEREFORE, if the Principal is awarded the Contract and, within the time and manner required under the  
Contract Documents, after the prescribed forms are presented to Principal for signature, enters into a written  
contract, in the prescribed form in accordance with the bid, and files two bonds, one guaranteeing faithful  
performance and the other guaranteeing payment for labor and materials as required by law, and meets all other  
conditions to the contract between the Principal and the Obligee becoming effective, or if the Principal shall fully  
reimburse and save harmless the Obligee from any damage sustained by the Obligee through failure of the  
Principal to enter into the written contract and to file the required performance and labor and material bonds, and  
to meet all other conditions to the Contract between the Principal and the Obligee becoming effective, then this  
obligation shall be null and void; otherwise, it shall be and remain in full force and effect. The full payment of the  
sum stated above shall be due immediately if the Principal fails to execute the Contract within seven (7) days of  
the date of the District's Notice of Award to Principal.

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

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

If the District awards the bid, the security of unsuccessful bidder(s) shall be returned within sixty (60) days from  
the time the award is made. Unless otherwise required by law, no bidder may withdraw its bid for ninety (90)  
days after the date of the bid opening.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety

above named, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Bid No. 23-24-16 TK Portable Buildings

\_\_\_\_\_  
Principal

\_\_\_\_\_  
By

\_\_\_\_\_  
Surety

\_\_\_\_\_  
By

\_\_\_\_\_  
Name of California Agent of Surety

\_\_\_\_\_  
Address of California Agent of Surety

\_\_\_\_\_  
Telephone Number of California Agent of Surety

**Bidder must attach Power of Attorney and Certificate of Authority for Surety and a Notarial Acknowledgement for all Surety's signatures. The California Department of Insurance must authorize the Surety to be an admitted Surety Insurer.**

Any claims under this bond may be addressed to:

(Name and Address of Surety)

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

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

**NON-COLLUSION DECLARATION**

The undersigned declares:

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

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_ [Date], at \_\_\_\_\_ [City], \_\_\_\_\_ [State].

Signed: \_\_\_\_\_

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

## **PROVISIONS OF THE CONTRACT**

### **GENERAL PROVISIONS**

#### **1. ADMINISTRATIVE**

- 1.1. **Definitions.** Each capitalized term that is defined in any of the Contract Documents shall have such meaning for purposes of all of the Contract Documents, despite not being defined in any other of the Contract Documents.
- 1.2. **Authority of the District Representative.** The District Representative shall have the authority for general supervision and control of the Work and the Project. The District Representative has the authority to determine the amount, quality, acceptability, and fitness of all parts of the Work, and to decide all questions pertaining to the Work, except to the extent that the Architect is responsible for answering such questions. The District Representative shall have authority to stop any or all of the Work whenever, in the District Representative's opinion, the Project or the Work is not being executed in accordance with applicable requirements or in a proper manner.

#### **2. WORK AND SITE CONDITIONS.**

- 2.1. **Work Permits and Licenses.** The Contractor shall obtain, at its own expense, all permits and licenses of a temporary nature necessary for the performance of the Work, including, but not limited to, any required business licenses, construction permit(s), Cal-OSHA safety-related permits, and/or storm water permit(s) if applicable. The Contractor shall procure and pay for all licenses required in its trade classification by any city, county, or the State, except for those specified in Section 5.2 of these General Provisions.
- 2.2. **Building Permits and Utility Connections.** Notwithstanding Section 5.1 of these General Provisions, the District shall procure and pay for all building permits required by local building officials and for connection to public utilities, to the extent required by law or obtained by the District in its discretion.
- 2.3. **Construction Schedule.** The Contractor shall submit to the District Representative for review a schedule for completion of the Work and all major components thereof, which shall include the "critical path" for such Work and shall be consistent with the Work of any other contractors on the Project and the Master Schedule within fifteen (15) days of award. The District Representative may reject the construction schedule as unreasonable or inconsistent, in which case the Contractor shall revise and resubmit the construction schedule. The Contractor shall ensure that its employees and subcontractors are aware of and comply with the approved Master Schedule. Acceptance of a construction schedule by the District Representative shall not be construed as verifying or approving the logic or feasibility of the schedule. The Contractor shall at all times comply with the Master Schedule. In the event the Work falls behind schedule, the Contractor shall, within two (2) business days of any request by the District, prepare and provide to the District a recovery schedule indicating the actions to be taken and the Work to be performed in order to bring the actual work performed into compliance with schedule requirements. Upon approval of the recovery schedule by the District, the Contractor must perform the Work in accordance with the recovery schedule to ensure conformance with the Master Schedule. Any float in the Master Schedule shall be for the benefit of the

Project, as determined by the District Representative, not for the benefit of the Contractor, any other prime contractor, or any of their subcontractors.

- 2.4. **Manpower Requirements.** At any time during the period for completion of the Work, the District may determine in its reasonable discretion that the Contractor or any of its subcontractors is not employing sufficient manpower on the Work to reasonably complete the Work or any component thereof within the time scheduled therefor. In such event, within forty-eight (48) hours of any request by the District, the Contractor shall provide such additional manpower, or shall ensure that the subcontractor provides such additional manpower, as the District determines is necessary to ensure completion of the Work in a timely manner. Any failure by the Contractor or subcontractor upon the District's request to provide such additional manpower as is required by the District shall constitute grounds for termination of the Contractor and/or the subcontractor. As an alternative to termination, the District, in its sole discretion, may determine to supplement the work-force of the Contractor or the subcontractor in order to ensure timely completion of the Work, and the cost thereof shall be deducted from amounts due to the Contractor pursuant to the Contract, and no such action by the District shall be deemed or construed to constitute interference by the District with the Contract or the Contractor's right to perform the Work.
- 2.5. **Liquidated Damages.** Time is of the essence with respect to the Contract and completion of the Work. The Parties acknowledge and agree that the District will suffer damages if Contractor does not complete the Work within the time provided pursuant to the Contract. Because it is impractical and infeasible to determine the actual amount of damages the District will incur, in accordance with Government Code Section 53069.85, the Contractor shall pay to the District liquidated damages at the rate specified in the Special Provisions for each and every calendar day or portion thereof if not a full day, that the Work remains uncompleted and not accepted by the District after the time provided pursuant to the Contract, as such time may be modified in accordance with the Contract ("Liquidated Damages"). Liquidated Damages shall constitute the exclusive compensation to the District for Contractor's delay or delay caused by its subcontractors, suppliers, et. cetera, in completion of the Work and shall not be construed as a penalty or forfeiture of any other right or remedy under the Contract or law. In the event Contractor fails to pay any such Liquidated Damages, the District may deduct such amount(s) from any payments due (or that may become due) to Contractor pursuant to the Contract. Nothing in this Section shall be deemed or construed to preclude the District from exercising its rights to take over the Work and/or for recovering damages caused by defective and/or non-conforming Work performed by Contractor, as provided by the Contract or applicable law, attributable to any breach or default by the Contractor of its obligations pursuant to the Contract.
- 2.6. **Extension of Time.** Subject to the other provisions of this Section, District shall extend the time for completion of the Work, by such number of days determined by the District in its reasonable discretion, in the event Contractor's progress on the Work is delayed as a result of: (i) an unreasonable act or omission of the District, not contemplated by the District and the Contractor; (ii) an act or omission of any other prime contractor, or the prime contractor's respective lower-tier subcontractor(s), supplier(s), or materialmen, on the Project not consistent with the Contract Documents; (iii) Changes in the Work required by the District for reasons other than

those caused by, or the fault of, the Contractor; (iv) strike or lockout not instigated by the Contractor or an affected subcontractor; (v) unusual and severe interruption in interstate or intrastate, but not local or regional, transportation; (vi) earthquake, flood or other unavoidable casualty that is not the fault of Contractor or a result of Contractor's actions or work; (vii) public health emergencies effecting industry-wide availability of materials and/or labor; or (viii) any other cause determined by the District to justify an extension of time. As a condition precedent to the District's obligation to grant any such extension of time, the Contractor must provide written notice of the delay to the District within five calendar days of when the delay commenced. No extension of time shall be granted for a delay occurring more than five days prior to when the notice of delay is submitted in writing to the District. In the case of a continuing cause of delay, only one notice shall be necessary, but the Contractor must apprise the District on a regular basis (not less than once per week) as to the status of the delay and, also, at such time as the cause of the delay has been resolved and the affected portion of the Work has resumed. The purpose of the notice requirements of this Section are to ensure that the District has an opportunity at the earliest possible time to mitigate and resolve delays in the Project.

- 2.7. **Workmanship and Materials.** The Contractor shall employ nothing less than good quality workmanship in performing the Work. All materials, equipment and other items incorporated into the Work shall be of good quality and, unless specified otherwise, shall be new. The Contractor shall, upon request, provide satisfactory evidence as to the type and quality of materials used in connection with the Work. If the Contractor determines that the materials delivered to the Project Site do not represent a good quality product, it shall advise the District Representative, and shall remedy the deficient quality as quickly as possible with the shortest delay, if any, to the Work on the Project, unless otherwise instructed by the District Representative.
- 2.8. **Substitutions of Materials and Equipment.** The Contractor shall use and/or incorporate into the Work on the Project all materials and equipment as are specified in the Contract Documents, except upon approval by the District Representative or Architect of the substitution of "equal" materials or equipment. No substitutions shall be accepted unless and until the Contractor requests and receives permission in writing from the District Representative or Architect. All requests for substitution shall be made concurrently to the District, the District Representative and the Architect. The Contractor must have submitted any requests for substitution and all information in substantiation of such request not later than twenty-four (24) hours after the date and time scheduled for opening of bids. Notwithstanding the foregoing, the Contractor may submit a request for substitution after such deadline in the event a specified item has become commercially unavailable, i.e., is no longer manufactured or is available only for a manifestly unreasonable price. In connection with any such request, the Contractor shall present complete details of the "equal" item, with specific explanations of the characteristics of the details that differ from the specifications. The Contractor must expressly describe how a substitute item will differ from the specified item, including without limitation, compliance with applicable building and other codes, and the Contractor shall to that extent be responsible for compliance with all specifications, codes, et. cetera, regardless of any District or Architect approval of the substitution request. The District Representative and/or Architect for the Project shall investigate the characteristics

of the proposed "equal" item and the merits of the proposed substitution, and shall notify the Contractor of the determination. The determination of the District Representative or Architect as to whether a proposed substitute material, equipment, or other item is "equal" shall be final.

- 2.9. **Contractor's Title to Materials.** Neither the Contractor nor any subcontractor on the Project shall purchase materials, equipment, supplies or other items for use on, or incorporation into, the Work subject to any chattel mortgage or under a conditional sale or other agreement pursuant to which an interest is retained by the seller. The Contractor represents and warrants that it shall have good, free and clear title to all materials, equipment, supplies or other items for which the Contractor accepts any payment from the District.
- 2.10. **Tests and Inspections.** Materials, fabrication, and erection shall be tested and inspected as required by Title 21 of the California Code of Regulations and when required by the District Representative or Inspector. The cost of all such tests and inspections shall be paid by the District, except that the Contractor shall reimburse the District for (or compensation to the Contractor shall be reduced by an amount equal to) the costs of retests or re-inspections of Construction, materials, equipment and other components of the Work that prove to be defective, inadequate, or inconsistent with the requirements of the Contract Documents.
- 2.11. **Materials Testing.** The Contractor shall deliver to the District Representative upon request, without charge to the District, and properly marked for identification purposes, all material test samples or specimens that are required pursuant to the Contract Documents. The Contractor shall pay all costs incurred in preparing, wrapping, protecting, transporting and/or mailing of required samples or specimens.
- 2.12. **Inspection of Manufactured Items.** The Contractor must ensure that the District shall at all reasonable times have access to all places where materials, equipment, machinery, or other items for incorporation into the Work are being manufactured, produced, or fabricated for use on or incorporation into the Project. The District shall be permitted such access as will allow a determination whether such materials, equipment, machinery or other items are being manufactured in strict accordance with the Contract Documents. The Contractor shall, upon request, provide the District Representative with access to and shall provide scales for, and/or other equipment and assistance with, weighing, measuring or otherwise evaluating any of the materials.
- 2.13. **Surveys.** The District, if reasonably required, will establish the boundary lines of the Project Site and all easements thereon. The Contractor shall preserve all existing bench marks and property or survey stakes, markers, or monuments as they exist in the field. The Contractor shall be responsible for the disturbance, removal, or covering of any such bench marks, stakes, markers or monuments, and shall reimburse to the District (or compensation to the Contractor shall be reduced by the amount of) the actual cost and expenses incurred in restoring or replacing the same. Only a licensed Land Surveyor or registered Civil Engineer of the State shall be employed for any revision to the established boundary lines and easements.
- 2.14. **Access to Work.** The District, including, without limitation, the Architect, District Representative and Inspector, shall at all times and for any purpose have unrestricted access to the Work on the Project, including any areas used by the Contractor or its subcontractor(s). Each public authority with jurisdiction over the

Project shall at all times have unrestricted access to the Work on the Project, including any areas used by the Contractor or its subcontractor(s), for purposes within that public authority's jurisdiction. The Contractor shall not impede or frustrate any access to or inspection of the Work, including inspection of the materials and the workmanship used in connection with the Work. The Contractor shall take all reasonable steps to facilitate any such access or inspection of the Work, including providing any equipment or other accommodations necessary or convenient for such access or inspection.

- 2.15. **Testing and Inspection of Work.** Testing and inspection of portions or elements of the Work, or of materials, equipment or other items to be incorporated into the Work, will be required pursuant to the Contract Documents, Inspector's instructions, applicable laws, ordinances and regulations, or by public authorities. The Contractor shall give the Inspector written notice of its readiness for any such testing or inspection at least 48 hours prior to when the inspection is scheduled to occur. If the inspection is to be conducted by a public authority or person other than the Inspector, the notice to the Inspector shall also specify the date and time at which such inspection is to occur. If the Contractor, without prior approval, covers or renders inaccessible the portion or element of the Work, or the material, equipment or other item, that is to be tested or inspected, the Contractor, at its own expense and upon request of the Inspector, shall remove or demolish all portions of the Work as are necessary to facilitate such testing or inspection. The Contractor must give notice of any cancellation of a scheduled inspection at least 24 hours prior to when the inspection is scheduled to occur. Section 5.16 Protection of Work. The Contractor and its subcontractor(s) shall protect the Work and any portions of the Project affected thereby from harm and are responsible under all circumstances for the conditions thereof until final acceptance of the Project by the District. The Contractor and its subcontractor(s) shall protect adjacent property from injury or damage arising out of Contractor's performance of the Work on the Project and shall repair or pay the cost of repairing any such damage or injury that occurs. Contractor's duty to protect the work shall cease upon receipt of a notice of intent to terminate this Contract by the District or if, through no fault of Contractor, Contractor's Work is suspended and Contractor is no longer authorized to access the Project Site.
- 2.16. **Protection of Project Site.** The Contractor shall protect all structures, walks, pipelines, utilities, trees, shrubbery, furniture, and all other items on and in the vicinity of the Project Site that may possibly be damaged or otherwise adversely affected during the performance of the Work.
- 2.17. **Damages to Other Contractors.** In the event any other contractor or subcontractor working on the Project incurs damage(s) as a result of any act or omission of the Contractor or its subcontractor(s) that is unreasonable or not consistent with the Contract Documents, the Contractor shall make good-faith efforts to effect a settlement with the other contractor. If no such settlement is reached, and if any party commences an action or other proceeding against the District related thereto, the Contractor shall indemnify, defend and hold-harmless the District in accordance with Section 8.15 of these General Provisions.
- 2.18. **Cleanup and Storage.** The Contractor shall ensure that the area of the Project Site in which the Work occurs is at all times, including nights and weekends, free of loose or accessible waste, materials, tools and equipment. The Contractor shall maintain the



area of the Work and the Project, including grounds and sidewalks, in a safe, neat, and clean manner that will cause the least inconvenience to the District and, as applicable, the general public, school staff, and students. The Contractor shall comply with all instructions from the District Representative with respect to conditions at the Project Site, including, without limitation, instructions regarding removal of rubbish and debris generated by, and any unnecessary materials, tools, equipment or temporary structures owned or used by, the Contractor or its subcontractors. In the event the Contractor fails to comply with any such instruction, the District Representative may, after providing Contractor with two (2) business day notice, arrange for removal and the Contractor shall pay to the District (or the Contractor's compensation shall be reduced by the amount of) the actual costs of such removal. Storage of materials on the Project Site shall be under the supervision of the District Representative, but at the expense, if any, of the Contractor.

2.19. **Safety.** Contractor shall perform and maintain the Work so as to avoid injury or damage to any person, including, without limitation, District employees, students, visitors and others, or to any property. In carrying out the Work, the Contractor and its employees and subcontractors shall at all times be in compliance with all applicable local, State and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the Work and the conditions under which the Work is to be performed. Required safety precautions may include, but are not necessarily limited to: (i) adequate life protection and lifesaving equipment; (ii) adequate illumination for underground and night operations; (iii) instructions in accident prevention for all employees, such as machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection and other safety devices; (iv) equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (v) adequate facilities for the proper inspection and maintenance of all safety measures. The Contractor shall take steps to ensure compliance with all safety measures applicable in particular operations or kinds of work, including sufficient safeguards, such as railings, temporary walks, lights, et. cetera, as are necessary to prevent injuries or damage to any person or property. Contractor shall be responsible in the event of any such injury or damage resulted from any unsafe or unprotected condition on the Project that the Contractor is hereby required to protect against. The Contractor shall conduct such clean-ups of the area of the Work, including grounds and sidewalks, as are necessary to maintain the safety of the area of the Work, but in any event not less than once daily. In the event of an emergency in which life or property are endangered, the Contractor shall take all reasonable actions to safeguard such life or property. The Contractor shall require that the job superintendent or others immediately call "911" each time a medical emergency occurs on or at the Project Site.

2.20. **Loss and Damage.** Until such time as the Work is fully complete and accepted by the District, the Contractor shall be responsible for all losses and/or repair of all damages that may arise from or be a result of: (i) the nature of the Work agreed to herein; (ii) the action of the elements or environment; or (iii) any unforeseen difficulties that may arise or be encountered during the process of completing the Work. However, provided that the Work has been constructed in strict accordance with the Contract Documents, the Contractor shall only be responsible for damage proximately caused by Acts of God (as defined in Public Contract Code Section 7105)

- up to a maximum of five percent (5%) of the Contract Amount. In the event any such Act of God proximately causes damages in excess of five percent (5%) of the Contract Amount, the District may, in its sole discretion, terminate the Contract effective three (3) days following written notice to Contractor. Furthermore, Contractor shall not be responsible for any losses and/or repair any damage that arises after a notice of intent to terminate is received from the District or if, through no fault of Contractor, the Project is suspended and Contractor is denied access to the Project Site.
- 2.21. **Regional Notification Center.** If the Work involves any trenching, boring, tunneling, digging or other excavation, the Contractor shall be solely responsible and liable for compliance with all applicable requirements of Government Code Sections 4216 through 4216.9, and with all requirements of the Contractors State License Board relating to such Government Code provisions. The Contractor must, as required, obtain from the Regional Notification Center an Underground Service Alert identification number and must provide such identification number to the District. Prior to it expiring, the Contractor must contact the Regional Notification Center for any necessary revalidation of the identification number.
- 2.22. **Asbestos or Other Hazardous Materials.** In the event the Contractor encounters on the Project Site any material that Contractor reasonably believes to be asbestos, polychlorinated biphenyl (PCB), any material listed by the federal or State EPA 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 ("Hazardous Material") that has not been rendered harmless, Contractor shall immediately stop all Work in the area affected and report the condition to the District in writing. The Contractor shall resume the Work only if it is determined that no Hazardous Material is present or that such Hazardous Material has been rendered harmless. The District shall not require that the Contractor perform any Work relating to Hazardous Material without the Contractor's consent.
- 2.23. **Non-Asbestos-Containing Materials Certification.** Prior to commencing the Work, the Contractor shall execute and submit to the District the Non-Asbestos-Containing Materials Certification Form included within the Contract Documents for the Project.
- 2.24. **Inspection of Completed Work.** In addition to any testing and inspection required by the Contract Documents, the Inspector may require special inspection of any portion of the Work already completed as to which there is a reasonable question as to whether it was completed in accordance with the requirements of the Contract Documents. In such event, the Contractor shall remove or un-do all portions of the Work as are necessary to facilitate inspection of the questioned portion of the Work. If the questioned portion of the Work is found not to conform with the Contract Documents, the Contractor shall pay all costs of the re-examination and correction of the Work, including repair or replacement of previously completed Work that was removed or un-done to permit the inspection. If the questioned Work is found to conform with the Contract Documents, the District shall pay the cost of the re-examination and any repair or replacement of previously completed Work that was removed or un-done to permit the inspection.
- 2.25. **Correction of Work Before Final Payment.** The Contractor shall promptly remove from the Project and the Project Site all materials, equipment or other items that, as determined by the Inspector, fail to conform to the requirements of the Contract Documents, regardless of whether such materials have already been incorporated into the Work. The Contractor shall, at its own expense, promptly replace any such

materials, equipment or items with conforming materials, equipment or items, and shall thereafter repair the Work and/or execute the remaining Work in conformance with the Contract Documents. In addition, the Contractor shall bear all costs and expenses of replacing or repairing the work of other contractors or subcontractor(s) that is destroyed or damaged in the course of removing or replacing any non-conforming materials, equipment or other items that were incorporated into the Work. The District shall have no obligation to issue the Final Payment to the Contractor unless and until the Contractor satisfies the requirements of this Section.

- 2.26. **Use of Completed Portions.** The District shall have the right at any time to take possession of and use any completed or partially completed portions of the Work, regardless of whether the entire Work is complete. In no event shall such possession and use by the District be construed as, or deemed to be, acceptance by the District of portions of the Work that is not complete or that has not been completed in accordance with the Contract Documents. In the event such possession and use delays or increases the cost to the Contractor of completing the remaining Work, the Contractor may submit a claim to the District Representative for additional compensation or extension of time, or both.

2.27. **Guarantee.**

- 2.27.1. General. In addition to any manufacturer or other guarantees required by the Contract Documents, the Contractor hereby guarantees that all Work performed pursuant to the Contract shall be of good quality and conform to all requirements of the Contract Documents, and that the Work shall be free from defective, faulty and/or non-conforming workmanship, materials, equipment and other items. Contractor agrees that it shall repair, replace or correct any such defective, faulty or non-- conforming Work that appears or is discovered during the one (1) year period after the date of final acceptance of the Project by the District (or the period of time specified elsewhere in the Contract Documents or in any guarantee or warrantee provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later). Provided however, should this Contract be terminated prior to completion of the Work by Contractor, then the 1-year warranty period shall commence as of the date a notice of intent to terminate is received by Contractor and shall only apply to portions of the Work completed by Contractor. The provisions of this Section shall not be construed to limit the guarantee on items for which the Contract Documents specify a longer guarantee or on items for which the manufacturer provides a longer guarantee period, and the Contractor shall be responsible for any latent defects in the Work for the period applicable to latent acts or omissions specified in Section 7030 of the Business and Professions Code.

- 2.27.2. Performance of Guarantee Work. Within seven (7) days after written notice from the District of any such defect, fault and/or non-conformance, the Contractor shall, at its sole cost and expense, commence and perform with due diligence all Work necessary to repair, replace or correct such defect, fault and/or non-conformance so that the requirements of the Contract Documents are met. Notwithstanding the foregoing, the Contractor shall immediately upon notice from the District undertake any necessary repair, replacement or correction in the event of an emergency or a dangerous condition, when necessary, to prevent an interruption in the District's

operations, or when necessary, to prevent injuries to persons and/or damage to property.

- 2.27.3. Collateral Damage. In complying with its guarantee obligation, the Contractor shall, at its sole cost and expense, repair, replace or correct any portions of the Project (including work of other contractors and subcontractor(s)) damaged by any defect, fault or non-conformance in the Work, or that become damaged in the course of repair, replacement or correction of defective, faulty or non- - conforming Work.
- 2.27.4. Extension of Guarantee Period. With respect to any of the Work that is repaired, replaced, or corrected during the applicable term of this guarantee, the guarantee and the Contractor's obligation hereunder shall be extended for an additional six-month period, commencing with the date of acceptance of the repaired, replaced or corrected Work.
- 2.27.5. Guarantees for Benefit of District. Any and all warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the District, regardless of whether or not such warranties and guarantees have been transferred or assigned to the District by separate agreement, and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the District.
- 2.27.6. Contractor Failure to Perform. In the event the Contractor fails to perform, or fails to timely perform, any necessary repair, replacement or correction to the reasonable satisfaction of the District, the District, upon five (5) business days written notice to Contractor, shall have the right, at the Contractor's sole cost and expense, to repair, replace or correct any defective, faulty or nonconforming Work together with any portion of the Project damaged thereby or by the repair, replacement or correction thereof. The Contractor or, if applicable, its surety, shall reimburse the District for all costs and expenses that the District incurs in connection with any such repair, replacement or correction by the District or in connection with enforcing the provisions of this

3. **CHANGES IN THE WORK.**

- 3.1. **District Instructions**. In giving instructions related to performance of the Work, the Contractor shall comply with instructions of the District Representative related to minor changes in the Work not involving extra cost and not inconsistent with the purpose of the Work, and there shall be no additional compensation to the Contractor therefore.
- 3.2. **District Authority**. For purposes of the Contract, any significant alteration, deviation, or change in the scope, method of performance, nature of materials or price of the Work or the Project, or any other matter materially affecting the performance or nature of the Work or the Project shall be referred to as a "Change in the Work". The District shall have the right to require a Change in the Work, without thereby invalidating the Contract.
- 3.3. **Change Orders**. Any request for a Change in the Work that involves an adjustment of the Contract Amount or a modification of the time for performance of the Work or portion thereof shall be set forth in a written order for the Change in the Work (each a "Change Order"). Each Party shall propose Change Orders for Changes in the Work that it requests. Any and all modifications of the time for performance of the Work

attributable to a Change in the Work must be set forth in the associated Change Order and not left for later determination. No Change Order shall become effective, and the District shall have no liability related thereto for payment or otherwise, unless and until approved and signed by the District and the Contractor. Except as expressly provided in the Change Order, all work pursuant to a Change Order shall be performed in accordance with the terms and conditions of the Contract. In the event of an emergency endangering life or property, notwithstanding the foregoing, the Contractor may rely on the District's oral requests for additional work, which if affecting the Contract Amount and/or time for performance of the Work will be adjusted accordingly by the District.

- 3.4. **Valuation of Change Orders.** The Parties shall determine and set forth in an applicable Change Order the fair and reasonable value of each Change in the Work, which will be added to or deducted from the amount of the Contract Amount. The Contractor shall, upon request of the District, provide all information required by the District to substantiate the value of a Change in the Work. No time extension shall be granted in conjunction with any Change Order unless the approved Change Order expressly sets forth such adjustment. The valuation of a Change Order shall be determined in one or more of the following ways: (i) by estimate and acceptance in a lump sum amount; (ii) by unit prices specified in the Contract or as agreed to by the Parties; or (iii) by a percentage of Contractor's cost and a fixed fee, in which case the Contractor shall keep detailed records of the net cost of labor and materials. The District Representative shall certify the amount of each Change Order that does not provide for a fixed lump-sum amount. In the event the Parties are unable to agree on a Change Order valuation method or amount, the Contractor nonetheless shall proceed with any Change in the Work required by the District. In such event, the Contractor shall keep detailed records of the net cost of labor and materials, together with vouchers. Pending final determination of value, payment on account of a Change in the Work shall be made based upon the District Representative's estimate of the value of the Change in the Work, including, if applicable, a reasonable allowance for overhead and profit due to the Contractor.
- 3.5. **Change Orders Specify Full and Final Compensation.** Except as expressly set forth in any particular Change Order, each Change Order shall be deemed and construed to include all change(s) required pursuant to the Change Order, including, without limitation, any and all extensions of time and overhead, acceleration costs, profit, general conditions costs, expenses, and other direct and indirect costs and expenses of such work and/or changes. In addition, each Change Order shall be deemed and construed to include all necessary adjustments attributable to cumulative impacts of that and any and all preceding Change Orders, whether such impacts relate to scheduling, productivity or other matters. By signing a Change Order, the Contractor shall be deemed and construed to have waived any and all claims and rights to any adjustments to the Contract Amount and/or time for performance of the Work other than as are set forth in the Change Order, and the Contractor may not thereafter attempt to hold the District responsible for any interference, delay, acceleration, or other effect on the Work and/or additional costs attributable to the change(s) required pursuant to the Change Order.

**4. INSURANCE AND INDEMNIFICATION.**

- 4.1. **General Liability Insurance.** Prior to commencing the Work, the Contractor must have in effect, and the Contractor must maintain in effect at all times as required by

this Section, a policy of broad-form commercial general liability insurance ("General Liability Policy"), written on an "occurrence" basis, covering claims for bodily injury, including death, property damage, and consequential damages that may arise out of or result from Contractor's performance of the Contract or from actions taken in connection with the Work, whether such actions are taken by Contractor, by any subcontractor of Contractor, or any person directly or indirectly employed by any of them. Not as a limitation on the foregoing, the General Liability Policy must provide coverage for both the ongoing and completed operations of the Contractor, and for the indemnification obligations assumed by the Contractor pursuant to the Contract Documents. The General Liability Policy must provide coverage with minimum coverage limits as specified in the Special Provisions. If an aggregate limit applies to the General Liability Policy, not less than the minimum aggregate coverage limit specified in the Special Provisions must apply specifically to the Project and the Contract, by means of either endorsement or a separate "following form" excess policy. The Contractor must keep the General Liability Policy in full force and effect for at least one year after the date of Final Payment to the Contractor to ensure that coverage for products-completed operations remains in effect at least for such one-year period.

- 4.2. **Vehicle Liability Insurance.** Prior to commencing the Work, the Contractor must have in effect, and the Contractor must maintain in effect at all times prior to final completion and acceptance of the Work, a policy of vehicle liability insurance, written on an occurrence basis, providing coverage for all motor vehicles (whether owned, leased, rented, or borrowed) that are driven or used in connection with the Work ("Vehicle Liability Policy"). The Vehicle Liability Policy must, by separate endorsement, name the District as an additional insured and must include a standard waiver of the insurer's rights of subrogation against the District. The Vehicle Liability Policy must provide coverage with minimum coverage limits as specified in the Special Provisions. If an aggregate limit applies, not less than the minimum aggregate coverage limit specified in the Special Provisions must apply specifically to the Project and the Contract, by means of endorsement or separate "following form" excess policy.
- 4.3. **Workers' Compensation Insurance.** In accordance with Labor Code Sections 1860 and 1861, and concurrently with execution and delivery of the Contract, the Contractor shall execute and deliver to the District the Workers' Compensation Certification form included within the Contract Documents whereby the Contractor acknowledges its responsibility to secure workers' compensation insurance in compliance with Labor Code Section 3700 et. seq. Prior to commencing the Work, the Contractor must have in effect, and the Contractor must maintain in effect at all times prior to full and final completion of the Work, a policy of workers' compensation insurance in compliance with Section 3700 of the Labor Code and other applicable provisions of law ("Workers' Compensation Policy"). Not less than five days prior to commencing the Work, the Contractor must provide to the District such Certificates of Insurance as evidence that the Contractor has such insurance coverage in effect. Section 8.4 Builder's All-Risk Insurance.
  - 4.3.1. **General Requirement.** If so, specified in the Special Provisions, the Contractor must procure a policy of builder's all-risk insurance, written on a non-reporting, completed value basis, providing coverage in an amount not less than the greater of: (i) the full estimated replacement cost of the Project

- assuming the Work has been completed; or (ii) the Contract Amount ("Builder's All-Risk Policy"). The Builder's All-Risk Policy must apply, at a minimum, to: (i) completed Work and the Project as improved by the Work; (ii) Work in progress; (iii) temporary structures and improvements; (iv) materials, supplies and equipment stored on the Project Site; (v) materials, supplies and equipment stored at off-site locations or in transit; and (vi) operational and performance testing, commissioning and start-up.
- 4.3.2. All-Risk Coverage. The Builder's All-Risk Policy must cover: (i) losses arising from causes that include, without limitation, fires, windstorms, lightening, explosions, theft, earth movement, collapse, and water damage; (ii) costs associated with clean-up, demolition, repair or other correction of covered losses, including, without limitation, fees for necessary architectural, engineering and other professional services; and (iii) all ensuing or consequential losses attributable to causes of loss excluded under the Builder's All-Risk Policy, including, without limitation, faulty design or workmanship. The Builder's All-Risk Policy must be endorsed for extended coverage, vandalism, malicious mischief, and theft, including theft of materials not then incorporated into the Work. Any exclusion of losses attributable to faulty design or workmanship shall not exceed the total costs the District would have incurred to repair or otherwise correct the fault if it had been discovered prior to the loss having occurred.
- 4.3.3. Earthquake and Flood Coverage. The foregoing provisions of this Section 8.4 shall not be deemed or construed to require that the Builder's All-Risk Policy include earthquake and flood insurance coverage. However, the District may require that the Contractor obtain an endorsement to the Builder's All-Risk Policy to provide earthquake and/or flood insurance for the Project, in which event the District shall be responsible for the cost of the endorsement.
- 4.3.4. Loss Payees and Additional Insureds. The Builder's All-Risk Policy must name or be endorsed to name the District and the Contractor as loss payees (or, if applicable, additional insureds), including, without limitation, for the purposes of any tax-exempt bond proceeds used to fund the Project, and the District shall for such purposes be deemed the owner of all work and materials on the Project Site or stored for use on the Project Site. The payment by the District of any Construction Progress Payments, in and of itself, shall not be deemed or construed to: (i) create an insurable interest for the District; or (ii) relieve the Contractor of responsibility it otherwise may have for losses arising from any direct physical loss, damage, or destruction incurred prior to final completion and acceptance of the Work.
- 4.4. **Contractor Insurance is Primary.** The coverages provided by each of the General Liability Policy, the Vehicle Liability Policy, and, if applicable, the Builder's All-Risk Policy shall be primary and not contributing with respect to any insurance or self-insurance programs covering the District and/or any of the District Agents.
- 4.5. **Insurer Standards.** Each of the General Liability Policy, the Vehicle Liability Policy, and, if applicable, the Builder's All-Risk Policy must be issued by an insurer that is approved to do business in this State and that has, as determined by the A.M. Best Company, a "Financial Strength Rating" of not less than "A-" (A minus), a "Ratings Outlook," if assigned, of either stable or positive, and a "Financial Size Category" of not less than VII. If a "Ratings Outlook" has been assigned to any such insurer that is

not either stable or positive, the District may consider the insurer's Rating's Outlook and all other relevant factors in determining whether the insurer is satisfactory, and, if the District reasonably determines that there may be a significant risk in accepting any insurance policy issued or to be issued by such insurer, then, upon request of the District, the Contractor must obtain such insurance policy through another insurer that satisfies the standards set forth in this Section.

- 4.6. **Additional Insureds.** The General Liability Policy and the Vehicle Liability Policy each must name or be endorsed to name the District as an additional insured. Each endorsement specifying any additional insured must be ISO Form CG 20 10 07 04 and 20 37 07 04 or an equivalent endorsement reasonably acceptable to the District. Each additional insured endorsement shall include a "primary insurance clause" stating to the effect that: "The insurance afforded by this policy for the benefit of the additional insureds shall be primary insurance, and any insurance maintained by the additional insureds shall be excess and non-contributory with the insurance provided hereunder." The coverage provided to the additional insureds must be at least as broad as the coverage provided to the Contractor and may not contain any additional exclusionary language or limitations applicable only to the additional insureds. Section 8.8 Cross-Liability and Waivers of Subrogation. Each of the General Liability Policy, the Vehicle Liability Policy, and, if applicable, the Builder's All-Risk Policy must: (i) be endorsed with a cross-liability endorsement (separation of insureds) and include a waiver of the Insurer's rights of subrogation against each person or entity that is an additional insured or loss payee. The Workers' Compensation Policy must be endorsed to include a waiver of the insurer's rights of subrogation against the District. A waiver of subrogation shall be effective with respect to each applicable person or entity regardless of whether the person or entity: (i) has a right to indemnification; (ii) has an obligation to indemnify any other person or entity; (iii) paid any premium for the applicable insurance; or (iv) has an insurable interest in any property. The Contractor shall indemnify, defend and hold-harmless the District, in accordance with Section 8.15 of these General Provisions, with respect to any and all subrogation claims arising from any of the General Liability Policy, the Vehicle Liability Policy, the Builder's All-Risk Policy (if applicable), or the Workers' Compensation Policy.
- 4.7. **Premiums, Deductibles and Self-Insured Retentions.** Except as provided in Subsection 8.4.3 of these General Provisions, the Contractor shall be solely responsible and liable for paying any and all premiums and other costs incurred in obtaining and maintaining the General Liability Policy, the Vehicle Liability Policy, the Builder's All-Risk Policy (if applicable), and the Workers' Compensation Policy, including, without limitation, any and all renewal premiums. Subject to written approval by the District, which the District may grant or withhold in its reasonable discretion, one or more of such insurance policies may be subject to a deductible or self-insured retention. Upon reasonable request of the District, the Contractor shall either: (i) cause any such deductible or self-insured retention to be reduced or eliminated; or (ii) obtain and provide to the District a bond or bonds guaranteeing payment of the deductible or self-insured retention, together with any losses and related investigations, claims, administrative and legal costs and expenses. Each Certificate of Insurance (defined in Section 8.10 of these General Provisions) that evidences any such insurance policy must specify any and all deductibles applicable to the policy. The Contractor shall be solely responsible and liable for any and all



such deductibles and self-insured retentions. Contractor's indemnification and other obligations pursuant to Section 8.15 of these General Provisions shall apply with respect to any and all claims arising from such premiums, deductibles and/or self-insured retentions.

- 4.8. **Evidence of Coverage.** Within five days after award of the Contract to the Contractor, or prior to commencing the Work, whichever is sooner, the Contractor must provide to the District, for each of the General Liability Policy, the Vehicle Liability Policy, the Builder's All-Risk Policy (if applicable), and the Workers' Compensation Policy, a certificate of insurance evidencing that such insurance is in effect (each a "Certificate of Insurance"), together with any and all endorsements to such policies required pursuant to this Part 8 of these General Provisions. Each Certificate of Insurance must: (i) be executed by a duly-authorized officer, agent or other representative of the insurer; (ii) include an original handwritten signature of the insurer's representative, not a stamped or printed signature; and (iii) must certify the names of the insured, any additional insureds, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance. The Contractor must provide to the District an updated Certificate of Insurance for each renewal of any such insurance policy not less than thirty days prior to any expiration of the policy. Each renewal and replacement of any such policy that, as permitted by this Part 8 of these General Provisions, is written on a "claims made" basis must have a retroactive date that is prior to the date the Contractor was initially required to have such insurance policy in effect pursuant to this Part 8. If any Certificate of Insurance associated with any of the General Liability Policy, the Vehicle Liability Policy, the Builder's All-Risk Policy (if applicable), or the Workers' Compensation Policy sets forth language to the effect that it "does not amend, extend or alter the coverage" of the insurance policy, or that the coverage available pursuant to the policy "is subject to all of the terms, exclusions, and conditions of the policy," then, notwithstanding Section 8.12 of these General Provisions, the Contractor, prior to commencing the Work, must provide to the District a certified copy of such insurance policy and all associated endorsements, riders, et. cetera.
- 4.9. **Mandatory Notice from Insurer of Change in Coverage.** Each of the General Liability Policy, the Vehicle Liability Policy, the Builder's All-Risk Policy (if applicable), and Workers' Compensation Policy, and each associated Certificate of Insurance, must require or be endorsed to require that the insurer notify the District not less than thirty days prior to any cancellation, termination, reduction in coverage, or expiration without renewal of such policy, or, in the case of any cancellation for nonpayment of premium, not less than ten days prior to cancellation. Language in any such insurance policy or Certificate of Insurance to the effect that the insurer shall "endeavor" to provide such notice, or to the effect "that failure to mail such notice shall impose no obligation and liability upon the company, its agents or representatives," shall not be acceptable.
- 4.10. **District Review and Approval of Insurance Policies.** Within ten days of a request from the District, the Contractor must provide to the District a certified copy of any of the General Liability Policy, the Vehicle Liability Policy, the Builder's All-Risk Policy (if applicable) and/or the Workers' Compensation Policy as requested by the District, together with any and all associated Certificates of Insurance, endorsements, riders, et. cetera. Each of such insurance policies and associated

other documents shall be subject to review and approval by the District in regard to compliance with the requirements of this Part 8 of these General Provisions. No such review by the District, and no failure by the District to undertake any such review, shall be deemed or construed to be an assumption of liability by the District or to constitute a waiver of any non-compliance by the Contractor with the requirements of this Part 8 of these General Provisions.

- 4.11. **Subcontractor Insurance.** The Contractor must require in its subcontracts applicable to the Work that each subcontractor obtain and maintain insurance coverage in compliance with all of the preceding requirements of this Part 8 of these General Provisions, except that: (i) no subcontractor need carry a Builder's All-Risk Policy; and (ii) coverage limits for subcontractor General Liability Policy and Vehicle Liability Policy shall be as specified in the Special Provisions. The Contractor shall be responsible for ensuring that any and all subcontractors have such insurance in effect and for providing all documentation of the subcontractors' insurance coverage (i.e., copies of insurance policies and Certificates of Insurance) to the District within the time(s) required by this Part 8 of these General Provisions. The Contractor shall indemnify, defend and hold-harmless the District, in accordance with Section 8.15 of these General Provisions, with respect to any and all claims, demands, actions, costs, expenses and other liabilities arising from the failure of any subcontractor to have in effect the insurance required pursuant to this Part 8 of these General Provisions.
- 4.12. **Waiver of Claims.** Each of the District and the Contractor hereby waives any and all rights it may have against the other pursuant to the Contract to the extent the waiving party is compensated for claims, damages or other liabilities by any of the insurance required pursuant to this Part 8 of these General Provisions. The Contractor shall require that in its subcontracts applicable to the Work that each subcontractor waive any and all rights it may have against the District in connection with the Work to the extent the subcontractor is compensated for claims, damages or other liabilities by any of the insurance required pursuant to this Part 8 of these General Provisions. The Contractor shall indemnify, defend and hold-harmless the District, in accordance with Section 8.15 of these General Provisions, with respect to any and all claims, demands, actions, costs, expenses and other liabilities arising from the failure of any subcontractor to provide the waiver as required pursuant to this Section.
- 4.13. **Indemnification.** The Contractor shall indemnify, defend, and hold-harmless the District against and from any and all claims, demands, actions, damages, losses, costs, expenses (including, without limitation, reasonable attorneys' fees), and other liabilities of whatever nature that arise from or in connection with the performance of the Contract or of the Work by Contractor or its officers, agents, employees or subcontractors. The Contractor shall reimburse the District for all damages, expenses and losses incurred by the District as a consequence of any claim, demand, action or other proceeding that is within the scope of the foregoing provision of this Section, including, without limitation, any and all disputes between Contractor and any of its subcontractors. However, the Contractor shall not be liable or responsible pursuant to this Section to the extent any claim, demand, action, damage, loss, cost, expense or other liability is attributable to the active negligence, sole negligence or willful misconduct of the District or any District's agent(s), in which event the District and the Contractor shall be liable on a comparative basis. The requirements of this Section shall be in addition to any other indemnification provisions contained

in the Contract Documents and shall survive termination of the Contract. Any and all obligations set forth in the Contract Documents requiring that the Contractor indemnify, defend and hold-harmless the District (including, without limitation, this Section) shall be deemed and construed as an obligation to indemnify, defend and hold-harmless the District, the District agent(s), and each of them.

- 4.14. **Subcontractor Indemnification.** The Contractor shall require that in its subcontracts applicable to the Work that each subcontractor indemnify, defend and hold-harmless the District in connection with the Work to the extent provided in Section 8.15 of these General Provisions. The Contractor shall indemnify, defend and hold-harmless the District, in accordance with Section 8.15 of these General Provisions, with respect to any failure of any subcontractor to indemnify, defend and hold harmless the District as required pursuant to this Section.

5. **BOND REQUIREMENTS.**

- 5.1. **Payment Bond.** Concurrent with execution and delivery of the Contract, the Contractor must deliver to the District a payment bond in the form included in the Contract Documents, which shall have been duly executed by the Contractor and a Qualified Surety (defined in Section 9.3 of these General Provisions). The payment bond must have a penal sum equal to one hundred percent (100%) of the Contract Amount, and shall be exclusive of any obligation under the performance bond required pursuant to Section 9.2 of these General Provisions. The District shall not be required to issue any payment whatsoever to the Contractor pursuant to the Contract unless and until the District has received and approved such payment bond.
- 5.2. **Performance Bond.** Concurrent with execution and delivery of the Contract, the Contractor shall deliver to the District a performance bond in the form included in the Contract Documents, which shall have been duly executed by the Contractor and a Qualified Surety. The performance bond must have a penal sum equal to one hundred percent (100%) of the Contract Amount, and shall be exclusive of any obligation under the payment bond required pursuant to Section 9.1 of these General Provisions. The District shall not be required to issue any payment whatsoever to the Contractor pursuant to the Contract unless and until the District has received and approved such performance bond.
- 5.3. **Surety Qualifications.** The payment and performance bonds required pursuant to Sections 9.1 and 9.2, respectively, of these General Provisions each must have been executed and issued by a surety that satisfies the requirements of this Section. The surety must be an "admitted surety insurer" as defined in California Code of Civil Procedure Section 995.120. In order to ensure that the surety is an "admitted surety insurer," the bidder or Contractor must attach to such bonds either of the following documents as required by California Code of Civil Procedure Section 995.311: (i) a copy of information printed from the website of the California Department of Insurance confirming that the surety is an admitted surety insurer; or (ii) a certificate from the County Clerk confirming that the surety is an admitted surety insurer. The surety that issues the performance bond must have a current A.M. Best Company "financial strength rating" of not less than "A" and a "financial size category" of not less than "VIII." A surety that meets the requirements of this Section shall be deemed to be a "Qualified Surety" for purposes of the Contract. If either or both of the payment bond or performance bond submitted by the Contractor was not executed and issued by a Qualified Surety, the Contractor, within 48 hours of notice from the District Representative and prior to commencing the Work, must

submit a replacement bond or bonds that satisfy the requirements of this Section, and if the Contractor fails to submit such replacement bond(s), the Contractor shall be deemed in material breach of the Contract. The foregoing requirement to provide a replacement payment or performance bond shall also be applicable in the event the surety, during the course of construction of the Project, loses its status as an “admitted surety insurer” as defined in Code of Civil Procedure Section 995.120.

5.4. **Increase in Bond Penal Sum.** In the event the Contract Amount is increased in accordance with the Contract, the Contractor, upon request of the District, shall promptly cause the amount of the payment and performance bonds to be correspondingly increased and shall promptly deliver satisfactory evidence thereof to the District. If the Contractor fails to provide to the District any bond required pursuant to the Contract, the District, in its sole discretion, may terminate the Contract for cause.

5.5. **Sufficiency of Bonds.** If, in the reasonable opinion of the District, either or both of the payment bond or performance bond required pursuant to this Part 9 of these General Provisions, or the surety issuing either or both of such bonds, is or becomes insufficient or unsatisfactory, the Contractor shall renew or replace such bond within 48 hours of notice from the District Representative, and any failure by the Contractor to do so shall be deemed a material breach of the Contract.

6. **SUSPENSION OR TERMINATION.**

6.1. **Suspension of Work by District.** The District, in its sole discretion, may at any time suspend performance of the Work and/or the Project by giving written notice to Contractor, and the suspension shall be effective upon receipt of such notice by the Contractor. Upon receipt of such notice, the Contractor shall immediately commence the process of suspending the Work, making safe any work in progress but otherwise taking steps to cease further progress on the Project. The District, consistent with the provisions of the Contract, shall pay the Contractor for all Work adequately performed up to the effective date of such suspension and for work reasonably required to eliminate safety hazards. Contractor shall resume its Work on the Project within twenty calendar days following written notice from the District to further proceed with Work on the Project.

6.2. **Termination for Convenience.** The District, in its sole discretion, and without need for cause, may at any time terminate the Contract, or any portion thereof, by giving written notice to Contractor, and such termination shall be effective upon receipt of such notice by the Contractor. Upon receipt of such notice, the Contractor shall immediately commence the process of terminating the Work, making safe any work in progress but otherwise taking reasonable steps to cease further progress on the Project. The District, consistent with the provisions of the Contract, shall pay Contractor for all Work adequately performed up to the effective date of the termination for convenience as for work reasonably required to eliminate safety hazards. In the event of a termination for convenience, the Contractor shall only be entitled to any profits, overhead or general conditions costs for any portion of the Work that was performed prior to termination or to compensation for costs related to discontinuing the Work. Notwithstanding a termination pursuant to this Section, the Contractor and its surety shall continue to be responsible and liable, in accordance with the Contract Documents and applicable law for any and all defects in quality, damage to property, injury to any person, and other matters arising from the Work performed and portion completed by Contractor prior to the termination.

6.3. **Termination for Cause.**

- 6.3.1. Events of Default. Each of the following events shall be deemed a default by the Contractor of its obligations pursuant to the Contract (each an "Event of Default"): (i) Contractor is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of Contractor's Insolvency; (ii) as reasonably determined by the District, the Contractor refuses or fails to provide a sufficient number of properly skilled workmen or the proper materials or supplies as are necessary for timely and/or proper completion of the Work; (iii) Contractor fails to promptly pay subcontractors for undisputed material or labor; (iv) Contractor fails to comply with any laws, ordinances, or instructions of the District applicable to the District; and (v) Contractor or its subcontractors otherwise fail to comply with any material provision of the Contract.
- 6.3.2. Opportunity to Cure. If an Event of Default occurs, the District may serve notice on the Contractor and its surety(ies) describing the unsatisfactory condition or violation that constitutes a default by the Contractor ("Notice of Default"). The Contractor shall have five (5) business days after service of any such Notice of Default to cure the Event of Default specified in the Notice of Default or to make arrangements satisfactory to the District for cure of the Event of Default. Notwithstanding the foregoing, in the case of an Event of Default pursuant to clause (i) of Subsection 10.3.1 of these General Provisions, the Contractor shall have thirty days to cure or make arrangements satisfactory to the District for cure of the Event of Default.
- 6.3.3. District Remedies for Failure to Cure. Upon failure of the Contractor to cure or make satisfactory arrangements for cure of an Event of Default in accordance with Subsection 10.3.2 of these General Provisions, the District may, at its option: (i) take such action as, in the District's opinion, is necessary to correct or cure the Event of Default and deduct the cost thereof from any amounts due or to become due to Contractor pursuant to the Contract; (ii) proceed to terminate the Contract, or any portion thereof; or (iii) take such other action as is permitted by the Contract or applicable law. In the event the District elects to terminate the Contract or any portion thereof, the District shall schedule and conduct a hearing on the matter, and the Contractor shall be permitted to attend and present evidence at such hearing to support a determination by the District that it should not terminate the Contract. The hearing shall be conducted by the Governing Board, which shall render a final decision. Alternatively, such hearing may be conducted by the District's Assistant Superintendent of Business Services or his designee, who shall make a recommendation to the Governing Board. Unless specified otherwise therein, a decision by the Governing Board shall be effective immediately. Notwithstanding a termination pursuant to this Section, the Contractor and its surety shall continue to be responsible and liable, in accordance with the Contract Documents and applicable law for any and all defects in quality, damage to property, injury to any person, and other matters arising from the Work performed prior to the termination.
- 6.3.4. Effect of Termination for Cause. In the event of any termination for cause pursuant to this Section 10.3, the District shall be entitled to withhold and retain from any payment due to the Contractor all amounts necessary to

offset any costs, expenses (including, but not limited to, attorneys' fees), losses and/or damages incurred by the District as a result of the termination for cause. If the remaining amounts potentially payable to the Contractor pursuant to the Contract are insufficient to offset such costs, expenses, losses and/or damages, the Contractor and/or its performance bond surety shall reimburse the District for the uncompensated balance of such costs, expenses, losses and/or damages, including, without limitation, any uncompensated costs to complete the Work. The District's rights pursuant to the Contract are in addition to, and not in lieu of, any other rights or remedies available to the District in the event of a termination for cause. In addition, the following provisions shall also apply in the event of any termination for cause pursuant to this Section 10.3: (i) The Contractor shall not be entitled to further compensation until satisfactory completion and acceptance by the District of all of the Work. (ii) The District shall give written notice of a termination pursuant to this Section 10.3 to both the Contractor and the Contractor's performance-bond surety. The surety shall thereafter have the right to take over and perform the Contract, provided, however, that, if the surety does not, within seven (7) calendar days after service of the notice of termination, notify the District that the surety intends to take over and perform the Contract, or if the surety does not commence performance of the Contract within fifteen days after providing such notice to the District, the District may take over and complete the Work by any means the District may deem appropriate, for the account of and at the expense of the Contractor, and the Contractor and its surety shall be liable to the District for costs thereby incurred by the District in excess of any remaining portion of the Contract Amount that otherwise would be payable to the Contractor. (iii) In the event the District takes over the Work, the District may, without liability for doing so, (1) take possession of the Work and the Project Site; (2) take possession of all materials, tools, equipment and appliances located at the Project Site and use them in connection with completion of the Project; (3) procure, upon such terms and in such manner as it may determine appropriate, services required to complete the Work; (4) require Contractor to provide all finished or unfinished documents, data, diagrams, drawings, materials or other matter prepared or built by Contractor in connection with its performance of the Contract; and (5) complete the affected portion(s) of the Project by whatever means and methods the District may deem to be in its best interests, including, but not limited to, calling upon Contractor's surety to complete the Work or to issue payment(s) to the District or its replacement contractor(s). (iv) In the event the District takes over and satisfactorily completes the Work, if the unpaid balance of the Contract Amount exceeds the cost to the District of satisfactorily completing the Work, including, without limitation, compensation for any additional architectural, managerial or administrative services needed as a result of the Contractor's default, such excess shall be paid to the Contractor after satisfactory completion and acceptance of the Work by the District less any amounts attributable to any stop payment notices and amounts withheld by the District in accordance with applicable law or the Contract. If the cost to the District of satisfactorily completing the

Work is greater than the unpaid balance of the Contract Amount, the Contractor, or its surety, shall pay the undisputed difference to the District within thirty days of notice from the District. In addition, the District may pursue any other recourse or remedies against the Contractor and/or its surety, which are available pursuant to law or the Contract.

- 6.4. **Termination by Contractor.** Subject to the other provisions of this Section, the Contractor may stop the Work or initiate termination of the Contract by giving written notice to the District Representative if, through no fault of the Contractor or its employees, subcontractors or suppliers: (i) all work on the Project ceases for a period exceeding thirty (30) days pursuant to an order or direction of any court or government entity, other than the District, with jurisdiction over any portion of the Project; (ii) the District Representative arbitrarily fails, within thirty (30) days of receipt from Contractor of a Progress Payment Application, to issue a certificate for payment for any undisputed amount(s) due to Contractor; or (iii) the District fails, within sixty (60) days of receipt from the District Representative of a certificate of payment therefor, to pay to the Contractor any undisputed amount specified in such certificate of payment. Upon receipt of any such notice from the Contractor, the District shall have fifteen days to cure or make other arrangements for cure of the matter as are acceptable to the Contractor. If the District fails within the required time period to cure or make such acceptable arrangements for cure of the matter, the Contractor may stop the Work or terminate the Contract by giving additional written notice to the District, which notice shall be effective immediately upon receipt by the District. In the event the Contractor stops the Work or terminates the Contract in pursuant to either subdivision (ii) or (iii) of the first sentence of this Section, the District shall be liable to the Contractor for any losses thereby reasonably incurred by the Contractor; provided that the Contractor shall not be entitled to recover any lost or foregone profits attributable to the portions of the Work not satisfactorily completed by the Contractor prior to stoppage of the Work or termination of the Contract.

**7. LAWS AND OTHER REQUIREMENTS.**

- 7.1. **Liability for Non-Compliance with Laws.** The Contractor at all times during the execution of the Work shall be and shall remain fully informed of all local, State and federal laws, ordinances, rules, regulations or other requirements that may in any manner affect those engaged or employed to perform any of the Work or the materials used in performing the Work, or that may in any way affect the performance of the Work. In addition, the Contractor at all times during the execution of the Work shall be and shall remain fully informed of all rules, regulations, orders and other requirements of any public or private entity with jurisdiction over the Work. In performing the Work, the Contractor shall comply with, and give notices required pursuant to, all laws, ordinances, rules, regulations and other requirements applicable to the Work as drawn and specified. The Contractor shall be liable for any violation of a law, ordinance, rule, regulation or other requirement in connection with performance of the Work. If the Contractor observes that the drawings and specifications are at a variance with any applicable law, ordinance, rule, regulation or other requirement, Contractor shall promptly notify the District Representative in writing. The Contractor shall bear all liability and costs, including any fines, arising from performance of any Work that the Contractor knew or reasonably should have known was contrary to any applicable

law, ordinance, rule, regulation or other requirement, and the Contractor failed to notify the District Representative of the same a sufficient time in advance of performing the Work to permit the District to investigate and resolve the discrepancy.

- 7.2. **Applicable Regulations.** The performance of the Work, including all construction and the materials and equipment used or incorporated into the Work, shall, not as a limitation, conform to all applicable requirements of the regulatory provisions specified in this Section. Each of such specified regulatory provisions, as those may be amended from time to time, is hereby incorporated as an operative part of the Plans and Specifications, and Contractor shall maintain a current copy of each at the Project Site. In the event of any conflict between the requirements of the various specified regulatory provisions, or in the event of any conflict between the requirements of the specified regulatory provisions and the requirements of any other applicable provision of law, the most authoritative requirements shall govern and nothing in the Contract Documents shall be construed to permit work that does not conform with such requirements. The Contractor shall not be entitled to additional compensation for any Changes in the Work necessary to ensure compliance with the requirements of the specified regulatory provisions, and the cost of any such Changes in the Work shall be deemed to be encompassed within the Contract Amount. The specified regulations are as follows: (i) Title 8 California Code of Regulations (Industrial Relations), Chapter 4 (Division of Industrial Safety), Subchapter 4 (Construction Safety Orders), commencing with Section 1500. (ii) Title 19 California Code of Regulations (Public Safety), Division 1 (State Fire Marshal), commencing with Section 1.00. (iii) Title 21 California Code of Regulations (Public Works), Division 1 (Department of General Services), Chapter 1 (Office of the State Architect), Subchapter 1 (Safety of Construction of Public Schools), commencing with Section 1. (iv) Title 24 California Code of Regulations (the California Building Standards Code).
- 7.3. **Provisions Deemed Inserted.** Each and every provision or clause required by law to be inserted in the Contract are hereby deemed to have been inserted, and the Contract shall be interpreted and enforced as though such provisions and clauses are expressly set forth herein. If, through mistake or otherwise, any required provision is not inserted or is not correctly inserted, then upon written request of either the District or the Contractor, the Contract shall be amended to make the insertion or correction. Any and all references in the Contract to laws, ordinances, rules, regulations or other requirements shall be deemed and construed to include all amendments, replacements and enactments thereto that are in effect as of the date of the Contract, as well as any later amendments thereto that do not materially or substantially alter the rights or obligations of the Parties.
- 7.4. **Equal Opportunity Employer.** The Contractor represents and warrants that it is an equal opportunity employer and that it shall not, in connection with the Work, discriminate against any employee or applicant for employment in violation of any applicable federal, State, or local law, including, without limitation, on the basis of such person's race, religion, color, national origin, ancestry, sex or age. Such policy of non-discrimination shall apply to all activities related to recruitment advertising, recruitment, initial employment, promotion, demotion, transfer, and layoff or termination.
- 7.5. **Tobacco-Free Facility.** All properties and facilities owned, leased or operated by the



District, including the Project, are tobacco-free workplaces. It is strictly forbidden while on or in any District-controlled property or facility, including the Project, to smoke, chew or otherwise use tobacco products. Any employee of the Contractor or its subcontractors found in violation of these requirements will be required to permanently leave District premises and the Contractor shall not thereafter re-employ such person on the Project or permit such person on the Project Site. The Contractor shall include this provision in all contracts with subcontractors and others performing any of the Work or providing labor, materials or services related to the Work, and each shall provide a copy of this provision to its employees on the Project.

- 7.6. **Drug-Free Facility.** All properties and facilities owned, leased or operated by the District, including the Project, are drug-free workplaces. It is strictly forbidden while on or in any District Controlled property or facility to: (i) engage in the unlawful manufacture, dispensation, possession or use, including being under the influence, of any controlled substance; (ii) possess or use any alcoholic beverage; or (iii) use any illegal substance which may cause significant impairment of normal abilities. Any employee of the Contractor or its subcontractors found in violation of these requirements will be required to permanently leave District premises and the Contractor shall not thereafter re-employ such person on the Project or permit such person on the Project Site. The Contractor shall include this provision in all contracts with subcontractors and others performing any of the Work or providing labor, materials or services related to the Work, and each, as well as the Contractor, shall provide a copy of this provision to its employees on the Project.
- 7.7. **Compliance with Labor Code Requirements.** The Project is a “public works project” as defined in Section 1720 of the California Labor Code (“Labor Code”) and, therefore, Part 7, Chapter 1, of the Labor Code is applicable to the Project. The Contractor must be, and shall be deemed and construed to be, aware of and understand the requirements of Labor Code Sections 1720 et. seq., and 1770 et. seq., and Title 8 of the California Code of Regulations, Section 16000 et. seq. (collectively, “Labor Laws”) which require the payment of prevailing wage rates and the performance of other acts in connection with public works projects. The Contractor acknowledges that, in applicable circumstances and as provided by Senate Bill (“SB”) 854 (Stats. 2014, Ch. 28), the Project is subject to compliance monitoring and enforcement by the DIR. In any event, the Contractor, at no additional cost to the District, must comply with any and all applicable Labor Law requirements, including, without limitation, requirements for payment of Prevailing Wages, maintenance, inspection and submittal of payroll records, notice and posting requirements, et. cetera. The Contractor must ensure that any and all subcontractors working under the Contractor comply with the Labor Laws and other public works requirements. The Contractor, at no additional cost to the District, must cooperate with the DIR, and the District in connection with Labor Law compliance matters. A contractor or subcontractor that has been debarred in accordance with the Labor Code, including, without limitation, pursuant to Sections 1777.1 or 1777.7, is not eligible to bid on, perform, or contract to perform any portion of the Work. Wage rates for the Work shall be in accordance with the general prevailing rates of per-diem wages determined by the DIR pursuant to Labor Code Section 1770. Wage rates shall conform to those on file at the District’s principal office and posted at the Project Site. The District will withhold payment to the Contractor necessary to

satisfy civil wage and penalty assessment issued by the Labor Commissioner. The following Labor Code sections are by this reference incorporated into and are a fully operative part of the Contract, and Contractor shall be solely responsible for compliance therewith: (i) Section 1735: Anti-Discrimination Requirements; (ii) Section 1775: Penalty for Prevailing Wage Rate Violations; (iii) Section 1776: Payroll Records; (iv) Sections 1777.5, 1777 .6, and 1777.7: Apprenticeship Requirements; (v) Sections 1810 through 1812: Working Hour Restrictions; (vi) Sections 1813 and 1814: Penalty for Failure to Pay Overtime; and (vii) Section 1815: Overtime Pay.

- 7.8. **Requirements for Payroll Records.** The Contractor must comply with all applicable provisions of Labor Code Section 1776, which relates to preparing and maintaining accurate payroll records, and submitting or making such payroll records available for review and copying by the District, the DIR's Division of Labor Standards Enforcement, and Division of Apprenticeship Standards. The payroll records must be certified, maintained at the principal offices of the Contractor, and submitted or made available as required by Labor Code Section 1776. The Contractor must inform the District of the location at which the payroll records are located, including the street address, city and county, and must, within five working days, provide a notice of any change of location and address. If the Contractor or any subcontractor fails to timely comply with requests for certified payroll records, it shall forfeit, as a penalty to the District, \$100 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated, and, in addition to penalties as provided by law, may be subject to debarment pursuant to Labor Code Section 1771.1. Timely provision by the Contractor of certified payroll records also shall be a condition precedent to the District's obligation to make any subsequent progress, final, Retention, or other payments to the Contractor pursuant to the Contract.
- 7.9. **Registration with DIR.** On and after March 1, 2015, no contractor or subcontractor may submit a bid for any work on a public works project, and on and after April 1, 2015, no contractor or subcontractor may be awarded a contract for work on a public works project or perform any work on a public works project, unless the contractor or subcontractor is then-currently registered with the DIR and qualified to perform public work pursuant to Labor Code Section 1725 .5. If applicable to the Contract, then, prior to entering into the Contract, the District will confirm that the Contractor is duly registered with the DIR. Notwithstanding anything to the contrary, if at any time during the performance of the Work, the Contractor or any of its subcontractors is not duly registered pursuant to Labor Code Section 1725.5 (including, without limitation, if the DIR revokes the registration), the District may cancel the Contract and/or replace the Contractor or subcontractor with a contractor or subcontractor that is duly registered pursuant to Labor Code Section 1725.5.
- 7.10. **Penalties for Violations of Labor Laws.** In accordance with Section 1775 of the Labor Code, the Contractor shall forfeit, as a penalty to the District, not more than \$200 and, subject to limited exceptions, not less than certain amounts specified by law, for each calendar day, or portion thereof, for each worker paid less than prevailing wage rates as determined by the director of the DIR. The Contractor shall pay to each worker the difference between such stipulated prevailing wage rate and the amount paid to the worker for each calendar day or portion thereof for which the worker was paid less than the applicable prevailing wage rates.

- 7.11. **Assignment of Anti-Trust Claims.** In accordance with Public Contract Code Section 7103.5, the Contractor, in entering into the Contract, hereby offers and agrees to assign to the District all rights, title, and interest in and to all causes of action Contractor may have under Section 4 of the Clayton Act (15 U.S.C. Section 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. Such assignment shall be made and become effective at the time the District tender's final payment to the Contractor, without further acknowledgment by the Parties.
8. **DISPUTE RESOLUTION.**
- 8.1. **Governing Law and Venue.** The Contract and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California. Any arbitration, litigation or other proceeding arising out of the Contract shall be commenced and conducted only in the County where the Project is located.
- 8.2. **Mediation and Arbitration.** The provisions of Part 3, Chapter 1, Article LS (commencing with Section 20104) of the Public Contract Code ("Dispute Resolution Provisions") shall apply to all public works claims of \$375,000 or less arising or resulting from the Contract. The Dispute Resolution Provisions are incorporated herein by this reference. The Dispute Resolution Provisions require that any such claim be in writing and supported by adequate documentation of the basis for the claim. The District shall respond to any such claim as required pursuant to the Dispute Resolution Provisions, and the Parties may be required to mediate and arbitrate the claim(s).
- 8.3. **Costs and Expenses.** The Parties shall, initially, equally bear the cost of any arbitration, litigation or other proceeding arising from or related to the Work or the Contract; however, the prevailing party in any such proceeding shall be entitled to recover such initial costs, in addition to other costs as specified herein, as an item of damage and/or recoverable cost.
- 8.4. **Continuation of Work.** Notwithstanding anything in the Contract Documents to the contrary, in the event of any dispute between the District and the Contractor, or any dispute between the Contractor and any subcontractor or other third party, the Contractor shall not be permitted to cease performance of the Work, but the Contractor shall have the right to pursue all other remedies permitted pursuant to the Contract and applicable law. A violation of this provision by the Contractor shall constitute a material breach of the Contract.