

Recording Requested by:  
Fidelity National Title Company

When Recorded Mail to (and  
Mail any applicable Tax Statements to):  
Lucia Mar Unified School District  
602 Orchard Street  
Arroyo Grande, CA 93420  
Attn: Mary Stark

Space Reserved for Recorder's Use Only

**LONG TERM PROPERTY LEASE ASSIGNMENT, TRANSFER,  
AND CONSENT AGREEMENT**  
(APNs 062-051-021 and -022)

The undersigned declare:

*In accordance with California Revenue and Taxation Code Section 11922, documentary transfer tax is ZERO based on the fact that the LMUSD is a political subdivision of the State of California.*

*This document is being recorded for the benefit of the Lucia Mar Unified School District and is exempt from the payment of a recordation fee pursuant to Govt. Code Section 6103.*

This Long Term Property Lease Assignment, Transfer, and Consent Agreement ("Assignment") is between and among **OCEANO COMMUNITY CENTER, INC.**, a California non-profit public benefit corporation ("OCCI"), **LUCIA MAR UNIFIED SCHOOL DISTRICT**, a California public school district ("LMUSD"), and **OCEANO COMMUNITY SERVICES DISTRICT**, a California public agency ("OCSD").

**Recitals**

OCSD and OCCI entered into that certain "Long Term Property Lease" dated July 27, 2005, and an Addendum to said Long Term Property Lease dated November 10, 2005 (together, the "Lease"), whereby OCSD leased to OCCI certain real property owned by OCSD, located at 19th and Wilmar Streets in the community of Oceano, and bearing Assessor's Parcel Nos. 062-051-021 and -022 (the "Property"). The purpose of the Lease was to allow OCCI to construct and operate a community center and related improvements on the Property for the benefit of the Oceano community, which OCCI has done. Copies of the Lease are attached to this Assignment as *Exhibit A*.

OCCI and LMUSD have entered into an "Agreement of Purchase and Sale and Joint Escrow Instructions" whereby OCCI is selling and LMUSD is buying said community center and related improvements on the Property, together with OCCI's interest in the Lease, and a variety of sports and office equipment, appliances, furniture, and fixtures in use by OCCI at

the community center.

OCCI and LMUSD intend that all of OCCI's rights, title and interest in and to the Lease, be assigned, transferred, sold and conveyed to and assumed by LMUSD as a part of and in connection with the closing of the escrow for the purchase and sale of the Property, OCSD consents to the assignment and assumption of OCCI's rights and obligations under the Lease, and the Parties have entered into this Assignment to accomplish that purpose.

THE PARTIES THEREFORE AGREE AS FOLLOWS:

1. **Assignment and Transfer.** OCCI assigns, transfers, sells, and conveys to LMUSD all of OCCI's rights, title, and interest in and to the Lease.

2. **Assumption.** LMUSD assumes and agrees to satisfy and discharge all of OCCI's obligations under the Lease that arise after the Effective Date of this Assignment, and shall indemnify and defend OCCI against and hold OCCI harmless from any and all losses, costs, damages, liabilities, and expenses, including, without limitation, reasonable attorney fees, incurred by OCCI as a result of any claim arising under the Lease and based on events occurring after the Effective Date of this Assignment.

3. **Consent.** Pursuant to Section 16 of the Lease, OCSD executes this Assignment for the purpose of evidencing its consent to the assignment by OCCI of its rights and obligations in and to the Lease and the assumption of same by LMUSD, and OCSD waives all requirements of said Section 16 that OCCI first offer said assignment and transfer to OCSD. Upon the Effective Date, OCCI shall be released from its rights and obligations under the Lease as to those obligations arising under the Lease, based on events occurring after the Effective Date of this Assignment.

4. **Warranties of OCCI and OCSD.** OCCI and OCSD warrant, represent, and covenant to LMUSD that to the best of their knowledge:

(a) The copy of the Lease attached hereto as *Exhibit A* is a true, complete and accurate copy of the Lease, and the Lease has not otherwise been modified, revised, supplemented or amended in any manner;

(b) The Lease is in full force and effect;

(c) OCCI is in full compliance with the Lease (or if not in full compliance, the specific nature and extent of such non-compliance is set forth in an attachment to this Assignment that has been initialed by authorized representatives of OCCI and OCSD);

(d) There is no prohibition set forth in the Lease with respect to OCCI's assignment of such Lease, OCSD's consent to such assignment, or LMUSD's assumption of the obligations under the Lease; and

(e) No other assignment of any interest in the Lease has been made.

5. **No Partnership.** None of the terms and conditions of this Assignment shall create a partnership between or among the Parties, nor shall it cause them to be considered joint venturers or members of any joint enterprise. This Assignment is not intended, nor shall it be construed, to create any third-party beneficiary rights in any person who is not a party to this Assignment.

6. **Severability.** If any term of this Assignment or the application of such term to a person or circumstance shall to any extent be declared invalid or unenforceable, the remainder of this Assignment, the application of such terms, persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected by it, and each term of this Assignment shall remain valid and enforceable to the extent permitted by law.

7. **Binding Effect.** This Assignment applies to and binds the Parties and their respective heirs, legal and personal representatives, successors, and assigns.

8. **Attorney Fees.** If a dispute arises between or among the Parties concerning the performance of the obligations under this Assignment or the meaning or interpretation of any provision of this Assignment, then the party(ies) not prevailing in the dispute shall pay any and all costs and expenses incurred by the other party(ies), including without limitation, court costs and reasonable attorney's fees.

9. **Effective Date; Conditions Precedent.** The "Effective Date" of this Assignment shall be the date that the transfer of title to the Property from OCCI to LMUSD occurs. The effectiveness of this Assignment is contingent upon that transfer of title. If for any reason that transfer of title does not occur, then this Assignment shall be null and void. The execution of this Assignment is a condition precedent to that transfer of title to the Property from OCCI to LMUSD.

10. **Recording.** LMUSD shall cause this Assignment to be recorded as a part of the closing of the escrow for the transfer of title to the Property from OCCI to LMUSD, with copies of the recorded Assignment to be provided to OCSD, LMUSD, and OCCI.

11. **Estoppel Certificate.** The Parties intend that this Assignment shall function as an estoppel certificate as to those matters set forth in Section 3 above.

12. **Counterparts.** This Assignment may be executed in any number of counterparts, each to be an original, but all of which shall constitute one instrument, and it shall be sufficient if all Parties hereto execute at least one such counterpart.

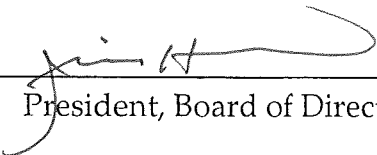
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**OCEANO COMMUNITY CENTER, INC.**

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
President, Board of Directors

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Corporate Secretary

**OCEANO COMMUNITY SERVICES DISTRICT**

By:  \_\_\_\_\_ Dated: 9/12/08  
President, Board of Directors

**LUCIA MAR UNIFIED SCHOOL DISTRICT**

By \_\_\_\_\_ Dated: \_\_\_\_\_  
Mary Stark, Deputy Superintendent

Attachment:

*Exhibit A, "Long Term Property Lease" between OCSD and Oceano Community Center, Inc., dated July 27, 2005, and an Addendum to said Long Term Property Lease dated November 10, 2005.*

J:\wdocs\00353\020\agt\00171069.DOC

RECORDING REQUESTED BY  
WHEN RECORDED RETURN TO:

Alexander F. Simas  
KIRK & SIMAS  
2550 Professional Parkway  
Santa Maria, CA 93455

File No. 01248.01.17

SPACE ABOVE THIS LINE FOR RECORDER'S USE

### MEMORANDUM OF LEASE

**THIS MEMORANDUM OF LEASE** is executed in connection with that certain Long Term Property Lease dated as of December 27, 2000, (for references purposes only) between **OCEANO COMMUNITY SERVICES DISTRICT**, ("Lessor") and **OCEANO COMMUNITY CENTER, INC.**, a California non-profit corporation ("Lessee") relating to that certain real property commonly known as 1425 19<sup>th</sup> Street, Oceano, California (the "Property"), and more particularly described as follows.

Lots 2 through 5, Lots 6 through 13 and Lots A and B, all in Block 4 of Wheeler's Subdivision of Lot L of the Warner Tract, in the County of San Luis Obispo, State of California, according to the map recorded January 18, 1927 in Book 3, Page 83 of Maps, in the office of the County Recorder of the County of San Luis Obispo, State of California.

APN: 062-051-021; 062-051-022

Lessor and Lessee have entered into the above-referenced Lease, which includes, among other things, a term (including all extensions) of ninety-nine (99) years terminating July 27, 2104 and subject to certain conditions specified therein including certain restrictions limiting the use of the property to public recreation purposes.

**LESSOR:**  
OCEANO COMMUNITY SERVICES DISTRICT

**LESSEE:**  
OCEANO COMMUNITY CENTER, INC.

By: Barbara Mann  
Barbara Mann  
Vice-President

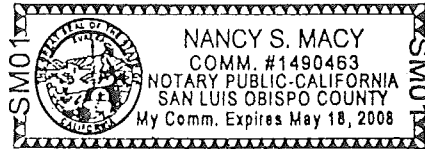
By: Ruth E. Brackett  
Ruth Brackett  
President

STATE OF CALIFORNIA )  
COUNTY OF SAN LUIS OBISPO )

On 08-01, 2005, before me, Nancy S. Macy, a notary public, personally appeared **Barbara Mann**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Nancy S. Macy

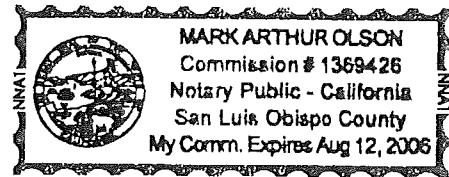


STATE OF CALIFORNIA )  
COUNTY OF SAN LUIS OBISPO )

On July 29, 2005, before me, Mark Arthur Olson, a notary public, personally appeared **Ruth Brackett**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Mark Arthur Olson



~~XXXXXXXX XX~~  
~~THE OCEANO COMMUNITY CENTER~~  
~~ATTACHMENT A IS GRANT APPLICATION AND GRANT AWARD~~

LONG TERM  
PROPERTY LEASE  
OCEANO COMMUNITY CENTER

This Lease July, 2005 (hereinafter "Lease") is executed as of the this 27th day of ~~DECEMBER~~, ~~2008~~, by and between the OCEANO COMMUNITY SERVICES DISTRICT (hereinafter referred to as "Lessor" or "District", and OCEANO COMMUNITY CENTER, INC., a California non-profit corporation (hereinafter referred to as "Lessee"), with reference to the following recitals:

**RECITALS**

- A. Lessor is a community services district organized pursuant to ' 61000 et seq. of the Government Code.
- B. Lessee is a California non-profit corporation organized pursuant to ' 501(c) (3) of the Corporations Code.
- C. Lessor owns certain real property within the Oceano Community Services District, County of San Luis Obispo, more particularly described as follows. Said real property is referred to herein as "the Premises".  
Lots 2 through 5, Lots 6 through 13 and Lots A and B, all in Block 4 of Wheeler's Subdivision of Lot ~~XL8~~ of the Warner Tract, in the County of San Luis Obispo, State of California, according to the map recorded January 18, 1927 in Book 3, Page 83 of Maps, in the office of the County Recorder of the County of San Luis Obispo, State of California.
- D. The Premises described in Recital C was purchased with grant money received from the California Wildlife, Coastal, Park Land Conservation Act (herein "the Grant"). The Grant restricts use of the Premises. Lessee acknowledges that it has read the Grant and understands the restrictions and obligations set forth therein. The Grant is attached hereto as Exhibit A.

to the Option term identified in Section 2.03(a) of this Lease.

### 3. Option to Renew

Lessor hereby grants to Lessee an option to extend the term of this Lease (herein "Extended Term") on the same terms, conditions and provisions as contained in this Lease, except as otherwise provided herein, for an additional ninety-six (96) years (herein "Option to Extend") on the following conditions:

(a) Subject to paragraph (b) below, the Option to Extend shall be automatically exercisable by written notice from Lessee to Lessor of Lessee's intent to exercise its election to extend the term not later than the date which is ninety (90) days prior to the expiration of the Initial Term.

(b) Lessee may only exercise its option, and the exercise thereof shall only be effective, if at the time of Lessee's exercise of such option, it has satisfied the following conditions to the satisfaction of Lessor:

1. Lessee is not in default of this Lease.
2. Lessor has received an Occupancy Permit for improvements pursuant to Section 8, below.

### 4. Rent

The monthly base rent ("Base Rent") for the Premises shall be One Dollar per month payable annually on or before July 1<sup>st</sup> of each year

### 5. Condition of Premises

(a) Except as provided herein, the Premises are leased in an "AS-IS" condition, and Lessee shall be responsible for construction of all buildings on the premises.

(b) Lessee acknowledges that Lessee has leased a part of the Premises and is familiar with and has inspected the Premises and accepts the Premises in an "AS-IS" condition.



## 6. Utilities

(a) Lessee shall make all arrangements and pay for all water, gas, heat, light, power, telephone and other utility services supplied to the Premises together with any taxes thereon and for all connection charges.

(b) Lessee acknowledges that Lessor has no obligation to provide utilities furnished as of the date of this Lease to the Premises or additional utilities. Lessor shall not be liable to Lessee under any circumstances for damages or loss to Lessee's property, injury to person or property, or consequential damages, however occurring, through, in connection with, or incidental to failure to furnish or interruption of any utilities or services.

(c) Lessee shall comply with all rules and regulations which Lessor, any governmental agencies or authorities, or any utility company may establish for the use, proper functioning and protection of any such utility.

## 7. Lessee's Use of the Premises

As a covenant and condition, the Premises and improvements shall be used by Lessee for the primary purposes of conducting recreational activities in compliance with the Project Agreement for Project SD-1-4001 (herein "the Grant") between the State of California, Department of Parks and Recreation, and the Oceano Community Services District. Subject to the following limitations and conditions:

(a) The Oceano Community Service District's use of the premises and lessee improvements pursuant to Paragraph 23 below.

(b) Lessee shall comply with all applicable laws affecting the Premises. Lessee will not commit or allow to be committed any waste on the Premises, nor maintain or allow to be maintained any nuisance on the Premises. District agrees to waive any and all plan check and inspection fees.

(c) Lessee shall not use or permit the Premises, the existing buildings, or Lessee Improvements, or any part of such property to be used for any purpose that would violate the Grant or any other provisions or conditions of this Lease.

## 8. Improvements

Prior to Lessee's exercise of its Option to Extend the Initial Term referenced in Section 2, above, and in compliance with the requirements of Section 9, below, Lessee shall have constructed improvements in substantial compliance with the plans and specifications referenced in Section 3.01 of the Option Agreement. So long as Lessee is not in default under the provisions of this Lease, title to improvements constructed by Lessee hereunder shall be vested in Lessee for the duration of this Lease.

## 9. Plans, Specifications and Construction

With reference to all improvements subsequent to those approved in accordance with option agreement.

(a) No improvement shall be erected, placed, altered or maintained on the Premises unless plans and specifications have been approved in writing by Lessor. Such approval by Lessor shall not be unreasonably withheld. Prior to commencing construction of any building, structure or improvement (including landscaping) on the Premises, Lessee shall notify Lessor of the date of commencement and expected completion thereof and shall submit the following plans and specifications for approval:

1. Plot plans drawn to scale, full dimensions, with name, date and north arrow showing property lines, size, location and configuration of all Improvements, including, but not limited to, buildings, structures, retaining walls, fences, walls, easements, access, parking areas, public and private streets, signs, exterior lighting, landscaped areas, topography, and the proposed location of all service areas and trash collection areas indicating the proposed method of screening such service and trash areas from public view.

2. Landscaping plans indicating the location, type, size and quantity of all trees, shrubs, plants and ground cover plus the layout of the proposed watering facilities plan. Said approval by Lessor shall not be unreasonably withheld.

3. Architectural plans and total square footage

of all structures, including signs, and showing exterior renderings or elevations of all sides of all structures, details of roof screening, construction materials and exterior colors.

4. A complete set of working drawings.

5. The name and license number of the general contractor or successor who will supply material or services in constructing the Improvements.

(b) Lessee shall be responsible, at Lessee's sole cost and expense, for securing all necessary governmental or quasi-governmental approvals of the plans and specifications and for securing all permits necessary to construct and operate the Lessee Improvements and Approved Improvements.

(c) Once Lessee shall have commenced construction, Lessee shall pursue the same with reasonable speed and dispatch in compliance with the approved plans and specifications and using the contractors specified in Subsection (a)5. All construction shall be in accord with all applicable laws, ordinances and regulations. If Lessee is prevented from completing Improvements on account of strikes, lockouts, failure of contractor or subcontractors, inability to procure material or labor in the free market, governmental restrictions, fire, earthquake, the elements, or other casualty or similar extraordinary conditions beyond Lessee's reasonable control (excluding financial difficulties, economic conditions or inability to obtain governmental approvals), then the Lessee shall thereafter proceed with all reasonable speed and dispatch to complete the Improvements.

(d) By approving plans and specifications, Lessor assumes no liability therefor, or for any defect resulting from the plans and specifications. Lessee indemnifies and shall hold Lessor harmless from any damage, loss or prejudice claimed, and from all expenses incurred arising out of Lessor's approval of plans and specifications or any improvement on the Premises.

(e) All of the Improvements shown in the approved plans and specifications constitute the "Approved Improvements." Substantial modifications to Approved Improvements shall be made only with prior written approval of Lessor, except that Lessor's prior written approval shall not be required for changes to the interior of any building which do not substantially diminish the value thereof.

## 10. Repairs and Maintenance

(a) Lessee shall maintain the Premises and every part thereof in good order, condition and repair, including but without limitation, the following:

1. all buildings, structures or fixtures, including foundations, roofs, ceilings, floors, interior and exterior walls,

2. store fronts, windows, doors, hangar doors, plate glass, showcases, skylights, entrances and vestibules located within the Premises,

3. landscaping, fences and signs, and

4. all sprinkler systems, plumbing, onsite sewers, drainage devices, heating, air conditioning, electrical facilities, equipment and other utilities or facilities serving the Premises.

(b) Lessee shall commence any repair within thirty (30) days after the receipt by Lessee of written notice of the need for such repair, including any notice from Lessor. Lessor shall not be liable to Lessee by reason of any injury to or interference with Lessee's use of the premises and or improvements arising from or connected with the need for or the making of any repairs, alterations or Improvements. All repairs, modifications or Improvements to the Premises shall be performed in accordance with the building standards of the County of San Luis Obispo, and it shall be the responsibility of Lessee to secure appropriate permits from the County of San Luis Obispo. Lessee shall maintain the floors and paint interior walls and exterior walls and shall wash all windows in the Premises as often as may be required to keep the Premises neat and attractive, and shall keep the Premises at all times in a neat, sanitary condition, free from waste or debris, consistent with standards established by Lessor. Lessee shall screen and landscape all outside storage areas and service yards of the Premises with fencing and landscaping approved by Lessor, and shall not allow any temporary structures or facilities on the Premises, without Lessor's approval, which approval is revocable at any time in the sole discretion of Lessor.

(c) In the event Lessee fails to perform its obligations under Section 10(b), Lessor may, at its option, after thirty(30) days written notice to Lessee, enter upon the Premises and put the same in good order, condition and repair,

and the cost thereof shall become due and payable, upon demand, by Lessee to Lessor as additional rent.

(d) Lessor shall have no obligation to make any repairs to the Premises other than as expressly and specifically set forth in this Lease. Lessee hereby waives any and all rights provided in Sections 1941 through 1942, inclusive, of the Civil Code of California and hereby waives, to the extent permissible, any rights other than statutes or laws now or hereafter in effect which are contrary to the obligations of Lessee under this Lease, or which place obligations upon Lessor in addition to those provided in this Lease.

(e) Lessee shall defend, indemnify and hold Lessor harmless against all actions, claims and damages by reason of (1) Lessee's failure to perform the terms of this Section 10, or (2) Lessee's nonobservance or nonperformance of any law, ordinance or regulation applicable to the Premises, and any liability or duty to repair imposed by the laws of California.

## 11. Liens

(a) Lessee shall not allow or permit to be enforced against the Premises or any part thereof, any mechanic's, materialmen's, contractor's or subcontractor's liens arising from any claim growing out of work of any construction, repair, restoration, replacement or improvement, or any other claim or demand no matter how the same may arise. Lessee shall pay or cause to be paid all of said liens, claims or demands before any lawsuit is brought to enforce them against the Premises. Lessee agrees to defend, indemnify and hold the Lessor and the Premises free and harmless from all liability for any and all such liens, claims and demands, together with reasonable attorneys' fees and all costs and expenses incurred by Lessor in connection therewith.

(b) Notwithstanding anything to the contrary set forth above, if Lessee shall in good faith contest the validity of any such lien, claim or demand, then Lessee shall, at its expense, defend itself and Lessor against the same and shall pay and satisfy any adverse judgment that may be rendered thereon before the enforcement thereof against Lessor or the Premises. A condition to Lessee's right to contest the validity of any lien, claim or demand shall be that if Lessor shall require, Lessee shall furnish to Lessor evidence of a surety bond satisfactory to Lessor in an amount at least equal to the contested lien, claim or demand, the effect of which is

to indemnify Lessor against liability for the same, and to hold the Premises free from the effect of such lien or claim.

## 12. Hazardous Materials

(a) Restrictions. Lessee shall not cause or permit any hazardous materials or toxic substances to be brought upon, kept or used in or about the Premises by Lessee, its agents, employees, contractors or invitees, without the prior written consent of Lessor. Lessor shall not unreasonably withhold such consent as long as Lessee demonstrates to Lessor's reasonable satisfaction and covenants to Lessor that such hazardous materials or toxic substances are necessary or useful to Lessee's conducting maintenance and/or recreational activities and will be used, kept and stored in a manner that complies with all laws relating to any such hazardous materials or toxic substances so brought upon or used or kept in or about the Premises. If Lessee breaches the obligations stated in the preceding sentence, or if the presence of hazardous materials or toxic substances on the Premises caused or permitted by Lessee results in contamination of the Premises, or if contamination of the Premises by hazardous materials or toxic substances otherwise occurs for which Lessee is legally liable to Lessor for damage resulting therefrom, then Lessee shall indemnify, defend and hold Lessor harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, and sums paid in settlement of claims, actual attorneys' fees, consultant fees and expert fees), which arise during or after the term of the Lease as a result of such contamination. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions, including regular inspections, or any clean-up, remedial, removal or restoration work required or recommended by any federal, state or local governmental agency or political subdivision because of hazardous materials or toxic substances present in the soil or ground water on or under the Premises. The indemnity, defense and hold harmless obligations of Lessee under this section shall survive any termination of this Lease. Without limiting the foregoing, if the presence of any hazardous materials or toxic substances on the Premises caused or permitted by Lessee results in any contamination of the Premises, Lessee shall promptly take all actions at its sole expense as are necessary

to return the Premises to the condition existing prior to the introduction of any such hazardous materials or toxic substances; provided that, Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions, in Lessor's sole and absolute discretion, would not potentially have any material adverse long-term or short-term effect on the Premises.

(b) Testing Wells. Lessor shall have the right, at any time, to cause testing wells to be installed on or about the Premises, and may, at its option, cause the ground water, soil and air to be tested to detect the presence of hazardous materials or toxic substances at least once every twelve (12) months during the term of the Lease by the use of such tests as are then customarily used for such purposes. If Lessee so requests, Lessor shall supply Lessee with copies of such test results. The cost of such tests and of the maintenance, repair and replacement of such wells shall be fully paid for by Lessee within ten (10) days after receiving a statement of charges from Lessor.

(c) Access. Lessor and Lessor's agents shall have the right to inspect the Premises for the purposes of ascertaining Lessee's compliance with this section. The cost of such inspections shall be reimbursed to Lessor by Lessee. In the event of a spill or mishandling of hazardous materials or toxic substances, Lessee shall immediately inform Lessor verbally and in writing. Such notice shall identify the hazardous materials or toxic substances involved and the emergency procedures taken.

(d) Definitions. As used herein, the terms "hazardous materials and/or toxic substances" mean (i) any hazardous or toxic substance, material or waste which is or becomes regulated by any local, state or federal government or special district, (ii) designated as a "hazardous substance" pursuant to Section 1311 of the Federal Water Pollution Control Act (33 USC Section 1317), (iii) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 USC Section 6901, et seq. (42 USC Section 6903), (iv) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Section 9601, et seq. (42 USC Section 9601), (v) defined as a "hazardous waste" or as a "hazardous substance" pursuant to Section 25117, 25316 or 25821(d) of the California Health and Safety Code, or (vi) any infectious wastes or substances.

References herein to specific statutes or laws shall also be references to any amendments of or applicable successor statutes or laws.

(e) Delivery of Inventory and Plans. If Lessee presently uses in its activities materials which may be hazardous materials or toxic substances as defined in this section, Lessee shall, prior to execution of the Lease, deliver to Lessor (i) a list of all such hazardous materials and toxic substances, (ii) a plan for use, handling, storage and disposal of hazardous materials and toxic substances, (iii) the name, address, telephone number and qualifications of a licensed company that will handle emergency clean-up for Lessee, and (iv) a written contingency plan for any emergency involving hazardous materials and toxic substances. During the term of the Lease, Lessee shall immediately deliver to Lessor (i) a new list of all such hazardous materials and toxic substances, each time Lessee adds or changes the materials or substances it uses and each time a material or substance used by Lessee becomes included within the definition of hazardous materials or toxic substances under this Lease (due to new or revised laws or otherwise), and (ii) copies of all reports required by any and all regulatory agencies governing the use, handling, storage and disposal of hazardous materials or toxic substances.

(f) Consent to Use. Lessor agrees that Lessee may use the hazardous materials and toxic substances specifically consented to by Lessor as required by subsection (a) above, subject to the terms of this Lease and this section. Lessee shall immediately notify Lessor in writing of any other materials which may be used by Lessee or stored by Lessee on or about the Premises which may be hazardous or toxic, and shall obtain Lessor's written consent prior to such use or storage.

(g) Insurance. Any increase in the premium for insurance carried by Lessor or required of Lessee under this Lease on the Premises which arises from Lessee's use and/or storage of these materials shall be solely at Lessee's expense. Lessee shall procure and maintain at its sole expense such additional insurance as may be necessary to comply with any requirement of any federal, state or local governmental agency or special district with jurisdiction.

(h) Storage. It is the intent of the parties hereto that the provisions of this section of the Lease, regarding the use and handling of hazardous materials and toxic



substances, shall also apply to Lessee's storage upon the Premises of any substances, including, but not limited to, gasoline and diesel fuels, in above- or below-ground storage tanks.

### 13. Taxes and Assessment

(a) Lessee shall pay without abatement, deduction or offset all real and personal property taxes, general and special assessments, and other charges of every description levied on or assessed against the Premises, improvements located on the Premises, personal property located on or in the land or Improvements, the leasehold estate, or any subleasehold estate, to the full extent of installments falling due during the term, whether belonging to or chargeable against Lessor or Lessee. Lessee shall make all such payments directly to the charging authority at least fifteen (15) days before delinquency and before any fine, interest or penalty shall become due or be imposed by operation of law for nonpayment. If, however, the law permits the payment of any or all of the above items in installments (whether or not interest accrues on the unpaid balance), Lessee may, at Lessee's election, utilize the permitted installment method, but shall pay each installment with any interest before delinquency.

(b) Lessee shall furnish to Lessor at least fifteen (15) days before the date when any tax, assessment or charge would become delinquent, receipts or other appropriate evidence establishing their payment. Lessee may comply with this requirement by retaining a tax service to notify Lessor whether the taxes have been paid.

(c) Taxes and assessments determined from the latest information available for the first and, if Lessee is not in default under this Lease, the last year of this Lease shall be prorated between the Lessor and Lessee on the basis of a tax fiscal year commencing July 1 and ending June 30.

(d) In the event Lessee fails to pay such taxes or assessments, Lessor may, at its option, after giving ten (10) days notice to Lessee, pay any such taxes or assessments together with all penalties and interest which may have been added thereto by reason of any such delinquency or failure to pay, and may likewise redeem the Premises or any part thereof, or the buildings or Improvements located thereon, from any tax

sale or sales. Any such amounts so paid by Lessor shall become immediately due and payable as additional rent by Lessee to Lessor, together with interest thereon at the maximum lawful rate from the date of payment by Lessor until paid by Lessee.

Any such payment shall not be deemed to be a waiver of any other rights of Lessor hereunder. Lessee may, in good faith, contest any such tax or assessment at its expense. However, Lessee shall defend itself and Lessor against the same and shall pay and satisfy any judgment including all penalties and interest that may be rendered thereon. Lessor may require Lessee to furnish Lessor a surety bond or other security reasonably satisfactory to Lessor in an amount equal to such contested tax or assessment, indemnifying Lessor against liability for such tax or assessment and holding the Premises free from the effect of such tax or assessment.

#### **14. Insurance and Indemnity**

(a) Lessor's Non-liability. Lessor shall not be liable for any loss, damage or injury of any kind to any person or property arising from any use of the Premises, or any part thereof, or caused by any defect in any building, structure or other improvement thereon or in any equipment or other facility therein, or caused by or arising from any act or omission of Lessee or any of its agents, employees, licensees or invitees, or by or from any accident on the Premises or any fire or other casualty thereon, or occasioned by the failure of Lessee to maintain the Premises and all Improvements thereto in a safe condition, or arising from any other cause except where caused by Lessor's sole negligence or willful misconduct.

(b) Indemnification of Lessor. Notwithstanding anything to the contrary contained in this Lease, and irrespective of any insurance carried by Lessee for the benefit of Lessor under the terms of this Lease, Lessee agrees to defend, indemnify and hold the Lessor and the Premises harmless from any and all damages and liabilities at any time occasioned by or arising out of (A) any act, activity or omission of Lessee, or of anyone holding under Lessee, or (B) the occupancy or use of the Premises or any part thereof, by or under Lessee, or (C) any state or condition of the Premises or any part thereof.

(c) Liability Insurance. Lessee shall procure and maintain at all times during the term of this Lease, at its sole cost and expense, a policy or policies of comprehensive public liability insurance by the terms of which Lessor and

Lessee are named as insured and are indemnified against liability for damage or injury to property or person, including death, of any person entering upon or using the Premises or any Improvements thereon or any part thereof, with limits of coverage in an amount of not less than One Million Dollars (\$1,000,000.00) combined single limit and annual aggregate coverage applying to injury to or death of any one or more persons arising from the same occurrence and for damage or injury to property. If Lessor's reasonably exercised judgment determines that the liability insurance amounts set forth herein become inadequate, then Lessor may, upon 30 days written notice, require a reasonable increase in coverage commencing with the next policy anniversary date. Such public liability insurance policy or policies shall be stated to be primary and noncontributing with any insurance which may be carried by Lessor and shall contain a provision (provided such provisions are available without increased premium) that the Lessor, although named as an insured shall nevertheless be entitled to recover under that policy for any loss, injury or damage to the Lessor, its agents and employees or the property of such persons by reason of the negligence of Lessee. Worker's compensation insurance shall be in the amounts required by law.

The following endorsements shall be attached to the liability insurance policy:

1. The insurance policy insures on an "occurrence" basis.
2. The policy must cover personal injury, as well as bodily injury.
3. The coverage shall be at least as broad as comprehensive liability and broad form comprehensive general liability or "commercial" general liability.
4. The Lessor, its Board of Directors, its officers, agents, employees and volunteers shall be named as insured under the coverage afforded with respect to liability arising out of activities performed by or on behalf of Lessee under this contract. The coverage shall contain no special limitations on the scope of protection afforded to Lessor, its Board Members, its officers, agents, employees and volunteers.
5. An endorsement shall be attached which states that the coverage is primary insurance and that any insurance or self-insurance fund maintained by or available to Lessor or any of its officers, agents, employees or volunteers shall be in excess of Lessee's insurance and shall not be called upon to contribute to a loss covered by the policy.
6. A cross-liability endorsement must be included to the effect that each insured is covered as if separate

policies had been issued to each insured.

7. The liability coverage may be either on a blanket basis or a policy which specifically identifies this Agreement with a contractual liability endorsement.

8. Any deductibles or self-insured retention must be declared to and approved by Lessor. At the option of Lessor, the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the Lessor, its officers, agents, employees and volunteers or the Lessee shall procure a bond guaranteeing payment of losses and related investigation, claims administration and defense expenses.

(d) Lessee shall at all times during the term of this Lease and at its sole expense, procure and maintain in full force a policy or policies of standard fire and extended coverage insurance insuring all Improvements on the Premises in an amount equal to not less than the full replacement costs. Lessee agrees to reevaluate insurance coverage at five (5) year intervals or annually upon request of Lessor and to increase said coverage if it shall be less than the then full replacement cost of the Improvements on the Premises. The amount of the full replacement cost shall be determined in writing by the carrier of insurance then in force and shall be binding on the parties for the purpose of this paragraph. The insurance policies insuring against fire or other casualty shall include the interest of the holder of any "mortgage" executed by Lessee in connection with obtaining of any interim or permanent financing with respect to the Premises, and said policies shall provide that any loss is payable jointly to Lessor, Lessee and the holder, if any, of a "mortgage" in the Lessee's interest under this Lease. Proceeds from any insurance policy shall be used in accordance with the provisions of this Lease dealing with use of insurance funds for repair and restoration.

(e) All policies of insurance procured and maintained by Lessee hereunder shall be issued by companies authorized to do business in California having not less than Best's A. Executed copies of all insurance policies or a certificate thereof shall be delivered to Lessor on the Commencement Date and shall contain a provision that not less than thirty (30) days written notice by certified mail, return receipt requested, shall be given to Lessor prior to the cancellation, reduction of coverage, expiration or any material change in any such policy.

(f) In the event any buildings, structures or Improvements located on the Premises are damaged by fire or

other casualty, any such sums as are received from or on account of any policy of insurance covering the same shall, except as provided in Section 15, below, be expended for the restoration, repair or replacement of said buildings, structures or Improvements.

(g) If Lessee fails or refuses to procure or to maintain insurance as required by this Lease or fails or refuses to furnish Lessor with required proof that the insurance has been procured and is in force and paid for, Lessor shall have the right at Lessor's election, without notice, to procure and maintain such insurance. The premiums paid by Lessor shall be treated as added rent due from Lessee with interest at the Bank of America prime rate, to be paid within thirty (30) days of demand. Lessor shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer or insurers.

(h) The parties hereby release each other, and their respective representatives, from any claims for damage to any person or to the Premises and the Improvements which may be located upon the Premises and to the fixtures, personal property, Lessee's Improvements and alterations of Lessee in or on the Premises and the Improvements which may be located upon the Premises that are caused by or result from risks insured against under any insurance policies carried by the parties hereto and in force at the time of any such damage. Each party hereto shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy, provided obtaining such a waiver in each such policy is then available at a reasonable charge. Neither party hereto shall be liable to the other for any damage caused by fire or any of the risks insured against under any insurance policy required by this Lease.

## 15. Repair and Restoration

If during the term of this Lease any building or improvement on the Premises or any part thereof shall be damaged or destroyed by fire or other casualty, Lessee shall, at its sole cost and expense, repair or restore the same according to the original plans thereof or to such modified plans as shall be previously approved in writing by Lessor pursuant to Section 9. Such work of repair or restoration

shall be commenced within ninety (90) days after the damage or loss occurs and shall be completed with diligence but not longer than one (1) year after such work is commenced, provided, however, that the time for commencement and completion of such repair and restoration shall be extended as appropriate in accordance with the provisions of Section 28(n) below. If insurance proceeds provided for above shall be insufficient for the purpose of such restoration and repair, or if the casualty is one not required to be insured against, then Lessee shall make up the deficiency out of its own funds.

Lessee waives the provisions of Civil Code Sections 1932(2) and 1933(4) with respect to any destruction of the Premises.

If such damage or destruction occurs during the last two (2) years of the Lease term Lessee shall have no duty to repair or restore, and if Lessee elects not to repair or restore, this Lease shall terminate and Lessor shall receive all insurance proceeds, referenced in Section 14d.

#### **16. Assignment and Subletting**

Lessee shall not assign, transfer or sublease its interest in the premises or this agreement without the prior written consent of Lessor which consent shall not be unreasonably withheld. It shall not be unreasonable for Lessor to withhold its consent if Lessor cannot be provided with adequate assurances that the designated assignee can provide primarily recreational activities under this lease agreement for a 3 year period and is capable of complying with the A GRANT@ and all covenants and conditions herein.

Prior to any assignment or transfer, lessee shall first offer the assignment or transfer to Lessor on the same terms and conditions as those proposed for the assignment or transfer. Lessor shall have 60 days in which to determine whether it will accept the offer. If Lessor does not accept the offer within that time, Lessee, subject to the consent requirements of the above Paragraph, shall be free to transfer or assign its interests in the premises or this agreement to an approved third party.

#### **17. Prohibition of Involuntary Assignment**

Neither this lease nor the leasehold estate of lessee nor any interest of lessee under this lease in the property or in the building or Improvements on the property will be subject to involuntary assignment, transfer, or sale, or to assignment, transfer, or sale by operation of law in any

manner whatsoever (except through statutory merger or consolidation, or devise, or intestate succession). Any such attempt at involuntary assignment, transfer, or sale will be void and of no effect.

## 18. Default

The occurrence of any one or more of the following events shall constitute a default under this Lease by Lessee:

- (a) Failure to pay an installment of rent or other sum when due;
- (b) Failure to pay any insurance premium, lien, claim, demand, judgment or other charge provided for in this Lease to be paid or caused to be paid by Lessee at the time and in the manner as provided for in this Lease;
- (c) Failure to maintain the Leased Premises or the Improvements as provided in this Lease;
- (d) Abandonment of the Leased Premises after completion of construction for a continuous period of thirty (30) days;
- (e) Failure to operate and conduct activities on the Premises in compliance with the Grant;
- (f) Default by Lessee under the terms of any mortgage on the estate of Lessee;
- (g) The making by Lessee of any general arrangements or assignments for the benefit of creditors;
- (h) Lessee's becoming a "debtor" as defined in 11 USCS '101 or any successor statute, unless, the case of a petition filed against Lessee, it is dismissed within sixty (60) days after filing;
- (i) The appointment of a trustee or receiver to take possession of substantially all of Lessee's assets at the Leased Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days of this appointment;
- (j) The attachment, execution, or other judicial seizure of substantially all of Lessee's assets located at the Leased Premises or of Lessee's interest in this Lease, where this seizure is not discharged within thirty (30) days after the

seizure;

(k) Failure to perform or breach of any other covenant, condition or restriction provided for in this Lease.

#### 19. Remedies in Event of Default

Upon any default of Lessee, and in the event the said default is due to the failure of Lessee to make the payment of any installment of rent or other sum when due, and in the event Lessee shall fail to remedy such default within *thirty (30)* days after written notice to do so, or upon any other default by Lessee, and in the event that Lessee shall fail to remedy such other default within thirty (30) days after written notice from Lessor so to do specifying the nature of such default, or if such default cannot be cured within thirty (30) days, Lessee has not commenced corrective action and prosecuted the same to completion with due diligence, or in the event that the default is of such a nature that it cannot be cured by any action of Lessee, then and in any of these events, in addition to any other remedy Lessor may have by operation of law, Lessor shall have the right but not the obligation without any further demand or notice to reenter the Leased Premises and eject all persons from the Leased Premises, using due process of law, and either:

(a) Immediately terminate Lessee's right to possession of the Premises, and repossess the same by summary proceedings or other appropriate action, and Lessor shall thereupon be entitled to receive from Lessee all damages specified in California Civil Code Section 1951.2(a), including, without limitation, the right to receive the worth at the time of the award, of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided; all of which damages to the extent specified in Section 1951.2(b) shall be computed by allowing interest at the maximum rate permitted by law. Lessor shall also have the right, but no duty, to cure any default of Lessee under the terms of any mortgage on the estate of Lessee.

(b) Without terminating this Lease or the Lessee's right to possession, relet the Leased Premises or any part of the Leased Premises as the agent and for the account of Lessee upon such reasonable terms and conditions as Lessor may deem



advisable, in which event the rents received on such reletting and collection shall be applied first to the reasonable expenses of such reletting and collection, including necessary renovation and alterations of the Leased Premises, reasonable attorneys' fees, any real estate commissions paid, and thereafter to payment of all sums due or to become due to Lessor under this Lease, and if a sufficient sum shall not be thus realized by the payment of such sums and other charges, Lessee shall pay Lessor any deficiency notwithstanding Lessor may have received rental in excess of the rental stipulated in this Lease in previous or subsequent months, and Lessor may bring an action therefor as such monthly deficiency shall arise.

## 20. Effect of Eminent Domain

(a) In the event the entire Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease will terminate and expire as of the date of such taking, and lessee will then be released from any liability thereafter accruing under the Lease agreement. Concurrent with any notice to Lessor, Lessee shall be provided notice of any pending action.

(b) In the event a portion of the Premises shall be so appropriated or taken and the remainder of the Premises shall not be suitable for the use then being made of the Premises by Lessee, Lessee will have the right to terminate this Lease as of the date of such taking on giving to lessor written notice of such termination within thirty (30) days [number of days notice of termination due to partial condemnation] days after Lessor has notified Lessee in writing that the Premises has been so appropriated or taken. Concurrent with any notice to Lessor, Lessee shall be provided notice of pending actions in eminent domain.

If, in the event of such partial taking, Lessee does not so terminate this Lease, then this Lease will continue in full force and effect as to the part not taken, and the rent to be paid by Lessee during the remainder of the term, shall, as of the date of taking, be adjusted so that Lessee shall be required to pay for the remainder of the term only such portion of such rent as the value of the part of the Premises remaining after the taking bears to the value of the entire Premises at the date of taking. Any such determination will not affect or change the times at which Lessor may require an adjustment in rent under such provisions.

(c) (1) In the event of the termination of this Lease by reason of the total or partial taking of the Premises by eminent domain, then in any such condemnation proceedings Lessor and Lessee will be free to make claim against the condemning or taking authority for the amount of any damage done to them, respectively, as a result of such taking.

(2) If, in the event of a partial taking of the Premises, this Lease is not terminated, then Lessor and Lessee will be free to make claim against the condemning or taking authority for the amount of any damage done to them, respectively, as the result of such taking.

## **21. Nondiscrimination Covenant**

During the term of this Lease, Lessee hereby agrees as follows:

(a) Lessee shall not discriminate against any person on the basis of sex, race, color, national origin, age, religion, ancestry, or physical handicap, in the use of the Premises or the improvements constructed pursuant to this Lease.

(b) Lessee shall not discriminate against any person on the basis of residence, except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence and pursuant to law.

(c) The Premises and improvements constructed thereon shall be open to members of the public generally, except as noted under the special provisions of the Grant Agreement.

## **22. Obligations of Lessor**

(a) Lessor shall have no further obligation to perform repair or maintenance work on or to the Premises.

(b) Lessee hereby acknowledges that Lessor shall have no obligation whatsoever to provide guard service or other security measures for the benefit of the Premises or Improvements to be constructed thereon.

## **23. Lessor's Reservations**

Lessee shall make the recreational improvements available to the Oceano Community Services District at a reasonable time

and subject to reasonable rules and regulations during such time when it is not otherwise in use for a bonafied community recreational activity. The Oceano Community Service District shall not be required to pay any fees or charges for the use of the premises up to a maximum of 120 hours per year (10 hours per month). If the Oceano Community Service District's use of the recreational improvements exceeds 120 hours per any calendar year, the Oceano Community Service District shall reimburse Lessee for the pro rata actual costs of operating the recreational improvements used by the District based upon the amount of hours of Oceano Community Service District use in excess of 120 hours compared to the total hours the recreational improvements are in use.

#### **24. Estoppel Certificates**

Lessor and Lessee shall, respectively, at any time and from time to time upon not less than ten (10) days prior written request by the other, deliver to the requesting party an executed and acknowledged statement in writing certifying:

(a) That this Lease is unmodified and in full force and effect (or if there has been any modification(s) thereof that the same is in full force and effect as modified, and stating the nature of the modification or modifications);

(b) That to its knowledge the requesting party is not in default under this Lease (or if any such default exists, the specific nature and extent thereof), and

(c) The date to which rent and other charges have been paid in advance, if any. Each certificate delivered pursuant to this Section may be relied on by any prospective purchaser or transferee of the Leased Premises or of Lessor's or Lessee's interest hereunder or by any fee mortgagee of the Leased Premises or of Lessor's or Lessee's interest hereunder or by any assignee of any such mortgagee.

#### **25. Surrender of Lease**

The voluntary or other surrender of this lease by lessee, or a mutual cancellation of the lease, will not work a merger, and will, at the option of lessor, terminate all or any existing subleases or subtenancies, or may, at the option of lessor, operate as an assignment to it of any or all such subleases or subtenancies.

## 26. Ownership of Improvements

At the expiration or sooner termination of the term of this Lease, all Improvements on the Premises constructed by Lessee pursuant to Section 8 shall become the property of Lessor.

## 27. Miscellaneous

(a) Attorneys' Fees. In the event any action is brought by Lessor to recover any rent due and unpaid hereunder or to recover possession of the Leased Premises, or in the event any action is brought by Lessor or Lessee against the other to enforce or for the breach of any of the terms, covenants or conditions contained in this Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees to be fixed by the Court, together with costs of suit therein incurred.

(b) Waiver. No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Lease shall be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions and conditions hereof. No delay or omission of Lessor to exercise any right or remedy shall be construed as a waiver of any such right or remedy or of any default by Lessee under this Lease. The various rights and remedies reserved to Lessor herein including those not specifically described in this Lease shall be cumulative and, except as otherwise provided by California statutory law in force at the time of execution of this Lease, Lessor may pursue any or all of such rights and remedies whether at the same time or otherwise.

(c) Holding Over. If Lessee shall hold over the Leased Premises after the expiration of the term hereof with the consent of Lessor, either express or implied, such holding over shall be construed to be only a tenancy from month to month, subject to all the covenants, conditions and obligations hereof, and Lessee hereby agrees to pay to Lessor double the rent as provided in this Lease; provided, however, that nothing herein contained shall be construed to give Lessee any rights to so hold over and to continue in possession of the Leased Premises after the expiration of the term hereof.

(d) Lease Binding Upon Successors and Assigns. Subject to the limitations on assignment and subleasing, each of the terms, covenants and conditions of this Lease shall extend to and be binding on and inure to the benefit of not only Lessor and Lessee, but each of their successors and assigns. Whenever in this Lease reference is made to either Lessor or Lessee, the reference shall be deemed to include, wherever applicable, the successors and assigns and such parties the same as if in every case expressed.

(e) Inspection. Lessor reserves the right for Lessor and Lessor's agents and representatives to enter upon the Leased Premises and Improvements constructed by Lessee at any reasonable time during normal business hours, for the purpose of attending to Lessor's interest hereunder, and to inspect the Leased Premises and Improvements constructed by Lessee.

(f) Relationship of Parties. The relationship of the parties hereto is that of Lessor and Lessee, and it is expressly understood and agreed that Lessor does not in any way nor for any purpose become a partner of Lessee or a joint venturer with Lessee in the conduct of Lessee's business or otherwise.

(g) Time of the Essence. Time is expressly declared to be of the essence of this Lease.

(h) Memorandum of Lease. This Lease shall not be recorded, but the parties agree to execute and deliver a Memorandum of this Lease in recordable form which will include the restrictions on assignment.

(i) Quitclaim. At the expiration or earlier termination of this Lease, Lessee shall execute, acknowledge and deliver to Lessor within five (5) days after written demand from Lessor to Lessee any quitclaim deed or other document required by any reputable title company to remove the cloud of this Lease from the real property subject to this Lease.

(j) Number and Gender. Whenever the singular number is used in this Lease and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and the word "person" shall include corporation, firm or association. If there is more than one Lessee, the obligations imposed under this Lease upon Lessee shall be joint and several.

(k) Headings and Titles. The marginal headings or

titles to the Sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease.

(l) Compliance with Governmental Regulations. Lessee shall, at its own cost and expense, promptly and properly, comply with and execute, including the making of any alteration to the Leased Premises or Improvements constructed by Lessee, all orders, regulations, laws and requirements of all governmental authorities arising from the use or occupancy of, or applicable to, the Leased Premises ("Applicable Laws").

(m) Entire Agreement. This Lease contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other previous agreement, statement or promise made by any party hereto which is not contained herein shall be binding or valid.

(n) Modification. Any Addendum to or modification of this Lease must be in writing and signed by the respective authorized representative of both Lessor and Lessee and when so executed shall become a part of this Lease

(o) Force Majeure. Except as to the payment of rent, neither of the parties hereto shall be chargeable with, liable for, or responsible to, the other for anything or in any amount for any delay caused by fire, earthquake, explosion, flood, hurricane, the elements, acts of God, or the public enemy, action or interference of governmental authorities or agents, war, invasion, insurrection, rebellion, riots, strikes, or lockouts or any other cause whether similar or dissimilar to the foregoing, which is beyond the control of such parties and any delay due to said causes or any of them shall not be deemed a breach of or default in the performances of this Lease.

(p) Disclaimer of Representation. Except as otherwise specifically provided herein, Lessor has made no representations or warranties to the Lessee concerning the Leased Premises, the present use thereof or the suitability for Lessee's intended use of the property. Lessee represents and warrants to Lessor that its representatives have made or will make their own independent inspection and investigation of the Leased Premises and Lessee, in entering into this Lease, is relying solely on such inspection and investigation. No patent or latent physical condition of Leased Premises, whether or not known or discovered, shall affect the rights of either party hereto. Any agreement, warranties or

representations not expressly contained herein shall in no way bind either Lessee or Lessor. Lessor and Lessee waive any right of rescission and all claims for damages by reason of any statement, representations, warranty, promise and agreement, if any, not contained in this Lease.

(q) Recitals. Recitals A through G of this Lease are incorporated herein by this reference and made a part hereof.

(r) Lessor agrees to make a good faith effort to ensure that transferee assumes all terms and conditions of this lease as a condition of transfer.

(s) Venue. Lessor and Lessee agree that if any legal action is taken to interpret or enforce the terms and conditions of this Lease, such actions shall be filed with the proper court in the County of San Luis Obispo.

(t) Authority to Execute Agreement. The parties hereby represent that the parties executing this agreement are expressly authorized to do so for and on behalf of the parties.

(u) Payments and Notices. Any notice to be given or other document to be delivered by either party to the other party may be given by personal delivery, generally recognized overnight courier, prepaid, or may be deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed to the party for whom intended as follows:

To: Lessor: Oceano Community Services District  
P. O. Box 599  
Oceano, CA 93445

Lessee: Oceano Community Center, Inc.  
P. O. Box 387  
Oceano, CA 93445

Either party hereto may from time to time by written notice to the other party designate a different address which shall be substituted for the one specified above. Notices and documents shall be served upon receipt or, if any notice or other document is sent by registered or certified mail, as provided above, the same shall be deemed served or delivered seventy-two (72) hours after the mailing thereof.

Executed at Oceano, California, on the day and the year first above written.

**LESSEE:**  
OCEANO COMMUNITY CENTER,  
INC.

**LESSOR:**  
OCEANO COMMUNITY SERVICES  
DISTRICT

By Luath E. Brachert

By Barbara Mann  
~~XXXXXXXXXXXXXXXXXXXX~~  
~~XXXXXXXXXXXXXXXXXXXX~~  
Barbara Mann  
Vice-President

ATTEST:

By \_\_\_\_\_

By Francis M. Cooney  
Francis M. Cooney,  
Board Secretary



State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION

EXHIBIT A

PROJECT AGREEMENT

CALIFORNIA WILDLIFE, COASTAL, AND PARK LAND CONSERVATION ACT

APPLICANT Oceano Community Services District

PROJECT TITLE Oceano Recreation Park PROJECT NUMBER SD-1-40001

PROJECT PERFORMANCE PERIOD IS July 1, 1989 to June 30, 1992

Under the terms and conditions of this agreement, the applicant agrees to complete the project as described in the project description, and the State of California, acting through its Director of Parks and Recreation pursuant to the California Wildlife, Coastal, and Park Land Conservation Program, agrees to fund the project up to the total state grant amount indicated.

PROJECT DESCRIPTION:

~~This grant is for the acquisition of approximately 1.4 acres of property for a recreation park in Oceano.~~

Total State Grant not to exceed \$ 400,000

Oceano Community Services District  
Applicant

By [Signature]  
Signature of Authorized Representative

Title General Manager

Date AUG 31 1989

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

The General Provisions attached are made a part of and are incorporated into the Agreement.

STATE OF CALIFORNIA  
DEPARTMENT OF PARKS AND RECREATION

By \_\_\_\_\_

Date \_\_\_\_\_

CERTIFICATION OF FUNDING

CONTRACT NUMBER		FUND CALIFORNIA WILDLIFE, COASTAL, AND PARK LAND CONSERVATION FUND OF 1988			
PROJECT NO. SD-1-40001	AMOUNT OF THIS ESTIMATE \$400,000	APPROPRIATION Local Assistance			
UNENCUMBERED BALANCE \$	ITEM NO. 3790-101-786(4)	CHAPTER 93	STATUTES 1989	FISCAL YEAR 1989/90	
ADJ. INCREASING ENCUMBRANCE \$	FUNCTION				
ADJ. DECREASING ENCUMBRANCE \$	LINE ITEM ALLOTMENT 88-90 860				
I hereby certify upon my own personal knowledge that budgeted funds are available for this encumbrance.			T.B.A. No.	S.R. No. 88-	
SIGNATURE OF ACCOUNTING OFFICER			DATE		

CALIFORNIA WILDLIFE, COASTAL, AND PARK LAND CONSERVATION ACT  
PER CAPITA AND SPECIAL DISTRICT

Project Agreement  
Special Provisions

Notwithstanding any other provision of this agreement, grant moneys shall be encumbered by the Applicant within three years of the date when the appropriation became effective. Said date of appropriation is July 1, 19

General Provisions

A. Definitions

1. The term "State" as used herein means the California State Department of Parks and Recreation.
2. The term "Act" as used herein means the California Wildlife, Coastal, and Park Land Conservation Act commencing with Section 5900 of the Public Resources Code.
3. The term "Project" as used herein means the project which is described on page 1 of this agreement.
4. The term "Applicant" as used herein means the party described as applicant on page 1 of this agreement.
5. The term "Application" as used herein means the individual application and its required attachments for grants pursuant to Section 5907 of the Public Resources Code and submitted to the State pursuant to Section 5914 and/or Section 5919 of the Public Resources Code.

B. Project Execution

1. Subject to the availability of grant moneys in the Act, the State hereby grants to the Applicant a sum of money (grant moneys) not to exceed the amount stated on page 1 in consideration of and on condition that the sum be expended in carrying out the purposes as set forth in the Description of Project on page 1 and under the terms and conditions set forth in this agreement.  
  
Applicant agrees to assume any obligation to furnish any additional funds that may be necessary to complete the project. Any modification or alteration in the project as set forth in the application on file with the State must be submitted to the State for approval.
2. Applicant agrees to complete the Project in accordance with the time of project performance set forth on page 1, and under the terms and conditions of this agreement.
3. Applicant shall comply as lead agency with the California Environmental Quality Act (Public Resources Code, Section 21000, et. seq.
4. If the Project includes development, the development plans and specifications or force account schedule shall be reviewed and approved by the State.
5. Applicant agrees to secure completion of the development work in accordance with the approved development plans and specifications or force account schedule.
6. Applicant agrees to permit periodic site visits by the State to determine if development work is in accordance with the approved plans and specifications or force account schedule, including a final inspection upon Project completion.
7. Applicant agrees to submit all significant deviations from the Project to the State for prior approval.

8. If the Project includes acquisition of real property Applicant agrees to comply with Chapter 16 (condemnation) Section 72601 of Division 7 of Title 1 of the Government Code and any applicable federal, state, or local laws and ordinances. Documentation of such compliance will be made available for review upon request by the State.
9. Applicant agrees to furnish State preliminary title reports respecting such real property or such other evidence of title which is determined to be sufficient by State. Applicant agrees in negotiated purchases to correct prior to or at the close of escrow any defects of title which in the opinion of State might interfere with the operation of the Project. In condemnation actions such title defects must be eliminated by the final judgment.
10. Applicant agrees to provide for reasonable public access to lands acquired in fee with grant moneys except where that access may interfere with habitat protection.

C. Project Costs

The Grant moneys to be provided Applicant under this agreement may be disbursed as follows:

1. If the Project includes acquisition of real property, the State may disburse to Applicant the grant moneys as follows, but not to exceed in any event the State grant amount set forth on page 1 of this agreement:
  - a. When acquisition is through negotiated purchase, State may disburse the amount of the State approved purchase price together with State approved costs of acquisition.
  - b. When acquisition is allowed pursuant to this Act through proceedings in eminent domain, State may disburse the amount of the total award as provided for in the final order of condemnation together with State approved costs of acquisition.
  - c. In the event Applicant abandons such eminent domain proceedings, Applicant agrees to bear all costs in connection therewith and that no grant moneys shall be disbursed for such costs.
2. If the Project includes development, after approval by State of Applicant's plans and specifications or force account schedule and after completion of the Project or any phase or unit thereof, State may disburse to Applicant upon receipt and approval by State of a statement of incurred costs from Applicant, the amount of such approved incurred costs shown on such statement, not to exceed the State grant amount set forth on page 1 of this agreement, or any remaining portion of such grant amount to the extent of such statement. State may disburse up to 100% of the State grant amount allocated for development upon receipt and approval by State of Applicant's plans and specifications or force account schedule.

The statements to be submitted by Applicant shall set forth in detail the incurred or estimated cost of work performed or to be performed on development of the Project and whether performance will be by construction contract or by force account. Statements shall not be submitted more frequently than ninety day periods unless otherwise requested by State.

Modifications of the development plans and specifications and/or force account schedule must be approved by State prior to any deviation from the State approved plans and specifications and/or force account schedule unless previously authorized by the State.

D. Project Administration

1. Applicant agrees to promptly submit such reports as the State may request.  
In any event Applicant shall provide State a report showing total final Project expenditures.
2. Applicant agrees that property and facilities acquired or developed pursuant to this agreement shall be available for inspection upon request by the State.
3. Applicant agrees to use any moneys advanced by the State under the terms of this agreement solely for the Project herein described.
4. If grant moneys are advanced, the Applicant agrees it should place such moneys in a separate interest bearing account, setting up and identifying such account prior to the advance, interest earned on grant moneys shall be used on the project or paid to the State. If grant moneys are advanced and not expended, the unused portion of the grant shall be returned to the State within 60 days of completion of the Project or end of the Project performance period, whichever is earlier.
5. Applicant agrees that income earned by the Applicant from a State approved non-recreational use on the Project shall be used for recreational purposes at the Project, or, if approved by the State, for recreational purposes within the Applicant's jurisdiction.

E. Project Termination

1. Applicant may unilaterally rescind this agreement at any time prior to the commencement of the Project. After Project commencement this agreement may be rescinded, modified or amended by mutual agreement in writing.
2. Failure by the Applicant to comply with the terms of this agreement or any other agreement under the Act may be cause for suspension of all obligations of the State hereunder.

3. Failure of the Applicant to comply with the terms of this agreement shall not be cause for the suspension of all obligations of the State hereunder if in the judgment of the State such failure was due to no fault of the Applicant. In such case, any amount required to settle at minimum cost any irrevocable obligations properly incurred shall be eligible for reimbursement under this agreement.
4. Because the benefit to be derived by the State, from the full compliance by the Applicant with the terms of this agreement, is the preservation, protection and net increase in the quantity and quality of parks, public recreation facilities and/or historical resources available to the people of the State of California and because such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the State by way of grant moneys under the provisions of this agreement, the Applicant agrees that payment by the Applicant to the State of an amount equal to the amount of the grant moneys disbursed under this agreement by the State would be inadequate compensation to the State for any breach by the Applicant of this agreement. The applicant further agrees therefore, that the appropriate remedy in the event of a breach by the Applicant of this agreement shall be the specific performance of this agreement, unless otherwise agreed to by the State pursuant to Section 5919 (b), Public Resources Code.
5. Applicant and State agree that if the Project includes development final payment may not be made until the Project conforms substantially with this agreement and is a useable public recreation facility.

F. Hold Harmless

1. Applicant agrees to waive all claims and recourse against the State including the right to contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to this agreement except claims arising from the concurrent or sole negligence of State, its officers, agents, and employees.
2. Applicant agrees to indemnify, hold harmless and defend State, its officers, agents and employees against any and all claims, demands, damages, costs, expenses or liability costs arising out of the acquisition, development, construction, operation or maintenance of the property described as the Project which claims, demands or causes of action arise under Government Code Section 895.2 or otherwise except for liability arising out of the concurrent or sole negligence of State, its officers, agents, or employees.
3. Applicant agrees that in the event State is named as codefendant under the provisions of Government Code Section 895 et seq., the Applicant shall notify State of such fact and shall represent State in the legal action unless State undertakes to represent itself as codefendant in such legal action in which event State shall bear its own litigation costs, expenses, and attorney's fees.
4. Applicant and State agrees that in the event of judgment entered against the State and Applicant because of the concurrent negligence of the State and Applicant, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury apportionment.
5. Applicant agrees to indemnify, hold harmless and defend the State, its officers, agents and employees against any and all claims, demands, costs, expenses or liability costs arising out of legal actions pursuant to items to which the Applicant has certified. Applicant acknowledges that it is solely responsible for compliance with items to which it has certified.

G. Financial Records

1. Applicant agrees to maintain satisfactory financial accounts, documents and records for the Project and to make them available to the State for auditing at reasonable times. Applicant also agrees to retain such financial accounts, documents and records for three years following project termination or completion.

Applicant and State agree that during regular office hours each of the parties hereto and their duly authorized representatives shall have the right to inspect and make copies of any books, records or reports of the other party pertaining to this agreement or matters related thereto. Applicant agrees to maintain and make available for inspection by the State accurate records of all of its costs, disbursements and receipts with respect to its activities under this agreement.

2. Applicant agrees to use any generally accepted accounting system.

H. Use of Facilities

~~Applicant agrees that the property acquired or developed with grant moneys under this agreement shall be used by the Applicant only for the purposes for which the State grant moneys were requested and no other use of the area shall be permitted except by approval of the Legislature.~~

2. Applicant agrees to maintain and operate the property acquired, developed, rehabilitated or restored with grant moneys in perpetuity subject to the provisions of Public Resource Code Section 5917. With the approval of State, the applicant or its successors in interest in the property may transfer the responsibility to maintain and operate the property in accordance with Section 5919.

I. Nondiscrimination

1. The Applicant shall not discriminate against any person on the basis of sex, race, color, national origin, age, religion, ancestry, or physical handicap in the use of any property or facility acquired or developed pursuant to this agreement.
2. The Applicant shall not discriminate against any person on the basis of residence except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence and pursuant to law.

Facilities shall be open to members of the public generally, except as noted under the special provisions of this project agreement.

J. Application Incorporation

The Application and any subsequent change or addition approved by the State is hereby incorporated in this agreement as though set forth in full in this agreement.

K. Severability

If any provision of this agreement or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of the agreement which can be given effect without the invalid provision or application, and to this end the provisions of this agreement are severable.

AGREEMENT BETWEEN THE COUNTY OF SAN LUIS OBISPO AND  
THE OCEANO COMMUNITY SERVICES DISTRICT  
REGARDING TRANSFER OF COUNTY REAL PROPERTY FOR DEVELOPMENT OF A  
COMMUNITY PARK IN OCEANO

THIS AGREEMENT is entered into by and between the County of San Luis Obispo, hereinafter "County" and the Oceano Community Services District hereinafter "District".

WHEREAS, County presently owns certain real property located in the unincorporated community of Oceano not required for County use; and

WHEREAS, said real property consists of approximately 4,875 square feet of unimproved land; and

WHEREAS, District desires to acquire said real property and other adjacent land to develop a community park; and

WHEREAS, County and District agree that transfer of said real property to the District for development and use as a community park is in the best interest of the general public.

NOW, THEREFORE, in consideration of the promises and conditions hereinafter set forth, County and District hereby covenant and agree as follows:

1. County will convey to District by Quitclaim Deed the real property described as Lot 6 in Block 4 of Wheeler's Subdivision of Lot "L" recorded in Book 3, Page 83 of Maps in the Office of the San Luis Obispo County Recorder, as soon as possible after execution of this Agreement by District.

2. It is hereby understood and agreed by County and District that no monetary consideration will be required of the District to acquire said real property in that the public benefits derived by the development and maintenance of the community park and the cost thereof equal or exceed the value of the County real property.

3. County will transfer the real property to the District subject to the following restrictions:

✓ A. District may use said real property for public recreational purposes only.

B. District may not transfer title, control or interest in said real property to any non-public entity.

C. District will develop, maintain and use the real property as a public Community Park within five (5) years from the date of transfer of said real property by County.

In the event any of the above restrictions are violated, title to the real property shall immediately revert to the County of San Luis Obispo.

County and District agree to all of the terms and conditions of this Agreement as herein set forth.

COUNTY OF SAN LUIS OBISPO

BY: \_\_\_\_\_  
Chairperson of the Board of Supervisors

ATTEST:

\_\_\_\_\_  
Clerk of the Board of Supervisors

Authorized by the Board of Supervisors this  
day of \_\_\_\_\_, 1990.

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.  
County Counsel

BY: \_\_\_\_\_  
Deputy County Counsel

DATE: \_\_\_\_\_

OCEANO COMMUNITY SERVICES DISTRICT

BY: Larry A. Baughman  
LARRY A. BAUGHMAN, President  
Board of Directors

ACKNOWLEDGEMENT )  
State of California ) ss  
County of San Luis Obispo )

On this 16th day of April, in the year 1990, before me GINA A. DAVIS, Deputy Secretary to the Board of Directors of the Oceano Community Services District, County of San Luis Obispo, State of California, personally appeared Larry A. Baughman, known to me to be the President of the Board of Directors of the Oceano Community Services District, County of San Luis Obispo, State of California and to be the person who executed the within instrument on behalf of said public corporation, agency or political subdivision, and acknowledged to me that such Oceano Community Services District Board of Directors, County of San Luis Obispo, State of California, executed same.

GINA A. DAVIS, Deputy Secretary to the  
Board of Directors of the Oceano Community  
Services District, County of San Luis  
Obispo, State of California

BY: Gina A. Davis

(SEAL)

jr/49690/J#1  
5/11/90

## ADDENDUM TO LEASE

This Addendum is made effective November \_\_\_\_\_, 2005 between OCEANO COMMUNITY SERVICES DISTRICT ("Lessor") and OCEANO COMMUNITY CENTER, INC. ("Lessee") and supersedes, amends and clarifies the Long Term Property Lease Oceano Community Center dated July 27, 2005 (the "Lease"). Where in conflict with the Lease, the terms of this Addendum shall govern the parties' respective rights.

### 1. **Encumbrance of Leasehold.**

a. **Right to Encumber.** In the event it becomes necessary for Lessee to secure interim or permanent financing for the construction of any required or permitted improvements herein, Lessee shall have the right to subject the leasehold estate and any and all such improvements to one or more mortgages as security for a loan or loans; provided, however, that the mortgage and all rights acquired under it shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease and to all rights and interests of Lessor, except as otherwise provided herein. No lien or encumbrance of any kind or nature can be placed upon the fee simple title to the Premises. Further, any lien, encumbrance or loan purportedly secured by the leasehold estate of Lessee created under the Lease, or any portion thereof, which is not consented to by Lessor pursuant to this article shall be null, void and of no force or effect.

Prior to making any such lien or encumbrance allowed hereunder, Lessee must submit to Lessor the proposed terms and conditions of said loan, setting forth the total amount thereof, the interest rate, the schedules and a description of the security for the repayment thereof (the "Proposed Financing Notice") and Lessor shall have the right of approval of such encumbrances. Lessor shall not unreasonably withhold or delay such approval, but Lessor may deny approval if Lessee or any of its successors or assigns is in default of its obligations under this Lease. In the event Lessor denies or withholds its approval, Lessor shall provide written notice of such denial not later than twenty-five (25) business days after receipt of the Proposed Financing Notice of Lessor's specific reasons for denying or withholding consent. Lessor's failure to provide written notice to Lessee within twenty-five (25) days of receipt of the Proposed Financing Notice shall conclusively be deemed to be Lessor's approval of the terms set forth in the Proposed Financing Notice.

The mortgage documents shall provide, among other things, that: (i) each mortgage document is subject and subordinate to this Lease; (ii) should the encumbrance holder succeed to the interests of Lessee in the Premises or under this Lease by any means or proceedings whatsoever, then the encumbrance holder shall be obligated to keep and perform all of the covenants and conditions of this Lease required to be kept and performed by Lessee (except as modified in this Addendum); and (iii) any proceeds from fire or extended coverage insurance shall be used as provided in this Lease. The encumbrance holder shall also agree to give Lessor written notice of any default by Lessee under the mortgage documents. Said notice shall be given within 20 calendar days after the encumbrance holder communicates in writing with Lessee regarding the default or gives Lessee notice of the default.

### b. **Rights of Encumbrance Holder.**

i. Nothing contained in the Lease shall be deemed to preclude the transfer of this Lease without the consent of Lessor at a foreclosure sale under any trust deed or mortgage executed to obtain financing referred to in Section 1.a, or by a deed in lieu thereof, or



any subsequent transfer by the encumbrance holder subject to the requirements hereof, if:

(1) the encumbrance holder is the purchaser at such foreclosure sale; and

(2) the encumbrance holder is a commercial bank, savings and loan association, mutual savings bank, insurance company, pension fund trustee, other institutional investor, or if the transfer by the encumbrance holder is approved in writing by Lessor.

In the event that the encumbrance holder purchases said leasehold interest, said encumbrance holder shall comply with all of the terms and conditions of this Lease, except that the encumbrance holder so acquiring title shall be personally liable for any monetary sums or payments owing to Lessor only during the period said encumbrance holder or a receiver appointed at its instance and request is in possession, or entitled to possession, of the Premises or retains the leasehold interest so acquired. Said encumbrance holder may transfer the leasehold interest so acquired to a third party, provided that as a condition of transfer the transferee shall assume and expressly agree in writing to be bound by all of the terms, covenants, conditions and agreements of this Lease, as modified by this Addendum; and provided further that such third party shall comply with and shall use the Premises in accordance with the deed restrictions on use encumbering the Premises and the restrictions in the California Wildlife, Coastal, and Park Land Conservation Act Project Agreement for Project Number SD-1-40001. In the event the encumbrance holder is not the purchaser at such foreclosure sale and is not a commercial bank, savings and loan association, mutual savings bank, insurance company, or pension fund trustee, then no such subsequent transfer by the purchaser at the foreclosure sale can be made without obtaining the prior written consent of Lessor pursuant to the terms and provisions of Section 16 of the Lease. In all cases, such transferee shall be one which complies with and shall use the Premises in accordance with the deed restrictions on use encumbering the Premises and the restrictions in the California Wildlife, Coastal, and Park Land Conservation Act Project Agreement for Project Number SD-1-40001. In the event of any transfer, the transferor shall forthwith give written notice to Lessor of such transfer, including the name and address of the transferee and the effective date of such transfer. In connection with this Addendum and the Lease, the parties agree that the deed and Project Agreement restrictions encumbering the Premises providing for use for "recreation" purposes only shall be interpreted to include the broadest reasonable definition of "recreation," including by way of example but not limitation:

(3) Subrental of portions of the facility to third parties on an ad hoc or ongoing basis for educational, social, cultural, athletic, and other similar events;

(4) Fund raising events and general office and administrative uses directly associated with the foregoing.

(5) Ancillary vending activities by public or private entities related to the foregoing, including by way of example but not limitation food and/or beverage catering, ATM services, and other incidental sales of goods and services.

ii. Notwithstanding any provision of this Lease to the contrary, Lessor agrees that it will not terminate this Lease because of any default or breach thereunder on the part of Lessee, if the encumbrance holder, within 90 calendar days after service of written notice from Lessor of its intention to terminate this Lease for such default or breach shall cure such default or breach if the same can be cured and keep and perform all of the covenants and conditions of this Lease provided herein to be kept and performed by Lessee. If the breach or

default is not curable, the encumbrance holder shall, within said 90-day period, commence and thereafter diligently pursue to completion proceedings for the foreclosure and sale under and pursuant to the terms of its encumbrance, which foreclosure such encumbrance holder shall endeavor to accomplish within 210 calendar days after service of written notice by Lessor of its intention to terminate this Lease. Encumbrance holder shall have no liability for failing to complete the foreclosure within 210 days and such time shall be extended for a reasonable period of time as a result of trustee errors on foreclosure, Lessee's bankruptcy, court proceedings or other reasons beyond encumbrance holder's control. If the encumbrance holder fails or refuses to comply with any or all of the terms of this section, Lessor shall be released from the covenants of forbearance contained herein.

iii. Notwithstanding any provisions of this Lease to the contrary, Lessor further agrees that it will not terminate this Lease because of any default or breach by Lessee specified in Sections 18.d, e, f, g, h, i, j and k of the Lease, if within the time specified in Section ii, above, the encumbrance holder gives written notice to Lessor agreeing to assume all obligations of Lessee under this Lease during such period that the encumbrance holder or a receiver appointed at the instance and request of the encumbrance holder, shall be in possession or entitled to possession of the Premises. If the encumbrance holder fails or refuses to comply with any or all of the terms of this section, Lessor shall be released from the covenants of forbearance contained herein.

iv. In the event of the termination of this Lease as a result of Lessee's purported voluntary termination, Lessee's default or the rejection of this Lease by a bankruptcy trustee, Lessor shall, in addition to providing the notice of default and termination required hereunder, provide the encumbrance holder with written notice that this Lease has been terminated, together with a statement of all sums which would have at the time been due under this Lease but for such termination, and of all other defaults, if any, then known to Lessor. Lessor agrees to enter into a new lease (the "New Lease") of the Premises with the encumbrance holder for the remainder of the term of this Lease, effective as of the date of termination or rejection, at the rent and additional rent, and upon the terms, covenants and conditions (including all options to renew but excluding requirements which are not applicable or which have already been fulfilled) of this Lease provided:

(1) The encumbrance holder shall make written request upon Lessor within ninety (90) calendar days after the date the encumbrance holder receives Lessor's Notice of Termination of this Lease.

(2) The encumbrance holder shall pay or cause to be paid to Lessor at the time of the execution and delivery of such New Lease, any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such termination and, in addition thereto, all reasonable expenses, including reasonable attorneys' fees, which Lessor shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by Lessor from Lessee or other party in interest under lessee. Upon the execution of the New Lease, Lessor shall allow to the encumbrance holder as an offset against the sums otherwise due under this subparagraph or under the New Lease, an amount equal to the net income actually received by Lessor from the Premises during any period when Lessor was in possession of the Premises from the date of termination of this Lease to the date the encumbrance holder is given possession; and Lessor shall assign to the encumbrance holder any subleases in effect at that time.

(3) If the encumbrance holder acquires possession of the

Premises following termination or rejection of this Lease but prior to the execution of the New Lease, then encumbrance holder shall keep and perform all obligations of this Lease during the period encumbrance holder is in possession, as if this Lease were still in effect except that encumbrance holder shall be relieved from the obligation for a period of 180 days from taking possession to operate the Premises as a community center to allow encumbrance holder a reasonable time to locate an operator for the Premises.

(4) Upon acquiring possession of the Premises, the encumbrance holder shall cure any of Lessee's defaults of which the encumbrance holder was notified by Lessor's Notice of Termination, and any defaults arising of Lessee's possession of the Premises following termination, which are reasonably susceptible of being so cured by the encumbrance holder. Such cure of Lessee's defaults shall be accomplished within a period of time equal to the time granted Lessee under this Lease to cure defaults of that character, but in no event less than 180 days for non-monetary defaults.

(5) The encumbrance holder, as lessee under the New Lease, shall be liable to perform the obligations imposed on the lessee by such New Lease only during the period the encumbrance holder has ownership of the leasehold estate. However, following a transfer of the leasehold estate, the encumbrance holder shall continue to be liable for such obligations as shall have accrued during the period of its ownership thereof.

Nothing in this article shall require the encumbrance holder as a condition of its exercise of rights hereunder to cure any default of Lessee which is not reasonably susceptible of being cured by the encumbrance holder including, without limitation, the default referred to in Section 18 of this Lease relating to bankruptcy and insolvency, and any other provisions of this Lease which may impose conditions of default not susceptible to being cured by the encumbrance holder, in order to comply with the provisions of this Section iv, and such default(s) shall be waived as to the encumbrance holder.

So long as the encumbrance holder's trust deed is unsatisfied and the encumbrance holder's rights under this Section iv have not lapsed, then, unless the encumbrance holder shall otherwise consent in writing, the fee title to the Premises and the leasehold estate of Lessee created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of the fee title and the leasehold estate by Lessor or by Lessee or by a third party, by purchase or otherwise.

As used herein, the term "encumbrance holder" shall include any holder of the note secured by the trust deed encumbering the leasehold interest, any entity controlled by or under common control with such holder, any nominee for the benefit of such holder, any assignee of an encumbrance holder, and any purchaser at a trustee's sale conducted under the terms of such trust deed.

v. Any notice to the encumbrance holder provided for in this Lease must be given contemporaneously with any notice to Lessee.

vi. Whenever the words "mortgage" or "encumbrance" appear herein, the words "security instrument" may be substituted in their place.

c. **No Right of Tenant to Voluntarily Terminate Lease.** Lessee shall not be entitled to voluntarily terminate the Lease and any purported termination without the prior and

express written consent of the encumbrance holder is void and of no effect.

d. **Definitions.** All capitalized terms used in this Addendum which are not otherwise expressly defined in the Addendum, shall have the meaning ascribed to them in the Lease.

Executed on November \_\_\_\_, 2005, at Oceano, California.

LESSOR:

LESSEE:

OCEANO COMMUNITY SERVICES DISTRICT

OCEANO COMMUNITY CENTER, INC.

By:

\_\_\_\_\_  
James Hill  
President

By:

\_\_\_\_\_  
Ruth Brackett  
President

ATTEST:

\_\_\_\_\_  
Francis M. Cooney  
General Manager

OCEANO COMMUNITY SERVICES DISTRICT

DRAFT CONSTRUCTION CONTRACT

SEPTEMBER 26, 2018

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## CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT entered into on \_\_\_\_\_, **20xx** ("Execution Date") by and between the OCEANO COMMUNITY SERVICES DISTRICT, a California community services district ("District"), and \_\_\_\_\_ ("Contractor"), is made with reference to the following:

### RECITALS:

A. District is a community services district duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California .

B. Contractor is a **Corporation** duly organized and in good standing in the State of \_\_\_\_\_, License Number \_\_\_\_\_. Contractor represents that it is duly licensed by the State of California and has the background, knowledge, experience and expertise to perform the obligations set forth in this Construction Contract.

C. On \_\_\_\_\_, District issued a Notice Inviting Bids to contractors for \_\_\_\_\_ **Project**. A copy of District's Notice Inviting Bids is attached hereto as Exhibit A and incorporated by reference. In response to District's Notice Inviting Bids, Contractor submitted its Bid. A copy of Contractor's Bid is attached hereto as Exhibit B and incorporated herein by reference. Also attached hereto and incorporated by reference are the following:

- Exhibit "C" - General Conditions
- Exhibit "D" - Special Provisions and/or Technical Specifications
- Exhibit "E" - Payment and Performance Bonds
- Exhibit "F" - Insurance Requirements
- Exhibit "G" - Additional Contract Requirements (if applicable)

D. District and Contractor desire to enter into this Construction Contract for the "Name of Project" \_\_\_\_\_, and other services as identified in the Bid Documents for the \_\_\_\_\_ upon the following terms and conditions.

NOW THEREFORE, in consideration of the mutual promises and undertakings hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed by and between the undersigned parties as follows:

## SECTION 1            INCORPORATION OF RECITALS AND DEFINITIONS.

### 1.1      **Recitals.**

All of the recitals are incorporated herein by reference.

### 1.2      **Definitions.**

Capitalized terms shall have the meanings set forth in this Construction Contract and/or in the General Conditions. If there is a conflict between the definitions in this Construction

Contract and in the General Conditions, the definitions in this Construction Contract shall prevail.

## **SECTION 2            THE PROJECT.**

The Project is the construction of the \_\_\_\_\_ . ("Project").

## **SECTION 3            THE CONTRACT DOCUMENTS.**

The Contract Documents consist of the following collection of documents:

- (i) Notice Inviting Pre-Qualification Statements, Pre-Qualification Statement, and Pre-Qualification Checklist (if applicable).
- (ii) Executed Construction Contract between District and Contractor.
- (iii) Notice Inviting Bids.
- (iv) Instructions to Bidders
- (v) Bidding Addenda.
- (vi) Contractor's Bid.
- (vii) General Conditions.
- (viii) Special Provisions and Technical Specifications.
- (ix) Performance and Payment Bonds.
- (x) Insurance Forms.
- (xi) Plans and Drawings.
- (xii) Reports listed in the Bidding Documents.
- (xiii) Supplements, Attachments, and Exhibits attached to the above items.
- (xiv) Modifications.
- (xv) Change Orders.
- (xvi) Field Orders.

## **SECTION 4            THE WORK.**

The Work includes all labor, materials, equipment, services, permits, licenses and taxes, and all other things necessary for Contractor to perform its obligations and complete the Project, including, without limitation, any Changes requested by District, in accordance with the Contract Documents and all Applicable Code Requirements.

## **SECTION 5            PROJECT TEAM.**

In addition to Contractor, District has retained, or may retain, consultants and contractors to provide professional and technical consultation for the design and construction of the Project. The Project requires that Contractor operate efficiently, effectively and cooperatively with District as well as all other members of the Project Team.



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**SECTION 6 TIME OF COMPLETION.****6.1 Time Is of Essence.**

Time is of the essence with respect to all time limits set forth in the Contract Documents.

**6.2 Commencement of Work.**

Contractor shall commence the Work on the date specified in District's Notice to Proceed.

**6.3 Contract Time.**

Contractor shall diligently prosecute the Work to Substantial Completion within \_\_\_\_\_ Calendar Days after the date specified in District's Notice to Proceed.

**6.4 Liquidated Damages.****6.4.1 Entitlement.**

District and Contractor acknowledge and agree that if Contractor fails to fully and satisfactorily complete the Work within the Contract Time, District will suffer, as a result of Contractor's failure, substantial damages which are both extremely difficult and impracticable to ascertain. Such damages may include, but are not limited to:

- (i) Loss of public confidence in District and its contractors and consultants.
- (ii) Loss of public use of public facilities.
- (iii) Extended disruption to public.

**6.4.2 Daily Amount.**

District and Contractor have reasonably endeavored, but failed, to ascertain the precise amount relationship to the actual damage that District will incur if Contractor fails to achieve Substantial Completion of the entire Work within the Contract Time. Therefore, the parties agree that in addition to all other damages to which District may be entitled other than delay damages, in the event Contractor shall fail to achieve Substantial Completion of the entire Work within the Contract Time, Contractor shall pay District as liquidated damages the amount of \$ \_\_\_\_\_ per day for each Day occurring after the expiration of the Contract Time until Contractor achieves Substantial Completion of the entire Work. The liquidated damages amount is not a penalty but considered to be a reasonable estimate of the amount of damages District will suffer.

**6.4.3 Apportionment.**

Such liquidated damages shall be subject to apportionment for delays to Substantial Completion for which Contractor is entitled to receive an extension of time under the Contract Documents. Such apportionment shall not be affected by the fact that liquidated damages may not be capable of apportionment for other periods of time during which there have occurred delays concurrently caused by both District and Contractor. It being the Contractor's obligation to have the entire Work Substantially Completed within the Contract Time, it is agreed that such liquidated damages shall not be apportioned for portions of the Work completed prior to expiration of the Contract Time.

**6.4.4 Exclusive Remedy.**

District and Contractor acknowledge and agree that this liquidated damages provision shall be District's only remedy for delay damages caused by Contractor's failure to achieve Substantial Completion of the entire Work within the Contract Time.

**6.4.5 Damages upon Abandonment.**

In the event that Contractor either abandons the Work or is terminated for default in accordance with the provisions of Section 16 of this Construction Contract, District shall have the right, in its sole discretion exercised by written notice issued either before or after Substantial Completion, to elect to either assert or waive its right to liquidated damages under this Paragraph 6.4.

- .1 If District elects to assert its right to liquidated damages, then the liquidated damages shall be calculated from expiration of the Contract Time to the date that Substantial Completion of the Work is achieved by District or its replacement contractor employed to complete Contractor's performance.
- .2 If District elects to waive its right to liquidated damages, then Contractor shall be liable to District, in lieu of the liquidated damages provided for in this Paragraph 6.4, for all actual Losses proximately resulting from Contractor's failure to complete the Work within the Contract Time.

**6.4.6 Other Remedies.**

The parties further acknowledge and agree that District is entitled to any and all available legal and equitable remedies District may have where District's Losses are caused by any reason other than Contractor's failure to achieve Substantial Completion of the entire Work within the Contract Time.

**6.5 Adjustments to Contract Time.**

The Contract Time may only be adjusted for time extensions approved by District and agreed to by Change Order executed by District and Contractor in accordance with the requirements of the Contract Documents.

**6.6 Additional Compensation to Contractor.**

The Contract Sum shall be increased by the amount of \$ \_\_\_\_\_ for each day of extension to the Contract Time that is permitted under the terms of the General Conditions solely due to Compensable Delay occurring prior to Substantial Completion, but only to the extent that such Compensable Delay is not concurrent with a Non-Compensable Delay.

Regardless of the cause of the Delay (including, without limitation, acts or omissions of District or its consultants, errors, conflicts or omissions in the Contract Documents, or Changes to the Work), Contractor agrees to accept the compensation provided for in this Paragraph as its sole and exclusive right, remedy and recovery arising from or related to any Delay, interruption, hindrance, compression, acceleration, disruption or the impact or ripple effect of Delays on the Work, that may occur in connection with Contractor's performance of Work on the Project and for any resulting foreseen or unforeseen:

- (i) Overhead expenses such as, but not limited to, additional supervision, administration, extended or extraordinary overhead (direct or home office), insurance or bond costs and
- (ii) Productivity expenses such as additional loss of productivity, inefficiency, and escalation of costs of labor, wage, material or equipment.

## **SECTION 7                      COMPENSATION TO CONTRACTOR.**

### **7.1 Contract Sum.**

Contractor shall be compensated for satisfactory completion of the Work in compliance with the Contract Documents the Contract Sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

### **7.2 Full Compensation.**

The Contract Sum shall be full compensation for all Work provided by Contractor and, except as otherwise expressly permitted by the terms of the Contract Documents, shall cover all Losses arising out of the nature of the Work or from the acts of the elements or any unforeseen difficulties or obstructions which may arise or be encountered in performance of the Work until its Acceptance by District, all risks connected with the Work, and any and all expenses incurred due to suspension or discontinuance of the Work. The Contract Sum may only be adjusted for Change Orders issued, executed and satisfactorily performed in accordance with the requirements of the Contract Documents.

### **7.3 Compensation for Extra or Deleted Work.**

The Contract Sum shall be adjusted (either by addition or credit) for Changes in the Work involving Extra Work or Deleted Work on the basis of both of the following:

- (i) The sum of Allowable Costs as defined in Paragraph 7.2.5 of the General Conditions to be added (for Extra Work) or credited (for Deleted Work) and
- (ii) An additional sum (for Extra Work) or deductive credit (for Deleted Work) based on Contractor Markup and Subcontractor/Sub-subcontractor Markups allowable pursuant to this Section 7.3.

Contractor Markup and Subcontractor/Sub-subcontractor Markups set forth herein are the full amount of compensation to be added for Extra Work or to be subtracted for Deleted Work that is attributable to overhead (direct and indirect) and profit of Contractor and of its Subcontractors and Sub-subcontractors, of every Tier. Contractor Markup and Subcontractor/Sub-subcontractor Markups, which shall not be compounded, shall be computed as follows:

**7.3.1 Self-Performed Work.**

Fifteen percent (15%) of the Allowable Costs for that portion of the Extra Work or Deleted Work to be performed by Contractor with its own forces.

**7.3.2 Subcontractors.**

15% of the Allowable Costs for that portion of the Extra Work or Deleted Work to be performed by a first Tier Subcontractor with its own forces, plus 2.5% thereon for Contractor Markup.

**7.3.3 Sub-subcontractors.**

15% of the Allowable Costs of that portion of the Work to be performed by Sub-subcontractors of the second and lower Tier with their own forces, plus 2.5% thereon for the Subcontractor, plus 2.5% on the combined total thereof for Contractor Markup.

**SECTION 8 STANDARD OF CARE.**

Contractor agrees that the Work shall be performed by qualified, experienced and well-supervised personnel. All services performed in connection with this Construction Contract shall be performed in a manner consistent with the standard of care under California law applicable to those who specialize in providing such services for projects of the type, scope and complexity of the Project.

**SECTION 9 INDEMNIFICATION.****9.1 Hold Harmless.**

To the fullest extent allowed by law, Contractor hereby agrees to defend, indemnify, and hold harmless District, its District Board of Directors, officers, agents, employees, representatives and volunteers (hereinafter collectively referred to as "Indemnitees"), through legal counsel acceptable to District, from and against any and all Losses arising directly or indirectly from, or in any manner relating to any of, the following:

- (i) Performance or nonperformance of the Work by Contractor or its Subcontractors or Sub-subcontractors, of any Tier;
- (ii) Performance or nonperformance by Contractor or its Subcontractors or Sub-subcontractors, of any Tier, of any of the obligations under the Contract Documents;
- (iii) The construction activities of Contractor or its Subcontractors or Sub-subcontractors, of any Tier, either on the Site or on other properties;
- (iv) The payment or nonpayment by Contractor of any of its Subcontractors or Sub-subcontractors, of any Tier, for Work performed on or off the Site for the Project; and

- (v) Any personal injury, property damage or economic loss to third persons associated with the performance or nonperformance by Contractor or its Subcontractors or Sub-subcontractors, of any Tier, of the Work.

However, nothing contained herein shall be construed as obligating Contractor to indemnify any Indemnitee for Losses resulting from the sole or active negligence or willful misconduct of the Indemnitee. Contractor shall pay District for any costs incurred in enforcing this provision. Nothing in the Contract Documents shall be construed to give rise to any implied right of indemnity in favor of Contractor against District or any other Indemnitee.

## **9.2 Survival.**

The provisions of Section 9 shall survive the termination of this Construction Contract.

## **SECTION 10 COMPLIANCE WITH APPLICABLE CODE REQUIREMENTS.**

This Project constitutes "public works" within the meaning of California Labor Code section 1720 and is subject to the prevailing wage laws. Contractor agrees to be subject to and comply with all applicable federal, state and municipal laws, codes, ordinances and regulations governing the Work, including, but not limited to applicable provisions of the California Labor Code.

## **SECTION 11 INSURANCE AND BONDS.**

Prior to the commencement of any Work, Contractor shall provide District with evidence that it has obtained insurance and Performance and Payment Bonds satisfying all requirements in Article 11 of the General Conditions. Failure to do so shall be deemed a material breach of this Construction Contract.

## **SECTION 12 PROHIBITION AGAINST TRANSFERS.**

District is entering into this Construction Contract based upon the stated experience and qualifications set forth in Contractor's Bid. Accordingly, Contractor shall not assign, hypothecate or transfer this Construction Contract or any interest therein directly or indirectly, by operation of law or otherwise without the prior written consent of District. Any assignment, hypothecation or transfer without said consent shall be null and void.

For purposes of applying the provisions of this Section, the sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor or of any general partner or joint venturer or syndicate member of Contractor, if a partnership or joint venture or syndicate or co-tenancy exists, which shall result in changing the control of Contractor, shall be construed as an assignment of this Construction Contract. Control means more than fifty percent (50%) of the voting power of the corporation or other entity.

**SECTION 13            NOTICES.**

**13.1 Method of Notice.**

Except as provided in Section 13.2 below, all notices, demands, requests or approvals to be given under this Construction Contract shall be given in writing and conclusively shall be deemed served on the earlier of the following:

- (i) On the date delivered if delivered personally;
- (ii) On the third business day after the deposit thereof in the United States mail, postage prepaid, and addressed as hereinafter provided;
- (iii) On the date sent if sent by facsimile transmission; or
- (iv) On the date it is accepted or rejected if sent by certified mail.

**13.2 Notice Recipients.**

All notices, demands or requests (including, without limitation, Claims) from Contractor to District at:

Oceano Community Services District  
1655 Front Street  
Oceano, CA 93455  
Attn: General Manager

In addition, copies of all Claims by Contractor under this Construction Contract shall be provided to the following:

Jeffery A. Minnery  
Firm  
Address

All Claims shall be delivered personally or sent by certified mail.

All notices, demands, requests or approvals from District to Contractor shall be addressed to:

Re: \_\_\_\_\_, \_\_\_\_\_ (CCS)

**13.3 Change of Address.**

In the event of any change of address, the moving party is obligated to notify the other party of the change of address in writing. Each party may, by written notice only, add, delete or replace any listed individuals.

**SECTION 14 DISPUTE RESOLUTION.****14.1 Resolution of Contract Disputes.**

Contractor Claims (as defined by Public Contract Code Section 9204(c)) and General Conditions Section 1.1.18 shall be resolved by the parties in accordance with General Conditions Section 4.2 and applicable law. The procedures set forth in General Conditions Section 4.2 shall be the exclusive recourse of Contractor for such claims.

**14.2 Resolution of Other Disputes.****14.2.1 Other Disputes.**

The definition of Contractor Claims shall not include any of the following:

- (i) Penalties or forfeitures prescribed by statute or regulation imposed by a governmental agency (other than relief from damages or penalties for delay assessed by a public entity under a contract for a public works project);
- (ii) Third party tort claims for personal injury, property damage or death relating to any Work performed by Contractor or its Subcontractors or Sub-subcontractors of any Tier;
- (iii) False claims liability under California Government Code Section 12650, et. seq.;
- (iv) Defects in the Work first discovered by District after Final Payment by District to Contractor; or
- (vi) The right of District to specific performance or injunctive relief to compel performance of any provision of the Contract Documents or for other District claims against the Contractor.

**14.2.2 Litigation, District Election.**

Matters that do not constitute Contractor Claims shall be resolved by way of an action filed in the Superior Court of the State of California, County of San Luis Obispo, and shall not be subject to the Contract Dispute Resolution Process. However, the District reserves the right, in its sole and absolute discretion, to treat such disputes as Contract Disputes.

Upon written notice by District of its election as provided in the preceding sentence, such dispute shall be submitted by the parties and finally decided pursuant to the Contract Dispute Resolution Process in the manner as required for Contract Disputes, including, without limitation, District's right under Paragraph 14.4.2 to defer resolution and final determination until after Final Completion of the Work.

**14.3 Submission of Contractor Claim.****14.3.1 By Contractor.**

Contractor shall submit a written Contractor Claim in accordance with Section 4.2 of the General Conditions.

**14.3.2 By District.**

District's right to commence the Contract Dispute Resolution Process shall arise at any time following District's actual discovery of the circumstances giving rise to the Contract Dispute. Nothing contained herein shall preclude District from asserting Contract Disputes in response to a Claim asserted by Contractor. A Statement of Contract Dispute submitted by District shall state the events or

circumstances giving rise to the Contract Dispute, the dates of their occurrence and the damages or other relief claimed by District as a result of such events.

#### **14.4 Contract Dispute Resolution Process.**

The parties shall utilize each of the following steps in the Contract Dispute Resolution Process in the sequence they appear below. Each party shall participate fully and in good faith in each step in the Contract Dispute Resolution Process, which good faith effort shall be a condition precedent to the right of each party to proceed to the next step in the process.

##### **14.4.1 Response by District.**

The time periods for the District's response are set forth in General Conditions Section 4.2.6; however, any failure to respond shall be governed by General Condition Section 4.2.9.

##### **14.4.2. Meet and Confer Conference.**

If the claimant disputes the District's written response, or if the District fails to respond to a claim issued within the time prescribed in General Conditions Section 4.2, the claimant may demand in writing and an informal conference to meet and confer for settlement of the issue in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the District shall schedule a meet and confer conference within 30 days for settlement of the dispute.

##### **14.4.3 Mediation.**

(i) Within ten (10) business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the District shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the District and the claimant sharing the associated costs equally.

The District and the claimant shall mutually agree to a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(ii) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(iii) Unless otherwise agreed to by the District and the contractor in



writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

#### **14.4.4 Binding Arbitration.**

If the Contract Dispute is not resolved by mediation, then the party wishing to further pursue resolution or determination of the Contract Dispute shall submit the Contract Dispute for final and binding arbitration pursuant to the provisions of California Public Contract Code Sections 10240, et seq. The award of the arbitrator therein shall be final and may be entered as a judgment by any court of competent jurisdiction. Such arbitration shall be conducted in accordance with the following:

- .1 Arbitration Initiation.** The arbitration shall be initiated by filing a complaint in arbitration in accordance with the regulations promulgated pursuant to California Public Contract Code Section 10240.5.
- .2 Qualifications of the Arbitrator.** The arbitrator shall be selected based by mutual agreement of the parties. The arbitrator shall be a retired judge or an attorney with at least five (5) years of experience with public works construction contract law and in arbitrating public works construction disputes. In addition, the arbitrator shall have at least twenty (20) hours of formal training in arbitration skills. In the event the parties cannot agree upon a mutually acceptable arbitrator, then the provisions of California Public Contract Code Section 10240.3 shall be followed in selecting an arbitrator possessing the qualifications required herein.
- .3 Hearing Days and Location.** Arbitration hearings shall be held at the offices of District and shall, except for good cause shown to and determined by the arbitrator, be conducted on consecutive business days, without interruption or continuance.
- .4 Hearing Delays.** Arbitration hearings shall not be delayed except upon good cause shown.
- .5 Recording Hearings.** All hearings to receive evidence shall be recorded by a certified stenographic reporter, with the costs thereof borne equally by District and Contractor and allocated by the arbitrator in the final award.
- .6 Limitation of Depositions.** Discovery shall be permitted in accordance with the provisions of section 10240.11 of the Public Contract Code; provided, however, that depositions shall be limited to both of the following:
  - (i) Ten (10) percipient witnesses for District and ten (10) percipient witnesses for Contractor and
  - (ii) Expert witnesses.

Upon a showing of good cause, the arbitrator may increase the number of permitted depositions. An individual who is both percipient and expert shall, for purposes of applying the foregoing numerical limitation only, be deemed an expert. Expert reports shall be exchanged prior to receipt of evidence, in accordance with the direction of the arbitrator, and expert reports (including initial and rebuttal reports) not so submitted shall not be

admissible as evidence

- .7 Authority of the Arbitrator.** The arbitrator shall have the authority to hear dispositive motions and issue interim orders and interim or executory awards.
- .8 Waiver of Jury Trial.** Contractor and District each voluntarily waives its right to a jury trial with respect to any Contract Dispute that is subject to binding arbitration in accordance with the provisions of this Paragraph 14.4.4. Contractor shall include this provision for waiver of jury trial, waiving the right to jury trial in any action involving District as a party in its contracts with its Subcontractors who provide any portion of the Work.

#### **14.5 Non-Waiver.**

There shall be no waiver of the rights granted pursuant to the Dispute Resolution Process, unless specifically set forth in Public Contract Code Section 9204((f)(1) or (2). Specifically, participation in the Contract Dispute Resolution Process shall not constitute a waiver, release or compromise of any defense of District, including, without limitation, any defense based on the assertion that the rights or Claims of Contractor that are the basis of a Contract Dispute were previously waived by Contractor due to failure to comply with the Contract Documents, including, without limitation, Contractor's failure to comply with any time periods for providing notice of requests for adjustments of the Contract Sum or Contract Time or for submission of Claims or supporting documentation of Claims.

### **SECTION 15            DEFAULT.**

#### **15.1 Notice of Default.**

In the event that District determines, in its sole discretion, that Contractor has failed or refused to perform any of the obligations set forth in the Contract Documents, or is in breach of any provision of the Contract Documents, District may give written notice of default to Contractor in the manner specified for the giving of notices in the Construction Contract.

#### **15.2 Opportunity to Cure Default.**

Except for emergencies, Contractor shall cure any default in performance of its obligations under the Contract Documents within two (2) Days after receipt of written notice. However, if the breach cannot be reasonably cured within such time, Contractor will commence to cure the breach within two (2) Days and will diligently and continuously prosecute such cure to completion within a reasonable time, which shall in no event be later than ten (10) Days after receipt of such written notice.

### **SECTION 16            DISTRICT'S RIGHTS AND REMEDIES.**

#### **16.1 Remedies Upon Default.**

In the event that Contractor fails to cure any default of this Construction Contract within the time period set forth above in Section 15, then District may pursue any remedies available under law or equity, including, without limitation, the following:

##### **16.1.1 Delete Certain Services.**

District may, without terminating the Construction Contract, delete certain portions

of the Work, reserving to itself all rights to Losses related thereto.

**16.1.2 Perform and Withhold.**

District may, without terminating the Construction Contract, engage others to perform the Work or portion of the Work that has not been performed by Contractor and withhold the cost thereof to District from future payments to Contractor, reserving to itself all rights to Losses related thereto.

**16.1.3 Suspend The Construction Contract.**

District may, without terminating the Construction Contract and reserving to itself all rights to Losses related thereto, suspend all or any portion of this Construction Contract for as long a period of time as District determines, in its sole discretion, appropriate, in which event District shall have no obligation to adjust the Contract Sum or Contract Time, and shall have no liability to Contractor for damages if District directs Contractor to resume Work.

**16.1.4 Terminate the Construction Contract for Default.**

District may terminate all or any part of this Construction Contract for default in accordance with Paragraph 16.4 below, reserving to itself all rights to Losses related thereto.

**16.1.5 Invoke the Performance Bond.**

District may, with or without terminating the Construction Contract and reserving to itself all rights to Losses related thereto, exercise its rights under the Performance Bond.

**16.1.6 Additional Provisions.**

All of District's rights and remedies under this Construction Contract are cumulative, and shall be in addition to those rights and remedies available in law or in equity. Designation in the Contract Documents of certain breaches as material shall not be construed as implying that other breaches not so designated are not material nor shall such designations be construed as limiting District's right to terminate the Construction Contract, or the exercise of its other rights or remedies for default, to only material breaches. District's determination of whether there has been noncompliance with the Construction Contract so as to warrant exercise by District of its rights and remedies for default under the Construction Contract, shall be binding on all parties. No termination or action taken by District after such termination shall prejudice any other rights or remedies of District provided by law or equity or by the Contract Documents upon such termination; and District may proceed against Contractor to recover all liquidated damages and Losses suffered by District.

**16.2 Delays by Sureties.**

Without limitation to any of District's other rights or remedies under the law, District has the right to suspend the performance by Contractor's sureties in the event of any of the following:

- (i) Failure of the sureties to begin Work within a reasonable time in such manner as to insure full compliance with the Construction Contract within the Contract Time;
  - (ii) Abandonment of the Work;
  - (iii) If at any time District is of the opinion the Work is unnecessarily or unreasonably delayed;
  - (iv) Willful violation of any terms of the Construction Contract;
-

- (v) Failure to perform according to the Contract Documents; or
- (vi) Failure to follow instructions of District for its completion within the Contract Time.

District will serve notice of such failure upon the sureties and in the event the sureties neglect or refuse to cure the breach within the time specified in such notice, District shall have the power to suspend the performance or any part thereof of the sureties.

### **16.3 Damages to District.**

#### **16.3.1 For Contractor's Default.**

District will be entitled to recovery of all Losses under law or equity in the event of Contractor's default under the Contract Documents.

#### **16.3.2 Compensation for Losses.**

In the event that District's Losses arise from Contractor's default under the Contract Documents, District shall be entitled to withhold monies otherwise payable to Contractor until Final Completion of the Project. If District incurs Losses due to Contractor's default, then the amount of Losses shall be deducted from the amounts withheld. Should the amount withheld exceed the amount deducted, the balance will be paid to Contractor or its designee upon Final Completion of the Project. If the Losses incurred by District exceed the amount withheld, Contractor shall be liable to District for the difference and shall promptly remit same to District.

### **16.4 Termination of the Construction Contract for Default.**

Without limitation to any of District's other rights or remedies at law or in equity, and reserving to itself all rights to Losses related thereto, District shall have the right to terminate this Construction Contract, in whole or in part, upon the failure of Contractor to promptly cure any default as required by Section 15. District's election to terminate the Construction Contract for default shall be communicated by giving Contractor a written notice of termination in the manner specified for the giving of notices in the Construction Contract. Any notice of termination given to Contractor by District shall be effective immediately, unless otherwise provided therein.

### **16.5 Suspension by District for Convenience.**

District may, at any time and from time to time, without cause, order Contractor, in writing, to suspend, delay, or interrupt the Work in whole or in part for such period of time, up to an aggregate of fifty percent (50%) of the Contract Time, as District may determine, with such period of suspension to be computed from the date of the written order. Such order shall be specifically identified as a Suspension Order by District. Upon receipt of a Suspension Order, Contractor shall, at District's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order during the period of Work stoppage. Within the period of the above noted aggregate time, or such extension to that period as is agreed upon by Contractor and District, District shall either cancel the Suspension Order or delete the Work covered by such Suspension Order by issuing a Change Order. If a Suspension Order is canceled or expires, Contractor shall resume and continue with the Work. A Change Order will be issued to cover any adjustments of the Contract Sum or the Contract Time necessarily caused by such suspension. The provisions of this Paragraph 16.5 shall not apply if a Suspension Order is not issued by District. A Suspension Order shall not be required to stop the Work as permitted or required under any other provision of the Contract Documents.

## 16.6 Termination Without Cause.

District shall have the option, at its sole discretion and without cause, of terminating this Construction Contract in part or in whole by giving thirty (30) Days written notice to Contractor. Contractor agrees to accept such sums as allowed under this Paragraph 16.6 as its sole and exclusive compensation and waives any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect or incidental damages of any kind.

### 16.6.1 Compensation.

Following such termination and within forty-five (45) Days after receipt of a billing from Contractor seeking payment of sums authorized by this Paragraph 16.6, District shall pay to Contractor as its sole compensation for performance of the Work the following:

- .1 **For Work Performed.** The amount of the Contract Sum allocable to the portion of the Work properly performed by Contractor as of the date of termination, less sums previously paid to Contractor.
- .2 **For Close-out Costs.** Reasonable costs of Contractor and its Subcontractors and Sub-subcontractors for:
  - (i) Demobilizing and
  - (ii) Administering the close-out of its participation in the Project (including, without limitation, all billing and accounting functions, not including attorney or expert fees) for a period of no longer than thirty (30) Days after receipt of the notice of termination in an amount not to exceed the daily sum payable to Contractor for Compensable Delays in Paragraph 6.6 of this Construction Contract.
- .3 **For Fabricated Items.** Previously unpaid cost of any items delivered to the Project Site which were fabricated for subsequent incorporation in the Work.

### 16.6.2 Subcontractors.

Contractor shall include provisions in all of its subcontracts, purchase orders and other contracts permitting termination for convenience by Contractor on terms that are consistent with this Construction Contract and that afford no greater rights of recovery against Contractor than are afforded to Contractor under this Section 16.6.

## 16.7 Contractor's Duties Upon Termination.

Upon receipt of a notice of termination for default or for convenience, Contractor shall, unless the notice directs otherwise, do the following:

- (i) Immediately discontinue the Work to the extent specified in the notice;
- (ii) Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not discontinued;
- (iii) Provide to District a description, in writing no later than fifteen (15) days after receipt of the notice of termination, of all subcontracts, purchase orders and contracts that are outstanding, including, without limitation, the terms of the original price, any changes, payments, balance owing, the status of the portion of

- the Work covered and a copy of the subcontract, purchase order or contract and any written changes, amendments or modifications thereto, together with such other information as District may determine necessary in order to decide whether to accept assignment of or request Contractor to terminate the subcontract, purchase order or contract;
- (iv) Promptly assign to District those subcontracts, purchase orders or contracts, or portions thereof, that District elects to accept by assignment and cancel, on the most favorable terms reasonably possible, all subcontracts, purchase orders or contracts, or portions thereof, that District does not elect to accept by assignment; and
- (v) Thereafter do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment on the Project Site or in transit thereto.

## **SECTION 17                    CONTRACTOR'S RIGHTS AND REMEDIES.**

### **17.1 Contractor's Remedies.**

Contractor may terminate this Construction Contract for cause only upon the occurrence of one of the following:

#### **17.1.1 For Work Stoppage.**

The Work is stopped for sixty (60) consecutive Days, through no act or fault of Contractor, any Subcontractor, or any employee or agent of Contractor or any Subcontractor, due to issuance of an order of a court or other public authority other than District having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable.

#### **17.1.2 For District's Non-Payment.**

If District does not make payment of sums that are not in good faith disputed by District and does not cure such default within ninety (90) Days after receipt of notice from Contractor, then upon an additional thirty (30) Days notice to District Contractor may terminate the Construction Contract.

### **17.2 Damages to Contractor.**

In the event of termination for cause by Contractor, District shall pay Contractor the sums provided for in Paragraph 16.6 above. Contractor agrees to accept such sums as its sole and exclusive compensation and agrees to waive any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect and incidental damages, of any kind.

## **SECTION 18                    ACCOUNTING RECORDS.**

### **18.1 Financial Management and District Access.**

Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Construction Contract in accordance with generally accepted accounting principles and practices consistently applied. District and District's accountants shall be afforded access at all times during

normal business hours, to inspect, audit and copy Contractor's records, books, estimates, take-offs, cost reports, ledgers, schedules, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and Contractor shall preserve these for a period of three (3) years after the later of (i) final payment or (ii) final resolution of all Contract Disputes and other disputes or for such longer period as may be required by law.

## **18.2 Compliance with District Requests.**

Contractor's compliance with any request by District pursuant to this Section 18 shall be a condition precedent to filing or maintenance of any legal action or proceeding by Contractor against District and to Contractor's right to receive further payments under the Contract Documents. Any failure by Contractor to provide access to its business records for inspection or copying by District shall be specifically enforceable by issuance of a writ or a provisional or permanent mandatory injunction by a court of competent jurisdiction based on affidavits submitted to such court, without the necessity of oral testimony.

## **SECTION 19 INDEPENDENT PARTIES.**

Both parties to this Construction Contract will be acting in an independent capacity and not as agents, employees, partners, or joint venturers of one another. District, its officers or employees shall have no control over the conduct of Contractor or its respective agents, employees, subconsultants, or subcontractors, except as herein set forth.

## **SECTION 20 NUISANCE.**

Contractor shall not maintain, commit, nor permit the maintenance or commission of any nuisance in connection with the performance of services under this Construction Contract.

## **SECTION 21 PERMITS AND LICENSES.**

Contractor, at its sole expense, shall obtain and maintain during the term of this Construction Contract, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services hereunder, including, but not limited to, a Santa Monica business license.

## **SECTION 22 WAIVER.**

A waiver by District of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

## **SECTION 23 CONFLICTS WITH THE CONSTRUCTION CONTRACT.**

District and Contractor agree that if there is any conflict between the terms of this Construction Contract and the other Contract Documents, this Construction Contract shall control.

## **SECTION 24 GOVERNING LAW.**

This Construction Contract shall be construed in accordance with and governed by the laws of the State of California.

**SECTION 25 COMPLETE AGREEMENT.**

This Construction Contract represents the full and complete understanding of every kind or nature between the parties with respect to the services set forth in this Construction Contract, and all preliminary negotiations and contracts of whatever kind or nature are merged herein. No verbal agreed or implied covenant shall be held to vary the provisions of this Construction Contract. Any modification of this Construction Contract will be effective only upon written execution signed by both District and Contractor and approved as to form by District Attorney.

**SECTION 26 SURVIVAL OF CONTRACT.**

The provisions of the Construction Contract which by their nature survive termination of the Construction Contract or Final Completion, including, without limitation, all warranties, indemnities, payment obligations, and District's right to audit Contractor's books and records, shall remain in full force and effect after Final Completion or any termination of the Construction Contract.

**SECTION 27 ADDITIONAL CONTRACT REQUIREMENTS.**

**This contract ( does or does not) have special fund(s) involved requiring additional contract requirements, therefore this section ( does or does not) apply.**

This Contract includes the following source of fund(s) or the District intends to apply to the following source of fund(s) for reimbursement of the expenses associated with the work set forth in this Contract:

Community Development Block Grant (CDBG)

Housing and Urban Development (HUD)

Other:

Therefore, District shall require Contractor to comply with the special fund(s) requirements (Exhibit 10), as they may be amended from time to time, in addition to all other requirements imposed by District.

**SECTION 28 PUBLIC WORKS CONTRACTOR REGISTRATION PROGRAM- SB 854**

In accordance with State of California Senate Bill No. 854 (SB 854):

- No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
- This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.



As of April 1, 2015, contractors and subcontractors must furnish electronic certified payroll records to the Labor Commissioner (State of California, Division of Labor Standards Enforcement).

Please see the DIR website for complete details and actions. It is the responsibility of the contractor to ensure all DIR requirements and regulations are met and stay current. For more information on Senate Bill No. 854, see <http://www.dir.ca.gov/Public-Works/SB854.html>.

**SECTION 29 GOVERNMENTAL POWERS.**

Nothing in this Agreement shall be deemed directly or indirectly to restrict or to impair in any manner or respect whatsoever any of District's governmental powers or rights or the exercise thereof by District, with respect to the Work or Project.

**SECTION 30 SEVERABILITY.**

In case a provision of this Construction Contract is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected.

**SECTION 31 EXHIBITS.**

- Exhibit A – Notice Inviting Bids.
- Exhibit B – Contractor's Bid.
- Exhibit C – General Conditions.
- Exhibit D – Special Provisions and/or Technical Specifications.
- Exhibit E – Payment and Performance Bonds.
- Exhibit F – Insurance Requirements..
- Exhibit G – Additional Contract Requirements (if applicable).

IN WITNESS WHEREOF, the parties have caused this Construction Contract to be executed the date and year first above written.

Signatures \_\_\_\_\_

OCEANO COMMUNITY SERVICES DISTRICT

DRAFT CONSTRUCTION CONTRACT GENERAL CONDITIONS

SEPTEMBER 26, 2018

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## **ARTICLE 1 – GENERAL PROVISIONS**

### **1.1 DEFINITIONS**

Terms appearing in the Contract Documents with initial capitalization shall have the meanings set forth below:

1.1.1 ACCEPTANCE: The point after Final Completion when Contractor has fully performed all of the requirements of the Contract Documents and the Work is accepted by District in writing.

1.1.2 ADDENDA, ADDENDUM: Written or graphic information (including, without limitation, Drawings or Special Provisions and Technical Specifications) prepared and issued by District General Manager or its designee prior to the receipt of Contractor's Bid, which modify or interpret the Bid Documents by additions, deletions, clarifications or corrections

1.1.3 ALLOWABLE COSTS: Costs for which reimbursement is allowed under Article

7.2.5 of these General Conditions and for which reimbursement is allowed under other provisions of the Contract Documents, that may be added by Change Order to the Contract Sum for Extra Work or deducted by Change Order from the Contract Sum for Deleted Work.

1.1.4 ALTERNATE(S): Those portions of the Bid setting forth the price(s) for optional or alternative items of Work not covered by the Base Bid.

1.1.5 APPLICABLE CODE REQUIREMENTS: All applicable federal, state and municipal laws, statutes, building codes, ordinances and regulations of governmental authorities having jurisdiction over the Project, Work, Site, Contractor or District.

1.1.6 APPLICATION FOR PAYMENT: An itemized application for payment prepared and submitted by Contractor for review and approval by District, which is prepared, submitted and accompanied by supporting documentation in accordance with the requirements of the Contract Documents.

1.1.7 APPROVE, APPROVED or APPROVAL: Whether capitalized or not capitalized, shall mean, unless otherwise stated, either an express approval contained in a written statement signed by the approving individual or entity or deemed approved in accordance with the terms, conditions and procedures set forth in the Contract Documents. All such approvals by or on behalf of District (including, without limitation, approvals by Construction Manager) may be granted or withheld in the sole discretion of District.

1.1.8 AS-BUILT DOCUMENTS: The Contract Documents showing the condition

of the Work as actually built, including, without limitation, the locations of mechanical, electrical, plumbing, HVAC or similar portions of the Work that are shown diagrammatically in the Contract Documents approved by District. These documents are maintained by Contractor on the Site and delivered, along with an electronic version of the set, to District upon Final Completion.

1.1.9 BASE BID: The sum stated in the Bid to perform the Work, exclusive of any Alternate(s).

1.1.10 BENEFICIAL OCCUPANCY: District's right, at its option and convenience, to occupy or otherwise make use of all or any part of the Work prior to either Substantial Completion, Final Completion, or Acceptance.

1.1.11 BID: Contractor's written bid proposal submitted to District for the Project in response to District's Notice Inviting Bids.

1.1.12 BID DOCUMENTS: The following collection of documents are designated as the Bid Documents:

- (i) Notice Inviting Bids.
- (ii) Instructions to Bidders.
- (iii) Blank Bid Form.
- (iv) Construction Contract between District and Contractor.
- (v) General Conditions.
- (vi) Special Provisions and Technical Specifications.
- (vii) Plans and Drawings.
- (viii) Bidding Addenda.
- (ix) Reports, Supplements, Attachments, Modifications, and Exhibits attached to the above items.

1.1.13 CERTIFICATE FOR PAYMENT: The form for approval by the Construction Manager of Contractor's Application for Payment.

1.1.14 CHANGE: Whether capitalized or not, when used in reference to changes in the Work is a generic term encompassing additions, deletion, alterations or changes in the Work, which may or may not involve Extra Work and for which Contractor may or may not be entitled to a Change Order under the terms of the Contract Documents.

1.1.15 CHANGE ORDER: A written instrument signed by District, or by District and Contractor, describing a Change to the Work of Contractor.

1.1.16 CHANGE ORDER REQUEST: Contractor's written request for an adjustment in the Contract Sum or Contract Time due to a Change resulting in Extra Work or Deleted Work.

1.1.17 DISTRICT: Oceano Community Services District, a California special district.

1.1.18 CONTRACTOR CLAIM: A separate demand by a Contractor sent by registered mail or certified mail, with return receipt requested, for one or more of the following: (A) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by the District; (B) payment by the District of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Construction Contract and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled; (C) payment of an amount that is disputed by the District. A Contractor Claim does not include, and the procedures for processing of Contractor Claims do not apply to the following:

- (i) Penalties or forfeitures prescribed by statute or regulation imposed by a governmental agency other than penalties for delay assessed by the District pursuant to Section 1.1.18(B);
- (ii) Tort claims for personal injury or death;
- (iii) False claims liability under California Government Code Section 12650, et seq.;
- (iv) Defects in the Work first discovered by District after final payment by District to Contractor;
- (v) Stop notices;
- (vi) The right of District to specific performance or injunctive relief to compel performance of any provision of the Contract Documents or for other District claims against the Contractor.

1.1.19 CLIENT DEPARTMENT: Department of District identified as the end user of the facilities.

1.1.20 COMPENSABLE DELAY: A Delay for which Contractor may be entitled under the Contract Documents to both an extension of the Contract Time and an adjustment of the Contract Sum for additional compensation. "Compensable Delay" means any Delay to the path of activities that is critical to Contractor's Substantial Completion of the Work within the Contract Time, which Delay is all



of the following:

- (i) Solely due to Changes requested by District that adds time, but does not involve Extra Work.
- (ii) Not due, in whole or in part, to the fault or negligence or breach of Contractor or any Subcontractor or Sub-subcontractor, of any Tier.
- (iii) Not concurrent with another Excusable Delay or any Unexcused Delay.

1.1.21 CONSTRUCTION CONTRACT: The written contract executed between District and Contractor for construction of the Project.

1.1.22 CONSTRUCTION MANAGER: The individual, partnership, corporation, joint venture or other legal entity under contract with District to perform construction management services for the Project. The term "Construction Manager" means Construction Manager or Construction Manager's authorized representative.

1.1.23 CONSTRUCTION SCHEDULE: The graphical representation of Contractor's as-planned schedule for performance of the Work, prepared in accordance with the requirements of the Contract Documents and that provides for Substantial Completion of the Work within the Contract Time.

1.1.24 CONTRACT DISPUTE: A dispute, other than a dispute listed in Section 14.2.1 (Non-Contract Disputes) of the Construction Contract, arising out of or related to the Construction Contract or the interpretation, enforcement or breach thereof.

1.1.25 CONTRACT DISPUTE RESOLUTION PROCESS: The process of resolution of Contract Disputes, and, upon election of District, disputes as set forth in Section 14 (Dispute Resolution) of the Construction Contract.

1.1.26 CONTRACT DOCUMENTS: The following collection of documents are designated as contract documents:

- (i) The Notice Inviting Pre-Qualification Statements, Pre-Qualification Statement, and Pre-Qualification Checklist (if applicable).
- (ii) Executed Construction Contract between District and Contractor.
- (iii) Notice Inviting Bids.
- (iv) Instructions to Bidders.
- (v) Bidding Addenda.
- (vi) Contractor's Bid.

- (vii) General Conditions.
- (viii) Special Provisions and Technical Specifications.
- (ix) Performance and Payment Bonds.
- (x) Insurance Forms.
- (xi) Plans and Drawings.
- (xii) Reports listed in the Bidding Documents.
- (xiii) Supplements, Attachments and Exhibits attached to the above items.
- (xiv) Modifications.
- (xv) Change Orders.
- (xvi) Field Orders.

1.1.27 CONTRACT SUM: The total amount of compensation stated in the Construction Contract that is payable to Contractor for the performance of the Work in accordance with the Contract Documents.

1.1.28 CONTRACT TIME: The total number of days set forth in the Construction Contract within which Substantial Completion of the Work must be achieved by Contractor, including approved extensions of time permitted under the terms of the Contract Documents.

1.1.29 CONTRACTOR: The individual or firm under contract with District to serve as the General Contractor for construction of the Project. The term "Contractor" means Contractor or Contractor's authorized representative.

1.1.30 CONTRACTOR MARKUP: The additional sum or deductive credit provided for under the Construction Contract for Contractor's profit and overhead on Extra or Deleted Work for which a Change Order is required to be executed under the Contract Documents adjusting the Contract Sum.

1.1.31 DAY: Whether capitalized or not, unless otherwise specifically provided, means calendar day. NOTE: For Federally-funded projects DAY, whether capitalized or not, is considered WORKING DAY and is defined as any day, except weekends and legal holidays.

1.1.32 DEFECTIVE WORK: Work by Contractor that is unsatisfactory, faulty, omitted, incomplete, deficient or does not conform to the Applicable Code Requirements, the Contract Documents, the directives of District or the requirements of any inspection, reference standard, test, code or approval

specified in the Contract Documents.

1.1.33 DELAY: Whether capitalized or not, includes any circumstances involving disruption, hindrance, or interference in the performance of the Work.

1.1.34 DELETED WORK: Work that is eliminated due to a Change in the Work requested by District or Contractor for which District is entitled to a deductive adjustment in the Contract Sum.

1.1.35 DESIGN CONSULTANT. The individual(s) or firm(s) under contract with District to provide design or engineering services for the Project and are responsible for preparing the Contract Documents for the Project. The term "Design Consultant" means Design Consultant or Design Consultant's authorized representative.

1.1.36 DRAWINGS: The graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, generally including plans, elevations, subparagraphs, details, schedules and diagrams. The Drawings are outlined in the Drawing Index. The term "Drawings" may be used interchangeably with "Plans."

1.1.37 ESCROW AGENT: A state or federally chartered bank in the State of California which holds securities pursuant to an escrow agreement as set forth in Article 9.5 of these General Conditions.

1.1.38 EXCUSABLE DELAY: A Delay for which Contractor may be entitled under the Contract Documents to an extension of time, but not compensation. "Excusable Delay" means any delay to the path of activities that is critical to Substantial Completion of the Work within the Contract Time caused by conditions beyond the control or foreseeability, and without the fault or negligence of Contractor or its Subcontractors or Sub-subcontractors, of any Tier, such as, but not limited to: war, embargoes, fire, unavoidable casualties, unusual delays in transportation, national emergency, and stormy and inclement weather conditions that are unusual and unseasonable and in which the Work cannot continue. Without limitation to the foregoing, the financial inability of Contractor or any Subcontractor or Sub-subcontractor, shall not be deemed conditions beyond Contractor's control or foreseeability. Contractor may claim an Excusable Delay only if all Work on a critically scheduled activity is stopped for more than six (6) hours of a normal eight (8) hour working day, or if three to six hours are lost in one working day, then it may be claimed for one-half day. A Compensable Delay shall, to the extent that it is concurrent with an Excusable Delay, be conclusively deemed an Excusable Delay.

1.1.39 EXISTING IMPROVEMENTS: All improvements located on the Site as of the date of execution of the Construction Contract, whether above or below

the surface of the ground, including but not limited to existing buildings, utilities, infrastructure improvements and other facilities.

1.1.40 EXTRA WORK: Additional Work or costs due to a Change in the Work that is not described in or reasonably inferable from the Contract Documents and for which Contractor is entitled to an adjustment of the Contract Sum under the terms of the Contract Documents. Extra Work shall not include additional Work or costs arising from Contractor's failure to perform any of its duties or obligations under the Contract Documents or arising from errors, omissions, conflicts, ambiguities, lack of coordination or noncompliance with Applicable Code Requirements in the Contract Documents with respect to which Contractor has assumed responsibility in connection with its obligation to conduct a careful review of the Bid Documents and Contract Documents.

1.1.41 FIELD ORDER: A written instrument signed by the Construction Manager that requests performance of Work in one of the following categories:

- (i) Over which there is a dispute as to whether the Work is or is not Extra Work.
- (ii) Involving Extra Work which District requests be performed without a unilateral Change Order adjustment to the Contract Sum or Contract Time and before all terms of an adjustment to the Contract Sum or Contract Time are fully agreed upon by District and Contractor.

The purpose of a Field Order is to direct performance of Work, which may be disputed, and, whether or not it expressly so states, shall not be construed as an acknowledgment by District that the Work described constitutes a Change or Extra Work if that is in fact not the case.

1.1.42 FINAL COMPLETION: The point at which:

- (i) Work is completed to the satisfaction of District in accordance with the Contract Documents, including minor corrective or completion items.
- (ii) All requirements of the Contract Documents entitling Contractor to final payment shall have been performed by Contractor (including, without limitation, delivery of all warranties and guarantees, equipment operation and maintenance manuals, as-built drawings and schedules and certificates required prior to occupancy).
- (iii) All approvals and acceptances shall have been made pursuant to Applicable Code Requirements.
- (iv) All rubbish, tools, scaffolding and surplus materials and equipment have been removed from the Site.

1.1.43 FRAGNET: A "Fragnet", sometimes referred to as "time impact analysis," is a contemporaneous, fragmentary scheduling network, which graphically identifies the sequencing of all critical and non-critical new activities and/or activity revisions affected by a Change Order Request, Field Order or Change Order, with logic ties to all affected existing activities noted on the Construction Schedule. Its objective is to isolate and quantify any time impact of a specific issue, determine and demonstrate any such specific Delay in relation to past and/or other current Delays and to provide a method for incorporating adjustments to the Contract Time into the Construction Schedule.

1.1.44 GENERAL CONDITIONS: That portion of the Contract Documents relating to the administrative procedures to be followed by Contractor in carrying out the Work.

1.1.45 HAZARDOUS SUBSTANCES: Refers to, without limitation, the following: any chemical, material or other substance defined as or included within the definition of hazardous substances, hazardous wastes, extremely hazardous substances, toxic substances, toxic material, restricted hazardous waste, special waste, or words of similar import under any Environmental Law.

1.1.46 LOSSES: Any and all losses, costs, liabilities, Claims, damages, liquidated damages, actions, judgments, settlements, expenses, fines and penalties. "Losses" do not include attorneys' fees.

1.1.47 MODIFICATION: A document other than a Change Order, approved by District Attorney and signed by District and Contractor, agreeing to alter, amend or modify the Contract Documents.

1.1.48 NON-COMPENSABLE DELAY: An (i) Unexcused Delay, and (ii) an Excusable Delay that is not also a Compensable Delay.

1.1.49 NOTICE OF AWARD: Written notice issued by District notifying Contractor of issuance of the Construction Contract.

1.1.50 NOTICE TO PROCEED: Written notice issued by District to Contractor to begin the Work.

1.1.51 PERFORMANCE BOND, PAYMENT BOND: The performance and payment bonds to be provided by Contractor for the Project.

1.1.52 PLANS: The graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, subparagraphs, details, schedules and diagrams. The term "Plans" may be used interchangeably with "Drawings."

1.1.53 PRE-CONSTRUCTION MEETING: A meeting held with the Project Team prior to beginning construction in order to review Contract Documents and

clarify roles, responsibilities and authority of the Project Team.

**1.1.54 PROJECT:** The total construction, of which the Work performed by Contractor under the Contract Documents may be the whole or part and which may include Work performed by District's own forces or by Separate Contractors.

**1.1.55 PROJECT TEAM:** Collectively, the Contractor, District, Design Consultant, Separate Contractors, Construction Manager and other consultants and contractors providing professional and technical consultation for the design and construction of the Project.

**1.1.56 RECORD DOCUMENTS:** The term "Record Documents" refers to the As-Built Documents, warranties, guarantees and other documents required to be submitted by Contractor as a condition of Final Completion.

**1.1.57 REQUEST FOR INFORMATION:** A written instrument, prepared by Contractor, which requests an interpretation or clarification in the Work or a response to a question concerning the Work. A Request for Information does not entitle Contractor to an adjustment in the Contract Sum unless it requires Extra Work and Contractor requests and is entitled to such an adjustment in accordance with the provisions of the Contract Documents.

**1.1.58 REQUEST FOR INFORMATION RESPONSE:** A written instrument, usually prepared by the Design Consultant, which sets forth an interpretation or clarification in the Work or a response to a Contractor question concerning the Work.

**1.1.59 SCHEDULE OF VALUES:** A detailed, itemized breakdown of the Contract Sum, which provides for a fair and reasonable allocation of the dollar values to each of the various parts of the Work.

**1.1.60 SEPARATE CONTRACTOR:** A person or firm under separate contract with District or other entity performing other Work at the Site.

**1.1.61 SITE:** The physical site located within District where the Project is to be constructed, including all adjacent areas for staging, storage, parking and temporary offices.

**1.1.62 SPECIAL PROVISIONS AND TECHNICAL SPECIFICATIONS:** The portion of the Contract Documents consisting of the written requirements for materials, equipment, standards, skill, quality for the Work and performance of related services. These provisions may also contain amendments, deletions or additions to the General Conditions.

**1.1.63 STATEMENT OF CONTRACT DISPUTE:** The Contractor's written statement prepared in accordance with Section 14.3 (Submission of Contract Dispute) of the Construction Contract required as a condition of its

initiating the Contract Dispute Resolution Process.

1.1.64 SUBCONTRACTOR: A person or firm that has a contract with a Contractor to perform a portion of the Work. The term "Subcontractor" includes suppliers and vendors and is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

1.1.65 SUB-SUBCONTRACTOR: A person or firm that has a contract with a Subcontractor to perform a portion of the Work. The term "Sub-subcontractor" includes suppliers and vendors and is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub- subcontractor.

1.1.66 SUBCONTRACTOR/SUB-SUBCONTRACTOR MARKUPS: The sum allowable under the Construction Contract for Subcontractor and Sub-subcontractor profit and overhead on Extra or Deleted Work for which Contractor is entitled to a Change Order under the Contract Documents adjusting the Contract Sum.

1.1.67 SUBMITTALS: All shop drawings, samples, exemplars, product data and other submittals required to be submitted by Contractor under the Contract Documents.

1.1.68 SUBSTANTIAL COMPLETION, SUBSTANTIALLY COMPLETE: The point at which the Work is sufficiently complete to be occupied and utilized by District for its intended purpose, and Contractor has fulfilled its obligations under the Contract Documents as determined by District, except for minor punchlist items which do not impair District's ability to so occupy and utilize the Project.

1.1.69 SUPERINTENDENT: The person appointed by Contractor, subject to approval by District, to supervise and coordinate Contractor's own forces and Subcontractors in all aspects of the Work.

1.1.70 TIER: The contractual level of a Subcontractor with respect to Contractor. For example, a first-tier Subcontractor is under subcontract with Contractor. A Sub- subcontractor under subcontract with a first-tier Subcontractor, is in the second tier, and so on.

1.1.71 UNEXCUSED DELAY: Any Delay in the path of activities that is critical to Substantial Completion of the Work within the Contract Time resulting from causes other than Excusable Delay or Compensable Delay. An Unexcused Delay shall not entitle Contractor to either an extension of the Contract Time or an adjustment of the Contract Sum. A Compensable Delay or Excusable Delay shall, to the extent it is concurrent with an Unexcused Delay, be conclusively deemed an Unexcused Delay.

1.1.72 WORK: All labor, materials, equipment, services, permits, licenses and taxes, and all other things necessary for Contractor to perform its obligations and complete the Project, including, without limitation, any changes or additions requested by District, in accordance with the Contract Documents and all Applicable Code Requirements.

## **1.2 OWNERSHIP AND USE OF DOCUMENTS**

1.2.1 All originals, copies and electronic forms of Drawings, Plans, specifications, shop drawings, samples, reports, schedules and other materials or documents prepared for the Project (including, without limitation, the Contract Documents) shall not be used by Contractor, or any Subcontractor or Sub-subcontractor, of any Tier, for any purpose other than performance of the Work. Contractor, Subcontractors and Sub-subcontractors are granted a limited license, revocable at will by District, to use and reproduce applicable portions of the Contract Documents appropriate to and for use in the execution of their

Work under the Contract Documents; provided however, that such use shall not be construed in derogation of Owner's rights to use and ownership under this provision.

1.2.2 Contractor shall keep on the Site of the Project, at all times, a complete set of District approved, permitted Contract Documents for use by District.

1.2.3 Proposed Changes or refinements and clarifications will be provided to Contractor in the form of reproducible prints. Contractor shall, at its own expense and without adjustment to the Contract Sum, do all reproduction and distribution of such reproducible prints as necessary for the complete pricing of the Change and for performance of the Work.

1.2.4 Contractor shall take all necessary steps to assure that a provision is included in all contracts with Subcontractors and Sub-subcontractors, of every Tier, who perform Work on the Project, protecting and preserving District's rights to ownership and use of documents as set forth in this Article 1.2.

## **1.3 AUTHORITY OF DISTRICT**

1.3.1 The Design Consultant shall, upon request, make recommendations to District and the Construction Manager concerning the quality or acceptability of Work performed.

1.3.2 District, in its sole discretion, will interpret the Contract Documents and make the determination of whether or not Contractor has fulfilled the requirements of the Contract Documents. Such interpretations and decisions of District shall be final and binding upon Contractor.



## 1.4 INTERPRETATION OF CONTRACT DOCUMENTS

1.4.1 The Contract Documents are complementary and what is required by one shall be as binding as if required by all.

1.4.2 In general, the Drawings will show dimensions, positions, and kind of construction; and the Special Provisions and Technical Specifications will define materials, quality and standards. Any Work called for on the Drawings and not mentioned in the Special Provisions and Technical Specifications, or vice versa, shall be performed as though fully set forth in both. Work not particularly detailed, marked or specified, shall be the same as similar parts that are detailed, marked or specified.

1.4.3 Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood construction industry meanings and non-technical words and abbreviations are used in accordance with their commonly understood meanings.

1.4.4 The Contract Documents may omit modifying words such as "all" and "any," and articles such as "the" and "an." If a modifier or an article is not included in one statement and appears in another it is not intended to affect the interpretation of either statement. The use of the word "including," when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters whether or not non-limiting language (such as "without limitation," "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

1.4.5 Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include the other gender, and each shall include corporation, partnership, trust, or other legal entity whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only as a matter of reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

1.4.6 Any cross-references indicated between various subparagraphs or Drawings and Documents are provided for the convenience of Contractor and shall not be deemed to be all-inclusive.

1.4.7 Unless specifically noted to the contrary, it is the intention of the Contract Documents that all Work, equipment, casework, mechanical, electrical and similar devices of whatever nature, be completely installed, hooked-up, made

operational and made functional for the purpose such are intended, and that all costs therefor be included in the Contract Sum.

1.4.8 Figured dimensions on scale Drawings and on full size Drawings shall govern over scale Drawings without figured dimensions. The Drawings shall not be scaled to determine dimensions, and (except in the case of diagrammatic Drawings) shall be calculated from figures shown on the Drawings. Obvious discrepancies between scale and figured dimensions, not marked "not to scale," must be brought to the Construction Manager's attention before proceeding with the Work affected by the discrepancy.

1.4.9 If there is a conflict between or among any of the Contract Documents, Contractor shall immediately bring such conflict to the attention of District, whose decisions regarding such conflict shall be final and binding as to the requirements of the Contract Documents. In the event of any conflicts between or among the Applicable Code Requirements, the more stringent shall govern. In resolving any conflict in the Contract Documents, the highest standard of quality and skill, the most stringent requirements, and the most specific provision of the Contract Documents shall govern and shall be required in the performance of the Work.

1.4.10 The general character of the Work is shown in the Contract Documents, but Changes, modifications, clarifications and refinements may be made in details when needed to more fully explain the Work. Provided that they is a logical evolution of the Bid Documents that were bid by Contractor or were reasonably inferable as necessary to provide a completed and fully operational system, facility or structure, the same shall be considered part of the scope of the Work to be performed without adjustment in the Contract Sum or the Contract Time.

1.4.11 Where on any Drawing a portion of the Work is drawn out and the remainder is indicated in outline, the drawn-out parts shall apply also to all other like portions of the Work. Where ornament or other detail is indicated on starting only, such detail shall be continued throughout the course of parts in which it occurs and shall also apply to all other similar parts in the Work unless otherwise indicated.

1.4.12 For convenience, the Special Provisions and Technical Specifications are arranged in various trade subparagraphs, but such segregation shall not be considered as limiting the Work of any subcontract or trade. Contractor shall be solely responsible for all subcontract arrangements of Work regardless of the location or provision in the Special Provisions and Technical Specifications.

1.4.13 Contractor will provide all necessary labor, equipment, transportation and incidentals required to complete the Work, even if the Contract Documents do not describe the Work in complete detail.

1.4.14 Drawings and diagrams for mechanical, plumbing and electrical Work shall be considered as diagrammatic only, not to be used for any structural guidance or physical layout, unless specifically detailed or dimensioned, and Contractor shall be responsible to provide any and all numbers and lengths of mechanical, plumbing or electrical fittings, wire, conduit, connections, attachments or similar materials needed to complete the Work, at no adjustment to the Contract Sum or Contract Time, whether or not they exceed the numbers of such pieces or the lengths indicated by the Drawings.

## **ARTICLE 2 – DISTRICT**

### **2.1 INFORMATION AND SERVICES PROVIDED BY DISTRICT**

2.1.1 District will furnish up to fifteen (sets) of the Contract Documents or portions thereof free of charge.

2.1.2 Except as otherwise provided in the Special Provisions and Technical Specifications and Article 3.18 herein, District shall obtain and pay for any permits, easements and governmental approvals for the use or occupancy of permanent structures required in connection with the Work.

2.1.3 Requests for Information Responses, Approvals and decisions required of District, Design Consultant or Construction Manager under the Contract Documents shall be provided by District, Design Consultant or Construction Manager to Contractor upon request in a timely manner in order to avoid unreasonable Delay in the orderly and sequential progress of the Work. Notwithstanding the foregoing, failure by District, Design Consultant, Construction Manager or District's other consultants to provide Request for Information

Response, Approvals or decisions shall not be considered as a basis for Contractor to seek adjustment in the Contract Time until seven (7) Days after Contractor has delivered written notice to District and to the person from whom such information, Approval or decision is needed, stating the following:

- (i) You are hereby notified that certain information, approval or decision described herein has not been provided in accordance with this provision and if not provided within seven (7) Days from this notice may result in additional cost or a request for time extension due to Delay;
- (ii) A detailed description of the information, approval or decision required.
- (iii) The date by which the information, approval or decision must be received so as to not result in Delay to the Project, which shall in no event be earlier than seven (7) Days after the date of District's receipt of such notice.

### **2.2 ACCESS TO PROJECT SITE**

2.2.1 District will make available, no later than the date designated in the current Construction Schedule accepted by District, the lands and facilities upon which the Work is to be performed, including such access and other lands and facilities designated in the Contract Documents, for use by Contractor.

### **2.3 DISTRICT'S RIGHT TO STOP THE WORK**

2.3.1 If Contractor fails to correct Defective Work as required by Article 12.2,

fails to perform the Work in accordance with the Contract Documents, or violates any Applicable Code Requirement, District may direct Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated by Contractor. Contractor shall not be entitled to any adjustment of Contract Time or Contract Sum as a result of any such order. District shall have no duty or responsibility to Contractor or any other party to exercise the right to stop the Work.

## **2.4 DISTRICT'S RIGHT TO CARRY OUT THE WORK**

2.4.1 If Contractor fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools and services to maintain the Construction Schedule, or otherwise fails to comply with any requirement of the Contract Documents, and fails within the time specified in the Contract Documents, after receipt of notice from District to promptly commence and thereafter diligently continue to completion the correction of such failure, District may, without prejudice to other remedies District may have, correct such failure at Contractor's expense. In such case, District shall be entitled to deduct from payments then or thereafter due Contractor the cost of correcting such failure, including compensation for the additional services and expenses of District and District's consultants made necessary thereby. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the additional amount to District.

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## **ARTICLE 3 – CONTRACTOR**

### **3.1 REVIEW OF THE SITE, CONTRACT DOCUMENTS AND FIELD CONDITIONS**

3.1.1 Contractor acknowledges that it is satisfied as to character, quality, and quantities of surface and subsurface materials or obstacles to be encountered insofar as reasonably ascertainable from a careful inspection of the Site (including, without limitation, Existing Improvements on the Site) and from the geological investigation reports, data and similar information made available to Contractor by District. Any failure by Contractor to take such information or conditions into consideration will not relieve Contractor from responsibility for estimating the difficulty and cost of successfully completing the Work within the Contract Sum and Contract Time.

3.1.2 Contractor warrants and represents that it has carefully reviewed and compared the Bid and Bid Documents prior to submitting its Bid and executing the Contract. Based upon its careful review, Contractor agrees that it shall not be entitled, and conclusively waives any right, to an adjustment in the Contract Sum or Contract Time for any additional or unforeseen costs or Delay in the performance of Work due to conditions in Contract Documents constituting errors, omissions, conflicts, ambiguities, lack of coordination or noncompliance with Applicable Code Requirements, if such conditions were either discovered by Contractor or could have been reasonably discovered by Contractor or its Subcontractors or Sub-subcontractors, of every Tier, in the exercise of care and diligence in the review of the Bid Documents.

3.1.3 If Contractor discovers what it perceives to be errors, omissions, conflicts, ambiguities, lack of coordination or noncompliance with Applicable Code Requirements in the Contract Documents, then Contractor shall, before proceeding with the Work affected, notify District or the Construction Manager in writing within two (2) Days stating both of the following:

- (i) A detailed description of the conditions discovered.
- (ii) Contractor's request for clarification, further details or correction of the Contract Documents.

Failure by Contractor to provide written notice within the period of time required shall result in Contractor waiving any right to adjustment in the Contract Sum or Contract Time on account thereof.

3.1.4 Contractor shall submit written notice thereof to District if, in Contractor's opinion, District, Design Consultant or Construction Manager furnishes additional written or verbal instructions, information or directions that Contractor considers constitute additional Work or Delay for which Contractor believes it is entitled to an adjustment of the Contract Sum or Contract Time. Such notice shall

be provided prior to performance of the Work affected by such instruction, information or direction and seven (7) Days after Contractor first received such instruction, information or direction. Failure to provide such written notice in the manner required by this provision shall constitute a waiver by Contractor of the right to any adjustment to the Contract Sum or Contract Time by reason of such instruction, information or direction.

3.1.5 Field measurements shall be taken and existing field conditions verified by Contractor, and carefully compared with the Contract Documents and other information known to Contractor before commencing the Work. Contractor shall promptly report in writing to the Construction Manager any errors, inconsistencies, or omissions discovered.

3.1.6 If Contractor or any Subcontractor or Sub-subcontractor, of every Tier, performs any portion of the Work which it knows, or in the exercise of care and diligence should have known, involves an error, omission, conflict, ambiguity, lack of coordination or noncompliance with Applicable Code Requirements, without notifying and obtaining the written Approval of District or before obtaining a written clarification, interpretation, instruction or decision from District, Design Consultant or Construction Manager, then any Work that is performed that is not in conformance with the clarifications, interpretation, instruction or decision of District, Design Consultant or Construction Manager shall be removed or replaced and Contractor shall be responsible for the resultant Losses with no adjustment in the Contract Sum or Contract Time.

3.1.7 District does not impliedly or expressly warrant, and assumes no responsibility for, the accuracy, suitability or completeness of the Bid Documents, Contract Documents or of the data, opinions or recommendations contained or expressed in any information, data or reports provided to Contractor relating to the following conditions at the Site: geological, soils, hydrologic, groundwater, Hazardous Substances, surface and subsurface obstructions, surface and subsurface utilities or Existing Improvements. Existing Improvements at the Site, for which no specific description is made on the Drawings, but which could be reasonably assumed to interfere with the satisfactory completion of the Work, shall be removed and disposed of by Contractor, but only upon the specific direction and control of District. Without limitation to the foregoing, and notwithstanding any information provided by District pertaining to groundwater elevations and/or geological and soils conditions encountered, it is understood that it is Contractor's responsibility to determine and allow for the elevation of groundwater, and the geological and soils conditions at the date of performance of the Work and any difference between elevation of groundwater and the geotechnical and soils conditions shown in the information provided by District and groundwater and the geotechnical and soils conditions actually encountered will not be considered as a Differing Site Condition or as a basis for an adjustment to the Contract Sum or Contract Time.

## **3.2 SUPERVISION AND CONSTRUCTION PROCEDURES**

3.2.1 Contractor shall supervise, coordinate and direct the Work using Contractor's best skill and attention and shall provide supervision sufficient to assure proper coordination and timely completion. Contractor shall be solely responsible for and have control over construction means, methods, techniques, safety, sequences, procedures and the coordination of all portions of the Work.

3.2.2 Contractor shall be responsible for the accurate layout of all portions of the Work and shall verify all dimensions on the Drawings and shall report to District any discrepancies before proceeding with related Work.

3.2.3 Contractor may be assigned working space adjacent to the Site, and all field offices, materials and equipment shall be kept within this area. Contractor shall be responsible for leaving the space in as good condition as Contractor found it, or restoring it to the condition it was in prior to Contractor commencing the Work.

3.2.4 Contractor shall be responsible to District for acts and omissions of Contractor's agents, employees, and of Contractor's Subcontractors and Sub-subcontractors, of every Tier, and their respective agents and employees. Unless otherwise stated in the Contract Documents, references to Contractor, when used in reference to an obligation bearing upon performance of the Work, shall be deemed to include Contractor's Subcontractors and Sub-subcontractors of every Tier.

3.2.5 Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents by the act(s) or omission(s) by District in the administration of the Contract, or by tests, inspections or Approvals required or performed by persons or firms other than Contractor.

## **3.3 RESPONSIBILITY FOR THE WORK**

3.3.1 Contractor shall be in charge of and responsible for all portions of the Work of the Contract, and shall be responsible for conforming such portions to the requirements of the Contract Documents and readying such portions to receive subsequent Work.

3.3.2 Contractor shall at all times maintain good discipline and order among its employees and Subcontractors. Contractor shall provide competent, fully qualified personnel to perform the Work, and shall ensure that each Subcontractor and Sub-subcontractor engaged on the Site arranges the storage of materials and equipment and performance of its Work so as to interfere as little as possible with Separate Contractors or other persons engaged in work for District on the Site.



3.3.3 During the installation of Work, Contractor shall insure that existing facilities, fences, and other structures are all adequately protected. Upon Final Completion of all Work, all facilities that may have been damaged shall be restored to a condition acceptable to District.

3.3.4 Contractor is responsible for the security of the Site and all Work provided under the terms of this Contract, as well as all Work provided by Separate Contractors that occurs on the Site at any time prior to Final Completion and Acceptance of the Work by District.

### **3.4 LABOR, WORKMANSHIP, MATERIALS AND MANUFACTURED ITEMS**

3.4.1 Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Unless otherwise provided in the Contract Documents or otherwise Approved by the Construction Manager, all articles, equipment and materials incorporated in the Work shall be new, of good quality, undamaged and not defective.

### **3.5 CONTRACTOR'S WARRANTY**

3.5.1 Contractor warrants to District that all materials and equipment used in or incorporated into the Work will be of good quality, new and free of liens, Claims and security interests of third parties; that all labor, installation, materials and equipment used or incorporated into the Work will be of good quality and free from defects; and that the Work will conform with the requirements of the Contract Documents and Applicable Code Requirements. If required by District, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Manufactured items installed in the Work and not specifically covered in the Contract Documents are to be installed in strict accordance with manufacturers' current printed instructions.

3.5.2 All materials to be incorporated in the Work shall be protected from damage during delivery, storage, and handling, and after installation until Acceptance of the Work, and Contractor shall, without charge to District, be responsible for all damage due to Contractor's failure to provide such proper protection.

### **3.6 CONSTRUCTION METHODS AND PROCEDURES**

3.6.1 The methods and procedures adopted by Contractor shall be such as to secure a quality of Work satisfactory to District and to enable completion of the Work in the time agreed upon. If at any time such methods and procedures appear inadequate, District may order Contractor to improve their character or increase efficiency, and Contractor shall conform to such order;

but the failure of District to order such improvement of methods or increase of efficiency will not relieve Contractor from its obligation to perform the Work in accordance with the Contract Documents or within the Contract Time.

3.6.2 If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, Contractor shall be fully and solely responsible for the Site safety for implementing such means, methods, techniques, sequences or procedures. If Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, Contractor shall give written notice to District and shall not proceed with that portion of the Work without further written instruction by District.

### **3.7 TAXES**

3.7.1 Contractor, Subcontractors and Sub-subcontractors are responsible for paying all sales, consumer, business license, use, income and payroll, and similar taxes for the Work or portions thereof provided by Contractor and Subcontractors.

### **3.8 LEGAL REQUIREMENTS**

3.8.1 Contractor shall perform the Work in accordance with all Applicable Code Requirements, even though such requirements are not specifically mentioned in the Contract Documents.

3.8.2 When the Work required by the Contract Documents is in conflict with any Applicable Code Requirement, Contractor shall notify District and shall not proceed with the Work until District has so ordered.

### **3.9 SUPERINTENDENT/PROJECT STAFF**

3.9.1 Contractor shall employ a complete and competent project staff for the duration of the Work, which shall include separate individuals designated to act as Superintendent(s), project manager(s), project engineer(s) and administrative assistant(s), plus such other members as necessary to diligently prosecute the Work. Contractor shall not replace the designated Superintendent or project manager without a minimum seven (7) Day written notice and only with the written approval of District, which may be granted or withheld in its sole discretion. Any Project staff member and any replacement member shall be subject to the approval of District, which may be granted or withheld in its sole discretion. Upon notice from District requesting replacement of any Project staff member who is unsatisfactory to District, Contractor shall in a timely manner, but in no event longer than three (3) Days after notification, replace such member with a competent member satisfactory to District. Failure by Contractor to comply with this provision shall entitle District, at its option exercised

in its sole discretion, to terminate the Contract or suspend the Work until compliance is demonstrated. All costs or damages associated with such termination or suspension shall be borne by Contractor, without adjustment in the Contract Sum or Contract Time.

3.9.2 The Superintendent shall be at the Site at all times during the performance of the Work. The Superintendent shall represent Contractor and communications given to and acknowledged by the Superintendent shall be binding on Contractor. Further, communications issued by or received from the Superintendent shall be deemed as binding on Contractor. The Superintendent must be able to read, write and communicate fluently in English. The Superintendent shall not perform the Work of any trade, pickup materials or perform any Work not directly related to the supervision and coordination of the Work.

### **3.10 SCHEDULES REQUIRED OF CONTRACTOR**

3.10.1 Contractor shall submit a preliminary Construction Schedule to District in a form approved by the Construction Manager at the Pre-Construction Meeting.

3.10.2 Updated Construction Schedules shall be submitted in the form and frequency approved by the Construction Manager.

3.10.3 The Construction Schedule and Construction Schedule updates shall meet the following requirements:

.1 Schedules must be suitable in format and clarity for monitoring progress of the Work and shall utilize the critical path method of scheduling.

.2 Schedules must provide necessary data about the timing for District's decisions and District-furnished items.

.3 Schedules must be in sufficient detail to demonstrate adequate planning and staffing for the Work.

.4 Schedules must represent a practical plan to complete the Work within the Contract Time. If at any time during the Work, any activity is not completed by its latest scheduled completion date, Contractor shall notify the Construction Manager within seven

(7) Days of Contractor's plans to reorganize the work force to return to the schedule and prevent Delays on any other activity.

.5 An updated Construction Schedule shall be submitted with each progress payment request, but no less frequently than monthly, and shall include all of the following:

- (i) A written narrative report detailing the actual progress of the Work as of the date of submission;
- (ii) The expected progress of the Work as of such date according to the approved Construction Schedule;
- (iii) The reasons for any variance between the approved Construction Schedule and the updated Construction Schedule; and
- (iv) Contractor's plan for placing the Work back on Schedule, at Contractor's expense.

3.10.4 Contractor shall plan, develop, supervise, control and coordinate the performance of the Work so the progress, sequence and timing of the Work conform to the current accepted Construction Schedule. Contractor shall continuously obtain from Subcontractors information and data about the planning for and progress of the Work, the ordering and fabrication of materials, required Submittals, and the delivery of equipment, shall coordinate and integrate such information and data in updated Construction Schedules and Record Documents, and shall monitor the progress of the Work and the delivery of equipment. Contractor shall act as the expeditor of potential and actual delays, interruptions, hindrances or disruptions for its own forces and those forces of Subcontractors, regardless of Tier. Contractor shall cooperate with District in the development of the Construction Schedule and updated Construction Schedules.

3.10.5 District's review, comments, requests for revisions, or acceptance of any schedule or scheduling data shall not:

- (i) Relieve Contractor from its sole responsibility for the feasibility of the schedule and to plan for, perform, and complete the Work within the Contract Time;
- (ii) Transfer responsibility for any schedule from Contractor to District; nor
- (iii) Imply District's agreement with any assumption upon which such schedule is based or any matter underlying or contained in such schedule.

3.10.6 Failure of District to discover errors or omissions in schedules that it has reviewed, or to inform Contractor that Contractor, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Construction Schedule, shall not relieve Contractor from its sole responsibility to perform and complete the Work within the Contract Time and shall not be a cause for an adjustment of the Contract Time or the Contract Sum.

3.10.7 Contractor shall cooperate with and coordinate its schedule with work of District and District's Separate Contractors.

### 3.11 DOCUMENTS AND SAMPLES AT PROJECT SITE

3.11.1 Contractor shall maintain one (1) set of As-Built Documents at the Site, which shall be kept up to date on a daily basis at all times during the performance of the Work. All performed changes, deletions or additions in the Work from that shown in the Contract Documents shall be recorded accurately and completely in the Record Documents. Upon Final Completion and as a condition to final payment, each sheet of the As-Built Documents and other Record Documents shall be signed and attested to by a representative of Contractor as being complete and accurate.

3.11.2 Contractor shall, at all times during performance of the Work, also maintain the following at the Site:

- (i) The latest updated Construction Schedule approved by District;
- (ii) Shop Drawings, product data, and samples; and
- (iii) All other required Submittals.

At all times during the course of the Project, these documents shall be available to District, the Construction Manager and the Design Consultant to audit, excerpt, or copy as they see fit. Upon Final Completion or termination of the Construction Contract, these shall be delivered to District.

3.11.3 It shall be the responsibility of Contractor to maintain a current and complete record of all Changes performed during the progress of the Project construction. The record shall be in the form of a complete set of prints of the As-Built Documents on which daily recordings are made by Contractor, indicating in detail and dimension each variation from the original set of Contract Documents and including all of the construction Work. At the completion of construction, Contractor shall, as a requirement of the Final Completion of the Work, certify that to the best of its knowledge, the As-Built Documents are true and accurate, and that the indications thereon represent all Changes performed during the construction of the Project. At the Final Completion of the Work, the As-Built and other Record Documents shall become the property of District.

3.11.4 Contractor, in concert with the Design Consultant and the Construction Manager, shall review Contractor's As-Built Documents for conformance with all current Changes prior to presenting its monthly Application For Payment. The monthly progress payment statement will not be accepted or processed by District unless the As-Built Documents are current and complete, and Approved by District.

3.11.5 At the Final Completion of the Work, all information annotated monthly on the As-Built Documents shall be fully incorporated by Contractor onto a set

of mylar reproduces furnished by Contractor. These As-Built Documents will become the permanent property of District at the Final Completion of the Work. If the As-Built Documents are prepared on a computer, then the revised computer files shall also be provided to District in the file format specified by District.

### **3.12 SUBMITTALS**

3.12.1 Submittals are not Contract Documents. Their purpose is to demonstrate, for those portions of the Work for which Submittals are required, how Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Prior to starting Work, Contractor shall provide to District an initial schedule for all materials and equipment for which shop drawings are required by the Contract Documents. For each required shop drawing, Contractor shall provide to District the date for the drawing's intended Submittal to the Design Consultant for review. The date required for its return to avoid Delay in any activity beyond the scheduled start date shall also be given.

3.12.2 All shop drawings and other Submittals shall be provided at Contractor's expense, when required by the Contract Documents or requested by the Construction Manager.

3.12.3 Contractor shall review, stamp approved, and submit to the Construction Manager, all Submittals required by the Contract Documents to be submitted and reviewed by the Design Consultant. Submittals to the Construction Manager without evidence thereon of Contractor's approval shall be returned, without further consideration, for resubmission in accordance with these requirements. Submittals shall be provided within the time frame specified in the Special Provisions and Technical Specifications in accordance with the Construction Schedule, and in such sequence as to cause no Delay in the Work or in the activities of District or of Separate Contractors. Submittals made by Contractor which are not required by the Contract Documents, may be returned without action by the Construction Manager or Design Consultant. Submittal to the Construction Manager and Design Consultant must include a statement, in writing, identifying any deviations from the Contract Documents required due to manufacturing or installation limitations contained in the Submittal.

3.12.4 All Submittals shall be submitted in six (6) sets, accompanied by letters of transmittal, and addressed to the Construction Manager for review. Unless otherwise specified in the Contract Documents, Submittals consisting of Drawings or Plans shall be in the form of six (6) copies. The Submittal must be in accordance with the Contract Documents. If the Submittal involves a request for substitution of materials, the request shall be clearly identified on the Submittal that it is a "Request for Substitution." Unless so clearly marked, Submittals shall not be considered as a request for substitution. If changes or corrections are required, three marked-up prints shall be returned to

Contractor. Submittals shall consist of the appropriate combination of catalog sheets, material lists, manufacturer's brochures, technical bulletins, specifications, diagrams, or product samples, necessary to describe a system, product, or item. The letter of transmittal shall give a list of the numbers of the sheets submitted. All sheets shall be marked with the name of the Project and the name of Contractor, shall be numbered consecutively, and shall be referenced to the sheets or paragraphs of the Contract Documents, referenced by sheet or subparagraph affected. Submittals shall be combined for singular assemblies, items or materials.

3.12.5 No Work requiring a Submittal shall be performed by Contractor until the Submittal has been reviewed by District, Construction Manager or Design Consultant and the Design Consultant has documented the exceptions noted on the Submittal. Contractor shall allow twenty (20) Days for review of Submittals. Once the Submittal is returned to Contractor by the Construction Manager with a statement that it has been reviewed and no exceptions are taken or further action requested, such Work shall be performed in accordance with the Submittal and the Contract Documents.

3.12.6 Contractor's Submittals represent that Contractor has determined or verified materials and field measurements and conditions related thereto and that it has checked and coordinated the information contained within such Submittals with the requirements of the Contract Documents and Submittals for related Work.

3.12.7 If Contractor discovers any conflicts, omissions or errors in Submittals, Contractor shall notify the Construction Manager and receive instruction before proceeding with the affected Work.

3.12.8 Contractor shall remain solely responsible, notwithstanding District, Construction Manager or Design Consultant's review or approval of Submittals, for deviations (including, without limitation, those arising from standard shop practice) from requirements of the Contract Documents, unless Contractor has specifically informed District, Construction Manager or Design Consultant in writing of such deviation at the time of transmitting the Submittal and District, Construction Manager or Design Consultant has given written approval of such deviation. No adjustment in the Contract Sum or Contract Time shall be permitted with respect to any such deviations that are noted in writing by Contractor and as to which District, Construction Manager or Design Consultant takes no exception or approves.

3.12.9 After review of Contractor's Submittals by District, Construction Manager or Design Consultant, the Construction Manager will transmit to Contractor the required number of sets. If the Submittals are found to be incomplete or incorrect, Contractor shall resubmit after corrective action has been taken. Contractor shall reimburse District, or District may withhold from payments due Contractor, sums owing by District for any fees charged by District,

Construction Manager or Design Consultant or District's other consultants for more than two (2) reviews of a Submittal, or for accelerated review in a shorter time than set forth in the approved Construction Schedule, if requested by Contractor or caused by late Submittals by Contractor. The return of a Submittal due to failure to comply with the Contract Documents or for correction or additional information shall be considered a review.

3.12.10 Review of Submittals by District, Construction Manager or Design Consultant will be general and for conformance with design intent, and shall not relieve Contractor from the responsibility for proper fitting and construction of the Work, nor from furnished materials and Work required by the Contract which may not be indicated on the reviewed Submittals.

3.12.11 Submittals shall be in English, be of good quality, and be of a size and scale to clearly show all necessary details. Submittals shall show in detail the size, sections and dimensions of all members; the arrangement and construction of all connections, joints and other pertinent details; and all holes, straps and other fittings required by other Separate Contractors for attaching their Work. When required by District, Construction Manager or Design Consultant, engineering computations shall be submitted. Contractor shall be responsible for delivering duplicates of Submittals to all other persons whose Work is dependent thereon.

3.12.12 Contractor shall, at all times, maintain at the Site a complete file of all District, Construction Manager or Design Consultant-reviewed Submittals.

### **3.13 TRADE NAMES, SUBSTITUTIONS**

3.13.1 Except as otherwise noted and permitted by law, whenever in the Contract Documents any material or process is indicated or specified by two or fewer patents, proprietary names, brand names and/or manufacturers, such specification shall be deemed pursuant to Public Contract Code 3400 to be followed by the words "or approved equal".

3.13.2 Contractor shall have ten (10) Days after submission of the Bid to submit data substantiating substitution of "or equal" items. District, with the advice of the Design Consultant, will determine whether the proposed brand or item is equal in quality and utility to that specified in the Contract Documents, and its decision shall be final. District, Construction Manager or Design Consultant may require the submission of samples, formulae, and/or statements of physical properties for consideration in determining equality of the material or process in question. No proposal for an equal will be considered complete unless accompanied by complete information and descriptive data necessary to determine the equality of the offered equal.

3.13.3 If Contractor requests use of substitute material or process, it shall be incumbent upon Contractor to furnish sufficient evidence to support the claim



of equality to the satisfaction of District, Construction Manager or Design Consultant.

3.13.4 If District accepts for use in the Project a substitute material or process which in the opinion of District, Construction Manager or Design Consultant is not the equal of that specified, a Change Order shall be issued issuing a credit to District for the difference in value.

3.13.5 Substitutions by Contractor that are incorporated into the Work without the prior review and Approval by District, Construction Manager or Design Consultant in accordance with the requirements of the Contract Documents shall be deemed to be Defective Work.

3.13.6 The specified Construction Contract completion time shall not be affected by any circumstance developing from the substitution provisions of this Article 3.13.

### **3.14 DAILY REPORTS BY CONTRACTOR**

- (i) At the end of each working day, Contractor shall submit a daily report to the Construction Manager (on a form provided by or accepted by the Construction Manager) listing:  
Labor - Names of workers, classification, and hours worked.
- (ii) Material - Description and list of quantities of materials used.
- (iii) Equipment - Type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable.
- (iv) Inspection and Testing Activities - Name, District or company and items involved.
- (v) Areas of Work - The areas of the Site on which Work was performed and a detailed description of the stage, status and progress of the Work in each such area at the beginning and end of the day.
- (vi) Accidents, Delays, Defective Work - Description in detail of any injuries to workers, accidents, Delays, or Defective Work that were encountered.
- (vii) Other Services and Expenditures - Description in such detail as District may require of other services and expenditures.

3.14.2 Reports by Subcontractors and Sub-subcontractors that comply with the requirements of this Article 3.14 shall also be submitted to the Construction Manager through Contractor at the end of each working day

3.14.3 Submission of daily reports by Contractor, Subcontractors and Sub-

subcontractors, of every Tier performing Work on the Site shall be a condition precedent to Contractor's right to payment under the Contract.

3.14.4 Facts, notice or information contained in daily reports of Contractor or its Subcontractors or Sub-subcontractors, whether known or not known to District or Construction Manager, shall under no circumstances be considered evidence of compliance by Contractor with any of the specific written notice requirements of the Contract Documents.

### **3.15 CUTTING AND PATCHING**

3.15.1 Contractor shall do all cutting, fitting, or patching of the Work required to make all parts of the Work join properly and to allow the Work to join the work of Separate Contractors shown in, or reasonably implied by, the Contract Documents.

3.15.2 Contractor shall not endanger the Work, the Project, Existing Improvements, or adjacent property by cutting, digging, or otherwise. Contractor shall not cut or alter the work of any Separate Contractor without the prior consent of District.

3.15.3 In all cases, cutting shall be performed under the supervision of competent workers skilled in the applicable trade and shall cause the openings to be cut as small as possible to minimize unnecessary damage.

### **3.16 ACCESS TO THE WORK**

3.16.1 District, Construction Manager, Design Consultant, their consultants and other persons authorized by District shall at all times have access to the Work wherever it is in preparation or progress. Contractor shall provide safe and proper facilities for such access and for inspection.

3.16.2 District may, at any time, and from time to time during the performance of the Work, enter the Project for the purpose of installing any necessary other work by District labor or other contracts or for any other purpose. Contractor shall cooperate with District and not interfere with other work being done by or on behalf of District.

### **3.17 ROYALTIES AND PATENTS**

3.17.1 Contractor shall pay all royalties and license fees required for the performance of the Work. Contractor shall immediately notify District if it learns of any circumstances that may constitute an infringement of patent rights and shall defend and indemnify District and the members of the Project Team in accordance with Article 3.21 against Losses, liabilities, suits or Claims resulting from Contractor's or any Subcontractor's or Sub-subcontractor's infringement of patent rights.

### **3.18 PERMITS AND LICENSES**

3.18.1 Contractor and all Subcontractors Contractor shall obtain and be responsible for the cost of all permits and applications related to the construction of the Project.

### **3.19 DIFFERING SITE CONDITIONS**

3.19.1 Save and except as permitted for Differing Site Conditions as defined in this Article 3.19, Contractor agrees to solely bear the risk and the additional cost and Delay of all concealed or unknown conditions at the Site or in Existing Improvements, without adjustment to the Contract Sum or Contract Time.

3.19.2 Differing Site Conditions are those conditions encountered at the Site or in Existing Improvements that are (1) subsurface or concealed conditions which differ materially from those indicated in the Contract Documents; or (2) unknown physical conditions at the Site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in the Contract Documents.

3.19.3 If Contractor encounters conditions it believes constitute Differing Site Conditions, then notice of such conditions shall be immediately reported to District and the Construction Manager followed within twenty-four (24) hours by a written notice stating a detailed description of the conditions encountered.

3.19.4 District shall promptly investigate Contractor's report of Differing Site Conditions. If District finds that Differing Site Conditions exist, in accordance with this Article 3.19, an adjustment shall be made in the Contract Sum and Contract Time in such amount as District approves.

3.19.5 If Contractor intends to seek an adjustment to the Contract Sum or Contract Time based upon Differing Site Conditions, it must, within seven (7) Days after it first discovered, or should have discovered in the exercise of diligence and care, the existence of such Differing Site Conditions, submit a written statement setting forth a detailed cost breakdown in the form required by Article 7.2 setting forth the basis of Contractor's calculation of the costs saved or incurred, detailed information demonstrating the effect on the Construction Schedule in the same manner as required by the Contract Documents for obtaining approval of extensions of time, identification of the Bid Documents that formed the basis of Contractor's Bid estimate to perform the Work affected by such conditions and a complete and detailed explanation of the factual basis for the request.

3.19.6 Failure by Contractor to strictly comply with the requirements of this Article 3.19 concerning the timing and content of any notice of Differing Site Conditions or request for adjustment in Contract Sum or Contract Time based on Differing Site Conditions shall be deemed a waiver of any right by Contractor for an adjustment in the Contract Sum or Contract Time by reason of such

conditions.

3.19.7 No Claim by Contractor for additional compensation for Differing Site Conditions shall be allowed if asserted after final payment under the Construction Contract.

### **3.20 INSPECTIONS**

3.20.1 In order to allow for inspection by District and other agencies, or any inspection required elsewhere in the Special Provisions and Technical Specifications, Contractor shall notify District in writing three (3) Days in advance of the permanent concealment of any materials or Work.

3.20.2 Whenever Contractor desires to carry on the Work of this Construction Contract at hours other than 8:00 AM to 6:00 PM, Monday through Friday and from 9:00 AM to 5:00 PM on Saturdays, it shall request authorization in writing from District for such Work at least twelve (12) Days in advance and, if approved to proceed, Contractor agrees to pay overtime reimbursement of costs, of such required inspector(s) and the Construction Manager, Design Consultant and/or other District consultants whose presence is necessary and requested by District. .

3.20.3 If any Work is concealed or performed without the prior notice specified above, then the Work shall be subject to such tests or exposure as may be necessary to prove to District that the materials used and the Work done are in conformity with the Contract Documents. All labor and equipment necessary for exposing and testing shall be furnished by Contractor at its expense. Contractor shall replace, at its own expense and without reimbursement by District, any materials or Work damaged by exposure and any faulty materials or work evidenced by such exposure or testing.

3.20.4 When, in order to comply with the intent of the Contract Documents, inspection must be made at the plant or mill of the manufacturer or fabricator of material or equipment, Contractor shall notify District a sufficient length of time in advance to allow for arrangements to be made for such inspection.

3.20.5 Any inspection or approval by any representative or agent of District will not relieve Contractor of the responsibility of incorporating into the Work only those materials which conform to the Contract Documents, and any nonconforming materials all be removed from the Site whenever identified.

3.20.6 When Contractor believes it has achieved either Substantial or Final Completion of the Work, Contractor shall notify District and the Construction Manager in writing and request a Substantial or Final Completion inspection of the Work. District, Design Consultant and Construction Manager will make such inspection as soon thereafter as possible.

### **3.21 INDEMNIFICATION, STOP NOTICES**

3.21.1 Contractor shall fully comply with the Indemnification provision of the Construction Contract.

3.21.2 Contractor shall take steps to assure that a right of indemnification is included in all subcontracts, purchase orders and other contracts entered into by Subcontractors and Sub-subcontractors, of every Tier, for the Project that afford the same coverage, benefits and protections as provided for in Article 3.21.1.

3.21.3 Nothing set forth in the Contract Documents shall be construed to give rise to any express or implied right in favor of Contractor for indemnity or contribution.

3.21.4 Contractor shall not permit any stop notices or other claims, valid or invalid, to be served, filed, recorded or otherwise imposed on District or on any part of the Work or the property on which the Work is performed. If any stop notice or other claim is served, filed or recorded in connection with the Work, District shall have the option, in its sole discretion, to require that Contractor immediately and at its own expense obtain a bond executed by a good and sufficient surety, in accordance with the California Civil Code, Section 3196, in a sum equal to one hundred twenty-five percent (125%) of the amount of such stop notice or claim. Such bond shall guarantee the payment of any amounts which the claimant may recover on the stop notice or claim, together with the claimant's costs of suit in any action to enforce such stop notice or claim if the claimant recovers therein. This remedy shall be in addition to all other rights and remedies of District under the Contract Documents and applicable law, including, without limitation, the right to withhold funds from sums due to Contractor.

### **3.22 PARKING**

3.22.1 Contractor shall provide and maintain suitable parking areas, for use by all construction workers and others performing work or furnishing services in connection with the Project, as required to avoid any need for parking personal vehicles where they may interfere with public traffic, construction activities or public parking.

### **3.23 USE OF THE PROJECT SITE AND CLEAN UP**

3.23.1 Contractor shall confine operations at the Site to areas permitted by Applicable Code Requirements and the Contract Documents. Contractor shall not encumber the Site with materials or equipment so that Separate Contractors' work is hindered or impeded due to such encumbrances.

3.23.2 Contractor shall, during performance of the Work, keep the Site and

surrounding area free from the accumulation of excess dirt, dust, waste materials, water and rubbish caused by Contractor or any Subcontractors. Contractor shall continuously remove all excess dirt, waste material, water and rubbish caused by Contractor and all tools, equipment, machinery and surplus materials from the Site and surrounding area at the completion of the Work. Adequate cleanup will be a condition for progress payments.

3.23.3 Personnel of Contractor, Subcontractors, and Sub-subcontractors shall not occupy, live upon, or otherwise make use of the Site during any time that Work is not being performed at the Site, except as otherwise provided in the Contract Documents.

3.23.4 Upon Final Completion of the Work, Contractor shall remove all construction facilities, appurtenances, tools, material and other articles from the Site. The entire area, including all fixed equipment, floors, surfaces and hardware shall be cleaned and restored to their original condition in accordance with the Special Provisions and Technical Specifications.

3.23.5 In addition to water sprinkling, temporary enclosures and anti-dust sweeping compounds should be used to limit dust and dirt rising and to keep the Site clean.

3.23.6 Construction materials shall be neatly stacked by Contractor when not in use. Dusty materials in piles or in transit shall be covered to prevent suspension of the dirt in the air. Contractor shall promptly remove splattered concrete, asphalt, oil, paint, corrosive liquids and cleaning solutions from the affected surfaces to prevent marring or other damage.

3.23.7 Volatile wastes shall be properly stored in covered metal containers and removed daily. All other trash receptacles shall be promptly emptied when full. Contractor shall promptly and legally transport and dispose of removed and demolished items and waste materials not identified to be recycled or reused in a manner complying with local ordinances and anti-pollution laws. No rubbish or waste materials shall be burned, buried, or otherwise disposed of on the Site.

3.23.8 Sanitary facilities shall be of reasonable capacity, properly maintained throughout the construction period, and obscured from public view to the greatest practical extent. Contractor shall enforce the use of such sanitary facilities by all personnel at the Site. Sanitary facilities shall be on a portable trailer and shall be removed from the Site at the end of each workday. For sewer lining projects, Contractor shall provide additional sanitary facilities on a portable trailer to be used by the residents during lining installation (one sanitary facility per each 30 meters [100 feet]). Contractor shall remove those sanitary facilities as soon as relief holes are cut and notices of completion are delivered.

## **3.24 ENVIRONMENTAL CONTROLS**

3.24.1 AIR POLLUTION CONTROL. Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to any work performed pursuant to the Contract, including any air pollution control rules, regulations, ordinances and statutes, specified in the California Laws Government Code, Section 11017, , or any other applicable law. In the absence of any applicable air pollution control rules, regulations, ordinances or statutes governing solvents, all solvents, including but not limited to the solvent portions of paints, thinners, curing compounds and liquid asphalt used on the Project shall comply with the applicable material requirements of the San Luis Obispo County Air Pollution Control District. All containers of paint, thinner, curing compound or liquid asphalt shall be labeled to indicate that the contents fully comply with said requirements. Material to be disposed of shall not be burned.

.1 Mold. If any material susceptible to microbial growth becomes wet during the construction phase, that material should be carefully removed from the construction Site to prevent further contamination of the indoor air.

.2 VOC's. Construction materials that emit low levels of volatile organic compounds (VOC) shall be used to improve indoor air quality. Adequate ventilation of packaged dry products shall be used prior to installation. Contractor is responsible to ventilate the building during the application of wet products (e.g., paints, glues, sealants), which release their highest levels of VOC's during the curing period immediately after the application. Also, wet products shall be applied before installing materials that act as "sinks" such as carpets, fabric, ceiling tiles, movable partitions, furniture, etc. in order to reduce the chance of the "sinks" absorbing contaminants and slowly releasing them into the building over time.

.3 Off-Gassing. Contractor is responsible for identifying specific materials that require more complex ventilation to accelerate off-gassing. In addition to paints, glues and sealants, those materials that generally require temporary ventilation include, without limitation: composite wood products, plastics, waterproofing, insulation, fireproofing, caulking, acoustical ceilings, resilient flooring and wood preservatives.

.4 Barriers. Barriers shall be used to prevent the migration of airborne pollutants from areas under construction and to mitigate any construction noise that may disrupt occupant activities. If effective controls for pollution emissions cannot be practically implemented, activities involving significant airborne pollutants shall be scheduled during off-hours at Contractor's expense. The Site shall be ventilated with fresh outside air during and immediately after the noxious activity.

.5 Exhaust. Contractor shall install a temporary exhaust in a construction area to prevent contaminated air from entering the building's return-air system,

including, without limitation:

- (i) Removing windows in a space.
- (ii) Using available or dedicated exhaust systems (e.g., kitchen or toilet exhaust) that are not tied into the building's overall return-air system.

The building shall be flushed with full outdoor air for seven (7) Days prior to occupancy. Full capacity of the HVAC system shall be used for at least 2.5 ACH (air changes per hour), provided by temporary fans. During this time, the interiors shall be thoroughly cleaned, the HVAC ducts vacuumed, and air and HVAC system filters replaced.

3.24.2 TEMPORARY WATER, LIGHT AND POWER. Water for any purpose shall be obtained by Contractor, at its expense, from District. Contractor is to contact the Construction Manager for a phone number and contact person. In no case may Contractor obtain water from unmetered fire hydrants. The costs of obtaining water shall be included in the prices paid for the various contract items of work included and no additional compensation will be allowed therefore, unless otherwise specified in these Contract Documents. Contractor should be aware that there is a penalty for taking water from an unmetered fire hydrant. This amount shall be deducted from the payment due Contractor.

### 3.24.3 WATER POLLUTION CONTROL.

.1 Contractor shall use Best Available Technology and Best Management Practices to prevent the pollution of drains and watercourses by discharges of materials other than uncontaminated storm water. Prohibited discharge include storm water, discharge that may threaten to cause pollution, contamination or nuisance, sanitary waste, sediment and debris from erosion and other substances resulting from construction activities. Sanitary wastes will not be permitted to enter any drain or watercourse other than sanitary sewers. No sediment, debris or other substance will be permitted to enter sanitary sewers.

.2 Contractor to provide effective and continuous control of water pollution, including where Work in small or multiple units, on an out of phase schedule or with modified construction procedures. Contractor shall determine which methods are most effective in achieving control of water pollution as a result of Contractor's operations. Contractor shall coordinate water pollution control work with all other Work performed by Contractor and Separate Contractors.

.3 Before starting any Work on the Project, Contractor shall submit to the Construction Manager for acceptance a program for effective control of water pollution. Such program shall show the schedule and detailed



description for the pollution and erosion control work or practices included in the Construction Contract and for all water pollution control measures which Contractor proposes to take in connection with construction of the Project to minimize the effects of their operations upon adjacent streams and other bodies of water. Contractor shall not perform any clearing and grubbing or earthwork on the Project, other than that specifically authorized in writing by the Construction Manager, until such program has been approved by District or Construction Manager. Contractor shall revise and bring up to date said water pollution control program at any time the Construction Manager makes written request for such revisions.

.4 The Construction Manager will notify Contractor within seven (7) Days of its learning of the acceptance or rejection of any submitted or revised water pollution control program.

.5 District shall not be liable to Contractor for failure to accept all or any portion of any originally submitted or revised water pollution control program, or for any Delays to the Work due to Contractor's failure to submit an acceptable water pollution control program. Contractor assumes sole responsibility for all costs associated with treatment of water polluted as a result of Contractor's Site activities, whether treatment is initiated by Contractor or District.

.6 Contractor may request the Construction Manager to waive the requirement for submission of a written program for control of water pollution when the nature of Contractor's operation is such that pollution discharge or erosion is not likely to occur. Waiver of this requirement will not relieve Contractor from responsibility for compliance with the other provisions of this Section. Waiver of the requirement for a written program for control of water pollution will not preclude District requiring submittal of a written program at a later time if the Construction Manager deems it necessary because of the effect of Contractor's operations.

.7 Where erosion damage which will cause water pollution is probable due to the nature of the material or the season of the year, Contractor's operation shall be so scheduled that permanent erosion control features will be installed concurrently with or immediately following grading operations.

.8 All water pollution control work required elsewhere in the Contract Documents which may be accomplished under the various contract items of Work will be measured and paid for as provided in said items of Work elsewhere in these Contract Documents.

.9 All water pollution control work performed in accordance with the accepted program which is not otherwise required under the Construction Contract and which is ordered by the Construction Manager will be paid for as Extra Work as provided for in the General Conditions. Except as otherwise provided in Article 3.24.3 or elsewhere in the Contract Documents, full

compensation for conforming to the requirements of Article 3.24.3 shall be considered as included in the prices paid for the various contract items of Work and no additional compensation will be allowed therefore.

3.24.4 URBAN RUNOFF. The following Best Management Practices which address the problem of urban runoff shall apply to all projects undergoing construction in District. The Best Management Practices list set forth below is required by District, and shall apply at the time of demolition of an existing structure or commencement of construction until receipt of a certificate of occupancy or certificate of completion:

.1 Runoff, sediments and construction waste from construction sites and parking areas shall not leave the site.

.2 Any sediments or other materials which are tracked off the Site shall be removed the same day. When determined necessary by the Construction Manager to provide temporary pollution control measures, a temporary sediment barrier shall be installed.

.3 On an emergency basis only, plastic covering may be utilized to prevent erosion of an otherwise unprotected area, along with runoff devices to intercept and safely convey the runoff. Excavated soil shall be located on the Site in a manner that eliminates the possibility of sediment running into the street or adjoining properties. Undocumented fills shall be covered until the soil is either used or removed.

.4 No washing of construction or other industrial vehicles shall be allowed adjacent to the Site. No runoff from washing vehicles on the Site is allowed to leave the Site.

.5 Drainage controls shall be utilized as needed, depending on the extent of proposed grading and topography of the Site, including, but not limited to the following: (i) detention ponds, sediment ponds or infiltration pits; and (ii) dikes, filter berms or ditches; and (iii) down drains, chutes or flumes.

3.24.5 STORMWATER POLLUTION. To avoid stormwater pollution, Contractor shall plan roadwork and pavement construction as follows:

(i) Apply concrete, asphalt, and seal coat during dry weather to prevent contaminants from contacting stormwater runoff.

(ii) Cover storm drain inlets and personnel access holes when paving or applying seal coat, slurry seal, fog seal, etc.

(iii) Always park paving machines over drip pans or absorbent materials, since they tend to drip continuously.

(iv) When making saw-cuts in pavement, use as little water as possible. Cover each catch basin completely with filter fabric during the sawing operation and contain the slurry by placing straw bales, sand bags, or gravel dams around the catch basin. After the liquid drains or evaporates, shovel or vacuum the slurry residue from the pavement or gutter and remove from the Site.

**DRAINAGE CONTROL.** Contractor shall provide for the drainage of storm water and such water as may be applied or discharged on the Site in performance of the Work. Drainage facilities shall be adequate to prevent damage to the Work, Site and adjacent property. Also drainage facilities shall be constructed to minimize the potential pollution to the ocean.

Existing drainage channels and conduits shall be cleaned, enlarged or supplemented as necessary to carry all increased runoff attributable to Contractor's operations. Dikes shall be constructed as necessary to divert increased runoff from entering adjacent property (except in natural channels), to protect District's private property and utility owner's facilities and the Work, and to direct water to drainage channels or conduits. Retention of drainage on the Site shall be provided as necessary to prevent downstream flooding.

#### 3.24.6 SOUND CONTROL.

.1 Contractor shall comply with all local sound control and noise level rules, regulations and ordinances which apply to any Work performed pursuant to the Construction Contract, except as modified in the Special Provisions and Technical Specifications.

.2 Each internal combustion engine, used for any purpose on the job or related to the job, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the Project without said muffler. The noise level from Contractor's operations, between the hours of 8:00 A.M. and 6:00 P.M., shall not exceed 86 DBA at a distance of 15 meters (50 feet). This requirement in no way relieves Contractor from responsibility for complying with local ordinances regulating noise level.

.3 The noise level requirement shall apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by Contractor. The use of loud sound signals shall be avoided in favor of light warnings except those required by safety laws for the protection of personnel.

.4 Prior to starting construction, all equipment to be used on the Project shall be inspected and tested for compliance with the requirements of this Project. Sound blankets or other sound mitigation equipment approved by the Construction Manager shall be required to bring equipment into compliance with the requirements of this Project.

.5 Full compensation for conforming to the requirements of this provision shall be considered as included in the prices paid for the various contract items of Work involved and no additional compensation will be allowed therefor.

**SPECIAL HAZARDOUS SUBSTANCES AND PROCESSES.** Contractor acknowledges that it is aware of and in compliance with the provisions of the Hazard Communication Standards (California Code of Regulations, Title 8, Section 5194). Contractor shall, at the request of the Construction Manager, demonstrate that Contractor is in complete compliance with the Hazard Communication Standards. In addition, Contractor shall, at the request of the Construction Manager, provide to the Construction Manager a material safety data sheet and a copy of the product label for any product handled or used by Contractor on District property or in an area where a District employee is working. Contractor shall contact the District's "Household Hazardous Waste Facility" regarding the intent to dispose of any materials containing asbestos or any petroleum-contaminated soil.

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## **ARTICLE 4 – ADMINISTRATION OF THE CONTRACT**

### **4.1 CONTRACT ADMINISTRATION BY DISTRICT, DESIGN CONSULTANT AND CONSTRUCTION MANAGER**

4.1.1 District and the Construction Manager will provide administration of the Construction Contract as provided in the Contract Documents.

4.1.2 No actions taken by District, Construction Manager or Design Consultant shall relieve Contractor of its obligations as described in the Contract Documents.

4.1.3 The Construction Manager will be present on the Site during the performance of the Work primarily for the purposes of providing administration, inspection and expediting communications between District, Design Consultant and Contractor.

4.1.4 Neither District, Design Consultant nor Construction Manager will have control over, will be in charge of, or will be responsible for construction means, methods, techniques, safety, sequences or procedures or for safety precautions and programs in connection with the Work, all of which are the sole responsibility of Contractor.

4.1.5 Unless otherwise provided in the Contract Documents or when direct communications have been specifically authorized, communications between Contractor and District or Design Consultant shall be in writing through Construction Manager. Communications by Contractor, Subcontractors and Sub-subcontractors with Separate Contractors shall be through the Construction Manager. Contractor shall not rely on oral or other non-written communications.

4.1.6 Based on the Construction Manager's Site visits and evaluations of Contractor's Applications For Payment, the Construction Manager will review and recommend to District for District approval the amounts, if any, due Contractor.

4.1.7 Construction Manager will make recommendations to District to reject the Work, or any portion thereof, which does not conform to the Contract Documents. District alone shall have the authority to stop the Work or any portion thereof. Whenever District considers it necessary or advisable, District will have the authority to require additional inspection or testing of the Work in accordance with the Contract Documents, whether or not such Work is fabricated, installed or completed. However, no authority of District conferred by the Contract Documents nor any decision made in good faith either to exercise or not exercise such authority, nor any recommendation by the Construction Manager, shall give rise to a duty or responsibility of District or the Construction Manager to Contractor or its Subcontractors or Sub-subcontractors, of any Tier.

4.1.8 Construction Manager will have the authority to do the following:

- (i) Conduct inspections in connection with Beneficial Occupancy;
- (ii) Assist District in determining the dates of Substantial Completion and Final Completion;
- (iii) Review any records, written warranties and related documents required by the Contract Documents and assembled by Contractor; and
- (iv) Make recommendations to District for issuance of final payment upon Contractor's compliance with the requirements of the Contract Documents.

4.1.9 District, with the assistance of recommendations from the Design Consultant and/or Construction Manager, shall be the ultimate interpreter of the requirements of the Contract Documents and the judge of performance thereunder by Contractor. Such decisions by District will be final and binding upon Contractor.

## **4.2 CLAIMS**

As set forth in the Section 1.1.18, a Contractor Claim means a separate demand by a Contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following: (A) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by the District; (B) payment by the District of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Construction Contract and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled; (C) payment of an amount that is disputed by the District.

4.2.1 Time period for submission of Contractor Claim.

(i) If a Contractor Claim involves an adjustment to the Contract Sum or to the Contract Time due to Extra Work, then the Claim arises upon issuance of a decision denying, in whole or in part, Contractor's Change Order Request. All other Claims arise when Contractor discovers, or should have discovered, the circumstances giving rise to the Claim (even if Contractor has not yet been damaged or delayed).

(ii) A Contractor Claim that does not involve an adjustment to the Contract Sum or Contract Time for Extra Work may be asserted if, and only if, Contractor gives written notice of intent to file the Claim within five (5) Days of the date the Claim arises under Article 4.2.1. A written notice of intent to file a Claim shall be valid if, and only if, it identifies the event or condition giving rise to the Claim, states its probable effect, if any, with respect to Contractor's entitlement to an adjustment of the Contract Sum or Contract Time, and complies with the requirements of Article 4.2.3.

4.2.2 The claimant shall furnish reasonable documentation to support a Contractor Claim. The documentation is to include the following:

- (i) A statement that it is a Contractor Claim and a request for a decision on the Contractor Claim;
- (ii) A detailed description of the act, error, omission, Differing Site Condition, event or other circumstance giving rise to the Contractor Claim; and
- (iii) If the Contractor Claim involves an adjustment to the Contract Sum or Contract Time for Extra Work, a statement demonstrating that a Change Order Request was submitted in a timely manner as required by Article 7.2. If the Contractor Claim does not involve an adjustment to the Contract Sum or Contract Time for Extra Work, a statement demonstrating that a notice of intent to file the Contractor Claim was submitted in a timely manner as required by Article 4.2.2.
- (iv) A detailed justification for any remedy or relief sought by the Contractor Claim, including, without limitation:
  - a. A detailed cost breakdown in the form required for submittal of Change Order Requests and subject to the prohibition in Article 7.2.14 relating to calculations based on total cost methodology.
  - b. Copies of actual job cost records demonstrating that the costs have been incurred.
  - c. If the Contractor Claim is based on an error, omission, conflict or ambiguity in the Contract Documents: (i) a sworn statement by Contractor and any Subcontractors or Sub-subcontractors involved in the Claim, to the effect that the error, omission, conflict or ambiguity was not discovered prior to submission of the Bid, or (ii) if not discovered, a statement demonstrating that the error, omission, conflict or ambiguity could not have been discovered by Contractor, its Subcontractors or Sub-subcontractors in exercise of the degree of care required of them under the Contract Documents for review of the Bid Documents prior to submission of the Bid.
- (v) If the Contractor Claim involves a request for adjustment of the Contract Time, written documentation demonstrating that Contractor has complied with the requirements of the Contract Documents pertaining to proving the right to an extension of time and demonstrating that Contractor is entitled to an extension of time under the Contract Documents.
- (vi) A written certification signed by a responsible managing officer of

Contractor's organization, who has the authority to sign subcontracts and purchase orders on behalf of Contractor and who has personally investigated and confirmed the truth and accuracy of the matters set forth in such certification, in the following form:

*"I hereby certify under penalty of perjury under the laws of the State of California that I am a managing officer of ( Contractor's name\_) and that I have reviewed the Claim presented herewith on Contractor's behalf and/or on behalf of (Subcontractor's/Sub-subcontractor's name(s) ) and that the following statements are true and correct.*

*(i) The facts alleged in or that form the basis for the Claim are true and accurate; and, Contractor does not know of any facts or circumstances, not alleged in the Claim, that by reason of their not being alleged render any fact or statement alleged in the Claim materially misleading; and,*

*(ii) Contractor has, with respect to any request for money or damages alleged in or that forms the basis for the Claim, reviewed the job cost records (including those maintained by Contractor and by any Subcontractor or Sub- subcontractor, of any Tier, that is asserting all or any portion of the Claim) and confirmed with reasonable certainty that the Losses or damages suffered by Contractor and/or such Subcontractor or Sub-subcontractor were in fact suffered in the amounts and for the reasons alleged in the Claim; and,*

*(iii) Contractor has, with respect to any request for extension of time or claim of Delay, disruption, hindrance or interference alleged in or that forms the basis for the Claim, reviewed the job schedules (including those maintained by Contractor and by any Subcontractor or Sub-subcontractor, of any Tier, that is asserting all or any portion of the Claim) and confirmed on an event-by-event basis that the delays or disruption suffered by Contractor and /or such Subcontractor or Sub-subcontractor were in fact experienced for the durations, in the manner, and with the consequent effects on the time and/or sequence of performance of the Work, as alleged in the Claim; and,*

*(iv) Contractor has not received payment from District for, nor has Contractor previously released District from, any portion of the Claim.*

Signature:

Name:

Title:

Company:



*Date:*

4.2.3 Notwithstanding the making of any Contractor Claim or the existence of any dispute regarding any Contractor Claim, unless otherwise directed by District, Contractor shall not delay, slow or stop performance of the Work, but shall diligently proceed with performance in accordance with the Contract Documents and District will continue to make payments as required by the Contract Documents.

4.2.4 All Contractor Claims and supporting documentation and certifications must be filed within thirty (30) Days after the Contractor Claim arises. No Contractor Claims shall be filed after the final payment has been issued unless otherwise permitted by law.

4.2.5 All Contractor Claims and supporting documentation must be sent by registered mail or certified mail with return receipt requested.

4.2.6 Time Period for Response.- How does this section compare to projects >\$350k etc

(i) Upon receipt of a Contractor Claim pursuant to this Section 4.2, the District shall conduct a reasonable review of the claim and, within a period not to exceed forty-five (45) days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, the District and Contractor may, by mutual agreement, extend the time period provide in this Section 4.2.6(i).

(ii) If the District needs approval from its governing body to provide the claimant with a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the District shall have up to three (3) days following the next duly publicly noticed meeting of the governing body after the forty-five (45) day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(iii) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the District issues its written statement. If the District fails to issue a written statement, Section 4.2.9 shall apply.

4.2.7 Meet and Confer Conference. If the claimant disputes the District's written response, or if the District fails to respond to a claim issued pursuant to Section 4.2 within the time prescribed, the claimant may demand in writing and an informal conference to meet and confer for settlement of the issue in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail,

return receipt requested, the District shall schedule a meet and confer conference within 30 days for settlement of the dispute.

#### 4.2.8. Mediation.

(i) Within ten (10) business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the District shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the District and the claimant sharing the associated costs equally. The District and the claimant shall mutually agree to a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(ii) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(iii) Unless otherwise agreed to by the District and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

(iv) In the event mediation does not resolve the parties' dispute, the parties shall comply with the binding Arbitration provisions set forth in Section 14.4.4 of the Construction Contract.

4.2.9 Failure by the District to respond to a Construction Claim within the time periods described in this subdivision or to otherwise meet the time requirements of this Section 4.2 shall result in the Construction Claim being deemed rejected in its entirety. A Construction Claim that is denied by reason of the District's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

4.2.10 Amounts not paid in a timely as required by this section shall bear interest at 7 percent per annum.

4.2.11 If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against the District because privity of contract does not exist, the Contractor may present to the District a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Contractor present a claim for work which was performed by the subcontractor or by the lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the District shall comply with the Agreement, including the General Conditions, and shall furnish reasonable documentation to support the Construction Claim. Within 45 days of the receipt of this written request, the Contractor shall notify the subcontractor in writing as to whether the Contractor presented the claim to the District and, if the Contractor did not present the claim, provide the subcontractor with a statement of reasons for not having done so.

4.2.12 There shall be no waiver of any of the rights set forth in this Section 4.2; provided, however, that (i) upon receipt of a Construction Claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (ii) the District may prescribe reasonable Change Order, Construction Claim, and Dispute Resolution Procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise the timeframes and procedures set forth in Public Contract Code Section 9204.

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## **ARTICLE 5 – SUBCONTRACTORS**

### **5.1 CONTRACTOR'S AWARD OF SUBCONTRACTS**

5.1.1 Contractor shall perform, with its own employees, Work amounting to at least 50 percent of the Contract Sum except that any designated "Specialty Items" may be performed by subcontract and the amount of any such "Specialty Items" so performed may be deducted from the Contract Sum before computing the amount required to be performed by Contractor with its own employees. "Specialty Items" are identified in the Bid Documents. Where an entire item is subcontracted, the value of Work subcontracted will, where no prices are provided, be based on the unit price and when a portion of an item is subcontracted, the value of Work subcontracted will be based on the estimated percentage of the unit price. Such percentages will be determined from information submitted by Contractor, and subject to approval by the Construction Manager.

5.1.2 Unless otherwise stated in the Contract Documents, Contractor shall submit in writing, prior to entering into any subcontract agreements, the company name, address, telephone and facsimile numbers, point-of-contact and contractor's license number of all Subcontractors proposed for the Work that are changed from those previously listed in Contractor's Bid. Any Subcontractor may be disqualified if District or the Construction Manager determines that such Subcontractor fails to meet the requirements of the Contract Documents or for any other appropriate reason. If District or the Construction Manager has reasonable objections to a person or entity proposed by Contractor, Contractor shall propose an alternate party to whom District and the Construction Manager have no reasonable objection.

5.1.3 Contractor shall comply with the Subletting and Subcontracting Fair Practices Act, California Public Contract Code, Sections 4100 through 4114. Nothing herein shall be deemed to entitle Contractor, without the written approval of District, to substitute other Subcontractors for those named in Contractor's List of Subcontractors contained in the completed Bid; and, except with such approval, no such substitution shall be made. Should Contractor violate any of the provisions of the Subletting and Subcontracting Fair Practices Act, such violation shall be deemed a violation of the Construction Contract, entitling District, without limitation to any other rights or remedies under the law, to suspend or terminate the Construction Contract.

5.1.4 Except as hereinafter provided, any increase in the cost of the Work resulting from the replacement or substitution of a Subcontractor, shall be borne solely by Contractor and without any adjustment in Contract Sum or Contract Time. However, if a replacement or substitution of any Subcontractor is made as a result of a request of District or the Construction Manager for any reason other than failure of such Subcontractor to meet the requirements of the Contract Documents or a request by Contractor for substitution, the

Contract Sum only, and not the Contract Time, shall be subject to adjustment pursuant to the Change Order provisions of the Contract Documents for the amount of the increase or decrease in the original subcontract amount, with no additional sum for Contractor Markup. In such cases and at the request of District, the replacement Subcontractor shall be selected through a competitive bidding process acceptable to District.

5.1.5 Where a hearing is held pursuant to the provisions of the California Public Contract Code Division 2, Part 1 – Chapter 4 (commencing with Subparagraph 4100), by the awarding authority or a duly appointed hearing officer, District's representative shall prepare and certify a statement of all costs incurred by District for investigation and conduct of the hearing, including the costs of any hearing officer and reporter appointed. The statement shall then be sent to Contractor who shall reimburse District for such costs. If not paid separately, such reimbursement may be deducted from any money due and owing to Contractor.

## **5.2 SUBCONTRACTUAL RELATIONS**

5.2.1 Prior to the execution of each subcontract agreement, Contractor shall make available to each proposed Subcontractor, copies of the Contract Documents to which the Subcontractor will be bound, including the provisions for dispute resolution. Within thirty (30) Days of the Notice To Proceed, Contractor shall provide District with a complete listing of all Subcontractors, which shall include, but not be limited to, the Work contracted for, Subcontractor's name, address, telephone and facsimile numbers, form for doing business (i.e., sole proprietor, corporation, partnership), point-of-contact and Subcontractor's license classification and number.

5.2.2 Any part of the Work performed for Contractor by a first Tier Subcontractor shall be pursuant to a written subcontract. Each such subcontract shall require that the Subcontractor:

- (i) Perform the Work in accordance with the terms of the Contract Documents.
- (ii) Assume toward Contractor all the obligations and responsibilities which Contractor assumes towards District by the Contract Documents.
- (iii) Preserve and protect the rights of District under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights.
- (iv) Waive all rights that the Subcontractor may have against District for damages caused by fire or other perils covered by builder's risk property insurance carried by Contractor or District, except for such rights Subcontractor may have to the proceeds of such insurance held by District under Article 11 of these General Conditions.

(v) Afford District and entities and agencies designated by District the same rights and remedies with respect to access to and the right to audit and the right to copy at District's cost all of the Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders and memoranda relating to the Work and requiring the Subcontractor to preserve all such records and other items for a period of at least three (3) years after Final Completion.

(vi) Recognize the rights of District under Article 5.3, Contingent Assignment of Subcontracts, including, without limitation, District's right to elect to accept assignment of the subcontract and to retain Subcontractor pursuant to the terms of the subcontract, to complete the unperformed obligations under the subcontract and, if requested by District, to execute a written agreement on terms acceptable to District confirming that the Subcontractor is bound to District under the terms of the subcontract.

(vii) Submit Applications for payment, requests for Change Orders and extensions of time and Claims, and to comply with all other notice and submission requirements of the Contract Documents, sufficiently in advance to allow Contractor time to comply with its obligations under the Contract Documents.

(viii) Purchase and maintain insurance in accordance with the requirements of the Contract Documents and reserving the right to Owner to purchase, in its sole discretion, such insurance pursuant to an Owner Controlled Insurance or other form of Wrap-Up Program.

(ix) Defend and indemnify the Indemnitees listed in Article 3.21 on the same terms.

(x) Agree to participate in the dispute resolution procedures specified in the Contract, at the election of District.

5.2.3 Contractor shall promptly, after execution, furnish to District true, complete, and executed copies of all subcontracts, change orders and modifications thereto. Progress payments shall not be made for items of Work for which District has not received executed subcontracts or Change Orders.

5.2.4 Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and District, except when, and only to the extent that, District elects to accept the assignment of the subcontract with such Subcontractor pursuant to Article 5.3.

5.2.5 District and the Construction Manager shall have the right to communicate with Contractor's Subcontractors and Sub-subcontractors with respect to matters that are related to Contractor's performance of its obligations under the Contract Documents. Contractor shall be provided with

a copy of all such written communications. Such communications shall not create or be interpreted as creating any contractual relationship between District or the Construction Manager and any such Subcontractor or Sub-subcontractor.

### **5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

5.3.1 In the event of any suspension or termination of the Construction Contract, Contractor is hereby deemed to have assigned to District all its interest in contracts with Subcontractors now or hereafter entered into by Contractor for performance of any part of the Work. The assignment will be effective upon acceptance by District in writing and only as to those contracts which District designates in writing. District may accept, at its sole election, said assignment at any time during the course of the Work and prior to Final Completion in the event of a suspension or termination of Contractor's rights under the Contract Documents. Such assignment is part of the consideration to District for entering into the Contract with Contractor and may not be withdrawn prior to Final Completion.

## **ARTICLE 6 CONSTRUCTION BY DISTRICT OR BY SEPARATE CONTRACTORS**

### **6.1 DISTRICT'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

6.1.1 District reserves the right to award separate contracts for, or to perform with its own forces as provided for by law, construction or operations related to the Work or other construction or operations at or affecting the Site, including portions of the Work which have been deleted by modification. Contractor shall cooperate with District's forces and Separate Contractors.

6.1.2 District shall provide coordination of the activities of District forces and of each Separate Contractor with the Work of Contractor. Contractor shall participate with District and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. Contractor shall make necessary revisions to the Construction Schedule after such joint review.

6.1.3 Without limitation upon any of the rights or remedies of District under the Contract Documents or under law arising from a default by Contractor, in the event that Contractor fails to have personnel on Site to supervise the Work, District shall have the right, in its sole discretion, but not the responsibility, upon twenty-four (24) hours' telephonic notice to Contractor, to provide such supervision on a temporary basis. Contractor shall, notwithstanding District's providing such temporary supervision, remain solely responsible for all actions of its personnel and Subcontractors and shall defend and indemnify District in accordance with Article 3.21 against any Losses arising therefrom. District shall have the right, in its discretion, to deduct from the sums owing to Contractor the reasonable cost of such temporary supervision.

### **6.2 MUTUAL RESPONSIBILITY**

6.2.1 Contractor shall be responsible for affording Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities. Contractor shall schedule and coordinate its construction and operations with the construction and operations of Separate Contractors as required by the Contract Documents.

6.2.2 If a portion of the Work is dependent upon the proper execution or results of other construction or operations by Separate Contractors, Contractor shall inspect such other construction or operations before proceeding with that portion of the Work. Contractor shall promptly report to District apparent discrepancies or defects which render the other construction or operations unsuitable to receive the Work. Unless otherwise directed by District, Contractor shall not proceed with the portion of the Work affected until apparent discrepancies or defects have been corrected. Failure of Contractor to so report



within a reasonable time after discovering such discrepancies or defects shall constitute an acknowledgment that the other construction or operations by District or Separate Contractors is suitable to receive the Work, except as to defects not then reasonably discoverable.

6.2.3 In the event of Delays, improperly timed activities or Defective Work, the costs of such occurrences shall be borne by the party responsible therefore.

6.2.4 If Contractor wrongfully causes damage to completed or partially completed construction or to property of District or Separate Contractors, Contractor shall promptly remedy damage.

6.2.5 If a dispute, or other matters in question arise between Contractor and a Separate Contractor, these occurrences shall be subject to the provisions of Section 14 (Dispute Resolution) of the Construction Contract. Contractor shall immediately notify the Construction Manager in writing and within seventy-two (72) hours of such occurrences.

### **6.3 DISTRICT'S RIGHT TO CLEAN UP**

6.3.1 If a dispute arises between Contractor and Separate Contractors as to the responsibility under their respective contracts for maintaining the Site and surrounding areas free from waste materials and rubbish, District may clean up and allocate the cost between those firms it deems, in its sole discretion, to be responsible.

## ARTICLE 7 – CHANGES

### 7.1 CHANGES

7.1.1 District may, at any time and without notice to Contractor's sureties, order Changes in the Work without invalidating the Construction Contract and without relieving sureties of their obligations to District.

7.1.2 District shall be entitled to a deductive adjustment in the Contract Sum for Changes that involve Deleted Work that result in a reduction in the cost of Contractor's performing the Work and shall be entitled to an adjustment reducing the Contract Time for Deleted Work that results in Contractor's being able to complete the Work earlier than the Contract Time.

7.1.3 Unless such rights have been waived and provided that Contractor has complied with the requirements of the Contract Documents with respect to, without limitation, complete and timely submission of all notices, requests and supporting documentation, Contractor shall be entitled to an additive adjustment to the Contract Sum for Changes that involve Extra Work and an adjustment extending the Contract Time for Delays for which Contractor is entitled under the Contract Documents to an extension of time.

7.1.4 District shall have the right to require performance of Changes that result in Extra Work on a lump sum basis, a unit price basis or a time and material basis, all as hereinafter more particularly described.

7.1.5 Changes may be ordered by District or the Construction Manager in writing by issuance of an agreed or unilateral Change Order or a Field Order. Contractor shall not be entitled to an adjustment of the Contract Sum or Contract Time for Changes that are not authorized by a Change Order or Field Order signed by District or Construction Manager. It is of essence to this agreement that all Changes in the Work that are the basis of an adjustment to the Contract Sum or Contract Time must be authorized in advance, in writing, by District or Construction Manager. Accordingly, no verbal directions, course of conduct between the parties or express or implied Acceptance of Changes or Work, and no claim that the Owner has been unjustly enriched (whether or not there has been such enrichment) shall be the basis for an adjustment to the Contract Sum or Contract Time if Contractor has not obtained advance written authorization to perform the Change in the manner required by this provision.

7.1.6 District reserves the absolute right to make whatever Changes that it determines in its sole discretion are necessary and in its best interests and under no circumstances shall the number (individual or cumulative value) or scope of Changes become a basis for Contractor to claim that the Construction Contract has been rescinded, terminated, abandoned or should be reformed nor shall such circumstances be the basis for Contractor, or any

Subcontractor or Sub-subcontractor, of any Tier, to recover any compensation or damages not permitted by, or in excess of that allowed under, the Contract Documents.

7.1.7 District shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order, and shall be binding on District and Contractor. Contractor shall carry out such written orders promptly.

## **7.2 CHANGE ORDERS AND CHANGE ORDER REQUESTS**

7.2.1 Contractor may request adjustments to the Contract Sum or Contract Time if, and only if, Contractor follows the procedures specified in the Contract Documents, including, without limitation, the procedures set forth in this Article 7.2. If requested by District or Construction Manager, or if Contractor believes that it is entitled to an adjustment of the Contract Sum or Contract Time due to Extra Work, Contractor shall submit to District and the Construction Manager a Change Order Request in writing within seven (7) Days after the occurrence of the circumstances giving rise thereto setting forth the circumstances that are the basis of the Change and Contractor's estimate of the additional Allowable Costs associated with the Extra Work in the form required by the General Conditions, Special Provisions and Technical Specifications and Contractor's proposed adjustments of the Contract Sum and the Contract Time, if any, for performing the Extra Work. If Contractor's Change Order Request includes a request for adjustment to the Contract Time, it shall include such information as required by the General Conditions and/or Special Provisions and Technical Specifications, including but not limited to a "Fragnet" or "time impact analysis," which identifies all critical and non-critical activities affected by the Change Order Request and showing logic ties into all existing affected activities noted on the latest approved, updated Construction Schedule.

7.2.2 In the event that the parties are unable to agree as to the reasonable cost and time to perform a Change to the Work based upon Contractor's Change Order Request and District does not elect to have the Change in the Work performed on a time and material basis, District may, in its discretion, either order performance of the Work by Field Order or make a unilateral determination of the reasonable additions or savings in cost and time attributable to the Change in the Work, based upon District's estimate, Contractor's submission or a combination thereof. A Change Order shall be issued for the amounts of cost and time determined by District and shall be promptly performed by Contractor. District's unilateral determination shall become binding upon Contractor unless Contractor submits a Contractor Claim in writing to District within twenty-one (21) Days of the issuance of the Change Order. No dispute, disagreement, nor failure of the parties to reach agreement regarding the amount, if any, of any adjustment to the Contract Sum or

Contract Time due to a Change in the Work, shall relieve Contractor from the obligation to proceed with performance of the Work, including, without limitation, performance of the Change, promptly and expeditiously.

7.2.3 Changes involving Extra Work that District elects to have performed on a time and material basis shall be performed, whether by Contractor's forces or the forces of Subcontractors or Sub-Subcontractors, based on actual Allowable Costs in performing the Change in the Work and with mark-ups in accordance with Section 7.3 of the Contract. Contractor shall submit on a daily basis to the Construction Manager daily time and material tickets to include the identification number assigned to the Change; the location and description of the Change; the classification of labor employed (and names and social security numbers if requested); the materials used; the equipment rented (not tools); and such other evidence of cost as the Construction Manager may require. The Construction Manager may require authentication of all time and material tickets and invoices by persons designated by the Construction Manager for such purpose. The failure of Contractor to secure any required authentication shall, if District elects to treat it as such, constitute a waiver by Contractor of any right to adjustment of the Contract Sum for the cost of all or that portion of the Extra Work covered by a non-authenticated ticket or invoice. The adjustment to the Contract Sum for the Extra Work will be based on the accumulation of Allowable Costs as provided in Article 7.2.5 below. It is Contractor's responsibility to review the Change Order Request invoicing of Contractor and Subcontractors and Sub-subcontractors for accuracy of Subcontractor Markups as defined in Section 7.3 (Compensation to Contractor) of the Construction Contract.

7.2.4 Adjustments to the Contract Sum for Changes for which Contractor is entitled to an adjustment of the Contract Sum by Change Order shall be computed at District's sole election on the basis of one or more of the following:

- (i) Unit prices stated in the Contract Documents or agreed upon by District and Contractor, which unit prices shall be deemed to include Contractor Markup and Subcontractor/Sub-subcontractor Markups permitted by Section 7.3 (Compensation for Extra or Deleted Work) of the Construction Contract.
- (ii) A lump sum agreed upon by District and Contractor, based on the estimated Allowable Costs and Contractor Markup and Subcontractor/Sub-Subcontractor Markup computed in accordance with Section 7.3 (Compensation for Extra or Deleted Work) of the Construction Contract.
- (iii) Contractor's Allowable Costs, plus Contractor Markup and Subcontractor/Sub- subcontractor Markups applicable to such Extra Work computed in accordance with Section 7.3 (Compensation for Extra or Deleted Work) of the Construction Contract.

7.2.5 Allowable Costs shall mean only those costs listed in, and

substantiated and documented in accordance with, this provision and that are not disallowed pursuant to Articles 7.2.6, 7.2.11 or other provisions of the Contract Documents. Allowable Costs are the actual costs necessarily incurred by Contractor and all Subcontractors and Sub-subcontractors, of every Tier, that actually perform the Extra Work caused by the Change(s) and that are incurred in the direct performance of the Extra Work or that are saved by reason of Deleted Work, and are strictly limited to the following:

.1 **Labor.** The actual straight-time (and the premium time portion of overtime, if approved in writing in advance by District or the Construction Manager) wages or salaries for employees employed at the Site, or at fabrication sites off the Site, plus employer payments collectively referred to as "Fringe Benefits and Payroll Taxes," of payroll, taxes and insurance, health and welfare pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of a labor classification, which would increase the Allowable Costs will not be permitted unless Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be payable under this provision only when such costs are not included in the invoice for equipment rental.

.2 **Material.** The cost of materials and consumable items which are furnished and incorporated into the Work at invoice or lowest current price at which such materials are locally available and delivered to the Site in the quantities involved, plus sales tax, freight and delivery. District reserves the right to approve materials and sources of supply, or to supply materials to Contractor, if necessary, for the Work. No markup shall be applied to any material provided by District. Material re-stocking charges shall be limited to 5% of the amount of material. All discounts, rebates and refunds from the sale of surplus materials and consumable items shall accrue to District, and Contractor shall make provision so that they may be obtained.

.3 **Tool and Equipment Rental.** Rental charges for necessary machinery and equipment, whether owned or hired, as authorized in writing by District or the Construction Manager, exclusive of hand tools. No payment will be made for the use of tools that have a replacement value of \$500 or less. When the equipment is owned by Contractor, the rental rate shall be as listed for such equipment in the California Department of Transportation publication entitled "Labor Surcharge and Equipment Rental Rates," which is in effect on the date the Work is accomplished. When equipment is not listed in said publication, the rate to be paid shall be as herein defined, or a suitable rental rate for such equipment will be established by the Construction Manager. Regardless of ownership, the rates to be used in determining equipment rental cost shall not exceed listed rates prevailing locally at equipment rental agencies or distributors at the time the work is performed. The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance and all incidentals.

If equipment is used intermittently, when not in use it shall be returned to its rental source unless Contractor elects to keep it at the Site at no expense to District. The reported rental time for equipment already at the Site shall be the duration of its use on the Extra Work, commencing at the time it is first put into actual operation on the Extra Work, plus the time required to move it from its previous site and back, or to a closer site.

.4 Royalties and Permits. Costs of royalties and permits solely related to the Extra or Deleted Work.

.5 Insurance and Bonds. Additional costs of insurance and bonds, not to exceed two percent (2%) of the total of Parts .1 through .4, above.

7.2.6 Extra Work Costs shall not include any of the following, which are construed to be included in Contractor's Markup:

- (i) Superintendent(s).
- (ii) Assistant Superintendent(s).
- (iii) Project Engineer(s).
- (iv) Project Manager(s).
- (v) Scheduler(s).
- (vi) Estimator(s).
- (vii) Drafting or detailing.
- (viii) Small tools (with a replacement value under \$500).
- (ix) Home or field office expenses, including staff, materials, and supplies.
- (x) Trailer or storage rental and expense, whether on the Site or off the Site.
- (xi) Data processing personnel and equipment.
- (xii) Site fencing.
- (xiii) Utilities, including, without limitation, gas, electric, sewer, water, telephones.
- (xiv) Telephone, facsimile, e-mail and copier.
- (xv) Overhead, administrative, or general expenses of any kind.
- (xvi) Loss of efficiency or productivity, or other impact cost due to the effect of

the Extra Work on the performance of other Work or the Work of other trades on the Project.

(xvii) Capital expenses, including interest on capital employed in connection with Extra Work.

(xviii) Legal costs.

(xix) Federal, State, or local income and franchise taxes.

(xx) Profit.

(xxi) Any Extra Work Costs incurred more than twenty (20) Days prior to submission by Contractor of its Change Order Request pursuant to Article 7.2.1.

(xxii) Cost of any item not specifically and expressly included in the items described in Article 7.2.5.

7.2.7 The term "Contractor Markup" shall mean the full amount of compensation for all costs and expenses including overhead and profit not included in the Allowable Costs, whether or not referred to in Article 7.2.5. Contractor Markup shall be computed as provided in Section 7.3 (Compensation for Extra or Deleted Work) of the Construction Contract.

(i) For Work to be omitted by Change Order, the reduction of the Contract Sum shall be computed on the basis of one or more of the following: Unit prices stated in the Contract Documents or agreed upon by District and Contractor.

(ii) A lump sum agreed upon by District and Contractor, based upon the estimated Allowable Costs that would have been incurred in performing the Deleted Work, plus Contractor Markup provided for in the Construction Contract.

(iii) A sum unilaterally determined by District, if District and Contractor cannot agree upon one or both of the methods described in paragraphs (i) or (ii), above.

7.2.8 No Contractor Claim for adjustment of the Contract Sum shall be allowed if asserted after final payment under the Construction Contract.

7.2.9 If any one Change involves both Extra Work and Deleted Work in the same portion of the Work, the Contractor Markup to be added or credited will be based on the net difference between amount allowed for the Extra Work and Deleted Work.

7.2.10 The Contract Sum will be adjusted for Delay only if and to the extent allowed by the Contract for Compensable Delay. Contractor agrees to accept such adjustments in its compensation as its sole and exclusive remedy and recovery for Delay, disruption, hindrance, interference, loss of productivity, labor or material cost escalations, inefficiency, acceleration, impact costs associated with the effect of the Changes on the Work, extended or extraordinary overhead (direct or indirect) or other Losses or damages due to Delay, of any kind.

7.2.11 District has the right to increase or decrease the quantity of any unit price item for which an estimated quantity is stated in the Bid Documents.

7.2.12 The signing of a Change Order indicates that the parties have reached a full resolution, settlement and accord and satisfaction with respect to all Contractor Claims for cost and extensions of time that were asserted, or that could have been asserted, in connection with the Change, whether known or unknown at the time of execution of the Change Order, and that are related to the subject matter of the Change Order, including, without limitation, all Contractor Claims, costs or damages for Delay, disruption, hindrance, interference, extended or extraordinary direct and indirect overhead, multiplicity of Changes, loss of productivity, labor or material cost escalations, inefficiency, the impact of the Change on the Work, legal expenses, consultant costs, interest, lost profits or revenue, bond or insurance costs, currency fluctuations, changes in taxes or other related Claims, costs or damages. Change Orders shall be executed by Contractor without any express reservation of rights by Contractor to reserve for the future the right to assert or recover from District any such Claims, costs or damages.

7.2.13 Contractor's cost breakdowns submitted with its Change Order Requests (including, without limitation, requests for cost reimbursement for Delay, disruption, hindrance and interference associated with extras, Changes, additions or deletions) shall be itemized in a manner that, with mathematical certainty and without reliance upon probabilities or inferences, segregates the direct, actual reimbursable costs associated with each individual extra, Change, addition, deletion and (on an event-by-event basis) each individual Delay or disruption event. Change Order Requests shall not be based, in whole or in part, upon any methodology (such as total cost or modified total cost methodologies) that purports to calculate Contractor's additional costs of performance of the extra, Change, addition or deletion (including, without limitation, the additional costs of Delay, disruption or other impact) based on the difference between Contractor's total actual Project or line item costs and its original bid estimate for the Project or any original bid estimate line item. In connection with the foregoing, Contractor represents and warrants that it has the ability to generate and maintain complete and accurate cost accounting records that will reflect:

- (i) The actual Allowable Costs incurred or saved for each individual item



of Extra Work or Deleted Work and

(ii) On an event-by-event basis, the effect of each Delay that forms the basis of each request for extension of time, regardless of their scope, number, complexity, cumulative effect or time of issuance or occurrence.

7.2.14 As a further condition of Contractor's right to an adjustment of the Contract Sum for Extra Work, Contractor must keep daily, detailed and accurate records itemizing each element of Extra Work Cost and shall provide substantiating records and documentation, including time cards, invoices and delivery tickets listing all labor, materials, and equipment involved for that day. Failure to submit such records daily shall waive any rights for recovery of Allowable Costs for that day. Such records and documentation shall be submitted to and Approved by Construction Manager on a daily basis.

### **7.3 FIELD ORDERS**

7.3.1 Upon receipt of a Field Order, Contractor shall, within a reasonable time, proceed with the Work described in the Field Order. If the Field Order involves Extra Work and sets forth a determination for adjustment of the Contract Sum or Contract Time with which Contractor disagrees, Contractor shall advise District of its agreement or disagreement in writing within seven (7) Days of such receipt. Failure by Contractor to provide such written notice shall result in its waiving any right to adjustment of the Contract Sum or Contract Time on account thereof.

### **7.4 DISPUTES REGARDING CHANGES**

Provided that District pays to Contractor all undisputed sums due under the Contract Documents for Work performed under Change Orders, Contractor shall not delay, slow, interrupt, or suspend the performance of any Work or any Change because of a dispute between the parties with respect to an adjustment in the Contract Sum or Contract Time.

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## **ARTICLE 8 – CONTRACT TIME**

### **8.1 COMMENCEMENT OF THE WORK**

8.1.1 Commencement of the Work shall begin on the date specified in the Notice to Proceed.

### **8.2 PROGRESS AND COMPLETION**

8.2.1 By signing the Contract, Contractor represents to District that the Contract Time is reasonable for performing the Work and that Contractor is able to perform the Work within the Contract Time.

.1 The Construction Schedule may reflect a period of performance that is shorter than the Contract Time; provided however, that the difference shall be deemed as float and nothing in this provision or in any other provision of the Contract Documents shall be construed as creating any contractual right, express or implied, on the part of Contractor to finish the Project earlier than the Contract Time and under no circumstances shall District be liable to Contractor for any costs, damages or compensation due to the inability of Contractor to complete the Work earlier than the Contract Time, regardless of the cause, including, without limitation, acts or omissions (intentional or negligent) of District.

.2 Contractor has included in its Bid price the costs of all Contractor and Subcontractor overhead (direct and indirect) and Special Provisions and Technical Specifications, including but not limited to all Project staff, temporary facilities, temporary utilities, and home office overhead for the entire duration of the Contract Time. The above costs must be included in Contractor's Bid notwithstanding Contractor's anticipation of completion in fewer days than established by the Contract Time.

.3 No increase in the Contract Sum shall be made or granted for Compensable Delay if, for any reason including but not limited to Delay caused by District, Contractor completes the Work before expiration of the Contract Time.

.4 No reduction in the Contract Sum shall be made nor will Contractor be required to remain on the Project Site if the Work is completed before expiration of the Contract Time.

.5 The Construction Manager will schedule and hold weekly progress meetings and other meetings to be required by progress of the Work as determined by the Construction Manager. Contractor and/or Contractor's designee shall be present at each meeting. Contractor may also be required to request attendance by representatives of its suppliers, manufacturers and Subcontractors.

8.2.2 Except by agreement or instruction of District in writing, Contractor shall not commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by Contractor. Contractor's obligations to commence the Work and to complete the Work within the Contract Time shall not be changed by the effective date of such insurance.

8.2.3 Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. If District determines and notifies Contractor that Contractor's progress is such that Contractor will not complete the Work within the Contract Time, Contractor shall, immediately and at no additional cost to District, take all measures necessary, including working such overtime and additional shifts (other than District's normal working hours of 8:00 AM to 6:00 PM, Monday through Friday and 9:00 AM to 5:00 PM on Saturday), to ensure that the Work is Substantially Completed within the Contract Time. Upon receipt of such notice from District, Contractor shall immediately respond in writing setting forth a detailed plan for accelerating the Work in a manner acceptable to District. Contractor shall not be entitled to any reimbursement or payment of costs, expenses or damages incurred as a result of an acceleration of the Work that is performed pursuant to this provision. District may also take all necessary measures to ensure no further Delays to the Substantial Completion of the Work within the Contract Time. Contractor shall reimburse District, or District may withhold from payment due to Contractor, sums expended by District to perform such measures.

8.2.4. During unfavorable weather, wet ground or other unsuitable construction conditions, Contractor shall confine the operations to Work that will not be affected adversely by such conditions. No portion of the Work shall be constructed under conditions which would affect adversely the quality thereof or be detrimental to the quality of water discharges, unless special means or precautions are taken by Contractor to perform the Work in a proper and satisfactory manner.

### **8.3 DELAY**

8.3.1 Contractor may make a Contractor Claim for an extension of the Contract Time, for an Excusable Delay or a Compensable Delay, subject to the following:

.1 In order to avoid double counting concurrent Delays, if an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first Delay to the cessation of the Delay which ends last.

.2 If an Unexcused Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of Days, if any, by which the Excusable Delay or the Compensable Delay exceeds the Unexcused Delay.

.3 If an Unexcused Delay occurs concurrently with both an Excusable Delay and a Compensable Delay, the maximum extension of the Contract Time shall be the number of Days, if any, by which the number of Days determined pursuant to Article 8.3.1.2 exceeds the number of Days of the Unexcused Delay.

8.3.2 As a condition precedent to Contractor's right to an extension of Time adjusting the Contract Time and the Contract Sum for Compensable Delay, it must provide written notice to District within seven (7) Days of the date that Contractor learned of the Delay or should have learned of the Delay in exercise of diligence and reasonable care, setting forth:

- (i) A description of the Delay;
- (ii) A statement that the Delay is critical to completion; and
- (iii) The probable effect of the Delay in terms of the number of Days' extension Contractor believes are required to the Contract Time.

It is agreed that the form, content and timeliness of the written notice required by Article 8.3.2 is of the essence to District's ability to adequately monitor the progress of the Work, to differentiate between critical and non-critical Delays, and to prioritize its actions in a manner that is appropriately targeted to mitigate the effect of delays. Accordingly, Contractor agrees that failure to provide written notice in the manner required by Article 8.3.2 shall be conclusively deemed a waiver of the right to an adjustment of the Contract Sum and Contract Time on account thereby, regardless of whether the circumstances of the Delay may have been known or suspected by District or the Construction Manager and that no other form of notice (including, without limitation, meeting minutes, log entries or schedule updates) shall suffice as constituting notice to District in accordance with Article 8.3.2.

**8.3.2** For a Compensable Delay, Contractor shall be entitled to an adjustment in the Contract Sum in a daily amount equal to Contractor's per diem amount as stated in the Contract multiplied by the number of Days of extension for Compensable Delay, if any, permitted under the Contract Documents. Such per diem amount shall be Contractor's sole and exclusive right and compensation to cover all costs and damages to Contractor and to its Subcontractors and Sub-subcontractors, of every Tier, for Compensable Delays and all other Claims for costs, acceleration, expenses, Losses, damage or compensation, of any kind, for additional supervision, administration, extended or extraordinary overhead (direct or home office), additional insurance or bond costs, loss of productivity, inefficiency, labor, wage, material or equipment escalation, or other costs, expenses or damages due to Delay, interruption, hindrance, compression, disruption, or the impact or ripple effect of Delays on the Work, are conclusively waived.

**8.3.3** The parties agree that District's exercise of its rights to order Changes, whether or not resulting in Extra Work, regardless of the extent and number of Changes, or to suspend the Work, is within the contemplation of the parties.

**8.3.4** The determination of whether a Delay is an Excusable Delay, Compensable Delay or Unexcused Delay shall not be affected by the fact that any earlier Delay occurred, regardless of fault or causation.

**8.3.5** All time limits stated in the Contract Documents are of the essence.

## **ARTICLE 9 – PAYMENTS AND COMPLETION**

### **9.1 SCHEDULE OF VALUES**

9.1.1 Within thirty (30) Days after signing the Contract, but in any event a maximum of ten (10) Days of receipt of the Notice to Proceed, Contractor shall submit to District through the Construction Manager a Schedule of Values reflecting cost breakdown of the Contract Sum in a form approved by the Construction Manager. The Schedule of Values shall itemize as separate line items the cost of each scheduled Work activity and all other costs, including warranties, Record Documents, insurance, bonds, overhead and profit, the total of which shall equal the Contract Sum and shall be made out in a form approved by the Construction Manager. The Schedule of Values, when approved by District, shall become the basis for determining the cost of Work requested on Contractor's Applications For Payment. Contractor shall submit a statement based upon this breakdown, and if required, itemized in such form and supported by such evidence as the Construction Manager may direct, showing Contractor's right to the payment claimed.

### **9.2 PROGRESS PAYMENT**

9.2.1 Subject to District's right of withholding under Article 9.4.2, District agrees to pay to Contractor within thirty (30) Days of receipt of an undisputed and properly submitted Application for Payment an amount equal to ninety-five percent (95%) of the sum of the following:

- (i) Construction Manager's determination of the value, expressed as a percentage of the Contract Sum, of the Work in permanent place that has been tested as of the end of the preceding month.
- (ii) Plus Construction Manager's determination of the value of materials suitably stored but not yet incorporated into the Work, subject to Article 9.3.6.
- (iii) Less amounts previously paid.

9.2.2 At any Time after 50% of the Work has been determined by District to be completed, if District determines in its sole discretion that satisfactory progress

on the Work is being made, District may, in its sole discretion, make any of the remaining progress payments in accordance with the calculation in Article 9.2.1 based on 100% of District's determination of the value of the Work in place and of stored materials not incorporated.

9.2.3 Progress payments shall not be construed as District's Acceptance of any or all of the Work and shall not be a waiver of any or all rights District has under the Contract Documents.

### 9.3 APPLICATION FOR PAYMENT

9.3.1 At the end of each month, Contractor shall submit to District an itemized Application for Payment, requesting payment for Work as of the end of that month that is calculated in accordance with the formula for payment set forth in Article 9.2.1. The Application for Payment shall be prepared:

- (i) Utilizing the format as designated by District or the Construction Manager.
- (ii) Itemized in accordance with the Schedule of Values.
- (iii) Including such data substantiating Contractor's right to payment as District may reasonably require, such as invoices, certified payrolls, daily time and material records, and, if securities are deposited in lieu of retention pursuant to Article 9.5, a certification of the market value of all such securities as of a date not earlier than five (5) Days prior to the date of the Application for Payment.
- (iv) Showing itemized amounts for Change Orders, Modifications and retention.

9.3.2 Applications for Payment shall not include requests for payment on account of Changes which have not been authorized by Change Orders or amounts Contractor does not intend to pay a Subcontractor because of a dispute or other reason.

9.3.3 If required by District, an Application for Payment shall be accompanied by all of the following:

- (i) A summary showing payments that will be made to Subcontractors covered by such application.
- (ii) Conditional waivers and releases of claims and stop notices from Contractor and each Subcontractor and Sub-subcontractor, of every Tier, listed in the current Application for Payment covering sums requested in the current Application for Payment.
- (iii) Unconditional waivers and releases of claims and stop notices, from Contractor and each Subcontractor and Sub-subcontractor, of every Tier, listed in the preceding Application for Payment covering sums disbursed pursuant to that preceding Application for Payment.

9.3.4 Contractor warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payment has been received from District, shall be free and clear of all claims, stop notices, security interests and encumbrances in favor of Contractor, Subcontractors, Sub-subcontractors, of every Tier, or other persons or firms entitled to make claims by reason of having provided labor, materials or

equipment relating to the Work.

9.3.5 The making of final payment shall constitute a waiver of all Claims by District except those arising from unsettled liens, faulty or Defective Work, failure of the Work to comply with the requirements of the Contract Documents or terms of any special guarantees required by the Contract Documents.

9.3.6 At the sole discretion of District, the Construction Manager may approve for inclusion in Contractor's Application for Payment the cost of materials to be incorporated in the Work but not yet incorporated in the Work and already delivered and suitably stored either at the Site or at some other appropriate location acceptable to District. In such case, Contractor shall furnish evidence satisfactory to District:

- (i) Of the cost of such materials.
- (ii) That such materials are under the exclusive control of Contractor, or if not, that title to the materials is in District, free of any lien or encumbrance and that the materials are safely and suitably stored in a bonded warehouse with appropriate insurance coverage satisfactory to District to cover any Loss.

Any payment pursuant to this provision shall not be construed as an inspection or acceptance of the materials nor shall it relieve Contractor of its continuing and sole responsibility for the care and protection of such materials nor shall it relieve Contractor from sole responsibility for any loss or damage to the materials from any cause whatsoever nor act as a waiver of the right of District to require strict fulfillment by Contractor with all terms of the Contract Documents.

9.3.7 District shall have the right, in its sole discretion, to make payments of monies owing to Contractor by means of direct payment to Subcontractors or Sub-subcontractors, of any Tier of any unpaid work performed by any Subcontractor or Sub-subcontractor of any Tier, or by joint payment to Contractor and to Subcontractors or Sub-subcontractors, of any Tier. The making of such payments shall not be construed as the assumption of any obligation on the part of District or as creating any contractual relationship between District and any Subcontractor or Sub-subcontractor and shall not relieve Contractor of any of its obligations under the Contract Documents.

## **9.4 CERTIFICATE FOR PAYMENT**

9.4.1 If Contractor has made an Application for Payment in accordance with Article 9.3, the Construction Manager will, not later than seven (7) Days after the date of receipt of an Application for Payment prepared and submitted in accordance with the Contract Documents, issue to District, with copy to Contractor, a Certificate for Payment in such amount as the Construction Manager determines is due.



If Construction Manager determines that Contractor's Application for Payment has not been properly prepared or submitted, then Construction Manager, within the seven (7) Day period provided for in Article 9.4.1, notify Contractor in writing of the reasons why the Application for Payment is being rejected.

9.4.2 Approval of all or any part of an Application for Payment may be withheld, a Certificate For Payment may be withheld or all or part of a previous Certificate For Payment may be nullified and that amount withheld from a current Certificate For Payment in order to protect District against actual or threatened loss as a result of any of the following:

- (i) Defective Work not remedied.
- (ii) Third-party claims against Contractor or District arising from the acts or omissions of Contractor, Subcontractors, or Sub-subcontractor, of any Tier.
- (iii) Stop notices.
- (iv) Failure of Contractor to make timely payments due Subcontractors for material or labor.
- (v) A reasonable doubt that the Work can be completed for the balance of the Contract Sum then unpaid.
- (vi) Damage to District or Separate Contractor for which Contractor is responsible.
- (vii) Reasonable evidence that the Work will not be completed within the Contract Time.
- (viii) Failure of Contractor to maintain and update As-Built or Record Documents.
- (ix) Failure of Contractor to submit schedules, reports, or their updates as required by the Contract Documents.
- (x) Performance of Work by Contractor without approved Submittals.
- (xi) Liquidated or actual damages assessed in accordance with the Construction Contract.
- (xii) Any other failure of Contractor to perform an obligation under the Contract Documents.

9.4.3 Subject to the withholding provisions of Article 9.4.2 and when any or all of the noted deficiencies or others have been removed, District shall pay Contractor the amount set forth in the Certificate for Payment in accordance

with its normal disbursement procedures.

9.4.4 Neither District nor the Construction Manager shall have an obligation to pay or to see to the payment of money to a Subcontractor or Sub-subcontractors, of any Tier, except as may otherwise be required by Law.

9.4.5 Neither a Certificate for Payment nor any payment (progress or final) shall be construed as a waiver of any rights arising from Defective Work.

## **9.5 DEPOSIT OF SECURITIES IN LIEU OF RETENTION AND DEPOSIT OF RETENTION INTO ESCROW**

9.5.1 At the request and expense of Contractor, a substitution of securities may be made as found in the California Government Code, Section 16430, and as authorized by the California Public Contract Code, Section 22300, in lieu of monies retained by District under Article 9.2 to ensure performance under the Contract Documents. Securities equivalent in value to the retention amount required by the Contract Documents for each Certificate For Payment shall be deposited by Contractor with a state or federally chartered bank in the State of California ("Escrow Agent"), which shall hold such securities pursuant to the escrow agreement referred to in Article 9.5.3 until final payment is due in accordance with Article 9.8. Securities shall be valued as often as conditions of the securities market warrant, but in no case less than once per month. Contractor shall deposit additional securities so that the current market value of the total of all deposited securities shall be at least equal to the total required amount of retention.

9.5.2 Alternatively to Article 9.5.1, and at the request and expense of Contractor, District shall deposit retention directly with the Escrow Agent. Contractor may direct the investment of such deposited retention into interest bearing accounts or securities, and such deposits or securities shall be held by the Escrow Agent upon the same terms provided for securities deposited by Contractor.

9.5.3 A prerequisite to the substitution of securities in lieu of retention or the deposit of retention into escrow shall be the execution by Contractor, District, and the Escrow Agent of an Escrow Contract for Deposit of Securities in Lieu of Retention and Deposit of Retention forms provided by District. The terms of such escrow agreement are incorporated into the requirements of Article 9.5.

9.5.4 Release of funds or securities from escrow shall be made with Contractor's final payment.

## **9.6 BENEFICIAL OCCUPANCY**

9.6.1 District reserves the right, at its option and convenience, to occupy or otherwise make use of all or any part of the Work, at any time prior to issuing the Certificate of Substantial Completion, upon thirty (30) Days notice to Contractor. Such occupancy or use is herein referred to as "Beneficial Occupancy." Beneficial Occupancy shall be subject to the following conditions:

.1 District, Design Consultant and Construction Manager will make an inspection of the portion of the Work to be beneficially occupied and prepare a list of items to be completed or corrected prior to Substantial Completion.

.2 Beneficial Occupancy by District shall not be construed by Contractor as

Acceptance by District of that portion of the Work which is to be occupied. District may, however, at its sole option, relieve Contractor of Contract requirements to protect Work being beneficially occupied by District where such relief is specifically designated by District in writing.

.3 Beneficial Occupancy by District shall not constitute a waiver of existing Claims of District or Contractor against each other.

.4 Contractor shall provide, in the areas beneficially occupied and on a continual basis (if required), utility services, heating, and cooling for systems which are in operable condition at the time of Beneficial Occupancy. All responsibility for the operation and maintenance of equipment shall remain with Contractor while the equipment is so operated. Contractor shall submit to District an itemized list of each piece of equipment so operated with the date operation commences.

.5 The Guarantee to Repair Periods, as defined in Article 12.2, will commence upon the first dates of actual occupancy or use of portions of the Work actually occupied and equipment or systems fully utilized.

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

.7 District shall pay all utility costs which arise out of the Beneficial Occupancy.

.8 Contractor shall not be responsible for providing security in areas beneficially occupied.

.9 District shall use its best efforts to prevent its Beneficial Occupancy from interfering with the conduct of Contractor's remaining Work.

.10 Contractor shall not be required to repair damage caused by District in its Beneficial Occupancy.

.11 Except as provided in Article 9.6, there shall be no added cost to District due to Beneficial Occupancy.

.12 Contractor shall continue to maintain all insurance required by the Contract in full force and effect.

## **9.7 SUBSTANTIAL COMPLETION**

9.7.1 When Contractor gives notice to District that the Work, or portion thereof designated by District for separate delivery, is Substantially Complete, unless District determines that the Work or designated portion thereof is not sufficiently complete to warrant an inspection to determine Substantial Completion, District

will inspect the Work, or such designated portion thereof, and prepare and give to Contractor a comprehensive list of items, if any, to be completed or corrected before establishing Substantial Completion. Contractor shall promptly proceed to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. District will then make a further inspection to determine whether the Work or such designated portion thereof is Substantially Complete. If District's inspection discloses any item, whether or not included on the list, which must be completed or corrected before Substantial Completion, Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item. Contractor shall then submit a request for another inspection by District to determine Substantial Completion.

9.7.2 When District determines that the Work or such designated portion thereof is Substantially Complete, District will prepare a Certificate of Substantial Completion on District's form, which when signed by District shall establish the date of Substantial Completion and the responsibilities of District and Contractor for security, maintenance, heat, utilities, insurance, completion of minor items and correction or repair of the Work or such designated portion thereof. Unless otherwise provided in the Certificate of Substantial Completion, the Guarantee To Repair Period for the Work (which is defined in Article 12.2.1), or such designated portion thereof covered by the Certificate of Substantial Completion, excluding any systems provided by Separate Contractors which are not yet fully operational or accepted by District, shall commence on the date of Substantial Completion of the Work or such designated portion thereof. The Guarantee To Repair Period for systems which become fully operational or Accepted subsequent to Substantial Completion will begin on the later of the date they are operational or Acceptance of the Project by District.

## **9.8 FINAL COMPLETION AND FINAL PAYMENT**

9.8.1 Upon receipt of notice from Contractor that the Work is ready for final inspection, District will make such inspection. District will file a notice of completion within ten (10) Days after Acceptance by District. After receipt of the Final Application for Payment, if District determines that Final Completion is achieved, District will issue a Certificate for final payment.

9.8.2 Without limitation to any other provisions of the Contract Documents, before final payment for Work under this Construction Contract is authorized, the Work has been completed in accordance with the Contract Documents and all applicable standards of care and the following requirements of the Contract Documents must be fulfilled by Contractor:

- (i) The submittal of an Application for Final Payment, together with supporting documentation, as required by Article 9.3.

(ii) Completion and delivery by Contractor to District of all required written guarantees, warranties, operation and maintenance manuals, As-Built Documents and other Record Documents and such other documents as required by the Contract Documents.

(iii) Delivery by Contractor to District of an affidavit, signed under penalty of perjury, stating that all workers and persons employed, all firms supplying the materials, and all Subcontractors and Sub-subcontractors, of every Tier, have been paid in full; and that there are no bills outstanding against the Work for either labor or materials, except certain items, to be set forth in such affidavit covering disputed claims or items in connection with which notices to withhold have been filed under the provisions of the statutes of the State of California.

(iv) Completion of all construction work in a manner acceptable to District.

(v) Submission of conditional releases of claims and stop notices upon final payment from Contractor and its Subcontractors and Sub-subcontractors, of every Tier, with no reservation of rights for disputed claims or amounts. Contractor shall pay or cause to be paid to Subcontractors and Sub-Subcontractors, of every Tier, the amount stated in the conditional releases within five (5) Days after receipt of the final payment, and shall promptly thereafter furnish evidence of such payment to District.

9.8.3 Acceptance of final payment by Contractor shall constitute a waiver of all Claims, except those previously made in writing and identified by Contractor as unsettled at the time of the Application for Final Payment.

9.8.4 District shall have the right, in its sole discretion, to make payment of amounts retained from progress payments on the Work of any Subcontractor at any time prior to Final Completion. The making of such early payment of retention shall not be construed as creating any obligation on the part of District nor shall it relieve Contractor of any of its obligations under the Contract Documents.

## ARTICLE 10 – PROTECTION OF PERSONS AND PROPERTY

### 10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 Contractor shall be solely and completely responsible for initiating, maintaining and supervising all safety precautions and programs on the Site in connection with the performance of the Construction Contract, including safety of all persons for the duration of the Work, on a 24-hour day, 7-day week basis.

10.1.2 Prior to the start of construction, Contractor shall submit to District a copy of Contractor's safety program for the Project. A copy of this program shall be maintained on Site at all times. The safety program shall include, at a minimum:

- (i) Management policy, illness and injury prevention program (as described below).
- (ii) Safety meetings.
- (iii) Accident investigation.
- (iv) Basic accident causes.
- (v) Safety inspection check list.
- (vi) Fire prevention and control.
- (vii) Report forms.
- (viii) Employee safety manual.

10.1.3 Prior to the start of construction, Contractor shall submit to District a copy of an illness and injury prevention program as required by law. This program must be submitted prior to issuance by District of Notice to Proceed. It must include provisions for Contractor reviewing and monitoring all Subcontractor safety programs.

### 10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 Precaution shall be exercised at all times for the protection of persons and property. Contractor shall have available at the Site, copies or suitable extracts of "Construction Safety Orders" and "General Industrial Safety Orders" issued by the State Division of Industrial Safety. Contractor shall comply with provisions of these and all other applicable laws, ordinances, and regulations.

10.2.2 Contractor shall immediately respond to notice from District of unsafe

conditions, shall take adequate precautions for safety of persons on the Site, and shall provide adequate protection to prevent injury or Loss to the following:

- (i) Employees involved in the Work and other persons who may be affected thereby.
- (ii) The Work in place and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody, or control of Contractor, Subcontractors, or Sub-subcontractors.
- (iii) Other property at the Site and adjoining property(ies).

10.2.3 Contractor shall promptly remedy damage and Loss (other than damage or Loss insured under property insurance required by the Contract Documents) to property caused in whole or in part by Contractor or its Subcontractors or Sub-subcontractors, of any Tier, or anyone for whose acts they may be liable and for which Contractor is responsible. An exception is Loss attributable to acts of the Construction Manager, District or Design Consultant or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of Contractor or its Subcontractors or Sub-subcontractors, of any Tier.

10.2.4 Contractor shall erect and maintain, as required by existing conditions and performance of the Work, adequate safeguards for safety and protection, including providing adequate lighting and ventilation, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

10.2.5 When use or storage of hazardous materials, equipment, or unusual methods are necessary for execution of the Work, Contractor shall exercise the utmost care and carry on such activities only under the supervision of properly qualified personnel.

10.2.6 Contractor shall be required to provide at the Site a member of Contractor's organization, typically the Superintendent, whose responsibility it shall be to provide instruction to persons present on the Site about prevention of accidents and overall jobsite safety. If Contractor has another individual responsible for these activities, Contractor shall notify District in writing.

10.2.7 Contractor shall be responsible for locating, providing, and coordinating the storage and staging of materials and equipment on-Site and off-Site and shall not load/store or permit any part of the Work on the Site to be loaded/stored so as to endanger the safety of persons or property.

10.2.8 Contractor shall protect its materials and the Work from damage in a manner satisfactory to District and shall make good, without charge to



District, all damage due to negligence in providing proper protection.

10.2.9 Contractor shall take necessary precautions to guard against and eliminate possible fire hazards and to prevent damage to the Work, building materials, equipment, temporary field offices, storage sheds and public and private property.

10.2.10 Contractor shall not permit the possession or use of alcohol or controlled substances on the Site.

10.2.11 Explosives may be used only when authorized in writing by District. Explosives shall be handled, used and stored in accordance with applicable regulations.

### **10.3 EMERGENCIES**

In an emergency affecting the safety of persons or property, Contractor shall immediately act to prevent or minimize damage, injury or loss. Contractor shall immediately notify the Construction Manager and District, which notice may be oral, followed within twenty-four (24) hours after occurrence of the incident by written confirmation, of the occurrence of such an emergency and Contractor's action.

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## **ARTICLE 11 – INSURANCE AND BONDS**

### **11.1 CONTRACTOR'S INSURANCE**

11.1.1 Prior to commencing the Work, Contractor shall procure and maintain at Contractor's own cost and expense, insurance as required in the Construction Contract between Contractor and District against claims for injuries to persons or damages to property which may arise out of or result from the performance of the Work by Contractor, its Subcontractors or Sub-subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

### **11.2 BOND REQUIREMENTS**

11.2.1 Within ten (10) Days after the issuance of the Notice of Award and prior to commencing Work on the Project, Contractor shall file with District good and sufficient Labor and Material Payment and Performance Bonds each in the amount of 100% of the Contract Sum. The bonds shall be signed by both Contractor and Surety and properly notarized on the District's forms or such other forms as required by District. Should any bond required hereunder or any surety on such bond become or be determined by District to be insufficient, it shall be replaced within ten (10) Days by a bond that fully complies with the requirements of Article 11.2. No further payments to Contractor for Work performed shall be made or due until Contractor has fully complied with the requirements of Article 11.2.

11.2.2 The Payment Bond shall remain in effect until Acceptance of the Work and payment of all Claims by Contractor, Subcontractors, or Sub-subcontractors, of any Tier, have been satisfied. The Performance Bond provided by Contractor shall remain in effect for the duration of the period of all warranties required by the Contract Documents and shall assure faithful performance of all Contractor's obligations under the Contract Documents, including, without limitation, all obligations that survive Final Completion or termination, such as, but not limited to. Contractor's warranty and indemnity obligations.

11.2.3 Contractor shall promptly furnish such additional security as may be required by District to protect its interests and those interests of persons or firms supplying labor or materials to the Work.

11.2.4 Surety companies used by Contractor shall be, on the date the Contract is signed by District and at all times while the bonds are in effect, either California Admitted Sureties or listed in the latest published United States Treasury Department list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies and either have a current A.M. Best A VIII rating or be an admitted surety that meets the requirements of the California Code of Civil Procedure, Section 995.660.

11.2.5 The premiums for all Bonds are included in the Contract Sum and shall be paid by Contractor.

11.2.6 The bonds shall name District as obligee.

11.2.7 Change Orders, Field Orders, Modifications, Changes in the Work and adjustments in the scope of Work Contract Sum or Contract Time shall in no way release or exonerate Contractor or its sureties from their obligations and notice thereof shall be waived by such sureties.

11.2.8 District and the Construction Manager shall have the right to communicate with Contractor's sureties with respect to matters that are related to Contractor's performance of its obligations under the Contract Documents. Contractor shall be provided with a copy of all such written communications. Such communications shall not create or be interpreted as creating any contractual relationship between District or the Construction Manager and any such surety.

11.2.9 In the event of a significant (15% or more) increase in Contract Sum, replacement bonds totaling the new Construction Contract amount may be required by District.

## ARTICLE 12 – DEFECTIVE WORK

### 12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Work is covered contrary to District's request or direction, or contrary to the requirements of the Contract Documents, it must, if required in writing by District, be uncovered for District's observation and be replaced at Contractor's expense without adjustment of the Contract Time or the Contract Sum.

12.1.2 If a portion of the Work has been covered, which is not required by the Contract Documents to be observed or inspected prior to its being covered and which District has not specifically requested to observe prior to its being covered, District may request to see such Work and it shall be uncovered and replaced by Contractor. If such Work is in accordance with the Contract Documents, the costs of uncovering and replacing the Work shall be added to the Contract Sum by Change Order; and if the uncovering and replacing of the Work extends the Contract Time, an appropriate adjustment of the Contract Time shall be made by Change Order. If such Work is not in accordance with the Contract Documents, Contractor shall pay such costs and shall not be entitled to an adjustment of the Contract Time or the Contract Sum.

### 12.2 CORRECTION OF DEFECTIVE WORK AND GUARANTEE TO REPAIR PERIOD

12.2.1 Besides guarantees required elsewhere, Contractor shall guarantee in writing all Work for a period of one (1) year. This guarantee termed "Guarantee To Repair Period," is a period of one (1) year, unless a longer period of time is specified in the Special Provisions and Technical Specifications, commencing as follows:

- (i) For any Work not described as incomplete in the Certificate of Substantial Completion, on the date of Substantial Completion.
- (ii) For space beneficially occupied or for separate systems fully utilized prior to Substantial Completion pursuant to Article 9.6, from the first date of such Beneficial Occupancy or actual use, as established an appropriate written authorization for Beneficial Occupancy.
- (iii) For all Work other than (i) or (ii) above, from the date of filing of notice of completion pursuant to Article 9.8.

12.2.2 Contractor shall (i) correct Defective Work that becomes apparent during the progress of the Work or during the Guarantee To Repair Period and (ii) replace, repair, or restore to District's satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work, without any

expense whatsoever to District. District will give notice of observed Defective Work with reasonable promptness, and Contractor shall promptly commence such correction, replacement, repair or restoration upon notice from District, but in no case later than seven (7) Days after receipt of such notice. Contractor shall diligently and continuously prosecute such correction to completion. Contractor shall bear all costs of such correction, replacement, repair, or restoration and all Losses resulting from such Defective Work, including additional testing, inspection and compensation for District's or District's services and expenses. Contractor shall perform corrective Work at such times that are acceptable to District and in such a manner as to avoid, to the extent practicable, disruption to District's activities. Ordinary wear and tear, unusual abuse or neglect are excepted from this guarantee. Contractor shall notify District upon completion of repairs.

12.2.3 If immediate correction of Defective Work is required for life safety or the protection of property or, if in the opinion of District, Defective Work creates a dangerous condition or requires immediate corrections or attention to prevent further Loss to District or to prevent interruption of operations of District, District will attempt to give immediate notice to Contractor. If Contractor cannot be contacted or does not comply with District's request for correction within a reasonable time as determined by District, District or Separate Contractors under District's direction, may, notwithstanding the provisions of this Article, proceed to make such corrections or provide such attention; and the costs of such correction or attention shall be charged against Contractor. Such action by District will not relieve Contractor of the guarantees provided in this Article or elsewhere in the Construction Contract. Contractor shall replace, repair or restore to District's satisfaction any other parts of the Work and any other real or personal property, which is damaged or destroyed as a result of such Defective Work or the correction of such Defective Work.

12.2.4 Contractor shall promptly remove from the Site those portions of the Work and materials which are not in accordance with the Contract Documents and which are neither corrected by Contractor nor accepted by District.

12.2.5 If Contractor fails to commence correction of Defective Work within seven (7) Days after notice from District or fails to diligently prosecute such correction to completion, District may correct the Defective Work in accordance with Article 2.4; and, in addition, District may remove the Defective Work and store salvageable materials and equipment at Contractor's expense.

12.2.6 If Contractor fails to pay the costs of such removal and storage as required by Articles 12.2.4 and 12.2.5 within seven (7) Days after written demand, District may, without prejudice to other remedies, sell such materials at auction or at private sale or otherwise dispose of such material. Contractor shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which Contractor is liable to District, including compensation for District's services and expenses. If such proceeds of sale do not cover costs

and damages for which Contractor is liable to District, the Contract Sum shall be reduced by such deficiency. If there are no remaining payments due Contractor or the remaining payments are insufficient to cover such deficiency, Contractor shall promptly pay the difference to District.

12.2.7 Contractor's obligations under this Article are in addition to and not in limitation of its warranty under Article 3.5 or any other obligation of Contractor under the Contract Documents. Enforcement of Contractor's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies District may have under the Contract Documents or at law or in equity for Defective Work. Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations of Contractor under the Contract Documents, which may be longer specified periods. Establishment of the Guarantee To Repair Period relates only to the specific obligation of Contractor to correct the Work and in no way limits either Contractor's liability for Defective Work or the time within which proceedings may be commenced to enforce Contractor's obligations under the Contract Documents.

### **12.3 ACCEPTANCE OF DEFECTIVE WORK**

12.3.1 Notwithstanding the provisions of Article 12.2 of these General Conditions, District shall have the option, at its sole discretion and by notice to Contractor, to accept Defective Work instead of requiring its removal or correction, in which case the Contract Sum shall be reduced by an amount equal to the difference between the value to District the Work would have had were it complete, correct and in conformity with the Contract Documents and the value to District of such Defective Work. Such option shall be exercised solely by notice to Contractor and shall not be implied from any act or omission by District or Construction Manager. If there are no remaining payments of the Contract Sum to be made to Contractor, or if the remaining payments and retention are insufficient to cover the amount of the reduction of the Contract Sum, Contractor shall promptly pay to District the amount of any such deficiency.

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## **ARTICLE 13 – STATUTORY REQUIREMENTS**

### **13.1 NONDISCRIMINATION/EQUAL OPPORTUNITY**

13.1.1 For purposes of this Article, the term Subcontractor shall not include suppliers, manufacturers, or distributors, except those who will actually perform work on the Site.

13.1.2 Contractor shall comply and shall ensure that all Subcontractors comply with the California Government Code, Section 12900, and the applicable sections that follow

13.1.3 Contractor agrees as follows during the performance of the Work:

.1 Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, ancestry, national origin, local custom, habit, sexual orientation, handicap, veteran's status, medical condition (as defined in the California Government Code, Section 12926), marital status, or citizenship. All applicants for employment and employees are to be treated without regard to their race, color, religion, sex, age, ancestry, national origin, local custom, habit, sexual orientation, handicap, veteran's status, medical condition (as defined in the California Government Code, Section 12926), marital status, or citizenship. Such equal treatment shall apply, but not be limited to:

- (i) Employment, upgrading, demotion, or transfer.
- (ii) Recruitment or recruitment advertising.
- (iii) Layoff or termination.
- (iv) Rates of pay or other forms of compensation.
- (v) Selection for training, including apprenticeship.

Contractor agrees to post in conspicuous places, available to employees and applicants for employment, the Notice of Equal Employment Opportunity (EEO) setting forth this provision.

.2 Contractor shall send to each labor union, with which it has a collective bargaining agreement or other contract or understanding, the letter of Concurrence and the Notice of Equal Employment Opportunity (EEO) advising them of Contractor's commitments under this provision; and Contractor shall post copies of the Notice of Equal Employment Opportunity (EEO) in conspicuous places available to employees and applicants for employment. The Notice of Equal Employment Opportunity (EEO) shall be in

English and other applicable languages.

.3 Contractor and all Subcontractors will permit access to their records of employment, employment advertisements, application forms, and other pertinent data and records by District or any appropriate District of the State of California designated by District for the purposes of investigation to ascertain compliance with this provision. The outcome of the investigation may result in the following:

a. A finding of willful violation of the provisions of this Construction Contract or of the Fair Employment Practices Act may be regarded by District as either of the following:

(i) A basis for determining that Contractor is not a "responsible bidder" as to future contracts for which such Contractor may submit bids.

(ii) A basis for refusing to accept or consider the bids of Contractor for future contracts.

b. District may deem a finding of willful violation of the Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has done both of the following:

(i) Investigated and determined that Contractor has violated the Fair Employment Practices Act.

(ii) Issued an order under the California Government Code, Section 12970, or obtained an injunction under the California Government Code Section 12973.

c. Upon receipt of such written notice from the Fair Employment Practices Commission, District may notify Contractor that, unless it demonstrates to the satisfaction of District within a stated period that the violation has been corrected, Contractor's bids on future projects will not be considered.

.4 Contractor agrees that, should District determine that Contractor has not complied with this provision, Contractor shall forfeit to District, as a penalty, for each day or portion thereof, for each person who was denied employment as a result of such non-compliance, the penalties provided in Article 13.3 for violation of prevailing wage rates. Such penalty amounts may be recovered from Contractor; and District may deduct any such penalty amounts from the Contract Sum.

.5 Nothing contained in this provision shall be construed in any manner so as to prevent District from pursuing any other remedies that may be available at law.



.6 Contractor shall meet the following standards for affirmative compliance and provide District with satisfactory evidence of such compliance upon District's request, which shall be evaluated in each case by District:

a. Contractor shall notify its Superintendent and other supervisory personnel of the nondiscrimination requirements of the Contract Documents and their responsibilities thereunder.

b. Contractor shall notify all sources of employee referrals (including unions, employment agencies, and the State of California Department of Employment) of the nondiscrimination requirements of the Contract Documents by sending to such sources and by posting the Notice of Equal Employment Opportunity (EEO).

c. Contractor or its representative shall, through all unions with whom it may have agreements, develop agreements that:

(i) Define responsibilities for nondiscrimination in hiring, referrals, upgrading, and training.

(ii) Implement an affirmative nondiscrimination program, in terms of the unions' specific areas of skill and geography, such that qualified minority women, non-minority women, and minority men shall be available and given an equal opportunity for employment.

d. Contractor shall notify District of opposition to the nondiscrimination requirements of the Contract Documents by individuals, firms or organizations during the term of the Contract.

.7 Contractor shall include the provisions of the foregoing Articles 13.1.3.1 through 13.1.3.6 in all subcontracts with Subcontractors, so that such provisions will be binding upon each such Subcontractor.

## **13.2 STATE LABOR LAW**

13.2.1 Contractor, its agents, and employees shall be bound by and comply with all applicable provisions of the Labor Code and such federal, state and local laws which affect the conduct of the Work.

13.2.2 Contractor shall strictly adhere to the provisions of the Labor Code regarding the employment of apprentices; minimum wages; payment of wages; alien labor, the eight- hour day; overtime, Saturday, Sunday and holiday work; registration with the Department of Industrial Relations to maintain eligibility to work on public works; and nondiscrimination because of race, color, national origin, age, marital status, sexual orientation, disability, sex or religion. Contractor shall forfeit to District the penalties prescribed in the Labor Code for

violations.

13.2.3 District has ascertained that the general prevailing rate of wages and employer payments for health and welfare, vacation, pensions, and similar purposes applicable to the locality in which the Work is to be done are as set forth in that certain document entitled, "Prevailing Wage Scale," as indicated in the California Labor Code Part 7, Chapter 1 – Article 2, as determined by the Director of Industrial Relations. Applicable Prevailing Wage Rates and related information not listed are to be obtained from the State of California by Contractor. Contractor shall post a copy of applicable exhibits/wage rates at each Site. Contractor to whom the Construction Contract is awarded and any Subcontractor agree to pay wages and benefits not less than said specified rates to all workers employed by them in the execution of the Construction Contract. A person or concern who fails to do so shall be subject to withholding of contract payments equal to the underpayment of required wages and benefits and subject to the penalties provided for in the California Labor Code, Section 1775. Contractor and each Subcontractor shall prepare and certify their payrolls on forms satisfactory and in accordance with instructions to be furnished by District.

13.2.4 In accordance with the Labor Code, prevailing wage rate determinations for the work to be done on this Project are maintained by the District.

13.2.5 In the event there is a determination that Contractor is in violation of prevailing wage requirements, Contractor shall reimburse District for all investigative costs incurred in addition to any other remedies provided under the Contract Documents.

### **13.3 PAYROLL RECORDS**

13.3.1 Contractor and all Subcontractors shall keep an accurate payroll record, showing the name, address, social security number, job classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journey worker, apprentice worker, or other employee employed in connection with the Work. All payroll records shall be certified as being true and correct by Contractor or Subcontractors keeping such records; and the payroll records shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:

.1 A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or the employee's authorized representative upon request.

.2 A certified copy of all Contractor and Subcontractor payroll records shall be made available for inspection upon request to District, the State of California Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State of California Division of Industrial

Relations. A certified copy of all payroll records shall be furnished to District or its representatives upon request.

.3 A certified copy of all payroll records shall be made available upon request by the public for inspection or copies thereof made; provided, however, that the request by the public shall be made to either District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal offices of Contractor or Subcontractors. Any copy of the records made available for inspection as copies and furnished upon request to the public or any public entity by District shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Contractor awarded the Construction Contract or performing the Construction Contract shall not be marked or obliterated.

.4 As of April 1, 2015: contractors and subcontractors must furnish electronic certified payroll records to the Labor Commissioner (State of California, Division of Labor Standards Enforcement).

13.3.2 Contractor and all Subcontractors shall file a certified copy of the payroll records with the entity that requested the records within ten (10) Days after receipt of a written request. Contractor shall inform District of the location of such payroll records for the Project, including the street address, District, and county; and Contractor shall, within ten (10) days, provide notice of change of location of such records. In the event of noncompliance with the requirements of Article 13.3 or with the California Labor Code Section 1776, Contractor and its Subcontractors shall have ten (10) Days in which to comply following receipt of a notice specifying in what respects Contractor must comply. Should non-compliance still be evident after the ten (10) Day period, Contractor shall forfeit to District, as a penalty, one hundred dollars (\$100.00) for each Day, or portion thereof, for each worker, until strict compliance is accomplished. Such forfeiture amounts may be deducted from the Contract Sum. Contractor shall include stipulations in all of its subcontracts to ensure that Subcontractors comply with Section 13.3.

## **13.4 APPRENTICES**

13.4.1 Attention is directed to the California Labor Code, Sections 1777.5, 1777.6, and 1777.7 and the California Code of Regulations, Title 8, Section 200, and the applicable sections that follow. To ensure compliance and complete understanding of the law requiring apprentices, and specifically the required ratio thereunder, Contractor or Subcontractors should, where some question exists, contact the State of California Division of Apprenticeship Standards prior to commencement of the Work. Responsibility for compliance with these requirements lies with Contractor.

## **13.5 WORK DAY**

13.5.1 Contractor shall not permit any worker to labor more than eight (8) hours during any one (1) Day or more than forty (40) hours during any one (1) calendar week, except as permitted by law and in such cases only upon such conditions as are provided by law. Contractor shall forfeit to District, as a penalty, fifty dollars (\$50.00) for each worker employed in the execution of this Construction Contract by Contractor, or any Subcontractor, for each Day during which such worker is required or permitted to Work more than eight (8) hours in any one (1) Day and forty (40) hours in any one (1) calendar week in violation of the terms of this provision or in violation of the provisions of any law of the State of California. Such forfeiture amounts may be deducted from the Contract Sum. Contractor and each Subcontractor shall keep, or cause to be kept, an accurate record showing the actual hours worked each Day and each calendar week by each worker employed on the Project, which record shall be kept open at all reasonable hours to the inspection of District, its officers and agents, and to the inspection of the appropriate enforcement agency or representative and the State of California.

### **END OF GENERAL CONDITIONS**