

INSTRUCTIONS FOR PUBLIC WORKS and MAINTENANCE AGREEMENT

1. **INTENDED PURPOSE:** This Agreement is exclusively for public works projects (PCC 22002) defined as construction, reconstruction, erection, alteration, renovation, improvement, demolition, painting, and repair work involving any publicly owned, leased, or operated facility. Maintenance is also covered under this Agreement which is defined as routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.
2. **DO NOT USE.** This Agreement is NOT intended for services such as consulting, technology, engineering, architectural, legal, medical, training, interpreting, or other non-construction type services.
3. **INSURANCE.** Your vendor must carry insurance under this Agreement as indicated in Exhibit A.1. Insurance must be obtained before commencement of services.
4. **LICENSE, DIR REGISTRATION, and BONDS.** Your Contractor must carry the appropriate [CSLB](#) license to perform services under this Agreement.
 - \$15,000 or greater for maintenance, [DIR](#) registration is required.
 - \$25,000 or greater for construction, [DIR](#) registration is required with [Payment and Performance Bonds](#) (Exhibit B).
 - Refer to the contract template on the next page, which includes detailed instructions for completing each required field.
5. **HOW TO USE.** Fill in all fields of the Agreement and have your Contractor sign first. District signature authority is based on the Agreement amount pursuant to [Board Resolution 2022-25](#).
 - If the contract amount is \$60,000 or greater. **STOP** – A public bid process is required. Contact Purchasing Services for assistance.
6. **REQUISITION.** After receiving the vendor signed Agreement, initiate your Purchase Requisition and upload the Agreement to Banner Document Management as supporting documentation. The Senior Buyer will countersign the agreement and once your Purchase Order is established by Purchasing Services, it will be transmitted to your vendor.

PUBLIC WORKS and MAINTENANCE AGREEMENT

This Agreement for Construction Services entered into as of the District’s execution date (“Effective Date”), by and between the Foothill-De Anza Community College District, a Community College District of the State of California, hereinafter called “Owner” and _____, hereinafter called “Contractor.” Each of Owner and Contractor are sometimes hereinafter referred to as a “Party” and collectively as the “Parties.”

Enter vendor name

1. AGREEMENT DOCUMENTS.

The documents forming the entire Agreement between District and Contractor shall consist of this Agreement and including:

- Exhibit A – General Conditions
- Exhibit B – Payment & Performance Bonds if Applicable

2. PROJECT SCOPE OF WORK.

The Contractor shall provide all work, labor, materials, equipment and services necessary to perform and complete the Scope of Work described as:

Enter project scope of work or make reference to and attach proposal or quote. Check box for appropriate District location of project.

Project Location: (check one) De Anza Foothill District Office Sunnyvale Center

3. AGREEMENT SUM AND PAYMENT.

The total Agreement sum amount payable by Owner to Contractor for the performance of work under the Agreement Documents unless modified in writing through a properly executed change order:

Not-to-Exceed \$ _____ (inclusive of Bonds if applicable, must not exceed \$60k per CUPPCCA).

Option A (single payment upon completion)
If work is completed within 30 days a lump sum payment shall be made by the Contractor and acceptance by the Owner.

Enter the not-to-exceed price of the contract/proposal.

final completion by the

Check appropriate payment method.

Option B (monthly progress payments and retention)
In accordance with Public Contract Code §9203 and §20104.50 where a Public Project or Repair is \$5,000 or more, Progress Payments less 5% retention will be paid within thirty (30) days after the Owner's receipt of a proper Application for Progress Payment.

Enter start and end dates of term and indicate option A or B. Enter District Project Manager contact.

4. TERM AND COMPLETION DEADLINE.

- a. The Contractor shall commence performance of the work in accordance with the schedule as stated below.

___ Schedule Option A – Defined Project:

Approximate Start date: _____

Approximate End date: _____ or within _____ calendar days.

- b. ___ Schedule Option B – On-going Annual Agreements:

Start Date: _____

End Date: _____

- c. The actual dates of work will be mutually agreed upon between the Owner and the Contractor after receipt of an authorized Purchase Order issued by the Owner. All work shall be coordinated with:

District Representative: _____

Email: _____ Phone: _____

5. CONTRACTOR'S LICENSE, DIR REGISTRATION AND COMPLIANCE MONITORING.

- d. In accordance with Section 3300 of the Public Contract Code, Contractor has a Class" _____ " license which shall be maintained in good standing for the duration of Contractor's work on the Project. Public works projects, as defined by Labor Code, shall be subject to compliance monitoring, reporting, and enforcement by the Department of Industrial Relations. The Owner shall not enter into any contract without proof of the Contractor's current registration to perform public work under Labor Code section 1725.5.

- e. The Contractor shall not enter into any subcontract without proof of the subcontractor's current registration to perform public work under Labor Code section 1725.5. A contractor or subcontractor shall not be qualified to enter into, or engage in the performance of, any contract of public work (as defined by Division 2, Part 7, Chapter 1 (§§1720 et seq.) of the Labor Code) unless currently registered and qualified under Labor Code section 1725.5 to _____ the Small Project Exemption is applicable.

Check appropriate box as applicable.

6. PERFORMANCE AND PAYMENT BONDS.

- f. Check below:

___ Bond are not applicable. (Not required for Projects less than \$25,000 inclusive of all changes)

If change orders increase the value of the Agreement over \$25,000 then Owner reserves the right to request bonds for Change Order(s) that materially changes the size and/or scope of work. The Contractor shall be required to provide payment bonds pursuant to California Civil Code sections 9550-9566.

___ Bonds are applicable. (Required for Projects \$25,000 and greater)

Prior to commencing any portion of the work, the Contractor shall apply for and furnish Owner separate payment and performance bonds for its portion of the work which shall cover 100% faithful performance (during construction and one year after completion, and during any warranty or guarantee period) of and payment of all obligations arising under this Agreement and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the work. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California and shall be executed on Owner issued forms. Samples of the bonds are included as **EXHIBIT B** – Payment Bond & Performance Bond

- g. To the extent, if any, that the Agreement Sum is increased in accordance with this Agreement, the Contractor shall cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the Owner. To the extent available, the bonds shall further provide that no change or alteration of this Agreement (including, without limitation, an increase in the Agreement Sum, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor shall be made without the written consent of the Owner. If the Contractor fails to furnish the required bond, the Owner may terminate this Agreement and pursue any legal remedies available to it.
- h. Only bonds executed by the Contractor and approved by the District area administrator shall be accepted. Owner shall require Contractor to obtain bonds from surety insurers selected by Contractor and to require Contractor to obtain bonds from surety insurers satisfactory to the Owner.

Enter vendor contact and District area administrator contact.

7. NOTICE.

All Notices required or permitted to be given under this Agreement by either party to the other, shall be in writing and given, served, and received, if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, or sent by overnight delivery services, or facsimile transmissions, addressed as follows:

For Contractor:
 Name: _____
 Title: _____
 Address: _____
 City, State, Zip: _____
 Phone: _____
 Email: _____
 CSLB License #: _____
 Expiration Date: _____
 DIR Registration #: _____

For District:
 Name: _____
 Title: _____
 Address: _____
 City, State, Zip: _____
 Phone: _____
 Email: _____

Enter signatures for Contractor and District. District signature authority pursuant to [Resolution No. 2022-25 Delegation of](#)

 In Witness Hereof, the Parties have entered into the Agreement of the respective names below. *****

FOR CONTRACTOR:	FOR DISTRICT:
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

NOTE: Construction services are subject to CUPPCCA. Amounts over the [Bid threshold](#) for construction requires a public bid. Contact Purchasing for assistance.

Contract modifications: If your vendor requests modification to this agreement, contact the Director, Purchasing, Contracts, and Risk Management for additional guidance.

This Agreement is not valid until signed by both Parties above. Board approval is required for construction services if total cost exceeds the applicable bid threshold in accordance with the Construction Cost Accounting Act (CUPCCAA)

EXHIBIT A - GENERAL CONDITIONS

1. INSURANCE REQUIREMENTS.

Contractor shall not commence work under this Agreement until required insurance certificate has been submitted to the requesting Project Manager. Certificates of insurance shall be issued by an insurer with an A M Best rating of A-VII or better, unless otherwise approved by District Risk Manager. Such certificate shall evidence all coverages and limits required by District in this Agreement and shall specify that insurers will give District thirty (30) days prior written notice of non-renewal or cancellation. The Description of Operations field must be completed indicating that Foothill-De Anza Community College District has been added as an additional insured. This section shall read: "The Foothill-De Anza Community College District, their employees, officers and agents, officers and agents are added as additional insureds." The Certificate Holder shall read: Foothill-De Anza Community College District, 12345 El Monte Rd. Los Altos Hills, CA 94022 Contractor shall maintain in force, throughout the term of this Agreement, insurance as follows:

- a. Commercial General Liability insurance, with limits not less than \$1,000,000 each occurrence/\$2,000,000 aggregate for Bodily Injury and Property Damage, including coverages for contractual liability, personal injury, sexual assault & molestation, broadform property damage, independent contractors, products and completed operations;
- b. Commercial Automobile Liability insurance, with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable;
- c. Workers' Compensation (statutory limits) and Employers' Liability insurance with limits required by law, provided that Contractor has employees as defined by the California Labor Code;
- d. Other Insurance Provisions
 - i. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District.
 - ii. Waiver of Subrogation. Contractor agrees that in the event of loss due to any perils for which it has agreed to provide Commercial General and Automobile Liability insurance, Contractor shall look solely to its insurance carrier(s) for recovery and grants a waiver of any right to subrogation which any such insurer of Contractor may acquire against the District by virtue of payments of any loss under this insurance
 - iii. If any of the required insurance is written on a claims-made coverage form, such insurance shall be maintained for a period of three years following termination of this Agreement.
 - iv. General and Automobile liability policies shall include as Additional Insureds, the District, its officers, agents, employees and servants, shall be primary to any other insurance or self-insurance available to the Additional Insureds and shall apply separately to each, except the inclusion of Additional Insureds shall not operate to increase the required limits of such insurance.
 - v. Maintenance of the required insurance is a material condition of this Agreement and failure to maintain such insurance may, at the District's option, result in a declaration of material breach and suspension of Contractor's further work under this Agreement.

2. CONTRACTOR RESPONSIBILITIES.

- a. LABOR, MATERIALS, EQUIPMENT AND SERVICES. The Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to complete the Project in accordance with the Contract Documents. Except for existing utility services at the Site made available to the Contractor by the District, the Contractor shall furnish all utilities necessary to complete the Project, including temporary utility distributions. The Work shall be completed in a high quality, workmanlike manner at such times and places as directed by and subject to the approval of the District Representative. All of the Work shall conform to the requirements of the Contract Documents and applicable laws, ordinances, rules and regulations ("the Laws"). If there are conflicts between any portions of the Contract Documents, the Contractor shall furnish and install the more stringent or higher quality requirements.
- b. CONTRACTOR SUPERINTENDENT. The Contractor shall employ a Superintendent who shall be at the Site at all times during performance of Work at the Site. The Superintendent is the Contractor's Representative for the Project; directions, instructions or other communications to and with the Contractor's Superintendent constitute directions, instructions or communications to or with the Contractor.
- c. EMPLOYEE COMPETENCY AND DISCIPLINE. The Contractor shall enforce strict discipline and good order among employees of the Contractor and Subcontractors at the Site. Personnel of the Contractor or any Subcontractor are subject to removal from the Site for violations of the Laws or District Policies. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them and shall dismiss from its employ and direct any Subcontractor to dismiss from their employment any person deemed by the District to be unfit or incompetent to perform assigned tasks.
- d. DISTRICT POLICIES; NOISE, DRUGS, TOBACCO, AND ALCOHOL. Use, possession, consumption or work under the influence of alcohol or illegal drugs at the Site is prohibited. District Board Policies prohibit the use of any form of tobacco products at the Site. Compliance with the California Drug-Free Workplace Act of 1990 (California Government Code §§8350 et seq.) is required. Use of music/audio devices, including radios or wearing any headphone devices for entertainment while performing Work at the Site is prohibited. The Contractor shall implement measures to: (i) notify all personnel at the Site of such prohibitions and (ii) prevent violations of such prohibited conduct. The District expressly reserves the right to remove construction personnel violating the foregoing.
- e. DISTRICT'S POLICY PROHIBITING HARASSMENT. The District is committed to providing a campus and workplace free of sexual harassment and harassment based on factors such as race, color, religion, national origin, ancestry, age, medical condition, marital status, sex, sexual orientation, disability, or veteran status. Harassment includes without limitation, unwanted sexual advances; offering employment benefits in exchange for sexual favors; making or threatening reprisals after a negative response to sexual advances; visual conduct: leering, making

verbal sexual gestures, displaying of suggestive objects or pictures, cartoons or posters; verbal conduct: making or using derogatory comments, epithets, slurs, and offensive jokes; verbal sexual advances or propositions; verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes, emails, text messages, or invitations; and physical conduct: touching, assault, impeding or blocking movements.

3. LABOR CODE REQUIREMENTS.

- a. DIR REGISTRATION. Work that is valued less than \$15,000 does not require DIR Registration. The Contractor and all Subcontractors must comply with the Labor Code §§1725.5 and 1771.1 and must be properly and currently registered with the California Department of Industrial Relations ("DIR") and qualified to perform public works pursuant to Labor Code section 1725.5 throughout the duration of the Project. 1.
- b. PREVAILING WAGE RATES; HOURS OF WORK: If the total value of the work is less than \$1,000, this is not required. If the value of the work exceeds \$1,000, the Contractor and all Subcontractors shall: (i) pay their respective workers wage rates not less than the prevailing wage rate established for the classification, trade or work performed by each worker; and (ii) maintain complete and accurate payroll records for workers engaged in the Work. The Contractor and Subcontractors shall not permit any worker to provide more than eight (8) hours of work per day or forty (40) hours per week without additional compensation as mandated by law. The Contractor shall be subject to all penalties and assessments provided by law or regulation for violation(s) of the prevailing wage rate requirements or hours of work limits. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE).
- c. APPRENTICES. Apprentices, if any, engaged in performing the Work shall be in strict conformity with applicable the Laws, including without limitation, Labor Code §§1777.5 through 1777.7, which are incorporated herein by this reference.

4. SUBCONTRACTORS. The Contractor is responsible for the acts, omissions and other conduct of Subcontractors and their employees, agents and representatives. Subcontracts between the Contractor and Subcontractors shall incorporate the Contract as far as such terms are applicable to the Subcontractor's work, including, without limitation, all indemnification, insurance, and warranty requirements. Subcontracts shall be made available to the District for review upon request of the District. DIR Registration is only required for work that is more than \$25,000. For work that is more than \$25,000, all Subcontractors must comply with Labor Code §§ 1725.5 and 1771.1 and must be currently registered contractors with the California Department of Industrial Relations ("DIR") and qualified to perform public works pursuant to Labor Code §1725.5 throughout the duration of the Project. Any Subcontractor who is not a DIR registered contractor shall be substituted in accordance with Labor Code §1771.1. Subcontractors identified in the Subcontractors List shall not be replaced except in strict conformity with requirements of Public Contract Code §4107. The Contractor is responsible for all fees, costs or expenses (including attorneys' fees) incurred by the District to review, evaluate and respond to the Contractor's request to replace a listed Subcontractor. Subcontractors must be California licensed contractors in the classification(s) required for the portions of the Project completed by the Subcontractor.

5. PROPERTY DAMAGE. The Contractor is responsible for costs to repair, replace or correct damage or destruction to property arising during the Contractor's completion of Project Work, including without limitation, damage/destruction of other facilities/improvements, landscape materials and irrigation systems.

6. PROJECT SITE

- a. SITE EXAMINATION AND SITE CONDITIONS. The Contractor has examined the Site and accepts conditions at the Site affecting the completion of the Project. By submitting a Proposal for the Project, the Contractor warrants and represents to the District that the Contractor has made all Site examinations that it deems necessary and that the pricing proposed in the Proposal is not subject to adjustment for conditions at the Site.
- b. SAFETY AND SECURITY; PROTECTION OF WORK AND PROPERTY. The Contractor is solely responsible for safety at the Site, including compliance with Laws pertaining to safety at the Site. Contractor shall comply with all District rules and regulations pertaining to safety, security and driving on school grounds, particularly when students are present. The Contractor shall implement safety measures such as fencing, barricades, signs, lights and other precautions to prevent injury or death to persons or damage to property. The Contractor is responsible for securing the Site and Work in place or in progress (including all personal property items situated at the Site) to prevent theft, loss or damage. The District and District employees, officers, agents or representatives shall not be liable for loss, theft, damage or destruction of personal property items. The risk of such loss, theft, damage or destruction is solely that of the Contractor or Subcontractors.
- c. STORM WATER POLLUTION PREVENTION. There will be a "Zero Tolerance" for unregulated use of storm drains. Do not dump, spill, empty, or wash anything into a storm drain under any circumstances. This restriction includes all wash waters from tools, vehicles or equipment.
- d. CONTRACTOR ENVIRONMENTAL/ HAZARDOUS MATERIALS RESPONSIBILITIES. The Contractor shall comply with Laws relating to construction waste management, materials re-use and/or recycling and the maintenance of records relating thereto. All activities of the Contractor relating to removal, transportation and/or disposal of any hazardous material shall be in strict compliance with the Laws, including compliance with requirements of manifests for the transportation and disposal of hazardous materials. The Contractor's failure to strictly comply with its obligations hereunder shall be a basis for the District's withholding of Contract Price disbursements until the Contractor has complied and performed its obligations hereunder. Upon completion of the Project, the Contractor shall complete, execute and submit to the District the form of Asbestos and Hazardous Materials Certification.
- e. CLEAN-UP. The Contractor shall remove and legally dispose of all waste materials and other debris from the Site. The Site shall be maintained in a neat, orderly and "broom clean" condition. At completion of the Project, the Contractor shall: (i) remove all temporary facilities and installations; and (ii) clean all surfaces, fixtures, equipment at the Site. If the Contractor fails to complete clean up

responsibilities, the District may do so, and all costs shall be charged to the Contractor; the District may deduct such costs from the Contract Price then or thereafter due the Contractor.

- f. OCCUPANCY. The District reserves the right to occupy existing facilities and improvements in, at or about the Site at any time before completion of the Project. The District's occupancy does not constitute acceptance or approval of any part of the Project and will not extend the Contract Time nor relieve the Contractor of any duties or responsibilities under this Contract.
- g. EMERGENCIES. In an emergency affecting life, life safety, property damage, the Work or adjoining property, Contractor, without special instruction or authorization from District, shall take such actions reasonably necessary to prevent such threatened loss or injury. Contractor shall immediately report in writing to the District Representative if such action is taken.

7. PROJECT REQUIREMENTS

- a. DISTRICT SITE ACCESS. The District and the District's employees, agents or representatives shall at all times have access to the Site and the Project. The Contractor shall provide safe and proper facilities for such access.
- b. CONSTRUCTION SCHEDULE. If the Contract Time is more than thirty (30) calendar days, the Contractor shall prepare a Construction Schedule in such form and format required by the District. The Construction Schedule shall reflect all activities necessary to complete the Work and shall be in such detail as required by the Contract Documents. If a schedule is required, the Contractor shall update the schedule monthly or more frequently as directed by the District or required by the circumstances of Project progress. The Contractor's Construction Schedule shall be submitted to the District for review and acceptance. The Contractor shall complete Project Work in accordance with the District accepted Construction Schedule.
- c. SUBSTITUTIONS. No substitution of any specified item, product, material or system ("Specified Items") will be considered unless the Contractor submits a request to substitute Specified Items along with data substantiating the equivalency of the proposed substitution with the Specified Items not more than seven (7) days after the date of Award of the Contract to the Contractor. The Contractor shall reimburse the District for all costs, expenses, and fees incurred by the District to review a proposed substitution for Specified Items. The District's acceptance or rejection of a proposed substitution is final. No substitution accepted by the District shall increase the Contract Price or the Contract Time; provided, however, if the cost to furnish/install an approved substitution of is less than the Specified Item, the Contract Price shall be reduced by such cost difference. If any Specified Items are identified in any portion of the Contract Documents as "District Standard Materials/Equipment" "match existing in use" or similar words/phrases, in accordance with Public Contract Code §3400, the District is deemed to have made a finding that such Specified Items are designated as "sole source" items designed to match existing and in use items. In accordance with Public Contract Code §3400, the District will not consider or accept alternatives or substitutions for any Specified Items so identified.
- d. CONTRACTOR WARRANTY. If within one (1) year, or such other period set forth in the Contract Documents, any part of the Project or workmanship is found defective, non-conforming, or not in compliance with the Contract Documents, the Contractor shall promptly correct, repair or replace such part of the Project or workmanship. If the Contractor fails to do so, the District may take necessary action to correct, replace or repair such Work or workmanship at the cost and expense of the Contractor.
- e. MANUFACTURER WARRANTIES/OPERATING MANUALS. The Contractor shall, prior to the release of retention, provide the District Representative with hard copies of all manufacturer warranties and operating manuals for all equipment and materials furnished, installed and incorporated into the Project, and transfer all warranties if in the name of the Contractor.
- f. DISTRICT INSPECTIONS AND ACCEPTANCE. Project Work is subject to District inspection, provided that inspection of any Project Work is not deemed acceptance of defective/non-conforming Project Work. Defective/non-conforming Project Work shall be repaired, replaced or corrected by the Contractor at its own expense.
- g. CERTIFIED PAYROLL RECORDS SUBMITTAL TO LABOR COMMISSIONER. Certified Payroll Records of the Contractor and Subcontractors, in the form, format and within the times established by the Labor Commissioner, shall be submitted to the Labor Commissioner if required. The District's disbursement of any portion of the Contract Price is expressly conditioned on the Contractor's completion and execution of the form of Verification of Certified Payroll Records Submittal to Labor Commissioner for the payment requested.

8. CHANGES

- a. DISTRICT AUTHORITY. The District may direct Changes within the general scope of Project Work. Changes authorized or directed by the District shall be reduced to a written Change Order in the form and content prepared by or on behalf of the District. Adjustments to the Contract Price for District authorized Changes shall be limited to the actual costs of labor, materials, equipment or services necessary to complete the Change. All other costs associated with a Change, including without limitation profit, overhead/administrative costs and delay/inefficiencies impacts are fully compensated by the mark-up established in the Contract Documents on direct costs of a Change. The Contractor shall provide the District with all information requested to substantiate the cost of a Change. The Contractor shall submit, prior to approval of a Change Order, its request for adjustment of the Contract Time (if any) along with data substantiating the Contractor's right to adjustment of the Contract Time and the extent of such adjustment. If Contractor fails to strictly comply with the preceding, the Contractor shall be deemed to have waived any right to adjustment of the Contract Time.
- b. CHANGE DIRECTIVE ("CD"). The District may direct a Change prior to and without issuance of a Change Order by a Change Directive ("CD"). The Contractor shall: (i) promptly commence and complete changes incorporated into a CD; and (ii) maintain detailed contemporaneous records of labor, materials and equipment incorporated into or consumed in completing a CD. Adjustment of the Contract Price or Contract Time on account of a CD shall be determined in accordance with the Contract Documents and incorporated into a Change Order.
- c. MARK-UPS ON CHANGES. The mark-up on direct costs for a Change directed or authorized by the District for all overhead (including home and field office overhead), general conditions costs, impacts of the Change and profit, shall not exceed the percentage of allowable direct actual costs for performance of the Change as set forth below.

- d. **SUBCONTRACTOR PERFORMED CHANGES.** For the portion of a Change performed by Subcontractors, the mark-up on actual direct labor and materials costs incurred by the Subcontractors is Ten Percent (10%). In addition, the Contractor may add an amount equal to Five Percent (5%) of the Subcontractor's actual direct labor and materials costs; the Contractor's mark-up shall not be applied to the Subcontractor's mark-up.
- e. **CONTRACTOR PERFORMED CHANGES.** For the portion of any Change performed by the Contractor's own forces, the mark-up on the allowable actual direct labor and materials costs of such portion of a Change is Fifteen Percent (15%).
- f. **EXCLUSIONS FROM MARK-UP OF ACTUAL COSTS.** Mark-ups on the actual cost of materials/equipment incorporated into a Change or for purchase/rental of Construction Equipment shall not be applied to any portion of such costs which are for sales, use or other taxes arising out of the purchase of materials/equipment and/or for purchase/rental of Construction Equipment.
- 9. **INDEMNIFICATION.** To the furthest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the District and its governing board, officers, employees, agents, and volunteers ("Indemnified Parties") from and against any and all liabilities, demands, claims, actions, causes of action (including cost of defense, settlement, and reasonable attorneys' fees) (collectively "Claims") which arise out of the negligent, willful misconduct of the Contractor, Subcontractors or the employees, agents or representatives of the Contractor or Subcontractors, including without limitation, Claims for bodily injuries (including death) to any person, damage (including theft or loss of use) to any property, California regulatory law violations, Stop Payment Notice claims and other economic losses, damages or injuries. The Contractor's obligations hereunder shall survive completion of the Work or termination of the Contract until barred by the applicable statute of limitations.

10. TERMINATION AND SUSPENSION

- a. **TERMINATION FOR CONTRACTOR DEFAULT.** The Contractor's failure to fully and timely perform its obligations under the Contract Documents or to strictly comply with terms and conditions of the Contract Documents shall constitute default of the Contractor; in such event, the District may terminate the Contract for cause upon seven (7) days written notice to the Contractor. Unless the Contractor commences, and diligently thereafter prosecutes to completion, all required actions to cure such default(s), the Contract is deemed terminated without further action of the District; such termination shall be effective the seventh (7th) day after the date of the District's written notice. If the District terminates the Contract for default of the Contractor, the Contractor is liable to the District for all losses, costs and damages arising out of the Contractor's default and costs to complete the Project Work which exceeds the remaining Contract Price at the time of termination.
- b. **DISTRICT TERMINATION FOR CONVENIENCE.** The District may terminate the Contract, in whole or in part, at any time for the convenience of the District by written notice to the Contractor, in which case, the payment of the Contract Price shall be limited to the value of the Work in place or in progress at the time of the termination for the District's convenience and reasonable demobilization/rental expenses; no payment shall be made or due from the District for the unperformed portion of the Project Work or anticipated lost profits.
- c. **SUSPENSION.** The District may, by written directive to the Contractor, suspend the Project Work, in whole or in part, for such time as determined by the District. Upon issuance of such directive, the Contractor shall take action as directed to protect work in place, materials/equipment at the Site and other actions relating to Project Work in place, in progress, in storage, in transit or in fabrication ("Contractor Suspension Activities"). The Contractor shall resume Project Work as directed by the District. The District's suspension of Project Work shall not result in adjustment of the Contract Price, except for the direct costs of Contractor Suspension Activities. The Contract Time will be equitably adjusted for District directed suspension of Project Work.

11. TESTING AND INSPECTIONS

- a. **TESTS AND INSPECTIONS.** Tests, inspections, and approvals of portions of the work required by the Agreement Documents will comply with Title 24, and with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction.
- b. **INDEPENDENT TESTING LABORATORY.** The Owner will select and pay an independent testing laboratory to conduct all tests and inspections, including shipping or transportation costs or expenses (mileage and hours). Selection of the materials required to be tested shall be made by the laboratory or the Owner's representative and not by the Contractor. However, if Contractor requests that the Owner use a different testing laboratory and Owner chooses to approve such request, Contractor shall pay any additional shipping or transportation costs or expenses (mileage and hours). If Owner pays such additional costs or expenses instead of Contractor, then Owner may invoice such costs or expenses to the Contractor or withhold such costs or expenses from progress payments and/or retention.
- c. **ADVANCE NOTICE TO INSPECTOR OF RECORD.** The Contractor shall notify the Inspector of Record a sufficient time in advance of its readiness for required observation or inspection so that the Inspector of Record may arrange for same. The Contractor shall notify the Inspector of Record a sufficient time in advance of the manufacture of material to be supplied under the Agreement Documents which must, by terms of the Agreement Documents, be tested in order that the Inspector of Record may arrange for the testing of the material at the source of supply.
- d. **TESTING OFF-SITE.** Any material shipped by the Contractor from the source of supply, prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said Inspector of Record that such testing and inspection will not be required, shall not be incorporated in the work.
- e. **ADDITIONAL TESTING OR INSPECTION.** If the Inspector of Record, the Architect, the Owner, or public authority having jurisdiction determines that portions of the work require additional testing, inspection, or approval not included, the Inspector of Record will, upon written authorization from the Owner, make arrangements for such additional testing, inspection, or approval. The Owner shall bear such costs for basic testing at the District's selected Independent Inspection Laboratory, except as provided for in sections 2, 6, and 7 where the Contractor shall pay for those testing, inspections or approvals.

- f. COSTS FOR RETESTING. If such procedures for testing, inspection, or approval under the previous sections reveal failure of the portions of the work to comply with requirements established by the Agreement Documents, the Contractor shall bear all costs arising from such failure, including those of re-testing, re-inspection, or re-approval, including, but not limited to, compensation for the Architect's services and expenses. Any such costs shall be paid by the Owner, invoiced to the Contractor, and, among other remedies, can be withheld from progress payments and/or retention.
- g. COSTS FOR PREMATURE TEST. In the event the Contractor requests any test or inspection for the Project and is not completely ready for the inspection, the Contractor shall be invoiced by the Owner for all costs and expenses resulting from that testing or inspection, including, but not limited to, the Architect's fees and expenses, and the amount of the invoice can among other remedies, be withheld from progress payments and/or retention.
- h. TESTS OR INSPECTIONS NOT TO DELAY WORK. Tests or inspections conducted pursuant to the Agreement Documents shall be made promptly to avoid unreasonable delay in the work.

12. SPECIAL CONSTRUCTION PROVISIONS

- a. TRENCHES OR EXCAVATIONS GREATER THAN FOUR FEET BELOW THE SURFACE. Pursuant to Public Contract Code section 7104, when any excavation or trenching extends greater than four feet below the surface:
 - i. The Contractor shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, if any.
 - ii. Material that the Contractor believes may be material that is hazardous waste, as defined in California Health and Safety Code section 25117, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law.
 - iii. Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.
 - iv. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Agreement Documents.
 - v. The public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the Agreement Documents.
 - vi. In the event that a dispute arises between the public entity and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from the Completion Deadline provided for by the Agreement Documents, but shall proceed with all work to be performed under the Agreement Documents. The Contractor shall retain any and all rights provided either by the Agreement Documents or by law which pertain to the resolution of disputes and protests between the contracting Parties.
 - vii. The Contractor shall promptly notify the District, who shall notify the County of Santa Clara, before any further site conditions are disturbed, of the presence of any historical objects including Native American archaeological/historical artifacts. The Work shall be put on hold until authorization is given to proceed.
- b. EXISTING UTILITY LINES; REMOVAL, RELOCATION. Pursuant to Government Code section 4215, the Owner assumes the responsibility for removal, relocation, and protection of utilities located on the site at the time of commencement of construction under this Agreement with respect to any such utility facilities which are not identified in this Agreement, the plans and specifications. The Contractor shall not be assessed for liquidated damages for delay in completion of the Project caused by failure of the Owner to provide for removal or relocation of such utility facilities. Owner shall compensate the Contractor for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, removing or relocating such utility facilities, and for equipment necessarily idle during such work.
- c. STORM WATER DISCHARGE PERMIT. If Applicable.
- d. ROOFING CERTIFICATION. Requirement pursuant to California Public Contract Code sections 3000 - 3010. For all projects that include a scope of work that meets the definition of a "roof project", the District shall require the contractor, and its listed roofing subcontractor, to disclose financial relationships by signing and submitting certifications as set forth in Public Contract Code section 3006(b) prior to award of the contract. The awarding contractor shall also be responsible for obtaining certification of its roofing manufacturer(s), and roofing vendor(s) used in the course of construction. California Public Contract Code section 3000 defines a "roof project" as a project for the replacement or repair of a roof of a public facility, except that "roof project" does not include a project for the repair of 25 percent or less of the roof or a repair project that has a total cost of twenty-one thousand dollars (\$21,000) or less, or for emergency repair work pursuant to Public Contract Code section 20654. Disclosure of a financial relationship in which that person or entity is a stockholder of a corporation of which the stock is listed for sale to the general public on a national securities exchange and registered with the United States Securities and Exchange Commission, if the person or entity holds less than 10 percent of the outstanding stock entitled to vote at the annual meeting of the corporation, is not required. A materials manufacturer, contractor, or vendor who knowingly provides false information or fails to disclose a financial relationship pursuant to this section shall be liable to the District for any costs to the District that are reasonably attributable to excess or unnecessary costs, when compared to competing bids, incurred by the District as a result of the undisclosed financial relationship.
- e. DIVISION OF STATE ARCHITECTS (DSA) OVERSIGHT. If Applicable.

13. MISCELLANEOUS

- a. CLAIMS RESOLUTION.
 - i. CONTRACTOR CONTINUATION OF WORK. Notwithstanding any claim, dispute, disagreement or other matter in controversy between the District and the Contractor relating to the Contract Documents or the Project Work, the Contractor shall continue to diligently prosecute

and perform the Work, pending any final determination or decision regarding any such claim, dispute, disagreement or matter in controversy.

- ii. PUBLIC CONTRACT CODE §9204 CLAIMS RESOLUTION PROCEDURES. Claims of the Contractor are subject to the non-binding dispute resolution procedures set forth in Public Contract Code §9204 ("Section 9204").
- iii. CONTRACTOR CLAIMS. Contractor Claims are subject to the Section 9204 procedures provided, however, that the Section 9204 procedures are expressly subject to the Contractor's prior full and timely compliance with requirements and procedures of the Contract Documents relating to submittal and resolution of Claims, change orders, disputes and other matters in controversy under the Contract Documents. By this reference, the Section 9204 procedures are incorporated herein.
- iv. SUBCONTRACTOR CLAIMS. Subcontractor Claims are subject to Section 9204 procedures, as modified herein. The District's review of Subcontractor Claims is expressly subject to the Contractor's submittal of a duly completed and executed form of Contractor Certification of Subcontractor Claim certifying that the Contractor has thoroughly reviewed the Subcontractor Claim and based on the Contractor's review, certify that: (i) the Subcontractor Claim is made by the Subcontractor in good faith; (ii) the Subcontractor Claim is supported by reasonable documentation establishing entitlement to the relief requested and District liability therefor; and (iii) the Subcontractor Claim does not incorporate any request constituting a False Claim under applicable law, including the California False Claim Act (Government Code §12650 et seq.).
- v. CONTRACTOR COMPLIANCE WITH GOVERNMENT CODE CLAIMS PROCEDURES. Disputed Claims and other matters in controversy asserted by the Contractor against the District are a "suit for money or damages" and subject to Government Code §§945.4, 945.6 and 946 ("Government Code Claims Process"). An express condition precedent to the Contractor's initiation of Section 20104.4 Dispute Resolution Procedures or Small Claims Court proceedings is the Contractor's compliance with the Government Code Claims Process.
- vi. DISPUTED CLAIMS. Claims not resolved by the Section 9204 Procedures are subject to Small Claims Court proceedings or binding dispute resolution procedures of Public Contract Code §20104.4 (Section 20104.4 Dispute Resolution Procedures).
- vii. CLAIMS WITHIN SMALL CLAIMS COURT JURISDICTION. Small Claims Court is the exclusive tribunal for binding resolution of Disputed Claims valued at or less than the then current jurisdictional limits of the Small Claims Court. Venue for any Small Claims Court proceeding shall be in Santa Clara County.
- viii. SECTION 20104.4 DISPUTE RESOLUTION PROCEDURES; CLAIMS LESS THAN \$375,000. Disputed Claims of \$375,000 or less and more than the then current Small Claims Court jurisdictional limits shall be resolved in accordance with the civil action procedures established in Public Contract Code §20104.4. Mediation conducted pursuant to Section 9204 Procedures shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.
- ix. LIMITATION ON SPECIAL/ CONSEQUENTIAL DAMAGES. In the event of the District's breach or default of its obligations under the Contract Documents, the damages, if any, recoverable by the Contractor are limited to general damages directly caused by the breach or default and shall exclude any and all special or consequential damages, if any. The Contractor expressly waives and relinquishes any recovery of special or consequential damages from the District, including but not limited to home and field overhead expenses and potential lost profits.
- x. ATTORNEYS' FEES: Except as expressly provided for in the Contract Documents, or authorized by the Laws, neither the District nor the Contractor shall recover from the other any attorneys' fees or other costs associated with or arising out of any legal, administrative or other proceedings filed or instituted in connection with or arising out of the Contract Documents or the performance of either the District or the Contractor thereunder.
- b. AUDIT. The District shall have the right to review, audit, and to copy records and supporting documentation of the Contractor and Subcontractors relating to performance of the Contract. Contractor agrees to maintain such records for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated or required by the Laws. Contractor agrees to allow the District access to these records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.
- c. GOVERNING LAW; INTERPRETATION; VENUE. This Contract is governed by the laws of the State of California and shall be interpreted as a whole and not in favor of the District or the Contractor. Venue for any legal proceeding shall be the Superior Court for the County of Santa Clara.
- d. FORCE MAJEURE. The Contractor and District are excused from performance during the time and to the extent that they are prevented from obtaining, delivering, or performing by act of God, health department shutdowns, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, products, plants or facilities by the government, when satisfactory evidence thereof is presented to the other party, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the party not performing.
- e. SUCCESSORS: This Contract shall be binding upon and inure to the benefit of the respective successors-in-interest of the District and the Contractor. The foregoing notwithstanding, the Contractor shall not assign by this Contract, any right or obligation hereunder or any portion thereof.
- f. DAYS: Unless otherwise stated in the Contract, all references to "days" shall be deemed references to calendar days.
- g. TIME: Time is of the essence in performance and completion of obligations under the Contract.
- h. NO ORAL MODIFICATIONS: The terms of the Contract shall be modified only by written instrument duly executed on behalf of the Contractor and District Board. No term or condition of the Contract shall be modified or amended except by a subsequent writing executed by the District and Contractor and approved or ratified by the District's Board. Verbal or oral modifications to the Contract are not enforceable.

- i. NO DISTRICT WAIVER. District's purported waiver or delayed enforcement of any term, condition, covenant or obligation of the Contractor under the Contract Documents shall not: (i) constitute the District's waiver or modification of such term, condition, covenant or obligation; or (ii) limit, restrict or impair the District's enforcement of such term, condition, covenant or obligation.
- j. PROVISIONS REQUIRED BY THE LAWS DEEMED INSERTED. Provisions required by the Laws to be incorporated into the Contract Documents are deemed incorporated herein and the Contract Documents shall be read and enforced as though such provisions are incorporated herein.
- k. CONFLICTS/INCONSISTENCIES. In the event of conflict or inconsistency between the Contract and these Terms and Conditions ("Contract") and the terms of Contractor's Quote/Proposal, the terms of the Contract shall prevail. It is further agreed that District's attachment of the Contractor's Quote/Proposal shall not constitute a modification, amendment or limitation of any term or condition of the Contract unless such term or condition is expressly set forth in writing in this Contract.
- l. SEVERABILITY. If any provision of this Contract is declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be a part of this Contract.
- m. INDEPENDENT CONTRACTOR STATUS. While engaged in carrying out the terms and conditions of the Contract, the Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venturer of the District.
- n. NON-DISCRIMINATORY EMPLOYMENT PRACTICES. The Contractor and Subcontractors shall comply with District Policies prohibiting discriminatory practices against employees or prospective employees based on race, color, ancestry, national origin, religious creed, sex, age, sexual preference, marital status or other classification protected by the Laws. Contractor agrees to abide by this policy and to comply with Laws prohibiting discriminatory employment practices, including the California Fair Employment Practice Act.
- o. ENTIRE CONTRACT. The Contract Documents contain the entire agreement and understanding between the District and the Contractor concerning the subject matter hereof, and supersedes and replaces all prior negotiations, proposed contracts or amendments, whether written or oral.