

**TERMS AND CONDITIONS OF
CUPCAA INFORMAL BID
(Public Works and Maintenance)**

1. **Labor and Materials.** The Contractor shall furnish and pay for all labor, materials, equipment and services necessary to complete the Work in accordance with the Contract Documents. Unless otherwise expressly provided for in the Contract Documents, all materials, equipment and other items incorporated into the Work shall be new and of the most suitable grade and quality for the purpose intended. The Work is subject to tests/inspections as required by the Contract Documents. The Contractor shall afford the District, the Project Inspector, the Architect and test/inspection services with access to the Work, wherever located and whether in place or in progress. All of the Work shall conform to the requirements of the Contract Documents and applicable laws, ordinances, rules and regulations.
2. **Submittals.** The Contractor shall submit to the District Representative or the Architect, as designated in the Contract Documents, shop drawings, product data and other submittals (collectively "Submittals") required by the Contract Documents promptly and in an orderly sequence while allowing sufficient time for review and comment. No portion of the Work requiring Submittals shall be performed until the required Submittals have been reviewed and accepted.
3. **Construction Schedule.** If required by the Contract Documents, the Contractor shall prepare a Construction Schedule in such form and format required by the Contract Documents. 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 Construction Schedule is required, the Contractor shall update the schedule monthly or more frequently as directed by the District or required by the circumstances of the Work.
4. **Changes.**
 - 4.1 Changes to the Work. The District may, by written order, make Changes to the Work, issue additional instructions and to add to or delete from the Work. No Change may be made without the prior written approval and direction of the District. Adjustments of the Contract Price or the Contract Time on account of a Change authorized hereunder will only be made by written Change Order duly executed by the Contractor and the District Representative. Adjustments to the Contract Price for authorized Changes shall be limited to the actual costs of labor and materials necessary to complete the Change plus the mark-up set forth in the Contract; it being agreed that the mark-up represents all compensation due the Contractor for profit, overhead/administrative costs and impacts of an authorized Change. Changes approved by the District shall be reduced to Change Order in the form established by the District.
 - 4.2 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.
 - 4.2.1 Subcontractor Performed Changes. For the portion of a Change performed by Subcontractors, the mark-up on actual direct labor and materials costs incurred the Subcontractors is Ten Percent (10%). In addition, the Contractor may add an amount equal to Five Percent (5%) of the Subcontractors actual direct labor and materials costs; the Contractor's mark-up shall not be applied to the Subcontractors mark-up.
 - 4.2.2 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%).
 - 4.2.3 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.
 - 4.3 Change Orders. If the District approves of a Change, a written Change Order prepared by the Architect on behalf of the District shall be forwarded to the Contractor describing the Change and setting forth the adjustment to the Contract Time and the Contract Price, if any, on account of such Change. All Change Orders shall be in full payment and final settlement of all claims for direct, indirect and consequential costs, including without limitation, costs of delays or impacts related to, or arising out of, items covered and affected by the Change Order, as well as any adjustments to the Contract Time. Any claim or item relating to any Change incorporated into a Change Order not presented by the Contractor for inclusion in the Change Order shall be deemed waived. The Contractor shall execute the Change Order prepared pursuant to the foregoing; once the Change Order has been prepared and forwarded to the Contractor for execution, without the prior approval of the District which may be granted or withheld in the sole and exclusive discretion of the District, the Contractor shall not modify or amend the form or content of such Change Order, or any portion thereof. The Contractor's attempted or purported modification or amendment of any such Change Order, without the prior approval of the District, shall not be binding upon the District; any such unapproved modification or amendment to such Change Order shall be null, void and unenforceable. Unless otherwise expressly provided for in the Contract Documents or in the Change Order, any Change Order issued hereunder shall be binding upon the District only upon action of the District's Board of Trustees approving

and ratifying such Change Order. In the event of any amendment or modification made by the Contractor to a Change Order for which there is no prior approval by the District, in accordance with the provisions of this Article 4.2, unless otherwise expressly stated in its approval and ratification of such Change Order, any action of the Board of Trustees to approve and ratify such Change Order shall be deemed to be limited to the Change Order as prepared by the Architect; such approval and ratification of such Change Order shall not be deemed the District's approval and ratification of any unapproved amendment or modification by the Contractor to such Change Order.

- 4.4 Contractor Notice of Changes. If the Contractor claims that any instruction, request, the Drawings, the Specifications, action, condition, omission, default, or other situation obligates the District to increase the Contract Price or to extend the Contract Time, the Contractor shall notify the Project Manager, if any, the Project Inspector and the Architect, in writing, of such claim within ten (10) days from the date of its actual or constructive notice of the factual basis supporting the same. The District shall consider any such claim of the Contractor only if sufficient supporting documentation is submitted with the Contractor's notice to the Project Inspector and the Architect. Time is of the essence in Contractor's written notice pursuant to the preceding sentence so that the District can promptly investigate and consider alternative measures to the address such instruction, request, Drawings, Specifications, action, condition, omission, default or other situation. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice (with sufficient supporting documentation to permit the District's review and evaluation) within ten (10) days of its actual or constructive knowledge of any instruction, request, Drawings, Specifications, action, condition, omission, default or other situation for which the Contractor believes there should be an adjustment of the Contract Time or the Contract Price shall be deemed Contractor's waiver, release, discharge and relinquishment of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of any such instruction, request, Drawings, Specifications, action, condition, omission, default or other situation. In the event that the District determines that the Contract Price or the Contract Time are subject to adjustment based upon the events, circumstances and supporting documentation submitted with the Contractor's written notice under this Article.
- 4.5 Unilateral Change Order. The District may, in its sole reasonable discretion, issue a Unilateral Change Order for any Change to the Work authorized by the District when the Contractor and the District have been unable to reach mutual agreement as to the extent of any adjustment to the Contract Price or Contract Time on account of such Change. If the District elects to issue a Unilateral Change Order, the District shall forward to the Contractor a copy of the proposed Unilateral Change Order (for the Contractor's information) at least ten (10) days prior to the date of the Board of Trustees' meeting to review and consider approval

of the Unilateral Change Order. Any Unilateral Change Order issued hereunder shall be binding upon the District and Contractor only if the District's Board of Trustees' takes action to approve or ratify the Unilateral Change Order. Notwithstanding any provision of the Contract Documents to the contrary, an express condition precedent to the Contractor's exercise of rights and remedies relating to a Unilateral Change Order, is the Contractor's written notice to the District of the Contractor's objections to all or any portion of a Unilateral Change Order within ten (10) days after the date of the Board of Trustees meeting ratifying or approving a Unilateral Change Order; failure of the Contractor to do so is deemed the Contractor's acceptance of the entirety of a Unilateral Change Order, as approved or ratified by the District's Board of Trustees and an express unequivocal waiver by the Contractor of any right or remedy of the Contractor, under the Contract Documents or the Laws to: (i) object to the Unilateral Change Order or any portion thereof; or (ii) further adjustment of the Contract Time or the Contract Price on account of the Change(s) incorporated into a Unilateral Change Order.

- 4.6 Allowances. If the Contract Price for the Work incorporates any Allowances for any Allowance Items, use of any portion of the Allowance shall be subject to the District's prior authorization and consent. If the Allowance designated for an Allowance Item is not fully used pursuant to the District's authorization and consent, the remaining Allowance shall be deducted from the Contract Price by deductive Change Order.
- 4.7 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 thirty-five (35) days after the date of award of the Contract to the Contractor. The Contractor shall reimburse the District for all costs and expenses incurred by the District to review a proposed substitution for Specified Items. The District's acceptance or rejection of a proposed substitution shall be 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 shall be 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.
- 4.8 Addition or Deletion of Alternate Bid Item(s). If Alternate Bid Item(s) were included in the bidding for the Work, during performance of the Work, the District may elect, to add any such Alternate Bid Item(s) if the same did not form a basis for award of the Contract or delete any such

Alternate Bid Item(s) if they formed a basis for award of the Contract. If the District elects to add or delete any such Alternate Bid Item(s) pursuant to the foregoing, the cost or credit for such Alternate Bid Item(s) shall be as set forth in the Contractor's price proposal for the Alternate Bid Item.

5. Safety; Security.

5.1 Safety. The Contractor shall comply with all applicable laws, ordinances, rules, or regulations pertaining to safety at the Site. The Contractor shall implement and enforce personal safety measures required by all applicable laws, ordinances, rules or regulations for all personnel at the Site. The Contractor shall implement site safety measure such as fencing, barricades, signs, lights and other precautions to prevent injury or death to persons or damage to property. The Contract Price and the Contract Time are not subject to adjustment for the Contractor's compliance with personal and site safety requirements.

5.2 Security. The Contractor is responsible for securing the Site and Work in place or in progress (including materials/equipment/tools situated at the Site) to prevent theft, loss or damage. The District and employees, officers, agents or representatives of the District are not liable to the Contractor, Subcontractors or their respective personnel for the loss, theft, damage or destruction of materials, equipment, tools and other personal property items, whether or not such personal property is used to complete the Work or is incorporated into the Work. The risk of such loss, theft, damage or destruction is solely that of the Contractor or Subcontractors.

6. Labor.

6.1 Prevailing Wage Rates. The Contractor and all Subcontractors shall: (i) pay their respective workers at least 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. During the Work and pursuant to Labor Code §1771.4(a)(4), the Department of Industrial Relations will monitor and enforce the prevailing wage rate obligations of the Contractor and Subcontractors. The Contractor shall comply with all requirements established by the Department of Industrial Relations relating prevailing wage rates, the payment thereof and posting of notices relating thereto. The Contractor is subject to all assessments, penalties and other charges for prevailing wage rate violations.

6.2 Apprentices. Apprentices, if any engaged in performing any portion of the Work shall be in strict conformity with applicable laws, rules and regulations, including without limitation, Labor Code §§1777.5 through 1777.7, which are incorporated herein by this reference.

6.3 DIR Registration.

6.3.1 Contractor and Subcontractor Compliance. Strict compliance with DIR Registration requirements pursuant to Labor Code §1725.5 is a material obligation of the Contractor hereunder. The foregoing includes without limitation, compliance

with DIR Registration requirements at all times during performance of the Work by the Contractor and all Subcontractors of any tier. No portion of the Work is permitted to be performed by a Subcontractor of any tier unless the Subcontractor is a DIR Registered contractor. The failure of the Contractor and all Subcontractors of every tier to be DIR Registered at all times during performance of the Work is the Contractor's default of a material obligation of the Contractor under the Contract Documents.

6.3.2 Contractor Obligation to Verify Subcontractor DIR Registration Status. An affirmative and on-going obligation of the Contractor under the Contract Documents is the Contractor's verification that all Subcontractors, of all tiers, are at all times during performance of the Work in full and strict compliance with DIR Registration requirements. The Contractor shall not permit or allow any Subcontractor of any tier to perform any Work without the Contractor's verification that all such Subcontractors are in full and strict compliance with DIR Registration requirements.

6.3.3 Contractor Obligation to Request Substitution of Non-DIR Registered Subcontractor. If any Subcontractor identified in the Contractor's Subcontractors List submitted with the Contractor's proposal for the Work is not DIR Registered at the time of opening of proposals for the Work or if a Subcontractor's DIR Registration lapses prior to or during a Subcontractor's performance of Work, the Contractor shall request the District's consent to substitute the non-DIR Registered Subcontractor pursuant to Labor Code §1771.1(c)(3) and/or Labor Code §1771.1(d).

6.3.4 Contractor/Subcontractor Penalties pursuant to § 1771.1(g). "If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars (\$100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars (\$8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5."

6.3.5 Subcontractor Penalties pursuant to § 1771.1 (h)(1). "In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars (\$100) for each day the unregistered lower tier subcontractor performs work in violation of

the registration requirement, not to exceed an aggregate penalty of ten thousand dollars (\$10,000)."

6.4 Certified Payroll Records.

6.4.1 Compliance With Labor Code §§1771.4 and 1776. A material obligation of the Contractor under the Contract Documents is: (i) the Contractor's strict compliance with the requirements pursuant to Labor Code §§ 1771.4 and 1776 for preparation and submittal of Certified Payroll Records ("CPR"); and (ii) the Contractor's enforcement of CPR preparation and submittal for all Subcontractors of every tier.

6.4.2 Express Condition Precedent to Payment of Contract Price. Strict compliance with CPR requirements established pursuant to Labor Code §1776 is an express condition precedent to the District's obligation to: (i) process any request for payment of any portion of the Contract Price; or (ii) to disburse any portion of the Contract Price to the Contractor. The Contractor shall demonstrate strict compliance with CPR preparation and submittal requirements by delivery to the District of electronic files or hard copies of all CPRs submitted by the Contractor and/or Subcontractors for the Work pursuant to Labor Code §§1771.4 and 1776 concurrently with the submittal thereof to the Labor Commissioner. The District: (i) shall not be obligated to process or disburse any portion of the Contract Price; or (ii) shall not be deemed in default of the District's obligations under the Contract Documents unless the Contractor's demonstrates strict compliance with CPR preparation and submittal requirements.

6.5 Limits on Hours/Days of Work. The Contractor and Subcontractors shall not require or permit any worker to provide more than eight (8) hours of work per day or forty (40) hours of work per week without additional compensation as mandated by law.

6.6 Competency and Discipline. The Contractor shall enforce strict discipline and good order among the Contractor's employees, the employees of any Subcontractor and all other persons performing any part of the Work at the Site. Personnel of the Contractor or any Subcontractor shall be subject to removal from the Site for violations of applicable law 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 or Sub-subcontractor to dismiss from their employment any person deemed by the District to be unfit or incompetent to perform Work.

6.7 Superintendent. The Contractor shall employ a Superintendent fluent in verbal and written English who shall be in attendance at the Site at all times during performance of Work at the Site. The Superintendent shall be deemed the Contractor's Representative for the Work; directions, instructions or other communications to or with the Contractor's Superintendent shall be deemed directions, instructions or communications to or with the Contractor.

7. **Subcontractors.** The Work of each Subcontractor shall be set forth in a written Subcontract agreement incorporating by reference this Contract; Subcontracts shall be made available to the District for review upon request of the District. The Contractor is responsible to the District for the acts, omissions and other conduct of Subcontractors. Each Subcontractor shall maintain Workers Compensation/Employers Liability Insurance, Commercial General Liability Insurance, and Automobile Liability Insurance as required by the Contract for Labor and Materials.

8. **DSA.** If the Project is subject to jurisdiction of the Division of State Architect ("DSA"), all of the following shall apply.

8.1 Project Inspector. All Work shall be performed under the observation of the Project Inspector, whose authority is established by law and the Contract Documents. Duties of the Project Inspector shall not relieve or limit the Contractor's performance of its obligations under the Contract Documents. The Project Inspector does not have authority: (i) to interpret the Contract Documents or to modify the Work depicted in the Contract Documents; or (ii) relating to the Contractor's safety plan. The Contractor shall provide the Project Inspector access to the Project and all information, data and similar materials as necessary or appropriate for the Project Inspector's purposes of fulfilling the Project Inspector's obligations relating to observations and inspections of the Work.

8.2 DSA PR13-01 and Verified Reports. The Project is subject to DSA PR13-01. The Contractor shall timely complete all actions required of the contractor under DSA PR 13-01. The Contractor shall timely complete all actions required of a contractor under DSA Regulations for submittal of Verified Reports.

8.3 Construction Materials Tests/Inspections. If construction materials incorporated into the Project are subject to tests/inspections by the Contract Documents or DSA requirements, tests/inspections will be conducted by qualified consultants selected by the District. The Contractor shall comply and cooperate with the District to schedule and coordinate conduct of tests/inspections with the progress of Work. The Contractor is liable for costs, fees, expenses and other losses arising out of failure of any construction materials to comply with standards required by DSA and/or the Contract Documents upon completion of the initial test/inspection of such materials.

9. **Payment of the Contract Price.**

9.1 Contract Time Sixty (60) Days Or Less. If the Contract Time is Sixty (60) days or less, the District will make payment of the Contract Price upon completion of the Work, the Contractor's full performance of all other obligations under this Contract Documents and the Contractor's submission of a properly itemized invoice. Upon receipt of the Contractor's invoice, the District Representative will promptly verify that the Work has been completed and that the Contractor has performed all other obligations hereunder. Within thirty (30) days of the District Representative confirmation of the completion of Work

and the Contractor's performance of other obligations hereunder, the District will make payment of the Contract Price.

- 9.2 Contract Time Sixty (60) Days or More. If the Contract Time is a duration of sixty (60) days or more, the Contractor may submit invoices on a monthly basis for the value of Work completed in the prior month, whereupon the District Representative will promptly verify that the Work has been completed as indicated in the Contractor's invoice. Within thirty (30) days of the date of such verification, the District will make payment equal to ninety five percent (95%) of the value of the Work completed. Within sixty (60) days of completion of all Work and all other of the Contractor's obligations hereunder, amounts previously retained from prior invoices will be released to the Contractor.
- 9.3 Contractor Disbursement of Contract Price. The District may, in its sole discretion, condition payment of the Contract Price, or any portion thereof, upon: (i) the Contractor's preparation of a Schedule of Values for review and acceptance by the District's Representative; (ii) the submittal of executed Waivers and Releases (on Progress Payment or Final Payment, as applicable) for the Contractor and all Subcontractors receiving any portion of the Contract Price; and/or (iii) submittal of Verification of Certified Payroll Records Submittal to Labor Commissioner.
- 9.4 District Deducts and Withholds From Contract Price. The District may deduct from the Contract Price and withhold disbursement of the Contract Price for any of the following: (i) Liquidated Damages; (ii) sums expended by the District to perform the Contractor's obligations under the Contract Documents; (iii) defective or non-conforming Project Work not remedied; (iv) stop payment notice claims; (v) reasonable doubt that the Project can be completed for the unpaid balance of the Contract Price or within the Contract Time; (vi) unsatisfactory prosecution of the Project Work; (vii) unauthorized deviations from requirements of the Contract Documents; (ix) losses, damages or costs arising out of the Contractor's default or breach of obligations; and (x) any other sums which the District is entitled or required to withhold from the Contractor the Contract Documents or the Laws. The failure by the District to deduct any of these sums from a progress payment shall not constitute a waiver of the District's right to subsequently deduct and withhold such sums.
- 10. **Insurance.** The Contractor and Subcontractors shall maintain in force during performance of the Work the following policies of insurance in the minimum coverage limits set forth in the Contract. The costs for obtaining and maintaining the insurance coverages required herein is included in the Contract Price:
 - 10.1 Workers Compensation. The Workers Compensation insurance shall cover claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work. The Contractor acknowledges that it is aware of the requirements under Labor Code §3700 for the Contractor to obtain and maintain workers

compensation insurance; at all times during the Work of the Project, the Contractor shall comply with the requirements of Labor Code §3700.

- 10.2 Employers' Liability. The Employer's Liability Insurance shall cover bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment by Contractor. The Employer's Liability Insurance may be obtained as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance policy.
- 10.3 Commercial General Liability Insurance. The General Liability insurance policies shall cover personal injury, bodily injury, death, other injury and property damage losses.
- 10.4 Contractor's Pollution Liability. If required by the Contract Documents, the Contractor Pollution Liability policy shall cover losses for bodily injury, property damage, defense, and cleanup as a result of pollution conditions (sudden/accidental and gradual) arising from contracting operations performed by or on behalf of the Contractor, except for fungus/spore coverage.
- 10.5 Automobile Liability. If the Contractor's commercial general liability insurance policy does not include automobile liability coverage, the Contractor shall obtain a separate automobile liability insurance policy. The Automobile Liability insurance shall cover losses for bodily injury, death or property damage arising out of use or operation of owned, non-owned and hired vehicles.
- 10.6 Builders Risk. If required by the Contract Documents, the Builders' Risk insurance shall cover all risks of direct physical loss basis, or an amount equal to the full completed value the Project Work. The Builders Risk policy deductible shall not exceed \$250,000 for each loss.
- 10.7 Insurer Requirements. All policies of insurance shall be issued by insurer(s) are: (a) A.M. Best rated A- or better; (b) A.M. Best Financial Size Category VII or higher; and (c) authorized under California law to transact business in the State of California and authorized to issue insurance policies in the State of California.
- 10.8 Certificates Of Insurance. Before commencing the Work, the Contractor and its Subcontractors shall provide to the District Representative certificate(s) of insurance and endorsements establishing conformity to insurance coverage requirements. No Work is permitted at the Site until the Contractor delivers Certificates of Insurance to the District Representative evidencing insurance policies/coverages required by the Contract. The Contract Time is not subject to extension for the Contractor's delayed delivery

of Certificates of Insurance to the District Representative.

10.9 **Policy Requirements.** The policies of insurance obtained by the Contractor and Subcontractors shall not be amended or modified and the coverage amounts shall not be reduced without at least thirty (30) days advance written notice to the District. Except for workers compensation insurance, the District must be named as an additional insured on all policies. The Contractor's policies are primary; any insurance carried by the District are only secondary and supplemental. All endorsements must waive any right to subrogation against any of the named additional insureds. All policies must be written on an occurrence form.

11. **Indemnification.** The Contractor shall indemnify, defend and hold harmless the District, the District's Board of Trustees and all members thereof and the District's employees, officers, agents and representatives from all claims, demands and liabilities, including without limitation, attorneys fees, which arise out of or related in any manner to this Contract or the Work. The Contractor's obligations hereunder include without limitation: (a) injury to, or death of, persons; (b) damage to property; (c) theft or loss of property; (d) Stop Notice claims; and (e) other losses, damages or costs arising out of, in whole or in part, of the negligent, grossly negligent or willful conduct of the Contractor or Subcontractors. The Contractor's obligations hereunder shall survive termination of the Contract and/or completion of the Work, and are incorporated into and made a part of the obligations of the Surety issuing the Performance Bond.

12. **Suspension and Termination.**

12.1 **Contractor Default.** The Contractor's failure to comply with any term or condition of the Contract Documents shall constitute default of the Contractor; in such event, the District may terminate the Contract upon written notice to the Contractor. If the District terminates the Contract for default of the Contractor, the Contractor and the Performance Bond Surety shall be liable to the District for all losses, costs and damages arising out of the Contractor's default and costs to complete the Work which exceeds the remaining Contract Price at the time of termination.

12.2 **District Termination for Convenience.** The District may terminate this 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; no payment shall be made or due from the District for the unperformed portion of the Work.

12.3 **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.

13. **Warranty.**

13.1 **Warranty and Guarantee Obligations.** The Contractor warrants to the District that: (i) all materials and equipment furnished under the Contract Documents are new, of good quality and of the most suitable grade and quality for the purpose intended, unless otherwise specified in the Contract Documents; and (ii) all Work and workmanship is of good quality, free from faults and defects and in conformity with the requirements of the Contract Documents. If within one (1) year, or such other period set forth in the Contract Documents, any of the Work or workmanship is found defective or not in compliance with the Contract Documents, the Contractor shall upon the District's demand, promptly take all measures necessary to correct, repair or replace such Work or workmanship. If the Contractor fails to do so, the District may take necessary action to correct, replace or replace such Work or workmanship at the cost and expense of the Contractor. The surety issuing the Performance Bond is liable to the District for correction, repair or replacement of defective/non-conforming parts of the Project or workmanship if the Contractor fails or refuses to perform in accordance with the preceding.

13.2 **Guarantee.** Upon completion of the Work, Contractor shall execute and deliver to the District the form of Guarantee included within the Contract Documents. The Contractor's execution and delivery of the form of Guarantee is an express condition precedent to any obligation of the District to disburse the Final Payment to the Contractor.

13.3 **Survival of Warranties.** The Contractor's warranty and guaranty obligations hereunder shall survive the Contractor's completion of Work under the Contract Documents, the District's Final Acceptance or the termination of the Contract.

14. **Miscellaneous.**

14.1 **Disputes; Continuation of Work.** Notwithstanding any claim, dispute or other disagreement between the District and the Contractor regarding performance under the Contract Documents, the scope of Work thereunder, or any other matter arising out of or related to, in any manner, the Contract Documents or the Work, the Contractor shall proceed diligently with performance of the Work in accordance with the District's written direction, pending any final determination or decision regarding any such claim, dispute or disagreement.

14.2 **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”).

14.2.1 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.

14.2.2 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.). The form of Contractor Certification of Subcontractor Claim is included in the Contract Documents.

14.2.3 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 §20104.4 Dispute Resolution Procedures is the Contractor’s compliance with the Government Code Claims Process.

14.2.4 Disputed Claims. Claims not resolved by the Section 9204 Procedures are subject to the binding dispute resolution procedures of Public Contract Code §20104.4 (Section 20104.4 Dispute Resolution Procedures).

14.2.5 Section 20104.4 Dispute Resolution Procedures, Claims Less Than \$375,000. Disputed Claims of \$375,000 or less 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.

14.3 Governing Law; Interpretation. This Contract shall be governed by the laws of the State of California. This

Contract shall be interpreted as a whole and not in favor of the District or the Contractor.

14.4 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 this Contract, any right or obligation hereunder or any portion thereof.

14.5 Permits; Approvals. Unless otherwise expressly provided in the Contract Documents, the Contractor shall obtain and pay for all fees, permits or approvals necessary to complete the Work.

14.6 Non-Discrimination. The Contractor and its Subcontractors shall not discriminate against any active or prospective employee based upon race, color, ancestry, national origin, religion, sex, age, sexual preference or marital status. The Contractor and its Subcontractors shall comply with all applicable laws, ordinances, rules and regulations prohibiting workplace discrimination and/or discriminatory employment practices.

14.7 Disabled Accessibility and Electronic And Information Technologies. Contractor hereby warrants that any goods or services, including any hardware or software products or services, to be provided under the Agreement comply with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention and will designate a contact person for expediting any complaints applicable to California Government Code §11135. Contractor further agrees to indemnify, defend, and hold harmless the District, from any claim arising out of its failure to comply with these requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of the Agreement. Contractor and any of its Subcontractors shall provide credible, third-party verification demonstrating compliance of product accessibility per current requirements of the revised US Section 508 Standards or Web Content Accessibility Guidelines 2.0, Level AA (WCAG 2.0, AA) upon initial deployment and with each major subsequent release prior to production use by faculty, staff, or students. Appropriate documentation detailing the testing, including evaluation results, will be current and maintained.

14.8 Days. Unless otherwise stated in the Contract Documents, all references to “days” shall be deemed references to calendar days.

14.9 Severability. If any term, condition or provision of this Contract is deemed invalid, illegal or unenforceable by a Court of competent jurisdiction, such term, condition or provision shall be deemed severed herefrom, but all other terms, conditions and provisions hereof shall remain unaffected and in full force and effect.

14.10 Attorneys' Fees. Except as expressly provided for in the Contract Documents, or authorized by law, 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, the performance of either the District or the Contractor thereunder, or enforcement hereof.

14.11 Provisions Required by the Laws Deemed Incorporated.

Each and every provision of law and clause required by the Laws to be inserted in the Contract Documents is deemed to be incorporated herein and the Contract Documents shall be read and enforced as though such provision or clause are included herein, and if through mistake, or otherwise, any such provision or clause is not inserted or if not correctly inserted, then upon application of either party, the Contract Documents shall forthwith be physically amended to make such revision.

14.12 No Oral Modifications. The terms of the Contract shall be modified only by written instrument duly executed on behalf of the Contractor and District. Verbal or oral modifications to the Contract of terms thereof are not valid or enforceable.

14.13 Entire Agreement. 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 agreements or amendments, whether written or oral. No amendment or modification to any provision of the Contract Documents shall be effective or enforceable except by an agreement in writing executed by the District and the Contractor.

[END OF SECTION]