

Agreement Between Owner and Design-Build Entity (DBE)

AGREEMENT October 6, 2022

BETWEEN the Owner:

Cambrian School District
415 Jacksol Drive
San Jose, CA 95124

and the DBE:

JL Construction, Inc.
70 Stony Point Road, Suite D
Santa Rosa, CA 95401

for the following Project:

Permanent Modular Building Project – Increment 2
RFP No. 22-001

The Owner and DBE agree as follows.

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 COMPENSATION AND PROGRESS PAYMENTS
- 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
- 4 WORK PRIOR TO EXECUTION OF THE NOTICE TO PROCEED WITH CONSTRUCTION
- 5 WORK FOLLOWING EXECUTION OF THE NOTICE TO PROCEED WITH CONSTRUCTION
- 6 CHANGES IN THE WORK
- 7 OWNER'S RESPONSIBILITIES
- 8 TIME
- 9 PAYMENT APPLICATIONS AND INCREMENT 2 PROJECT COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 UNCOVERING AND CORRECTION OF WORK
- 12 COPYRIGHTS AND LICENSES
- 13 TERMINATION OR SUSPENSION
- 14 CLAIMS AND DISPUTE RESOLUTION
- 15 MISCELLANEOUS PROVISIONS
- 16 SCOPE OF THE AGREEMENT

TABLE OF EXHIBITS

- A ATTACHMENT 1A – COST PROPOSAL FORM
- B APPROVED MODIFICATIONS TO THE COST PROPOSAL AND FINAL GMP
- C MONTHLY WORKFORCE REPORT
- D INSURANCE REQUIREMENTS
- E CERTIFICATIONS

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Request for Proposal (RFP) Amendment #1 dated 9-9-22 including all attachments and the DBE Entities Proposal dated September 15, 2022.

§ 1.1.1 Not Used.

§ 1.1.2 Not Used.

§ 1.1.3 Not Used.

§ 1.1.4 Not Used.

§ 1.1.5 Not Used

§ 1.1.6 The Guaranteed Maximum Price for the Increment 2 Work as discussed in Section 1.1.7.1 below to be provided by the DBE is set forth below:

Proposers Total GMP Cost Proposal for Increment 2 at all four sites is **\$12,541,000**.

§ 1.1.7 The Final Guaranteed Maximum Price (GMP) for the Increment 2 Work will be the sum of the Proposers initial Proposal amount plus or minus any agreed upon scope revisions discovered during the design, construction document preparation, DSA approvals, including any unforeseen or Owner requested revisions before and during construction. Modifications to the Proposers GMP

§ 1.1.7.1 Increment 2: The Increment 2 Work on the Project to be performed pursuant to the terms and conditions of this Agreement with the DBE, consists of the design, construction documents and installation of four single story modular buildings consisting of five (5) modular classroom each to be installed on permanent concrete foundations, one building each at the following four (4) school sites; (a) Price Middle School, 2650 New Jersey Avenue, San Jose, CA 95124; (b) Fammatre Elementary School, 2800 New Jersey Avenue, San Jose, CA 95124; (c) Farnham Elementary School, 15711 Woodard Road, San Jose, CA 95124; and (d) Sartorette Elementary School, 3850 Woodford Drive, San Jose, CA 95124 (individually referred to as a "School Site" or collectively as the "School Sites." The Increment 2 Work includes the complete design, obtaining all required DSA approvals for the Increment 2 Work and the Construction of the Buildings as further clarified on the Modular Scope Statement included in the Request for Proposal.

§ 1.1.7.2 Increment 1: The Increment 1 Work on the Project, which is outside the scope of this Agreement, includes all sitework, building pads, site utilities, and building low voltage systems required for each School Site in support of the Increment 2 Work. The Increment 1 Work will be performed by sealed bid contractors separate from this Agreement for the Increment 2 Work. The cost for the Increment 1 Work shall be separate and apart from the GMP for the Increment 2 Work.

§ 1.1.7.3 The Owner recognizes that the DSA review could result in changes to the design that may affect the GMP and Contract Time for the Increment 2 Work. The cost or time impact of these changes will be negotiated with DBE and the GMP and Contract Time will be revised if necessary. If the GMP or Contract Time is revised, a Design-Build Amendment will be prepared for Board approval.

§ 1.1.7.4 In accordance with Education Code section 17295, no construction of Increment 2 shall commence prior to the receipt of DSA approval of the plans and specifications for that Increment.

The provisions of this Section 1.1.7 are subject to the provisions set forth in Articles 4 and 5 herein.

§ 1.1.8 Not Used.

§ 1.1.9 Not Used.

§ 1.1.10 The DBE shall, subject to the Standard of Care defined in Section 3.1.3, confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the DBE shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the DBE shall execute a Modification in accordance with Article 6.

§ 1.1.12 Not Used.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representatives in accordance with Section 7.1.1:

John Pappalardo, Chief Financial Officer
415 Jacksol Drive
San Jose, CA 95124

Construction Manager:
RGM KRAMER
4020 Moorpark Ave,
Suite 220
San Jose, CA 95117

§ 1.2.2 The persons or entities, in addition to the Owner's construction manager, who are required to coordinate and review the DBE's documents and submittals are as follows:

Architect:
Sugimura Finney Architects
2115 S. Bascom Ave.,
Suite 200
Campbell, CA 950088

§ 1.2.3 The Owner will retain the following consultants and separate contractors:

Sitework, Utilities, Interior Low Voltage Systems Contractors and Vendors TBD.

§ 1.2.4 The DBE identifies the following representative in accordance with Section 3.1.2:

Kyle Chamberlain

§ 1.2.5 Key Personnel: The DBE identifies the following key personnel and levels of their commitment to the project (in accordance with 5.7):

Project Executive:	Kyle Chamberlain
Sr. Project Manager:	TBD
Principal in Charge/AOR:	Norm Wilson, Architect
Design Project Manager:	Jared Johnson
Sr. Project Designer:	NA
General Superintendent:	Randy Curran
Superintendent:	TBD

§ 1.2.6 Neither the Owner's nor the DBE's representative shall be changed without ten (10) days' written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.1.8, the method of binding dispute resolution shall be the following:

Arbitration pursuant to Sections 14.1.10 and 14.1.11.

§ 1.4 Definitions

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and DBE and its attached Exhibits (hereinafter, the “Agreement”); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive/Field Modification. In the event of a conflict or ambiguity between any term, condition or provision in the Exhibit B Proposal and the Owner’s Criteria, the Owner’s Criteria shall control. In the event of a conflict or ambiguity between any term, condition or provision in the Exhibit B Proposal and the Owner’s Request for Proposal, including all addenda, the Request for Proposal and addenda shall control. In the event of a conflict or ambiguity between any term, condition or provision in this A141 Agreement and the Owner’s Request for Proposal, including all addenda, this A141 Agreement shall control.

§ 1.4.2 **The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the DBE.

§ 1.4.3 **The Work.** The term “Work” means the design, construction and related services required to fulfill the DBE’s obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the DBE. The Work may constitute the whole or a part of the Project.

§ 1.4.4 **The Project.** The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 **Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the DBE, Subcontractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 **Submittal.** A Submittal is any submission to the Owner for review and approval demonstrating how the DBE proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 **Owner.** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Owner” means the Owner or the Owner’s authorized representative (Construction Manager or District’s Architect). The “Owner” is also referred to herein as the “District”.

§ 1.4.8 **DBE.** The DBE is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “DBE” means the DBE or the DBE’s authorized representative.

§ 1.4.9 **Consultant.** A Consultant is a person or entity providing professional services for the DBE for all or a portion of the Work and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the DBE for all or a portion of the Work and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Subcontractor. A Subcontractor is a person or entity performing all or a portion of the construction (including, if applicable, on a design-build basis), required in connection with the Work, for the DBE. All Subcontractors shall be lawfully licensed, if required in the jurisdiction where the Project is located. Subcontractors are referred to throughout the Design-Build Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. Subcontractors include all subcontractors of every tier.

§ 1.4.12 Not Used.

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, to achieve Substantial Completion of the Work. The Contract Time, or the time within which to achieve any milestone date, does not commence until issuance of an NTP as contemplated by Section 1.1.7 above.

§ 1.4.14 Day. The term “day” as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum or Guaranteed Maximum Price (GMP). The Contract Sum is the amount to be paid to the DBE for performance of the Increment 2 design and installation services, which are being compensated on a lump sum basis, and for the remaining Work performed after execution of the Notice to Proceed with Construction.

§ 1.4.16 Design and Preconstruction Services. Work performed prior to execution of the Notice to Proceed with Construction is the Design and Preconstruction Services portion of the Work set forth in Article 4 herein.

§ 1.4.17 Construction Services. The term “Construction Services” means the installation portion of the Work performed following execution of the Notice to Proceed with Construction as set forth in Article 5 herein, and specifically excludes pre-construction phase services.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of the Notice to Proceed with Construction

§ 2.1.1 Payments for Increment 2 of the Work performed prior to execution of the Notice to Proceed with Construction shall be made monthly based on actual progress.

§ 2.1.2 Compensation for work performed prior to execution of the Notice to Proceed with Construction is the total of the preconstruction and design services in the segregated amount of **\$470,000** including but not limited to:

- .1 Evaluation of Owner’s Criteria
- .2 Schematic Design
- .3 Construction Documents
- .4 Costs for design and pre-construction services of architect, engineers, consultants, design build and/or design assist Subcontractors for the Increment 2 Work.
- .5 Complete or validate the programming phase and design criteria provided with the RFP and use it as a starting point and basis for detailed final programming effort.
- .6 Estimating, scheduling and constructability reviews for DBE, Subcontractors, consultants and others.
- .7 Complete coordination with DSA and achieving DSA approval for the Increment 2 Work.
- .8 Estimating and approvals of modifications to the GMP.
- .9 Overhead and profit on design and preconstruction services.

§ 2.1.3 The hourly billing rates for additional services of the DBE and the DBE’s Architect, Consultants and Subcontractors, if any, are set forth in Exhibit E. Annual increases to the hourly rates shall reflect actual, demonstrated cost increases, not to exceed three percent (3%).

§ 2.1.4 Payments to the DBE Prior To Execution of the Notice to Proceed with Construction

§ 2.1.4.1 Payments are due and payable upon presentation of a valid and acceptable invoice. Separate invoices shall be submitted for each site. Amounts which are undisputed and unpaid 30 days after the Owner's receipt of the invoice date shall bear interest at the rate of Three Percent (3%) per annum. Payment of the Increment 2 lump sum amount is subject to 5% retainage by the Owner. Increment 2 retainage will be released by the Owner upon DSA final approval of Increment 2 building package.

§ 2.2 Contract Sum and Payment for Work Performed After Execution of the Notice to Proceed with Construction
For the DBE's performance of the Increment 2 Work after execution of the Notice to Proceed with Construction, the Owner shall pay to the DBE on a monthly basis in accordance with Article 9 the Contract Sum in current funds as based upon the following:

§ 2.2.1 The GMP price for the Direct Cost of the Work of trade contractors and self-performed work including but not limited to, Equipment, Material, Labor including burden, Subcontracts, payment and performance bonds, Self-Performed Work, Continuous and Final Building Cleaning, Sales Tax, any General Requirements identified in the scope statement, overhead and Profit. DBE may include allowances in the GMP for potential expenditures only with specific approval from the Owner as authorized during the design and approvals. DBE Allowances shall be for specific and discrete scopes of work.

§ 2.2.2 Any changes to this fixed sum will occur only pursuant to Change Orders issued in accordance with Article 6.

§ 2.2.3 DBE's GMP proposal for Increment 2 must include contingency required for unanticipated costs arising from scope gaps between Subcontractors and/or suppliers, market-driven price fluctuations, non-compensable delays, and cleanup or repair of damage to the Work not identifiable to a particular Subcontractor. The Owner shall maintain and control project level contingency for added scope and unforeseen conditions should they occur.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The DBE shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The DBE shall designate in writing a representative who is authorized to act on the DBE's behalf with respect to the Project.

§ 3.1.3 The DBE shall perform the design and engineering services required for the Work in accordance with the same degree of skill and care ordinarily exercised by design professionals experienced in the design of comparable Projects practicing under similar conditions at the locality of the Project (the "Standard of Care"). The DBE shall perform the Construction Services in accordance with the Design-Build Documents and in accordance with the same degree of skill and care ordinarily exercised by contractors experienced in performing construction services on comparable Projects practicing under similar conditions at the locality of the Project. The DBE shall not be relieved of the obligation to perform the Construction Services in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The DBE shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the DBE performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the DBE shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the DBE nor any Subcontractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the DBE determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the DBE shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the DBE shall execute a Modification in accordance with Article 6.

§ 3.1.4 The DBE shall be responsible to the Owner for acts and omissions of the DBE's employees, Architect, Consultants, Subcontractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 **General Consultation.** The DBE shall schedule and conduct periodic meetings with the Owner and its representatives to review matters such as procedures, progress, coordination, and scheduling of the Increment 2 Work. The DBE Design Manager or Project Manager shall be responsible to attend all Owner meetings.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the DBE shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the DBE's Architect and the DBE's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the DBE.

§ 3.1.7 The DBE shall prepare, and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project, including, but not limited to, complete coordination and approval from the Division of the State Architect and local fire, water and air agencies.

§ 3.1.8 DBE shall work in collaboration and cooperation with Owner and the Owner's Architect and Construction Manager towards realizing a high-quality Project.

§ 3.1.9 DBE is required to comply with all applicable prevailing wage requirements and/or regulations. The general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, are determined by Director of the State of California Department of Industrial Relations. State prevailing wage requirements are published by the Director of the State of California Department of Industrial Relations and can be found online at www.dir.ca.gov/

§ 3.1.9.1 Skilled and Trained Workforce Provisions.

§ 3.1.9.2 "Skilled and Trained Workforce" means a workforce that meets all of the conditions specified in Public Contract Code section 2601(d), including, without limitation the requirements that: (i) all the workers on Increment 2 of the Project in an apprenticeable occupation in the building and construction trades are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations (the "Chief"), and (ii) except for those occupations specified in Public Contract Code section 2601(d), for work performed on or after January 1, 2020, at least 60 percent of the skilled journeypersons employed to perform work on Increment 2 of the Project by DBE and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation.

§ 3.1.9.3 DBE covenants and agrees that a "Skilled and Trained Workforce" will be used to perform Increment 2 of the Project which are either skilled journeypersons or apprentices registered in an apprenticeship program. On a monthly basis while the Project is being performed, DBE shall provide a report to the Owner using the form attached as Exhibit C ("Monthly Skilled and Trained Workforce Report") demonstrating that DBE and its subcontractors at every tier are complying with the requirements of Public Contract Code section 2600 et seq. and Education Code section 17250.25(c)(1). If DBE fails to provide Owner the monthly report, or provides a report that is incomplete, Owner shall withhold further payments to DBE until a complete report is provided. If a monthly report is incomplete due to the failure of a subcontractor to timely submit the required information to DBE, Owner shall only withhold an amount equal to 150% of the value of the monthly billing for the relevant subcontractor. If a monthly report does not demonstrate compliance with Public Contract Code section 2600 et seq. and Education Code section 81703(c), Owner shall withhold an amount equal to 150% of the value of the monthly billing to DBE if DBE failed to comply with Public Contract Code section 2600 et seq. and Education Code section 17250.25(c)(1), or 150% of the value of the monthly billing for the subcontractor that failed to comply with Public Contract Code section 2600 et seq. and Education Code section 17250.25(c)(1), until DBE provides a plan to achieve substantial compliance with respect to the relevant apprenticeable occupation, prior to completion of the Project. The Owner shall also forward a copy of the non-compliant monthly report to the Labor Commissioner for issuance of a civil wage and penalty assessment in accordance with Public Contract Code section 2603 as well as a copy of the plan, if any, submitted by DBE to achieve substantial compliance with Public Contract Code section 2600 et seq. The monthly report provided to the Owner pursuant to this paragraph shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with section 6250) of Division 7 of Title 1 of the Government Code), and shall be open to public inspection.

§ 3.1.9.4 Employment Of Apprentices

1. In addition to the requirement that DBE provide a Skilled and Trained Workforce as provided for in Article 3.1.9.3 above, DBE's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code concerning employment of apprentices by DBE or any Subcontractor under him. In addition, DBE shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code.
2. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, or from the Division of Apprenticeship Standards and its branch offices.
3. Knowing violations of Section 1777.5 will result in forfeiture, as a penalty to Owner, of an amount not to exceed one hundred dollars (\$100) for each full calendar day of non-compliance, pursuant to Section 1777.7. Such penalty shall be withheld from any payment then due.

§ 3.1.9.5 Skilled and Trained Workforce. DBE shall, at all times, enforce orderly and disciplined conduct among those performing work on Increment 2 of the Project and shall not employ on the work any unfit person not skilled in the task assigned to him, except as provided in this Article 3.1.9.

§ 3.1.10 DBE and the Subcontractors, of every tier, shall be registered with the Department of Industrial Relations pursuant to Labor Code §§ 1725.5 and 1771.1 for the duration of time that DBE is performing the Increment 2 Work under the Contract Documents. Neither DBE nor any Subcontractor shall be qualified to submit a Bid/Proposal or be listed in a Bid/Proposal, subject to the requirements of Section 4104 of the Public Contract Code or engage in the performance of Work under the Contract Documents unless currently registered and qualified to perform public work pursuant to Labor Code §1725.5. DBE shall not enter into any subcontract without proof of the potential Subcontractor's registration. If an unregistered Subcontractor submits a proposal, the Owner will deem such proposal non-responsive. If any unregistered Subcontractor performs Work on this Project at any time, the Owner has the right to terminate the Contract for cause.

§ 3.1.11 DBE shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical conditions, disability, or any other reason.

§ 3.2. Progress Reports

§ 3.2.1 The DBE shall keep the Owner informed of the progress and quality of the Increment 2 Work. On a monthly basis, or otherwise as agreed to by the Owner and DBE, the DBE shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the DBE's compensation;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and DBE.

§ 3.2.2 In addition the DBE shall include the following additional information in its progress reports:

- .1 DBE's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

§ 3.2.3 DBE shall assist Owner in reporting the Increment 2 Work progress to oversight entities at regular intervals. DBE shall prepare occasional presentations as requested by Owner regarding issues of special importance.

§ 3.3 DBE's Schedules

§ 3.3.1 The DBE, in collaboration with the District's Construction Manager, shall prepare a critical path schedule for the Increment 2 Work meeting milestones on the Construction Managers Master Schedule.

§ 3.3.2 The DBE shall perform the Work in general accordance with the most recent schedules as updated in Collaboration with the Construction Manager.

§ 3.3.3 DBE's schedule of the Work shall include all tasks necessary to complete the Project. DBE shall provide the following durations in the schedule of the Work for reviews and approvals:

- .1 For schematic design, design development, and construction documents, allow 14 calendar days for Owner review of each.
- .2 For Local Fire Marshal, CGS, DSA and other government agencies, allow sufficient time as required by the reviewing agency.

§ 3.3.4 DBE is invited to suggest ways to save time or cost by phasing, re-sequencing the construction phase, or changing the construction durations. If Owner approves a change to the duration or phasing of the Project, DBE compensation may be revised. In its sole discretion, Owner may authorize construction components prior to approval of the Design-Build Amendment for construction of the entire Project.

§ 3.4 Certifications. Upon the Owner's written request, the DBE shall obtain from the Architect, Consultants, and design-build Subcontractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and design-build Subcontractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) meet the Standard of Care in complying with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The DBE's Architect, Consultants, and Subcontractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.5 DBE's Submittals

§ 3.5.1 Prior to submission of any Submittals, the DBE shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the DBE's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Increment 2 Work. If the DBE fails to submit a Submittal schedule, the DBE shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.5.2 By providing Submittals the DBE represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.5.3 The DBE shall perform no portion of the Increment 2 Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.5.4 The Work shall be in accordance with approved Submittals except that the DBE shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the DBE has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The DBE shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.5.5 All professional design services or certifications to be provided by the DBE, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Phase 2 Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval.

The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.6 **Warranty.** In accordance with the provisions of Section 11.2.2, the DBE warrants to the Owner that materials and equipment furnished under the Agreement will be of good quality and new unless the Design-Build Documents require or permit otherwise. The DBE further warrants that the installation services will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the installation services or otherwise expressly permitted by the Design-Build Documents. Installation services, materials, or equipment not conforming to these requirements may be considered defective. The DBE's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the DBE, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the DBE shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.7 **Royalties, Patents and Copyrights**

§ 3.7.1 The DBE shall pay all royalties and license fees.

§ 3.7.2 The DBE shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the DBE has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the DBE shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the DBE, the Owner shall give prompt written notice to the DBE.

§ 3.8 **Indemnification**

§ 3.8.1 To the fullest extent permitted by law, the DBE shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the DBE or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.8.

§ 3.8.2 The indemnification obligation under this Section 3.8 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for DBE or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.9 **Contingent Assignment of Agreements**

§ 3.9.1 Each agreement for a portion of the Work is assigned by the DBE to the Owner, provided that

- 1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the DBE whose agreements are accepted for assignment; and
- 2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the DBE's rights and obligations under the agreement.

§ 3.9.2 Upon such assignment to the Owner under this Section 3.9.2, the Owner may further assign the agreement to a successor DBE or other entity. If the Owner assigns the agreement to a successor DBE or other entity, the Owner shall nevertheless remain legally responsible for all of the successor DBE's or other entity's obligations under the agreement.

§ 3.10 **DBE's Insurance and Bonds.** The DBE shall purchase and maintain insurance as required by Exhibit D and shall provide payment and performance bonds in the full amount of the GMP, as may be amended.

§ 3.11 Not Used.

§ 3.12 Waivers of Subrogation. The parties waive rights of subrogation as provided in Exhibit D.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE NOTICE TO PROCEED WITH CONSTRUCTION

§ 4.1 General

§ 4.1.1 Any information submitted by the DBE, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and DBE execute a Modification.

§ 4.1.2 The DBE shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The DBE shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 4.1.3 DBE shall provide complete architectural, engineering, and consulting services as required to construct the Project in all details in accordance with good practice, applicable building codes, and Owner's Criteria Documents. DBE's attention is called to the requirement to complete programming validation and get final approval from Owner. The complete design services shall be apportioned into the Increment 2 Design and Preconstruction Services. DBE shall manage the services provided under the Agreement for Design Build Services, and the Owner will coordinate its responsibilities with DBE, so that the transition between the design and installation phases is seamless.

§ 4.1.4 Owner may benefit if the Increment 2 Work is divided into phasing components as set forth in Section 1.1.7. Retention release may be based on project phases with distinct schedule of values, NTPs and Notice of Completions. Phasing components shall be identified during the design phase by DBE and proposed to Owner. Owner is not obligated to accept proposed phasing components or revise the Increment 2 Work.

§ 4.1.5 Not used.

§ 4.1.6 Not used

§ 4.1.7 It is one of the collaborative responsibilities of DBE to look for ways of reducing Project construction costs. DBE's proposed cost reductions shall not reduce the Owner Criteria requirements, reduce quality of materials or craftsmanship, increase life-cycle costs, negatively affect the architectural aesthetics or design intent, or adversely affect the Project completion, unless such trade-offs are explained as part of the proposed cost reduction alternative and accepted by Owner.

§ 4.1.8 DBE shall assess the type, quantity, and quality of the available information describing existing site conditions. DBE shall make recommendations to the Owner regarding supplemental site surveys if more information is needed. If Owner deems it necessary to investigate conditions at the Project site or have incidental construction work performed during the Increment 2 Work, the DBE may be hired by the Owner to provide the required services by performing limited scope construction.

§ 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The DBE shall schedule and conduct meetings with the Owner, Architect, Construction Manager and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The DBE shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the DBE's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 Not used

§ 4.2.3 Not used

§ 4.3 Schematic Design

§ 4.3.1 In collaboration with the Districts Architect, the DBE shall prepare and submit a Schematic Design to the Owner for Increment 2 by the milestones indicated in the Project Schedule. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan with building footprint
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

§ 4.3.2 The Owner shall review the Schematic Design and, if acceptable, provide the DBE with written consent to proceed to development of the Construction Documents. The Preliminary Design shall not modify the Owner's Criteria unless the adjustments or modifications to the Owner's Criteria are called out for the Owner's attention and approved in the report, or the Owner and DBE execute a Modification. Owner shall endeavor to issue a written consent to proceed to development of the Construction Documents for Increment 2 within fourteen (14) days of the DBE's submission of a Preliminary Design.

§ 4.4 Construction Documents

§ 4.4.1 Upon approval of the Preliminary Design, the DBE shall prepare Construction Documents for Increment 2 in collaboration with the District's Architect for Increment 1 and in compliance with the Project Schedule. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents as modified or supplemented by the design approvals obtained pursuant to Sections 4.2 and 4.3.

§ 4.4.2 The DBE shall provide the Construction Documents to the Owner for review. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the DBE of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and DBE execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the DBE of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 4.4.3 DBE shall develop and review the Construction Documents with Owner, taking into account the quality of materials and equipment that is achievable within the Owner's Budget. DBE's design decisions shall be based on construction materials, methods, systems, phasing, and costs that will provide the highest quality building achievable within the available Budget and schedule. The Contract Documents shall identify the design codes, standards, and requirements used for the development of the plans, including the edition and applicable sections.

§ 4.4.4 Construction Documents shall include a quality control program and an implementation plan to ensure that the completed Project complies with the approved design. The Architect shall specify within the Construction Documents all tests and inspections that are required by the building code and those that are appropriate to achieve compliance with the Contract. DBE shall retain Architect to provide construction administration services in a professional capacity. These services shall include shop drawing review, response to requests for information regarding the Construction Documents, and periodic visits to the site to observe the quality of the Work.

§ 4.4.5 The final, approved-for-construction set of Construction Documents shall be signed and stamped by California-licensed professionals who prepared the documents, and who shall certify their compliance with codes, standards, practices and regulations. The DBE shall retain full responsibility for the design.

§ 4.4.6 Not used.

§ 4.5 Not used.

§ 4.6 DBE's Final GMP

§ 4.6.1 Upon submission of the Increment 2 Construction Documents to DSA for final approval, the DBE shall update the GMP based on approved changes during the Construction Document preparation. The DBE's Final GMP shall include the following:

- .1 A list of the Construction Documents and other information, including the DBE's clarifications, assumptions and changes, upon which the Final GMP is based;
- .2 The proposed date for DSA approval,
- .3 A concurrence of the project construction schedule in collaboration with the Construction Manager.
- .5 An enumeration of any qualifications and exclusions, if applicable;
- .6 A list of the DBE's key personnel, Subcontractors and suppliers;

§ 4.6.2 Submission of the DBE's Proposal shall constitute a representation by the DBE that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.6.3 If the Owner and DBE agree on the final GMP, and after DSA approval of the Construction Documents, the Owner may issue the Notice to Proceed with Construction. The Owner and DBE shall endeavor to agree on the Final GMP and execute the Design-Build Amendment within thirty (30) days of DSA approval.

§ 4.6.4 The Owner is not obligated to issue the Notice to Proceed with Construction. The Owner may, at its sole discretion, terminate the Agreement. Any work product or Instruments of Service shall be turned over to Owner. Owner shall have a perpetual license to the Instruments of Service as provided in Article 12, and the Owner shall pay the DBE for Work properly performed prior to the termination, subject to Owner's right of setoff. In the event Owner and Design-Build Entity do not continue with the Project, all work product or Instruments of Service for the Project may be used by Owner in any manner related to this Project, including use for subsequent contracts to maintain, repair, improve or renovate the Project; provided, however, that the Owner shall indemnify, defend and hold DBE, the Architect, and Consultants and their respective officers and employees against any claims, damages, losses or expenses, including attorneys' fees and costs, arising out of any such use by the Owner, except to the extent that the work product or Instruments of Service do not meet the Standard of Care.

§ 4.6.5 The Guaranteed Maximum Price established will be the maximum compensation available for Increment 2, unless the Guaranteed Maximum Price is increased by the Owner.

§ 4.6.6 Not used

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE NOTICE TO PROCEED WITH CONSTRUCTION

§ 5.1 Notice to Proceed with Construction.

§ 5.1.1 Prior to issuance of the Notice to Proceed with Construction DBE shall provide the following for approval:

- Agreed upon final GMP cost and modifications
- 100% Performance Bond
- 100% Payment Bond
- Insurance Certificates and Endorsements
- Vaccine Compliance Certification
- Workers Compensation Certification
- Drug-Free Workplace Certification
- Tobacco-Free Environment Certification
- Hazardous Materials Certification
- Imported Materials Certification
- Criminal Background Investigation/Fingerprinting Certification
- Final Schedule of Values
- Final Submittal Schedule
- Complete subcontractors list
- Contractors Safety Plan

Upon issuance of the Notice to Proceed with Construction, only after approval of Construction Documents by the Division of the State Architect, the DBE may proceed with the Increment 2 Work in accordance with the Construction Managers Master Schedule.

§ 5.1.2 The Owner's Construction Manager shall conduct a preconstruction conference with the Subcontractors, design personnel, and appropriate Owner staff. The preconstruction conference agenda may include but is not limited to safety, job procedures for clarifications, change orders, shop drawings, progress payments, field testing and

inspection, and preparation and distribution of preconstruction conference notes.

§ 5.1.3 Not used

§ 5.1.4 Not used.

§ 5.2 Construction

§ 5.2.1 Commencement. Except as permitted by mutual agreement of the parties in Section 5.2.2, construction shall not commence prior to execution of the Notice to Proceed with Construction.

§ 5.2.2 If the Owner and DBE agree in writing, some construction support activities may proceed prior to the execution of the Notice to Proceed with Construction. However, such authorization shall not waive the Owner's right to terminate the agreement. The DBE shall be entitled to compensation only for the construction support activities actually completed.

§ 5.2.3 The DBE shall supervise and direct the Work, using the skill and attention ordinarily used by members of the design-build industry under similar conditions at the Project location. The DBE shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Construction Services under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The DBE shall be responsible for inspection of portions of Construction Services already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the DBE shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the DBE may make substitutions only in accordance with Article 6.

§ 5.3.3 The DBE shall enforce strict discipline and good order among the DBE's employees and other persons carrying out the Work. The DBE shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 5.4 Taxes

The DBE shall pay sales, consumer, use and similar taxes, for the Work provided by the DBE, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Cost of DSA plan review fees, inspectors, and testing shall be paid by the Owner directly to DSA or the applicable firm.

§ 5.5.2 The DBE shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 5.5.3 Concealed or Unknown Conditions. In accordance with Public Contract Code section 7104, if the DBE encounters conditions at the site that are (1) material that the DBE believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (2) subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to DBE prior to the deadline for submitting its proposal; or (3) 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 Design-Build Documents, the DBE shall promptly (within 48 hours) provide written notice to the Owner before conditions are disturbed. DBE has no right to an adjustment in Contract Sum or Contract Time unless DBE promptly (within 48

hours) notifies the Owner, except that Owner may extend the notification time upon DBE's written request in order to obtain additional relevant information. The Owner shall promptly investigate such conditions and, if the Owner determines that they do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the DBE's cost of, or the time required for, performance of any part of the Work, shall make an equitable adjustment under the provisions set forth in Article 6 herein. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the DBE in writing, stating the reasons. If the DBE disputes the Owner's determination or recommendation, the DBE may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the DBE encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the DBE shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The DBE shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 6.

§ 5.5.5 Not Used.

§ 5.6 Allowances

§ 5.6.1 The DBE shall include in the Contract Sum allowances only as approved by the Owner prior to the Final GMP.

§ 5.6.2 The following provisions apply to allowances,

- .1 allowances shall cover the cost to the DBE of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the DBE's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in DBE's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Subcontractors and Suppliers

§ 5.7.1 The DBE shall not employ personnel, or contract with Subcontractors or suppliers to whom the Owner has made reasonable and timely objection. The DBE shall not be required to contract with anyone to whom the DBE has made reasonable and timely objection.

§ 5.7.2 If the DBE changes any of the personnel, Subcontractors or suppliers identified in Section 1.2.5 or in the Design-Build Amendment, the DBE shall notify the Owner and provide the name and qualifications of the new personnel, Subcontractor or supplier. The Owner may reply within 14 days to the DBE in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Subcontractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities identified in Section 1.2.5 or required in the Design-Build Amendment, the DBE, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the DBE in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the DBE, the DBE shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any,

occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the DBE has acted promptly and responsively in submitting names as required. DBE, at its sole cost and expense, and as necessary to satisfy the requirements of Education Code (EDC) section 45125.1 and 45125.2 or Owner policy, will ensure that all required criminal background checks are timely conducted. DBE must provide for the completion of a Live Scan, in the Owner's required format, prior to any of the DBE's personnel, who are anticipated to come into contact with the Owner's students. DBE further acknowledges that other fingerprinting requirements may apply, as set forth in EDC section 45125 et seq., and that DBE will comply with any such requirements. DBE further acknowledges and agrees that no DBE personnel shall come into contact with students if they have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

§ 5.8 Documents and Submittals at the Site

The DBE shall maintain at the site for the Owner one copy (or in electronic versions available to the Owner) of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The DBE shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

The DBE shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.10 Cutting and Patching

The DBE shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The DBE shall not unreasonably withhold from the Owner or a separate contractor the DBE's consent to cutting or otherwise altering the Construction Services.

§ 5.11 Cleaning Up

§ 5.11.1 The DBE shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the DBE shall remove waste materials, rubbish, the DBE's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the DBE fails to clean up as provided in the Design-Build Documents, the Owner may, after seven days of written notice to DBE, do so and Owner shall be entitled to reimbursement from the DBE.

§ 5.12 Access to Work

The DBE shall provide the Owner and its separate contractors and consultants access to the work site. The DBE shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 The work of the entire project will be performed under multiple-prime contractor delivery under the supervision of the Construction Manager. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation.

§ 5.13.1.2 Not used

§ 5.13.1.3 The Construction Manager shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the DBE, who shall cooperate with them. The DBE shall participate with other separate contractors and the Construction Manager in reviewing and implementing construction schedules.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the DBE under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The DBE shall afford the Owner and separate contractors' reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the DBE's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 Where the DBE's Construction Services depends upon construction or operations by the Owner or a separate contractor, the DBE shall, prior to proceeding with that portion of the Construction Services, prepare a written report to the Owner, identifying apparent discrepancies or defects the DBE has discovered in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the DBE's Construction Services. Failure of the DBE to report shall constitute an acknowledgment that the Owner's or separate contractors completed or partially completed construction is fit and proper to receive the DBE's Construction Services, except as to defects not then reasonably discoverable.

§ 5.14.3 The DBE shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the DBE's delays, improperly timed activities or defective construction. The Owner shall be responsible to the DBE for costs the DBE incurs because of a separate contractor's delays, improperly timed activities, damage to the Construction Services or defective construction.

§ 5.14.4 The DBE shall promptly remedy damage the DBE wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the DBE has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the DBE, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Owner may at any time, without notice to the Sureties, by written Order, make changes in the Work within the general scope of the Contract, including but not limited to additions, deletions or other revisions, changes in the Design-Build Documents and in the method and manner of performing the Construction Services. Such changes will be Ordered in either of two ways, by:

- .1 **Field Modification**, which is a written instruction, clarification or additional information communicated by Owner to DBE Directing or Authorizing a minor adjustment in the Work or the requirements of the Design-Build Documents that does not change the Contract Sum or Contract Time; or by
- .2 **Change Order**, which is a written amendment to the Contract, changing the Work, and/or the Design-Build Documents, and/or the Contract Sum, and/or the Contract Time, executed by the Board of Trustees.

§ 6.1.2 **Timeline:** Within fourteen (14) Days of receipt of a Change Order Request (COR) from the Owner, DBE will, to the extent feasible given the scope of the COR, submit in a format acceptable to the Owner, DBE's proposed cost and time estimates detailing the amount to be added to or deducted from the Contract Sum and Contract Time due to the proposed change. The DBE's proposal must include ("Supporting Documentation"):

- .1 Detailed estimates and other documentation supporting the proposed cost; and
- .2 Proposed adjustment of the Contract Time that is known by the DBE to be directly or indirectly attributable to the proposed Change Order. All requests for adjustment to the Contract Time must be supported by a detailed schedule analysis.

§ 6.1.3 Failure to submit cost and time estimate: If DBE fails to submit the required information and documentation, or an explanation of why doing so is not feasible, within the 14 Day time limit, Owner has the right to issue a unilateral Change Order. The Contract Sum and Contract Time will be changed in accordance with the Owner's estimate of cost and time, unless, within 14 Days following completion of the added Work or with written notice to delete the Work, the DBE submits to the Owner written proof that the Owner's estimate is in error.

§ 6.1.4 If, after the DBE has submitted their cost and time proposal, the Owner and the DBE fail to successfully negotiate and agree on a time and/or cost for the proposed Change Order, the Owner may issue a unilateral Change Order to the DBE and the DBE must proceed with the changed Work. If the DBE disputes any portion of the unilateral Change Order, the DBE must maintain time and materials records as specified herein. If the DBE fails to maintain such records or fails to submit such records within 14 Days following completion of the added Work, Owner's estimate will be used for the purpose of final adjustment in Contract Time and Contract Sum.

§ 6.2 DELETED WORK

§ 6.2.1 When Work is deleted, the Owner is entitled to a credit for the deleted Work.

§ 6.2.2 If DBE has ordered acceptable material or equipment for the deleted Work before the date of notification of such deletion by Owner, and if orders for such material or equipment cannot be canceled, such material or equipment will be paid for by Owner at DBE's actual cost. In such case, the material or equipment paid for will become Owner's property and Owner will pay the actual cost of any further handling. If the material or equipment is returnable to the vendor and if Owner so Directs, DBE must return the material or equipment and Owner will pay the actual costs of returning the material or equipment, including reasonable and verifiable handling and restocking charges.

§ 6.3 CONTRACT MODIFICATIONS

§ 6.3.1 The methods for Contract Modification are:

- .1 By negotiation based on estimates of increase or decrease in Contract Time and/or Contract Sum. Upon Owner's written request, DBE must furnish a detailed estimate of increase or decrease in costs and/or time, together with cost and schedule breakdowns and other support data within the time specified in such request. The DBE is responsible for any additional costs caused by the DBE's failure to submit the estimates of cost and/or time within the time specified.
- .2 By Owner, through issuance of a unilateral Change Order pursuant to Section 6,1, whether or not negotiations are initiated as provided above based on Owner's estimate of increase or decrease in Contract Time and/or Contract Sum.
- .3 By Owner, through the issuance of a "Force Account" Change Order, whether or not negotiations are initiated as provided above, by Force Account as defined below. Beginning with the first Day and at the end of each Day, the DBE must furnish to the Owner detailed hourly records for labor, construction equipment, and services and itemized records of materials and equipment used that Day in performance of the changes. Such records must be on a mutually acceptable form. Such records must be signed by the DBE and verified by the Owner's Project Manager on a daily basis; provided, however, that failure of the Owner's Project Manager to verify the records as required is not a basis for denial of a Change Order by the Owner.

§ 6.3.2 Adjustment of compensation will be based upon:

- .1 Labor: Compensation for labor includes the necessary payroll cost for labor, including the first level supervision, directly engaged in performance of the change. Wages shall not exceed current prevailing wages in the locality where the change is performed. Use of a classification that would increase labor cost will not be permitted. Exceptions to the above will be permitted only if DBE establishes to the satisfaction of Owner the necessity for payment at higher rates or classification.
- .2 Materials and Equipment: Compensation for materials and equipment includes the necessary cost for materials and equipment directly required for performance of the change. Cost of materials and equipment may include costs of transportation and delivery, and reasonably anticipated waste or spoilage. If discounts by Suppliers are obtained by DBE, they must be credited to Owner. If materials and equipment are obtained from supply or source(s) owned by, or partially owned by DBE, payment will not exceed current wholesale price for such materials and equipment.
 - .1 If DBE fails to furnish satisfactory evidence of cost from Supplier, the cost of materials and equipment shall be the lowest current wholesale price at which similar materials and equipment are available in quantities required. Owner reserves the right to furnish materials and equipment

required for performance of the change(s) and DBE has no right to Claim for costs or mark-ups on such materials and equipment furnished by Owner.

- .3 Construction Equipment: Compensation shall be only for use of equipment directly required for performance of the change and will be calculated as provided below under Force Account Work.
- .4 Services: Compensation shall be only for the necessary cost of Approved services directly required for the performance of the change.
- .5 General Conditions and General Requirements Costs: For Modifications involving compensable extensions of the Contract Time, compensation will include an adjustment in the Contract Sum for demonstrated increases in general conditions and general requirements costs.

§ 6.3.3 Markups for Added or Deleted Work

- .1 General. The following markups for performance of changes constitute full compensation for all costs not covered above, including profit, direct and indirect overhead, extended overhead, insurance, taxes and bonds:
 - .1 For portions of added Work performed by DBE's own forces, the DBE may add as mark-up to totals of authorized allowable direct costs, an amount not to exceed the following percentages:
 - .1 Labor markups not to exceed ten percent (10%).
 - .2 Materials, equipment, construction equipment and services markup not to exceed ten percent (10%).
 - .2 For portions of added Work performed by Subcontractor(s), the Subcontractor(s) must compute its costs as follows:
 - .1 Labor markups not to exceed ten percent (10%).
 - .2 Materials, equipment, construction equipment and services markup not to exceed ten percent (10%).
 - .3 DBE may add, as mark-up to Subcontractor cost, six percent (6%), including cost of bonds.
 - .4 When the added Work includes Work performed by Subcontractors, the total aggregate of all mark-ups for added Work, regardless of the number of tiers of Subcontractors and Sub-subcontractors used, shall be:
 - .1 Labor markup not to exceed twenty percent (20%).
 - .2 Materials, equipment, construction equipment and services markup not to exceed twenty percent (20%).
 - .5 For Deleted Work: When Work is deleted, the Owner is entitled to a credit for the deleted Work. The credit must include direct labor, materials, equipment, and supervision exclusive of overhead and profit of the DBE and Subcontractor.
 - .6 For Combinations of Added and Deleted Work: The costs before markups of added and deleted Work must be separately estimated. If the difference between such costs results in an increase, the markups for added Work will be applied to such difference. If the difference in such costs results in a decrease, the markups for deleted Work will be applied to such difference.

§ 6.3.4 General Limitations: Cost to DBE for a change that exceeds market values prevailing at the time of the change will not be allowed unless DBE establishes that all reasonable means for performance of the change at prevailing market values have been investigated and the excess cost could not be avoided. Notwithstanding actual charges to DBE on Work performed by DBE or others, no markups will be paid in excess of those specified above.

§ 6.3.5 Disallowed Costs: Disallowed Costs in Change Orders or Claims include, but are not limited to:

- .1 Interest cost of any type other than those mandated by statute;
- .2 Claim preparation or filing costs;
- .3 legal expenses;
- .4 the costs of preparing or reviewing Change Order proposals
- .5 lost revenues;
- .6 loss of anticipated profits;
- .7 lost income or earnings;
- .8 Schedule preparation costs;
- .9 Submittal preparation costs;
- .10 costs of idled equipment when such equipment is not yet at the site or has not yet been employed on the Work;
- .11 lost earnings or interest on unpaid retention;

- .12 Claims consulting costs;
- .13 the costs of corporate officers or staff visiting the site or participating in meetings with the Owner;
- .14 any compensation due to the fluctuation of foreign currency conversions or exchange rates;
- .15 loss of other business;
- .16 costs or damages for delays, interruptions, hindrances or disruptions to the Work for on-site or off-site costs or damages based upon formulas, e.g. Eichleay or other formula.

§ 6.3.6 Adjustment of Contract Time: There will be no adjustment of the Contract Time for changes that do not impact the Critical Path of the Official Progress Schedule. DBE must show that the change affected the Critical Path of the Official Progress Schedule and how the change increased (or decreased) the Contract Time to complete the Increment 2 Work.

§ 6.4 DBE'S ACCEPTANCE OF CHANGE ORDERS

§ 6.4.1 DBE's written acceptance of a Change Order constitutes final and binding agreement to the provisions thereof and a waiver of all Claims in connection therewith, whether direct, indirect or consequential, provided that the Owner timely processes the Change Order. Pursuant to Public Contract Code section 7100, DBE may specifically exclude individual Change Order items from operation of the DBE's written acceptance of the Change Order and waiver of all Claims in connection therewith. A general statement that the DBE reserves their right to Claim additional time and/or money at a future date for all Work associated with the Change Order is not permitted.

§ 6.4.2 If DBE disagrees with any terms or conditions of a Change Order, DBE must sign it with the statement "Signed Under Protest" and attach a written statement detailing the basis of the disagreement.

§ 6.4.3 The written statement detailing the basis of the disagreement must specifically identify each item to be excluded from the DBE's waiver and state why the DBE is unable to determine the time and/or money due from the Owner for the items excluded from the DBE's release.

§ 6.5 FORCE ACCOUNT WORK

§ 6.5.1 General

- .1 Owner may, at any time, Order the DBE in writing, through the issuance of a Change Order, to perform Work on a Force Account (time and materials, cost not to exceed) basis. When DBE performs Force Account Work, the labor, materials and equipment used in performing such Work are subject to Owner's Approval. As used in this Section 6.5 the word "Work" means Force Account Work. For the avoidance of doubt, it is acknowledged that Sections 6.5.1 through 6.5.8 only apply to Force Account Work and have no bearing on other provisions of the Contract or Design-Build Documents.
- .2 Payment for Force Account Work
 - .1 The total payment as provided herein constitutes full compensation to DBE for performance of Force Account Work.
 - .2 DBE will be paid the direct costs for labor, materials and equipment used in performing the Work determined as hereinafter provided. If materials and equipment are obtained from a supply or source owned in whole or in part, by the DBE, payment for such materials and/or equipment will not exceed current wholesale prices for such materials and equipment.
 - .3 If, in the opinion of the Owner, the cost of materials and equipment is excessive, or if the DBE fails to furnish satisfactory evidence of costs from Suppliers, the cost of materials and equipment will be the lowest current wholesale price at which similar materials and equipment are available in quantities required.
 - .4 No costs will be allowed for time while construction equipment is inoperative, idle, or on stand-by, for any reason, unless such times have been Approved in advance by the Owner.
- .3 Markups: To the total of the direct costs computed as provided above the following maximum markups will be added:
 - .1 Ten percent to Labor (10%)
 - .2 Ten percent to Materials and equipment (permanently incorporated) (10%)
 - .3 Ten percent to Equipment Rental (10%)
- .4 Except as provided in Section 6.3.2.5 above, the above markups constitute full compensation for all overhead costs (general overhead, supervision, office expenses, field office facilities, utilities, bonds and insurance of all types, and transportation) including all items of expense not specifically

designated as cost or equipment rental. The total payment made as provided constitutes full compensation for the Work performed.

- .5 When forces other than DBE's organization perform Work, DBE must reach agreement with such other forces as to the distribution of the payment made by Owner for such Work. Owner will accept no additional markups by reason of the performance of Force Account Work by a Subcontractor or other forces.
- .6 DBE must monitor all costs and notify Owner at least seventy-two (72) hours before the cost limit will be reached or when seventy percent (70%) of the cost not-to-exceed value is reached. In no event shall DBE exceed Owner's cost limit.

§ 6.5.2 Labor

- .1 DBE and Subcontractors will be paid the cost of labor for the workers (including first level supervision when authorized by Owner) used in the actual and direct performance of the Work. The DBE and Subcontractor must document labor hours expended in their Daily Report. The cost of labor, whether the employer is DBE, Subcontractor or other forces, will be the sum of the following:
 - .1 Actual Wages: The actual wages paid include two components: (1) direct labor costs actually paid to the employee; and (2) any employer payments to or on behalf of workers for health and welfare, pension, vacation and similar purposes.
 - .2 Labor Surcharges: Labor surcharge shall constitute full compensation for all payments imposed by State and Federal laws and for all other payments made to, or on behalf of, the Workers, other than actual wages and subsistence and travel allowance as specified as defined herein.
 - .3 Subsistence and Travel Allowance: The actual allowance paid to such workers in compliance with labor agreements.

§ 6.5.3 Materials

- .1 Owner Furnished: Owner may furnish such materials as it deems advisable, and DBE has no rights to Claim for costs and markup on such materials.
- .2 DBE Provided: Only materials necessary to and actually used in the Construction Services will be paid for. The cost of such materials will be the cost to the purchaser, whether DBE, Subcontractor, or other Supplier thereof, unless the following apply:
 - .1 If a cash or trade discount by the actual Supplier is offered or available to the purchaser, it must be credited to Owner whether or not such discount was actually received.
 - .2 If materials are procured by any method, which is not a direct purchase from an actual Supplier, the cost of such materials shall be deemed to be the price, paid to the actual Supplier as determined by Owner. No markup except for actual costs incurred in the handling of such materials will be permitted.
 - .3 If materials are obtained from a supply or source owned in whole or in part by the purchaser, payment therefore will not exceed the price paid by the purchaser for similar materials provided from said source on Contract items, or the current wholesale price for such materials delivered to the Project Site, whichever price is lower.
 - .4 If in Owner's opinion the cost of such materials is excessive, then the cost of such materials shall be deemed to be the lowest current wholesale price at which such materials are available in the required quantities delivered to the Project Site, less any discounts as provided.
 - .5 If DBE does not furnish satisfactory evidence of the cost of such materials from the actual Supplier thereof, the cost shall then be determined in accordance with Article 6.5.3.4 above.

§ 6.5.4 Equipment Rental

- .1 Rental Rate: DBE will be paid for the use of equipment at the rental rate listed for such equipment in the latest edition of the California Department of Transportation, Labor Surcharge and Equipment Rental Rates for DBE owned equipment, or the actual rate paid pursuant to any applicable rental agreement for the use of such equipment entered into by DBE. If it is deemed necessary by Owner to use equipment not so listed, Owner and DBE will establish prior to the Work being done an agreed rental rate for such equipment. DBE may furnish any cost data that might assist Owner in establishing such rental rate.

- .1 The aforesaid rental rates shall be deemed to include the cost of fuel, power, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of all kinds, depreciation, storage, insurance, labor except for construction equipment operators and any and all costs to the DBE incidental to the use of such construction equipment.
- .2 Operators of rental equipment will be paid for as provided under Section 6.5.2 Labor. All equipment must be in good working condition and suitable for the purpose for which it is to be used.
- .3 Unless otherwise specified, Manufacturer's ratings and Manufacturer approved modifications shall be used to classify equipment for determining applicable rental rates. A power unit of at least the minimum rating recommended by the Manufacturer shall power equipment that has no direct power unit.
- .4 Individual pieces of equipment or tools having a replacement value of \$500 or less, whether or not consumed by use, are considered to be small tools and no rental payment will be made.
- .5 Rental time will not be allowed while equipment is inoperative due to breakdowns.

§ 6.5.5 Equipment on the Work

- .1 The rental time to be paid for equipment already on the Project Site will be the time the equipment is in operation on the Work being performed, and in addition, will include the time required to move the equipment to the location of the Work and return it to the original location, except that moving time will not be paid if the equipment is used at the Project Site for activities besides Force Account Work.
- .2 Loading and transporting costs will be allowed, in lieu of moving time, when equipment is moved by means other than its own power, except that no payment will be made if equipment is used at the Project Site for activities besides Force Account Work.
- .3 The following will be used in computing the rental time of equipment on the Work:
 - .1 When hourly rates are listed, less than thirty (30) minutes of operation will be considered to be one-half (1/2) hour of operation.
 - .2 When daily rates are listed, less than four (4) hours of operation will be considered to be one-half (1/2) day of operation.

§ 6.5.6 Equipment not on the Work

- .1 For the use of equipment moved in solely to perform Force Account Work, and used exclusively for such Work, DBE will be paid the rental rates determined as provided in Section 6.5.4 Equipment Rental above and for the cost of transporting the equipment to the Work site, all in accordance with the following provisions:
 - .1 DBEs must obtain Owner's approval before transporting any equipment to the Project Site.
 - .2 Owners will pay the cost of loading and unloading Approved equipment.
 - .3 The cost of transporting equipment in low bed trailers shall not exceed the hourly rates charged by established haulers.
 - .4 Not Used.
 - .5 Should DBE desire to return the equipment to a location other than the location from where it was transported to the Work site, Owner will pay the cost of transportation in accordance with the above provisions, provided such payment will not exceed the cost of transporting the equipment to the Work site.
 - .6 Payment for transporting, loading and unloading equipment, as above provided, will not be made if the equipment is not used primarily on Force Account Work.
- .2 The rental period will begin when the equipment is unloaded at the Work site, will include each day that the equipment is at the Work site and will terminate at the end of the second workday when Owner directs DBE to discontinue use of such equipment.
- .3 Rental time will be paid as follows:

<u>Hours equipment is in operation</u>	<u>Hours to be paid</u>
0.0	4.00
0.5	4.25
1.0	4.50
1.5	4.75
2.0	5.00

2.5	5.25
3.0	5.50
3.5	5.75
4.0	6.00
4.5	6.25
5.0	6.50
5.5	6.75
6.0	7.00
6.5	7.25
7.0	7.50
7.5	7.75
8.0	8.00
Over 8.0	Actual hours in operation

- .1 The hours to be paid for equipment that is operated less than 8 hours due to breakdowns will not exceed 8 less the number of hours the equipment is inoperative due to breakdowns.
- .2 When hourly rates are listed, less than thirty (30) minutes of operation will be considered to be one-half (1/2) hour of operation.
- .3 When daily rates are listed, payment for one-half (1/2) day will be made if the equipment is not used. If the equipment is used, payment will be made for one day.
- .4 The minimum rental time to be paid for the entire rental period on an hourly basis will not be less than eight (8) hours or if on a daily basis will not be less than one day.

§ 6.5.7 Adjustment of Contract Time

- .1 The Milestone Completion Date(s) and Contract Completion date will not be changed because of Force Account Work unless DBE demonstrates that such Work actually affected the Critical Path of the project.

§ 6.5.8 Records

- .1 DBE and Subcontractors must maintain records that provide a clear distinction between the performance of the Force Account Work and the performance of all other operations.
- .2 From the above records, DBE must furnish Owner completed daily Force Account Work reports on mutually acceptable forms for each day's Force Account Work.
- .3 The daily Force Account Work reports:
 - .1 Must be submitted not later than one (1) workday following the performance of said Work.
 - .2 Must itemize the materials used.
 - .3 Must cover the direct cost of labor and the charges for equipment rental, whether provided by DBE, Subcontractor, or other forces.
 - .4 Must provide names or identifications and classifications of workers, the hourly rate of pay and hours worked, and the size, type and identification number of equipment and hours operated.
- .4 Before presenting the daily Force Account Work reports to Owner, DBE must compile the estimated daily and to-date cumulative cost of the Work.
- .5 Material charges must be substantiated by valid copies of vendor's invoices. Such invoices must be submitted with the daily Force Account Work reports, or if not available, they must be submitted with subsequent daily Force Account Work reports. Should said vendor's invoices not be submitted within sixty (60) Days after the date of delivery of the material, Owner reserves the right to establish the cost of such materials at the lowest current wholesale prices at which said materials are available in the quantities concerned, delivered to the location of the Work, less any discounts provided.
- .6 DBE must sign each daily Force Account Work report.
- .7 Owner will compare Owner's records with DBE's completed daily Force Account Work reports and make any necessary adjustments. When these daily Force Account Work reports are agreed upon and signed by both parties, said reports become the basis of payment for the Work performed, but do not preclude subsequent adjustment based on a later audit by Owner.
- .8 DBE's cost records pertaining to the Work must be open to inspection or audit by Owner during the life of the Contract and for a period of not less than three (3) years after the Date of Acceptance thereof, and DBE must retain such records for the period.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner's Construction Manager shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the DBE's schedule agreed to by the Owner. The Owner shall furnish to the DBE, within 14 days after receipt of a written request (unless Board Approval is required), information necessary and relevant for the DBE to evaluate, give notice of or enforce Stop Notice rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness, or in accordance with any time periods specified in the Design Build Documents and Project Schedule.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the DBE, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the DBE, the Owner shall provide a legal description of the site under the Owner's control. The Owner will provide the DBE with any geotechnical reports generated with regard to the Project site. Any reports provided by the Owner are provided to DBE for reference purposes only and are not part of the Contract. DBE, at its expense, may perform any additional geotechnical or other analyses/reports for the site, subject to Owner's reasonable approval.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall collaborate with the DBE in securing building and other permits, licenses and inspections.

§ 7.2.5 The services and information required to be provided by the Owner under this Agreement shall be furnished at the Owner's expense and the DBE shall be entitled to rely on the accuracy thereof. In no event shall the DBE be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Construction Services.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the DBE.

§ 7.2.7 Not Used.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the DBE with persons or entities employed or retained by the DBE.

§ 7.2.9 Not Used.

§ 7.2.10 Not Used.

§ 7.2.11 Testing and inspection of the Project's construction will be performed and paid for by Owner. DBE shall coordinate and cooperate with Owner's inspection and testing agencies. Testing and inspection provided by the Owner shall be for the Owner's benefit and shall not limit or minimize in any way the responsibility of DBE to provide the quality of construction in compliance with the Design-Build Documents.

§ 7.3 Submittals

§ 7.3.1 The Owner's Architect shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as

dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the DBE as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the DBE of the obligations under Sections 3.5 and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the DBE of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the DBE's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the DBE's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of and will not be responsible for acts or omissions of the DBE, Architect, Consultants, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work for the DBE.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the DBE, the Architect, Consultants, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the dates of Substantial Completion and Final Completion in accordance with Sections 9.8 and 9.10.

§ 7.8 Owner's Right to Stop Work

If the DBE fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the DBE to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the DBE or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the DBE defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the DBE the reasonable cost of correcting such deficiencies. If payments then or thereafter due the DBE are not sufficient to cover such amounts, the DBE shall pay the difference to the Owner.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits with regard to Completion stated in the Design-Build Documents are of the essence of the Contract. By executing the Agreement the DBE confirms that the Contract Time is a reasonable period for performing the Increment 2 Work.

§ 8.1.2 The DBE shall proceed expeditiously with adequate forces and shall achieve Substantial Completion and Final Completion in compliance with the Construction Manager's Master Schedule.

§ 8.1.3 Pursuant to Government Code §53069.85, should the DBE not achieve Substantial Completion of the Work within the Contract Time, as adjusted, the DBE shall forfeit and pay to the Owner the amount of **One Thousand Dollars (\$1,000.00)** per affected project site in liquidated damages for every day beyond the Milestone completion date, as adjusted, until the DBE achieves Substantial Completion. Any such Liquidated Damages are automatically and without notice of any kind forfeited by DBE upon the accrual of each day of delay to the Contract Time as adjusted. The Owner may at any time deduct Liquidated Damages from any payments due or to become due to the DBE. Neither the Owner's failure or delay in deducting liquidated damages from payments otherwise due the DBE, nor the Owner's failure or delay in notifying DBE of the forfeiture of liquidated damages, shall be deemed a waiver of the Owner's right to liquidated damages. The DBE and its Surety shall be liable for and pay to the Owner the entire amount of liquidated damages including any portion that exceeds the amount of the Contract Sum then held, retained or controlled by the Owner. The DBE and Owner acknowledge and agree that the liquidated damages and the provisions of this Section 8.1.3 are reasonable and necessary under the circumstances existing at the time this Agreement is made because of the difficulty of fixing the Owner's actual damages in the event of delayed completion of the Increment 2 Work. The DBE and Owner agree that the liquidated damages do not constitute a penalty and are the Owner's sole damages remedy for the DBE's unexcused failure to achieve the Substantial Completion date. For the avoidance of doubt, it is acknowledged that liquidated damages only apply to the Substantial Completion date and not to any other milestones.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the DBE is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the DBE's control; or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order in accordance with Article 6 and this Section 8.2.

§ 8.2.1.1 Excusable Delays. If Completion of the Increment 2 Work is delayed by Excusable Delays, the Contract Time shall be subject to adjustment for such reasonable period of time as determined in accordance with Article 6. Excusable Delays shall not result in any increase in the Contract Sum. Excusable Delays refer to unforeseeable and unavoidable casualties or other unforeseen causes beyond the control, and without fault or neglect, of the DBE, any Subcontractor, material supplier or other person directly or indirectly engaged by the DBE in performance of any portion of the Increment 2 Work. Excusable Delays include unanticipated and unavoidable labor disputes, unusual and unanticipated delays in transportation of equipment, materials or construction equipment reasonably necessary for completion and proper execution of the Work, unanticipated unusually severe weather conditions, epidemics, quarantine restrictions, and unanticipated delays caused by utility companies or DSA or other authorities having jurisdiction over the Increment 2 Work. Neither the financial resources of the DBE or any person or entity directly or indirectly engaged by the DBE in performance of any portion of the Work shall be deemed conditions beyond the control of the DBE. If an event of Excusable Delay occurs, the Contract Time may be adjusted only if the DBE establishes: (i) full compliance with all applicable provisions of the Contract Documents relative to the method, manner and time for DBE's notice and request for adjustment of the Contract Time; (ii) that the event(s) forming the basis for DBE's request to adjust the Contract Time are outside the reasonable control and without any fault or neglect of the DBE or any person or entity directly or indirectly engaged by DBE in performance of any portion of the Work; and (iii) that the event(s) forming the basis for DBE's request to adjust the Contract Time directly and adversely impacted the critical path of the Work as indicated in the then current construction schedule or the schedule relative to the date(s) of the claimed event(s) of Excusable Delay.

§ 8.2.1.2 Compensable Delays. If Completion of the Increment 2 Work is delayed and such delay is caused by the acts or omissions of the Owner or separate contractor employed by the Owner, changes ordered in the Work by the Owner, errors or omissions in the Owner Criteria that DBE should not have discovered in the exercise of the Standard of Care, or as otherwise provided in the Design Build Documents (collectively, "Compensable Delays"), upon DBE's request and notice, in strict conformity with Articles 6 and 8.2, the Contract Time may be adjusted by Change Order for such reasonable period of time as justified by the delay in accordance with the Contract. In accordance with Public Contract Code §7102, if the DBE's progress is delayed by any of the events described in the preceding sentence, DBE shall not be precluded from the recovery of damages directly and proximately resulting therefrom, provided that the Owner is liable for the delay, the delay is unreasonable under the circumstances involved and the delay was not within the

reasonable contemplation of the Owner and the DBE at the time of execution of the Contract and the DBE timely submits and supports its claim for compensable delay in strict conformity with the terms of the Contract. In such event, DBE's damages, if any, shall be limited to direct, actual and unavoidable additional costs of design professional fees and costs incurred during construction administration directly resulting from such delay, and labor, materials or construction equipment directly resulting from such delay, additional general conditions costs directly resulting from such delay, and shall exclude special, indirect or consequential damages. In no event shall DBE seek costs or damages for delays, interruptions, hindrances or disruptions to the Work for on-site or off-site costs or damages based upon formulas, e.g., Eichleay or other formula.

§ 8.2.1.3 Unexcusable Delays. Unexcusable Delays refer to any delay to the progress of the Increment 2 Work caused by events or factors other than those specifically identified in Sections 8.2.1.1 and 8.2.1.2. Neither the Contract Sum nor the Contract Time shall be adjusted on account of Unexcusable Delays.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE 9 PAYMENT APPLICATIONS AND INCREMENT 2 PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment(s).

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the DBE, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the DBE's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten (10) days before the date established for each progress payment, the DBE shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the DBE's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Subcontractors, and material suppliers, and shall reflect Five Percent (5%) retainage.

§ 9.3.1.1 Applications for payment may include requests for payment on account of changes in the Work authorized by unilateral Change Orders or Force Account Work for the portion of such costs that are not disputed by the Owner.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Increment 2 Work for which the DBE does not intend to pay the Architect, Consultant, Subcontractor, material supplier, or other persons or entities providing services or work for the DBE, unless such Work has been performed by others whom the DBE intends to pay or are subject to back charge or offset by the DBE under the applicable contract agreement.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. Payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the DBE with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The DBE warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The DBE further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the DBE's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the DBE, Architect, Consultants, Subcontractors, material

suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the DBE's Application for Payment, issue to the DBE a Certificate for Payment indicating the amount the Owner determines is properly due and notify the DBE in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the DBE's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the DBE as provided in Section 9.4. If the DBE and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the DBE is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the DBE;
- .3 failure of the DBE to make payments properly to the Architect, Consultants, Subcontractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time due to non-excusable Delays, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the DBE and to the Architect or any Consultants, Subcontractor, material or equipment suppliers, or other persons or entities providing services or work for the DBE to whom the DBE failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents. All progress payments shall be made in accordance with Public Contract Code section 20104.50.

§ 9.6.2 The DBE shall pay each Architect, Consultant, Subcontractor, and other person or entity providing services or work for the DBE no later than the time period required by applicable law, but in no event more than seven (7) days after receipt of payment from the Owner the amount to which the Architect, Consultant, Subcontractor, and other person or entity providing services or work for the DBE is entitled, reflecting percentages actually retained from payments to the DBE on account of the portion of the Work performed by the Architect, Consultant, Subcontractor, or other person or entity. The DBE shall, by appropriate agreement with each Architect, Consultant, Subcontractor, and other person or entity providing services or work for the DBE, require each Architect, Consultant, Subcontractor, and other person or entity providing services or work for the DBE to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Subcontractor, or other person or entity providing services or work for the DBE, information regarding percentages of completion or amounts applied for by the DBE and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Subcontractor or other person or entity providing services or work for the DBE.

§ 9.6.4 The Owner has the right to request written evidence from the DBE that the DBE has properly paid the Architect, Consultants, Subcontractors, or other person or entity providing services or work for the DBE, amounts paid by the Owner to the DBE for the Work. If the DBE fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Subcontractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Subcontractor, except as may otherwise be required by law.

§ 9.6.5 DBE payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ 9.6.7 Not Used.

§ 9.7 If the Owner does not make payment of undisputed amounts, through no fault of DBE, within the time required by the Design-Build Documents, then DBE may, upon thirty (30) days' written notice to the Owner, stop Work until payment of the undisputed amount owing is received.

§ 9.8 Substantial Completion

§ 9.8.1 The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9 when the Increment 2 Work is sufficiently complete in accordance with the Design-Build Documents so the Owner can utilize it for its intended use.

§ 9.8.2 When the DBE considers that the Increment 2 Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the DBE shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the DBE to complete all Increment 2 Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the DBE's list, the Owner shall make an inspection to determine whether the Increment 2 Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the DBE's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Increment 2 Work or designated portion thereof for its intended use, the DBE shall complete or correct such item upon notification by the Owner. In such case, the DBE shall then submit a request for another inspection by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and DBE shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion in accordance with Exhibit E.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the DBE will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and DBE for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the DBE shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the DBE to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's final acceptance of the Project, the Owner shall record a Notice of Completion (NOC). With the consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents, in accordance with the provisions of Public Contract Code section 7107.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the DBE, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and DBE have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the DBE considers a portion substantially complete, the DBE shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the DBE to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and DBE.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and DBE shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the DBE's written notice that the Increment 2 Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Increment 2 Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the DBE submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the DBE knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Subcontractor, or other person or entity providing services or work for the DBE, refuses to furnish a release or waiver required by the Owner, the DBE may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the DBE shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If final completion of the Increment 2 Work is materially delayed through no fault of the DBE or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the DBE, and without terminating the Agreement, make payment of the balance due for that portion of the Increment 2 Work fully completed and accepted. If the remaining balance for the Increment 2 Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the DBE to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims. Payment of retention shall be made in accordance with Public Contract Code section 7107.

§ 9.10.4 Not Used.

§ 9.10.5 Not Used.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The DBE shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The DBE shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Increment 2 Work and other persons who may be affected thereby;
- .2 the Increment 2 Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the DBE or the Architect, Consultants, or Subcontractors, or other person or entity providing services or work for the DBE; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The DBE shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The DBE shall implement, erect, and maintain, as required by existing conditions and performance of the Agreement, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Increment 2 Work, the DBE shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The DBE shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the DBE, the Architect, a Consultant, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the DBE is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the DBE. The foregoing obligations of the DBE are in addition to the DBE's obligations under Section 3.1.14.

§ 10.2.6 The DBE shall designate a responsible member of the DBE's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the DBE's superintendent unless otherwise designated by the DBE in writing to the Owner.

§ 10.2.7 The DBE shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 **Injury or Damage to Person or Property.** If the Owner or DBE suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 **Covid Vaccination/Testing Certification.** DBE and its subcontractors must provide for the completion of the certification form attached hereto as Exhibit G and incorporated herein by reference prior to any of DBE's employees, or those of any other subcontractors, coming in contact with the Owner's employees and pupils.

§ 10.3 Hazardous Materials

§ 10.3.1 The DBE is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the DBE encounters a hazardous material or substance, the removal or remediation

of which is not the responsibility of the DBE under the Design-Build Documents, including but not limited to asbestos or polychlorinated biphenyl (PCB), the DBE shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the DBE's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the DBE and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the DBE the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The DBE will promptly reply to the Owner in writing stating whether or not the DBE has reasonable objection to the persons or entities proposed by the Owner. If the DBE has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the DBE has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and DBE. By Change Order, the Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the DBE's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify, defend and hold harmless the DBE and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the DBE brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the DBE's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The DBE shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the DBE brings to the site and negligently handles, or (2) where the DBE fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the DBE, the DBE is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the DBE for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the DBE shall act, at the DBE's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Construction Services that the DBE has covered to determine if the Construction Services have been performed in accordance with the Design-Build Documents. If such Construction Services are in accordance with the Design-Build Documents, the Owner and DBE shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Construction Services are not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Construction Services shall be at the DBE's expense and the DBE shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The DBE shall promptly correct Construction Services rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after

Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the DBE's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the DBE's obligations under Section 3.2.1, if, within one year after the date of Substantial Completion of the Increment 2 Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Construction Services are found not to be in accordance with the requirements of the Design-Build Documents, the DBE shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the DBE a written acceptance of such condition. The Owner shall give such notice in writing promptly after discovery of the condition. During the one-year period for correction of the Construction Services, if the Owner fails to notify the DBE and give the DBE an opportunity to make the correction, the Owner waives the rights to require correction by the DBE and to make a claim for breach of warranty. If the DBE fails to correct nonconforming Construction Services within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 Not Used.

§ 11.2.2.3 The one-year period for correction of Construction Services shall not be extended by corrective Work performed by the DBE pursuant to this Section 11.2.

§ 11.2.3 The DBE shall remove from the site portions of the Increment 2 Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the DBE nor accepted by the Owner.

§ 11.2.4 The DBE shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the DBE's correction or removal of Construction Services that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the DBE has under the Design-Build Documents. Establishment of the one-year period for correction of Construction Services as described in Section 11.2.2 relates only to the specific obligation of the DBE to correct the Construction Services, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the DBE's liability with respect to the DBE's obligations other than specifically to correct the Increment 2 Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Construction Services that are not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be affected whether or not final payment has been made.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the DBE, including those in electronic form, are Instruments of Service. The DBE, and the Architect, Consultants, Subcontractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the DBE and any other person or entity providing services or work for any of them. The foregoing notwithstanding, pursuant to Education Code section 17316, the DBE grants to Owner, without further compensation from Owner, a perpetual license to use the Design-Build Documents for completion of, or alterations, additions, renovations or other modifications to, the Project. Upon the termination of this Agreement, the Owner may use any portion of the DBE's work product, including Instruments of Service (whether they are completed or in progress), for any purpose, in the sole and exclusive discretion of the Owner.

§ 12.2 The DBE and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the DBE grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the DBE rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

§ 12.3.1 The DBE shall obtain non-exclusive licenses from the Architect, Consultants, and Subcontractors, that will allow the DBE to satisfy its obligations to the Owner under this Article 12. The DBE's licenses from the Architect and its Consultants and Subcontractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the DBE's Architect, Consultants, or Subcontractors terminate their agreements with the DBE for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Subcontractor all amounts due, and (2) provide the Architect, Consultant or Subcontractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Subcontractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the DBE, Architect, Consultants, Subcontractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the DBE, Architect, Consultants, Subcontractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Notice to Proceed with Construction

§ 13.1.1 If the Owner fails to make payments of undisputed amounts to the DBE for Increment 2 Work prior to execution of the Notice to Proceed with Construction in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the DBE's option, cause for suspension of performance of services under this Agreement. If the DBE elects to suspend the Increment 2 Work, the DBE shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the DBE shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the DBE shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the DBE's Work. The DBE's compensation for, and time to complete, the remaining Increment 2 Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the DBE shall be compensated for the Increment 2 Work performed prior to notice of such suspension. When the Project is resumed, the DBE shall be compensated for expenses incurred in the interruption and resumption of the DBE's Work. The DBE's compensation for, and time to complete, the remaining Increment 2 Work shall be equitably adjusted.

§ 13.1.3 Not Used.

§ 13.1.4 Either party may terminate this Agreement upon not less than 30 days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the DBE for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the DBE, the DBE shall be compensated for Work satisfactorily performed prior to termination and any other expenses directly attributable to termination for which the DBE is not otherwise compensated. In no event shall the DBE's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Notice to Proceed with Construction

§ 13.2.1 Termination by the DBE

§ 13.2.1.1 The DBE may terminate the Agreement if the Increment 2 Work is stopped for a period in excess of 90 consecutive days through no act or fault of the DBE, the Architect, a Consultant, or a Subcontractor, or their agents or employees, or any other persons or entities performing portions of the Increment 2 Work under direct or indirect contract with the DBE, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the DBE may, upon 30 days' written notice to the Owner, terminate the Agreement and recover from the Owner payment for Increment 2 Work satisfactorily executed, including reasonable overhead and profit on Increment 2 Work satisfactorily performed and costs incurred by reason of such termination.

§ 13.2.1.4 If the Increment 2 Work is stopped for a period of 90 consecutive days through no act or fault of the DBE, the Architect, a Consultant, a Subcontractor, or their agents or employees or any other persons or entities performing portions of the Increment 2 Work under direct or indirect contract with the DBE because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Increment 2 Work, the DBE may, upon seven additional days' written notice to the Owner, terminate the Agreement and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 The Owner may terminate the Agreement if the DBE

- .1 Not Used.
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Subcontractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Subcontractors for services, materials or labor in accordance with their respective agreements with the DBE;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise determined by the Owner to be in breach of a material provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the DBE and the DBE's surety, if any, seven days' written notice to cure and DBE or its surety failing to cure within such period (or if the cure cannot be reasonably accomplished in such seven day period, beginning the cure and thereafter diligently pursuing it to completion), may terminate employment of the DBE and may, subject to any prior rights of the surety:

- .1 Exclude the DBE from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the DBE;
- .2 Accept assignment of the Architect, Consultant and Subcontractor agreements; and
- .3 Finish the Increment 2 Work by whatever reasonable method the Owner may deem expedient. Upon written request of the DBE, the Owner shall furnish to the DBE a detailed accounting of the costs incurred by the Owner in finishing the Increment 2 Work.

§ 13.2.2.3 When the Owner terminates the Agreement for one of the reasons stated in Section 13.2.2.1, the DBE shall not be entitled to receive further payment until the Increment 2 Work is finished.

§ 13.2.2.4 In the event of a termination under this Section 13.2.2, if the unpaid balance of the Contract Sum exceeds costs of finishing the Increment 2 Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the DBE. If such costs and damages exceed the unpaid balance, the DBE shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Agreement.

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the DBE in writing to suspend, delay or interrupt the Increment 2 Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption. Adjustment of the Contract Sum shall include overhead, general conditions and profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the DBE is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Agreement.

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, upon at least seven days' written notice to the DBE terminate the Agreement for the Owner's convenience and without cause. In such case, the DBE shall be entitled to payment for: (i) Increment 2 Work actually performed and in place as of the effective date of such termination, with a reasonable allowance for profit and overhead on such Increment 2 Work, and (ii) reasonable termination expenses for reasonable protection of Increment 2 Work in place and suitable storage and protection of materials and equipment delivered to the site of the Increment 2 Work but not yet incorporated into the Work, provided that such payments exclusive of termination expenses shall not exceed the total GMP as reduced by payments previously made to the DBE and as further reduced by the value of the Increment 2 Work as not yet completed. The DBE shall not be entitled to profit and overhead on Increment 2 Work which was not performed as of the effective date of the termination or for any other damages, direct or indirect, which the DBE or anyone claiming through the DBE alleges resulted from the Owner's election to terminate under this Section 13.2.4.1. The Owner may, in its sole discretion, elect to have subcontracts assigned to it after exercising the right hereunder to terminate for the Owner's convenience.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the DBE shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Increment 2 Work directed to be performed prior to the effective date of termination stated in the notice, enter into no further Increment 2 agreements or purchase orders.

§ 13.2.4.3 Not Used.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 Public Contract Code § 9204. Claims between the Owner and the DBE shall be resolved in accordance with the procedures established in Public Contract Code § 9204 and this Article 14.

§ 14.1.2 Claim. The term "Claim" means a written demand by the DBE sent by registered mail or certified mail with return receipt requested for:

- (1) An extension of the Contract Time, including relief from damages or penalties assessed by the Owner for delay;

(2) Payment of money or damages arising from work done by, or on behalf of, the DBE pursuant to the Contract and payment that is not otherwise expressly provided for in the Contract Documents or to which the DBE is not otherwise entitled; or

(3) Payment of an amount that is disputed by the Owner.

§ 14.1.3 Submission of Claim. The DBE shall submit a Claim by registered mail or certified mail with return receipt requested to the Owner's Representative, with a copy to the Project Manager. The DBE shall submit its Claim in writing, together with all Supporting Documentation as specified in Section 14.1.4 no later than the earlier of either: (1) thirty (30) days after the date the Claim arises; or (2) sixty (60) days after the date of Substantial Completion. It is the intent of the Owner to evaluate and resolve Claims with the DBE as close to the events giving rise to such Claims as possible and to avoid stale or late Claims, including late notice and documenting of Claims, and to timely mitigate the issue, event, condition, circumstance and/or cause of the Claim and any adverse impacts or damages related thereto. Should the DBE fail to submit a Claim by the deadline set forth in this Section, DBE waives and releases such Claim, including all rights and remedies in connection therewith.

§ 14.1.4 Contents of Claim. A Claim must include all Supporting Documentation as set forth in Article 6 and a statement signed under penalty of perjury under the laws of the State of California by an authorized agent or officer of DBE certifying that, to the best of his/her knowledge, information and belief, the Claim is substantiated and has merit. The DBE recognizes and acknowledges that this requirement is not a mere formality but is intended to ensure that the DBE only submits Claims that it believes are substantiated and have merit.

§ 14.1.5 Subcontractor Claims. Pursuant to Public Contract Code § 9204(d)(5), a Subcontractor may request in writing, either on its own behalf or on behalf of a lower tier Subcontractor, that the DBE submit to the Owner a claim for work which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the claim be submitted to the Owner shall furnish reasonable documentation to support the claim. Regardless of whether or not the DBE decides to submit the Subcontractor's claim to the Owner, DBE shall provide a copy of the Subcontractor's written request, including all supporting documentation, to the Project Manager/Construction Manager within ten (10) days of DBE's receipt of the request. In the event the DBE agrees to submit a Subcontractor's claim to the Owner, the DBE shall submit such claim as a request for a Change Order in accordance with Article 6, unless such claim was previously submitted to the Owner as a request for a Change Order. Within forty-five (45) days of receipt of the Subcontractor's written request, the DBE shall notify the Subcontractor in writing as to whether the DBE submitted the claim to the Owner and, if the DBE did not submit the claim, the DBE shall provide the Subcontractor with a written statement of the reasons for not having done so and shall concurrently provide a copy of such written statement to the Project Manager/Construction Manager. In the event the DBE includes supporting documentation with such written statement, the DBE shall concurrently provide a copy of such supporting documentation to the Project Manager/Construction Manager. If the DBE submits a Claim on behalf of a Subcontractor, the Claim shall include a statement in writing and signed by an authorized agent or officer of the DBE under penalty of perjury under the laws of the State of California that DBE has evaluated the Claim and Supporting Documentation and certifies that, to the best of his/her knowledge, information and belief, the Claim is substantiated and has merit. The DBE recognizes and acknowledges that this requirement is not a mere formality but is intended to ensure that the DBE only submits Claims that it believes are substantiated and have merit.

§ 14.1.6 Owner Review of Claim. Upon receipt of a Claim, the Owner shall review the Claim and, within a period not to exceed forty-five (45) days, shall provide DBE a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the Owner and the DBE may, by mutual written agreement, extend the forty-five (45) daytime period. The Owner shall process and make payment of any undisputed portion of a Claim within sixty (60) days after the Owner issues its written statement. Failure by the Owner to provide a written statement in response to a Claim from the DBE within the forty-five (45) daytime period, or within an agreed upon extended time period, shall result in the Claim being deemed rejected in its entirety. A Claim that is rejected by reason of the Owner's failure to respond, or failure to timely respond, to the Claim shall not constitute an adverse finding regarding the merits of the Claim or the claimant's responsibility or qualifications.

§ 14.1.7 Meet and Confer Meeting. If the DBE disputes the Owner's written response made pursuant to Section 14.1.6, or if the Owner fails to respond within the time frame prescribed in Section 14.1.6, the DBE, within fourteen (14) days of the Owner's written response or, if the Owner fails to respond, within fourteen (14) days after the Owner's response was due, may demand, in a writing sent to the Owner's Representative or designee by registered mail or certified mail, return receipt requested, with a copy to the Project Manager, an informal conference to meet and confer for settlement

of the issues in dispute. The Owner shall schedule a meet and confer conference within thirty (30) days of its receipt of the DBE's written demand.

§ 14.1.8 Mediation. Within ten (10) business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the Owner shall provide the DBE a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after the Owner issues its written statement. Any disputed portion of the Claim, as identified by the DBE in writing, shall be submitted to nonbinding mediation. The expenses and fees of the mediator and the administrative fees shall be divided among the parties equally. Each party shall pay its own legal fees, witness fees, and other expenses. The Owner and the DBE shall mutually agree to a mediator within ten (10) business days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. The foregoing notwithstanding, pursuant to Public Contract Code § 9204(f), the parties may mutually agree in writing to waive mediation.

§ 14.1.9 DBE's Obligation to File a Government Code Claim. Nothing in this Agreement, including this Article 14, waives, modifies or tolls the DBE's obligation to present a timely claim under Government Code § 910, et seq. Therefore, in addition to complying with the contractual Claims procedures, the DBE is required to present claims to the Owner pursuant to Government Code § 910, et seq. If after the requirements of Sections 14.1.6, 14.1.7 and 14.1.8 are satisfied, and all or a portion of the Claim remains unresolved, and if the Government Code claim is rejected by the Owner, the DBE may proceed under Sections 14.1.10 and 14.1.11.

§ 14.1.10 Claims of \$375,000 or Less. The provisions of Public Contract Code § 20104.4 shall apply. Pursuant to Public Contract Code § 20104.4(a), within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. Pursuant to Public Contract Code § 9204(d)(2)(D), a mediation conducted pursuant to Section 14.1.8 shall excuse the obligation under Public Contract Code § 20104.4(a) to mediate after litigation has been commenced unless otherwise agreed to by the parties in writing.

§ 14.1.11 Arbitration. Except as provided in Section 14.1.10, any other claims, disputes, disagreements or other matters in controversy between the Owner and the DBE arising out of, or related, in any manner, to the Design-Build Documents, or the interpretation, clarification or enforcement thereof, shall be resolved by arbitration conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA") in effect as of the date that a Demand for Arbitration is filed, except as expressly modified herein. The locale for any arbitration commenced hereunder shall be the regional office of the AAA closest to the Project site or at a location as mutually agreed by the parties. The award rendered by the Arbitrator(s) shall be final and binding upon the Owner and the DBE, as well as any other parties joined in the proceedings. In connection with any arbitration proceeding commenced hereunder, the discovery rights and procedures provided for in California Code of Civil Procedure §1283.05 shall be applicable, and the same shall be deemed incorporated herein by this reference. A Demand for Arbitration shall be filed and served within a reasonable time after the occurrence of the claim, dispute or other disagreement giving rise to the Demand for Arbitration, but in no event shall a Demand for Arbitration be filed or served after the date when the institution of legal or equitable proceedings based upon such claim, dispute or other disagreement would be barred by the applicable statute of limitations. In the event more than one Demand for Arbitration is made by either the Owner or the DBE, all such controversies shall be consolidated into a single arbitration proceeding, unless otherwise agreed to by the Owner and the DBE. The DBE's Surety, a Subcontractor or material supplier to the DBE and other third parties may be permitted to join in and be bound by an arbitration commenced hereunder if required by the terms of their respective agreements with the DBE, except to the extent that such joinder would unduly delay or complicate the expeditious resolution of the claim, dispute or other disagreement between the Owner and the DBE, in which case an appropriate severance order shall be issued by the Arbitrator(s). The expenses and fees of the Arbitrator(s) shall be divided equally among the parties to the arbitration. Each party to any arbitration commenced hereunder shall be responsible for and shall bear its own attorneys' fees, witness fees and other cost and expense incurred in connection with such arbitration. The foregoing notwithstanding, the Arbitrator(s) may award arbitration costs, including Arbitrators' fees but excluding attorneys' fees, to the prevailing party. The confirmation, enforcement, vacation or correction of an arbitration award rendered hereunder shall be the Superior

Court of the State of California for the county in which the Site is situated. The substantive and procedural rules for such post-award proceedings shall be as set forth in California Code of Civil Procedure §1285 et seq.

§ 14.2 No Attorneys' Fees. Except as expressly provided for in the Design-Build Documents, or authorized by law, neither the Owner nor the DBE 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 Design-Build Documents or the performance of either the Owner or the DBE thereunder.

§ 14.3 No Interest. Notwithstanding any other provision of law, the Owner and DBE shall not be liable for payment of interest on any disputed amounts pending final adjudication of such disputes.

§ 14.4 Claims for Consequential Damages

The DBE and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the DBE for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Increment 2 Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.4 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the State of California without regard to its Choice of Law provisions. Venue shall be in Santa Clara County, California.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and DBE, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Neither party to the Contract shall assign the Agreement as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement.

§ 15.2.2 DSA Inspector Office: The DBE shall provide and maintain throughout the duration of the work a fully functioning field office for the DSA Inspector. The office shall be a minimum of 120 square feet and shall be equipped with a minimum of one window and one door. The Inspector's office shall have a separate entrance to exterior. Inspector's office shall be an independent free-standing facility or separated from DBE's office by full-height partition wall. The Inspectors office shall be furnished at a minimum with a full-size desk, desk chair, two side chairs, a plan table and a 4-drawer file cabinet.

§ 15.2.3 If the Owner requests the DBE to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the DBE to execute consents reasonably required to facilitate assignment to a lender, the DBE shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The DBE shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or DBE shall constitute a waiver of a right or duty afforded them under the Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the DBE shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The DBE shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the DBE.

§ 15.5.2 If the Owner determines that portions of the Increment 2 Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the DBE to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the DBE shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Increment 2 Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the DBE's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the DBE and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Not Used.

§ 15.7 Capitalization

Terms capitalized in the Agreement include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 Approved DSA Construction Documents and Specifications

- .2 Exhibit A, Cost Proposal
- .3 Exhibit B, Modifications to the Cost Proposal and Final GMP
- .4 Exhibit C, Skilled and Trained Workforce Monthly Report
- .5 Exhibit D, Insurance Requirements
- .6 Exhibit E, Hourly Rates
- .7 Exhibit F, Vaccination Certification
- .8 Exhibit G, Certifications
- .9 Performance and Payment Bonds
- .10 Request for Proposal No. 22-001 dated August 23, 2022, as amended on 9/9/2, is incorporated herein in its entirety by this reference.

This Agreement is entered into as of the day and year first written above.

OWNER
CAMBRIAN SCHOOL DISTRICT

DBE
JL CONSTRUCTION, INC.

Name: John Pappalardo

Name: Kyle Chamberlain

Title: Chief Financial Officer

Title: Vice President

Date: _____

Date: _____

EXHIBIT A

ATTACHMENT 1A, COST PROPOSAL FORM FROM RFP RESPONSE

ATTACHMENT 1A - COST PROPOSAL FORM

To: Governing Board of the Cambrian School District (“District” or Owner”)

From: (Proper Name of Proposer) JL Construction, Inc.

1. The undersigned Proposer proposes and agrees, if this Proposal is accepted, to enter into an agreement with the Cambrian School District (“District”) to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Sum and within the Contract Term indicated in this Proposal and in accordance with all other terms and conditions of the Contract Documents.
2. Proposer accepts all of the terms and conditions of the Contract Documents. This Proposal will remain subject to acceptance for ninety (90) Days after the Proposal submission date.
3. In submitting this Proposal, the Proposer represents that:
 - a. The Proposer has examined all of the Contract Documents and the following Addenda (receipt of all of which is hereby acknowledged).

Addendum No.	Addendum Date:
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1	9/9/22
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_____	_____
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Addendum No.	Addendum Date:
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_____	_____
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Addendum No.	Addendum Date:
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_____	_____
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- b. The Proposer has given District prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and as-built drawings and actual conditions and the written resolution thereof through Addenda issued by District is acceptable to Contractor.
4. Based on the foregoing, the Proposer proposes and agrees to fully perform the Work and in strict accordance with the Contract Documents for the following sums of money listed in the following GMP Cost Proposal:

GUARANTEED MAXIMUM PRICE (GMP) COST PROPOSAL FOR PERMANENT MODULAR BUILDINGS PROJECT – INCREMENT 2 CAMBRIAN SCHOOL DISTRICT	
A1. Preconstruction and Design Services for Price Middle School	\$ <u>118,000</u> (in numerals)
A2. Construction at Price Middle School	\$ <u>3,108,000</u> (in numerals)
B1. Preconstruction and Design Services for Fammatre Elementary School	\$ <u>117,000</u> (in numerals)
B2. Construction at Fammatre Elementary School	\$ <u>2,937,000</u> (in numerals)
C1. Preconstruction and Design Services for Farnham Elementary School	\$ <u>118,000</u> (in numerals)
C2. Construction at Farnham Elementary School	\$ <u>3,089,000</u> (in numerals)
D1 Preconstruction and Design Services for Sartorette Elementary School	\$ <u>117,000</u> (in numerals)
D2. Construction at Sartorette Elementary School	\$ <u>2,937,000</u> (in numerals)
Total (GMP) for all Four Sites (Add items A1, A2, B1, B2, C1, C2, D1 and D2)	\$ <u>12,541,000</u> (in numerals)
	\$ <u>Twelve million five hundred forty one thousand</u> (in words)

IN CASE OF DISCREPANCY BETWEEN THE AMOUNT IN PROPOSAL ITEM 4 AND THE TOTAL COST PROPOSAL (in words), THE TOTAL COST PROPOSAL (in words) SHALL PREVAIL.

- 3 The Total Cost Proposal will be determined by the sum of Proposal Items A1, A2, B1, B2, C1, C2, D1, and D2.
- 4 The undersigned Proposer understands that District reserves the right to reject this Proposal.
- 5 If written notice of the acceptance of this Proposal hereinafter referred to as Notice of Award is e-mailed or posted to the undersigned Proposer within the time described in the appropriate Sections of the Attachments or at any other time thereafter before it is withdrawn, the undersigned Proposer will execute and deliver the documents required by the Request for Proposal within the times specified therein. These documents include, but are not limited to, the Contract Template and Insurance as required.
- 6 Notice of Award or request for additional information may be addressed to the undersigned Proposer at the address set forth below.
- 7 The undersigned Proposer acknowledges that District has reserved the right to delay or modify the commencement date. The undersigned Proposer further acknowledges District has reserved the right to perform independent work at the Site, the extent of such work may not be determined until after the opening of the Proposals, and that the undersigned Proposer will be required to cooperate with such other work in accordance with the requirements of the Contract Documents.
- 8 The undersigned Proposer agrees that, liquidated damages for failure to complete all Work in the Contract within the time specified shall be as set forth in the RFP.
- 9 Based on the foregoing, Proposer proposes and agrees to fully perform the Work and in accordance with the Contract Documents adhere to the following schedule:

Notice to Proceed with design and preconstruction services	10/8/22
Anticipated DSA submission of Increment 2	12/19/22
Anticipated DSA approval of Increment 2	4/14/23
Anticipated Notice to Proceed with in-plant construction of Increment 2 buildings per CM master project schedule	5/1/23
Anticipated Notice to Proceed with site construction of Increment 2 buildings per CM master project schedule	9/1/23
Anticipated Completion of Increment 2 buildings per CM master project schedule	5/1/24

The names of all persons interested in the foregoing Proposal as principals are:

(IMPORTANT NOTICE: If Proposer or other interested person is a corporation, give the legal name of corporation, state where incorporated, and names of president and secretary thereof; if a partnership, give name of the firm and names of all individual co-partners composing the firm; if Proposer or other interested person is an individual, give first and last names in full).

NAME OF PROPOSER: JL Construction, Inc.


Licensed in accordance with the act for the registration of Contractors, and with

License Number: 761270 Expiration: April 30, 2023

DIR Registration Number: 1000005631 Expiration: June 30, 2023

California 2132780
Where incorporated, if applicable Corporate ID

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Proposer  Title: Kyle Chamberlain - Vice President

NOTE: If Proposer is a corporation, set forth the legal name of the corporation together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation. If Proposer is a partnership, set forth the name of the firm together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership.

Business Address: 70 Stony Point Road, Suite D, Santa Rosa, CA 95401

Officers authorized to sign contracts:

Jeff Luchetti - President, Kyle Chamberlain - Vice President
(Print Names)

Nancy Luchetti - Secretary, Lauren Chamberlain - Treasurer

Telephone Number(s):

(707) 527-5788

E-Mail address:

kylec@jlcbuild.com

Federal ID Number:

94-3323886

Date of Proposal:

September 15, 2022

END OF DOCUMENT



JL CONSTRUCTION

Value Engineering

1. Plastic laminate countertops in lieu of solid surface countertops. **Approximate savings \$36,000 at Price MS, and \$6,000 at each of the elementary schools.**
2. All Weather 5000 Series Aluminum Windows and HM Doors and frames in lieu of Aluminum Storefront. **Approximate savings \$48,000 per campus.**
3. Single shade, manual operation window coverings in lieu of double shade and motorized shades. **Approximate savings \$30,000 per campus.**

EXHIBIT B

APPROVED MODIFICATIONS TO THE COST PROPOSAL AND FINAL GMP

(To be incorporated by contract modification)

EXHIBIT C

MONTHLY REPORT

Skilled and Trained Workforce

(Public Contract Code section 2600 et. seq.)

Month: _____, 20__

SKILLED WORKFORCE COMPLIANCE SECTION

In accordance with Public Contract Code section 2600 et. seq. all the workers of _____ [INSERT NAME OF DBE/SUBCONTRACTOR] performing work in an apprenticeable occupation in the building and construction trades on the Project known as the Cambrian School District Permanent Modular Building Project [INSERT PROJECT NAME AND LOCATION] (the “Project”) are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards of the California Department of Industrial Relations (the “Chief”). “Skilled journeyperson” means a worker who either:

- (1) Graduated from an apprenticeship program for the applicable occupation that was approved by the Chief or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the Federal Secretary of Labor.
- (2) Has at least as many hours of on-the-job-experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the Chief.

TRAINED WORKFORCE COMPLIANCE SECTION – CHECK APPLICABLE BOX

In addition, the required percentage of the skilled journeypersons employed by _____ [INSERT NAME OF CONTRACTOR/SUBCONTRACTOR] to perform work on the Project are graduates of an apprenticeship program for the applicable occupation.¹ A graduate of an apprenticeship program means either of the following:

- (1) An individual that has been issued a certificate of completion under the authority of the California Apprenticeship Council for completing an apprenticeship program approved by the Chief pursuant to Section 3075 of the Labor Code, or
- (2) An individual that has completed an apprenticeship program located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

_____ [INSERT NAME OF CONTRACTOR/SUBCONTRACTOR] does not comply this month with the required percentage of skilled journeypersons on this Project and has developed a plan to meet the percentage in the future. See attached proposed plan.

_____ [INSERT NAME OF DBE/SUBCONTRACTOR] is exempt from skilled journeypersons percentage requirement on this Project due to Subcontractor's employment of skilled journeypersons performing fewer than 10 hours of work during the above-referenced month and/or the subcontract does not exceed one-half of 1 percent of the price of the prime contract.

I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct and complies with Public Contract Code Section 2601, subdivisions (d)(1) and (e). I also understand that the information I provided in this form is to be used by Contractor to periodically monitor Subcontractor's use of a skilled and trained workforce. Subcontractor agrees to provide DBE with information supporting what I have declared on this form upon request by DBE.

Date: _____

Design-Build Entity/Subcontractor:

Signature:

Name/Title:

¹ Skilled journeypersons employed to perform work on the Project by DBE or its subcontractors at every tier must be graduates of an apprenticeship program for the applicable occupation for at least 60 percent of the work per Public Contract Code Section 2601, except for the following occupations for which at least 30 percent of the work must be performed by skilled journeyperson: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, settler, or finisher. A percentage of graduates does not apply to the teamster occupation.

Rev. 2020.10

EXHIBIT D

INSURANCE REQUIREMENTS

1) DBE shall, procure and maintain insurance and shall require each Subcontractor to provide and maintain insurance of the type and in the limits as set forth below, which can be satisfied with a combination of primary and excess/umbrella liability policies.

- (a) Workers' Compensation and Employer's Liability Insurance: Workers' Compensation for the statutory limits in accordance with the laws of the State of California. Employer's Liability in an amount not less than \$1,000,000 for each accident, each bodily injury or disease, and aggregate.
- (b) Commercial General Liability Insurance: Commercial General Liability insurance in a form providing coverage not less than that of an ISO CG0001 Commercial General Liability coverage form, for bodily injury and property damage arising out of the Work, including completed operations, in an amount not less than \$10,000,000 each occurrence and aggregates for DBE, and \$1,000,000 each occurrence and \$2,000,000 aggregates for Subcontractors. Proof of excess liability coverage to meet limits is acceptable.
- (c) Automobile Liability Insurance: Automobile Liability insurance covering bodily injury and property damage for owned, non-owned and hired automobiles for a Combined Single Limit of \$1,000,000 for DBE and \$1,000,000 for Subcontractors.
- (d) Pollution Legal Liability Insurance: If performing or providing any hazardous waste services or abatement, DBE shall provide and maintain, and shall require any Subcontractor performing or providing any hazardous waste services or abatement to provide and maintain insurance covering losses caused by pollution conditions that arise from their operations, including completed operations. Such insurance shall apply to bodily injury and property damage, cleanup costs and defense, including costs and expenses incurred in the investigation, defense or settlement of claims. The policies of insurance affording these coverages shall be written with limits in an amount not less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants. If coverage is written on a claims- made basis, any retroactive date applicable to coverage under the policy must precede the effective date of the contract and continuous coverage will be maintained, or an extended discovery period will be exercised, for a period often (10) years from Final Completion.
- (e) Professional Liability: The DBE shall purchase and maintain Professional Liability covering negligent acts, errors and omissions in the performance of professional services, and shall require any Subcontractor providing Design Services to purchase and maintain Professional Liability insurance with limits of \$2,000,000 each claim and aggregate. If professional liability insurance is written on a claims-made policy form, the retroactive date must be equal or prior to the first date in which services commenced for this project.
- (f) Insurer Requirements: Insurance policies required of the DBE and Subcontractors shall be written by insurers authorized to write insurance in the State of California with an A.M. Best Rating of at least A: X for the DBE and A-: VII for Subcontractors.
- (g) Additional Insured: With the exception of Worker's Compensation and Professional Liability Insurance, the insurance policies will be endorsed to include as additional insureds the District, its officers, agents, employees and representatives, Project Manager, Architect, Construction Manager, and Inspector of Record. The coverage shall be primary coverage and non-contributing with insurance or self-insurance coverage, if any, carried by the Additional Insureds.

- h) Waivers of Subrogation: With the exception of Professional Liability, the required insurance policies shall be endorsed to waive rights of subrogation against the District, its officers, agents, employees, representatives and consultants, Project Manager, Architect, Construction Manager, and Inspector of record.
- (i) Evidence of DBE's Insurance: DBE shall deliver to the District Certificates of Insurance, including all required endorsements, evidencing the required insurance coverages.

(2) Builder's Risk Insurance. The DBE shall purchase and maintain, in a company or companies lawfully authorized to do business in California, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum excluding design fees, plus the value of subsequent modifications and cost of materials supplied or installed by others, comprising the total construction value for the Project at the site on a replacement cost basis until Substantial Completion of the Project.

- (a) This insurance shall include the interests of the District, DBE, and Subcontractors of all tiers as additional insured parties, and be written on an "all-risk" completed value policy form that includes, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.
- (b) DBE shall be responsible for the builder's risk deductibles to the extent the loss was caused by DBE or an entity for whom DBE is responsible. DBE shall require responsible Subcontractor to reimburse DBE for the deductible. To the extent the underlying loss that occurred was not caused by the act or omission of the DBE or entity for whom either or both of them are responsible, the District shall satisfy the deductible.
- (c) The District, and DBE waive all rights against each other and any of their subcontractors and sub-subcontractors, for damages caused by fire or other causes of loss to the extent covered by builder's risk insurance obtained pursuant to this Section. The District or DBE, as appropriate, shall require the subcontractors and sub-subcontractors, by appropriate agreements, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise.
- (d) Partial occupancy or use by the District shall not commence until the insurance company or companies providing the builder's risk insurance have consented to such partial occupancy or use by endorsement or otherwise.
- (e) Upon issuance of a Certificate of Substantial Completion and prior to occupying the Project, the District shall replace the builder's risk insurance with permanent property insurance policy written for the total value of the Project and provide DBE's with written confirmation.

**EXHIBIT E
CERTIFICATIONS**

- Vaccine Compliance Certification
- Workers Compensation Certification
- Drug-Free Workplace Certification
- Tobacco-Free Environment Certification
- Hazardous Materials Certification
- Imported Materials Certification
- Criminal Background Investigation/Fingerprinting Certification

**VACCINE COMPLIANCE CERTIFICATION
(Contractor Vaccine Requirements)**

(“DBE”) CERTIFICATION

With respect to the Contract Agreement dated _____ by and between Cambrian School District (“OWNER”) and _____ (“DBE”) for the provision of the services related to RFP No. 22-001 and related contract documents, DBE hereby certifies Owner’s governing board that all of its employees* who may come onto an Owner Site or otherwise come into contact with Owner’s students and staff have been fully vaccinated against COVID-19. This certification is required by the COVID-19 testing requirement as mandated by the California Department of Public Health Order of August 11, 2021 (“Order”). Records shall be maintained by Contractor and made available to the Owner upon request.

In the alternative, DBE shall have all unvaccinated employees* complete the attached Covid-19 Testing Verification form on a weekly basis. Records shall be maintained by Contractor and made available to the Owner upon request.

*“Employee” is to be interpreted broadly to include any individual performing services on your behalf including, but not limited to, hired staff, subcontractors, volunteers, agents, representatives.

Owner’s Representative

Date

ATTACHMENT TO VACCINE COMPLIANCE CERTIFICATION

Phone Number:	E-mail:
---------------	---------

As you are aware the California Department of Public Health by order dated August 11, 2021 is requiring COVID-19 testing. As a result, you are receiving this verification because according to our records, you are not fully vaccinated for COVID-19 or have declined to state. As a condition of employment, you are required to be COVID-19 tested once a week. You will receive this form every Monday to complete and verify the previous week. This form must be completed and returned every Friday by 5:00 p.m.

- You are obligated to be tested weekly with either antigen or PCR (molecular) testing. Any antigen or PCR test used must either have Emergency Use Authorization by the U.S. Food and Drug Administration or be operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services. Results must be provided to the Owner/Vendor by Friday at 5:00 p.m. each week.

If you have recently become fully vaccinated, please contact the Owner/Vendor _____ at (____) ____-____ [insert contact information] to update its records.

Please provide your answers to the following questions:

Did you receive your COVID-19 test last week?

- Yes
- No

Did you receive a positive COVID-19 test result in the last ten days?

- Yes
If yes, please stay home and contact the Vendor immediately.
- No. (Please provide negative results)

Failure to provide your test results each week by Friday at 5:00 p.m. will result in loss of access to the Owner site. Until an approved cleared test is provided, you will be denied access to the Owner Site.

I verify the truth and accuracy of the statements in my COVID-19 testing verification.

Employee Signature: _____ Date: _____

Vendor: _____

Date Received by Owner: _____ By: _____

Notice of Workers Compensation Insurance

I, _____
(Name)

the _____ of _____
(Title) (Contractor Name)

declare state and certify that:

1. I am aware that California Labor Code §3700(a) and (b) provides:

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

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees."

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

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

Drug Free Workplace Certification

I, (Name) _____

the (Title) _____ of (Contractor Name) _____

declare state and certify that:

3. I am aware of the provisions and requirements of California Government Code § 8350 et seq., the Drug Free Workplace Act of 1990.
4. I am authorized to certify, and do certify, on behalf of Contractor that a drug free workplace will be provided by Contractor by doing all of the following:
 - a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in Contractor's workplace and specifying actions which will be taken against employees for violation of the prohibition;
 - b) Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace;
 - (2) Contractor's policy of maintaining a drug-free workplace;
 - (3) The availability of drug counseling, rehabilitation and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations;
 - c) Requiring that each employee engaged in the performance of the Contract be given a copy of the statement required by subdivision (A), above, and that as a condition of employment by Contractor in connection with the Work of the Contract, the employee agrees to abide by its terms.
5. Contractor agrees to fulfill and discharge all of Contractor's obligations under the terms and requirements of California Government Code §8355 by, inter alia, publishing a statement notifying employees concerning: (a) the prohibition of any controlled substance in the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the Work of the Contract be given a copy of the statement required by California Government Code §8355(a) and requiring that the employee agree to abide by the terms of that statement.
6. Contractor and I understand that if the District determines that Contractor has either:(a) made a false certification herein, or (b) violated this certification by failing to carry out and to implement the requirements of California Government Code §8355, the Contract awarded herein is subject to termination, suspension of payments, or both. Contractor and I further understand that, should Contractor violate the terms of the Drug-Free Workplace Act of 1990, Contractor may be subject to debarment in accordance with the provisions of California Government Code § 8350, et seq.

7. Contractor and I acknowledge that Contractor and I are aware of the provisions of California Government Code § 8350, et seq. and hereby certify that Contractor and I will adhere to, fulfill, satisfy and discharge all provisions of and obligations under the Drug-Free Workplace Act of 1990.

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

Executed at (City and State) _____ this _____ day of _____,
20_____.

Contractor Name

Signature

Title

Hazardous Materials Certification

ASBESTOS AND OTHER HAZARDOUS MATERIALS CERTIFICATION

1. Contractor hereby certifies that no Asbestos or Asbestos Containing Materials, polychlorinated biphenyl (PCB), any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules or regulations, shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Contractor's work on the Project for District under this project.
2. Contractor further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks and liabilities.
3. Asbestos and/or asbestos containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos containing material.
4. Any disputes involving the question of whether or not material contains asbestos or any other hazardous material(s) shall be settled by electron microscopy; the costs of any such tests shall be paid by Contractor if the material is found to contain asbestos or any other hazardous material(s).
5. All work or materials found to contain asbestos or any other hazardous material(s) containing equipment will be immediately rejected and this Work will be removed at Contractor's expense at no additional cost to the Owner.
6. Contractor has read and understood the General Conditions clauses pertaining to hazardous materials and shall comply with all the provisions outlined therein.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

Lead Based Materials Certification

This certification provides notice to the Contractor that:

- (1) The Contractor's work may disturb lead-containing building materials.
- (2) The Contractor must notify the District if any work may result in the disturbance of lead-containing building materials.

1. Lead as a Health Hazard

Lead poisoning is recognized as a serious environmental health hazard facing children today. Even at low levels of exposure, much lower than previously believed, lead can impair the development of a child's central nervous system, causing learning disabilities, and leading to serious behavioral problems. Lead enters the environment as tiny lead particles and lead dust disburse when paint chips, chalks, peels, wears away over time, or is otherwise disturbed. Ingestion of lead dust is the most common pathway of childhood poisoning; lead dust gets on a child's hands and toys and then into a child's mouth through common hand-to-mouth activity. Exposures may result from construction or remodeling activities that disturb lead paint, from ordinary wear and tear of windows and doors, or from friction on other surfaces.

Ordinary construction and renovation or repainting activities carried out without lead-safe work practices can disturb lead-based paint and create significant hazards. Improper removal practices, such as dry scraping, sanding, or water blasting painted surfaces, are likely to generate high volumes of lead dust.

Because the Contractor and its employees will be providing services for the District, and because the Contractor's work may disturb lead-containing building materials, CONTRACTOR IS HEREBY NOTIFIED of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school buildings built prior to 1993 are presumed to contain some lead-based paint until sampling proves otherwise.

2. Overview of California Law

Education Code section 32240 et seq. is known as the Lead Safe Schools Protection Act. Under this act, the Department of Health Services ("DHS") is to conduct a sample survey of schools in the State of California for the purpose of developing risk factors to predict lead contamination in public schools. (Ed. Code, § 3224 1.)

Any school that undertakes any action to abate existing risk factors for lead is required to utilize trained and state-certified contractors, inspectors, and workers. (Ed. Code, § 32243, subd. (b).) Moreover, lead-based paint, lead plumbing, and solders, or other potential sources of lead contamination, shall not be utilized in the construction of any new school facility or the modernization or renovation of any existing school facility. (Ed. Code, § 32244.)

Both the Federal Occupational Safety and Health Administration ("Fed/OSHA") and the California Division of Occupational Safety and Health ("Cal/OSHA") have implemented safety orders applicable to all construction work where a contractor's employee may be occupationally exposed to lead.

The OSHA Regulations apply to all construction work where a contractor's employee may be occupationally exposed to lead. The OSHA Regulations contain specific and detailed requirements imposed on contractors subject to that regulation. The OSHA Regulations define construction work as work for construction, alteration, and/or repair, including painting and decorating. It includes, but is not limited to, the following:

- a. Demolition or salvage of structures where lead or materials containing lead are present;

- b. Removal or encapsulation of materials containing lead;
- c. New construction, alteration, repair, or renovation of structures, substrates, or portions thereof, that contain lead, or materials containing lead;
- d. Installation of products containing lead;
- e. Lead contamination/emergency cleanup;
- f. Transportation, disposal, storage, or containment of lead or materials containing lead on the site or location at which construction activities are performed; and
- g. Maintenance operations associated with the construction activities described in the subsection.

Because it is assumed by the District that all painted surfaces (interior as well as exterior) within the District contain some level of lead, it is imperative that the contractor, its workers and subcontractors fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials (including title 8, California Code of Regulations, section 1532. 1).

The Contractor must notify the District if any Work may result in the disturbance of lead-containing building materials. Any and all Work that may result in the disturbance of lead-containing building materials must be coordinated through the District. A signed copy of this Certification must be on file prior to beginning Work on the Project, along with all current insurance certificates.

3. Contractor's Liability

If the Contractor fails to comply with any applicable laws, rules, or regulations, and that failure results in a site or worker contamination, the Contractor will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify, and hold harmless the District, pursuant to the indemnification provisions of the Contract, for all damages and other claims arising therefrom.

If lead disturbance is anticipated in the Work, only persons with appropriate accreditation, registrations, licenses, and training shall conduct this Work.

It shall be the responsibility of the Contractor to properly dispose of any and all waste products, including, but not limited to, paint chips, any collected residue, or any other visual material that may occur from the prepping of any painted surface. It will be the responsibility of the Contractor to provide the proper disposal of any hazardous waste by a certified hazardous waste hauler. This company shall be registered with the Department of Transportation (DOT) and shall be able to issue a current manifest number upon transporting any hazardous material from any school site within the District.

The Contractor shall provide the District with any sample results prior to beginning Work, during the Work, and after the completion of the Work. The District may request to examine, prior to the commencement of the Work, the lead training records of each employee of the Contractor.

THE CONTRACTOR HEREBY ACKNOWLEDGES, UNDER PENALTY OF PERJURY, THAT IT:

1. HAS RECEIVED NOTIFICATION OF POTENTIAL LEAD-BASED MATERIALS ON THE OWNER'S PROPERTY;
2. IS KNOWLEDGEABLE REGARDING AND WILL COMPLY WITH ALL APPLICABLE LAWS, RULES, AND REGULATIONS GOVERNING WORK WITH AND DISPOSAL OF LEAD.

THE UNDERSIGNED WARRANTS THAT HE/SHE HAS THE AUTHORITY TO SIGN ON BEHALF OF AND BIND THE CONTRACTOR. THE DISTRICT MAY REQUIRE PROOF OF SUCH AUTHORITY.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

Imported Materials Certification

(To be submitted by the successful bidder with its signed Agreement within 10 (ten) calendar days of the date of the Notice of Award)

This form shall be executed by any Contractor that in any way, provides or delivers and/or supplies any soils, aggregate or related materials to the Project Site.

By my signature below, I hereby certify that I am aware of section 25260 of the Health and Safety Code and the sections referenced therein regarding the definition of hazardous material. I further certify on behalf of the Firm that all soils, aggregates or related materials provided, delivered and/or supplied or that will be provided, delivered, and/or supplied by this Firm to the Project site are free of any and all hazardous material as defined in section 25260 of the Health and Safety Code. I further certify that I am authorized to make this certification on behalf of the Firm.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

Criminal Background Fingerprinting Certification

California Education Section 45125.2 requires entities providing construction services to the District, where the employees of the entity or subcontractor will have contact with pupils, to ensure the safety of the pupils. The Contractor shall ensure the safety of pupils by one or more of the following methods:

1. The installation of a physical barrier at the worksite, at the expense of Contractor unless otherwise specified, to limit contact with pupils.

2. Continual supervision and monitoring of all employees of Contractor and Subcontractors by an employee of Contractor whom the Department of Justice has ascertained has not been convicted of a violent or serious felony. A violent felony is defined in Penal Code Section 667.5(c) and a serious felony is defined in Penal Code Section 1192.7(c).

In order to evidence adherence to the fingerprinting requirements of Education Code Section 45125.2, the Contractor is required to comply with the following:

You must certify prior to start of on site work, that the safety of pupils is being ensured by one or more of the methods described above. Provide this certification by completing the following Declaration and forwarding the Declaration to the Cambrian School District, 4115 Jacksol Drive, San Jose, California, and this Declaration will be forwarded to the Governing Board. If you are submitting fingerprint cards to the California Department of Justice, then contact the Department of Justice at 916-227-3836 to determine the current fee and appropriate form or forms to be used at the time you submit the fingerprint cards. Fees are a Contractor cost and not reimbursable by the District. You may be required to submit a copy of your contract to the Department of Justice. Fingerprint services are generally provided by local police department, County Sheriff, and local private companies such as packaging, mail services, and photo processing businesses.

DECLARATION REGARDING EMPLOYEE FINGERPRINTING AND CRIMINAL BACKGROUND CHECK

_____, declares that where the employees will have contact with pupils, of the Cambrian School District, the safety of the pupils will be ensured by one or more of the following

- 1. The installation of a physical barrier, at the expense of the contractor, at the work site to limit contact with pupils.
- 2. Continual supervision and monitoring of all employees of Contractor and Subcontractor by an employee of Contractor whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

I am a duly authorized representative of _____ for the purpose of providing this certification and declare under penalty of perjury and the laws of the State of California that the foregoing is true and correct.

Executed this _____ day of _____, 20____, in _____ California.

Signature

Printed Name and Title

Labor Requirements Certification

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding payment of prevailing wages, benefits, on-site audits with 48-hours notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

Tobacco Free Environment Certification

This Tobacco-Free Environment Certification form is required from the successful Bidder.

Pursuant to, without limitation, 20 U.S.C section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq. and District Board Policies, all District sites, including the Project site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes school buildings, school grounds, school owned vehicles and vehicles owned by others while on District property.

I acknowledge that I am aware of the District's policy regarding tobacco-free environments at District sites, including the Project site and hereby certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, subcontractors, or my firm's subcontractors' employees or agents to use tobacco and/or smoke on the Project site.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____