

**WEST VALLEY-MISSION
COMMUNITY COLLEGE DISTRICT**

REQUEST FOR PROPOSAL DESIGN-BUILD

**PE BUILDINGS INTERIOR
LIGHTING RETROFIT**

**Bid # 11-1314
WEST VALLEY COLLEGE**

LATEST TIME/DATE FOR SUBMISSION OF RFP RESPONSE	FEBRUARY 12, 2014, 2:00 PM
LOCATION FOR SUBMISSION OF RFP RESPONSE	WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT ATTN: DIRECTOR, GENERAL SERVICES 14000 FRUITVALE AVENUE SARATOGA, CA 95070-5698
MANDATORY PRE-PROPOSAL MEETING AND SITE WALK	JANUARY 30, 2014 , 2:00 PM
LATEST DATE/TIME FOR RESPONDENTS' SUBMISSION OF CLARIFICATIONS REQUESTS/RFP QUESTIONS	FEBRUARY 03, 2014, 3:00 PM
DISTRICT RESPONSES TO RESPONDENTS' QUESTIONS	FEBRUARY 07, 2014
INTERVIEWS (AT DISCRETION OF DISTRICT)	FEBRUARY 13, 2014
DISTRICT BOARD OF TRUSTEES ACTION TO AWARD SERVICE AGREEMENT	MARCH 04, 2014

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WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT
REQUEST FOR PROPOSALS ("RFP")
PE BUILDINGS INTERIOR LIGHTING RETROFIT
WEST VALLEY COLLEGE
Bid #11-1314

West Valley-Mission Community College District ("District") requests that firms ("Respondents") provide engineering design, procurement and construction for interior lighting improvement at the **PE BUILDING** at West Valley Campus. Submit written responses to this RFP.

1. Overview, Objective and Site Information

West Valley College Campus is located at 14000 Fruitvale Avenue, Saratoga, CA 95070, within the County of Santa Clara. The District is a part of the CCC/PG&E Partnership. The District's intent is to improve lighting including lighting attached to the exterior of buildings, emergency egress, and exit signs for the PE building totaling approximately 10,000 gross square feet. The existing T-12 lamps will be replaced with T-8 lamps. The energy savings for the lighting fixture retrofits are based on the reduced energy consumption per fixture times the number of fixtures and the operating hours of each fixture.

The objective of this Request for Qualifications and Proposal ("RFP") is to identify and select the most qualified and value-competitive **Design-Build contractor** ("Contractor") for the design, and installation at West Valley College campus PE buildings. The District's award of contracts, if at all, will be made in accordance with Government Code section 4217, *et seq.*, and will be based on the Vendor's skill, experience and qualifications.

Respondents are expected to optimize the proposed design within the identified area. The scope consists of **A) Design services** **B) Construction services**. Please also refer to **Attachment E**, campus Site Plans, **Attachment G, Attachment J** Technical Specifications, and **Exhibit A** Scope of work.

2. Request for Qualifications and Proposals

- 2.1. Purpose of RFP. This RFP is part of the process for the District's selection of a Respondent to **design and install interior lighting** in the PE building as indicated on **Attachment E**, at the District's West Valley College campus. The District intends to award a single contract to a single Vendor for completion of the design and construction.
- 2.2. District Modifications to RFP. The District expressly reserves the right to modify any portion of this RFP prior to the latest date/time for submission of RFP Responses, including without limitation, the cancellation of this RFP. Modifications, if any, made by the District to the RFP will be in writing; potential Respondents who have

obtained this RFP from the District prior to any such modifications will be issues modifications to the RFP by written addenda.

- 2.3. No Oral Clarifications/Modifications. The District will not provide any oral clarifications or modifications to the RFP or the requirements hereof; no employee, office, agent or representative of the District is authorized to provide oral clarifications or modifications to the RFP. No Respondent shall rely on any oral clarification or modification to the RFP. Inquiries must be submitted not later than the time/date indicated in Paragraph 6.1 of this RFP.
- 2.4. Public Records. Except for materials deemed Trade Secrets (as defined in California Civil Code §3426.1) and materials specifically marked “Confidential” or “Proprietary,” all materials submitted in response to this RFP are deemed property of the District and public records upon submission to the District. The foregoing notwithstanding, the District may reject for non-responsiveness the RFP Response of a Respondent who indiscriminately notes that its RFP Response or portions thereof are “Trade Secret” “Confidential” or “Proprietary” and exempt from disclosure as public record. The District is not liable or responsible for the disclosure of RFP Responses, or portions thereof, deemed to be public records, including those exempt from disclosure if disclosure is by law, by an order of a court of competent jurisdiction, or which occurs through inadvertence, mistake or negligence on part of the District or its agents or representatives. If the District is required to defend or otherwise respond to any action or proceeding wherein request is made for the disclosure of the contents of any portion of a RFP Response deemed exempt from disclosure hereunder, by submitting a response to this RFP, each Respondent agrees to defend, indemnify and hold harmless the District in any action or proceeding from and against any liability, including without limitation attorneys’ fees arising therefrom. The party submitting materials sought by any other party shall be solely responsible for the cost and defense in any action or proceeding seeking to compel such disclosure of such materials; the District’s sole involvement in any such action shall be that of a stakeholder, retaining the requested materials until otherwise ordered by a court of competent jurisdiction.
- 2.5. Errors/Discrepancies/Clarifications to RFP. If a Respondent: (i) encounters errors or discrepancies in this RFP or portions hereof; or (ii) requires clarifications of any portion of the RFP, the Respondent shall immediately notify Brigit Espinosa, Director of General Services, via email: brigit_espinosa@wvm.edu. Responses of the District to the notice of any errors or discrepancies herein, or request for clarification will be in writing; if, in the sole judgment of the District, any clarification response affects the RFP or other Respondents, the District will issue the clarification response by a written addendum distributed to all potential Respondents who have theretofore obtained this RFP from the District. All requests for clarification of this RFP must be submitted and actually received by Brigit

Espinosa no later than **3:00 P.M, Tuesday, February 03, 2014**. The District will not respond to clarification requests submitted thereafter.

- 2.6. Examination of Site and Contract Documents. Each Respondent shall, at its sole cost and expense, inspect the Site and to become fully acquainted with the Contract Documents and conditions affecting the Work. The failure of a Respondent to receive or examine any of the Contract Documents or to inspect the Site, or any portion thereof, shall not relieve such Respondent from any obligation with respect to the Proposal, or the Work required under the Contract Documents. The District assumes no responsibility or liability to any Respondent for, nor shall the District be bound by, any understandings, representations or agreements of the District's representatives, agents, employees or officers concerning the Contract Documents or the Work made prior to execution of the Contract which are not in the form of Bid Addenda duly issues by the District. The submission of a Proposal shall be deemed prima facie evidence of the Respondent's full compliance with the requirements of this section.
- 2.7. Prevailing Wage Rates Pursuant to California Labor Code §1773, the Director of the Department of Industrial Relations of the State of California determines the generally prevailing rates of wages in the locality in which the Work is to be performed. Copies of these determinations, entitled "PREVAILING WAGE SCALE" are available for review on the internet at http://www.dir.ca.gov/dlsr/statistics_research.html. The Contractor and all Subcontractors performing any portion of the Work shall pay prevailing wages based on the highest determination, i.e., Department of Industrial Relations determination, for the classification of labor provided by their respective workers in prosecution and execution of the Work. The determinations in effect ten (10) days prior to bid opening shall govern the entire duration of the Project. The Contractor awarded the Contract for the Work shall post a copy of all applicable prevailing wage rates for the Work at conspicuous locations at the Site of the Work.
- 2.8. Contractors' License Classification. In accordance with the provisions of California Public Contract Code §3300, the District requires that Respondents possess, at the time of submission of a Proposal, at the time of award of the Contract and at all time during construction activities, the following classification(s) of California Contractors **License C-10**. Any Respondent not so duly and properly licensed shall be subject to all penalties imposed by law. No payment shall be made for work, labor, materials or services provided under the Contract for the Work unless and until the Registrar of Contractors verifies to the District that the Respondent awarded the Contract is properly and duly licensed to perform the Work.

3. Negotiations.

The District reserves the right to engage in negotiations, discussions and other communications with one or more Respondents, as determined by the District in the sole exclusive discretion of the District.

3.1 West Valley College Campus. West Valley College, located at: 14000 Fruitvale Avenue, Saratoga, CA 95070-5698, is a 143 acre campus nestled in the foothills of the Santa Cruz Mountains.

3.2. General.

The lighting systems shall be designed and constructed with emphasis and focus on energy efficient systems. Designer - Builder is responsible for design coordinate, installation, and testing. The design of the lighting system for the proposed building shall encompass interior lighting and exterior lighting attached to the buildings. Other equipment in the ceiling such as: communication wiring, data wiring, building management system wiring, mechanical equipment should remain intact. Lighting fixtures that are to be retrofitted and replaced should remain in the same grid format in the ceiling, unless otherwise noted.

3.3. Warranties

Respondents must offer warranty coverage (inclusive of materials, equipment and labor) for materials, equipment, workmanship and operation of the lighting systems as follows: (i) five (5) years for lighting system or per manufacture recommendation. (ii) All proposed lighting systems must not render void, violate or otherwise limit other existing warranties covering any portion of existing District facilities, materials or equipment. (iii) one (1) year labor warranty.

3.4. Administrative Requirements

During the course of performance, the successful Respondent will be required to comply with administrative requirements including, without limitation, payment of prevailing wage rates, limitations on hours/days of work at the Site, non-discriminatory employment practices and implementation of safety programs.

4. Service Agreement.

Incorporated as **Attachment K** to this RFP is a form of Service Agreement ("Agreement") which the District anticipates executing with the Respondent selected through this RFP.

5. Program Requirements

5.1 Codes and Standards.

All work to be compliant with the latest adopted editions of the following codes and standards:

- 2010 California Building Standards Administrative Code, Part 1, Title 24C.C.R.
- 2010 California Building Code (CBC), Title 24 C.C.R (2009 International Building Code of the International Code Council, Volumes 1-2 California Amendments)
- 2010 California Electrical Code (CEC), Part 3, Title 24 C.C.R. (2008 National Electric Code of the National Fire Code Association, NFPA)
- 2010 California Energy Code Part 6, Title 24, C.C.R. for Energy Compliance
- 2010 California Fire Code (CFC) Part 9, Title 24, C.C.R. (2009 International Fire Code of the International Code Council)
- 2010 California Referenced Standards, Part 12, Title 24, C.C.R.
- Title 19, C.C.R., Public Safety, State Fire Marshal Regulations
- Illuminating Engineering Society of North America Handbook (IESNA)

5.2 Life-Cycle Requirements

A. The materials and products selected must allow for the continuous use and operation of the facility for the programmed life cycle.

B. As a minimum level of performance the following elements shall be considered Primary requirement and be included in the design and construction for all structures:

1. Ease of electrical lighting systems operation, including both users and maintenance personnel.
2. Ease of isolating elements of a system to minimize impact to other components of the system in the event of a failure, maintenance, etc.
3. All materials and products to be commercially and readily available.
4. Selection of products to allow for industry standard, non-proprietary equipment

5.3 Raceway

A. All conductors shall be enclosed within a raceway system. All raceway shall be designed and installed in compliance with the CEC and shall incorporate the following requirements:

1. All raceways to be concealed unless otherwise noted or installed in an unfinished space.
2. Use of MC Cable is allowed only as an exception and in limited quantities. i.e. From a junction box above ceiling down a wall to another box, not more than six feet
3. Conduits fill rates shall not exceed 40%.
4. All EMT conduit fittings shall be steel compression style.

- 5. All conduit mounted below 10' or within reach of a student without the aid of a ladder shall be secured to the structure via the use of two hole conduit straps.
- 6. All wall boxes to be double gang or larger with appropriately sized mud ring.
- 7. All enclosures, pull-boxes, etc. to be permanently labeled based on its contents.

6. RFP Response

6.1 **RFP Activities; Timeline.** The following is a description of the principal activities to be completed under this RFP and the date for anticipated completion of each activity. The following notwithstanding, the District expressly reserves the right to amend the extent, nature of scope of RFP activities and/or the time for completing RFP activities.

ACTIVITY	DATE
Mandatory Pre-Proposal Meeting and Site Walk	JANUARY 30, 2014 , 2:00 PM
Latest date/time for Respondents' Submission of Clarifications Requests/RFP Questions	FEBRUARY 03, 2014, 3:00 PM
District Responses to Respondents' Questions	FEBRUARY 07, 2014
Respondents' Submission of RFP Response	FEBRUARY 12, 2014, 2:00 PM
Interviews (at discretion of District)	FEBRUARY 13, 2014
District Board of Trustees Action to Award Service Agreement	MARCH 04, 2014

6.2. **Submission of RFP Response.**

6.2.1. **Latest Date/Time for Submission of RFP Response.**

The latest date/time for submission of RFP Responses is 2:00 P.M., February 12, 2014 . RFP Responses which are not actually received in the office of the District's Director, General Services at or prior to the latest date/time for submission of RFP Responses will be rejected by the District for non-responsiveness. Respondents are solely responsible for the timely submission of RFP Responses. **Respondents are encouraged to personally deliver, or to retain a private courier/messenger service to personally deliver, RFP Responses directly to the office of the District's Director, General Services to ensure timely delivery to the proper location for submission of RFP Responses.**

- 6.2.2 Location for Submission of RFP Response. RFP Responses shall be submitted to Director, General Services, West Valley College, 14000 Fruitvale Avenue, Saratoga, California 95070-5678.
- 6.2.3 RFP Response Costs. All costs and expenses incurred by a Respondent to prepare and submit a response to this RFP and all other related activities shall be borne solely and exclusively by the Respondent.
- 6.2.4 RFP Response. All materials submitted in response to this RFP shall be on 8 ½" x 11" paper, preferably in portrait orientation, except for drawings and graphics, which may be submitted in larger format, folded as practicable to fit into 8 ½" x 11" size. All submitted materials must be bound in either a three-ring binder or spiral bound notebook. Tabbed dividers should be used to identify and separate discrete sections of the RFP Response which correspond to the information requested in Paragraph 6.3 below.
- 6.2.5 Additional Materials. Respondents are not prohibited from submitting materials in addition to those specifically responding to the matters noted in Paragraph 6.3 below. If a Respondent elects to submit materials with its RFP Response which are in addition to the matters described in Paragraph 6.3 below, the Respondent shall bind all such additional materials separately from the RFP Response addressing the matters set forth in Paragraph 6.3 below.
- 6.2.6 Copies of RFP Response. Each Respondent shall submit an original and three (3) copies of its RFP Response, as well as an electronic version in Word and Excel and saved to a CD or flash drive. Pdf documents should be limited to graphics files.

6.3. RFP Response Format/Contents.

Each RFP Response must conform to the following described format and must include the content described below. Failure of a Respondent to submit its RFP Response in a format and with content conforming to the following requirements may be a basis for the District's rejection of such RFP Response for non-responsiveness.

- 6.3.1 Cover Sheet. Identify the submittal as the Response to this RFP and include an identification of the firm submitting the RFP Response along with the firm's address, telephone/fax numbers and email addresses of the firm's principal contracts in connection with this RFP or the RFP Response.
- 6.3.2 Letter of Interest. Include a brief letter expressing the interest of the Respondent in providing a statement of the qualifications of the Respondent to provide the Services described in the Agreement. Provide contact information, including the telephone number, fax number and email address for the personnel of the Respondent who will be receiving notices and other communications from the District regarding the RFP. The letter of interest should be bound with other materials responding to this RFP.

6.3.3 Table of Contents. Include a Table of Contents reflecting the Respondent's responses to each of the items set forth below.

6.3.3.1 Tab 1; Proposal. Complete and execute the form of Proposal included with this RFP as **Attachment A** and required documents as noted in Section of the Proposal at Attachment A.

In providing the total cost, be sure to provide the all-inclusive including all design, permitting, installation, commissioning and warranties.

Such cost and services shall include, but not necessarily limited to:

Contractor is responsible for field verification of all measurements and quantities.

Contractor must provide protection for all surfaces.

Contractor is responsible to move away and back objects and furniture that affect or are in the way of installation of new work.

Contractor will repair any district's owned system damaged during the course of the project.

All installation work is to take place when classes are not occupied unless by special arrangement is coordinated.

Contractor must provide notice 48 hours prior to shut down of any utilities.

Contractor is responsible for removal and disposal of all debris. It is not allowed to use campus containers for any type of disposal.

Contractor is responsible for daily cleaning during construction and for final cleaning of work area.

6.3.3.2. Tab 2; Non-Collusion Affidavit and Statement of Qualifications Complete the Non-Collusion Affidavit and Vendor Qualifications document incorporated into this RFP as **Attachment B** and **Attachment C**, respectively.

6.3.3.3. Tab 3; Financial Statement. Include a current financial statement (2012 CY or 2011/2012 FY) for the Respondent. Financial Statements must be reviewed or audited by a California licensed Certified Public Accountant.

6.3.3.4 Tab 4; Proposed Design Team. Identify each person proposed as part of the Design Team and indicate whether such proposed personnel are employees of the Respondent, an employee of a Sub-Consultant to the Respondent or an independent contractor to the Respondent. The Proposed Project Team must include personnel for the following disciplines: (i) structural; (ii) electrical. Include an organization chart

illustrating the roles and relationships among the Respondent’s proposed Design Team (including proposed Design Consultants) and between the proposed Design Team and District personnel responsible for implementing the Project. Include resumes of the key personnel of the Respondent and its proposed Design Consultants identified in this section of the RFP Response which reflects the educational backgrounds as well as the skills and experience of such personnel in developing, preparing and completing the scope.

6.3.3.5 Tab 5; Insurance Certificates. Provide copies of Certificates of Insurance for the Respondent and confirming the minimum coverage amounts for each policy of insurance as set forth below.

Required Insurance Policy Certificate	Minimum Respondent Coverage Amount	Minimum Design Consultant Coverage Amount
Workers Compensation	In accordance with law	In accordance with law
Employers Liability	One Million Dollars (\$1,000,000)	One Million Dollars (\$1,000,000)
Comprehensive General Liability (including property damage and automobile liability)	Two Million Dollars (\$2,000,000) per occurrence/Four Millions Dollars (\$4,000,000) aggregate	One Million Dollars (\$1,000,000) per occurrence/One Million Dollars (\$2,000,000) aggregate
Professional Liability	Two Million Dollars (\$2,000,000) per claim/Two Million Dollars (\$2,000,000) aggregate	One Million Dollars (\$1,000,000) per occurrence/One Million Dollars (\$2,000,000) aggregate

6.3.3.6 Tab 6; Agreement Comments. Included with this RFP is the Vendor Service Agreement (“Agreement”). Respondents must thoroughly review the Agreement included herewith and must in their respective RFP responses identify any term or condition of the Agreement which the Respondent requests modification, by amendment to existing provisions,

addition of additional provisions or deletion of existing provisions. Where any requested modification consists of amendments to existing provisions or additional provisions, the response to this RFP must set forth the text of the requested amendment or addition. Any Respondent whose RFP Response does not identify modifications to terms or conditions of the attached Agreement will be deemed to have agreed to all terms and conditions set forth therein; if awarded the Agreement, such Respondent must execute the Agreement in the form and content attached hereto subject only to elements of such Respondent's RFP Response accepted by the District.

- 6.3.3.7 Tab 7; Technical Components. Include separate sub-parts (Tab 7-A Technical Description) and (Tab 7-B Architectural and Lighting plans)

Tab 7-A Technical Description. Using the WORD version of **Attachment J**, provide a detailed description of the scope Lighting requirements

Tab 7-B Architectural. Provide drawings, fixture, Ballast and sensor descriptions , or other graphic materials which illustrate the proposed lighting system, including but not necessarily limited to proposed lighting layout.

6.4. Selection Criteria

General. Timely submitted RFP Responses will be reviewed by the District. A Response to the RFP which does not comply with the requirements of this RFP will be subject to rejection for non-responsiveness, provided that the District reserves the right to waive immaterial deviations in a response to this RFP.

- 6.5. Interviews. District may, in the sole discretion of the District, require Respondents to participate in an interview with a Selection Committee established by the District. Interviews, if conducted by the Selection Committee, will generally consist of no more than fifteen (15) minutes for Respondents' presentation, followed by questions posed by the Selection Committee. Respondents selected for the interview process shall be at the sole discretion of the District. If requested by the Selection Committee, any Respondent invited to participate in the interview process shall have present at the interview its key personnel of the Respondent and its Project Team. The order of firms to be interviewed will be selected randomly.

- 6.6. Cost Negotiations. The District reserves the right to request that Respondents timely submitting a RFP Response to subsequently require Respondents to take part in cost negotiations and/or submit a Best and Final Offer. The RFP

Response of a Respondent who fails to participate in cost negotiations and/or submit a Best and Final Offer in the form and format directed by the District within the time requested by the District may be rejected for non-responsiveness.

6.7. Award of Contract.

Waiver of Irregularities or Informalities. The District reserves the right to reject any and all Bid Proposals or to waive any irregularities or informalities in any Bid Proposal or in the bidding.

Award to Lowest Responsive Responsible Bidder. The award of the Contract, if made by the District through action of its Board of Trustees, will be to the responsible Bidder submitting the lowest responsive Bid Proposal on the basis of the Base Bid Proposal and Alternate Bid Items total, in accordance with these Instructions for Bidders.

Alternate Bid Items Proposal. If the bidding includes Alternate Bid Items, the price(s) proposed by a Bidder for each Alternate Bid Item shall be set forth in the appropriate line item of the Total Bid Proposal Form, included in the Bid Proposal. Each Bidder shall submit its completed and executed Total Bid Proposal Form with submission of the Bidder's Bid Proposal. The Bid Proposal of a Bidder will be rejected for non-responsiveness if the Bidder fails to propose prices for each Alternate Bid Item on the Total Bid Proposal Form.

Selection of Alternate Bid Items. The determination of the combination of Alternate Bid Items selected for inclusion in the Contract to be awarded will be determined by the District after bid opening and before award.

Alternate Bid Items Not Included in Award of Contract. Bidders are referred to the provisions of the Contract Documents permitting the District, during performance of the Work, add or delete from the scope of the Work any or all of the Alternate Bid Items with the cost or credit of the same being the amount(s) set forth by in the Alternate Bid Items Proposal.

RFP Attachments

Bid #11-1314

Attachment A

PROPOSAL

TO: **WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT**, a California Community College District, acting by and through its Board of Trustees ("the District").

FROM:

(Name of Bidder)

(Address)

(City, State, Zip Code)

(Telephone/Telecopier)

(E-Mail Address of Bidder's Representative(s))

(Name(s) of Bidder's Authorized Representative(s))

OFFICE LOCATION CLOSEST TO DISTRICT, IF DIFFERENT FROM ABOVE:

(Address)

(City, State, Zip Code)

(Telephone/Telecopier)

PROJECT: WEST VALLEY PE BUILDING INTERIOR LIGHTING RETROFIT

To the Board of Trustees of the West Valley-Mission Community College District ("District"), the undersigned proposes to provide the work, labor, materials and services necessary to complete

engineering design, procurement and construction of lighting energy retrofit at West Valley College Physical Education buildings.

1. **Proposal Submission.** This Proposal is submitted by _____ (“Respondent”); if the Services Contract for the Project is awarded to the Respondent, the Respondent shall execute the Agreement included with the Contract Documents and shall complete the Project in accordance with the Contract Documents, for the Contract Price and within the Contract Time set forth therein.

2. **Respondent Acknowledgements.** By submitting this Proposal, the Respondent acknowledges that the Respondent has: (i) conducted observations of the Site as deemed reasonable and prudent by the Respondent; (ii) carefully reviewed and examined the Contract Documents; (iii) been afforded the opportunity to request clarification or explanation of the Contract Documents; and (iv) committed to permit acceptance of this Proposal by the District within one-hundred twenty (120) days of the date of this Proposal.

3. **Documents Accompanying Proposal.** The Respondent confirms that the following documents are submitted concurrently with this Proposal:
 - A. Non-Collusion Affidavit (Attachment B).
 - B. Statement of Vendor’s Qualifications (Attachment C).
 - C. Bid Bond.
 - D. Sub-contractor list (Exhibit F).

4. **Addenda.** The Respondent acknowledges its receipt of the following Addenda issued by or on behalf of the District and that the Proposal incorporates the matters addressed in each of the following Addenda. The Respondent further acknowledges that if the Respondent does not acknowledge receipt of all Addenda issued by or on behalf of the District and that this Proposal incorporates the matters raised by all Addenda, this Proposal may be rejected for non-responsiveness.

Addenda Number	Addenda Received by Respondent	Addenda Incorporated Into Proposal
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

5. Price Proposal.

5.1. Proposed Price. In accordance with the RFP Instructions, the undersigned Respondent hereby submits its proposed pricing (“Proposed Price”) for the PE BUILDING INTERIOR LIGHTING RETROFIT as follows:

WEST VALLEY COLLEGE:

For the total amount of _____ Dollars

The Respondent confirms that the foregoing Proposed Prices are inclusive of: (i) all work, labor, materials, services and all other obligations under the Contract Documents; (ii) all general administrative overhead costs and expenses, whether for home-office, field office or otherwise; and (iii) profit. The Proposed Prices are further allocated between the West Valley College Campus and broken-down by the principal components in the following tables. The undersigned Respondent acknowledges that the District may reject this Proposal for non-responsiveness if the District reasonably determines that the allocation of the Proposed Price between components and/or between the campuses are materially unbalanced.

WEST VALLEY COLLEGE PROPOSAL FORM

Scope	Price
Base Bid , including Design, Construction & PG&E incentive process	_____ Dollars (\$_____)
Alternate No.1 , replace 500’ damaged wires and circuitry	_____ Dollars (\$_____)
Alternate No.2 , replace all incandescent & florescent EXIT signs with LED	_____ Dollars (\$_____)
Alternate No.3 , replace 50 wall switches	_____ Dollars (\$_____)
Alternate No.4 , unit price to use relight kits in lieu of relamp and reballast	_____ Dollars (\$_____)
Total Cost, Base bid and all (4) bid alternates combined	_____ Dollars (\$_____)

5.2. Proposed Price. The Bidder’s price proposal(s) for Alternate Bid Items are set forth in the form of Alternate Bid Item Proposal included herewith. Price proposal(s) for Alternate Bid Item(s) will not form the basis for the District’s award of the Contract.

5.2.1 Alternate No. 1, replace 500' damaged wires and circuitry:

The undersigned Bidder proposes and agrees to provide the Alternate No 1. As shown, including without limitation, providing and furnishing any and all labor, materials, tools, equipment and services necessary to complete in a workmanlike manner all of the work and other obligation required by the contract documents for the sum of:

_____ Dollars (\$_____)

5.2.2. Alternate No. 2, replace all incandescent & florescent EXIT signs with LED:

The undersigned Bidder proposes and agrees to provide the Alternate No 2. As shown, including without limitation, providing and furnishing any and all labor, materials, tools, equipment and services necessary to complete in a workmanlike manner all of the work and other obligation required by the contract documents for the sum of:

_____ Dollars (\$_____)

5.2.3. Alternate No. 3, replace 50 wall switches:

The undersigned Bidder proposes and agrees to provide the Alternate No 3. As shown, including without limitation, providing and furnishing any and all labor, materials, tools, equipment and services necessary to complete in a workmanlike manner all of the work and other obligation required by the contract documents for the sum of:

_____ Dollars (\$_____)

5.2.4. Alternate No. 4, Provide a unit price for T8 relight kits in lieu of relamp and reballaast including labor and materials:

The undersigned Bidder proposes and agrees to provide the Alternate No 4. As shown, including without limitation, providing and furnishing any and all labor, materials, tools, equipment and services necessary to complete in a workmanlike manner all of the work and other obligation required by the contract documents for the sum of:

_____ Dollars (\$_____)

6. Project Duration. Contractor shall achieve Final Completion of the Work on or before June 12, 2014

7. **Schedule Proposal.** The undersigned Respondent proposes to complete activities and tasks necessary for design and construction of the Project in accordance with the Proposed Project Schedule. The Proposed Project Schedule is summarized as follows:

WEST VALLEY COLLEGE		
Activity/Task	Respondent's Proposed Commencement Date	Respondent's Proposed Completion Date
Complete Design Documents and Submitted to District for Review and Comment		
District Review and Comments to Design Documents		
Complete Incorporation of District Comments into Design Documents		
Commencement of Construction		N/A
Project Substantial Completion		
Project Final Completion	N/A	

7.1. Respondent's Acknowledgment. The undersigned Respondent acknowledges that if it is subject to Liquidated Damages liability, the District may deduct Liquidated Damages from the Contract Price then or thereafter due the Respondent, the District may seek recovery of **Liquidated Damages for the amount of \$500.00 per day** from the Respondent's Performance Bond Surety and/or the District may seek recovery of Liquidated Damages from the Respondent or the Performance Bond Surety without having exhausted remedies against the other.

8. Contractor's License. The undersigned Bidder is currently and duly licensed in accordance with the California Contractors License Law, California Business & Professions Code §§7000 et seq., under the following classification(s) **C10** bearing License Number(s) _____, with expiration date(s) of _____. The Bidder certifies that: (a) it is duly licensed, in the necessary class(es), for performing the Work of the Contract Documents; (b) that such license shall be in full force and effect throughout the duration of the performance of the Work under the Contract Documents; and (c) that all Subcontractors providing or performing any portion of the Work shall be so properly licensed to perform or provide such portion of the Work.

9. Award of Contract.

9.1. District Actions. The Respondent acknowledges that action to award the Contract is vested solely in the Board of Trustees of the District and that the District may waive minor irregularities or informalities in the RFP process or the District may reject all Proposals. The District reserves the right to reject all Proposals.

9.2. Respondent Responsibilities. If the undersigned Respondent is awarded the Contract, the Respondent shall execute and return the executed Agreement to the District within ten (10) calendar days of the date of the Board of Trustees action awarding the Contract to the Respondent. Concurrently with return of the executed Agreement, the Respondent shall also **submit: (i) Certificates of Insurance evidencing that the policies of insurance in the**

minimum coverage amounts set forth in the RFP and the Contract Documents have been obtained by the Respondent; (ii) duly executed and issued Labor & Materials Payment Bond and Performance Bond; (iii) duly completed and executed Certificate of Workers Compensation Insurance; (iv) and duly completed and executed Subcontractor's List; and (v) duly completed and executed Drug-Free Workplace Certification.

The individual executing this Proposal on behalf of the above-identified Respondent warrants and represents to the District that: (i) he/she is duly authorized to execute this Proposal on behalf of the Respondent and to bind the Respondent to this Proposal; and (ii) this Proposal is complete and accurate.

Dated: _____, 2014

By: _____

Title: _____

BID BOND

KNOW ALL MEN BY THESE PRESENTS that we, _____,

as Surety and _____, as Principal, are jointly and severally, along with their respective heirs, executors, administrators, successors and assigns, held and firmly bound unto **WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT**, hereinafter "the Obligee," for payment of the penal sum hereof in lawful money of the United States, as more particularly set forth herein.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Principal has submitted the accompanying Bid Proposal to the Obligee for the Work commonly described as **BID #11-1314 PE BUILDING INTERIOR LIGHTING RETROFIT PROJECT**.

WHEREAS, subject to the terms of this Bond, the Surety is firmly bound unto the Obligee in the penal sum of **ten percent (10%)** of the maximum amount of the Bid Proposal submitted by the Principal to the Obligee, as set forth above.

NOW THEREFORE, if the Principal shall not withdraw said Bid Proposal within the period specified therein after the opening of the same, or, if no period be specified, for ninety (90) days after opening of said Bid Proposal; and if the Principal is awarded the Contract, and shall within the period specified therefor, or if no period be specified, within seven (7) days after the prescribed forms are presented to him for signature, enter into a written contract with the Obligee, in accordance with the Bid Proposal as accepted and give such bond(s) with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such Contract and for the payment for labor and materials used for the performance of the Contract, or in the event of the withdrawal of said Bid Proposal within the period specified for the holding open of the Bid Proposal or the failure of the Principal to enter into such Contract and give such bonds within the time specified, if the Principal shall pay the Obligee the difference between the amount specified in said Bid Proposal and the amount for which the Obligee may procure the required Work and/or supplies, if the latter amount be in excess of the former, together with all costs incurred by the Obligee in again calling for Bids, then the above obligation shall be void and of no effect, otherwise to remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or the Call for Bids, the Work to be performed thereunder, the Drawings or the Specifications accompanying the same, or any other portion of the Contract Documents shall in no way affect its obligations under this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said Contract, the Call for Bids, the Work, the Drawings or the Specifications, or any other portion of the Contract Documents.

In the event suit or other proceeding is brought upon this Bond by the Obligee, the Surety shall pay to the Obligee all costs, expenses and fees incurred by the Obligee in connection therewith, including without limitation, attorneys' fees.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this _____ day of _____, 20__ by their duly authorized agents or representatives.

(Principal's Corporate Seal)

(Principal Name)

By: _____

(Typed or Printed Name)

Title: _____

(Surety's Corporate Seal)

(Surety Name)

By: _____

(Signature of Attorney-in-Fact for Surety)

(Attach Attorney-in-Fact Certificate)

(Typed or Printed Name)

(Telephone Number of Surety)

Contact name, address, telephone number and email address
for notices to the Surety

(Contact Name)

(Address)

(Telephone)

(Email address)

Attachment B

NON-COLLUSION AFFIDAVIT

STATE OF CALIFORNIA)

COUNTY OF _____)

PROJECT: WEST VALLEY-PE BUILDING INTERIOR LIGHTING RETROFIT

I, _____, being first duly sworn, deposes and says that I am
(Typed or Printed Name)

the _____ of _____, the party submitting
(Title) (Bidder Name)

the foregoing Bid Proposal ("the Bidder"). In connection with the foregoing Bid Proposal, the undersigned declares, states and certifies that:

1. The Bid Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization or corporation.
2. The Bid Proposal is genuine and not collusive or sham.
3. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any other bidder or anyone else to put in sham bid, or to refrain from bidding.
4. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price, or that of any other bidder, or to fix any overhead, profit or cost element of the bid price or that of any other bidder, or to secure any advantage against the public body awarding the contract or of anyone interested in the proposed contract.
5. All statements contained in the Bid Proposal and related documents are true.
6. The bidder has not, directly or indirectly, submitted the bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any person, corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Executed this ____ day of _____, 2014__ at _____.
(City, County and State)

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

Signature

(Address)

Name Printed or Typed

(City, County and State)

(_____) _____
(Area Code and Telephone Number)

Attachment C

STATEMENT OF VENDOR'S QUALIFICATIONS

Bidder Name: _____

Project: WEST VALLEY-PE BUILDING INTERIOR LIGHTING RETROFIT

Bidder's Organization

1.1 Form of entity of Bidder, i.e., corporation, partnership, etc. _____

1.1.1 If a corporation, state the following:

State of incorporation: _____

Date of incorporation: _____

President/Chief Executive Officer: _____

Secretary: _____

Treasurer/Chief Financial Officer: _____

1.1.2 If a partnership, state the following:

Type of partnership, i.e., general partnership, limited partnership: _____

Date of Organization: _____

Names of all general partners, if any of the general partners are not natural persons, provide the information for each such general partner requested by Paragraphs 1.1.1, 1.1.2 and 1.1.4 as appropriate: _____

1.1.3 If a proprietorship, state the names of all proprietors: _____

1.1.4 If a joint venture, state the following

Date of organization: _____

Names of all joint venture members. For each member of the joint venture, provide the information requested by Paragraphs 1.1.1, 1.1.2 and 1.1.3 for each joint venture member, as applicable: _____

1.2 Number of years your organization has been in business as a contractor: _____

1.3 Number of years your organization has conducted business under its present name: _____

1.4 If your organization has conducted business under a name or name style different than your organization's present name, identify all prior name(s) or name style(s): _____

1.5 Your organization's Federal Tax Identification Number: _____

2. Construction Licensing

2.1 California Contractors License: Number: _____
Expiration Date: _____

Responsible Managing Employee/Officer: _____

License Classification(s): _____

2.2 Has a claim or other demand ever been made against your organization's California Contractors License Bond? _____ Yes _____ No

If yes, on a separate attachment, state the following: (i) the name, address and telephone number of each person or entity making claim or demand; (ii) the date of each claim or demand; (iii) the circumstances giving rise to each such claim or demand; and (iv) the disposition of each such claim or demand.

2.3 Has a complaint ever been filed against your organization's California Contractors License with the California Contractors State License Board? _____ Yes _____ No

If yes, on a separate attachment, state the following for each complaint: (i) the name, address and telephone number of each person or entity making the complaint; (ii) the date of each complaint; (iii) the circumstances giving rise to each such complaint; and (iv) the disposition of each such complaint, including without limitation, any disciplinary

or other action imposed or taken by the California Contractors State License Board as a result of any such complaint.

3. **Professional Engineering Licensing**

3.1 For each of the following engineering disciplines, please state whether your company employs a professional engineer, and if yes, list the name and license number of at least one engineer employed by your company in this discipline:

Discipline	Full Time (FT)/ Part Time (PT)	Name	License No.
Electrical			
Structural			
Mechanical			

4. **Experience**

4.1 Categories of work (other than management/supervision) your organization typically performs with your own forces _____

4.2 On a separate attachment, **list all construction projects completed by your organization in the past two (2) years** and for each project identified, state: (i) the project owner’s name, name of the project owner’s representative, and the address, telephone number and e-mail address of the project owner and the project owner’s representative;(ii) a general description of the work performed by your organization on the project; (iii) the dollar value of the work performed or to be performed by your organization; (iv) the project architect’s contact person and his/her name, address, telephone number and email address; (v) the original contract price; (vi) the original completion duration; (vii) the final adjusted contract price; and (viii) the actual completion duration. *(For the electronic version of this response, this document must be submitted either as a MS Word table or an Excel spreadsheet, in a multiple column, multiple row fashion. Whether in Word table or Excel format, each lettered item (i) through (viii) should be its own row/cell in the left-hand column. Each listed construction project should be its own separate single column to the right of the lettered items column, with the entire response to each of the lettered items placed in a single cell, in the same row as the lettered item to which it is responding. In the hard copy versions this table should be in landscape orientation.)*

4.3 On a separate attachment, **list all construction projects your organization has in progress** and for each project listed, state: (i) the project owner’s name, name of the project owner’s representative, and the address, telephone number and e-mail address of the project owner and the project owner’s representative; (ii) a general description of the work performed by your organization on the project; (iii) the dollar value of the work

performed or to be performed by your organization; (iv) the project architect's contact person and his/her name, address, telephone number and email address; (v) percent presently complete; and (vi) the current scheduled completion date. *(The electronic version of this response should be done in the same fashion as described for 4.2 above. In the hard copy versions of your Proposal this table should be in landscape orientation.)*

- 4.4 On a separate sheet attachment, provide details of and discuss all public education (both K-12 and higher education) **installations of projects your organization has completed** that reflect the skills, experience and other qualifications of the Respondent and its proposed personnel to successfully complete lighting retrofit projects. The discussion of experience must specifically address: (i). Completed lighting retrofit project for a California community college district, University of California campus, California State University campus, or California K-12 district within the past three (3) years, (ii) Design phase and construction phase quality control measures and programs; and (iii) Experience with DSA reviews, approvals and permitting processes and procedures.

(The electronic version of this response should use the table above and be submitted either as a Word table or an equivalent Excel spreadsheet. Additional columns to the right should be added as needed for additional systems: In the hard copy versions of your Proposal this table should be in landscape orientation.)

5. Performance History

- 5.1 Claims and lawsuits (if you answer yes to any of the following, you must attach details).

- 5.1.1 Have any lawsuits or other administrative, legal, arbitration or other proceedings, ever been brought or commenced against your organization or any of its principals, officers or equity owners in connection with any construction contract, construction project?

Yes No

If so, describe the circumstances, the amount demanded or other relief demand and the disposition of each such lawsuit or other proceeding.

- 5.1.2 Has your organization ever filed a lawsuit or commenced other administrative, legal or other proceedings in connection with any construction contract, construction project?

Yes No

If so, describe the circumstances, the amount demanded or other relief demand and the disposition of each such lawsuit or other proceeding.

- 5.1.3 Are there any judgments, orders, decrees or arbitration awards pending, outstanding against your organization or any of the officers, directors, employees or principals of your organization? Yes No

If so, describe each such judgment, order, decree or arbitration award and the present status of the satisfaction or discharge thereof.

- 5.2 Has your firm or any predecessor to your firm, or any of its owners, officers, or partners ever been found liable in a civil suit, or found guilty in a criminal action, for making any **false claim or material misrepresentation** to any public agency or entity?
__ Yes __ No
If "yes" provide details of each conviction on a separate attachment.
- 5.3 At any time during the last five years, has your firm or any predecessor to your firm, or any of its owners, officers or partners ever been **convicted of a crime** involving any federal, state, or local law related to construction?
__ Yes __ No
If "yes" provide details of each conviction on a separate attachment.
- 5.4 At any time during the last five years, has your firm or any predecessor to your firm, or any of its owners, officers or partners ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?
__ Yes __ No
If "yes" provide details of each conviction on a separate attachment.
- 5.5 Is your firm currently the debtor in a bankruptcy case?
__ Yes __ No
If "yes" provide details on a separate attachment.
- 5.6 Was your firm, or any predecessor to your firm, in bankruptcy any time during the last five (5) years? (This question refers only to a bankruptcy action that was not described in answer to question 5-5, above).
__ Yes __ No
If "yes" provide on a separate attachment.
- 5.7 In the last five (5) years, has your firm or any predecessor to your firm, been denied an award of a public works contract based on a finding by a public agency that your organization was not a responsible bidder?
__ Yes __ No
If "yes" provide details on a separate attachment.
- 5.8 Within the last five (5) years, has there ever been a period when your organization had employees but was without workers' compensation insurance or state-approved self-insurance?
__ Yes __ No
If "yes" provide details on a separate attachment.
- 5.9 Has your organization ever refused to sign a construction contract or photovoltaic Lighting generating project awarded to it?
__ Yes __ No
If so, on a separate attachment, state the following: (i) describe each such contract; (ii) the owner's name, address, telephone number and contact person; and (iii) the circumstances of your refusal to sign such contract.
- 5.10 Has your organization ever failed to complete a construction contract?
__ Yes __ No

If so, on a separate attachment, state the following: (i) describe each such contract; (ii) the owner's name, address, telephone number and contact person; and (iii) the circumstances of your failure to complete such contract.

Has your organization ever been declared in default under a construction contract?
 Yes No

If so, on a separate attachment, state the following: (i) describe each such contract; (ii) the owner's name, address, telephone number and contact person; and (iii) the circumstances of each such declaration of default.

5.11 Has any construction contract project contract to which your organization was/is a party been terminated for the convenience of the project owner? Yes No

If so, identify the project and project owner along with a description of the circumstances under which the convenience termination occurred.

5.12 Has your organization been required to pay a premium of more than one percent (1%) for a performance and payment bond on any project(s) on which your firm worked at any time during the past three (3) years?
 Yes No

If "yes" state the percentage that your organization was required to pay. You may provide an explanation for a percentage rate higher than one percent (1%), if you wish to do so.

5.13 Has a claim or other demand ever been asserted against any Bid Bond, Performance Bond, or Payment Bond posted by your organization in connection with any construction contract or your submittal of a bid proposal for a construction contract?
 Yes No

If so, on a separate attachment, state the following: (i) the name, address, telephone number and contact person for each claimant; (ii) the date upon which each such demand or claim was made; and (iii) the disposition of each such demand or claim.

5.14 List all sureties (surety name, name of surety contact person, full address, telephone and email of surety and surety contact person) that have issued bonds for your organization during the last five (5) years, including the inclusive dates during which each issued the bonds:

5.15 During the past five (5) years, has your organization ever been denied bond coverage by a surety company, or has there ever been a period of time when your firm had no surety bond in place during a public construction project when one was required?
 Yes No

If "yes" on a attachment indicating the date when your organization was denied coverage and the name of the company or companies which denied coverage; and the period during which you had no surety bond in place.

5.16 At any time during the past five (5) years, has any surety company made any payments on behalf of your organization to satisfy any claims made against a performance or payment bond issued on your firm's behalf, in connection with a construction project, either public or private?

Yes No

If "yes," on a separate attachment set forth: (i) the amount of each such claim; (ii) the name and telephone number of the claimant; (iii) the date of the claim; (iv) the grounds for the claim; (v) the present status of the claim; (vi) the date of resolution of such claim if resolved; (vii) the method by which such was resolved if resolved; (viii) the nature of the resolution; and (ix) the amount, if any, at which the claim was resolved.

5.17 In the last five years has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

Yes No

6. **Safety.**

6.1 Workers Compensation Insurance Experience Modification Rating ("EMR"):
Current Year EMR _____

A characteristic of a "responsible" Bidder is an EMR of 1.25 or less. If the EMR set forth above for either the current year or for the prior year is greater than 1.25, the Bidder's Bid Proposal will be rejected for non-responsiveness.

6.2 Within the past two (2) years has your firm been subject to any Cal-OSHA citation for "serious", "willful" or "repeat" safety violations?

Yes No

If yes, the Bidder's Bid Proposal will be rejected for non-responsiveness.

7. **Labor; Prevailing Wage and Apprenticeship Compliance**

7.1 At the time of submitting this Statement of Qualifications, is your organization ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract, pursuant to either Labor Code §1777.1 or Labor Code section §1777.7?

Yes No

If "Yes," state the beginning and ending dates of the period of debarment: _____

7.2 Has there been more than one occasion during the past five (5) years in which your organization was required to pay either back wages or penalties for your own organization's **failure to comply with California prevailing wage laws**?

NOTE: This question refers only to your own organization's violation of prevailing wage laws, not to violations of the prevailing wage laws by a subcontractor.

Yes No

If "yes," on a separate attachment, describe the nature of each violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid and the amount of back wages and penalties that you were required to pay.

7.3 Provide the name, address and telephone number of the apprenticeship program (approved by the California Apprenticeship Council) from whom you intend to request

the dispatch of apprentices to your organization for use on the Work.

7.4 If your organization operates its own California approved apprenticeship program: (i) identify the craft or crafts in which your organization provided apprenticeship training in the past year; (ii) state the year in which each such apprenticeship program was approved, (iii) attach evidence of the most recent California Apprenticeship Council approval(s) of your apprenticeship program(s); (iv) state the number of individuals who were employed by your organization as apprentices at any time during the past three (3) years in each apprenticeship; and (v) the number of persons who, during the past three (3) years, completed apprenticeships in each craft while employed by your firm.

7.5 At any time during the past five (5) years, has your organization been found to have violated any provision of California apprenticeship laws or regulations, or the laws pertaining to use of apprentices on public works?

___ Yes ___ No

If "yes," provide the date(s) of such findings, and attach copies of the Department's final decision(s).

8. **References** (Include name, contact person, telephone/facsimile and address for each reference provided):

8.1 Trade References (three (3) minimum)

8.2 Bank References

8.3 Public Works Inspectors of Record (K-12 or community college projects)

8.4 Owner references (three (3) minimum, preferably California K-12 school districts and/or California community college districts)

9. Accuracy and Authority

The undersigned is duly authorized to execute this Statement of Vendor’s Qualifications under penalty of perjury on behalf of the Respondent. The undersigned warrants and represents that he/she has personal knowledge of each of the responses to this Statement of Vendor’s Qualifications and/or that he/she has conducted all necessary and appropriate inquiries to determine the truth, completeness and accuracy of responses to this Statement of Vendor’s Qualifications.

The undersigned declares and certifies that the responses to this Statement of Vendor’s Qualifications are complete and accurate; there are no omissions of material fact or information that render any response to be false or misleading and there are no misstatements of fact in any of the responses.

Executed this ___ day of _____ 2014_ at _____
(City and State)

I declare under penalty of perjury under California law that the foregoing is true and correct.

(Signature)

Attachment D

Customer References

Provide at least 5 customer references and associated information regarding your firm previously installed for them.

	Company/Institution Contact Person	Email and Phone Number	Project Size	Scope completion Date
1				
2				
3				
4				
5				

Dated: _____, 20124

By: _____

Title:

Attachment G

Technical Specifications

The Project shall provide a fully functioning facility that conforms to the requirements of the descriptive conditions of the Program Requirements.

- A. 1. The narrative includes spatial quality descriptions and general Project parameters.
2. The narrative is intended to provide information about the general nature of the spaces contained within the program. It is not exhaustive in scope; where specific finishes, materials, etc. are not noted the contractor must provide those that meet the intent of the Performance criteria defined by the Illuminating Engineering Society of North America Handbook (IESNA) and throughout this document. Spaces required for utilities, data and circulation are not included in the narrative text, but must be provided as necessary for a complete, functional and compliant facility.
3. The design drawings, lighting performance data and fixture types provided with this bid request were provided by 16500 Inc. The contact person is Brian Appleton, bappleton@16500.com (510.882.0026). There is no requirement as part of this submission to utilize this information, **it is provided for informational purposes only.**
- B. Modifications during Design: The design and construction of the project shall be based on the selected Team's proposal modified if and as necessary during the subsequent design phase.
1. As the design is developed, the Team may suggest modifications to the requirements. Such modifications shall be considered by the Owner, who in its sole discretion shall determine the acceptability of proposed modifications. The Team shall document all modifications.
2. At all times shall the team maximize the design to provide enhanced security and PG&E energy rebates.
- C. Criteria: If there is a conflict between the program requirements, sketches, performance criteria defined by the Illuminating Engineering Society of North America Handbook (IESNA) and/or other requirements for any individual elements, the more restrictive criteria shall be provided. "More restrictive" is defined in this case as criteria that offer higher value to the Owner, such as larger quantity, greater durability, larger scope, longer warranty or similar advantageous alternative.

The purpose of the program requirements is to establish the minimum material, product, and system program criteria required to be met in any and all renovation and new construction work at West Valley College. The program requirements describe the character, quality, or level of performance required for all improvements relative to renovation or new construction materials, assemblies, building systems and equipment. Designers are encouraged to utilize the performance criteria defined by the Illuminating

Engineering Society of North America Handbook (IESNA) as minimum guidelines only; the document is intended to be flexible and to allow for the proposal of equal or superior alternatives.

1. This document is intended to be general and to be used in conjunction with specific project requirements or programs.

2. Copies of reference standards specified in the program requirements shall be provided for the Owner's use.

- D. Code Compliance: Provide remodeled and new facilities, equipment and spaces that comply with applicable codes. Coordinate work so that DSA-compliant accessibility is ensured throughout the College site where construction occurs and at junctures of new and existing conditions.

1.3 Submittals:

All materials, products and systems, including those not specifically addressed in the program requirements, and therefore not carrying a minimum requirement, are subject to review and approval by the District via standard design development and construction submittal review processes.

A. Product Data: For each type of product indicated.

B. Operation and Maintenance Manual: For wiring devices to include in all manufacturers' packing label warnings and instruction manuals that include labeling conditions.

1.4 Action Submittals

A. Product Data: For each type of lighting fixture, arranged in order of fixture designation. Include data on features, accessories, finishes, and the following:

1. Physical description of lighting fixture including dimensions.
2. Emergency lighting units including battery and charger.
3. Ballast, including BF.
4. Energy-efficiency data.
5. Life, output (lumens, CCT, and CRI), and energy-efficiency data for lamps.

B. Shop Drawings: For nonstandard or custom lighting fixtures. Include plans, elevations, sections, details, and attachments to other work.

1. Detail equipment assemblies and indicate dimensions, weights, loads, required clearances, method of field assembly, components, and location and size of each field connection.
2. Wiring Diagrams: For power, signal, and control wiring.
3. Provide details to meet current seismic requirements for anchoring and mounting

1.5 Informational Submittals

A. Coordination Drawings: Reflected ceiling plan(s) and other details, drawn to scale, on which the following items are shown and coordinated with each other, using input from installers of the items involved:

1. Lighting fixtures.
2. Suspended ceiling system components.
3. Structural members to which suspension systems for lighting fixtures will be attached.
4. Other items in finished ceiling including the following:
 - a. Occupancy sensors.

B. Qualification Data: For qualified agencies providing photometric data for lighting fixtures.

C. Product Certificates: For each type of ballast for bi-level and dimmer-controlled fixtures, from manufacturer.

1.6 Project Closeout

A. As-Built Drawings:

Upon completion of work, the design build team shall provide to the District three bound copies of maintenance manuals showing all approved shop drawings and maintenance and operations documentation. Include a half size set of the as-built drawings folded and bound into the maintenance manuals. Incorporate all red- lines from field notes onto the design and submit two hard copies of the final full size As-build drawings.

B. Operation and Maintenance manual:

a. Operation Manual

Include operation data required including the following information:

1. Performance and design criteria
2. System and equipment descriptions
3. Operation standards and procedures
4. Wiring, control and piped system diagrams

b. Maintenance manual

Include the following as applicable:

1. Product name, Manufacture and model number
2. Reordering information for specially manufactured products
3. Type of cleaning agent to be used and method of cleaning
4. Repair instructions.
5. List of items recommended to be stocked as spare parts.

C. Warranties

Warranty coverage shall be inclusive of materials, equipment and labor for workmanship and operation of the lighting systems as follows: (i) at five (5) years for lighting system. (ii) All proposed lighting systems must not render void, violate or otherwise limit other existing warranties covering any portion of existing District facilities, materials or equipment. (iii) one (1) year for labor.

1.7 Waste and Recycling Report Log.

As required by State Law, the District collects and reports on all waste and recycling streams from the Campus. As a part of this effort, the District requires the contractor to report on all construction generated waste, including soils exports, demolition generated debris, and all general construction debris. The Contractor shall use the attached Waste and Recycling Report Log to report all waste at the end of each month. Contractor shall submit the Report with their monthly Payment Application and failure to provide report (even if it is stating zero waste) may result in Pay Application not being processed until the Report is provided.

Attachment J
PE BUILDING Lighting Retrofit Specifications and Technical Description

Tab 7-A

3.4 Lighting Requirements

A. General

1. Replace all T12 lamps, ballasts and old and faded diffusers with energy efficient ballasts, T8 lamps with specified ballasts and new diffusers from attached spreadsheets whether or not shown on sketches or listed in table. When replacing diffusers, they should be replaced with the same type, e.g. old prismatic lenses should be replaced with a clear new prismatic lenses. Install any required branch circuitry to maintain existing circuit continuity, especially in areas where light fixtures are being removed. Contractor should make sure modifications can be performed before the work is to be performed. Wherever a discrepancy in quantity or size of lamps, wire, conduit or any other materials the contractor shall be responsible for providing and installing all materials to ensure complete and operable systems as required by the owner.
2. Interior Spaces: maximize the effectiveness of day lighting; provide uniform distribution at desk height to allow unlimited furniture arrangement with variable lighting levels and special presentation lighting. Minimize glare.
3. Replace all exterior metal halides and high pressure sodium lamps with compact Fluorescent with specified ballasts whether or not shown on sketches or listed in table. Install any required branch circuitry to maintain existing circuit continuity, especially in areas where light fixtures are being removed. Wherever a discrepancy in quantity or size of lamps, wire, conduit or any other materials the contractor shall be responsible for providing and installing all materials to ensure complete and operable systems as required by the owner.
4. Lighting levels shall be designed in accordance with the recommendations of the Illuminating Engineering Society of North America (IESNA), and the lighting power density shall be in accordance with California Energy Title 24 Compliance.
5. Luminaires shall be placed to facilitate lifecycle maintenance including but not limited to the re-lamping of fixtures.
6. All luminaires shall be seismically restrained as required by the CBC. New fixtures and grid repairs should meet current seismic requirements.
7. Emergency lighting shall be provided in corridors and public access areas. Emergency illumination levels shall conform to the CBC requirement at floor level during loss of power. Refer to sketches for emergency lighting.

B. Minimum Illumination Performance criteria defined by the Illuminating Engineering Society of North America Handbook (IESNA)

1. The following minimum lighting levels shall be provided:

Area	Average Horizontal Lighting Level at the Workplane (foot candles)
Lockers	15-20
Stairs / Corridor	15-20
Work Stations	50-60
First Aid	50-60
Restrooms	15-20
Warehouse – Large Items	20-30
Warehouse – Small Items	30-40
Gym	80 Avg.
Maintenance/Repair Shop	50-60
Offices	50-60
Classrooms	40-50
Fitness Lab	40-60
Weightlifting	50-60
Wrestling	60
Conference Room	40-50
Electrical/Mechanical Rooms	15-20

2. Light Fixture Schedule

EXTERIOR (MULTIPLE BUILDINGS)	Wall mounted, 32W TRT CFL, dark bronze finish, Ballast Factor (BF) greater than or equal to 0.90	Lithonia: TWF1 32TRT 120 ELDW LPI Ballast: Philips: ICF 2S26HI LD K
PE - BUILDING A – STUDENT SHOWERS	4' strip, UL listed for wet location, vandal resistant, low profile, narrow width, 2-25W T8, electronic ballast, emergency battery pack as required	Kenall: SCT 4 0 2 RS 1 120 1 EL WL
PE – BUILDING A – FACULTY LOCKERS	4' wraparound, 1-25W T8, electronic ballast, emergency battery pack as required, select ballast option GEB10PS for fixtures controlled by occupancy sensor	Lithonia: CB 1 MVOLT EL
PE – BUILDING A – FACULTY SHOWERS	4' strip, UL listed for wet location, vandal resistant, low profile, narrow width, 2-25W T8, electronic ballast, emergency battery pack as required	Kenall: SCT 4 0 2 RS 1 120 1 EL WL
PE - BUILDING A – CLASSROOMS	2x4 recessed, acrylic diffuser, 3-25W T8 and electric ballast, emergency battery pack as required, select ballast option GEB10PS for fixtures controlled by occupancy sensor	Lithonia: 2GT8 3 A12125 MOVLT EL
PE - BUILDING B	2x4 recessed, acrylic diffuser, 2-25W T8 and electric ballast, emergency battery pack as required, select ballast option GEB10PS for fixtures controlled by occupancy sensor	Lithonia: 2GT8 2 A12125 MOVLT EL

<p>PE - BUILDING C</p>	<p>4' suspended, fluorescent high bay, 4-54WT5HO, lamp life rated 20,000 hours or greater, minimum CRI 82, electronic ballast, programmed rapid start, emergency battery pack as required</p>	<p>Lithonia: IBZ 454L EL14</p>
<p>PE - BUILDING C - EXTERIOR</p>	<p>2x2 recessed, overlapping flanged trim, acrylic diffuser, UL listed for wet location, 2-17W T8, minimum lamp life 20,000 hours and electronic ballast, emergency battery pack as required</p>	<p>Lithonia: 2WRT F 2 17 A12125 MVOLT GEB10IS</p>
<p>PE - BUILDING D</p>	<p>4' suspended, fluorescent high bay, 4-54WT5HO, lamp life rated 20,000 hours or greater, minimum CRI 82, electronic ballast, programmed rapid start, emergency battery pack as required</p>	<p>Lithonia: IBZ 454L EL14</p>
<p>PE - BUILDING E – WEIGHT ROOM</p>	<p>2x4 surface mounted, acrylic diffuser, 3-25W T8 and electric ballast, emergency battery pack as required, select ballast option GEB10PS for fixtures controlled by occupancy sensor</p>	<p>Lithonia: 2M 3 FW A12125 MVOLT EL14</p>
<p>PE - BUILDING E - WRESTLING</p>	<p>2x4 surface mounted, acrylic diffuser, 4-25W T8 and electric ballast, emergency battery pack as required, select ballast option GEB10PS for fixtures controlled by occupancy sensor</p>	<p>Lithonia: 2M 4 FW A12125 MVOLT EL14</p>

C. Uniformity Ratios

1. From lighting calculations the lighting design shall provide for uniformity ratios of 4:1 or better for all instruction spaces.

D. Lamps

1. The lamps selected for this project shall be limited to those listed below unless otherwise noted within this document.

Source or Approved Equal	Lamp	Wattages	Color Temperature (°k)
Fluorescent Philips – Energy Advantage Extra Long Life – GE - F17T8/XL/SPX35/ECO, GE - F25T8/XL/SPX35/ECO	T8	17, 25	3,500
LED – Philips EnduraLED LED 120V EnduraLED Dimmable 12W A19 - 12A19/END/2700-800 DIM 6/1	LED	12.5	2,700
LED – Philips EnduraLED LED 120V EnduraLED Dimmable 17W A21 17A21/END/2700-1100 DIM 6/1	LED	17	2,700
Fluorescent - GE - F54W/T5/841/ECO	T5	54	4,100
Compact Fluorescent 32W GE – F32TBX/835/A/ECO	CFL	32	3,500

- b. When possible the designer should minimize the number of lamp types
- c. Low pressure sodium sources shall not be permitted.

E. Exit Signs

1. LED exit signs shall replace all incandescent and fluorescent EXIT signs.
2. Mount exit signs a minimum of 10' above finished floor. If unable to mount above 10' provide vandal resistant sign and/or wire guard.
3. Minimize the use of pendant mounted exit signs.

F. Ballast

1. T8 and T5 Ballast must meet the color rendering index (CRI) and Rated Lamp Life Standards described in the table below. Additionally, T8 and T5 fluorescent ballasts must exhibit total harmonic distortion (THD) less than or equal to 10% and a power factor greater than 0.9.

Lamp Type and Size	Ballast Type	CRI	Minimum Rated Lamp Life (3 hrs/start)
T8 – 2-ft, 3-ft, 4-ft	Programmed Start/ Programmed Rapid-start	>= 80	24,000 hours
T8 – All Sizes	Instant Start	>=80	18,000 hours
T5 – All Sizes	Programmed Start/ Programmed Rapid-start	>= 82	20,000 hours
CFL-32W	Programmed Start	>=82	12,000 hours

2. Provide instant start ballast for all luminaires, unless otherwise stated

Lamp Qty.	Ballast Type or Approved Equal
Fluorescent, (1) 48", T-8 @ 25W lamps	Philips - Centium - ICN-1P32-N, Instant Start Ballast, NLO (BF=1.00)
Fluorescent, (2) 48", T-8 @ 25W lamps	Philips -Advance Optanium - IOP-2P32-SC, Instant Start Ballast, NLO (BF=0.87)
Fluorescent, (3) 48" T-8 @ 25W lamps	Philips -Advance Optanium - IOP-3P32-SC, Instant Start Ballast, NLO (BF=0.87)
Fluorescent, (4) 48", T-8 @ 25W lamps	Philips -Advance Optanium - IOP-4P32-SC, Instant Start Ballast, NLO (BF=0.87)

3. Provide programmed rapid-start ballasts as required. An area that has occupancy sensor controls shall have programmed rapid-start ballast.

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Lamp Qty.	Ballast Type or Approved Equal
Fluorescent, (1) 48", T-8 @ 25W lamps, Fluorescent, (2) 48", T-8 @ 25W lamps	Philips -Advance Optanium - IOP-2S32-SC, Programmed Rapid-Start Ballast (BF=0.88)
Fluorescent, (3) 48", T-8 @ 25W lamps	Philips -Advance Optanium - IOP-3S32-SC, Programmed Rapid-Start Ballast (BF=0.88)

Ballasts must be on the CEE Qualifying Products (dimming ballasts) list.
Ballasts must have continuous dimming. Stepped dimming ballasts are not eligible.
Tuning level (20%) must be factory set or set on-site and must be locked in.

Lamp Qty.	Ballast Type or Approved Equal
Linear Fluorescent, (1) all lengths, T-8	Philips – Mark 7 - IZT-1S32-SC, Dimming Program Start Ballast
Linear Fluorescent, (2) all lengths, T-8	Philips – Mark 7 - IZT-2S32-SC, Dimming Program Start Ballast

5. Refer to sketches for location of emergency ballast equipped with a battery pack.
6. Ballasts to be less than 10% total harmonic distortion.

G. Lighting Controls

1. Classrooms shall have bi-level switching, all other areas to have (off and on) occupancy sensors.
2. General Wiring Device Requirements
 - a. Wiring Devices, Components, and Accessories: Listed and labeled as defined in NFPA 70, by a qualified testing agency, and marked for intended location and application.
 - b. Comply with NFPA 70.
3. Toggle Switches
 - a. Comply with NEMA WD 1, UL 20, and FS W-S-896.
 - b. Switches, 120/277 V, 20 A:
4. Wall Plates
 - a. Single and combination types shall match corresponding wiring devices.
 - b. Plate-Securing Screws: Metal with head color to match plate finish.

c. Material for Finished Spaces: Smooth, high-impact thermoplastic.

5. Finishes

a. Device Color:

b. Wiring Devices Connected to Normal Power System: As selected by Owner unless otherwise indicated or required by NFPA 70 or device listing.

c. Wall Plate Color: For plastic covers, match device color.

6. Lighting shall be circuited for a minimum of bi-level switching for classrooms only. Outdoor lighting shall incorporate a new photocell and existing astronomical time switch.

7. Circuit lighting for a minimum of bi-level switching, along with interface with new occupancy sensors. In compliance with California Title 24 requirements.

8. Wall and ceiling mounted occupancy sensing devices shall be utilized. These sensors shall have dual sensing technology Passive Infrared and Ultrasonic. The contractor shall follow manufacturer's guidelines for placement and installation. If a wall mounted sensor's viewing range is obstructed and not permitted to perform properly, a ceiling mounted shall be install in place of it.

9. Restrooms shall have ultrasonic technology sensors. The contractor shall follow manufacturer's guidelines for placement and installation.

10. Where controls are accessible to students without immediate staff supervision (i.e. corridors, rest rooms, etc.) provide keyed wall switch.

11. All keyed wall switched shall match existing campus standard.

12. Wall switches to be rated no less than 15A.

13. Spaces that have audio/visual projection equipment shall be controlled to allow for a uniformed reduced light level for the observer seating and a low lit area on the projection surface.

14. General Requirements for Sensors: Wall- or ceiling-mounted, solid-state indoor occupancy sensors with a separate power pack.

a. Listed and labeled as defined in NFPA 70, by a qualified testing agency, and marked for intended location and application.

b. Operation: Unless otherwise indicated, turn lights on when coverage area is occupied, and turn them off when unoccupied; with a time delay for turning lights off, adjustable over a minimum range of 1 to 15 minutes.

c. Sensor Output: Contacts rated to operate the connected relay, complying with UL 773A. Sensor is powered from the power pack.

d. Power Pack: Dry contacts rated for 20-A ballast load at 120- and 277- V ac, for 13-A tungsten at 120-V ac, and for 1 hp at 120-V ac. Sensor has 24-V dc, 150 mA, Class 2 power source, as defined by NFPA 70.

e. Mounting:

1. Sensor: Suitable for mounting in any position on a standard outlet box.
2. Relay: Externally mounted through a 1/2-inch (13-mm) knockout in a standard electrical enclosure

f. Indicator: Digital display, to show when motion is detected during testing and normal operation of sensor.

15. Ultrasonic Type: Ceiling mounted; detect occupants in coverage area through pattern changes of reflected ultrasonic energy.

a. Detector Sensitivity: Detect a person of average size and weight moving not less than 12 inches (305 mm) in either a horizontal or a vertical manner at an approximate speed of 12 inches/s (305 mm/s).

b. Detection Coverage (Standard Room): Detect occupancy anywhere within a circular area of 1000 sq. ft. (93 sq. m) when mounted on a 96-inch- (2440-mm-) high ceiling.

16. Dual-Technology Type: Ceiling mounted; detect occupants in coverage area using PIR and ultrasonic detection methods. The particular technology or combination of technologies that control on-off functions is selectable in the field by operating controls on unit.

a. Sensitivity Adjustment: Separate for each sensing technology.

b. Detector Sensitivity: Detect occurrences of 6-inch- (150-mm-) minimum movement of any portion of a human body that presents a target of not less than 36 sq.in. (232 sq. cm), and detect a person of average size and weight moving not less than 12 inches (305 mm) in either a horizontal or a vertical manner at an approximate speed of 12 inches/s (305 mm/s).

c. Detection Coverage (Standard Room): Detect occupancy anywhere within a circular area of 1000 sq. ft. (93 sq. m) when mounted on a 96-inch- (2440-mm-) high ceiling.

17. Photoelectric Switches: Description: Solid state, with contacts rated for 1800 VA, to operate connected load, complying with UL 773.

a. Listed and labeled as defined in NFPA 70, by a qualified testing agency, and marked for intended location and application.

b. Light-Level Monitoring Range: 1.5 to 10 fc (16.14 to 108 lux), with an adjustment for turn-on and turn-off levels within that range.

c. Time Delay: Thirty-second minimum, to prevent false operation.

Power General Requirements

A. General

1. Do not pull new cabling into conduits with existing conductors. If the design

requires the installation of new cabling into a conduit with existing conductors, remove the existing conductors, inspect for damage and reinstall with new conductors.

2. The use of MC Cable is allowed only as an exception and in limited quantities. i.e. From a junction box above ceiling down a wall to another box, not more than six feet.

B. Conductors

1. All conductors shall be copper.
2. Conductor's #10 and smaller shall be solid.
3. Conductor's #8 and larger shall be stranded.

PE Building A Lighting retrofit

A. Demolition

1. See associated sketches for removal of fixtures. Removed fixtures shall be properly disposed and new ceiling tiles shall be installed where fixtures were removed and repair grid as required.

B. Space includes but not limited to:

1. Lockers
2. Office Areas
3. Classrooms
4. Common Areas
5. Restrooms
6. Storage
7. Exterior

C. Lighting System

1. The following class of luminaires shall be utilized for the spaces listed:
 - a. T8 Fluorescent – Reballast and relamp to 1 - 25 watt lamp unless otherwise noted. Reference spreadsheet and sketch to determine the quantity of lamps to be installed per fixture.
 - b. T8 Fluorescent – Install 2 – 2'X4' fixtures with 2 - 25 watt lamps in each fixture in place of the existing 4'X4' fixture to unless otherwise noted. Reference spreadsheet and sketch to determine the quantity of lamps to be installed per fixture.
 - c. T5 High Output Fluorescent – Install New T5 fixtures in place of high pressure sodium fixture to 4 - 54 watt lamps unless otherwise noted. Reference spreadsheet and sketch to determine the quantity of lamps to be installed per fixture.
 - d. T8 Fluorescent – Reballast and relamp to 2 - 25 watt lamps unless otherwise noted. Reference spreadsheet and sketch to determine the quantity of lamps to be installed per fixture.
 - e. T8 Fluorescent – Reballast and relamp to 3 - 25 watt lamps unless otherwise noted. Reference spreadsheet and sketch to determine the quantity of lamps to be installed per fixture.

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- f. T8 Fluorescent – Replace with 2'X2' - damp location rated - 2 linear – 17 watt lamps unless otherwise noted. Reference spreadsheet and sketch to determine the quantity of lamps to be installed per fixture.
- g. Exterior LED – 12.5 watt screw-in LED lamp.
- h. Exterior CFL - 32 watt wall pack – Install new fixture with 32 watt CFL.

PE Building B Lighting retrofit

A. Demolition

- 1. See associated sketches for removal of fixtures. Removed fixtures shall be properly disposed and new ceiling tiles shall be installed where fixtures were removed and repair grid as required..

B. Space includes but not limited to:

- 1. Office Areas
- 2. Common Areas
- 3. Restrooms
- 4. Storage
- 5. Exterior

C. Lighting System

- 1. The following class of luminaires shall be utilized for the spaces listed:
 - a. T8 Fluorescent – Reballast and relamp to 2 - 25 watt lamps unless otherwise noted. Reference spreadsheet and sketch to determine the quantity of lamps to be installed per fixture. Relight kits can be used as an alternate.
 - b. T8 Fluorescent – Reballast and relamp to 3 - 25 watt Lamps unless otherwise noted. Reference spreadsheet and sketch to determine quantity of lamps to be installed per fixture. Relight Kits can be used as an alternate.
 - c. Exterior LED – 12.5 watt screw-in LED lamp.
 - d. Exterior CFL - 32 watt wall pack – Install new fixture with 32 watt CFL.

PE Building C lighting retrofit

A. Demolition

- 1. See associated sketches for removal of fixtures. Removed fixtures shall be properly disposed and new ceiling tiles shall be installed where fixtures were removed and repair grid as required..

B. Space includes but not limited to:

- 1. Gym
- 2. Storage
- 3. Exterior

C. Lighting System

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1. The following class of luminaires shall be utilized for the spaces listed:
 - a. T5 High Output Fluorescent – Install new T5 fixtures in place of metal halide fixture to 4 - 54 watt lamps unless otherwise noted. Reference spreadsheet and sketch to determine the quantity of lamps to be installed per fixture.
 - b. Exterior LED – 12.5 watt screw-in LED lamp.

PE Building D Lighting retrofit

A. Demolition

1. See associated sketches for removal of fixtures. Removed fixtures shall be properly disposed and new ceiling tiles shall be installed where fixtures were removed and repair grid as required..

B. Space includes but not limited to:

1. Main Gym
2. Exterior

C. Lighting System

1. The following class of luminaires shall be utilized for the spaces listed:
 - a. T5 High Output Fluorescent – Install new T5 fixtures in place of high pressure sodium fixture to 4 - 54 watt lamps unless otherwise noted. Reference spreadsheet and sketch to determine the location and quantity of lamps to be installed per fixture.
 - b. Exterior LED – 12.5 watt screw-in LED lamp.

PE Building E Lighting retrofit

A. Demolition

1. See associated sketches for removal of fixtures. Removed fixtures shall be properly disposed and new ceiling tiles shall be installed where fixtures were removed and repair grid as required..

B. Space includes but not limited to:

1. Wrestling
2. Weight Room
3. Common Areas
4. Restrooms
5. Storage
6. Exterior

C. Lighting System

1. The following class of luminaires shall be utilized for the spaces listed:

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- a. T8 Fluorescent – Install 2 – 2'X4' fixtures with 2 - 25 watt lamps in each fixture in place of the existing 4'X4' fixture to unless otherwise noted. Reference spreadsheet and sketch to determine the quantity of lamps to be installed per fixture.
- b. T8 Fluorescent – Reballast and relamp to 3 - 25 watt lamps unless otherwise noted. Reference spreadsheet and sketch to determine the quantity of lamps to be installed per fixture. Relight kits can be used as an alternate.
- c. Exterior LED – 12.5 watt screw-in LED lamp.
- d. Exterior CFL - 32 watt wall pack – Install new fixture with 32 watt CFL.

Attachment J
PHYSICAL EDUCATION Lighting Retrofit Architectural and lighting plans
Tab 7-B

SHEET INDEX

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PE-E1.0	LIGHTING PLAN PHYSICAL EDUCATION

Attachment J
Light Fixture Index
Tab 7-B

LIGHT FIXTURE INDEX

DESCRIPTION

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Physical Education Building "B"
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Attachment K

**WEST VALLEY-MISSION
COMMUNITY COLLEGE DISTRICT**

**Bid # 11-1314
REQUEST FOR PROPOSALS PE BUILDINGS INTERIOR
LIGHTING RETROFIT**

SERVICE AGREEMENT

WEST VALLEY COLLEGE

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 - 4.9.3.2. Limitations Upon Adjustment of Contract Time on Account of Delays.
- 4.10. Liquidated Damages.
 - 4.10.1. District's Right to Take-Over Work.
- 4.11. Contract Price.
 - 4.11.1. No Adjustment to Contract Price.
 - 4.11.2. Vendor Billings for Payment of the Design and Construction Services Contract Price.
 - 4.11.3. District Payments for Design and Construction Services.
 - 4.11.4. Reimbursable Expenses.
 - 4.11.5. Disbursement of Design Services Contract Price.
 - 4.11.5.1. Initial Payment.

- 4.11.5.2. Interim Payments.
- 4.11.5.3. Final Payment.
- 4.11.6. Disbursement of Construction Services Contract Price.
 - 4.11.6.1. Allocation of Construction Services Contract Price.
 - 4.11.6.2. Disbursement of Construction/Installation Services.
- 4.11.7. Progress Payments for Construction Services Contract Price.
 - 4.11.7.1. Applications for Progress Payments.
 - 4.11.7.2. District's Review of Applications for Progress Payments.
 - 4.11.7.3. Review of Applications for Progress Payments.
- 4.11.8. District's Disbursement of Progress Payments.
 - 4.11.8.1. Timely Disbursement of Progress Payments.
 - 4.11.8.2. Untimely Disbursement of Progress Payments.
 - 4.11.8.3. District's Right to Disburse Progress Payments by Joint Checks.
 - 4.11.8.4. No Waiver of Defective or Non-Conforming Work.
 - 4.11.8.5. Progress Payments for Changed Work.
 - 4.11.8.6. Materials or Equipment Not Incorporated Into the Work.
 - 4.11.8.6.1. Limitations Upon Payment.
 - 4.11.8.6.2. Materials or Equipment Delivered and Stored at the Site.
 - 4.11.8.6.3. Materials or Equipment Not Delivered or Stored at the Site.
 - 4.11.8.6.4. Materials or Equipment in Fabrication or Transit.
 - 4.11.8.7. Exclusions From Progress Payments.
 - 4.11.8.8. PG&E Rebates.
- 4.11.9. Title to Work.
- 4.11.10. Substitute Security for Retention.
- 4.11.11. Final Payment.
 - 4.11.11.1. Application for Final Payment.
 - 4.11.11.2. Conditions Precedent to Disbursement of Final Payment.
 - 4.11.11.3. Disbursement of Final Payment.
 - 4.11.11.4. Waiver of Claims.
 - 4.11.11.5. Claims Asserted After Final Payment.
 - 4.11.11.6. Withholding of Payments.
 - 4.11.11.7. Payments to Subcontractors.
- 4.12. Changes
 - 4.12.1. Changes in the Work.
 - 4.12.2. Oral Order of Change in the Work.
 - 4.12.3. Vendor Submittal of Data.
 - 4.12.4. Adjustment to Design and Construction Services Contract Price and Contract Time on Account of Changes to the Work.
 - 4.12.4.1. Mutual Agreement.
 - 4.12.4.2. Determination by the District.
 - 4.12.4.3. Basis for Adjustment of Design and Construction Services Contract Price.
 - 4.12.4.3.1. Labor.
 - 4.12.4.3.2. Materials and Equipment.
 - 4.12.4.3.3. Construction Equipment.
 - 4.12.4.3.4. Mark-up on Costs of Changes to the Work.
 - 4.12.4.3.5. Vendor Maintenance of Records.
 - 4.12.4.3.6. Adjustment to Contract Time.
 - 4.12.5. Change Orders.
 - 4.12.5.1. Vendor Notice of Changes.
 - 4.12.5.2. Disputed Changes.

- 4.12.6. Emergencies.
- 4.12.7. Minor Changes in the Work.
- 4.12.8. Unauthorized Changes.
- 4.13. Correction of Work; Warranties.
 - 4.13.1. Uncovering of Work.
 - 4.13.2. Rejection of Work.
 - 4.13.3. Correction of Work.
 - 4.13.4. Failure of Vendor to Correct Work.
 - 4.13.5. Acceptance of Defective or Non-Conforming Work.
 - 4.13.6. Workmanship and Materials.
 - 4.13.7. Warranty Work.
 - 4.13.8. Survival of Warranties.

5. Post Construction Services

- 5.1. Final Completion.
- 5.2. Close-Out Documents.
 - 5.2.1. Assembly/Transmittal of Close-Out Documents.
 - 5.2.2. Governmental Agency Close-Out.
 - 5.2.3. As-Built Drawings

6. Insurance; Indemnity and Bonds.

- 6.1. Design and Construction Phase Insurance Requirements.
- 6.2. Workers' Compensation Insurance; Employer's Liability Insurance.
- 6.3. Commercial General Liability and Property Insurance.
- 6.4. Design Phase Insurance.
- 6.5. Builder's Risk "All-Risk" Insurance.
- 6.6. Insurance Policy Requirements.
 - 6.6.1. Minimum Coverage Amounts.
 - 6.6.2. Required Qualifications of Insurers.
- 6.7. Evidence of Insurance; Subcontractor's Insurance.
- 6.8. Maintenance of Insurance.
- 6.9. Vendor's Insurance Primary.
- 6.10. Indemnity.

7. Termination; Suspension.

- 7.1. Termination for Default.
- 7.2. District's Right to Suspend.
- 7.3. District's Termination for Convenience.
- 7.4. Vendor Suspension of Services.
- 7.5. Vendor Obligations Upon Termination.

8. Miscellaneous

- 8.1. Governing Law; Interpretation.
- 8.2. Successors and Assigns.
- 8.3. Cumulative Rights and Remedies; No Waiver.
- 8.4. Severability.
- 8.5. No Assignment by Vendor.
- 8.6. Gender and Number.
- 8.7. Independent contractor Status.
- 8.8. Notices.
- 8.9. Disputes; Continuation of Work.

- 8.10. Dispute Resolution; Arbitration.
 - 8.10.1. Claims Under \$375,000.00.
 - 8.10.2. Arbitration.
 - 8.10.3. Vendor Compliance with Government Code §900 et seq.
- 8.11. Attorneys' Fees.
- 8.12. Provisions Required by Law Deemed Inserted.
- 8.13. Days.
- 8.14. Use of Design Documents.
 - 8.14.1. Ownership.
 - 8.14.2. Electronic Files.
- 8.15. Definitions.
 - 8.15.1.1. Design Consultant(s).
 - 8.15.1.2. Submittals.
 - 8.15.1.3. Site.
 - 8.15.1.4. Drawings and Specifications.
 - 8.15.1.5. Work.
 - 8.15.1.6. Project Budget.
 - 8.15.1.7. Construction Cost Estimate.
 - 8.15.1.8. District.
 - 8.15.1.9. Surety.
 - 8.15.1.10. Subcontractors; Sub-Subcontractors.
 - 8.15.1.11. Material Supplier.
 - 8.15.1.12. Division of State Architect ("DSA").
 - 8.15.1.13. Project Inspector ("IOR").
 - 8.15.1.14. Vendor's Superintendent.
 - 8.15.1.15. Record Drawings.
 - 8.15.1.16. Construction Equipment.
 - 8.15.1.17. Site.
 - 8.15.1.18. Defective or Non-Conforming Work.
 - 8.15.1.19. Delivery.
 - 8.15.1.20. Notice to Proceed.
 - 8.15.1.21. Progress Reports; Verified Reports.
 - 8.15.1.22. The Contract Documents.
- 8.16. Entire Agreement.
- 8.17. Authority to Execute.

SERVICE AGREEMENT

THIS VENDOR SERVICE AGREEMENT ("Agreement") is made in the City of Saratoga, State of California, by and between **WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT**, a California Community College District hereinafter "District", located at 14000 Fruitvale Avenue, Saratoga, State of California, and _____, having its principal offices at _____, California _____ ("Vendor") (Vendor and the District are hereinafter collectively referred to as "the Parties") and shall be effective as of _____, 2014.

WHEREAS, Vendor provides design, installation and related services for West Valley **PE BUILDING** lighting energy retrofit project.

WHEREAS, the District contemplates implementation of energy retrofit designs for interior lighting improvements at West Valley College campus PE Building.

WHEREAS, the scope of the Project at West Valley College Campus is set forth in the attached Project Scope Description ("the Scope"); the Scope is incorporated herein as Exhibit A.

WHEREAS, the District issued a written Request for Proposals ("RFP") soliciting proposals from qualified Electrical contractor firms providing **design and installation**, for retrofit lighting; by this reference, the RFP is incorporated herein.

WHEREAS, on or about _____ the Vendor submitted its response to the RFP ("the Proposal"); by this reference, the Proposal is incorporated herein.

WHEREAS, pursuant to Government Code §4217.10 et seq. the District has selected the Vendor, on the basis of its skills and qualifications, to provide design and installation for retrofit lighting situated on the District's West Valley College campus ("the Project").

WHEREAS, the District and Vendor desire by this Agreement to establish terms and conditions relating to the Project.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is acknowledged by the Parties and each of them, the Parties agree as follows:

1. The Project.

1.1. **General.** The Project subject to this Agreement is the West Valley College lighting retrofit design and installation for lighting improvements and energy savings at the PE buildings. The Work of the Project consists of the following separate components:

- (i)** Preparation of Design Documents for the Project ("Design Services")
- (ii)** Construction of the Project ("Construction Services").
- (iii)** Submit all necessary documentation to PG&E for incentive.

Vendor shall perform and provide all necessary labor, materials, tools, equipment, utilities, services and transportation to complete all of the Work of the Project.

1.2. The Work. The Work of the Project consists of two components: (a) preparation of Design Documents for the Project ("Design Services") and (b) construction of the Project ("Construction Services"). Vendor shall perform and provide all necessary labor, materials, tools, equipment, utilities, services and transportation to complete all of the Work including, without limitation, all work necessary to secure approval from the Division of State Architect ("DSA"), where required.

1.3. Project Duration. Vendor shall achieve Final Completion of the Work on or before **June 12, 2014**.

2. Payment Bond; Performance Bond.

Prior to commencement of the Work, the Vendor shall furnish a Performance Bond as security for Vendor's faithful performance of the Contract and a Labor and Material Payment Bond as security for payment of persons or entities performing work, labor or furnishing materials in connection with Vendor's performance of the Work under the Contract Documents. Unless otherwise stated in the Special Conditions, the amounts of the Performance Bond and the Payment Bond required hereunder shall be one hundred percent (100%) of the Contract Price. Said Labor and Material Payment Bond and Performance Bond shall be in the form and content set forth in attached Exhibits C and D to this Agreement. The failure or refusal of the Vendor to furnish either the Performance Bond or the Labor and Material Payment Bond in strict conformity with this Section may be deemed by the District as a default by the Vendor of a material obligation hereunder. Upon request of the Vendor, the District may consider and accept, but is not obligated to do so, multiple sureties on such bonds. The Surety on any bond required under the Contract Documents shall be an Admitted Surety Insurer as that term is defined in California Code of Civil Procedure §995.120 and named in the current list of *Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies* as published in Treasury Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. The surety shall also be rated at least A-/VII by A.M. Best.

3. Design Services.

3.1. General. All of the Design Services provided by or through Vendor under this Agreement shall be provided and performed consistent with professional skill and care and in such a manner as to avoid hindrance, unnecessary interruption or delay to the orderly progress and completion of the Design Services. Design Services consist generally of the preparation of Drawings and Specifications with sufficient accuracy, clarity and completeness to reflect the Scope.

3.2. Design Consultants; Design Disciplines. Design Services include all engineering and other design services necessary to complete Project Design Services including without limitation: (a) architectural; and (b) engineering disciplines: structural, mechanical, electrical, plumbing and civil. The Design Services may be completed by Vendor's personnel or the personnel of Design Consultants to Vendor provided that all of the Design Services hereunder shall be provided by or under the direction and control of a

California licensed Architect or California registered engineer as required by the nature of the Design Services being provided.

- 3.3. Design Services Standard of Care. Vendor and/or its Design Consultants shall provide the Design Services: (a) using their best professional skill and judgment; (b) acting with due care and in accordance with professional standards of care and the terms of this Agreement; and (c) in accordance with all applicable codes, laws, rules or regulations in effect or reasonably foreseeable at the time the Design Services are rendered.
- 3.4. Obligation to Design Within Construction Costs. A material obligation of the Vendor under this Agreement and in connection with each Assigned Project hereunder is the Vendor's development and preparation of Design Documents for each Assigned Project that can be constructed (under the then current marketplace conditions) within the Construction Budget established by the District for the Project. Design Documents for the Project shall include features, elements, components or other items which may be added to or deleted from the scope of the Project without impairing the size, intended uses, functions or occupancy of the Project ("Design Alternatives").
- 3.5. Conformity to District Standards. Design Documents prepared by or through the Vendor for the Project shall conform to District standards, if any, for materials, equipment and/or workmanship in effect as of the completion of the Working Drawings for the Project. Modifications of the Design Documents for the Project to conform to District materials, equipment or workmanship standards shall be without adjustment of the Contract Price for the Project.
- 3.6. Vendor Design Services Project Manager. Vendor shall designate a responsible employee of Vendor to serve as Vendor's Design Services Project Manager. The Design Services Project Manager shall: (a) be reasonably satisfactory to the District; (b) not be replaced without the prior consent of the District; (c) have the overall responsibility for Vendor's timely and complete performance of Design Services obligations under this Agreement; and (d) be authorized to act on behalf of Vendor, which shall not be unreasonably withheld, in connection with Design Services of Vendor under this Agreement.
- 3.7. Design Development Documents.
 - 3.7.1. Scope of Design Development Documents. Based on the Project scope described in Exhibit A, Vendor shall develop and prepare Design Development Documents which include: (a) Drawings indicating generally the anticipated fixtures layout, and equipment locations, detail system interconnection to the local electric utility's distribution system and identify operation in accordance with the Illuminating Engineering Society of North America Handbook (IESNA); (b) draft outline of Specifications including designation/description of materials/equipment to be incorporated into the Work.
 - 3.7.2. District Review of Design Development Documents. Upon completion of the Design Development Documents, Vendor shall submit the same to the District Representative for review and acceptance. If the District Representative fails to provide written acceptance of such Documents, or request an extension of time

to review such Documents, within ten (10) calendar days of Vendor's submittal of said Documents, the Parties agree that the Documents shall be deemed to have been accepted by the District on the tenth (10th) day. Vendor shall modify the Design Development Documents as necessary to obtain the District's acceptance thereof.

3.7.3. Vendor Preparation of Design Documents. Upon the execution and ratification of this Agreement, the Vendor shall be deemed authorized to commence with the preparation of Design Documents and other Design Services under this Agreement and procure long lead time equipment, without further action of the District. If the District fails to provide a written Notice to Proceed within fifteen (15) calendar days after the date of the District's acceptance of the Design Documents, the Parties agree that the Notice to Proceed shall be deemed to have been issued by the District on the fifteenth (15th) day.

3.8. Construction Documents. Based on the comments of the District Representative to the Design Development Documents, Vendor shall prepare Construction Documents consisting of detailed Drawings and Specifications with sufficient clarity, coordination and consistency to construct the Project in accordance with the Construction Contract Time established by the District and within the Project Budget. Vendor shall submit the completed Construction Documents to the District for review, comment and acceptance. If the District Representative fails to provide a written acceptance of such Documents, or request an extension of time to review such Documents, within ten (10) calendar days of Vendor's submittal of said Documents, the Parties agree that the Documents shall be deemed to have been accepted by the District on the tenth (10th) day. Upon completing revisions, if any, to the Construction Documents to address comments of the District, Vendor shall submit the same to the District Representative for review, comment and acceptance on behalf of the District. Vendor shall revise the Construction Documents as reasonably necessary to obtain the District's acceptance of the entirety of the Construction Documents. The Construction Documents accepted by the District shall be referred to as the Final Construction Documents. Notwithstanding any provision of this Agreement to the contrary and in addition to other comments/revisions necessary to obtain the District's acceptance of the Construction Documents, the District's acceptance of the Construction Documents shall be conditioned upon Vendor's written statement accompanying the Construction Documents which shall specifically warrant and represent to the District that the scope of the Project depicted in the Contract Documents is a Lighting powered photovoltaic power generating system that meets or exceeds the requisite kilowatts identified in the Request for Proposals and Vendor's Proposal. Unless otherwise indicated in this Agreement, references to the Construction Documents in this Agreement shall be deemed references to the Final Construction Documents.

3.9. Permits, Approvals. Upon completion of the Final Construction Documents, Vendor shall submit the same, on behalf of the District, to all governmental or quasi-governmental agencies or entities with jurisdiction over any portion of the Work depicted therein for review and issuance of permits or other approvals necessary or required for construction of the Work including, DSA. Vendor shall promptly process such applications and promptly obtain all necessary permits and approvals for construction of the Project. Vendor shall keep the District informed of the status of such applications

for permits and approvals. Except for the fee(s) charged by the governmental or quasi-governmental agency issuing a permit or approval relating to Project construction, all costs and expenses associated with or arising out of the submission and processing of necessary permits or approvals for construction of the Project are included and incorporated into the Design and Construction Services Contract Price. The District shall be responsible for payment of the fee(s) charge by the governmental or quasi-governmental agency issuing a permit or approval relating to Project construction.

- 3.10. Limitations on District Acceptance of Design Documents. The District's review of Design Documents shall be for the limited purpose of confirming that the Work reflected in the Design Documents generally conforms to the requirements of the Project. The District's review and acceptance of the Design Documents or any portion thereof shall not relieve or limit Vendor's obligations, whether pursuant to the terms of this Agreement or by operation of law, relating to its standard of care in preparing Design Documents, nor shall such review/acceptance result in any District assumption of responsibility for the content thereof nor the completeness and accuracy of the Design Documents. If the District fails to provide a written acceptance of such Documents within ten (10) calendar days of Vendor's submittal of said Documents, the Parties agree that the Documents shall be deemed to have been accepted by the District on the tenth (10th) day. If the District deems the Design Documents unacceptable and the Vendor disagrees with the District's assessment, a mutual third party shall resolve whether the Design Documents meet the Scope.

4. Construction Services

- 4.1. General. Vendor shall provide Construction Services, consisting generally of labor, materials, equipment and services necessary to procure, install and construct the Work indicated in the Construction Documents. The Work indicated in the Construction Documents shall be installed and constructed in accordance with the Construction Documents and applicable laws, ordinances, rules or regulations.
- 4.2. California Contractors' License. At all time during performance of Construction Services, Vendor shall be duly licensed in good standing by the California Contractors State License Board as a **C-10** Electrical Contractor
- 4.3. District.
- 4.3.1. Notice to Proceed. After the District's acceptance of the Final Construction Documents, the District will issue a written Notice to Proceed to Vendor authorizing and directing its commencement of Project construction. If the District fails to provide a written Notice to Proceed within fifteen (15) calendar days after the date of the District's acceptance of the Final Construction Documents, the Parties agree that the Notice to Proceed shall be deemed to have been issued by the District on the fifteenth (15th) day. The commencement date of the Construction Services Contract Time shall be as set forth in the Notice to Proceed issued by the District to Vendor. The Construction Services Contract Time shall not be subject to adjustment if Vendor does not commence Project construction as of the commencement date set forth in the Notice to Proceed.
- 4.3.2. District's Right to Suspend Work. The District may, without cause, and

without invalidating or terminating the Contract, order the Vendor, in writing, to suspend, delay or interrupt the Work in whole or in part for such period of time as the District may determine. The Vendor shall resume and complete the Work suspended by the District in accordance with the District's directive, whether issued at the time of the directive suspending the Work or subsequent thereto.

4.3.3. Adjustments to Contract Price and Contract Time. In the event the District shall order suspension of the Work, an adjustment shall be made to the Contract Price for increases in the direct cost of performance of the Work of the Contract Documents, actually caused by suspension, delay or interruption ordered by the District; provided however that no adjustment of the Contract Price shall be made to the extent: (i) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Vendor is responsible under the Contract Documents; or (ii) that an equitable adjustment is made or denied under another provision of the Contract Documents. The foregoing notwithstanding, any such adjustment of the Contract Price shall not include any adjustment to increase the Vendor's overhead, general administrative costs or profit, all of which will remain as reflected in the Cost Breakdown submitted by the Vendor pursuant to the Contract Documents. In the event of the District's suspension of the Work, the Contract Time shall be equitably adjusted.

4.3.4. District Right to Stop Work. In addition to the District's right to suspend the Work or terminate the Contract pursuant to the Contract Documents, the District, may, by written order, direct Vendor to stop the Work, or any portion thereof, until the cause for such stop work order has been eliminated if Vendor: (i) fails to correct Work which is not in conformity and in accordance with the requirements of the Construction Documents, or (ii) otherwise fails to carry out the Work in conformity and accordance with the Contract Documents. The right of the District to stop the Work hereunder shall not be deemed a duty on the part of the District to exercise such right for the benefit of Vendor or any other person or entity, nor shall the District's exercise of such right waive or limit the exercise of any other right or remedy of the District under the Contract Documents or at law. If Work is stopped or suspended pursuant to the foregoing, the Contract Price and the Contract Time are not subject to adjustment.

4.3.5. District Partial Occupancy or Use. The District may occupy or use any completed or partially completed portion of the work. The District's use or occupancy of the Work or portions thereof pursuant to the preceding shall not be deemed "completion" of the Work as that term is used in Public Contract Code §7107.

4.3.6. No Acceptance of Defective or Non-Conforming Work. Unless otherwise expressly agreed upon by the District and Vendor, the District's partial occupancy or use of the Work or any portion thereof, shall not constitute the District's acceptance of the Work not complying with the requirements of the Contract Documents or which is otherwise defective.

4.3.7. District Representative. The District will designate Gilbane Building Company as the District Representative during construction of the Project to serve as the District Representative. The District Representative is authorized to act on behalf of the District and to enforce the District's rights under this Agreement. All Work of the Project, whether in place or in progress, shall be available for inspection, observation or review by the District Representative at any time. Without adjustment of the Design and Construction Services Contract Price, Vendor shall provide the District Representative with access to the Work, wherever located and whether in place or in progress.

4.4. The Project Inspector. In addition to the authority and rights of the Project Inspector as provided for elsewhere in the Contract Documents and/or arising by operation of the Laws, all of the Work shall be performed under the observation of the Project Inspector. The performance of the duties of the Project Inspector under the Contract Documents shall not relieve or limit the Contractor's performance of its obligations under the Contract Documents

4.4.1. Other Inspections. All of the Work shall also be subject to inspections conducted by public agencies with jurisdiction over the Project or any portion thereof.

4.4.2. Access to Work. The Vendor shall provide the Project Inspector and other Inspectors with access to all parts of the Work at any time, wherever located and whether partially or completely fabricated, manufactured, furnished or installed. The Project Inspector and other Inspectors shall have the authority to stop Work if the Work is not in conformity with the Contract Documents.

4.4.3. Limitations on Project Inspector. The Project Inspector and other Inspectors do not have authority to interpret the Contract Documents or to modify the Work depicted in the Contract Documents. Neither the Project Inspector nor any other Inspector have any authority relative to the content or scope of the Vendor's safety plan/program. No Work inconsistent with the Contract Documents shall be performed solely on the basis of the direction of the Project Inspector or other Inspector, and the Vendor shall be liable to the District for the consequences of all Work performed on such basis.

4.4.4. Compliance with Inspectors' Corrective Requirements. If the Inspectors determine that any portion of the Work is defective or not conforming to requirements of the Construction Documents, upon notice of such defective or non-conforming conditions, Vendor shall promptly take all necessary measures to correct such defective or non-conforming conditions. Vendor shall undertake and complete corrections to defective/non-conforming conditions identified by the Inspectors. If Vendor fails or refuses to correct defective/non-conforming conditions pursuant to the preceding within ten (10) calendar days of the Inspectors' determination, the District, with its own forces or its own separate Vendor, may complete correction to

defective or non-conforming conditions at the cost and expense of Vendor. The District may deduct such cost(s) and expense(s) from any portion of the Design and Construction Services Contract Price then or thereafter due Vendor. If Vendor establishes that the Inspector's corrective requirements were in error and that Vendor's work was in conformity with the Contract Documents, Vendor shall be entitled to a change order granting it a reasonable extension of Contract Time and Contract Price based on the time and increased costs and expenses incurred by Vendor in performing the Inspector's corrective requirements.

4.5. District Separate Vendors. The District reserves the right to perform construction or other operations at or about the Site with its own forces or other Vendors. Vendor shall cooperate with the District and the District's separate Vendors to coordinate their respective activities on or about the Site and shall afford the District and the District's separate Vendors a reasonable opportunity for storage of materials/equipment and performance of their respective activities at or about the Site to the same extent that the District has provided to Vendor.

4.6. Vendor Construction Activities.

4.6.1. Field Measurements. Prior to commencement of the Work, or portions thereof, Vendor shall take field measurements and verify field conditions at the Site.

4.6.2. Dimensions; Layouts and Field Engineering. Vendor shall be solely responsible for coordinating the Work of the Contract Documents. All field engineering required for laying out the Work and establishing grades for earthwork operations shall be by Vendor at its expense. Any field engineering or other engineering to be provided or performed by Vendor under the Contract Documents and required or necessary for the proper execution or installation of the Work shall be provided and performed by the a registered engineer under the laws of the State of California in the engineering discipline for such portion of the Work and shall be submitted to the District Representative for review and acceptance. Upon commencement of any item of the Work, Vendor is responsible for dimensions of such item of Work and related Work; without adjustment of the Contract Time or Design and Construction Services Contract Price, Vendor is responsible for making component parts of the Work fit together properly.

4.6.3. Work in Accordance With Contract Documents. Vendor shall perform all of the Work in strict conformity with the Contract Documents and applicable laws, codes, regulations and rules. The Project, as completed shall conform to the Construction Documents, except to the extent that the District has accepted a Change and issued a Change Order therefore. Vendor shall furnish and install the materials and equipment as specified in the Construction Documents, unless Vendor shall have obtained the District's consent and approval to substitution of specified materials or equipment.

4.6.4. Subsurface Conditions. If the Work under the Contract Documents involves

digging trenches or other excavations that extend deeper than four feet below the surface, Vendor shall promptly and before the following conditions are disturbed, notify the District Representative in writing, of any: (i) material that Vendor believes may be material that is hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I or Class II or Class III disposal site in accordance with provisions of existing law; (ii) subsurface or latent physical conditions at the site differing from those indicated; or (iii) unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Work or the character provided for in the Contract Documents. If the District and the Vendor determine that the conditions so materially differ or involve such hazardous materials which require an adjustment to the Design and Construction Services Contract Price or the Contract Time, the District shall issue a Change Order in accordance with the provisions of this Agreement. If any of the conditions listed in (i), (ii), or (iii) above, are discovered and result in any delays by Vendor or any increases in Contract Price by Vendor, Vendor shall be entitled to a change order granting it a reasonable extension of Contract Time and a reasonable increase in the Contract Price based upon the time and increased costs and expenses incurred by Vendor in stopping or delaying performance under the Contract Documents, working around affected areas of the project site, and restarting performance under the Contract Documents. In accordance with California Public Contract Code §7104, any dispute arising between Vendor and the District as to any of the conditions listed in (i), (ii) or (iii) above, shall not excuse Vendor from the completion of the Work within the Contract Time and Vendor shall proceed with all Work to be performed under the Contract Documents. The District reserves the right to terminate the Contract pursuant to the Contract Documents should the District determine not to proceed because of any condition described in (i), (ii) or (iii) above. The District shall notify the Vendor in writing of the Contract termination within five (5) calendar days of the notification provided by the Vendor of such conditions. If the Contract is terminated because of any the conditions described in (i), (ii) or (iii), the Vendor shall be entitled to payment for all Work performed, earned profit and overhead, and costs incurred in accordance with this Contract up to the date of termination.

4.6.5. Archaeological Finds. If any significant archaeological deposits, features, or human remains are encountered, and they cannot be avoided, work in the affected area will be suspended. In such an event, an archaeologist recommended by the State Historic Preservation Office will conduct a survey of the affected area. A preliminary determination will then be made as to the significance of the survey findings. If considered significant, the survey remains will be preserved and appropriate professional actions taken in accord with established professional practices.

4.6.6. Supervision and Construction Procedures.

4.6.6.1. Supervision of the Work. Vendor shall supervise and direct performance of the Work, using Vendor's best skill and attention.

Vendor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract Documents, unless Contract Documents give other specific instructions concerning these matters. Vendor shall be responsible for inspection of completed or partially completed portions of Work to determine that such portions are in proper condition to receive subsequent Work.

4.6.6.2. Responsibility for the Work. Vendor shall be responsible to the District for negligent acts and omissions of Vendor's employees, Subcontractors and their agents and employees and all other persons performing any portion of the Work under a contract with Vendor and at Vendor's discretion. Vendor shall not be relieved of the obligation to perform the Work in accordance with the Contract Documents by tests, inspections or approvals required or performed by persons other than Vendor.

4.6.6.3. Layouts. Vendor is solely responsible for laying-out the Work so that construction of the Work conforms to the requirements of the Contract Documents and so that all component parts of the Work are coordinated. Vendor shall be responsible for maintenance and preservation of benchmarks, reference points and stakes for the Work. The cost of maintenance and preservation of benchmarks, reference points and stakes shall be included within the Design and Construction Services Contract Price. Vendor shall be solely responsible for all loss or costs resulting from the loss, destruction, disturbance or damage of benchmarks, reference points or stakes by Vendor and its agents, employee's invitees and other representatives. Vendor shall not be liable for loss, destruction, disturbance or damage caused by vandal or other third parties not under the control or supervision of Vendor. Vendor shall be entitled to a change order granting it a reasonable extension of Contract Time and a reasonable increase in the Contract Price based upon the time and increased costs and expenses incurred by Vendor as a result of such occurrences.

4.6.7. Conferences and Meetings. A material obligation of Vendor under the Contract Documents is the attendance at required meetings by Vendor's supervisory personnel for the Work and Vendor's management personnel as required by the Contract Documents or as requested by the District. Vendor's personnel participating in conferences and meetings relating to the Work shall be authorized to act on behalf of Vendor and to bind Vendor. Vendor is solely responsible for arranging for the attendance by Subcontractors, Material Suppliers at meetings and conferences relating to the Work as necessary, appropriate or as requested by the District.

4.6.7.1. Pre-Construction Conference. Vendor's representatives (and representatives of Subcontractors as requested by the District) shall attend a Pre-Construction Conference at such time and place as designated by the District. The Pre-Construction Conference will

generally address the requirements of the Work and Contract Documents, and to establish construction procedures. Subject matters of the Pre-Construction Conference will include as appropriate: (a) administrative matters, including an overview of the respective responsibilities of the District, Vendor, Subcontractor, Inspectors and others performing any part of the Work or services relating to the Work; (b) Submittals; (c) Changes and Change Order processing; (d) employment practices, including Certified Payroll preparation and submission and prevailing wage rate responsibilities of Vendor; (e) Progress Schedule development and maintenance; (f) development of Schedule of Values and payment procedures; (g) requisite Project accounting procedures and submission of records; (h) communication procedures; (i) emergency and safety procedures; (j) Site visitor policies; (k) conduct of Vendor/Subcontractor personnel at the Site; and (l) punchlist/close-out procedures.

- 4.6.7.2. Progress Meetings. Progress meetings will be conducted on regular intervals (weekly unless otherwise expressly indicated elsewhere in the Contract Documents). Vendor's representatives and representatives of Subcontractors (as requested by the District) shall attend Progress Meetings. Progress Meetings will be chaired by the District and will generally include as agenda items: Site safety, field issues, coordination of Work, construction progress and impacts to timely completion, if any. The purposes of the Progress Meetings include: a formal and regular forum for discussion of the status and progress of the Work by all Project participants, a review of progress or resolution of previously raised issues and action items assigned to the Project participants, and reviews of the Progress Schedule and Submittals.
- 4.6.7.3. Special Meetings. As deemed necessary or appropriate by the District, Special Meetings will be conducted with the participation of Vendor, Subcontractors and other Project participants as requested by the District.
- 4.6.7.4. Minutes of Meetings. Following conclusion of the Pre-Construction Conference, Progress Meetings and Special Meetings, Vendor will prepare and distribute minutes reflecting the items addressed and actions taken at a meeting or conference. Unless the District notifies Vendor in writing of objections or corrections to minutes prepared hereunder within five (5) dates of the date of distribution of the minutes, the minutes as distributed shall constitute the official record of the meeting or conference. No objections or corrections of any Subcontractor or Material Supplier shall be submitted directly to the District; such objections or corrections shall be submitted to the District through Vendor. If Vendor timely interposes objections or notes corrections, the resolution of such matters shall be addressed at the next scheduled Progress Meeting.

4.6.8. Temporary Sanitary Facilities. At all times during Work at the Site, Vendor shall obtain and maintain temporary sanitary facilities in conformity with applicable law, rule or regulation. Vendor shall maintain temporary sanitary facilities in a neat and clean manner with sufficient toilet room supplies. Personnel engaged in the Work are not permitted to use toilet facilities at the Site.

4.6.9. Noise and Dust Control.

4.6.9.1. Noise Control. Vendor shall comply with the requirements of the city and county having jurisdiction with regard to noise ordinances governing construction sites and activities. Construction Equipment generating noise at the Site shall be limited to the hours/ days of work at the site are from 7:30 am to 6:00 pm Monday through Friday. Non-noise generating work at building interiors may be scheduled, with District and construction manager approval outside of these restrictions. If classes are in session at any point during the progress of the Work, and, in the District's reasonable discretion, the noise from any Work disrupts or disturbs the students or faculty or the normal operation of the college, at the District's request, **Vendor shall schedule the performance of all such Work around classrooms availability hours or make other arrangements so that the Work does not cause such disruption or disturbance.** In no event shall such arrangements result in adjustment of the Design and Construction Services Contract Price or the Contract Time.

4.6.9.2. Dust Control. Vendor shall be fully and solely responsible for maintaining all areas of the Site and adjoining areas, outdoors and indoors, and keeping all areas free from flying debris, grinding powder, sawdust, dirt and dust as well as any other product, product waste or work waste, that by becoming airborne may cause respiratory inconveniences to persons, particularly to students and District personnel. Additionally, Vendor shall take specific care to avoid deposits of airborne dust or airborne elements. Such protection devices, systems or methods shall be in accordance with the regulations set forth by the EPA and OSHA, and other applicable laws, rules or regulations. Additionally, Vendor shall be the sole party responsible to regularly and routinely clean up and remove any and all deposits of dust and other elements. Damage and/or any liability derived from Vendor's failure to comply with these requirements shall be exclusively at the cost of Vendor, including, without limitation, any and all penalties that may be incurred for violations of applicable laws, rules or regulations, and any amounts expended by the District to pay such damages shall be due and payable to the District on demand. Vendor shall replace any damaged property or part thereof and professionally clean any and all items that become covered or partially covered to any degree by dust or other airborne elements. If classes are in session at any point during the progress of Work, and, in the District's reasonable discretion, flying debris, grinding powder, sawdust, dirt or dust from any

Work disrupts or disturbs the students or faculty or the normal operation of the college, at the District's request, Vendor shall schedule the performance of all such Work around normal college hours and make other arrangements so that the Work does not cause such disruption or disturbance. In no event shall such arrangements result in adjustment of the Design and Construction Services Contract Price or the Construction Contract Time.

4.6.9.3. Vendor Failure to Comply. If Vendor fails to comply with the requirements for dust control, noise control, or any other maintenance or clean up requirement of the Contract Documents, the District shall notify Vendor in writing and Vendor shall take immediate action. Should Vendor fail to respond with immediate and responsive action within twenty-four (24) hours from such notification, the District shall have the absolute right to proceed as it may deem necessary to remedy such matter. Any and all reasonable costs incurred by the District in connection with such actions shall be the sole responsibility of, and be borne by, Vendor; the District may deduct such amounts from the Design and Construction Services Contract Price then or thereafter due Vendor.

4.6.10. Hours and Days of Work at the Site.

4.6.10.1. Work Hours/Days. Subject to limitations set forth elsewhere in the Contract Documents and below, the hours/days of Work at the Site are: 7:30am – 6pm Mondays through Fridays, except for holiday days. All installation work is to take place only when areas are not occupied unless by special arrangement. **Vendor shall schedule the performance of all Work around classrooms availability hours or make other arrangements so that the Work does not cause such disruption or disturbance.** In no event shall such arrangements result in adjustment of the Design and Construction Services Contract Price or the Contract Time. Room schedule will be provided.

4.6.11.

4.6.11.1. Limitations on Work Hours/Days. Work activities at the Site will be limited or prohibited on days: (i) devoted to student testing or when testing of students may be adversely affected by Work activities at the Site; or (ii) when other special events or functions are scheduled. The Contractor shall familiarize itself with District activities at the Site to avoid Work activity interferences or disturbances to such District activities. The Contractor's Construction Schedule shall take into account the District activities which limit or preclude Work activities at the Site. The 2012 - 2013 Academic Calendar is attached hereto and incorporated herein for the Contractor's reference and use. Except in the circumstances of an emergency, all construction activities shall be permitted at or about the Site Mondays through Fridays, excepting holidays and between the hours of 7:30 a.m. and 6:00 p.m. Work

performed outside of the foregoing hours and days will not result in adjustment of the Contract Time or the Design and Construction Services Contract Price.

4.6.12. Labor and Materials.

4.6.12.1. Payment for Labor, Materials and Services. Vendor 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 in the Work.

4.6.12.2. Employee Discipline. Vendor shall enforce strict discipline and good order among Vendor's employees, the employees of any Subcontractor or Sub-Subcontractor, and all other persons performing any part of the Work at the Site. Vendor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Vendor shall dismiss from its employ and direct any Subcontractor or Sub-Subcontractor to dismiss from their employment any person deemed by the District to be unfit or incompetent to perform Work and thereafter, Vendor shall not employ nor permit the employment of such person for performance of any part of the Work without the prior written consent of the District, which consent may be withheld in the reasonable discretion of the District.

4.6.12.3. Vendor's Superintendent/Assistant Superintendent. Vendor shall employ a competent superintendent and all necessary assistants who shall be in attendance at the Site at all times during Project construction. Vendor's communications relating to the Work or the Contract Documents shall be through Vendor's Superintendent or Assistant Superintendent. The superintendent or Assistant Superintendent shall represent Vendor and communications given to the Superintendent or Assistant Superintendent shall be binding as if given to Vendor. Vendor shall dismiss the superintendent or any of his/her assistants if they are deemed, in the sole reasonable judgment of the District, to be unfit, incompetent or incapable of performing the functions assigned to them, the District shall have the right to approve the designated Superintendent and Assistant Superintendent and any such replacements.

4.6.13. Prohibition on Harassment.

4.6.13.1. District's Policy Prohibiting Harassment. The District is committed to providing a campus and workplace free of sexual harassment and harassment based on factors such as race, color religion, national origin, ancestry, age, medical condition, marital status, disability or veteran status. Harassment includes without limitation, verbal, physical or visual conduct which creates an intimidating, offensive or hostile

environment such as racial slurs; ethnic jokes; posting of offensive statements, posters or cartoons or similar conduct. Sexual harassment includes without limitation the solicitation of sexual favors, unwelcome sexual advances, or other verbal, visual or physical conduct of a sexual nature.

4.6.13.2. Vendor's Adoption of Anti-Harassment Policy. Vendor shall adopt and implement all appropriate and necessary policies prohibiting any form of discrimination in the workplace, including without limitation harassment on the basis of any classification protected under local, state or federal law, regulation or policy. Vendor shall take all reasonable steps to prevent harassment from occurring, including without limitation affirmatively raising the subject of harassment among its employees, expressing strong disapproval of any form of harassment, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment and informing complainants of the outcome of an investigation into a harassment claim. Vendor shall require that any Subcontractor or Sub-Subcontractor is performing any portion of the Work to adopt and implement policies in conformity with these provisions relating to prohibition of harassment.

4.6.13.3. Prohibition on Harassment at the Site. Vendor shall not permit any person, whether employed by Vendor, a Subcontractor, Sub-Subcontractor, or any other person or entity, performing any Work at or about the Site to engage in any prohibited form of harassment. Any such person engaging in a prohibited form of harassment directed to any individual performing or providing any portion of the Work at or about the Site shall be subject to appropriate sanctions in accordance with the anti-harassment policy adopted and implemented pursuant to these provisions. Any person, performing or providing Work on or about the Site engaging in a prohibited form of harassment directed to any student, faculty member or staff of the District or directed to any other person on or about the Site shall be subject to immediate removal and shall be prohibited thereafter from providing or performing any portion of the Work. Upon the District's receipt of any notice or complaint that any person employed directly or indirectly by Vendor in performing or providing the Work has engaged in a prohibited form of harassment, the District will promptly undertake an investigation of such notice or complaint. In the event that the District, after such investigation, reasonably determines that a prohibited form of harassment has occurred, the District shall promptly notify Vendor of the same and direct that the person engaging in such conduct be immediately removed from the Site. Unless the District's determination that a prohibited form of harassment has occurred is grossly negligent or without reasonable cause, District shall have no liability for directing the removal of any person determined to have engaged in a prohibited form of harassment and nor shall the Design and Construction Services Contract Price or the Contract Time shall be adjusted on account thereof. Vendor and

the Surety shall defend, indemnify and hold harmless the District and its employees, officers, board of trustees, agents, and representatives from any and all claims, liabilities, judgments, awards, actions or causes of actions, including without limitation, attorneys' fees, which arise out of, or pertain in any manner to: (i) the assertion by any person dismissed from performing or providing work at the direction of the District pursuant to this provision; or (ii) the assertion by any person that any person directly or indirectly under the employment or direction of Vendor has engaged in a prohibited form of harassment directed to or affecting such person. The obligations of Vendor and the Surety under the preceding sentence are in addition to, and not in lieu of, any other obligation of defense, indemnity and hold harmless whether arising under the Contract Documents, at law or otherwise; these obligations survive completion of the Work or the termination of the Contract.

4.6.14. Taxes. Vendor shall pay, without adjustment of the Design and Construction Services Contract Price, all sales, consumer, use and other taxes for the Work or portions thereof provided by Vendor under the Contract Documents.

4.6.15. Compliance With Laws. All Work and construction operations shall conform to and comply with all applicable laws, rules, regulations and ordinances. Vendor shall comply with and give notices required by laws, ordinances, rules, regulations and other orders of public authorities bearing on performance of the Work.

4.6.16. Submittals.

4.6.16.1. Waiver of Submittals. Provided that Vendor furnishes and installs the materials and equipment indicated in the Construction Documents, Vendor shall not be required to submit Shop Drawings, Product Data, Samples and similar submittals (collectively "Submittals") of materials, equipment or construction procedures to the District Representative or any other party for review and acceptance.

4.6.16.2. No Substitutions of Materials/Equipment Without District Review. Vendor shall perform no portion of the Work involving substitutions of materials/equipment indicated in the Construction Documents until the District Representative has reviewed and returned the Submittal to Vendor indicating "No Exception Taken" to such Submittal, within three (3) business days of receipt of the Submittal by the Vendor, If the District fails to return the Submittal to Vendor or fails to request an extension of time for review the Submittal, the Parties agree that "No Exception Taken" shall be deemed to have been indicated on the fourth (4th) business day. If the District deems to "Take Exception" to such Submittal and the Vendor disagrees with the District's assessment, a mutual third party shall resolve whether the substitution of materials/equipment meets the Scope. Vendor shall not perform any portion of the Work requiring a Submittal or which is affected by a required Submittal until the entirety of the required Submittal or other

related required Submittal has been fully processed. Such Work shall be in accordance with the final action taken by the District in their review of Submittals and other applicable portions of the Contract Documents.

4.6.16.3. District Review of Submittals for Substitutions of Materials Equipment. The purpose of the review by the District of Submittals relating to substitutions of materials/equipment indicated in the Construction Documents is for conformity of the proposed substitution of materials/equipment with the design intent of the Construction Documents and conformity with the performance and other requirements of the Project. If a Submittal is returned to Vendor as rejected or requiring correction(s) with re-submission, Vendor, so as not to delay the progress of the Work, shall promptly thereafter resubmit a Submittal conforming with the requirements of the Contract Documents; the resubmitted Submittal shall indicate the portions thereof modified in accordance with comments accompanying the rejected Submittal. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the District shall be entitled to rely upon the accuracy and completeness of such calculations and certifications accompanying Submittals. Acceptance of substitute materials/equipment reflected in a Submittal shall not result in an increase in the Construction Contract Time or the Design and Construction Services Contract Price.

4.6.16.4. Deferred Approval Items. In the event that any portion of the Work is designated in the Contract Documents as a "Deferred Approval" item, Vendor shall be solely and exclusively responsible for the preparation of Submittals for such item(s) in a timely manner so as not to delay or hinder the completion of the Work within the Contract Time.

4.6.17. Materials and Equipment.

4.6.17.1. Specified Materials, Equipment. Vendor acknowledges that the Construction Documents for the Work are prepared by or under the direction of Vendor and that the Construction Documents as prepared by or under the direction of Vendor are in conformity with applicable laws, including without limitation, Public Contract Code §3400. Specifications prepared by on behalf of Vendor do not include any specific Section, device, equipment, product, material, fixture, patented process, form, method or type of construction, by name, make, trade name, or catalog number which could be construed as limiting competition.

4.6.17.2. No Substitutions or Alternatives. Vendor shall furnish and install the materials and equipment specified in the Construction Documents without material substitutions or alternatives thereto, unless Vendor shall have notified the District in writing of its intent to substitute materials/equipment and the proposed substituted materials/equipment are accepted by the District pursuant to the Submittal process described

4.6.17.3. Placement of Material and Equipment Orders. Vendor shall, after issuance of the Notice to Proceed, promptly and timely place all orders for materials and/or equipment necessary for completion of the Work so that delivery of the same shall be made without delay or interruption to the timely completion of the Work. Vendor shall require that any Subcontractor or Sub-Subcontractor performing any portion of the Work similarly place orders for all materials and/or equipment to be furnished by any such Subcontractor or Sub-Subcontractor in a prompt and timely manner so that delivery of the same shall be made without delay or interruption to the timely completion of the Work. Upon request of the District, Vendor shall furnish reasonably satisfactory written evidence of the placement of orders for materials and/or equipment necessary for completion of the Work, including without limitation, orders for materials and/or equipment to be provided, furnished or installed by any Subcontractor or Sub-Subcontractor.

4.6.17.4. District's Right to Place Orders for Materials and/or Equipment. Notwithstanding any other provision of the Contract Documents, in the event that Vendor shall, upon request of the District, fail or refuse, for any reason, to provide reasonably satisfactory written evidence of the placement of orders for materials and/or equipment necessary for completion of the Work, or should the District reasonably determine, in its sole and reasonable discretion, that any orders for materials and/or equipment have not been placed in a manner so that such materials and/or equipment will be delivered to the Site so the Work can be completed without delay or interruption, the District shall have the right, but not the obligation, to place such orders on behalf of Vendor. If the District exercises the right to place orders for materials and/or equipment pursuant to the foregoing, the District's conduct shall not be deemed to be an exercise, by the District, of any control over the means, methods, techniques, sequences or procedures for completion of the Work, all of which remain the responsibility and obligation of Vendor. Notwithstanding the right of the District to place orders for materials and/or equipment pursuant to the foregoing, the election of the District to exercise, or not to exercise, such right shall not relieve Vendor from any of Vendor's obligations under the Contract Documents, including without limitation, completion Project construction within the Contract Time and for the Design and Construction Services Contract Price. If the District exercises the right hereunder to place orders for materials and/or equipment on behalf of Vendor pursuant to the foregoing, Vendor shall reimburse the District for all costs and fees incurred by the District in placing such orders; such costs and fees may be deducted by the District from the Design and Construction Services Contract Price then or thereafter due Vendor.

4.6.18. Safety.

4.6.18.1. Safety Programs. Vendor shall be solely responsible for initiating, maintaining and supervising all safety programs required by applicable law, ordinance, regulation or governmental orders in connection with the performance of the Contract, or otherwise required by the type or nature of the Work. Vendor's safety program shall include all actions and programs necessary for compliance with California or federally statutorily mandated workplace safety programs, including without limitation, compliance with the California Drug Free Workplace Act of 1990 (California Government Code §§8350 et seq.). Prior to commencement of construction activities at the Site, an authorized representative of Vendor shall execute the Drug-Free Workplace Certification and deliver the executed Drug-Free Workplace Certification to the District. Without limiting or relieving Vendor of its obligations hereunder, Vendor shall require that its Subcontractors similarly initiate and maintain all appropriate or required safety programs. Prior to commencement of Work at the Site, Vendor shall provide the District Representative with Vendor's proposed safety program for the Work for the District Representative's review and acceptance. Without adjustment of the Design and Construction Services Contract Price or the Contract Time, Vendor shall modify and re-submit its proposed safety plan to incorporate modifications thereto requested by the District Representative.

4.6.18.2. Safety Precautions. Vendor shall be solely responsible for initiating and maintaining reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (i) employees on the Work and other persons who may be affected thereby; (ii) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of Vendor or Vendor's Subcontractors or Sub-Subcontractors; and (iii) other property or items at the site of the Work, or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. Vendor shall take adequate precautions and measures to protect existing roads, sidewalks, curbs, pavement, utilities, adjoining property and improvements thereon (including without limitation, protection from settlement or loss of lateral support) and to avoid damage thereto. Without adjustment of the Design and Construction Services Contract Price or the Contract Time, Vendor shall repair, replace or restore any damage or destruction of the foregoing items as a result of performance or installation of the Work.

4.6.18.3. Safety Signs, Barricades. Vendor shall erect and maintain, as required by existing conditions and conditions resulting from performance of the Contract, reasonable safeguards for safety and protection of property and persons, including, without limitation, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

4.6.18.4. Safety Notices. Vendor shall give or post all notices required by applicable law and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

4.6.18.5. Safety Coordinator. Vendor shall designate a responsible member of Vendor's organization at the Site whose duty shall be the prevention of accidents and the implementation and maintenance safety precautions and programs. This person shall be Vendor's superintendent unless otherwise designated by Vendor in writing to the District.

4.6.18.6. Emergencies; First Aid. In an emergency affecting safety of persons or property, Vendor shall act, to prevent threatened damage, injury or loss. Vendor shall maintain stocked emergency first aid kits at the Site which comply with applicable law, rule or regulation.

4.6.19. Hazardous Materials.

4.6.19.1. General. In the event that Vendor, any Subcontractor or anyone employed directly or indirectly by them shall use, at the Site, or incorporate into the Work, any material or substance deemed to be hazardous or toxic under any law, rule, ordinance, regulation or interpretation thereof (collectively "Hazardous Materials"), Vendor shall comply with all laws, rules, ordinances or regulations applicable thereto and shall exercise all necessary safety precautions relating to the use, storage or disposal thereof.

4.6.19.2. Prohibition on Use of Asbestos Construction Building Materials ("ACBMs"). It is the intent of the District that ACBMs not be used or incorporated into any portion of the Work. Vendor warrants to the District that the Construction Documents do not incorporate therein any ACBMs. If the Work depicted in the Construction Documents require materials or products which Vendor knows, or should have known with reasonably diligent investigation, to contain ACBMs, Vendor shall promptly notify the District Representative of the same so that an appropriate alternative can be made in a timely manner so as not to delay the progress of the Work. Vendor warrants to the District that there are no materials or products used or incorporated into the Work which contain ACBMs. Whether before or after completion of the Work, if it is discovered that any product or material forming a part of the Work or incorporated into the Work contains ACBMs, Vendor shall at its sole cost and expense remove such product or material in accordance with any laws, rules, procedures and regulations applicable to the handling, removal and disposal of ACBMs and to replace such product or material with non-ACBM products or materials and to return the affected portion(s) of the Work to the finish condition depicted in the Drawings and Specifications relating to such portion(s) of the Work. Vendor's obligations under the preceding sentence shall survive the termination

of the Contract, the warranty period provided under the Contract Documents, Vendor's completion of the Work or the District's acceptance of the Work. In the event that Vendor shall fail or refuse, for any reason, to commence the removal and replacement of any material or product containing ACBMs forming a part of, or incorporated into the Work, within ten (10) days of the date of the District's written notice to Vendor of the existence of ACBM materials or products in the Work, the District may thereafter proceed to cause the removal and replacement of such materials or products in any manner which the District determines to be reasonably necessary and appropriate; all costs, expenses and fees, including without limitation fees and costs of consultants and attorneys", incurred by the District in connection with such removal and replacement shall be the responsibility of Vendor and Vendor's Performance Bond Surety.

4.6.19.3. Disposal of Hazardous Materials. Vendor shall be solely and exclusively responsible for the disposal of any Hazardous Materials on or about Site resulting from Vendor's performance of Work, unless such Hazardous Materials were present on or about the Site prior to Vendor's performance of Work. Vendor's obligations hereunder shall include without limitation, the transportation and disposal of any Hazardous Materials in strict conformity with any and all applicable laws, regulations, orders, procedures or ordinances.

4.6.20. Maintenance of Documents.

4.6.20.1. Documents at Site. Vendor shall maintain at the Site: (i) one record copy of the Drawings, and Specifications; (ii) Change Orders approved by the District and all other modifications to the Contract Documents; (iii) Record Drawings; (iv) Material Safety Data Sheets ("MSDS") accompanying any materials, equipment or products delivered or stored at the Site or incorporated into the Work; (v) all building and other codes or regulations applicable to the Work, including without limitation, Title 24, Part 2 of the California Code of Regulations; and (vi) all documents required by the Federal Provisions incorporated herein including, without limitation, documents evidencing jobs created and job retained. During performance of the Work, all documents maintained by Vendor at the Site shall be available to the District review, inspection or reproduction. Upon completion of the Work, all documents maintained at the Site by Vendor pursuant to the foregoing shall be assembled and transmitted to the District Representative upon Substantial Completion of the Work.

4.6.20.2. Maintenance of Record Drawings. During its performance of the Work, Vendor shall maintain Record Drawings consisting of a set of the Drawings which are marked to indicate all field changes made to adapt the Work depicted in the Construction Documents to adapt to field conditions, changes resulting from Change Orders and all concealed or buried installations, including without limitation, piping, conduit and utility

services. All buried or concealed items of Work shall be completely and accurately marked and located on the Record Drawings. The Record Drawings shall be clean and all changes, corrections and dimensions shall be marked in a neat and legible manner in a contrasting color. Record Drawings relating to the Structural, Mechanical, Electrical and Plumbing portions of the Work shall indicate without limitation, circuiting, wiring sizes, equipment/member sizing and shall depict the entirety of the as built conditions of such portions of the Work. The Record Drawings shall be continuously maintained by Vendor during the performance of the Work. At any time during Vendor's performance of the Work, upon the request of the District, Vendor shall make the Record Drawings maintained here under available for the District's review and inspection. The District's review and inspection of the Record Drawings during Vendor's performance of the Work shall be only for the purpose of generally verifying that Vendor is continuously maintaining the Record Drawings in a complete and accurate manner; any such inspection or review shall not be deemed to be the District's approval or verification of the completeness or accuracy thereof. The failure or refusal of Vendor to continuously maintain complete and accurate Record Drawings or to make available the Record Drawings for inspection and review by the District may be deemed by the District to be Vendor's default of a material obligation hereunder. Without waiving, restricting or limiting any other right or remedy of the District for Vendor's failure or refusal to continuously maintain the Record Drawings, the District may, upon reasonably determining that Vendor has not, or is not, continuously maintaining the Record Drawings in a complete and accurate manner, take appropriate action to cause the continuous maintenance of complete and accurate Record Drawings, in which event all fees and costs incurred or associated with such action shall be charged to Vendor and the District may deduct the amount of such fees and costs from any portion of the Design and Construction Services Contract Price then or thereafter due Vendor. Prior to receipt of the Final Payment, Vendor shall deliver the Record Drawings to the District.

4.6.21. Use of Site. Vendor shall confine operations at the Site to areas permitted by law, ordinances or permits, subject to any restrictions or limitations set forth in the Contract Documents. Vendor shall not unreasonably encumber the Site or adjoining areas with materials or equipment. Vendor shall be solely responsible for providing security at the Site with all such costs included in the Design and Construction Services Contract Price. The District and agencies with jurisdiction over the Work shall at all times have access to the Site.

4.6.22. Clean-Up. Vendor shall at all times keep the Site and all adjoining areas free from the accumulation of any waste material or rubbish caused or generated by performance of the Work. Without limiting the generality of the foregoing, Vendor shall maintain the Site in a "broom-clean" standard on a daily basis. Notwithstanding the foregoing, Vendor shall not be responsible for cleaning the Site areas of any waste materials or rubbish generated by other

than Vendor or its employees, Subcontractors, agent or representatives. Vendor agrees to promptly notify the District in the event that vandals or other third persons damage or leave waste material or rubbish in or about the Site. In the event that the Work of the Contract Documents includes painting and/or the installation of floor covering, prior to commencement of any painting operations or the installation of any flooring covering, the area and adjoining areas of the Site where paint is to be applied or floor covering is to be installed shall be in a "broom-clean" condition. Prior to completion of the Work, Vendor shall remove from the Site all rubbish, waste material, excess excavated material, tools, Construction Equipment, machinery, surplus material that were generated by Vendor or its employees, Subcontractors, agent or representatives that are not the property of the District under the Contract Documents. As directed by the District, Vendor shall remove temporary fencing, barricades, planking, temporary sanitary facilities, temporary utility distributions and other temporary facilities. Subject to the foregoing exclusions, upon completion of the Work, the Site and all adjoining areas shall be left in a neat and broom clean condition satisfactory to District. If Vendor fails to clean up as provided for in the Contract Documents, the District may do so, and all costs incurred in connection therewith shall be charged to Vendor; the District may deduct such costs from any portion of the Design and Construction Services Contract Price then or thereafter due Vendor.

4.6.23. Patents and Royalties. Vendor and the Surety shall defend, indemnify and hold harmless the District and its agents, employees and officers from any claim, demand or legal proceeding arising out of or pertaining, in any manner, to any actual or claimed infringement of patent rights arising as a result of Vendor's performance of the Work under the Contract Documents. Notwithstanding the foregoing, Vendor shall not have any indemnity or liability obligation to the extent that the subject infringements pertain to materials specifically required by the District under the Contract Documents.

4.6.24. Cutting and Patching. Vendor shall be responsible for cutting, fitting or patching required to complete the Work or to make the component parts thereof fit together properly. Vendor shall not damage or endanger any portion of the Work, or the fully or partially completed construction of the District or separate Vendors by cutting, patching, excavation or other alteration. When modifying new Work or when installing Work adjacent to an existing structure/facility, Vendor shall use reasonable efforts under the existing circumstances to match, as closely as conditions of the Site and materials will allow the finishes, textures and colors of the existing structure/facility and refinish elements of the existing structure/facility. Vendor shall not cut, patch or otherwise alter the construction by the District or separate Vendor without the prior written consent of the District or separate Vendor thereto, which consent shall not be unreasonably withheld. Vendor shall not unreasonably withhold consent to the request of the District or separate Vendor to cut, patch or otherwise alter the Work.

4.6.25. Encountering of Hazardous Materials. In the event Vendor encounters Hazardous Materials at the Site which have not been rendered harmless or for

which there is no provision in the Contract Documents for containment, removal, abatement or handling of such Hazardous Materials, Vendor shall immediately stop the Work in the affected area, but shall diligently proceed with the Work in all other unaffected areas. Upon encountering such Hazardous Materials, Vendor shall immediately notify the District Representative, in writing, of such condition. Vendor shall proceed with the Work in such affected area only after such Hazardous Materials have been rendered harmless, contained, removed or abated by the District. In the event such Hazardous Materials are encountered, Vendor shall be entitled to an adjustment of the Contract Time to the extent that the Work is stopped and Substantial Completion of the Work is affected thereby. In no event shall there be an adjustment to the Design and Construction Services Contract Price solely on account of Vendor encountering such Hazardous Materials.

4.6.26. Labor Standards.

4.6.26.1. Wage Rates; Employment of Labor. Pursuant to California Labor Code §1773, the Director of the Department of Industrial Relations of the State of California also determines the generally prevailing rates of wages in the locality in which the Work is to be performed. Copies of these determinations, entitled "PREVAILING WAGE SCALE" are available for review on the internet at http://www.dir.ca.gov/dlsr/statistics_research.html. The Vendor and all Subcontractors performing any portion of the Work shall pay prevailing wages based on the highest determination, i.e Department of Industrial Relations determination, for the classification of labor provided by their respective workers in prosecution and execution of the Work. **The determinations in effect ten (10) days prior to bid opening shall govern the entire duration of the Project.** The Vendor awarded the Contract for the Work shall post a copy of all applicable prevailing wage rates for the Work at conspicuous locations at the Site of the Work.

4.6.26.2. Hours of Work.

4.6.26.2.1. Limits on Hours of Work. Pursuant to California Labor Code §1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code §1811, the time of service of any worker employed at any time by the Vendor or by a Subcontractor, of any tier, upon the Work or upon any part of the Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereafter provided. Notwithstanding the foregoing provisions, Work performed by employees of Vendor or any Subcontractor, of any tier, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

4.6.26.2.2. Penalty for Excess Hours. The Vendor shall pay to the District a penalty of Twenty-five Dollars (\$25.00) for each worker employed on the Work by the Vendor or any Subcontractor, of any tier, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Vendor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

4.6.26.2.3. Vendor Responsibility. Any Work performed by workers necessary to be performed after regular working hours or on Sundays or other holidays shall be performed only with prior approval from the District and without adjustment to the Contract Price or any other additional expense to the District. The Vendor shall be responsible for costs incurred by the District which arise out of Work performed by the Vendor at times other than regular working hours and regular working days. Upon determination of such costs, the District may deduct such costs from the Contract Price then or thereafter due the Vendor.

4.6.27. Employment of Independent Contractors. Pursuant to California Labor Code §1021.5, Vendor shall not willingly and knowingly enter into any agreement with any person, as an independent Contractor, to provide any services in connection with the Work where the services provided or to be provided requires that such person hold a valid Contractor's license issued pursuant to California Business and Professions Code §§7000 et seq. and such person does not meet the burden of proof of his/her independent Contractor status pursuant to California Labor Code §2750.5. In the event that Vendor shall employ any person in violation of the foregoing, Vendor shall be subject to the civil penalties under California Labor Code §1021.5 and any other penalty provided by law. In addition to the penalties provided under California Labor Code §1021.5, Vendor's violation of this provision or the provisions of California Labor Code §1021.5 shall be deemed an event of Vendor's default under this Agreement. Vendor shall require any Subcontractor or Sub-Subcontractor performing or providing any portion of the Work to adhere to and comply with the foregoing provisions.

4.6.28. Assignment of Antitrust Claims. Pursuant to California Government Code §4551, Vendor and its Subcontractor(s), of any tier, hereby offers and agrees to assign to the District all rights, title and interest in and to all causes of action they may have under Section 4 of the Clayton Act, (15 U.S.C. §15) or under the Cartwright Act (California Business and Professions Code §§16700 et seq.), arising from purchases of goods, services or materials hereunder or any Subcontract. This assignment shall be made and become effective at the time the District tenders Final Payment to Vendor, without further acknowledgment by the parties. If the District receives, either through judgment or settlement, a monetary recovery in connection with a cause of action assigned under

California Government Code §§4550 et seq., the assignor thereof shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the District any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the District as part of the Design and Construction Services Contract Price, less the expenses incurred by the District in obtaining that portion of the recovery. Upon demand in writing by the assignor, the District shall, within one year from such demand, reassign the cause of action assigned pursuant to this Section if the assignor has been or may have been injured by the violation of law for which the cause of action arose: and (i) the District has not been injured thereby; or (ii) the District declines to file a court action for the cause of action.

4.7. Subcontractors

4.7.1. Subcontracts. Any Work performed for Vendor by a Subcontractor shall be pursuant to a written agreement between Vendor and such Subcontractor which specifically incorporates by reference the Contract Documents and which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents, including without limitation, the policies of insurance required by the terms of this Agreement and the termination provisions hereof, and obligates the Subcontractor to assume toward Vendor all the obligations and responsibilities of Vendor which by the Contract Documents Vendor assumes toward the District. The foregoing notwithstanding, no contractual relationship shall exist, or be deemed to exist, between any Subcontractor and the District, unless the Contract is terminated and District, in writing, elects to assume the Subcontract. Each Subcontract for a portion of the Work shall provide that such Subcontract may be assigned to the District if the Contract is terminated by the District pursuant to the terms of this Agreement, subject to the prior rights of the Surety obligated under a bond relating to the Contract. If this Agreement is terminated for any reason, Vendor shall provide to the District copies of all executed Subcontracts and Purchase Orders to which Vendor is a party. During performance of the Work, Vendor shall, from time to time, as and when requested by the District and mutually agreed upon, provide copies of any and all Subcontracts or Purchase Orders relating to the Work and all modifications thereto. Vendor's failure or refusal, for any reason, to provide copies of such Subcontracts or Purchase Orders in accordance with the two preceding sentences is Vendor's default of a material term of the Contract Documents.

4.7.2. Subcontractors List. Within five (5) days of the District's issuance of the Notice to Proceed, Vendor shall complete and submit to the District Representative the Subcontractors List attached as Exhibit F hereto. In accordance with Public Contract Code §4100 et seq., Vendor shall identify each Subcontractor. . Performing any Work valued at or greater than one-half of one percent (0.05%) of the Design and Construction Services Contract Price allocated to Construction Services. Vendor shall set forth in the Subcontractors List, the business location of each identified Subcontractor and the portion of Work to be performed by each identified Subcontractor.

4.7.3. Substitution of Listed Subcontractor.

4.7.3.1. Substitution Process. Any request of Vendor to substitute a listed Subcontractor will be considered only if such request is in strict conformity with these provisions and the provisions of California Public Contract Code §4107.

4.7.3.2. Responsibilities of Vendor Upon Substitution of Subcontractor. The District's consent to Vendor's substitution of a listed Subcontractor shall not relieve Vendor from its obligation to complete the Work within the Contract Time and for the Design and Construction Services Contract Price. The substitution of a listed Subcontractor shall not, under any circumstance, result in, or give rise to any to any increase of the Contract Price or the Contract Time on account of such substitution.

4.7.4. Subcontractors' Work. Whenever the Work of a Subcontractor is dependent upon the Work of Vendor or another Subcontractor, Vendor shall require the Subcontractor to: (a) coordinate its Work with the dependent Work; (b) provide necessary dependent data and requirements; (c) supply and/or install items to build into the dependent Work of others; (d) make appropriate provisions for dependent Work of others; (e) carefully examine and understand the portions of the Contract Documents (including without limitation, the Construction Documents) and required Submittals, if any, relating to the dependent Work; and (f) examine the existing dependent Work and verify that the dependent Work is in proper condition for the Subcontractor's Work. If the dependent Work is not in a proper condition, the Subcontractor shall notify Vendor in writing and not proceed with the Subcontractor's Work until the dependent Work has been corrected or replaced and is in a proper condition for the Subcontractor's Work.

4.8. Correction or Completion of the Work After Substantial Completion.

4.8.1. Substantial Completion. Substantial Completion is that stage of the Work when the Program Administrator, has completed its onsite inspection and approved the work

4.8.2. Punchlist. Upon achieving Substantial Completion of the Work, the District Representative and Vendor shall jointly inspect the Work and prepare a comprehensive list of items of the Work to be corrected or completed by Vendor ("the Punchlist"). Substantial Completion is that stage in the progress of the Work when the Work is complete in accordance with the Contract Documents so that the District can use and occupy the Work for its intended purposes. The exclusion of, or failure to include, any item on the Punchlist shall not alter or limit the obligation of Vendor to complete or correct any portion of the Work in accordance with the Contract Documents.

4.8.3. Time for Completing Punchlist Items. In addition to establishing the Punchlist, Vendor and the District Representative shall, after the joint inspection, establish a reasonable time for Vendor's completion of all Punchlist

items. Vendor shall promptly and diligently proceed to complete all Punchlist items within the time established. In the event that Vendor shall fail or refuse, for any reason, to complete all Punchlist items within the time established, Vendor shall be subject to assessment of Liquidated Damages for delayed completion of Punchlist.

4.8.4. Final Completion. Final Completion is that stage of the Work when all Work has been completed in accordance with the Contract Documents, including without limitation, the performance of all correction or completion items noted upon Substantial Completion, the Project has successfully passed all requisite testing and inspection, is fully operational, has been energized, connected to the grid and the meters and monitoring are in place and fully functional. Final Completion shall be determined by the District Representative upon request of Vendor. The good faith and reasonable determination of Final Completion by the District Representative shall be controlling and final.

4.8.5. Final Acceptance. Final Acceptance of the Work shall occur upon approval of the Work by the District's Representative. The commencement of any warranty or guarantee period under the Contract Documents shall be deemed to be the date upon which the District approves of the Final Acceptance of the Work.

4.9. Construction Schedule.

4.9.1. Submittal of Preliminary Construction Schedule. Within five (5) days following issuance of the Notice to Proceed, Vendor shall prepare and submit to the District Representative a Preliminary Construction Schedule indicating, in graphic form, the estimated rate of progress and sequence of all Work required under the Contract Documents. The purpose of the Preliminary Construction Schedule is to assure adequate planning and execution of the Work so that it is completed within the Contract Time and to permit evaluation of the progress of the Work. Unless otherwise provided in the Special Conditions, the Construction Schedules shall; (i) be prepared utilizing the then most recent edition of Microsoft Excel, Microsoft Project or Primavera Suretrak; (ii) indicate the date(s) for commencement and completion of various portions of the Work including without limitation, procurement, fabrication and delivery of major items, materials or equipment. If the Construction Schedules required hereunder incorporate therein any "float" time, such float shall be deemed to jointly belong to and owned by the District and Vendor. As used herein, "float time" shall be deemed to refer to the time between earliest finish date and the latest finish date of each activity shown on the Construction Schedule.

4.9.1.1. Review of Preliminary Construction Schedule. The District Representative shall review the Preliminary Construction Schedule submitted by Vendor for conformity with the requirements of the Contract Documents. Within ten (10) days of the date of receipt of the Preliminary Construction Schedule, the Preliminary Construction Schedule will be returned to Vendor with comments to the form or content thereof. Review of the Preliminary Progress Schedule and any

comments thereto by the District Representative shall not be deemed to be the assumption of construction means, methods or sequences by the District, all of which remain Vendor's obligations under the Contract Documents.

4.9.1.2. Preparation and Submittal of Contract Construction Schedule.

Within seven (7) days of the District's return of the Preliminary Construction Schedule to Vendor, Vendor shall prepare and submit to the District Representative a Construction Schedule which incorporates therein the comments to the Preliminary Construction Schedule. Upon Vendor's submittal of such Construction Schedule, the District Representative shall review the same for purposes of determining conformity with the requirements of the Contract Documents. Within ten (10) days of the receipt of the Construction Schedule, the District Representative will approve such Construction Schedule or will return the same to Vendor with comments to the form or content. In the event there are comments to the form or content thereof, Vendor, shall within seven (7) days of receipt of such comments, revise and resubmit to the District Representative the Construction Schedule incorporating therein such comments. Upon the District's approval of the form and content of a Construction Schedule, the same shall be deemed the "Approved Construction Schedule." The District's approval of a Construction Schedule shall be for the sole and limited purpose of determining conformity with the requirements of the Contract Documents. By the Approved Construction Schedule, the District shall not be deemed to have exercised control over, or approval of, construction means, methods or sequences, all of which remain the responsibility and obligation of Vendor in accordance with the terms of the Contract Documents. Further, the Approved Construction Schedule shall not operate to limit or restrict any of Vendor's obligations under the Contract Documents nor relieve Vendor from the full, faithful and timely performance of such obligations in accordance with the terms of the Contract Documents. The activities, commencement and completion dates of activities, and the sequencing of activities depicted on the Approved Construction Schedule shall not be modified or revised by Vendor without the prior consent, or direction, of the District. Updates to the Approved Construction Schedule shall not be deemed revisions to the Approved Construction Schedule. In the event that the Approved Construction Schedule shall depict completion of the Work in a duration shorter than the Contract Time, the same shall not be a basis for an adjustment of the Contract Time or the Design and Construction Services Contract Price in the event that actual completion of the Work shall occur after such the time depicted in such Approved Construction Schedule. In such event, the Design and Construction Services Contract Price shall not be subject to adjustment on account of any additional costs incurred by Vendor to complete the Work prior to the Contract Time, as adjusted in accordance with the terms of the Contract Documents. Any adjustment of the Contract Time or the Design and Construction Services Contract Price shall be based upon the Contract

Time set forth in the Contract Documents and not any shorter duration which may depicted in the Approved Construction Schedule.

4.9.1.3. Revisions to Approved Construction Schedule. In the event that the progress of the Work or the sequencing of the activities of the Work shall materially differ from that indicated in the Approved Construction Schedule, as determined by the District in its reasonable discretion and judgment, the District may direct Vendor to revise the Approved Construction Schedule; within fifteen (15) days of the District's direction, Vendor shall prepare and submit to the District Representative a revised Approved Construction Schedule, for review and acceptance by the District Representative. Vendor may request consent of the District to revise the Approved Construction Schedule. Any such request shall be considered by the District only if in writing setting forth Vendor's proposed revision(s) to the Approved Construction Schedule and the reason(s) therefor. The District may consent to, or deny, any such request of Vendor to revise the Approved Construction Schedule in its reasonable discretion.

4.9.1.4. Updates to Approved Construction Schedule. Vendor shall monitor and update the Approved Construction Schedule on a monthly basis, or more frequently as required by the conditions or progress of the Work, or as may be requested by the District. Vendor shall provide the District Representative with updated Approved Construction Schedules indicating progress achieved and activities commenced or completed within the prior updated Approved Construction Schedule. Updates to the Approved Construction Schedule shall not include any revisions to the activities, commencement and completion dates of activities or the sequencing of activities depicted on the Approved Construction Schedule. Any such revisions to the Approved Construction Schedule shall result in the District's rejection of such update and Vendor shall, within seven (7) days of the District's rejection of such update, submit to the District Representative an Updated Approved Construction Schedule which does not incorporate any such revisions. If requested by the District, Vendor shall also submit, with its updates to the Approved Construction Schedule a narrative statement including a description of current and anticipated problem areas of the Work, delaying factors and their impact, and an explanation of corrective action taken or proposed by Vendor. If the progress of the Work is behind the Approved Construction Schedule, Vendor shall indicate what measures will be taken to place the Work back on schedule. The District may, from time to time, and in the District's sole and exclusive discretion, transmit to Vendor's Performance Bond Surety the Approved Construction Schedule, any updates thereof and the narrative statement described hereinabove. The District's election to transmit, or not to transmit such information, to Vendor's Performance Bond Surety shall not limit Vendor's obligations under the Contract Documents.

4.9.1.5. Vendor Responsibility for Construction Schedule. Vendor shall be responsible for the preparation, submittal and maintenance of the Construction Schedules required by the Contract Documents, and any failure of Vendor to do so may be deemed by the District as Vendor's default in the performance of a material obligation under Contract Documents. Any and all costs or expenses required or incurred to prepare, submit, maintain, and update the Construction Schedules shall be solely that of Vendor and no such cost or expense shall be charged to the District. The Design and Construction Services Contract Price shall not be subject to adjustment on account of costs, fees or expenses incurred or associated with Vendor's preparation, submittal, and maintenance or updating of the Construction Schedules.

4.9.2. Adjustment of Contract Time. If Final Completion is delayed, adjustment, if any, to the Contract Time on account of such delay shall be in accordance with the following:

4.9.2.1. Excusable Delays. If Final Completion of the Work is delayed by Excusable Delays, the Contract Time shall be subject to adjustment for such reasonable period of time as determined by the District Representative; Excusable Delays shall not result in any increase in the Design and Construction Services Contract Price except as provided in this Section, or otherwise in the Contract Documents. Excusable Delays refer to unforeseeable and unavoidable casualties or other unforeseen causes beyond the control, and without fault or neglect, of Vendor, any Subcontractor, Material Supplier or other person directly or indirectly engaged by Vendor in performance of any portion of the 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 or DSA directive to stop the Work. Neither the financial resources of Vendor or any person or entity directly or indirectly engaged by Vendor in performance of any portion of the Work shall be deemed conditions beyond the control of Vendor. If an event of Excusable Delay occurs, the Contract Time shall be subject to adjustment hereunder only if Vendor establishes: (i) full compliance with all applicable provisions of the Contract Documents relative to the method, manner and time for Vendor's notice and request for adjustment of the Contract Time; (ii) that the event(s) forming the basis for Vendor's request to adjust the Contract Time are outside the reasonable control and without any fault or neglect of Vendor or any person or entity directly or indirectly engaged by Vendor in performance of any portion of the Work; and (iii) that the event(s) forming the basis for Vendor's request to adjust the Contract Time directly and adversely impacted the progress of the Work as indicated in the Approved Construction Schedule or the most recent updated Approved Construction Schedule relative to the date(s) of the claimed event(s) of Excusable Delay.

4.9.2.2. Compensable Delays. If Final Completion of the Work is delayed and such delay is caused by the acts or omissions of the District, or separate Vendor employed by the District (collectively "Compensable Delays"), upon Vendor's request and notice, in strict conformity with applicable provisions of the Contract Documents, the Contract Time will be adjusted by Change Order for such reasonable period of time as determined by the District Representative and the Vendor, taking into consideration all intervening and interfering events, including without limitation weather, competing uses for the project site, work by other unrelated Vendors, and other matters not within the control of Vendor. In accordance with California Public Contract Code §7102, if Vendor's progress is delayed by any of the events described in the preceding sentence, Vendor shall not be precluded from the recovery of damages directly and proximately resulting therefrom, to the extent that Vendor and its employees, Subcontractors, agents or representative are not responsible for the delay, the delay is unreasonable under the circumstances involved and the delay was not within the reasonable contemplation of the District and Vendor at the time of execution of the Agreement. In such event, Vendor's damages, if any, shall be limited to direct, actual and unavoidable additional costs of labor, materials or Construction Equipment directly resulting from such delay, and shall exclude indirect or other consequential damages. Except as expressly provided for herein, Vendor shall not have any other claim, demand or right to adjustment of the Design and Construction Services Contract Price arising out of delay, interruption, hindrance or disruption to the progress of the Work. Adjustments to the Design and Construction Services Contract Price and the Contract Time, if any, on account of Changes to the Work or Suspension of the Work shall be governed by the applicable provisions of the Contract Documents.

4.9.2.3. Unexcusable Delays. Unexcusable Delays refer to any delay to the progress of the Work caused by events or factors other than those specifically identified in Sections 4.9.2.1 and 4.9.2.2 above. Neither the Design and Construction Services Contract Price nor the Contract Time shall be adjusted on account of Unexcusable Delays.

4.9.3. Adjustment of Contract Time.

4.9.3.1. Procedure for Adjustment of Contract Time. The Contract Time shall be subject to adjustment only in strict conformity with applicable provisions of the Contract Documents. Failure of Vendor to request adjustment(s) of the Contract Time in strict conformity with applicable provisions of the Contract Documents shall be deemed Vendor's waiver of the same.

4.9.3.2. Limitations Upon Adjustment of Contract Time on Account of Delays. Any adjustment of the Contract Time on account of an Excusable Delay or a Compensable Delay shall be limited as set forth herein. If an Excusable Delay and a Compensable Delay occur

concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first delay to the cessation of the delay which ends last. If an Unexcusable Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, which the Excusable Delay or the Compensable Delay exceeds the period of time of the Unexcusable Delay. In addition to the foregoing limitations upon extension of the Contract Time, no adjustment of the Contract Time shall be made on account of any Excusable Delays or Compensable Delays unless such delay(s) actually and directly impact Work or Work activities on the critical path of the then current and updated Approved Construction Schedule as of the date on which such delay first occurs. The District shall not be deemed in breach of, or otherwise in default of any obligation hereunder, if the District shall deny any request by Vendor for an adjustment of the Contract Time for any delay which does not actually and directly impact Work or Work activities on the critical path of the then current and updated Approved Construction Schedule.

4.10. Liquidated Damages. Should the Vendor neglect, fail or refuse to achieve Final Completion of the Work within the Contract Time, (subject to adjustments authorized under the Contract Documents), the Vendor agrees to pay to the District the amount of **FIVE HUNDRED DOLLARS (\$500.00)** per day as per diem Liquidated Damages, not as a penalty but as Liquidated Damages, for every day beyond the Contract Time. The Liquidated Damages amounts set forth herein are agreed upon by and between the Vendor and the District because of the difficulty of fixing the District's actual damages in the event of delayed Final Completion. The Vendor and the District specifically agree that said amounts is a reasonable estimate of the District's damages in such event, and that such amounts do not constitute a penalty. Liquidated Damages may be deducted from the Contract Price then or thereafter due the Vendor. The Vendor and the Surety shall be liable to the District for any Liquidated Damages exceeding any amount of the Contract Price then held or retained by the District. In the event that the Vendor shall fail or refuse to complete the Project and the District elects to exercise its right to cause completion or correction of such items pursuant to Section 4.10.1 hereof, the District's assessment of Liquidated Damages pursuant to the foregoing shall be in addition, and not in lieu of, the District's right to charge Vendor with the cost of completing or correcting such items of the Work. The Vendor and the District acknowledge and agree that the provisions of this Section are reasonable under the circumstances existing at the time of the Vendor's execution of the Agreement.

4.10.1. District's Right to Take-Over Work. Unless caused by the District, if Vendor fails or refuses, for any reason and at any time, to furnish adequate materials, labor, equipment or services to maintain progress of the Work in accordance with the then current Construction Schedule after one (1) week advance written notice from the District Representative to Vendor of its failure or refusal, the District may thereafter, without terminating this Agreement or waiving/limiting any right or remedy arising therefrom, furnish or cause to be furnish such materials, labor, equipment or services necessary to maintain progress of the Work in accordance with the then current Construction Schedule. All reasonable costs, expenses or other charges

(whether direct, indirect and administrative) incurred by the District in furnishing such materials, labor, equipment or services shall be at the sole cost of Vendor and the District may deduct the same from the Design and Construction Services Contract Price then or thereafter due Vendor. The District's exercise of rights pursuant to the foregoing shall not be deemed a waiver or limitation of any other right or remedy of the District under the Contract Documents or arising by operation of law.

4.11. Contract Price. The Contract Price under this Agreement is the fixed price lump sum amount of _____ Dollars (\$_____). The Contract Price is allocated to Design Services and Construction Services as follows: _____ Dollars (\$_____) is allocated for Design Services ("the Design Services Contract Price") and _____ Dollars (\$_____) is allocated for Construction Services ("the Construction Services Contract Price").

4.11.1. No Adjustment to Contract Price. Except for Reimbursable Expenses for permit fees and reproduction of the Design and Construction Documents for Subcontractors, the Contract Price is the full and complete amount due from the District to the Vendor for Vendor's completion of its obligations hereunder.

4.11.2. Vendor Billings for Payment of the Design and Construction Services Contract Price. During its performance of Design and Construction Services, Vendor shall submit monthly billing statements for payment of portions of the Design and Construction Services Contract Price. Each monthly billing statement shall reflect the costs of the Design and Construction Services rendered in the immediately preceding month, provided that the monthly billing statements shall be limited the amount allocated to each phase of the Design and Construction Services. Billing statements shall be in such form and format and with such substantiating detail as required by the District.

4.11.3. District Payments for Design and Construction Services. Within thirty (30) days of receipt of Vendor's billing statements for Design and Construction Services, District will make payment to Vendor of undisputed amounts of the Contract Price. The District may, however, withhold or deduct from amounts otherwise due Vendor for Design or Construction Services if Vendor fails to timely and completely perform material obligations to be performed on its part under this Agreement, with the amounts withheld or deducted being released after Vendor has fully cured such failure of performance, less costs, damages or losses sustained by the District resulting therefrom. Notwithstanding any provision of this Agreement to the contrary, if the District shall, in good faith, dispute the amount due Vendor for Design Services under any billing statement for Design Services rendered by Vendor under this Agreement, pursuant to Civil Code §3320(a), the District may withhold from payment to Vendor an amount not to exceed one hundred and fifty percent (150%) of the disputed amount.

4.11.4. Reimbursable Expenses. There are no Reimbursable Expenses due from the District to Vendor in connection with Vendor's Design and Construction

Services, except for the actual direct costs of permits or approvals of the Design Documents for construction of the Project or if the District directs Vendor to reproduce the Design Documents for use by Subcontractors during construction. Reimbursable Expenses, if any, shall be billed by Vendor to the District at actual cost without mark-up.

4.11.5. Disbursement of Design Services Contract Price.

4.11.5.1. Initial Payment. Thirty (30) days after the date of the Agreement, the Vendor may submit a billing for the Initial Payment of the Design Services Contract Price. Such billing shall be in an amount equal to ten percent (10%) of the Design Services Contract Price and shall be accompanied by a detailed statement of the Design Services completed by the Vendor in the thirty (30) day period after the date of the Agreement. Provided that the Vendor has diligently proceeded to complete Design Services obligations, as reflected in the Vendor's detailed statement of Design Services, the District will disburse the Initial Payment within thirty (30) days after the date of the District's receipt of the Vendor's statement requesting disbursement of the Initial Payment of the Design Services Contract Price.

4.11.5.2. Interim Payments. At such time as the Vendor has completed preparation of the Design Documents and submitted the same to the District Representative for review and acceptance and the District Representative has accepted the Design Documents in accordance with Section 3.7.2 hereof, Vendor may submit a billing for disbursement of the Interim Payment of the Design Services Contract Price. Such billing shall be an amount equal to thirty percent (30%) of the Design Services Contract Price. Within thirty (30) days of the District's receipt of the Vendor's statement requesting disbursement of the Interim Payment, the District will disburse the Interim Payment. Thereafter, at such time as the Vendor has completed preparation of the Construction Documents and submitted the same to DSA and other governmental or quasi-governmental agencies with jurisdiction over any portion of the Project for review and permitting, the Vendor may submit a billing for disbursement of the Interim Payment of the Design Services Contract Price. Such billing shall be an amount equal to forty percent (40%) of the Design Services Contract Price. Such billing shall be accompanied by written evidence of the Vendor's submission of the Design Documents to DSA and other governmental and quasi-governmental agencies for review and permitting. Provided that the Vendor has submitted complete Construction Document to DSA and other governmental and quasi-governmental agencies for review and permitting, within thirty (30) days of the District's receipt of the Vendor's statement requesting disbursement of the Interim Payment, the District will disburse the Interim Payment.

4.11.5.3. Final Payment. At such time as DSA and other governmental and quasi-governmental agencies has completed their review of the

Construction Documents and has issued their respective permits/approvals authorizing construction of the Project, the Vendor may submit a billing statement for the Final Payment of the Design Services Contract Price, which shall be an amount equal to twenty percent (20%) of the Design Services Contract Price. Provided that DSA and other governmental and quasi-governmental agencies have issued a permit or other approval authorizing construction of the Project, within thirty (30) days of the date of the District's receipt of the Vendor's Final Payment billing statement, the District will disburse the Final Payment of the Design Services Contract Price to the Vendor.

4.11.6. Disbursement of Construction Services Contract Price.

4.11.6.1. Allocation of Construction Services Contract Price. The Construction Services Contract Price is allocated as follows:

Construction/Installation Services \$ _____

4.11.6.2. Disbursement of Construction/Installation Services. The portion of the Contract Price allocated for Construction/Installation Services shall be disbursed by Progress Payments reflecting the value of the Work actually installed at the time of the Vendor's submission of an Application for Progress Payment. Each Application for Progress Payment shall be subject to review and verification pursuant to Section 4.11.8 through 4.11.12 hereof. The amount disbursed for Construction/Installation Services shall not exceed ninety percent (90%) of the amount due, as verified pursuant to Section 4.11.8 through 4.11.12 hereof. The retained amount of ten percent (10%) ("Retainage") shall be disbursed by the District upon Final Completion of the Work and acceptance by the District in accordance with Public Contract Code § 9203 and the Vendor's submission of an application for Final Payment pursuant to Section 4.11.12.

4.11.7. Progress Payments for Construction Services Contract Price.

4.11.7.1. Applications for Progress Payments. During Vendor's performance of Construction Services, Vendor shall submit an invoice to the District Representative, Applications for Progress Payments monthly, setting forth an itemized estimate of Work completed in the preceding month for the purpose of the District's making of Progress Payments of the Design and Construction Services Contract Price. Within thirty (30) days after the District's receipt of invoice, District shall make payment to the Vendor for the work performed hereunder. Values utilized in the Applications for Progress Payments shall be based upon the District approved Cost Breakdown and such values shall be only for determining the basis of Progress Payments to Vendor, and shall not be considered as fixing a basis for adjustments, whether additive or deductive, to the Design and Construction Services Contract Price, or

for determining the extent of Work actually completed.

4.11.7.2. District's Review of Applications for Progress Payments. In accordance with Public Contract Code §20104.50, upon receipt of an Application for Progress Payment, the District will review each Application for Progress Payment as soon as is practicable after receipt of such Application for Progress Payment. Such review shall be for the purpose of determining that the Application for Progress Payment is a proper Progress Payment request. An Application for Progress Payment shall be deemed "proper" only if it is submitted on the form approved by the District, with all of the requested information of such form of Application for Progress Payment completely and accurately provided by Vendor and such completed Application for Progress Payment is accompanied by: (i) Certified Payrolls of Vendor and all Subcontractors, of any tier, for laborers performing any portion of the Work for which a Progress Payment is requested; (ii) duly completed and executed forms of Conditional Waiver and Release of Rights Upon Progress Payment in accordance with California Civil Code §3262 of Vendor, all Subcontractors of any tier, and Material Suppliers covering the Progress Payment requested; (iii) duly completed and executed forms of Unconditional Waiver and Release of Rights upon Progress Payment in accordance with California Civil Code §3262 of Vendor, all Subcontractors of any tier, and Material Suppliers covering the Progress Payment received by Vendor under the prior Application for Progress Payment; (iv) if applicable, a current union statement reflecting that Vendor and any Subcontractor of any tier, are current in the payment of any supplemental fringe benefits required pursuant to any collective bargaining agreement to which Vendor or any such Subcontractor is a party to or is otherwise bound by; and (v) a certification by Vendor that it has continuously maintained, or caused to be maintained, the Record Drawings reflecting the actual as-built conditions of the Work performed for which the Progress Payment is requested, it being understood that such certification is subject to verification by the District prior to disbursement of the Progress Payment. In accordance with Public Contract Code §20104.50, an Application for Progress Payment determined by the District not to be a proper Application for Progress Payment shall be returned by the District to Vendor as soon as is practicable after receipt of the same from Vendor, but in no event not more than seven (7) days after the District's receipt thereof. The District's return of any Application for Progress Payment pursuant to the preceding sentence shall be accompanied by a written document setting forth the reason(s) why the Application for Progress Payment is not proper.

4.11.7.3. Review of Applications for Progress Payments. Upon receipt of an Application for Progress Payment, the District Representative shall inspect and verify the Work to determine whether it has been performed in accordance with the terms of the Contract Documents and to determine the portion of the Application for Progress Payment which is

properly due to Vendor under the terms of the Contract Documents.

4.11.8. District's Disbursement of Progress Payments.

4.11.8.1. Timely Disbursement of Progress Payments. In accordance with Public Contract Code §20104.50, within thirty (30) days after the District's receipt of a proper Application for Progress Payment, there shall be paid, by District, to Vendor a sum equal to ninety percent (90%) of the value of the Work indicated in the Application for Progress Payment which is actually in place as of the date of the Application for Progress Payment and as verified and approved by the District Representative; provided, however, that the District's obligation to disburse any Progress Payment shall be subject to the District's receipt of all documents set forth above, each and all of which are conditions precedent to the District's obligation to disburse Progress Payments. If an Application for Progress Payment is determined not to be proper due to the failure or refusal of Vendor to submit documents with the Application for Progress Payment, as required by the Contract Documents, or incompleteness or inaccuracies in any such documents submitted or if it is reasonably determined that the Record Drawings have not been continuously maintained to reflect the actual as built conditions of the Work completed in the period for which the Progress Payment is requested, the thirty (30) day period hereunder for the District's timely disbursement of a Progress Payment shall be deemed to commence on the date that the District is actually in receipt of documents not submitted with the Application for Progress Payment, or corrections to documents with the Application for Progress Payment so as to render them complete and accurate, or the date upon which Vendor accurately and fully completes preparation of the Record Drawings relating to the Work for which the Progress Payment is requested.

4.11.8.2. Untimely Disbursement of Progress Payments. In accordance with Public Contract Code §20104.50, in the event that the District shall fail to make any Progress Payment within thirty (30) days after receipt of an undisputed and properly submitted Application for Progress Payment, the District shall pay Vendor interest on the undisputed amount of such Application for Progress Payment equal to the legal rate of interest set forth in California Code of Civil Procedure §685.010(a). The foregoing notwithstanding, in the event that the District shall determine that any Application for Progress Payment is not proper, and the District does not return such Application for Progress Payment within seven (7) days, the period of time for the District's disbursement of the Progress Payment on such Application for Progress Payment without incurring the interest liability shall be reduced by the number of days exceeding the seven (7) day return period.

4.11.8.3. District's Right to Disburse Progress Payments by Joint Checks. Provided that the District is in receipt of the applicable Subcontract or

Purchase Order, the District, may in its sole discretion, issue joint checks to Vendor and such Subcontractor or Material Supplier in satisfaction of its obligation to make Progress Payments or the Final Payment due hereunder.

4.11.8.4. No Waiver of Defective or Non-Conforming Work. The approval of any Application for Progress Payment or the disbursement of any Progress Payment to Vendor shall not be deemed nor constitute acceptance of defective Work or Work not in conformity with the Contract Documents.

4.11.8.5. Progress Payments for Changed Work. Vendor's Applications for Progress Payment may include requests for payment on account of Changes in the Work which have been properly authorized and approved by the District Representative and all other governmental agencies with jurisdiction over such Change in accordance with the terms of the Contract Documents and for which a Change Order has been issued. Except as provided for herein, no other payment shall be made by the District for Changes in the Work.

4.11.8.6. Materials or Equipment Not Incorporated Into the Work.

4.11.8.6.1. Limitations Upon Payment. Except as expressly provided for herein, no payments shall be made by the District on account of any item of the Work, including without limitation, materials or equipment which, at the time of Vendor's submittal of an Application for Progress Payment, has/have not been incorporated into and made a part of the Work.

4.11.8.6.2. Materials or Equipment Delivered and Stored at the Site. The District may, in its sole and exclusive discretion, make payment for materials or equipment not yet incorporated into the Work if, at or prior to the time of Vendor's submittal of an Application for Progress Payment incorporating therein a request for payment of such materials or equipment if all of the following are complied with: (a) the materials or equipment have been delivered to the Site; (b) adequate arrangements, reasonably satisfactory to the District, have been made by Vendor to store and protect such materials or equipment at the Site including without limitation, insurance reasonably satisfactory to the District, covering and protecting against the risk of loss, destruction, theft or other damage to such materials or equipment while in storage if such coverage is not afforded under the policy of Builder's Risk insurance obtained pursuant to the Contract Documents; and (c) the establishment of procedures reasonably satisfactory to the District by which title to such materials or equipment will be vested in the District upon the District's payment therefor. Vendor acknowledges that the discretion to make, or not to make, payment for materials or

equipment delivered or stored at the site of the Work pursuant to the preceding sentence shall be exercised exclusively by the District; the District's exercise of discretion not to make payment for materials or equipment delivered or stored at the Site, but not yet incorporated into the Work shall not be deemed the District's default hereunder. If the District elects to make payment for materials or equipment delivered and stored at the Site, the costs and expenses incurred to comply with the requirements of (b) and (c) above shall be borne solely and exclusively by Vendor and no payment shall be made by the District on account of such costs and expenses.

4.11.8.6.3. Materials or Equipment Not Delivered or Stored at the Site.

No payments shall be made by the District for materials or equipment to be incorporated into the Work where such materials or equipment have not been delivered or stored at the Site. The foregoing notwithstanding, the District may, in its sole and exclusive discretion, elect to make payment for materials or equipment not incorporated into the Work and which are not delivered or stored at the Site at or prior to the time of Vendor's submittal of an Application for Progress Payment incorporating therein a request for payment of such materials or equipment provided that each and all of the following have been complied with: (a) adequate arrangements, reasonably satisfactory to the District, have been made by Vendor to store and protect such materials or equipment which include without limitation, insurance reasonably satisfactory to the District, covering and protecting against the risk of loss, destruction, theft or other damage to such materials or equipment while in storage if coverage for the same is not afforded under the policy of Builder's Risk insurance obtained pursuant to the Contract Documents; and (b) the establishment of procedures reasonably satisfactory to the District by which title to such materials or equipment will be vested in the District upon the District's payment therefor. Vendor acknowledges that the discretion to make, or not to make, payment for such materials or equipment pursuant to the preceding sentence shall be exercised exclusively by the District; the District's exercise of discretion not to make payment for such materials or equipment shall not be deemed the District's default hereunder. In the event that the District shall elect to make payment for materials or equipment not at the Site, the costs and expenses incurred to comply with the requirements of (a) and (b) above shall be borne solely and exclusively by Vendor and no payment shall be made by the District on account of such costs and expenses.

4.11.8.6.4. Materials or Equipment in Fabrication or Transit. The District shall not make any payment on account of any materials or equipment which is in the process of being fabricated or which

are in transit to the Site of or other storage location.

- 4.11.8.7. Exclusions From Progress Payments. In addition to the District's right to withhold disbursement of any Progress Payment provided for in the Contract Documents, neither Vendor's Application for Progress Payment shall include, nor shall the District be obligated to disburse any portion of the Design and Construction Services Contract Price for amounts which Vendor does not intend to pay any Subcontractor, of any tier, or Material Supplier because of a dispute or any other reason.
- 4.11.8.8. PG&E and Rebates. Vendor and the District acknowledge that an application for the PG&E Rebate Reservations has been submitted by the District and approved by PG&E for the West Valley College. Vendor shall assist the District in completing the application process for and to obtain the incentive for the West Valley College lighting retrofit. The District shall be the recipient of PG&E and incentive, which proceeds are the sole property of the District.
- 4.11.9. Title to Work. Vendor warrants that title to all Work covered by an Application for Progress Payment will pass to the District no later than the time of payment. Vendor further warrants that upon submittal of an Application for Progress Payment, all Work for which a Progress Payment has been previously issued and Vendor has received payment from the District therefor shall, to the best of Vendor's knowledge, information and belief, be free and clear of liens, claims, stop notices, security interests or encumbrances in favor of Vendor, Subcontractors, Material Suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.
- 4.11.10. Substitute Security for Retention. In accordance with the provisions of California Public Contract Code §22300, eligible and equivalent securities may be substituted for any monies withheld by the District to ensure Vendor's performance under the Contract Documents at the request and expense of Vendor and in conformity with the provisions of California Public Contract Code §22300. The foregoing and the provisions of California Public Contract Code §22300 notwithstanding, failure of Vendor to request the substitution of eligible and equivalent securities for monies to be withheld by the District within ten (10) days following issuance of the Notice to Proceed shall be deemed a waiver of such right.
- 4.11.11. Final Payment.
- 4.11.11.1. Application for Final Payment. When Vendor has achieved Final Completion of the Work and has otherwise fully performed its obligations under the Contract Documents, Vendor shall submit an Application for Final Payment on such form as approved by the District. Thereupon, the District Representative will promptly make a final inspection of the Work and when the District Representative finds the Work acceptable under the Contract Documents and that the Contract

has been fully performed by Vendor, the District Representative will thereupon promptly approve the Application for Final Payment. The Final Payment shall include the remaining balance of the Design and Construction Services Contract Price and any retention from Progress Payments previously withheld by the District.

4.11.11.2. Conditions Precedent to Disbursement of Final Payment. Neither Final Payment nor any remaining Design and Construction Services Contract Price shall become due until Vendor submits to the District each and all of the following, the submittal of which are conditions precedent to the District's obligation to disburse the Final Payment: (i) an affidavit or certification by Vendor that payrolls, bills for materials and other indebtedness incurred in connection with the Work for which the District or the District's property may or might be responsible or encumbered have been paid or otherwise satisfied; (ii) a certificate evidencing that insurance required by the Contract Documents to remain in force after Vendor's receipt of Final Payment is currently in effect; (iii) a written statement that Vendor knows of no substantial reason that the insurance will not be renewable to cover any period following Final Payment as required by the Contract Documents; (iv) duly completed and executed forms of Conditional or Unconditional Waivers and Releases of rights upon Final Payment of Vendor, Subcontractors of any tier and Material Suppliers in accordance with California Civil Code §3262, with each of the same stating that there are, or will be, no claims for additional compensation after disbursement of the Final Payment; (v) Operations and Maintenance manuals and separate warranties provided by any manufacturer or distributor of any materials or equipment incorporated into the Work; (vi) the Record Drawings; (vii) the form of Guarantee included in the Contract Documents duly executed by an authorized representative of Vendor; (viii) any and all other items or documents required by the Contract Documents to be delivered to the District upon completion of the Work; (ix) the completion and submittal of all reports required by the Contract Documents, including without limitation, verified reports required by applicable provisions of the California Code of Regulations; and (x) if required by the District, such other data establishing payment or satisfaction of obligations such as receipts, releases and waivers of liens, stop notices, claims, security interest or encumbrances arising out of the Contract to the extent and in such form as may be required by the District.

4.11.11.3. Disbursement of Final Payment. Provided that the District is then in receipt of all documents and other items required by the Contract Documents as conditions precedent to the District's obligation to disburse Final Payment, not later than thirty (30) days following Final Acceptance the District shall disburse the Final Payment to Vendor. Pursuant to California Public Contract Code §7107, if there is any dispute between the District and Vendor at the time that disbursement of the Final Payment is due, the District may withhold from

disbursement of the Final Payment an amount not to exceed one hundred fifty percent (150%) of the amount in dispute.

- 4.11.11.4. Waiver of Claims. Vendor's acceptance of the Final Payment is a waiver and release by Vendor of any and all claims against the District for compensation or otherwise in connection with Vendor's performance of the Contract.
- 4.11.11.5. Claims Asserted After Final Payment. Any lien, stop notice or other claim filed or asserted after Vendor's acceptance of the Final Payment by any Subcontractor, of any tier, laborer, Material Supplier or others in connection with or for Work performed under the Contract Documents shall be the sole and exclusive responsibility of Vendor who further agrees to indemnify, defend and hold harmless the District and its officers, agents, representatives and employees from and against any claims, demands or judgments arising or associated therewith, including without limitation attorneys' fees incurred by the District in connection therewith. In the event any lien, stop notice or other claim of any Subcontractor, Laborer, Material Supplier or others performing Work under the Contract Documents remain unsatisfied after Final Payment is made, Vendor shall refund to District all monies that the District may pay or be compelled to pay in discharging any lien, stop notice or other claim, including, without limitation all costs and reasonable attorneys' fees incurred by District in connection therewith.
- 4.11.11.6. Withholding of Payments. The District may withhold any Progress Payment or the Final Payment, in whole or in part, or backcharge Vendor to the extent it may deem advisable to protect the District on account of: (i) defective Work or Work not in conformity with the requirements of the Contract Documents which is not remedied; (ii) failure of Vendor to make payments when due Subcontractors or Material Suppliers for materials or labor; (iii) claims filed or reasonable evidence of the probable filing of claims by Subcontractors, laborers, Material Suppliers, or others performing any portion of the Work under the Contract Documents for which the District may be liable or responsible including, without limitation, Stop Notice Claims filed with the District pursuant to California Civil Code §3179 et seq.; (iv) a reasonable doubt that the Contract can be completed for the then unpaid balance of the Design and Construction Services Contract Price; (v) tax demands filed in accordance with California Government Code §12419.4; (vi) other claims, penalties and/or forfeitures for which the District is required or authorized to retain funds otherwise due Vendor; (vii) any amounts due from Vendor to the District under the terms of the Contract Documents; or (viii) Vendor's failure to perform any of its obligations under the Contract Documents or its default under the Contract Documents or its failure to maintain adequate progress of the Work. In addition to the foregoing, the District shall not be obligated to process any Application for Progress Payment or Final Payment, nor shall Vendor be entitled to any Progress Payment or Final Payment so

long as any lawful or proper direction concerning the Work or the performance thereof or any portion thereof, given by the District, the District Representative and any public authority having jurisdiction over the Work, or any portion thereof, shall not be fully and completely complied with by Vendor. When the District is reasonably satisfied that Vendor has remedied any such deficiency, payment shall be made of the amount withheld. In lieu of making payment of withheld amounts to Vendor, the District may, in its sole exclusive discretion, apply withheld amounts to the payment and satisfactions of debts and obligations of Vendor relating to the Work. In doing, the District shall be an agent of Vendor for the sole and limited purpose of making payment(s) to others for the Work on behalf of Vendor; payments made by the District pursuant to the foregoing shall be deemed payments to Vendor and the Design and Construction Services Contract Price shall be adjusted to reflect such payment(s). The District shall not be liable to Vendor or others for its good faith decision to make or not make payment(s) of amounts withheld from Vendor pursuant to the foregoing. If the District elects to make payments to other of amounts withheld from Vendor, the District may do so without prior judicial determination; the District will render Vendor a complete and accurate accounting of amounts withheld and paid to others on behalf of Vendor.

4.11.11.7. Payments to Subcontractors. Vendor shall pay all Subcontractors for and on account of Work of the Contract performed by such Subcontractors in accordance with the terms of their respective subcontracts and as provided for pursuant to California Public Contract Code §10262, the provisions of which are deemed incorporated herein by this reference. In the event of Vendor's failure to make payment to Subcontractors in conformity with California Public Contract Code §10262, the provisions of California Public Contract Code §10253 shall apply; by this reference, the provisions of California Public Contract Code §10253 are incorporated herein in its entirety, except that the references in said Section 10253 to "the director" shall be deemed to refer to the District. Vendor shall timely make payment of retention due Subcontractors in accordance with Public Contract Code §7107.

4.12. Changes

4.12.1. Changes in the Work. The District, at any time, by written order, may make Changes within the general scope of the Work under the Contract Documents or issue additional instructions require additional Work or delete Work. Vendor shall not proceed with any Change involving an increase or decrease in the Design and Construction Services Contract Price or the Contract Time without prior written authorization from the District. The foregoing notwithstanding, Vendor shall promptly commence and diligently complete any Change to the Work subject to the District's written authorized issued pursuant to the preceding sentence; Vendor shall not be relieved or excused from its prompt commencement and diligent completion of any Change subject to the District's written authorization by virtue of the absence or inability of Vendor and the

District to agree upon the extent of any adjustment to the Contract Time or the Design and Construction Services Contract Price on account of such Change. The issuance of a Change Order in connection with any Change authorized by the District shall not be deemed a condition precedent to Vendor's obligation to promptly commence and diligently complete any such Change authorized by the District hereunder. Any requirement of notice of Changes in the scope of Work to the Surety shall be the responsibility of Vendor. Changes to the Work are subject to approval by governmental and/or quasi-governmental agencies with jurisdiction over the Change or the Project.

4.12.2. Oral Order of Change in the Work. Any oral order, direction, instruction, interpretation, or determination from the District, Inspectors or the District Representative which in the opinion of Vendor causes any change to the scope of the Work, or otherwise requires an adjustment to the Design and Construction Services Contract Price or the Contract Time, shall be treated as a Change only if Vendor gives the District Representative written notice within ten (10) days of the order, directions, instructions, interpretation or determination and prior to acting in accordance therewith. Time is of the essence in Vendor's written notice pursuant to the preceding sentence so that the District can promptly investigate and consider alternative measures to address the order, direction, instruction, interpretation or determination giving rise to Vendor's notice. Accordingly, Vendor acknowledges that its failure, for any reason, to give written notice within ten (10) days of such order, direction, instruction, interpretation or determination shall be deemed Vendor's waiver of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Design and Construction Services Contract Price on account of such order, direction, instruction, interpretation or determination. The written notice shall state the date, circumstances, extent of adjustment to the Design and Construction Services Contract Price or the Contract Time, if any, requested, and the source of the order, directions, instructions, interpretation or determination that Vendor regards as a Change. Unless Vendor acts in strict accordance with this procedure, any such order, direction, instruction, interpretation or determination shall not be treated as a Change and Vendor hereby waives any claim for any adjustment to the Design and Construction Services Contract Price or the Contract Time on account thereof.

4.12.3. Vendor Submittal of Data. Within thirty (30) days after receipt of a written order directing a Change in the Work or furnishing the written notice regarding any oral order directing a Change in the Work, Vendor shall submit to the District Representative a detailed written statement setting forth the general nature of the Change, the amount of any adjustment to the Design and Construction Services Contract Price on account thereof, properly itemized and supported by sufficient substantiating data to permit evaluation of the same, and the extent of adjustment of the Contract Time, if any, required by such Change. No claim or adjustment to the Design and Construction Services Contract Price or the Contract Time shall be allowed if not asserted by Vendor in strict conformity herewith or if asserted after Final Payment is made under the Contract Documents.

4.12.4. Adjustment to Design and Construction Services Contract Price and Contract Time on Account of Changes to the Work. Adjustments to the Design and Construction Services Contract Price due to Changes in the Work shall be determined by application of one of the following methods, in the following order of priority:

4.12.4.1. Mutual Agreement. By negotiation and mutual agreement, on a lump sum basis, between the District and Vendor on the basis of the estimate of the actual and direct increase or decrease in costs on account of the Change. Vendor's estimate of increase or decrease in costs pursuant to the foregoing, if requested, shall be in sufficient detail and in such form as to allow the District Representative to review and assess the completeness and accuracy thereof. Vendor shall be solely responsible for any additional costs or additional time arising out of, or related in any manner to, its failure to provide the estimate of costs within the time specified in the request of the District Representative for such estimate.

4.12.4.2. Determination by the District. By the District, whether or not negotiations are initiated pursuant to the preceding Section based upon actual and necessary costs incurred by Vendor as determined by the District on the basis of Vendor's records. In the event that the procedure set forth in this Section is utilized to determine the adjustment to the Design and Construction Services Contract Price for Changes to the Work, promptly upon determining the extent of adjustment to the Design and Construction Services Contract Price, the District shall notify Vendor in writing of the same; Vendor shall be deemed to have accepted the District's determination of the amount of adjustment to the Design and Construction Services Contract Price on account of a Change to the Work unless Vendor shall notify the District Representative, in writing, not more than fifteen (15) days from the date of the District's written notice, of any objection to the District's determination. Notwithstanding any objection of Vendor to the District's determination of the extent of any adjustment to the Design and Construction Services Contract Price, Vendor shall diligently proceed to perform and complete any such Change.

4.12.4.3. Basis for Adjustment of Design and Construction Services Contract Price. If Changes in the Work require an adjustment of the Design and Construction Services Contract Price the basis for adjustment of the Design and Construction Services Contract Price shall be as follows:

4.12.4.3.1. Labor. Vendor shall be compensated for the costs of field labor actually and directly utilized in the performance of the Change. Wage rates for labor shall not exceed the prevailing wage rates for the labor classification(s) necessary for the performance of the Change. Labor costs exclude costs incurred by Vendor prepare estimate(s) of the costs of the Change,

maintenance of records relating to the Change, coordination and assembly of materials and information relating to the Change or performance thereof, or the supervision, general overhead and administrative functions and general conditions costs associated with the Change or performance thereof.

4.12.4.3.2. Materials and Equipment. Vendor shall be compensated for the actual costs of materials and equipment necessarily and actually used or consumed in connection with the performance of Changes. If, in the reasonable opinion of the District, the costs asserted by Vendor for materials and/or equipment in connection with any Change is excessive, or if Vendor fails to provide satisfactory evidence of the actual costs of such materials and/or equipment, the costs of such materials and/or equipment and the District's obligation for payment of the same shall be limited to the then lowest wholesale price at which similar materials and/or equipment are available in the quantities required to perform the Change. The District may elect to furnish materials and/or equipment for Changes to the Work, in which event Vendor shall not be compensated for the costs of furnishing such materials and/or equipment or any mark-up thereon.

4.12.4.3.3. Construction Equipment. Vendor shall be compensated for the actual cost of the necessary and direct use of Construction Equipment in the performance of Changes to the Work. Use of such Construction Equipment in the performance of Changes to the Work shall be compensated in increments of fifteen (15) minutes. Rental time for Construction Equipment moved by its own power includes time required to move such Construction Equipment to the Site from the nearest available rental source. If Construction Equipment is not moved to the Site by its own power, Vendor will be compensated for the loading and transportation costs in lieu of rental time. The foregoing notwithstanding, neither moving time or loading and transportation time shall be allowed if the Construction Equipment is used for performance of any portion of the Work other than Changes to the Work. Unless prior approval in writing is obtained by Vendor from the District Representative and the District, no costs or compensation shall be allowed for time while Construction Equipment is inoperative, idle or on standby, for any reason. Vendor shall not be entitled to an allowance or any other compensation for Construction Equipment or tools used in the performance of Changes to the Work where such Construction Equipment or tools have a replacement value of \$500.00 or less. Construction Equipment costs claimed by Vendor in connection with the performance of any Change to the Work shall not exceed commercial rental rates in the locality of the Site. The allowable rate for Construction Equipment in connection with Changes to the Work is full compensation to Vendor for the cost

of rental, fuel, power, oil, lubrication, supplies, necessary attachments, repairs or maintenance of any kind, depreciation, storage, insurance, labor (exclusive of labor costs of the Construction Equipment operator), and any all other costs incurred by Vendor incidental to the use of such Construction Equipment.

4.12.4.3.4. Mark-up on Costs of Changes to the Work. In determining the cost to the District and the extent of increase to the Design and Construction Services Contract Price resulting from a Change adding to the Work, the allowance for mark-ups on the costs of the Change for all overhead (including home office and field overhead), general conditions costs and profit associated with the Change shall not exceed the percentage set forth herein. For the portion of any Change performed by Subcontractors of any tier, the percentage mark-up on the allowable actual direct labor and materials costs cumulatively incurred by all Subcontractors of any tier shall be Ten Percent (10%). In addition, for the portion of any Change performed by Subcontractors of any tier, Vendor may add an amount equal to Five Percent (5%) of the allowable actual direct labor and materials costs of Subcontractors performing the Change. For the portion of any Change performed by the Vendor's own forces, the mark-up on the allowable actual direct labor and materials costs of such portion of a Change shall be Fifteen Percent (15%). If a Change to the Work reduces the Design and Construction Services Contract Price, no profit, general conditions or overhead costs shall be paid by the District to Vendor for the reduced or deleted Work. In the event of deductive changes, the adjustment to the Design and Construction Services Contract Price shall be the actual cost reduction realized by the reduced or deleted Work.

4.12.4.3.5. Vendor Maintenance of Records. In the event that Vendor shall be directed to perform any Changes to the Work, or should Vendor encounter conditions which Vendor, believes would obligate the District to adjust the Design and Construction Services Contract Price and/or the Contract Time, Vendor shall maintain detailed records on a daily basis. Such records shall include without limitation hourly records for labor and Construction Equipment and itemized records of materials and equipment used that day in connection with the performance of any Change to the Work. If more than one Change to the Work is performed by Vendor in a calendar day, Vendor shall maintain separate records of labor, Construction Equipment, materials and equipment for each such Change. If Subcontractors provide or perform any portion of Change to the Work, Vendor shall require that each such Subcontractor maintain records in accordance with this Section. Each daily record maintained hereunder shall

be signed by Vendor's Superintendent or Vendor's authorized representative; such signature shall be deemed Vendor's representation and warranty that all information contained therein is true, accurate, and complete and relate only to the Change referenced therein. All records maintained by a Subcontractor, relating to the costs of a Change to the Work shall be signed by such Subcontractor's authorized representative or Superintendent. All records maintained hereunder shall be subject to inspection, review and/or reproduction by the District Representative upon request. If Vendor fails or refuses, for any reason, to maintain or make available for inspection, review and/or reproduction such records and the adjustment to the Design and Construction Services Contract Price on account of any Change to the Work is determined by the district, the District's reasonable good faith determination of the extent of adjustment to the Design and Construction Services Contract Price shall be final, conclusive, dispositive and binding upon Vendor. Vendor's obligation to maintain records hereunder is in addition to, and not in lieu of, any other Vendor obligation under the Contract Documents with respect to Changes to the Work.

4.12.4.3.6. Adjustment to Contract Time. In the event of Change(s) to the Work the Contract Time shall be extended or reduced by Change Order for a period of time commensurate with the time reasonably necessary to perform such Change.

4.12.5. Change Orders. If the District approves of a Change, a written Change Order prepared by the District Representative on behalf of the District shall be forwarded to Vendor describing the Change and setting forth the adjustment to the Contract Time and the Design and Construction Services Contract Price, if any, on account of such Change. All Change Orders shall be in full payment and final settlement of all claims for direct, indirect and consequential costs, including without limitation, costs of delays or impacts related to, or arising out of, items covered and affected by the Change Order, as well as any adjustments to the Contract Time. Any claim or item relating to any Change incorporated into a Change Order not presented by Vendor for inclusion in the Change Order shall be deemed waived. Once the Change Order has been prepared and forwarded to Vendor for execution, without the prior approval of the District which may be granted or withheld in the sole and exclusive discretion of the District, Vendor shall not modify or amend the form or content of such Change Order, or any portion thereof. Vendor's attempted or purported modification or amendment of any such Change Order, without the prior approval of the District, shall not be binding upon the District; any such unapproved modification or amendment to such Change Order shall be null, void and unenforceable. Unless otherwise expressly provided for in the Contract Documents or in the Change Order, any Change Order issued hereunder shall be binding upon the District only upon action of the District's Board of Trustees approving and ratifying such Change Order.

4.12.5.1. Vendor Notice of Changes. If Vendor should claim that any instruction, request, action, condition, omission, default, or other situation obligates the District to increase the Design and Construction Services Contract Price or to extend the Contract Time, Vendor shall notify the District Representative, in writing, of such claim within ten (10) days from the date of its actual or constructive notice of the factual basis supporting the same. The District shall consider any such claim of Vendor only if sufficient supporting documentation is submitted with Vendor's notice to the District Representative. Time is of the essence in Vendor's written notice pursuant to the preceding sentence so that the District can promptly investigate and consider alternative measures to the address such instruction, request, action, condition, omission, default or other situation. Accordingly, Vendor acknowledges that its failure, for any reason, to give written notice (with sufficient supporting documentation to permit the District's review and evaluation) within ten (10) days of its actual or constructive knowledge of any instruction, request, action, condition, omission, default or other situation for which Vendor believes there should an adjustment of the Contract Time or the Design and Construction Services Contract Price shall be deemed Vendor's waiver, release, discharge and relinquishment of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Design and Construction Services Contract Price on account of any such instruction, request, Drawings, Specifications, action, condition, omission, default or other situation. In the event that the District determines that the Design and Construction Services Contract Price or the Contract Time are subject to adjustment based upon the events, circumstances and supporting documentation submitted with Vendor's written notice under this Section, any such adjustment shall be determined in accordance with the Contract Documents.

4.12.5.2. Disputed Changes. In the event of any dispute or disagreement between Vendor and the District regarding the characterization of any item as a Change to the Work or as to the appropriate adjustment of the Design and Construction Services Contract Price or the Contract Time on account thereof, Vendor shall promptly proceed with the performance of such item of the Work, subject to a prompt resolution of such dispute or disagreement in accordance with the terms of the Contract Documents. Vendor's failure or refusal to so proceed with such Work is Vendor's default of a material obligation.

4.12.6. Emergencies. In an emergency affecting the safety of life, or of the Work, or of property, Vendor, without special instruction or prior authorization from the District or the District Representative, is permitted to act at its discretion to prevent such threatened loss or injury.

4.12.7. Minor Changes in the Work. The District Representative may order minor Changes in the Work not involving an adjustment in the Design and Construction Services Contract Price or the Contract Time and not inconsistent with the intent of the Contract Documents. Such Changes shall be effected by

written order and shall be binding on the District and Vendor.

4.12.8. Unauthorized Changes. Any Work beyond the lines and grades shown on the Contract Documents, or any extra Work performed or provided by Vendor without notice to the District Representative in the manner and within the time set forth in the Contract Documents. Work so done will not be measured or paid for, no extension to the Contract Time will be granted on account thereof and any such Work may be ordered removed at Vendor's sole cost and expense. The failure of the District to order removal of such Work is not acceptance of such Work nor relieves Vendor from any liability on account thereof.

4.13. Correction of Work; Warranties.

4.13.1. Uncovering of Work. If any portion of the Work is covered contrary to the request of the District Representative or the requirements of the Contract Documents, it must, if required by the District Representative, be uncovered for observation by the District Representative and be replaced without adjustment of the Contract Time or the Design and Construction Services Contract Price.

4.13.2. Rejection of Work. Prior to the District's Final Acceptance of the Work, any Work which is defective or not in conformity with the Contract Documents may be rejected by the District Representative and Vendor shall correct such rejected Work without adjustment to the Design and Construction Services Contract Price or the Contract Time, even if the Work, materials or equipment have been previously inspected or even if they failed to observe the defective or non-conforming Work, materials or equipment. Vendor shall, at its sole cost and expense, remove from the Site all portions of the Work which are defective or are not in accordance with the requirements of the Contract Documents which are neither corrected by Vendor nor accepted by the District.

4.13.3. Correction of Work. Vendor shall promptly correct any portion of the Work properly rejected by the District Representative for failing to conform to the requirements of the Contract Documents, or which is determined by them to be defective, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. Vendor shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for the services and expenses made necessary thereby. Vendor shall bear all costs of correcting destroyed or damaged construction, whether completed or partially completed, of the District or separate Vendors, caused by Vendor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents, or which is defective.

4.13.4. Failure of Vendor to Correct Work. If Vendor fails to commence to correct defective or non-conforming Work within five (5) days of notice of such condition and promptly thereafter complete the same within a reasonable time, the District may correct the same at Vendor's expense.

4.13.5. Acceptance of Defective or Non-Conforming Work. The District may, in its sole and exclusive discretion, elect to accept Work which is defective or which is not in accordance with the requirements of the Contract Documents, instead of requiring its removal and correction, in which case the Design and Construction Services Contract Price may be reduced as appropriate and equitable.

4.13.6. Workmanship and Materials. Vendor warrants to the District that all materials and equipment furnished under the Contract Documents shall be new, of good quality and of the most suitable grade and quality for the purpose intended, unless otherwise specified in the Contract Documents. All Work shall be of good quality, free from faults and defects and in conformity with the requirements of the Contract Documents. If required by the District Representative, Vendor shall furnish satisfactory evidence as to the kind and quality of materials and equipment incorporated into the Work. Vendor expressly warrants the merchantability, the fitness for use, and quality of all substitute or alternative items in addition to any warranty given by the manufacturer or supplier of such item.

4.13.7. Warranty Work. In addition to the CSI required warranty provisions, if, after the date of Final Acceptance, any of the Work is found to be defective or not in accordance with the requirements of the Contract Documents, or otherwise contrary to the warranties contained in the Contract Documents, Vendor shall commence necessary corrective action not more than Four (4) business days after receipt of a written notice from the District to do so, and to thereafter diligently complete the same. If Vendor fails or refuses to commence correction of any such item within said Four (4) business day period or to diligently prosecute such corrective actions to completion, the District may, without further notice to Vendor, cause such corrective Work to be performed and completed. In such event, Vendor and Vendor's Performance Bond Surety shall be responsible for all costs in connection with such corrective Work, including without limitation, general administrative overhead costs of the District in securing and overseeing such corrective Work. Nothing contained herein shall be construed to establish a period of limitation with respect to any obligation of Vendor under the Contract Documents. The obligations of Vendor hereunder are in addition to, and not in lieu of, any guarantees or warranties provided by any manufacturer of any item or equipment forming a part of, or incorporated into the Work, or otherwise recognized, prescribed or

imposed by law. Neither the District's Final Acceptance, the making of Final Payment, any provision in Contract Documents, nor the use or occupancy of the Work, in whole or in part, by District shall constitute acceptance of Work not in accordance with the Contract Documents. Nor relieve Vendor from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein.

4.13.8. Survival of Warranties. Vendor's warranty obligations survive Vendor's

completion of Work, the District's Final Acceptance of the Work and/or the termination of the Contract.

5. Post Construction Services

5.1. Final Completion. Upon request of the Vendor, the District, Project Inspector and Vendor shall inspect the Work of the Project to determine that Final Completion has been achieved and that the Work conforms and complies with the requirements of this Agreement. If Final Completion has been achieved, the Vendor shall determine and certify the date of Final Completion of the Project or portions thereof.

5.2. Close-Out Documents.

5.2.1. Assembly/Transmittal of Close-Out Documents. The Vendor shall compile and assemble the Vendor's close-out documents for delivery to the District, including without limitation, Record As-Built Drawings, Operations and Maintenance manuals, key schedules and warranties.

5.2.2. Governmental Agency Close-Out. The Vendor shall prepare and submit for processing such documentation as required by governmental agencies, including DSA, in connection with completion of the construction of the Project. An express condition precedent to the Vendor's right to receive the portion of the Contract Price for a Project allocated for the Post-Construction Services and an express condition precedent to the District's obligation to disburse the portion of the Contract Price allocated for the Post-Construction Services is the Vendor's completion of all of its Post-Construction obligations, including without limitation the preparation and submission of Verified Reports to DSA.

5.2.3. As-Built Drawings. The District shall require the Vendor for the Project to provide the District with As-Built Record Drawings indicating the location and size of all concealed, underground or imbedded construction not covered in the original Drawings, Change Orders, Supplemental Drawings or Submittals. The Vendor shall be required to record such work on reproducible drawings prepared by the Vendor and furnished to the District. The Vendor's As-Built Record Drawings shall be delivered by the Vendor to the District for the District's review. Vendor shall bear sole responsibility for the accuracy and completeness of the As-Built Record Drawings.

6. Insurance; Indemnity and Bonds.

6.1. Design and Construction Phase Insurance Requirements. At all times during performance of obligations under this Agreement, Vendor and its Design Services sub-consultants and its Construction Services Subcontractors shall obtain and maintain the following insurance coverages:

- 6.2. Workers' Compensation Insurance; Employer's Liability Insurance. Vendor and each of its Design Consultants and Subcontractors shall purchase and maintain Workers' Compensation Insurance as will protect them from claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed. Vendor and each of its Design Consultants and Subcontractors shall purchase and maintain Employer's Liability Insurance covering bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment by Vendor. The Employer's Liability Insurance required of Vendor and its Design Consultants and Subcontractors hereunder may be obtained as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance required to be obtained and maintained hereunder. Coverage amounts for Vendor, its Design Consultants and Subcontractors under their respective Workers Compensation insurance policies shall be in accordance with applicable law. The minimum coverage amount under Employer's Liability Insurance required hereunder for Vendor, its Design Consultants and Subcontractors shall be One Million Dollars (\$1,000,000). Concurrently with execution of this Agreement, Vendor shall execute and deliver to the District the form of Certificate of Workers Compensation Insurance attached hereto as Exhibit G. The foregoing is a material obligation of Vendor hereunder.
- 6.3. Commercial General Liability and Property Insurance. Vendor and each of its Design Consultants and Subcontractors shall purchase and maintain Commercial General Liability and Property Insurance covering the types of claims set forth below which may arise out of or result from Vendor's operations under the Contract Documents and for which they may be legally responsible: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than their employees; (ii) claims for damages insured by usual personal injury liability coverage; (iii) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (iv) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; (v) contractual liability insurance applicable to their obligations under the Contract Documents; and (vi) Completed Operations. The minimum coverage under the Commercial General Liability insurance policies of Vendor and its Design Consultants/Subcontractors shall be One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate.
- 6.4. Design Phase Insurance. In addition to the insurance coverage requirements set forth above, in connection with Vendor's obligations under the Design Phase of this Agreement, Vendor and each of its Design Services Consultants shall each obtain and maintain a policy of Professional Liability insurance covering their liabilities in completing its obligations in connection with the Design Services under this Agreement. The minimum coverage amounts of the Professional Liability insurance policies of Vendor and each of its Design Phase Consultants shall be One Million Dollars (\$1,000,000) per claim/Two Million Dollars (\$2,000,000) aggregate.
- 6.5. Builder's Risk "All-Risk" Insurance. Builders Risk insurance covering the risks of loss, damage or destruction of Work in progress or in place at the Site resulting from the perils of fire, malicious mischief, vandalism, and collapse will be obtained by the District as part of the scope of coverage under the District's property casualty insurance policy.

If a claim is adjusted under the District obtained Builder's Risk Insurance, Vendor shall be liable and responsible for payment of the deductible, subject to a maximum of \$10,000 any one event or loss. In lieu of Vendor's direct payment of the deductible to the insurance carrier issuing the Builder's Risk Insurance policy, the District may deduct any portion of the deductible from the Design and Construction Services Contract Price then or thereafter due Vendor. Vendor shall bear full and sole responsibility for purchasing and maintaining any additional insurance coverage for risks not covered by the District by and through its Builder's Risk "All-Risk" Insurance policy, for which Vendor requires or deems necessary.

6.6. Insurance Policy Requirements. Each policy of insurance required by the Contract Documents shall confirm the following requirements.

6.6.1. Minimum Coverage Amounts. The insurance required of Vendor hereunder shall be written for not less than any limits of liability specified in the Contract Documents, or required by law, whichever is greater. In the event of any loss or damage covered by a policy of insurance required to be obtained and maintained by Vendor hereunder, Vendor shall be solely and exclusively responsible for the payment of the deductible, if any, under such policy of insurance, without adjustment to the Design and Construction Services Contract Price on account thereof.

6.6.2. Required Qualifications of Insurers. Required policies of insurance under this Agreement will be accepted by the District only if the insurer(s) are: (a) A.M. Best rated A- or better; (b) A.M. Best Financial Size Category VII or higher; and (c) authorized under California law to transact business in the State of California and authorized to issue insurance policies in the State of California. If at any time during performance of Vendor obligations under this Agreement, the insurer(s) issuing a required policy of insurance is/are not A.M. Best rated A- or better and is/are not A.M. Best Financial Size Category VII or higher, Vendor or its Design Consultant/Subcontractor, as applicable shall within thirty (30) days of the District's written notice of the insufficiency of an insurer to obtain insurance coverage(s) from alternative insurer(s) who is/are then A.M. Best rated A- or better and who is/are A.M. Best Financial Size Category VII or higher. If Vendor fails to deliver Certificate(s) of Insurance from an alternative insurer(s) meeting or exceeding the A.M. Best rating and A.M. Best Financial Size Category set forth above, within thirty (30) days of the date of the District's issuance of a written notice pursuant to the preceding sentence, in addition to any other right or remedy of the District under the Contract Documents or arising by operation of law, the District may withhold disbursement of any payment otherwise due hereunder until Vendor has delivered such Certificate(s) of Insurance from an alternative insurer(s).

6.7. Evidence of Insurance; Subcontractor's Insurance. Concurrently with execution of this Agreement, Vendor shall provide to the District Representative documented evidence of Insurance for itself and all Design Phase Sub-Consultants evidencing the insurance coverages in at least the minimum coverage amounts required by this Agreement during performance of Design Services. Prior to commencing construction activities at the Site, Vendor shall deliver to the District Representative documented evidence of

Insurance evidencing the insurance coverages required of Vendor and its Subcontractors during performance of Construction Services. Failure or refusal of Vendor to so deliver documented evidence of Insurance may be deemed by the District to be a default of a material obligation of Vendor under the Contract Documents, and thereupon the District may proceed to exercise any right or remedy provided for under the Contract Documents or at law. The documented evidences of Insurance and the insurance policies required by the Contract Documents shall contain a provision that coverages afforded under such policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the District. The insurance policies required of Vendor hereunder during Construction Services shall also name the District, as an additional insured. Should any policy of insurance be canceled before Final Acceptance of the Work by the District and Vendor fails to immediately procure replacement insurance as required, the District reserves the right to procure such insurance and to deduct the premium cost thereof and other costs incurred by the District in connection therewith from any sum then or thereafter due Vendor under the Contract Documents. Vendor shall, from time to time, furnish the District, when requested, with satisfactory proof of coverage of each type of insurance required by the Contract Documents; failure of Vendor to comply with the District's request may be deemed by the District to be a default of a material obligation of Vendor under the Contract Documents.

- 6.8. Maintenance of Insurance. Any insurance bearing on the adequacy of performance of Work shall be maintained after the District's Final Acceptance of all of the Work for the full one year correction of Work period and any longer specific guarantee or warranty periods set forth in the Contract Documents. Should such insurance be canceled before the end of any such periods and Vendor fails to immediately procure replacement insurance as specified, the District reserves the right to procure such insurance and to charge the cost thereof to Vendor. Nothing contained in these insurance requirements is to be construed as limiting the extent of Vendor's responsibility for payment of damages resulting from its operations or performance of the Work under the Contract Documents, including without limitation Vendor's obligation to pay Liquidated Damages. In no instance will the District's exercise of its option to occupy and use completed portions of the Work relieve Vendor of its obligation to maintain insurance required under this Section until the date of Final Acceptance of the Work by the District, or such time thereafter as required by the Contract Documents.
- 6.9. Vendor's Insurance Primary. All insurance and the coverages thereunder required to be obtained and maintained by Vendor hereunder, if overlapping with any policy of insurance maintained by the District, shall be deemed to be primary and non-contributing with any policy maintained by the District and any policy or coverage thereunder maintained by District shall be deemed excess insurance. To the extent that the District maintains a policy of insurance covering property damage arising out of the perils of fire or other casualty covered by Vendor's Builder's Risk Insurance or the Comprehensive General Liability Insurance of Vendor or any Subcontractor, the District, Vendor and all Subcontractors waive rights of subrogation against the others. The costs for obtaining and maintaining the insurances coverage required herein of Vendor and its Subcontractors shall be included in the Design and Construction Services Contract Price.

6.10. Indemnity. Unless arising out of the negligence, gross negligence or willful misconduct of Vendor or its employees, Subcontractors, agents or representatives, Vendor shall indemnify, defend and hold harmless the Indemnified Parties who are: the District and its Board of Trustees, officers, employees, agents and representatives. Vendor's obligations hereunder includes indemnity, defense and hold harmless of the Indemnified Parties from and against any and all damages, losses, claims, demands or liabilities whether for damages, losses or other relief, including, without limitation reasonable attorneys' fees and costs which arise, in whole or in part, from the Design Services/Construction Services provided by or through Vendor, the Work, the Contract Documents or the acts, omissions or other conduct of Vendor, any Design Consultant, Subcontractor or any person or entity engaged by them. Vendor's obligations under the foregoing include without limitation: (i) injuries to or death of persons; (ii) damage to property; or (iii) theft or loss of property; (iv) Stop Notice claims asserted by any person or entity in connection with the Work; and (v) other losses, liabilities, damages or costs resulting from, in whole or part, any acts, omissions or other conduct of Vendor, any of Vendor's Design Consultants, Subcontractors, of any tier, or any other person or entity employed directly or indirectly by Vendor in connection with the Design Services or construction services under this Agreement and their respective agents, officers or employees. The obligations of Vendor, as set forth in (v) above shall include, without limitation losses, costs, expenses, damages and other claims asserted by any other Vendor to the District in connection with the Work or in connection with a work of improvement related to or affected by the Work. If any action or proceeding, whether judicial, administrative, arbitration or otherwise, shall be commenced on account of any claim, demand or liability subject to Vendor's obligations hereunder, and such action or proceeding names any of the Indemnified Parties as a party thereto, Vendor shall, at its sole cost and expense, defend the named Indemnified Parties in such action or proceeding with counsel reasonably satisfactory to the named Indemnified Parties. In the event that there shall be any judgment, award, ruling, settlement, or other relief arising out of any such action or proceeding to which any of the Indemnified Parties are subject to, or bound by, Vendor shall pay, satisfy or otherwise discharge any such judgment, award, ruling, settlement or relief; Vendor shall indemnify and hold harmless the Indemnified Parties from any and all liability or responsibility arising out of any such judgment, award, ruling, settlement or relief. Vendor's obligations hereunder are binding upon Vendor's Performance Bond Surety and these obligations shall survive notwithstanding Vendor's completion of the Work or the termination of the Contract.

7. Termination; Suspension.

7.1. Termination for Default. Either the District or Vendor may terminate this Agreement upon seven (7) days advance written notice to the other if there is a default by the other Party in its performance of a material obligation hereunder and such default in performance is not caused by the Party initiating the termination. Such termination shall be deemed effective the seventh (7th) day following the date of the written termination notice, unless during such seven (7) day period, the Party receiving the written termination notice shall commence to cure it default(s) and diligently thereafter prosecute such cure to completion. In addition to the District's right to terminate this Agreement pursuant to the foregoing, the District may terminate this Agreement upon written notice to Vendor if: (a) Vendor becomes bankrupt or insolvent, which shall

include without limitation, a general assignment for the benefit of creditors or the filing by Vendor or a third party of a petition to reorganize debts or for protection under any bankruptcy or similar law or if a trustee or receiver is appointed for Vendor or any of Vendor's property on account of Vendor's insolvency; or (b) if Vendor disregards applicable laws, codes, ordinances, rules or regulations. If District exercises the right of termination hereunder prior to Vendor's completion of Design and Construction Services, the Contract Price due the Vendor, if any, shall be based upon Design and Construction Services, completed prior the effective date of the District's termination of this Agreement, reduced by the District's prior payments of the Design and Construction Services Contract Price and losses, damages, or other costs sustained by the District arising out of the termination of this Agreement or the cause(s) for termination of this Agreement. If the District exercises the right of termination hereunder after Vendor's completion of Design and Construction Services and prior to Vendor's completion of Design and Construction Services, the Design and Construction Services Contract Price due Vendor shall be based upon the value of the Work actually completed and in place as of the effective date of termination, reduced by the District's prior payments of the Design and Construction Services Contract Price and losses, damages, or other costs sustained by the District arising out of the termination of this Agreement or the cause(s) for termination of this Agreement. Vendor shall remain responsible and liable to District all losses, damages or other costs sustained by District arising out of termination pursuant to the foregoing or otherwise arising out of Vendor's default hereunder, to the extent that such losses, damages or other costs exceed any amount due Vendor hereunder for the Design and Construction Services Contract Price.

- 7.2. District's Right to Suspend. The District may, in its discretion, suspend all or any part of the design or construction of the Project or the Vendor's services under this Agreement; provided, however, that if the District shall suspend design or construction of the Project or Vendor's services for a period of thirty (30) consecutive days or more and such suspension is not caused by the Vendor's default or the acts or omissions of Vendor or its Design Consultants or Subcontractors, upon rescission of such suspension, the Design and Construction Services Contract Price will be subject to adjustment to reflect actual costs and expenses incurred by Vendor, if any, as a direct result of the suspension and resumption of Project design/construction.
- 7.3. District's Termination for Convenience. The District may, at any time, upon seven (7) days advance written notice to Vendor terminate this Agreement for the District's convenience and without fault, neglect or default on the part of Vendor. In such event, the Agreement shall be deemed terminated seven (7) days after the date of the District's written notice to Vendor or such other time as the District and Vendor may mutually agree upon. In such event, the District shall make payment of the Design and Construction Services Contract Price to Vendor for services provided through the date of termination plus actual costs incurred by Vendor directly attributable to such termination.
- 7.4. Vendor Suspension of Services. If the District shall fail to make payment of the Design Services Phase of the Contract Price when due Vendor hereunder, Vendor may, upon seven (7) days advance written notice to the District, suspend further performance of the design services hereunder until payment in full is received.

7.5. Vendor Obligations Upon Termination. Upon the District's exercise of the right of termination under pursuant to the foregoing, Vendor shall take action as directed by the District relative to on-going preparation of the Design Documents or construction of the Project. If requested by the District, the Vendor shall within five (5) days of such request, assemble and deliver to the District all work product, instruments of service and other items of a tangible nature (whether in the form of documents, drawings, samples or electronic files) prepared by or on behalf of the Vendor under this Agreement. Vendor shall deliver the originals of all work product, instruments of service and other items of a tangible nature requested by the District pursuant to the preceding sentence; provided, however, that Vendor may, at its sole cost and expense, make reproductions of the originals delivered to the District.

8. Miscellaneous

8.1. Governing Law; Interpretation. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. The titles of the various Sections of this Agreement and elsewhere in the Contract Documents are used for convenience of reference only and are not intended to, and shall in no way, enlarge or diminish the rights or obligations of the District or Vendor and shall have no effect upon the construction or interpretation of the Contract Documents. The Contract Documents shall be construed as a whole in accordance with their fair meaning and not strictly for or against the District or Vendor.

8.2. Successors and Assigns. Except as otherwise expressly provided in the Contract Documents, all terms, conditions and covenants of the Contract Documents shall be binding upon, and shall inure to the benefit of the District and Vendor and their respective heirs, representatives, successors-in-interest and assigns.

8.3. Cumulative Rights and Remedies; No Waiver. Duties and obligations imposed by the Contract Documents and rights and remedies hereunder are in addition to, and not in lieu of nor a limitation of, duties, obligations, rights and remedies under law. No action or failure to act by the District is a waiver of a right or remedy under the Contract Documents or at law nor does the District's failure to act constitute approval of or acquiescence in a breach hereunder.

8.4. Severability. If any provision of the Contract Documents is deemed illegal, invalid, unenforceable and/or void, by a court or any other governmental agency of competent jurisdiction, such provision shall be deemed to be severed and deleted from the Contract Documents, but all remaining provisions hereof, shall in all other respects, continue in full force and effect.

8.5. No Assignment by Vendor. Vendor shall not sublet or assign the Contract, or any portion thereof, or any monies due thereunder, without the express prior written consent and approval of the District, which may be withheld or restricted in the sole discretion of the District.

8.6. Gender and Number. Whenever the context of the Contract Documents so require, the neuter gender includes the feminine and masculine, the masculine gender includes the

feminine and neuter, the singular number includes the plural and the plural number includes the singular.

- 8.7. Independent contractor Status. Vendor is an independent contractor to the District and not an agent or employee of the District.
- 8.8. Notices. Except as otherwise expressly provided for in the Contract Documents, all notices which the District or Vendor may be required, or may desire, to serve on the other, shall be effective only if delivered by personal delivery or by postage prepaid, First Class Certified Return Receipt Requested United States Mail, addressed to the District or Vendor at their respective address set forth in the Special Conditions, or such other address(es) as either the District or Vendor may designate from time to time by written notice to the other in conformity with the provisions hereof. In the event of personal delivery, such notices shall be deemed effective upon delivery, provided that such personal delivery requires a signed receipt by the recipient acknowledging delivery of the same. In the event of mailed notices, such notice shall be deemed effective on the third working day after deposit in the mail.
- 8.9. Disputes; Continuation of Work. Notwithstanding any claim, dispute or other disagreement between the District and Vendor regarding performance under this Agreement or the Contract Documents, the scope of Work thereunder, or any other matter arising out of or related to, in any manner, this Agreement, the Contract Documents or the Work, Vendor shall proceed diligently with performance of the Work in accordance with the District's written direction, pending any final determination or decision regarding any such claim, dispute or disagreement.
- 8.10. Dispute Resolution; Arbitration.
- 8.10.1. Claims Under \$375,000.00. Claims between the District and Vendor of \$375,000.00 or less shall be resolved in accordance with the procedures established at Public Contract Code, §§20104 et seq
- 8.10.2. Arbitration. Except as provided above, any other claims, disputes, disagreements or other matters in controversy between the District and Vendor arising out of, or related, in any manner, to the Contract 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 Site. The award rendered by the Arbitrator(s) is final and binding upon the District and Vendor. The discovery rights and procedures provided for in California Code of Civil Procedure §1283.05 are applicable, and are 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. If more than one Demand for Arbitration is made by either the District or Vendor, all such controversies shall be consolidated into a single arbitration proceeding, unless otherwise agreed to by the District and Vendor. Vendor's Surety, a Design Sub-Consultant, Subcontractor or Material Supplier to Vendor 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 Vendor, except to the extent that such joinder would unduly delay or complicate the expeditious resolution of the claim, dispute or other disagreement between the District and Vendor, 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 post-award proceedings shall be as set forth in California Code of Civil Procedure §1285 et seq.

8.10.3. Vendor Compliance with Government Code §900 et seq. The foregoing provisions relating to dispute resolution procedures notwithstanding, neither this Agreement nor such provisions shall be deemed to waive, limit or modify any requirements under Government Code §900 et seq. relating to the Vendor's submission of claims to the District as a express condition precedent and prerequisite to filing a Demand for Arbitration, which shall be deemed a "claim" for money or damages under Government Code §900 et seq. The Vendor's strict compliance with all applicable provisions of Government Code §900 et seq. in connection with any claim, dispute or other disagreement arising hereunder shall be an express condition precedent to the Vendor's initiation of the binding arbitration procedures under Section 8.11.2.

8.11. Attorneys' Fees. Except as expressly provided for in the Contract Documents, or authorized by law, neither the District nor Vendor shall recover from the other any attorneys' fees or other costs associated with or arising out of any legal, administrative or other proceedings filed or instituted in connection with or arising out of the Contract Documents or the Work.

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

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

8.14. Use of Design Documents.

8.14.1. Ownership. Subject to the provisions hereof, all of Vendor’s Instruments of Service, including without limitation, the originals and reproducible transparencies of the Drawings, Specifications and other Design Documents prepared by or on behalf of Vendor under this Agreement (which include, but are not limited to, working drawings, and master plans, preliminary sketches, architectural presentation drawings, structural and other engineering calculations or computations and estimates) are and shall remain the property of Vendor. The foregoing notwithstanding, if this Agreement is terminated for the default of Vendor, in addition to any other right or remedy arising from Vendor’s default, the District may use any portion of the Design Documents (whether completed or in progress) for purpose of completing the Project. Further, notwithstanding full performance of obligations hereunder and Vendor’s ownership rights to the Design Documents, Vendor grants to the District a perpetual license to use the Design Documents, without additional compensation to Vendor, in connection with the District’s use, operation, maintenance, upgrading, downsizing/upsizing of the Project, or components thereof; provided, however, that if the Design Documents are used for expansion of the Project, Vendor shall be entitled to reasonable compensation in an amount comparable to that which a competent design professional in the same general geographic area would charge for comparable design services.

8.14.2. Electronic Files. At each stage of Vendor’s submission of Schematic Design hereof, Vendor shall also submit to the District electronic files of the same. Electronic files of the Drawings shall be prepared in the latest version of commercially available computed aided drafting software. Electronic text files shall be prepared in the latest version of MS Word and electronic spreadsheet files shall be prepared in the latest version of MS Excel

8.15. Definitions.

8.15.1.1. Design Consultant(s). Design Consultant(s) are individuals or entities retained by Vendor to provide or perform a portion of the Vendor’s Design Services, including any portion of the Design Documents. Design Consultants shall be duly licensed as required by applicable law, rule or regulation and shall be qualified to perform or provide the portion of Vendor’s services or work product assigned by having previously provided design consulting services for California public school project design and construction. The District shall have the right to reasonably disapprove a Design Consultant. Vendor shall be responsible for the adequacy, timeliness and quality of services or work product provided or performed by Design Consultants; Vendor shall be liable to District for, and shall defend, indemnify and hold harmless District and its Board of Trustees, employees, officers, agents and representatives from and against, all losses, costs, damages, liabilities,

actions or demands arising out of the services or work product provided or performed by Design Consultants.

8.15.1.2. Submittals. Shop Drawings, Product Data or Samples prepared or provided by Vendor or its Subcontractor(s) or supplier(s) illustrating some portion of the Work.

8.15.1.3. Site. The physical area for construction and related activities of the Project.

8.15.1.4. Drawings and Specifications. The Drawings are the graphic and pictorial portions of the Design Documents showing generally the location, design and dimensions of the Work, including without limitation, plans, elevations, sections, details, schedules and diagrams. Specifications are the portion of the Design Documents which consist of written requirements for materials, equipment, construction systems, standards, criteria and workmanship for the Work and related services.

8.15.1.5. Work. All of the design, construction and other services required by the terms of the Agreement including all labor, materials, equipment and other services required of Vendor to complete design and construction of the Project.

8.15.1.6. Project Budget. The Project Budget refers to the total costs allocated by the District for construction of the Project, inclusive of the Contract Price under this Agreement. The Project Construction Budget established by the District may be modified by the District upon notice to the Vendor. As used in this Agreement, the term "Project Construction Budget" refers to the then current amount allocated for construction of the Project as modified from time-to-time.

8.15.1.7. Construction Cost Estimate. Construction Cost Estimates are estimates prepared by or on behalf of the Vendor of the current costs of labor, materials, equipment and services plus a reasonable allowance for Vendor's profit, overhead and administrative cost as necessary to complete construction of the Project in accordance with the Design Documents.

8.15.1.8. District. The "District" refers to West Valley-Mission Community College District and unless otherwise stated, includes the District's authorized representatives, including the District's Board of Trustees and the District's officers, employees, agents and representatives.

8.15.1.9. Surety. The Surety is the person or entity that executes, as surety, Vendor's Labor and Material Payment Bond and/or Performance Bond.

8.15.1.10. Subcontractors; Sub-Subcontractors. A Subcontractor is a person or entity under contract with Vendor to perform a portion of Vendor's Construction Services obligations. A Sub-Subcontractor is a person or

entity under contract with a Subcontractor to perform Vendor's Construction Services obligations. References to "Subcontractor" include Sub-Subcontractors unless otherwise stated or indicated by context.

- 8.15.1.11. Material Supplier. A Material Supplier is a person or entity who furnishes materials or equipment (including equipment rental) without fabricating, installing or consuming them in construction of the Project.
- 8.15.1.12. Division of State Architect ("DSA"). The DSA is the California Division of the State Vendor including without limitation the DSA's Office of Construction Services, Office of Design Services and the Office of Regulatory Services; references to the DSA in the Contract Documents shall mean the DSA, its offices and its authorized employees and agents. The authority of the DSA over the Work and the performance thereof shall be as set forth in the Contract Documents and Title 24 of the California Code of Regulations ("CCR").
- 8.15.1.13. Project Inspector ("IOR"). The Project Inspector is the individual designated and employed by the District in accordance with the requirements of Title 24 of the California Code of Regulations. The Project Inspector shall be authorized to act on behalf of the District as provided for in the Contract Documents and the Laws, including without limitation, in Title 24 of the California Code of Regulations, as the same may be amended from time to time.
- 8.15.1.14. Vendor's Superintendent. Vendor's Superintendent is an individual employed by Vendor whose principal responsibility is supervision and coordination of the Construction Services; Vendor's Superintendent shall not perform routine construction labor.
- 8.15.1.15. Record Drawings. The Record Drawings are the Drawings marked by Vendor during performance of its Construction Services to completely and accurately indicate as-built condition of the Project.
- 8.15.1.16. Construction Equipment. "Construction Equipment" is equipment utilized for the performance of any portion of the Work, but which is not incorporated into the Work.
- 8.15.1.17. Site. The Site is the physical area designated in the Contract Documents for Vendor's performance, construction and installation of the Work.
- 8.15.1.18. Defective or Non-Conforming Work. Defective or non-conforming Work is any Project construction which is unsatisfactory, faulty or deficient by: (a) not conforming to the requirements of the Contract Documents; (b) not conforming to the standards of workmanship of the applicable trade or industry; (c) not being in compliance with the requirements of any inspection, reference, standard, test, or approval required by the Contract Documents; or (d) damage occurring prior to

8.15.1.19. Delivery. "Delivery" is the unloading and storage of materials, equipment or other items in a protected condition pending incorporation into the Work.

8.15.1.20. Notice to Proceed. The Notice to Proceed is the written notice issued by or on behalf of the District to Vendor authorizing Vendor to proceed with commencement of construction of the Work and which establishes the date for commencement of the Contract Time.

8.15.1.21. Progress Reports; Verified Reports. Progress Reports, if required, are written reports prepared by Vendor and periodically submitted to the District in the form and content as required by the Contract Documents.

8.15.1.22. The Contract Documents. The documents forming a part of the Contract Documents consist of the following, all of which are component parts of the Contract Documents: the Scope, Subcontractors List, Agreement, Performance Bond, Labor and Materials Payment Bond, Drug-Free Workplace Certification, and Certification of Workers Compensation Insurance. In the event of conflicts or inconsistencies between the terms of this Agreement and the Scope, the terms of this Agreement shall govern and prevail.

8.16. Entire Agreement. The Contract Documents contain the entire agreement and understanding between the District and Vendor concerning the subject matter hereof, and supersedes and replaces all prior negotiations, proposed agreements or amendments, whether written or oral. No amendment or modification to any provision of the Contract Documents shall be effective or enforceable except by an agreement in writing executed by the District and Vendor.

8.17. Authority to Execute. The individual(s) executing this Agreement on behalf of Vendor is/are duly and fully authorized to execute this Agreement on behalf of Vendor and to bind Vendor to each and every term, condition and covenant of the Contract Documents.

In witness hereof, the District and Vendor have executed this Agreement as of the date set forth above.

"District"
West Valley-Mission Community College
District

"Vendor"

By:

Edralin Maduli
Vice-Chancellor of Central Services

Date: _____

By:

Title:

Date: _____

EXHIBIT A

SCOPE OF WORK

PE Building lighting retrofit designs for interior lighting improvement including lighting attached to the exterior of buildings, emergency egress, occupancy sensors, and exit signs, totaling approximately 10,000 gross square feet. The existing T-12 lamps will be replaced with energy efficient T-8 lamps with occupancy sensor controls. Ballasts to be replaced with energy efficient ballasts. LED exit signs shall replace all non LED exit signs.

The Scope consists of:

A) Design services:

Develop and prepare design development documents and draft outline of specification for the District's review. Based on the district's comments, vendor shall prepare construction documents.

B) Construction services:

Vendor shall provide Construction Services, consisting generally of labor, materials, equipment and services necessary to procure, install and construct the Work indicated in the Construction Documents.

The services shall include, but not necessarily be limited to:

Contractor is responsible for field verification of all measurements and quantities and exact location.

Contractor must provide protection for all surfaces including Gym floor.

Contractor is responsible to move away and back objects and furniture that affect or on the way of installation of new work.

Contractor will repair any district's owned system damaged during the course of the project.

Contractor must provide notice 48 hours prior to shut down of any utilities.

Contractor is responsible for removal and disposal of all debris. It is not allowed to use campus containers for any type of disposal.

Contractor is responsible for daily cleaning during construction and for final cleaning of work area.

Contractor shall schedule the performance of all Work around classrooms availability hours or make other arrangements so that the Work does not cause such disruption or disturbance. Classroom schedule will be available.

Alternate Scope:

Alternate #1: Replace 500' damaged wire and circuitry as needed.

Alternate #2: Replace all incandescent & florescent EXIT signs with LED

Alternate #3: Replace 50 wall switches

Alternate #4: Provide a unit price for relight kits in lieu of relamp and reballasts

EXHIBIT B

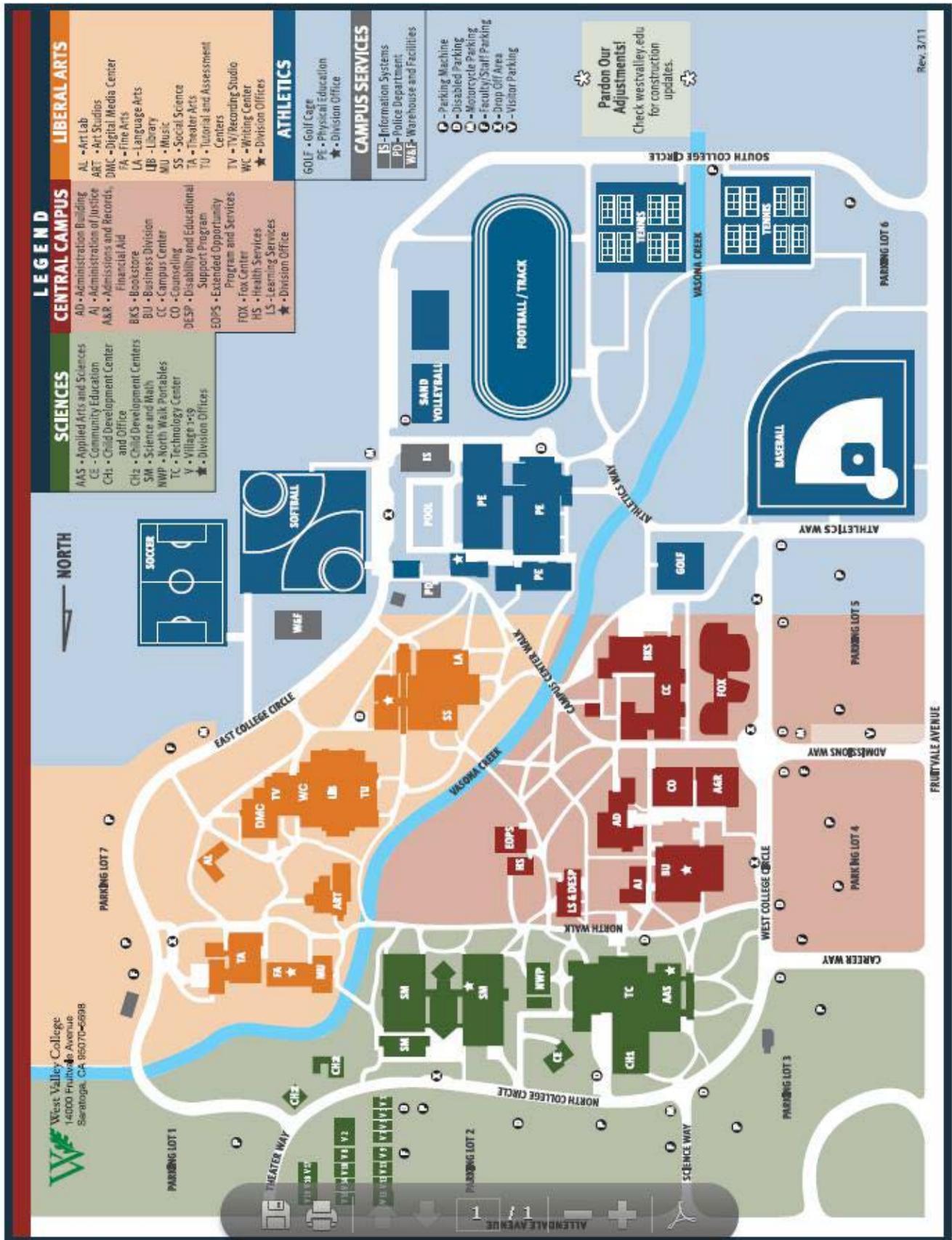


Exhibit C

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that we, _____ as Principal, and _____ as Surety, are held and firmly bound unto **WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT**, hereinafter "the Obligee", in the penal sum of _____ Dollars (\$_____) in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Obligee, by resolution of the WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT Board of Trustees has awarded to the Principal a Contract for the Work described as **West Valley- PE Lighting retrofit project**.

WHEREAS, the Principal, has entered into a Service Agreement with Obligee WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT for performance of the Work, the Service Agreement and all other Contract Documents set forth therein are incorporated herein by this reference and made a part hereof.

WHEREAS, by the terms of the Contract Documents, the Principal is required to furnish a bond for the prompt, full and faithful payment to any Claimant, as hereinafter defined, for all labor materials or services used, or reasonably required for use, in the performance of the Work.

NOW THEREFORE, if the Principal shall promptly, fully and faithfully make payment to any Claimant for all labor, materials or services used or reasonably required for use in the performance of the Work then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

The term "Claimant" shall refer to any person, corporation, partnership, proprietorship or other entity including without limitation, all persons and entities described in California Civil Code §3181, providing or furnishing labor, materials or services used or reasonably required for use in the performance of the Work under the Contract Documents, without regard for whether such labor, materials or services were sold, leased or rented. This Bond shall inure to the benefit of all Claimants so as to give them, or their assigns and successors, a right of action upon this Bond.

In the event suit is brought on this Bond by any Claimant for amounts due such Claimant for labor, materials or services provided or furnished by such Claimant, the Surety shall pay for the same and reasonable attorneys' fees pursuant to California Civil Code §3250.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, deletion, addition, or any other modification to the terms of the Contract Documents, the Work to be performed thereunder, the Specifications or the Drawings, or any other portion of the Contract Documents, shall in any way limit, restrict or otherwise affect its obligations under this Bond; the Surety hereby waives notice from the Obligee of any such change, extension of time, alteration, deletion,

addition or other modification to the Contract Documents, the Work to be performed under the Contract Documents, the Drawings or the Specifications of any other portion of the Contract Documents.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this _____ day of _____, 20__ by their duly authorized agent or representative.

(Principal's Corporate Seal)

(Principal Name)

By: _____
(Signature)

Title: _____

(Surety's Corporate Seal)

(Surety Name)

By: _____
(Signature of Attorney-in-Fact for Surety)

(Attach Attorney-in-Fact Certificate)

(Type or Print Name of Attorney-in-Fact)

() _____
(Area Code and Telephone Number of Surety)

Contact name, address, telephone number and email address for notices to the Surety

(Contact Name)

(Address)

(Telephone)

(Email address)

Exhibit D

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that we, _____ as Principal, and _____ as Surety, are held and firmly bound unto **WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT**, hereinafter "Obligee", in the penal sum of _____ Dollars (\$_____) in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the -Obligee, by resolution of the **WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT** Board of Trustees has awarded to the Principal a Contract for the Work described as **West Valley- PE Lighting retrofit**.

WHEREAS, the Principal, has entered into a Service Agreement with Obligee **WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT** for performance of the Work; the Service Agreement and all other Contract Documents set forth therein including, without limitation, the Project Assignment Amendments, are incorporated herein and made a part hereof by this reference.

WHEREAS, by the terms of the Contract Documents, the Principal is required to furnish a bond ensuring the Principal's prompt, full and faithful performance of the Work of the Contract Documents.

NOW THEREFORE, if the Principal shall promptly, fully and faithfully perform each and all of the obligations and things to be done and performed by the Principal in strict accordance with the terms of the Contract Documents as they may be modified or amended from time to time; and if the Principal shall indemnify and save harmless the Obligee and all of their officers, agents and employees from any and all losses, liability and damages, claims, judgments, liens, costs, and fees of every description, which may be incurred by the Obligee by reason of the failure or default on the part of the Principal in the performance of any or all of the terms or the obligations of the Contract Documents, including all modifications, and amendments, thereto, and any warranties or guarantees required thereunder; then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

The Surety, for value received, hereby stipulates and agrees that no change, adjustment of the Contract Time, adjustment of the Contract Price, alterations, deletions, additions, or any other modifications to the terms of the Contract Documents, the Work to be performed thereunder, or to the Specifications or the Drawings shall limit, restrict or otherwise impair Surety's obligations or Obligee's rights hereunder; Surety hereby waives notice from the Obligee of any such changes, adjustments of Contract Time, adjustments of Contract Price, alterations, deletions, additions or other modifications to the Contract Documents, the Work to be performed under the Contract Documents, or the Drawings or the Specifications.

In the event of the termination by the Obligee of the Contract due to the Principal's breach or default of the Contract Documents, within twenty (20) days after written notice from the Obligee to the Surety of the Principal's breach or default of the Contract Documents and Obligee's termination of the Contract, the Surety shall notify Obligee in writing of Surety's assumption of obligations hereunder by its

election to either remedy the default or breach of the Principal or to take charge of the Work of the Contract Documents and complete the Work at its own expense ("the Notice of Election"); provided, however, that the procedure by which the Surety undertakes to discharge its obligations under this Bond shall be subject to the advance written approval of the Obligee, which approval shall not be unreasonably withheld, limited or restricted. The insolvency of the Principal or the Principal's mere denial of a failure of performance or default under the Contract Documents shall not by itself, without the Surety's prompt, diligent inquiry and investigation of such denial, be justification for Surety's failure to give the Notice of Election or for its failure to promptly remedy the failure of performance or default of the Principal or to complete the Work.

In the event the Surety shall fail to issue its Notice of Election to Obligee within the time provided for hereinabove, Obligee may thereafter cause the cure or remedy of the Principal's failure of performance or default or to complete the Work. The Principal and the Surety shall be each jointly and severally liable to Obligee for all damages and costs sustained by the Obligee as a result of the Principal's failure of performance under the Contract Documents or default in its performance of obligations thereunder, including without limitation the costs of cure or completion exceeding the then remaining balance of the Contract Price; provided that the Surety's liability hereunder for the costs of performance, damages and other costs sustained by the Obligee upon the Principal's failure of performance under or default under the Contract Documents shall be limited to the penal sum hereof, which shall be deemed to include the costs or value of any Changes to the Work which increases the Contract Price.

In the event suit or other proceeding is brought upon this Bond by the Obligee, the Surety shall pay to the Obligee all costs, expenses and fees incurred by the Obligee therewith, including without limitation, attorneys' fees.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this ____day of _____, 20__ by their duly authorized agent or representative.

(Principal's Corporate Seal)

(Principal Name)

By: _____

(Typed or Printed Name)

Title: _____

(Surety's Corporate Seal)

(Surety Name)

By: _____
(Signature of Attorney-in-Fact for Surety)

(Attach Attorney-in-Fact Certificate)

(Typed or Printed Name)

() _____
(Area Code and Telephone Number of Surety)

Contact name, address, telephone number and email address for notices to the Surety

(Contact Name)

(Address)

(Telephone)

(Email address)

EXHIBIT F

SUBCONTRACTORS LIST

Vendor: _____

Address: _____

Telephone: _____

Telecopier: _____

Vendor's Authorized Representative(s): _____

PROJECT: WEST VALLEY- PE BUILDING INTERIOR LIGHTING RETROFIT

NAME OF SUBCONTRACTOR	BUSINESS LOCATION/ ADDRESS OF SUBCONTRACTOR	TRADE OR PORTION OF THE WORK

PHOTOCOPY THIS PAGE AS NECESSARY TO LIST ADDITIONAL SUBCONTRACTORS

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

PROJECT: WEST VALLEY- PE LIGHTING RETROFIT PROJECT

I, _____ the _____ of
(Name) (Title)

_____, declare, state and certify that:
(Vendor Name)

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.

(Vendor Name)

By: _____
(Signature)

(Typed or printed name)

DRUG-FREE WORKPLACE CERTIFICATION

I, _____, am the _____ of
(Print Name) (Title)

(Vendor Name)

I declare, state and certify to all of the following:

1. I am aware of the provisions and requirements of California Government Code §§8350 et seq., the Drug Free Workplace Act of 1990.
2. I am authorized to certify, and do certify, on behalf of Vendor that a drug free workplace will be provided by Vendor 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 Vendor'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:
 - i. The dangers of drug abuse in the workplace;
 - ii. Vendor's policy of maintaining a drug-free workplace;
 - iii. The availability of drug counseling, rehabilitation and employee-assistance programs; and
 - iv. 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 Vendor in connection with the Work of the Contract, the employee agrees to abide by the terms of the statement.
 - D. Vendor agrees to fulfill and discharge all of Vendor'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.
3. Vendor and I understand that if the District determines that Vendor 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. Vendor and I further understand that, should Vendor violate the terms of the Drug-Free Workplace Act of 1990, Vendor may be subject to debarment in accordance with the provisions of California Government Code §§8350, et seq.

4. Vendor and I acknowledge that Vendor and I are aware of the provisions of California Government Code §§8350, et seq. and hereby certify that Vendor 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 _____ this ____ day of _____, 20____.
(City and State)

(Signature)

(Handwritten or Typed Name)

