

Addendum No. 1

to the

REQUEST FOR PROPOSALS FOR DESIGN-BUILD SERVICES FOR COMPLETION OF PLANNING, DESIGN AND CONSTRUCTION OF THE PACIFICA SCHOOL DISTRICT WORKFORCE HOUSING PROJECT

Amendments to the Scope of Work

1. The following paragraph is inserted at the end of Section 3.A "RFP Process:"

The District will consider proposals that include completion of the design and construction of Phase Two of the Project as a Project Alternative. Proposals including Phase Two construction stage services must include a separate proposed Project Baseline Schedule and Cost Proposal for the Project Alternative. Such proposals may also include additional information about how inclusion of Phase Two construction stage services would affect the proposer's approach to the Project and what benefit it would have to the District.

Amendments to the Solicitation Process

2. Section 4.A "Cover Letter and Acceptance of RFP Terms" is deleted in its entirety and replaced as follows:

In the cover letter, please provide a description of the Design-Builder, including Design-Builder's name, street address, telephone number, and e-mail address. Identify the "team representative." (i.e., the person who is authorized to represent and negotiate on behalf of the Design-Builder's team and make legally binding commitments). Identify all members of the design-build team. Cover letter shall state the willingness to accept the terms of the District's Design-Build Agreement, except as specifically stated in the Proposal, as well as the terms of the RFP.

The cover letter must affirm that the information in the Proposal is provided under penalty of perjury, as required under Section 17250.25(b)(4)(A) of the California Education Code.

3. Section 4.C.3 "Schedule" and 4.C.4 "Alternative Ideas" are deleted in their entirety and replaced, and a new Section 4.C.5 "Site Logistics Plan" is added, as follows:
 - 4.C.3 Schedule: Proposer shall provide a proposed Project Baseline Schedule for each stage of the Project, including a proposed project logistics plan, Gantt chart, and construction phasing approach. The schedule may include descriptions of potential schedule savings ideas and approaches.
 - 4.C.4 Alternative Ideas: Proposer may present any innovative or alternative ideas and approaches to completing the design and construction of the Project that deviate from the Scope of Work. The alternate ideas should demonstrate the Proposer's ingenuity through design concepts, construction materials, and construction methods to deliver the Project. Alternative ideas may further the District's objectives through some combination of improvements in design or construction

quality, increased efficiencies, decreased costs and/or the acceleration of delivery. Provide any examples of where suggested innovative or alternative approaches have been successfully implemented by the Proposer.

All alternative ideas must meet the District's programmatic requirements (per Attachment D) and quality parameters (per Attachment E). Proposals including Phase Two construction stage services must include a separate proposed Project Baseline Schedule and Cost Proposal for the Project Alternative.

- 4.C.5 Site Logistics Plan: Proposer must provide a proposed Site Logistics Plan that establishes the areas of the site that will be used for trailers, deliveries, staging, ingress and egress, location of major pieces of equipment, storage containers, stockpiles of materials, clearways used for emergency access, environmental controls, trailers for Design-Builder and Owner, parking facilities for Design-Builders, employees, and Owner, access road, fence line, etc.

4. The third paragraph of Section 4.H "Selection Process and Criteria" is deleted in its entirety and replaced as follows:

The District may accept the proposal of the highest ranked firm or enter into negotiations with the highest ranked firm. Negotiations may include cost, terms and conditions or any other portion of the Proposal deemed by the Parties to be necessary. If negotiations are unsuccessful, the District will terminate the negotiations with that firm and may open negotiations with the next highest-ranked firm. If negotiations with this firm are also not successful, the District may repeat the negotiations process with the next highest-ranked firms. Notwithstanding the foregoing, the District may reject all Proposals at any time at its sole discretion.

Exhibits

5. Attachment H (Design-Build Agreement) is added pursuant to Exhibit 1 to this Addendum No. 1.

Note that several of the exhibits to the Design-Build Agreement are listed as being attached, but have been omitted here for the following reasons:

Exhibit	Description	Explanation
2A	Program of Facilities Requirements	Included as Attachment C to the RFP
2B	Design Guide Illustrations	Included as Attachment D to the RFP (to be updated by later addendum)
2C	Owner's Minimum Requirements	Included as Attachment E to the RFP (to be updated by later addendum)
4	Price Proposal - Utilizing Form 4	To be provided by Proposer
5A & 5B	Staffing Plan and Key Personnel	To be provided by Proposer
6A	Project Baseline Schedule	To be provided by Proposer
8A	Design-Builder's Insurance Requirements	Included as Attachment I to the RFP
8B & 8C	Payment Bond Form and Performance Bond Form	Included as Attachment N to the RFP
9	Design-Builder's Proposal	To be provided by Proposer

6. The first page of Attachment O (Cost Proposal) is deleted in its entirety and replaced with Exhibit 4 "Price Proposal Form." Proposers shall submit the new Price Proposal Form with proposals.

Exhibit 1

Design-Build Agreement



Design-Build Agreement

Pacifica School District Workforce Housing Project

To be Developed at

930 Oddstad Boulevard

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DESIGN-BUILD AGREEMENT

Between Owner and Design-Builder

THIS AGREEMENT ("Agreement") is made as of _____, 2019 ("Effective Date") between Pacifica School District ("Owner"), located at 375 Reina Del Mar Avenue, Pacifica, California 94044 and [insert name of design-build entity] ("Design-Builder") located at [insert address] for preconstruction and construction services ("Work") for the Pacifica School District Workforce Housing Project ("Project") in accordance with the Contract Documents.

By executing this Agreement, each of the Signatories represents that he or she has the authority to bind the Party on whose behalf his or her execution is made.

Owner:
Pacifica School District
375 Reina Del Mar Avenue
Pacifica, California 94044

Design-Builder:
[insert name of entity]
[insert street address]
[insert city, state, zip]

By: _____
(Signature)

By: _____
(Signature)

Name:

Name: [insert name, title]

Telephone No.:

Telephone No.:

Facsimile No.:

Facsimile No.:

Email:

Email:

CA License No.:

THE PARTIES AGREE TO THE FOLLOWING TERMS AND CONDITIONS

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KEY BUSINESS TERMS SHEET

Owner's Representative	(Name) (Direct Phone) (Cell Phone) (Email)
Owner's Project Manager	(Name) (Direct Phone) (Cell Phone) (Email)
Design-Builder's Manager	(Name) (Direct Phone) (Cell Phone) (Email)
Design-Builder Architect	(Name) (Direct Phone) (Cell Phone) (Email)
Other Personnel	See Key Personnel in Exhibit 5B
Compensation:	
Lump Sum	\$ _____
Schedule:	
Preconstruction Stage Completion Date	(Date)
Substantial Completion Date	(Date)
Final Completion Date	(Date)
Liquidated Damages:	
Failure to Achieve Substantial Completion Date	\$ ____/calendar day
Failure to Achieve Final Completion Date	\$ ____/calendar day

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TABLE OF EXHIBITS

All Exhibits set forth below are incorporated into the Agreement whether attached or included in the Project Repository, which can be accessed via the Brookwood Box website at the following password-protected address: <https://brookwoodgroup.box.com/v/Pacifica-DB-Agreement>

Exhibit 1	Supplemental Conditions	Attached
Exhibit 2	Design Criteria	Attached
Exhibit 2A	Program of Facilities Requirements	
Exhibit 2B	Design Guide Illustrations	
Exhibit 2C	Owner's Minimum Requirements	
Exhibit 3	Scope of Work	Attached
Exhibit 4	Price Proposal - Utilizing Exhibit 4 Price Proposal Form	Attached
Exhibit 5	Personnel	
Exhibit 5A	Staffing Plan	Attached
Exhibit 5B	Key Personnel	Attached
Exhibit 6	Schedule and Site Logistics Plan	
Exhibit 6A	Project Baseline Schedule	Attached
Exhibit 6B	Site Logistics Plan	By Amendment
Exhibit 6C	Rules of the Site	By Amendment
Exhibit 7	Construction Documents	By Amendment
Exhibit 8	Insurance and Bonding	
Exhibit 8A	Design-Builder's Insurance Requirements	Attached
Exhibit 8B	Payment Bond Form	Attached
Exhibit 8C	Performance Bond Form	Attached
Exhibit 9	Design-Builder's Proposal	Attached

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DESIGN-BUILD AGREEMENT

This Design-Build Agreement (“**Agreement**”) is executed as of _____, 2019 (“**Effective Date**”) by and between the “**Owner**” and “**Design-Builder**” for completion of the “**Project**.” The Owner and Design-Builder may collectively be referred to as “**the Parties**.”

Owner:

Pacifica School District
375 Reina Del Mar Avenue
Pacifica, California 94044

Design-Builder:

Project:

Pacifica School District Workforce Housing Project

The Owner and Design-Builder agree as set forth below:

1. GENERAL

1.1 Definitions. All defined terms will be capitalized throughout the Agreement. The definitions for this Agreement appear in alphabetical order in Section 1 of the “**Supplemental Conditions**” to the Agreement and may also be set forth in quotations the first time the term is used for convenience.

1.2 Project Description. The Project involves **Preconstruction Stage Services** for two residential structures to be located at Owner’s property in Pacifica, CA, referred to as “**Phase One**” and “**Phase Two**,” as well as **Construction Stage Services** for Phase One.

1.3 Project Delivery. The Project will be delivered using a design-build delivery method pursuant to California Education Code §§ 17250.10 *et seq.*

2. THE DESIGN-BUILD TEAM AND RELATIONSHIP OF THE PARTIES

2.1 Design-Build Team. The Design-Builder is ultimately responsible to the Owner for completion of the Project. The Design-Build Team includes all team members providing services to the Design-Builder, and is comprised of, at a minimum, the “**General Contractor**,” the “**Design Professionals**” and “**Design-Build Subcontractors**” designated below. All “**Design Services**” will be performed by the Architect of Record and/or other design consultants (collectively, “**Design Professionals**”). The Owner will be a third party beneficiary to all design service agreements and/or design-build subcontracts. The Design-Build Team is currently comprised of the entities identified in **Exhibit 5B**.

2.2 Licensing. Design-Builder must possess a California class “B” General Building Contractor license. Consultants must all possess the appropriate California state design licenses for their particular discipline. Subcontractors must all possess the appropriate California state specialty license for their particular trade. Nothing in this Agreement will require a Design-Build Team member, or any of their respective Consultants or Subcontractors, to perform any portion of the Work outside of their respective licenses or contrary to Applicable Law.

2.3 Good Faith. The Design-Builder will perform all Work under this Agreement in compliance with each of the following requirements: (i) use its best skill and judgment in furthering the interests of the Owner and the Project; (ii) furnish effective and efficient design, construction administration and supervision; (iii) furnish at all times an adequate supply of **"Skilled Labor"** and materials; and (iv) perform the Work in the most expeditious and economical manner consistent with the Design Criteria in **Exhibit 2**, good engineering practices, and the Owner's best interests.

2.4 Standard of Care. The Design-Builder warrants that it possesses the design and construction licenses and expertise required for this Project under Section 2.2 and will use the same degree of care and skill customarily used by California state licensed professionals performing similar services for residential construction projects in the state of California.

2.5 Collaboration. Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under this Agreement. Design-Builder and its Design Professionals, Subcontractors, suppliers, and equipment vendors will perform their respective portions of the Work using collaborative tools and methods. The Design-Build Team will actively participate and collaborate with Owner to achieve best value, optimal design, increased labor efficiency, and elimination of waste and re-work. The Design-Builder will collaborate with Owner to develop the design within the Contract Price, and to ensure that the design satisfies the **"Design Criteria."**

2.6 Communications. All communications from the Design-Builder shall be directed to Owner via the Owner's Representative, Ken Klebanoff, and others as directed by the Owner's Representative.

2.7 Relationship of the Parties. The Design-Builder's relationship with the Owner is that of an independent contractor whose involvement in the Project is to act solely in the capacity of a California licensed design professional and general contractor and not as an agent, fiduciary, partner, member of, subsidiary of, or otherwise affiliated with the Owner.

2.8 Responsibility. Design-Builder acknowledges and agrees that it is solely responsible to Owner for the sufficiency, quality, adequacy and completeness of the Work, and that Design-Builder is responsible for any acts, errors, or omissions of the Design-Builder's principals, employees, agents, and/or any other parties either directly or indirectly in privity of contract with Design-Builder including, but not limited to, the Architect of Record and other Design Professionals, Subcontractors, suppliers, equipment vendors, and their agents and employees, and other persons performing any portion of the Work on behalf of Design-Builder.

2.9 Conflicts of Interest. Design-Builder warrants that it is not aware of any existing conflicts of interest under Applicable Law that would prevent any member of the Design-Build Team from participating in the Project. Design-Builder has an ongoing obligation to monitor and disclose conflicts or potential conflicts of interest. If an organizational conflict of interest is discovered, the Design-Builder must make an immediate and full written disclosure to the Owner that includes a description of the action that the Design-Builder has taken or proposes to take to avoid or mitigate the conflict. If the contract is terminated due to a conflict of interest that existed at the time of the award, the Owner has no obligation, responsibility or liability to reimburse all or part of the costs incurred or alleged to have been incurred by the Design-Builder.

3. CONTRACT DOCUMENTS

3.1 Contract Documents. The “**Contract Documents**” consist of this Agreement, the Supplemental Conditions, and all other Exhibits attached to this Agreement, all subsequent modifications through amendments and change orders executed by Owner and Design-Builder, and the Construction Documents to be developed by the Design-Builder.

3.2 Interpretation and Intent. The intent of the Contract Documents is to include all items necessary for proper completion of all Work within the “**Contract Time**” and within the “**Contract Price**.” The Contract Documents are intended to be complementary and what is required by any one of them is as binding as if called for by all of them.

3.3 Order of Precedence. In the event of inconsistencies between requirements contained in different components of the Contract Documents, the content of each document listed below prevails over any inconsistent content in any document listed below it:

3.3.1 Amendments of the Design-Build Agreement;

3.3.2 Change Orders approved by Owner;

3.3.3 The Design-Build Agreement executed between Owner and Design-Builder not including Exhibits;

3.3.4 Project Baseline Schedule, as approved by Owner and updated pursuant to Section 8.2 of this Agreement.

3.3.5 The Scope of Work set forth in **Exhibit 3** to the Agreement;

3.3.6 Design-Builder Insurance Requirements included in **Exhibit 8B** to the Agreement;

3.3.7 Performance and Payment Bonds included in **Exhibits 8C** and **8D** to the Agreement;

3.3.8 The Supplemental Conditions included in **Exhibit 1** to the Agreement;

3.3.9 The Design Criteria included as **Exhibit 2**;

3.3.10 Construction Documents developed by Design-Builder;

3.3.11 All other Exhibits to the Design-Build Agreement and all other Contract Documents not listed above.

3.3.12 Proposal submitted by Design-Builder;

4. OWNER’S OBLIGATIONS

4.1 Information and Documents. The Owner may make various Background Documents related to the Project available to the Design-Builder, including but not limited to any surveys and other information that describe the Project Site as well as schedule requirements, budget constraints and other criteria, and procurement schedules. Any Background Documents provided are for information only and will not be included as part of the Contract Documents.

4.2 Design Criteria. The “Design Criteria,” consisting of the Program of Facilities Requirements, Design Guide Illustrations, Owner’s Minimum Requirements, Preliminary Project Schedule, and Preliminary Project Budget, all included in Exhibit 2 to this Agreement, were developed by the Owner to provide an understanding of the baseline design requirements for the Project. The Design Criteria, along with other information provided during the RFP and proposal process, provides a basis for the Contract Price, initial Project Baseline Schedule, and initial design work. The Design-Builder must conduct all Work in accordance with the Design Criteria.

4.3 Ownership of Facilities. The Owner will own the Facilities, and control easements on which certain Facilities are to be built. Owner will provide Design-Builder with access to the Work site and easements for the purpose of fulfilling its obligations under this Agreement.

4.4 Governmental Approvals. The Owner will not be responsible for obtaining any permits or approvals for the Project.

4.5 Owner’s Representative. Owner’s interests on the Project will be represented by the Owner’s Representative (“OR”), Ken Klebanoff. The OR is authorized to act on the Owner’s behalf with respect to the daily operations of the Project, or may delegate authority to another representative. For simplicity, where this Agreement refers to the Owner, Design-Builder may assume that the OR is the appropriate point of contact. Where necessary, the OR will elevate issues to the District Board or to appropriate executives.

4.6 Stop Payment Notice. The Owner will comply with all stop payment notices submitted in compliance with applicable laws.

4.7 Separate Contracts. The Owner reserves the right to perform construction, maintenance, and operations related to the Project with the Owner’s own forces, and to award contracts in connection with the Project that are not part of the Design-Builder’s responsibilities under this Agreement. The Design-Builder will coordinate its Work with Owner to allow for any other separate contracts to be performed, and to minimize interference. Design-Builder shall perform all Work in such a manner as to avoid any material interruption of Owner’s existing operations, including, without limitation, use of the athletic fields. When performing construction, maintenance, or operations related to the Project, the Owner agrees that its separate contractors will be subject to the same obligations as the Design-Builder with respect to insurance, indemnification, safety, protection, inspections and non-conforming work. The Owner will remain responsible to the Design-Builder for any delays to the Contract Time or cost impacts resulting from work performed by its separate contractors. Any cost and/or time impacts will be addressed through the Change Order process set forth in Section 9.

4.8 Timeliness. In order to avoid any impacts to the Contract Time, information or services under the Owner’s control, including reviews and approvals, will be furnished within the timeframes set forth in the Contract Documents.

4.9 Owner Direct Payments. In case of a material breach by the Design-Builder, the Owner hereby retains the right to make direct payment to Subcontractors and Design Professionals, less retention, and to deduct the amounts from future payment requests from Design-Builder. Owner shall give Design-Builder notice and a reasonable opportunity to cure the material breach before exercising any rights described in this Section 4.9.

5. DESIGN-BUILDER'S OBLIGATIONS

5.1 Design-Build Services. Design-Builder will provide Preconstruction Stage Services and Construction Stage Services in compliance with the Contract Documents. This Section will set forth the Design-Builder's general obligations under the Agreement, which are described in further detail in the Scope of Work included in **Exhibit 3**.

5.2 Preconstruction Stage Services. Design-Builder will provide the following services with respect to Phase One and Phase Two.

5.2.1 Governmental Approval Services. The Design-Builder will be responsible for obtaining all permits, licenses, and approvals for Phase One and Phase Two, unless otherwise specified in this Section 5.2.1.

5.2.1.1 Required Project Approvals. The permits, licenses, and approvals for which the Design-Builder is responsible include, but are not limited to, the following:

(i) **Environmental Permits and Approvals.** Design-Builder is responsible for obtaining all environmental permits and approvals, including, without limitation, approvals under the California Environmental Quality Act, and Clean Water Act. Design-Builder must, as it determines necessary, review project information and history, perform detailed alternatives analyses, review existing site conditions, including traffic operations, conduct environmental review and public outreach, prepare reports, give presentations to public agency governing bodies, and participate in project meetings.

(ii) **Entitlements.** Design-Builder is responsible for obtaining all planning and zoning approvals, including, without limitation, plan amendments, zoning amendments, subdivision maps, use permits, variances, development agreements, and encroachment permits. Design-Builder must, as it determines necessary, review project information and history, conduct public outreach, prepare reports, give presentations to public agency governing bodies, and participate in project meetings.

(iii) **Other Permits, Licenses, and Approvals.** Design-Builder is responsible for obtaining all permits, licenses, and approvals necessary for the completion of the Construction Stage Services, including, without limitation, tree removal permits, traffic permits, hauling permits, demolition permits, noise permits. Unless Owner agrees otherwise, all permits, licenses, and approvals that are unrelated to environmental review or entitlements, must be obtained prior to commencement of the Construction Stage.

5.2.1.2 Review of Approvals. Owner reserves the right to review and approve any submittals and final terms and conditions of permits, licenses, and approvals obtained pursuant to this Section 5.2.1, and to deal directly with any agencies responsible for the approvals. Design-Builder will be entitled to an extension of time to the extent that a delay is caused by Owner's unreasonable delay in reviewing and/or approving such approvals.

5.2.1.3 Assist Owner in Obtaining Approvals. The Design-Builder may also be required to assist the Owner in obtaining permits and approvals that are the Owner's responsibility (if any), including the preparation of permits application materials, coordination with the regulatory agencies, and other required assistance.

5.2.2 Financing Services. Design-Builder is responsible for assisting Owner to assemble financing. These services include, without limitation, financial modeling for both Phase One and Phase Two, as well as assistance with loan closing, and administering financial arrangements for Phase One.

5.2.3 Design Services. Design-Builder will work collaboratively with Owner to validate existing design concepts, propose alternatives, gather additional information, develop cost models, evaluate design and construction phasing alternatives and potential early work packages, and submit a **"Preliminary Design"** for Phase One and Phase Two, all as described in more detail in the Scope of Work detailed in **Exhibit 3**.

5.2.3.1 Conduct of Design Services. The Design-Builder will, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Professionals, the necessary Design Services, in accordance with the standard of care described in Section 2.4, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications, design submittals and Construction Documents to permit Design-Builder to complete the Work consistent with the Design Criteria and all requirements in the Contract Documents.

5.2.3.2 Design Submissions. Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include drawings, diagrams and specifications setting forth the Project requirements, or proposed amendments to the Design Criteria. Interim design submissions shall be consistent with the Design Criteria. Requirements for Design Submissions are set forth in more detail in the Scope of Work included in Exhibit 3.

5.2.3.3 Construction Documents. Design-Builder shall submit to Owner Construction Documents reflecting the Preliminary Design and setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the Design Criteria, as well as approved interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meetings minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the requirements set forth in the Scope of Work in Exhibit 3.

5.2.3.4 Demolition Plans. Design Builder must submit to Owner Demolition Plans for all demolition necessary to complete the Work, as further described in Section 9 of the Supplemental Conditions.

5.3 Negotiation of Construction Stage Amendment. Prior to commencing any work on the Construction Stage of the Project, the Design-Builder will submit a proposed Construction Stage Amendment to Owner that, if accepted by Owner, would govern the Construction Stage work. The Construction Stage Amendment shall be comprised of the following documents: 1) any requested Construction Stage Price adjustments pursuant to Section 7.2; 2) the Preliminary Design; 3) a Construction Stage project schedule; 4) "open book" cost model detailing Design Builder's labor, materials, equipment, subcontractor, overhead, and profit. The cost model shall include all material and subcontractor price quote documentation, and Design-Builder agrees to supplement this information on request, all of which may be reviewed by independent cost estimator's on Owner's behalf; and 5) all documents required as

part of the Project Manual for Construction Stage Work, including a number of forms and plans (Site Logistics Plan, Rules of the Site, Safety Plan, Traffic Control Plan, Quality Control Plan, various mitigation plans) to be identified by Owner and developed by Design-Builder during the course of the Preconstruction Stage.

5.3.1 Owner shall review the information submitted in order to determine if the Construction Stage Amendment provides Owner with the best value for completing the Construction Stage of the Project. If Owner finds the Construction Stage Amendment to be acceptable, Owner will authorize the execution of a Construction Stage Amendment to the Agreement and issue a Notice to Proceed with the Construction Stage services. Owner reserves the right to take any of the following actions in response to the proposed Construction Stage Amendment submitted by Design-Builder:

5.3.1.1 Negotiate revisions to any of the documents submitted, including the total Construction Stage Price, specific components of the Construction Stage Price, revisions to the Design Criteria, revisions to the Preliminary Design, or revisions to the Project Baseline Schedule

5.3.1.2 Reject the proposed Construction Stage Amendment, and require the Design-Builder to complete the design to 100% under a new contract for design only utilizing industry standard rates, which will be used for an award to a separate contractor for construction of Phase One. Owner agrees to terminate the Agreement with Design-Builder for convenience in accordance with Article 16.3 concurrent with the execution of the separate contract for design

5.3.1.3 Reject the proposed Construction Stage Amendment and require Design-Builder's Architect of Record to contract with Owner directly to complete the design to 100% under a new contract for design only at industry standard rates, which will be used for an award to a separate contractor for construction of the Project. Owner agrees to terminate the Agreement with Design-Builder for convenience in accordance with Article 16.3 concurrent with the execution of the separate contract for design.

5.3.1.4 Reject the proposed Construction Stage Amendment, terminate the Agreement with Design-Builder for convenience in accordance with Article 16.3, and take possession of all design documents and related work product developed by Design-Builder. Under this option, the Owner will grant Design-Builder a release and hold harmless for any design errors or omissions contained in any unfinished design work or unfinished work product.

5.4 Construction Stage Services. Design-Builder will provide all Construction Stage Services required for Phase One only. Design-Builder will provide all labor, materials, equipment, tools and appurtenances necessary to complete the construction work described in, or reasonably inferable from, the Contract Documents. Design-Builder's construction services will also include each of the responsibilities summarized below.

5.4.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete the Construction Stage Services consistent with the Contract Documents.

5.4.2 Design-Builder is responsible for demolition of all existing structures and improvements necessary to facilitate construction of the Phase One.

5.4.3 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

5.4.4 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor within 14 days.

5.4.5 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

5.4.6 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

5.4.7 Design-Builder shall meet all environmental and permit mitigation requirements set forth in these Contract Documents, including, without limitation, remediation of all hazardous materials, including preexisting hazardous materials, at the Project Site.

5.4.8 Design-Builder must promptly remove from the site, or from property adjacent to the site of the Work, all unused and rejected materials, surplus earth, concrete, plaster, and construction waste, including waste from demolition of existing structures and improvements, to permit Design-Builder to perform its Construction Stage Services efficiently, safely and without interfering with the use of adjacent property. In particular the Design-Builder shall keep the site clean to maintain safe access and to avoid fire hazard. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction waste, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy Phase One or any portion of Phase One for its intended use. Upon Substantial Completion of the Work, Design-Builder shall return the premises to its pre-existing condition or better, based on a preconstruction survey to be performed by Design-Builder.

5.4.9 Design-Builder must obtain all remaining government approvals delayed until the Construction Stage pursuant to Section 5.2.1.1(iii).

5.5 Site Investigations. By executing this Agreement, the Design-Builder represents that it has visited the Project premises, and is familiar with the local conditions under which the Work is to be performed.

5.6 Test and Inspections. The Design-Builder will pay for all testing and inspection including the special inspections, structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and

reports required by law or the Contract Documents. Owner reserves the right to conduct its own additional tests at Owner's expense, and Design-Builder shall allow access to all Work and Project documents for such additional tests.

5.7 Coordination with Owner and Owner's Separate Contractors. The Design-Builder will coordinate its Work with any of Owner's employees or contractors performing work in the vicinity of the Project Site.

5.8 Sole Responsibility. The Design-Builder acknowledges and agrees that it is solely responsible to the Owner for the sufficiency, quality, adequacy and completeness of all services performed by the Design-Builder, including, without limitation, environmental review documents, design work (whether during the Preconstruction Stage or Construction Stage), and construction services. Design-Builder is responsible for any acts, errors, or omissions of the Design-Builder, its Design Professionals, its Subcontractors, employees, agents, and/or any other parties either directly or indirectly in privity of contract with Design-Builder including, but not limited to, the "Design-Build Team" identified in Section 2.1, second tier-subcontractors, and vendors who are performing any portion of the Work. The Design-Builder's design must meet the minimum design requirements as defined by the Design Criteria, and all other design requirements included in the agreement. The Owner will review the design at specific design development milestones for consistency and compliance with such design requirements.

5.9 Applicable Laws.

5.9.1 Statutory Authority. The Owner is awarding this Project pursuant to the design-build authority provided under California Public Contract Code Sections 22160-22169. The Design-Builder and the Owner acknowledge that they have reviewed this statutory authority, are familiar with all requirements, and will comply with applicable requirements and duties.

5.9.2 Compliance with All Applicable Laws. The Design-Builder and the Owner agree to comply with all Federal, State, Municipal and local laws, ordinances, rules, regulations, building codes and standards, orders, notices and requirements applicable to proper design and construction of this Project.

5.10 Staffing Plan and Key Personnel. The Design-Builder agrees that it will staff this Project in accordance with the staffing plan included in **Exhibit 5A**. The Staffing Plan will include a staff-level organizational chart indicating hierarchy and reporting responsibilities, as well as all Key Personnel.

5.10.1 Key Personnel. The Design-Builder will identify all "**Key Personnel**" in **Exhibit 5B** and will not remove any of its Key Personnel from this Project without the express written consent of the Owner, except for death, disability or departure of person from employment. The Owner's Representative will be able to request the removal of any person employed by the Design-Builder whom it believes is incompetent, improper or a hindrance to the design-build process. If any Design-Builder personnel become unavailable to work on the Project, or if the Owner requests that an employee be removed, the Design-Builder will propose a replacement person within 10 business days for approval by the Owner. The recommended replacement person will have similar or better qualifications and experience, and must be approved in writing by the Owner.

Additional Staffing and Key Personnel requirements are set forth in the Scope of Work in **Exhibit 3**.

5.11 Safety. The Design-Builder is the “Controlling Employer” as defined by Cal/OSHA and will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work and in accordance with the Design-Builder’s Health and Safety Program. The Design-Builder shall comply with all statutory safety requirements.

5.12 Project Baseline Schedule. The initial Project Baseline Schedule, is attached as **Exhibit 6A**. This initial Project Baseline Schedule will be regularly updated in conjunction with Section 8.2 of this Agreement (at least monthly) and refined as project development and design proceeds. The updates to the initial Project Baseline Schedule will coordinate and integrate the progress of Design Services with milestone dates for design development and Construction Documents, procurement of long lead items and Subcontracts, and construction of major components of the Project. The initial Project Baseline Schedule, and all subsequent versions, shall include all major components of the Work and the Owner’s occupancy requirements projecting milestones for each of the following:

- Approval of environmental review documents
- Approval of entitlements, including all necessary subdivision maps, zoning amendments, plan amendments, use permits, and design review
- Completion of project funding, including financial modeling and loan closings
- Proposed phasing of individual work packages
- Completion of Schematic Design
- Completion of Design Development
- Completion of 100% Construction Documents
- Execution of Construction Stage Agreement
- Demolition of existing facilities, including remediation of any hazardous materials therein
- Start of Construction
- “Substantial Completion” of the Project including Issuance of Final Certificate of Occupancy for Phase One
- “Final Completion” of the Project

The Project Baseline Schedule must be prepared utilizing CPM scheduling software. The schedule must be broken down by activity and duration highlighting the critical path.

The schedule submitted by the Design-Builder and agreed to by the Owner shall be referred to as the Project Baseline Schedule, and shall not be adjusted except through Change Order under Section 9 for permitted delays as defined in Section 8. The Project owns all float in the Project Baseline Schedule and monthly updates. Therefore, there will not be any adjustments to the Contract Time until all Project float is exhausted and the critical path is impacted.

5.13 Taxes and Fees. The Design-Builder will pay all sales, consumer, use, gross receipts, and other similar taxes legally enacted at the time of commencement of the Work.

5.14 Consultants and Laboratories. The Design-Builder will make recommendations to the Owner regarding selecting, retaining and coordinating any additional professional services, special consultants and testing laboratories required for the Project.

5.15 Construction Administration.

5.15.1 Preliminary Notices. Within 5 business day's receipt, Design-Builder will forward to the Owner all 20-Day Preliminary Notices (Civil Code sections 9300, 9500 and 9560) served on it by any person or entity entitled to assert a payment bond or stop payment notice claim. Design-Builder will maintain a written record of all 20-Day Preliminary Notices received by it including the manner of receipt, date of receipt, and name and address of person or entity serving the 20-Day Preliminary Notice. This written record will be turned over to the Owner at Project Close-out.

5.15.2 Supervision. The Design-Builder will manage, supervise and direct the Work using its best skill and judgment. The Design-Builder shall identify the ("**Design-Builder's Manager**") who will represent the Design-Builder with respect to the daily operations of the Project, or may delegate authority to another representative. For simplicity, where this Agreement refers to the Design-Builder, Owner may assume that the Design-Builder's Manager is the appropriate point of contact. The Design-Builder's Manager may not be changed without Owner's written consent. The Design-Builder will also provide a qualified superintendent at the Project Site to properly supervise all of Design-Builder's employees, Subcontractors and their agents and employees, and other persons performing construction work and to ensure that the construction work is carried out in strict accordance with the Contract Documents

5.15.3 Discipline. The Design-Builder will enforce strict discipline and good order at all times among Design-Builder's employees, Design Professionals and Subcontractors and will not employ or contract with any unfit or unskilled person(s) or entities on this Project. The Design-Builder and its Design-Professionals and Subcontractors will comply with all Owner policies, standards, and procedures throughout the duration of this Project.

5.15.4 Construction Coordination. Before starting each portion of the construction work, the Design-Builder will: (i) coordinate with Owner's Project Manager, or his designee, to coordinate any necessary shut-down of equipment, and related operations issues; (ii) review and compare the various Contract Documents relative to that portion of the construction work, as well as the information furnished by the Owner, Design Professionals and Subcontractors that may affect proper installation of the work; (iii) field measure existing conditions related to that portion of the work; and (iv) observe any conditions at the site directly affecting that portion of the work.

5.15.5 Field Measurements. The Design-BUILDER will take field measurements to ensure proper matching and fitting of new construction with existing conditions at the Project Site.

5.15.6 Submittals. The Design-BUILDER and its Subcontractors shall provide timely submittal of all “**Shop Drawings,**” “**Product Data,**” “**Samples**” and similar submittals (collectively referred to as “**Submittals**”) required by the Contract Documents, to the Architect of Record for review and approval. After approval by the Architect of Record, all Submittals will also be provided to the Owner for Owner’s information. All Submittals will be submitted in a sequence that avoids delays in the Project Schedule. Design-BUILDER will not submit any Submittal that is merely a tracing or copy of any of the Construction Documents. Each Submittal will be prepared by the Design-BUILDER and/or its Subcontractors or suppliers and will be submitted according to the Project specifications. No construction work will be performed without approval by the Design-BUILDER, as required. Regardless of the Submittal process, the Design-BUILDER remains responsible to the Owner for proper design and construction in compliance with all requirements set forth in this Agreement.

5.15.6.1 Response Times to Design-BUILDER Submittals. Unless otherwise provided in the Contract Documents, Owner shall respond to reviews, approvals, and data needs to Design-BUILDER within 21 calendar days.

5.15.6.2 Design-Build Subcontractors. All Submittals prepared by Design-BUILDER and its Subcontractors shall be reviewed and approved by the Design-BUILDER’s Architect of Record who will remain responsible to the Design-BUILDER and Owner for the design.

5.15.7 Coordination of MEP. Mechanical, electrical, plumbing, fire protection and fire and life safety work will be coordinated, as appropriate, to avoid obstructions, conflicts, keep openings and other passageways clear, overcome interference with structural, framing, and equipment conditions, and coordinate with other trades.

5.15.8 Layout and Protection. The Design-BUILDER is responsible for all layouts and will preserve and protect all line and grade benchmarks. Any additional surveying or layout caused as a result of Design-BUILDER or any of its Subcontractor’s failure to take the necessary precautions to protect the data will be performed at Design-BUILDER’s own cost and expense.

5.15.9 Materials and Equipment. All materials and equipment required under the Contract Documents will be new and of good quality. Once the Construction Documents are approved by Owner, no substitutions will be accepted on this Project unless: (i) the specified materials or equipment have been discontinued; or (ii) the Owner has approved the substitution through written Change Order. Materials and equipment will be furnished in ample quantities and procured in time to ensure uninterrupted progress of construction. All materials and equipment will be properly stored and protected as required by the Contract Documents and any loss or damage due to improper storage or protection will be borne by the Design-BUILDER.

5.15.9.1 Long Lead Items. The Design-BUILDER will collaborate with Owner to establish a program to expedite ordering and delivery of materials and equipment requiring long lead time.

5.15.9.2 Shipment and Deliveries. Prior to shipment, delivery and installation of materials and equipment, the Design-BUILDER will verify the stage of completion of the Project with Owner to determine the availability of facilities for access, delivery,

transportation and storage, and to correlate these observations with the requirements of the Contract Documents. All shipments and deliveries will be scheduled and coordinated in accordance with the most current approved Site Logistics Plan and the most current approved Project Schedule.

5.15.9.3 Storage of Materials and Equipment. Storage of equipment and materials will be coordinated through the Design-Builder and the Owner. Design-Builder will maintain, or cause its Subcontractor's to maintain, all storage areas and will keep storage areas clean, safe, and secure. Storage areas shall also provide for proper protection of all stored materials and equipment from all forms of corrosion. Any materials or equipment stored offsite will be insured or stored in a bonded warehouse unless Design-Builder and Owner agree that materials and equipment can be safely stored on-site. The risk of loss will remain on the Design-Builder for all materials and equipment stored off-site.

5.15.9.4 Risk of Loss. All construction work stored at the Project Site, or work related to the preparation or delivery of materials or equipment to the Project Site, is performed exclusively at the risk of the Design-Builder and will remain at the risk of the Design-Builder until Final Completion of the Project.

5.15.9.5 Maintenance. The Design-Builder will provide all maintenance for systems and equipment at its own costs and expense until Substantial Completion.

6. SUBCONTRACTORS

6.1 Procurement. Those portions of the Work that the Design-Builder will not self-perform, or that will not be performed by Design Professionals or Subcontractors named in Design-Builder's proposal, will be performed by Subcontractors added during the course of the Work in accordance with the bidding process in Section 5.15 and Public Contract Code Sections 22166 and 4100, et seq. All subcontracted work shall be performed under written subcontracts or purchase orders.

6.2 Written Agreements. All subcontracts will be in writing and will bind the Subcontractor to the Design-Builder by the terms of the Contract Documents, and Subcontractor will assume toward the Design-Builder all the obligations and responsibilities that the Design-Builder assumes toward the Owner. Each subcontract agreement will preserve and protect the rights of the Owner and Design-Builder under the Contract Documents with respect to the portion of the Work to be performed by the Subcontractor so that subcontracting the Work does not prejudice the Owner's rights. Where appropriate, the Design-Builder will require Subcontractors to enter into similar agreements with its tier-subcontractors. The Supplemental Conditions to this Agreement and all necessary Exhibits to this Agreement will be a part of each Subcontract Agreement.

6.3 Licensing Requirements. All Subcontractors will be properly licensed for their respective portion of the Work.

6.4 Standard of Care. All Subcontractors will warrant that they possesses the design and/or construction licenses and expertise required for this Project and will use the same degree of care and skill customarily used by California state licensed professionals and contractors performing similar services for residential facilities construction in the state of California during the same time frame.

6.5 Conflicting Terms. All conflicts arising out of any subcontract agreement will be resolved in accordance with the order of precedence set forth in Section 3.3, and this Agreement will take precedence over any terms and provisions in a subcontract.

6.6 Assignment. Each subcontract agreement will include an assignment provision. The assignment provision will allow for assignment of subcontracts to the Owner upon termination of the Design-Builder for cause or convenience provided: (i) Owner accepts assignment by written notification to the Subcontractor and Design-Builder; and (ii) assignment is subject to the rights of the surety, if any, obligated under a bond or bonds relating to this Agreement. The Design-Builder will not be responsible for acts and omissions of the Subcontractors that occur after the effective date of assignment.

6.7 Claims and Dispute Resolution. The Subcontractor will be bound to the same claims and dispute resolution procedures as set forth in Section 15.11 of the Supplemental Conditions.

6.8 Insurance. The Design-Builder may, at its discretion, require its Subcontractors, through written subcontract, to carry appropriate insurance and bonding. Design-Builder's insurance must satisfy all requirements set forth in **Exhibit 8B** regardless of any subcontractor coverage.

6.9 Indemnity. The Design-Builder will cause its Subcontractors, through written subcontract, to include the indemnification provisions set forth in Section 11 and to indemnify and defend the Owner and its board of trustees, the Owner, and Design-Builder from all claims, damages and liability pursuant to the provisions in Section 11.

6.9.1 Third Party Beneficiary. The Owner will be an express third party beneficiary to all design-build subcontracts.

6.9.2 Subcontracts. Subcontracts may be awarded on a lump sum or best value basis.

6.9.3 Contract Time. Subcontractors will be tied to similar provisions governing Contract Time under Section 8.

7. COMPENSATION

7.1 Preconstruction Stage Compensation. During the Preconstruction Stage of the Project, the Design-Builder will complete all Preconstruction Stage Services summarized in Section 5.2 of this Agreement and elaborated in more detail in the Scope of Work in **Exhibit 3**. Compensation for all Preconstruction Stage Services, including labor, materials, overhead, and profit of Design-Builder and all of its Design Professionals, and design-assist Subcontractors, will be on the basis of a lump-sum amount of [REDACTED] Dollars and [REDACTED] Cents (\$[REDACTED]). Design-Builder will be paid pursuant to monthly invoices based on percentage of completion of Preconstruction Stage Work.

7.2 Construction Stage Compensation. During the Construction Stage of the Project, the Design-Builder will perform all Construction Stage Services, as summarized in Section 5.4 of this Agreement. Compensation for the Construction Stage Services will be on the basis of a lump sum of \$[REDACTED], which will cover all labor, equipment, materials, profit,

overhead, taxes and any other expenses to be incurred by the Design-Builder. Design-Builder will be paid pursuant to monthly invoices based on percentage of completion of the Work.

7.2.1 During Construction Stage Amendment negotiations, either party may request adjustments to the Contract Price that are triggered by certain specified events. Design-Builder will provide all backup and supporting documentation reasonably requested by the Owner to support the lump sum and any requested adjustments.

7.2.2 Increases to the Construction Stage Price will only be permissible for the following reasons: a) approved change orders as described in Section 9, including Owner initiated change orders to accommodate modifications arising during Planning Commission review; or b) unforeseeable escalation of material costs in excess of 25 percent, as demonstrated to the District's reasonable satisfaction.

7.2.3 Design-Builder may propose changes to the design of the Project to reduce the cost of the Project below the Construction Stage Price agreed upon in the Construction Stage Amendment. If these changes are accepted by Owner, and if the Design-Builder is able to deliver the Project for less than the price agreed upon in the Construction Stage Amendment, the District will share those savings 50/50 with the Design-Builder.

7.3 Construction Contingency. The Construction Stage Price includes a Construction Contingency that will not exceed [REDACTED] of the Construction Stage Price. The Construction Contingency will be available for Design-Builder to cover any cost of the Work unanticipated by Design-Builder on the effective date of the Design-Build Agreement, such as faulty installation, unanticipated field conditions that do not constitute a differing site condition, re-sequencing the Work for the good of the Project, costs related to evolution of the design from 60%-100%, and design errors and omissions. Use of the Construction Contingency requires Owner's approval, not to be unreasonably withheld. Owner will not require Design-Builder to use the Construction Contingency to pay for Change Order work. All unspent funds in the Contingency at Final Completion shall accrue to Owner.

7.4 Design-Builder's Fee. The Design-Builder's Fee is [REDACTED]%, and is included in the Contract Price. However, the Design-Builder's Fee will be applied to the direct cost of the construction in the event of contingency work, change orders, and price adjustments to adjust the Construction Stage Price, unless the Parties agree upon an alternative method of compensation.

7.5 Design-Builder Allowances. The Design-Builder may propose including appropriate allowances for defined items of Work that cannot be appropriately quantified and estimated at the time the Design-Build Agreement is executed, only with specific approval of Owner. Each such item of Work will be covered in a separate line item and have a clear description of what is covered by such allowance. Allowance items will be converted to, and included as, typical contract work by Change Order once conditions exist that allow them to be properly quantified and priced. Allowance items that cannot reasonably be quantified and estimated before the allowance work begins will be reconciled based on the actual cost of the allowance Work. If the actual cost of the Work for any item of Work covered by an allowance will be greater than the amount of the allowance, Design-Builder will so notify Owner and if Owner authorizes the allowance Work in a Change Order, the Construction Stage Price will be increased by such difference with an additional agreed upon amount for overhead and profit. If the cost of any item to which such an allowance applies is less than the amount of the

allowance, Owner may issue a Change Order decreasing the Construction Stage Price by the sum of the amount of such difference and the mark-up for overhead and profit on the difference.

8. CONTRACT TIME

8.1 Contract Time. The Design-Builder must achieve Final Completion of the Work using best practical safe speed to achieve Final Completion as soon as reasonably possible. The Contract Time is the time allotted for the Design-Builder to achieve Substantial Completion and Final Completion of the Work. Completion of the Preconstruction Stage must be achieved _____ calendar days from issuance of the Notice to Proceed for the Preconstruction Services. Substantial Completion must be achieved _____ calendar days from issuance of the Notice to Proceed for the Construction Stage Services. Final Completion must be achieved within _____ calendar days of achieving Substantial Completion. The Design-Builder must also achieve all specific milestone completion dates as set forth in the Project Baseline Schedule in **Exhibit 6A**.

8.2 Monthly Project Schedules. The Design-Builder will create monthly updates of the initial Project Baseline Schedule, referred to as “Monthly Project Schedules,” incorporating activities and schedule updates of the Design Professionals and Subcontractors on the Project as necessary to reflect the status of design and construction and projected milestone dates for Substantial Completion and Final Completion. The Design-Builder will provide information in an agreed upon format, and as requested by the Owner, for the scheduling of times and sequences of operations required for its Work in coordination with the work of Owner’s employees and separate contractors, if any.

8.2.1 3 Week Look-Ahead Schedules. The Owner will require the Design-Builder, with the assistance of its Design Professionals and Subcontractors, to create 3 Week Look-Ahead Schedules for the performance of upcoming Work and document all Work performed during the prior 3 week period. The Design-Builder will require its Subcontractors and Design Professionals to continuously monitor the Monthly Project Schedule and 3 Week Look-Ahead schedules to understand the timing, phasing and sequencing of operations of their respective work with other Work being performed at the Project. The 3 Week Look-Ahead Schedules are to be used as a working tool to evaluate any schedule slippages and collaborate on methods for labor efficiency. Work flow will be scheduled based on providing information, material and resources as required by the user of the information, material or resources, optimizing the flow of Work and reducing bottlenecks and activity that will not advance the Project Schedule. The Design-Builder will provide Owner with copies of the 3 Week Look-Ahead Schedules and will meet with Owner to review and coordinate with any work being performed by Owner’s separate contractors. Design-Builder shall request input from Owner on 3 Week Look-Ahead Schedules, as necessary, no less than one week before the 3 Week Look-Ahead Schedule submission date.

8.3 Prosecution of the Work. The Design-Builder will commence the Work when notified to do so by the Owner and will diligently prosecute and complete its Work pursuant to the most current Monthly Project Schedule.

8.3.1 Schedule Slippage. The Design-Builder will notify Owner and the Owner within 48 hours of any slippage in the Monthly Project Schedule as a result of its Work and must submit a detailed recovery plan for evaluation and approval by Owner and the Owner. All costs associated with the recovery will be the responsibility of the Design-Builder unless the Design-Builder is entitled to an extension of time under Section 8.4.

8.3.2 Acceleration. The Owner, may direct the Design-Builder and its Subcontractors and Design Professionals to work overtime. If the Design-Builder and its Subcontractors and Design Professionals are not in default under any of the terms or provisions of this Agreement, their respective subcontracts and/or agreements, or any of the other Contract Documents, the Owner will pay the Design-Builder, its Subcontractors and Design Professionals for actual additional wages and/or billable rates paid, if any. All additional wages and billable rates paid will be subject to audit.

8.4 Permitted Delays. If the Design-Builder is delayed, obstructed, hindered or interfered with in the commencement, prosecution or completion of the Work by: (i) any negligent act or omission of the Owner, or Owner's separate contractors; (ii) **"Owner Elected Changes;"** (iii) delay caused by a **"Force Majeure Event;"** (iv) **"Unforeseen and Differing Site Conditions;"** and/or (v) **"Owner's Suspension of the Work,"** such that the critical path of the most current, approved Project Baseline Schedule is impacted extending the Final Completion Date, the Substantial Completion Date, or any specific milestone completion dates, then the Design-Builder will be entitled to an extension for the same period of time that the Design-Builder was delayed provided that the delay, obstruction, interference or hindrance was not caused, in whole or in part by any fault, neglect, act or omission of the Design-Builder, its employees, Design Professionals, Subcontractors or suppliers.

Notwithstanding the above, the Design-Builder will not be entitled to an extension of time unless the Design-Builder provides the Owner with notice in writing of potential delay, obstruction, hindrance or interference within 72 hours of the discovery of the potential delay. Design-Builder shall follow up with all practical speed, but not later than 7 days after the initial notice, to summarize the cause or causes of the delay, and demonstrates that it could not have anticipated or avoided the delay, obstruction, hindrance or interference and has used all available means to minimize the consequences of the delay. The Design-Builder may also be entitled to an adjustment in the Contract Price based on demonstration that the delay, after implementation of all reasonable mitigation, materially adversely affected Design-Builder's cost of completing the Work.

8.5 Liquidated Damages. The Owner and Design-Builder acknowledge and agree that if Design-Builder fails to complete Work within the time set forth in section 8.1, the Owner will suffer damages that are both extremely difficult and impracticable to ascertain. Therefore, Owner and Design-Builder agree that, liquidated damages shall be enforced on failure to achieve Substantial Completion in the amount of \$3,000 per day, and failure to achieve Final Completion in the amount of \$1,000 per day.

Payment of liquidated damages represents a reasonable estimate of fair compensation for the losses that reasonably may be anticipated as a result of Design-Builder's delays in completing the Work. Owner and Design-Builder acknowledge and agree that this liquidated damages provision will be Owner's sole remedy for delay damages caused by Design-Builder's failure to achieve Substantial Completion or Final Completion, within the time set forth in Section 8.1, and/or any of the specific milestone completion dates. Nothing contained in this Section will preclude the Owner from recovery for actual damages unrelated to Design-Builder's delays, including but not limited to, claims for actual losses incurred due to breach of contract, negligence, defective work, injury to persons or property or third party claims, and consequential damages not otherwise waived under this Agreement.

9. CHANGES

9.1 Change Orders. A Change Order is a mutually agreed written order adjusting the Design-Builder's Contract Price, Contract Time or both. A Change Order may come through an Owner Elected Change, or Design-Builder's request. All changes in the Work will only be authorized by an Owner Elected Change, or Owner executed Change Order and performed under the applicable conditions of the Contract Documents. A Change Order signed by the Design-Builder and Owner indicates an agreement to any adjustment in the Contract Time, and/or Contract Price, which includes all Costs of Work plus Fee, and that the adjustments in the Change Order fully and completely resolves any claim by Design-Builder for additional compensation or time arising from or related to the subject of the Change Order. Change Orders for additional Work that was not considered as part of the Contract Price are limited to the following circumstances and, therefore may impact the Contract Price, and may or may not impact Contract Time:

9.1.1 Owner Elected Changes;

9.1.2 Force Majeure Events;

9.1.3 Unforeseen and Differing Site Conditions;

9.1.4 Owner's Suspension of the Work as defined in Section 16.2;

9.1.5 Changes in applicable law;

9.2 Owner Elected Change. The Owner will initiate a Change Order by providing the Design-Builder with a written summary of the Owner Elected Change. Within 10 business days of receipt of an Owner Elected Change, or such other mutually-agreed upon period for more complex or extensive Owner Elected Changes, the Design-Builder must submit a complete cost proposal for the revised scope to the Owner, as well as any proposed change in Contract Time under Section 8. The Owner will review and evaluate the Design-Builder's cost proposal and any proposed change in Contract Time, before presenting the Design-Builder with a proposed Change Order at either its regular weekly meeting or a special meeting.

9.3 Design-Builder Initiated Changes. The Design-Builder must provide the Owner written notice of a proposed change within 5 business days of discovery of the facts or circumstances giving rise to the proposed change order. The Owner will meet and discuss the proposed change either at its regular weekly meeting or at a special meeting.

9.4 Submission. All claims for additional compensation or extensions in Contract Time will be presented in writing to the Owner for review. The Owner will either discuss the proposed change at its regular weekly meeting or will call a special meeting to meet and review the proposed change. At the conclusion of the meeting an Owner Elected Change may be issued. Consistent with Owner's internal procedures, a change order request may require approval from Owner's Board of Trustees. All Change Orders must be approved by the Owner before the expense is incurred. Additive Change Orders will affect Contract Price and may affect Contract Time, subject to Section 8. Deductive Change Orders will affect Contract Price and may affect Contract Time, subject to Section 9.7.

9.5 Continued Performance. No Work will be allowed to lag pending the adjustment through Change Order, but will be promptly executed as directed through Owner Elected

Change, even if a dispute arises. Disputes will be resolved in accordance with Section 15.11. Failure of the Design-Builder to provide the Owner with notice of its disputed claim and to submit the written claim within 10 business days of completion of the Work in dispute constitutes an agreement on the part of the Design-Builder that it will not be paid for its Work. No claim will be considered after the Work in question has been performed unless a written Change Order has been executed or timely written notice of claim has been made by the Design-Builder. The Design-Builder will not be entitled to claim or to bring suit for damages, whether for loss of profits or otherwise, on account of an omission of any item or portion of Work covered by the executed Change Order.

9.6 Omitted Work. If the Design-Builder omits any portion of the Work that is included in the Contract Documents, the Owner will have the right to withhold from payments due or to become due to the Design-Builder in an amount which, in the Owner's opinion, is equal to the value of portion of the Work that was omitted until the omitted Work is performed.

9.7 Contract Price Reduction. The Owner may also reduce the Contract Price to reflect backcharges or payments withheld pursuant to the Contract Documents upon written notice, and 48 hours opportunity to cure.

9.8 Contract Time Impacts and Extended Costs. The Design-Builder will not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is allowable under Section 8 and claimed in a proposed change order under Section 9.3. No claims will be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. Nothing contained in this Section will be construed as restricting the rights and remedies of Design-Builder in violation of Civil Code section 2782 or Public Contract Code section 7102. If this provision is determined to conflict with Public Contract Code section 7102 or Civil Code section 2782, this provision will be reformed to provide the greatest protection to the Owner under the law.

9.9 Surety. All changes, additions or omissions in the Work ordered through an Owner Elected Change, or Change Order are part of the Work and will be performed and furnished in strict accordance with all of the terms and provisions of the executed Change Order and the other Contract Documents. The Design-Builder will keep its surety informed of all modifications to this Agreement. The obligations of Design-Builder's surety are not to be reduced, waived or adversely affected by the issuance of Change Orders even if the Design-Builder fails to inform the surety of the Change Order(s) and the Owner will not be required to obtain consent of the surety to the Design-Builder or any of its Subcontractors.

10. PAYMENT

10.1 Progress Payments. In accordance with Public Contract Code section 20104.50, the Owner will make monthly progress payments on all undisputed Work performed within 30 calendar days of receipt of a monthly invoice and a monthly progress report that were properly submitted pursuant to the procedures set forth in this Section and as further established by the Owner. Each invoice will be submitted on the forms provided by the Owner, will include an itemized list of the work performed, be based on the percentage of the Work completed, and provide a level of detail to allow Owner to make a fair and reasonable estimate of the value of Work completed. The invoice must be certified by the Design-Builder and made out to the Owner. Before making payment, the Owner will review the invoice for accuracy of the Work completed to date. No such estimate or payment shall be required to be made, when in

the judgment of the Owner, the Work is not proceeding in accordance with the provisions of the Agreement.

10.1.1 Schedule of Values. Design-Builder must submit a draft schedule of values must be submitted to Owner for approval prior to the first payment and within ten days after Notice to Proceed. As approved by Owner, the schedule of values shall be used for preparing future estimates for partial payments to the Design-Builder, and shall list the major items of Work, including materials and services, with a cost fairly apportioned to each item so that the total of the prices for all items equal the lump sum price. The schedule of values shall be by area, structure, or other logical division of work. The insurance, bond, and overhead costs will be carried on separate line items. The schedule of values shall not be considered in determining payment or credit for additional or deleted work.

10.1.2 Monthly Progress Reports. Each monthly invoice must include a report providing an overall status of the Project's progress, and any concerns or impacts.

10.1.3 Evaluation of Invoice. The Owner will review the invoice based on the approved schedule of values, monthly progress report, on-site observations and evaluation of the Work, and on the data and documentation substantiating the invoice. Upon request, Design-Builder must substantiate the cost for any or all items and provide additional level of detail, including quantities of work. Based on that review, Owner will pay all undisputed items. An approval of an invoice is subject to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion of the Work and to specific qualifications expressed by the Owner. Owner is entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and approval will not be deemed to represent that a detailed examination, audit, or arithmetic verification of the documentation submitted with the Design-Builder's invoice has been made or that exhaustive or continuous on-site inspections have been made to verify that the Work is in accordance with the Contract Documents. A payment by Owner does not represent that Owner has ascertained how or for what purpose the Design-Builder has used money previously paid.

10.1.4 Retention. The Owner will withhold 5% of each progress payment during the Project. Retention will be withheld until the Project achieves Final Completion unless the Owner, in its sole discretion, agrees to release the Design-Builder's retention earlier and provided that the Work has been accepted by the Owner and other necessary agencies with jurisdiction over the Project.

10.1.4.1 Substitution of Securities. To the extent required by law, Owner will consider and approve reasonable and appropriate requests under Public Contract Code section 22300 for substitution of securities or establishment of an escrow account for retention. Nothing contained in this Section will prevent Owner from withholding payment when grounds exist for doing so under the Contract Documents.

10.1.5 Change Orders. Applications for payment may include requests for payment on account of changes in the Work that have been properly authorized.

10.1.6 Stored Materials and Equipment. Stored materials and equipment may be included in the invoice provided the materials and equipment are properly stored in accordance with Section 5.15.9.3 and a complete invoice accompanies the invoice. Owner will not pay for materials or equipment storage.

10.1.7 Stop Payment Notices and Claims. Upon submission of an invoice, the Design-Builder warrants that all Work included in the invoice has been performed in accordance with the Contract Documents and that title to all Work covered by an invoice will pass to the Owner no later than the time of payment and to the best of the Design-Builder's knowledge, information and belief, will pass to the Owner free and clear of all stop payment notices, claims, security interests or encumbrances. Design-Builder will provide executed conditional waivers and release of claims for all amounts included in the invoice. Waivers must comply with the requirements of California Civil Code section 3262.

10.1.8 Owner Payment to Design Professionals, Subcontractors and Suppliers. The Owner will not have an obligation to pay a Design Professional or Subcontractor for work performed unless required by law. However, if the Owner receives a stop payment notice or has reason to believe that the Design-Builder is not paying its Design Professionals or Subcontractors and suppliers, the Owner may make payment of sums due to Design-Builder through joint check or pay Design Professionals and Subcontractors and suppliers directly and withhold those payments from Design-Builder. The Owner shall not exercise any rights granted under this Section prior to issuing a notice to the Design-Builder and granting the Design-Builder a reasonable opportunity to cure.

10.2 Final Payment. Upon Final Completion of the Work, the Design-Builder will submit a final payment application. All prior progress estimates will be subject to correction in the final invoice. If items remain to be completed at that time, then the Design-Builder in conjunction with Owner will revise the Final Punch List and will include 150% of the estimated cost to complete each remaining item. The Owner may withhold from the final payment 150% of the estimated cost to complete the Work. The amount retained by the Owner for Final Punch List items will be released to the Design-Builder as each item is completed. Upon Final Completion of the Project, and submission of Owner's Release of Claims form, by Design-Builder, final payment of all remaining retention, if unencumbered, will be paid on all undisputed amounts no later than 30 calendar days after either Final Completion of the entire Project or recordation of a Notice of Completion (whichever is later), and in no event later than the time prescribed under Section 7107 of the Public Contract Code.

10.2.1 Contract Price Reduction. Upon Final Completion of the Project, the Owner may reduce the Contract Price to reflect costs charged to the Design-Builder, backcharges or payments withheld pursuant to the Contract Documents.

10.2.2 Evidence. Before issuance of final payment, Owner may request satisfactory evidence that: (i) all payrolls, materials bills and other indebtedness connected with the Work have been paid or otherwise satisfied; (ii) insurance required by the Contract Documents will remain in force after final payment and will not be canceled or allowed to expire until at least 30 calendar days prior written notice has been given to the Owner; (iii) the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (iv) surety, if any, has consented to final payment, (v) Owner has received all close-out documents required by the Contract Documents; and (vi), other data establishing payment or satisfaction of obligations, such as releases and waivers of stop payment notices, claims, security interests or encumbrances arising out of this Agreement have been received.

10.2.3 Payment Not Acceptance of Work. Approval of an invoice (final or otherwise) or partial or entire use or occupancy of the Project by the Owner will not be used as

conclusive evidence that the Work was properly performed or constitute acceptance of Work that is not in accordance with the Contract Documents.

10.3 Payments Withheld. In addition to the 5% retention, the Owner may withhold payments due to the Design-Builder that may be necessary to cover: (i) stop payment notice claims; (ii) defective Work not remedied; (iii) failure of Design-Builder to make proper payments to its Design Professionals, Subcontractors or suppliers; (iv) damage to Design Professionals, Subcontractors or third party caused by Design-Builder; (v) amounts due to the Owner for claims against Design-Builder; (vi) failure to provide Owner with timely schedule updates under Section 8.2; (vii) disputed amounts in the invoice; and (viii) legally permitted penalties.

10.4 Waiver of Claims. Acceptance of final payment by the Design-Builder constitutes a waiver of claims by Design-Builder and its Design Professionals, Subcontractors and suppliers except for those previously made in writing and identified by the Design-Builder as unsettled at the time of final invoice. The Design-Builder must acknowledge this waiver on a form provided by the Owner prior to Design-Builder's receipt of the final payment.

11. INDEMNIFICATION

11.1 Indemnification.

Design-Builder shall defend, indemnify, and hold harmless Pacifica School District, and its trustees, officers, employees and agents, and their successors and assigns (collectively referred to as "Indemnitees") from and against all third party claims, demands, liability, suits, actions, costs or expenses (including reasonable attorneys' fees) for any and all loss or damage, including, but not limited to, personal injury or property damage, arising out of or resulting from allegations of:

- a. The failure or alleged failure by any Design-Build Team member to comply with any applicable law, order, citation, rule, regulation, standard, ordinance or statute, including rules and regulations imposed by Cal-OSHA and caused by the act or omission of the Design-Builder;
- b. The negligent act, omission, misconduct, or fault, or the alleged negligent act, omission, misconduct or fault of any Design-Build Team member;
- c. Any and all claims by any governmental or taxing authority claiming unpaid taxes based on gross receipts, purchases or sales, the use of any property or income of any Design-Build Team member with respect to any payment for the Work made to or earned by the Design-Build Team member under the Contract Documents;
- d. Any and all stop payment notices and/or liens filed in connection with the Work, including all expenses and attorneys' fees incurred by the Owner in discharging any stop payment notice or lien, provided that the Owner is not in default on payments owing to the Design-Builder with respect to such Work;
- e. Failure of the Design-Builder to comply with the Insurance provisions set forth in **Exhibit 8**;
- f. Any release of hazardous materials:

1. Brought onto the Site by any Design-Build Team member; or
2. Where the removal or handling involved negligence, willful misconduct, or breach of Contract by any Design-Build Team member; and

Nothing in this section shall require the Design-Builder to defend, indemnify or hold harmless the Indemnitees for the Indemnitees' sole negligence, willful misconduct, or active negligence.

11.2 Indemnification for Infringement of Intellectual Property Rights.

The Design-Builder agrees to fully defend, indemnify, and hold harmless the Indemnitees against any demand, claim, cause of action, suit, proceeding, or judgment that design, service, method, or product called for and provided by the Design-Builder or any Design-Build Team member (herein called "deliverables") that infringes or allegedly infringes any patent, copyright, trademark, service mark, trade dress, utility model, industrial design, mask work, trade secret, or other proprietary right of a third party (collectively "Intellectual Property Right").

The Design-Builder shall pay any and all costs of such defense and settlement (including interest, fines, penalties, costs of investigation, costs of appeals, and attorney 's fees), and will pay any and all costs and damages finally awarded against any of the Indemnitees. The Design-Builder shall have the exclusive right to conduct its legal defense.

In the event that any deliverable furnished hereunder, or called for in any design or services provided under this Agreement, is in any suit, proceeding, or judgment held to constitute an infringement on any third party's Intellectual Property Right, and its use is enjoined, the Design-Builder shall, at its own expense accomplish the following:

- a. Procure the fully paid-up, irrevocable, and perpetual right for the Owner to continue using the deliverable;
- b. Modify the deliverable; or
- c. Provide for the replacement of the deliverable with an alternative product that is functionally equivalent to the deliverable.

If the Design-Builder is unable to provide the Owner with one of the forms of relief described above, the Design-Builder shall also reimburse to the Owner the total paid by the Owner for the deliverable that is held to constitute an infringement.

11.3 Indemnification for Design Defects. To the fullest extent permitted by law, the Design-Builder shall fully defend (with counsel acceptable to the Owner), indemnify, and hold harmless Indemnitees from any and all claims, demands, causes of action, damages, costs, expenses (including legal, expert witness, and consulting fees and costs), losses, or liabilities of whatsoever nature that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the Design-Builder, its employees, any of the Design-Builder's Design Professionals or Subcontractors of any tier, or anyone for whom Design-Builder or any of its Design Professionals or Subcontracts may be liable, in relation to any of their design services, including but not limited to errors, omissions, inconsistencies, inaccuracies, deficiencies, or other defects whether or not contained in the Construction Documents furnished by the Design-Builder, and whether or not such errors, omissions, inconsistencies, inaccuracies, deficiencies, or other defects were also included in the Contract Documents provided by the Owner. The

Design-Builder agrees that, because the Owner's Design Criteria is preliminary and conceptual in nature and is subject to review and modification by the Design-Builder, such documents shall not be deemed a "design furnished" by the Owner or any of the other Indemnitees, as the term "design furnished" is used in Civil Code Section 2782, and that this clause is governed by Civil Code Section 2782.8. In addition, Design-Builder shall defend the Owner, or pay for the costs of such defense, to the extent of Design-Builder's proportionate percentage of fault for the underlying claim. In addition, Design-Builder shall defend the Owner, or pay for the costs of such defense, to the extent of Design-Builder's proportionate percentage of fault for the underlying claim.

11.4 Exception. The indemnification provisions in this Section 11 will extend to claims occurring after this Agreement is terminated as well as while it is in force. However, Design-Builder will not be obligated to indemnify or provide a defense to the Indemnitees from claims arising from the active negligence or willful misconduct of Indemnitees. If any of the Indemnitees are actively negligent, the Design-Builder will continue to indemnify and provide a defense to Indemnitees but only to the extent and in proportion to the degree that the Indemnitees were not actively negligent. Nothing contained in Section 11 will be construed to impose any obligation in conflict with the provisions of Civil Code section 2782 and/or Insurance Code section 11580.04. In the event of a conflict, the provision conflicting with Civil Code section 2782 and/or Insurance Code section 11580.04 will be modified to limit Design-Builder's obligations to the greatest extent permitted by law. The section does not apply to the duty to defend claims arising from design defects, which obligation is addressed separately in Section 11.3. The section does not apply to the duty to defend claims arising from design defects, which obligation is addressed separately in Section 11.3.

11.5 Duty to Defend. Except as otherwise provided herein, the Design-Builder will defend all claims defined in Section 11.1 at its own cost, expense and risk and pay and satisfy any judgment or decree that may be rendered against any Indemnatee arising out of a claim, or reimburse Indemnatee(s) for any and all legal expenses incurred by any of them in connection with the claim or in enforcing the indemnity granted in this section. The duty to defend will apply, and Design-Builder will be required to furnish a defense, regardless of whether the matter has been adjudicated. The Owner shall have the right to approve counsel defending it, which approval will not be unreasonably withheld. Following the resolution of any such dispute, the Owner shall reimburse Design-Builder for the costs incurred by Design-Builder for any Indemnitees' defense, to the extent of the Owner's proportionate responsibility or fault, as determined by court or arbitrator or as agreed by settlement or otherwise.

12. INSURANCE AND BONDS

12.1 Design-Builder's Insurance Requirements. The Design-Builder's insurance requirements are set forth in **Exhibit 8B** to this Agreement. The Owner and its trustees, officers, employees, agents, and volunteers will be a named additional insured under all of Design-Builder's insurance policies except errors and omissions policies and workers' compensation policies. Likewise, the Design-Builder will require all Subcontractors to name the Owner, and its trustees, officers, employees, agents, and volunteers as additional insured on all Subcontractor policies except errors and omissions policies and workers' compensation policies. Before commencement of the Work, the Design-Builder will provide certificates of insurance and endorsements per **Exhibit 8B** as evidence of insurance and Owner's, and Owner's additional insured status under those policies.

12.2 Performance and Payment Bonds. The Design-Builder will furnish a payment bond and a performance bond to the Owner, each in the amount equal to 100% of the amount of the Construction Stage Amendment, covering all construction work and warranties, on the forms provided in **Exhibit 8C and 8D**. The payment and performance bonds will be provided prior to commencement of Work. The surety supplying the bonds must be an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, authorized to do business as a surety in the State of California and satisfactory to the Owner. Failure to furnish the required payment and performance bonds to the Owner constitutes a default under this Agreement and the Owner will have all of the rights and remedies provided under the Contract Documents and afforded by law including, but not limited to, forfeiture of the bidder's bid deposit or bond to the Owner and the Owner may award this contract to another responsive and responsible bidder, or may call for new bids. Full compensation for furnishing the payment and performance bonds are included in the Contract Price.

12.2.1 Payment of Subcontractors. Without limiting the responsibilities of Design-Builder and its surety under the terms of this Agreement, the Design-Builder and its surety agree to promptly pay all lawful claims of Subcontractors, materialmen, laborers, persons, firms or corporations for labor or services performed or materials, supplies, machinery equipment, rentals, fuels, oils, tools, appliances, insurance and other items furnished, used, or consumed in connection with the prosecution of the construction work including Change Orders, and will indemnify and save harmless the Owner, and Owner from and against all liability loss, damage and expense, including interest, costs and attorneys' fees, which the Owner, and Owner and/or its surety may sustain by reason of Design-Builder's or its surety's failure to do so.

13. WARRANTY OF THE WORK

13.1 Design-Builder Warranty. The Design-Builder shall provide a one-year warranty on all furnished labor and materials, commencing on the date of Final Completion of all Work under the Agreement. Design-Builder shall perform all required corrective work, and shall be responsible for the cost of all labor, materials, equipment, transport, installation and re-testing required for the corrective work. Moreover, in the event that corrective work is required under the Design-Builder Warranty, a one-year warranty shall apply to the corrected work covering any discrepancies and defects in the corrected work that are discovered after the corrected work is accepted.

The Design-Builder Warranty shall warrant that:

- a. The Work conforms to the requirements of the Contract Documents;
- b. All Design Services furnished under the Agreement conforms to all professional engineering principles generally accepted as standards of the industry in the State of California and complies with the standard of care of a reasonable professional that is performing the same or similar work, at the same time and locality and under the same or similar conditions;
- c. The construction Work furnished under the Agreement is free from defects in workmanship, and was performed in a workmanlike manner and conforms to the standards of care and diligence normally practiced by recognized construction firms performing construction of a similar nature in the State of California, and conforms to the requirements of the Design Criteria and the 100% Construction

Documents, as these documents may have amended during the course of Work under the Agreement;

- d. Materials and equipment furnished under the Contract Documents are of good quality and new;
- e. The Facilities are fit for the purposes intended in the Contract Documents;
- f. The Facilities shall be free of defects in design, material, and workmanship; and
- g. The Facilities shall function up to the standards set forth in the Design Criteria and all other reliability standards established in the Contract Documents.

13.2 Subcontractor Warranties. The Design-Builder shall obtain one year warranties commencing on the date of Final Completion of all Work under the Agreement from all Subcontractors and Design-Build Team members providing design services, labor, equipment, materials, supplies and maintenance equipment; require all such warranties to be executed in writing for the benefit of the Owner and enforce all warranties for the benefit of the Owner, if so directed by the Owner. Warranties by subcontractors are in addition to, and do not replace or reduce, any other warranty obligations stated in the Contract Documents, including but not limited to the Design-Builder Warranty. All such Subcontractor warranties from Design-Build Team members shall run directly to and be enforceable by the Design-Builder and the Owner, and their respective successors and assigns.

The Design-Builder hereby assigns to the Owner all of the Design-Builder's rights and interest in all warranties that are received by the Design-Builder from any Subcontractor or Design-Build Team members. All such warranties shall survive Final Completion, acceptance, final payment, and termination of the Agreement if the stated warranty period extends beyond the Final Completion, acceptance, final payment, and termination of the Agreement.

13.3 Manufacturers' Warranties. The Design-Builder shall obtain manufacturers' warranties for all equipment procured and installed on the Project and shall assign all such warranties to the Owner prior to Final Completion. Owner and Design-Builder shall agree upon acceptable warranty periods for each item of equipment prior to the procurement of the equipment of not less than one year from Final Completion. Manufacturers' warranties shall all commence on Final Completion.

Design-Builder shall obtain an extended five-year warranty for the condenser unit compressors (collectively the "Major Equipment Items"). The extended two-year warranty for Major Equipment Items shall cover all costs of repair or replacement, including, without limitation, costs for the equipment, labor, material, parts, transport, installation and testing. Design-Builder must additionally provide pricing information for an extended five-year warranty for the Major Equipment Items.

13.4 Remedy. The Design-Builder shall remedy, at its own expense, any failure to conform to the warranty requirements set forth in this Section 13 Warranty of the Work. If the Design-Builder fails to remedy any such failure within a reasonable time after receipt of notice (or immediately in the case of an emergency), the Owner shall have the right in its sole discretion to replace, remove, or otherwise remedy the failure at the Design-Builder's expense.

13.4.1 Notification to Design-Builder. The Owner shall notify the Design-Builder, in writing, within a reasonable time after the discovery of any failure to conform to the warranty requirements set forth in this Section 13, Warranty of the Work.

13.4.2 Warranties Do Not Limit the Design-Builder's Liability. The foregoing warranties are in addition to all rights and remedies available under the Agreement or applicable law, and shall not limit the Design-Builder's liability or responsibility imposed by the Agreement or applicable law with respect to the Work, including:

- a. Liability for design defects;
- b. Latent construction defects;
- c. Strict liability;
- d. Negligence; and
- e. Fraud.

13.5 Assignment of Warranty. Upon providing written notice to the Design-Builder, the Design-Builder's warranties, including all warranties from Subcontractors and Design-Build Team members that have been assigned to the Design-Builder, shall be immediately assignable by the Owner to any entity, in the Owner's sole discretion.

14. OWNERSHIP OF DOCUMENTS

14.1 Ownership of Construction Documents. The Design Criteria, the Construction Documents, as well as any technical data or other design-related materials submitted to the Owner by the Design-Builder or any of its Design Professionals or Design-Build Subcontractors for the Project (collectively the "**Design and Construction Documents**"), whether draft or final, shall become the property of the Owner upon submission to the Owner and payment to Design-Builder. The Owner may use and disclose such Design and Construction Documents in any manner and for any purpose necessary during the Owner's normal course of business. The Design-Builder, its Design Professionals and Design-Build Subcontractors may retain one record set each of the Design and Construction Documents for the limited purpose of defense of any subsequent claims or disputes involving this Project. The Design-Builder, its Design Professionals and Design-Build Subcontractors will not own or claim a copyright in the Design and Construction Documents and other documents prepared by Design-Builder, its Design Professionals or Design-Build Subcontractors. All copies of the Design and Construction Documents, except the record set of the Design and Construction Documents mentioned above, will be returned to the Owner and/or the Owner upon completion of the Project. The Design and Construction Documents and other documents prepared by the Design-Builder were developed and furnished for use solely with respect to this Project. They are not to be used by the Design-Builder, its Design Professionals and/or Design-Build Subcontractors on any other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner.

14.1.1 Ownership. Any models necessary for design and construction of the Project, and any related two dimensional drawings, calculations, schedules or specifications created for the Project will, upon completion of the Project, become the property of the Owner. Notwithstanding the above, design elements that were created by the Design-Builder, before

execution of the Agreement, as extensions to commercially available building information modeling software will remain the property of the respective party that created the extension.

14.1.2 Licensing. The Design-Builder, its Design Professionals and Design-Build Subcontractors are granted a limited, non-exclusive, license to use and reproduce applicable portions of the Design and Construction Documents and other documents prepared by the Design-Builder for use in the performance of the Design-Builder's Work under this Agreement. Additionally, the Owner grants the Design-Build Team members a non-exclusive, perpetual license for use, or display of, 2D information solely for either educational or promotional purposes.

14.1.3 Exception. Nothing contained in Section 14.1 will be construed to limit the Design-Builder, its Design Professionals and Design-Build Subcontractors rights, title and interest to continue to use their respective general design details that each of them uses or has used on multiple projects, or new standard design details that were developed during design of this facility.

14.2 Copies. All copies made under this license will bear the statutory copyright notice, if any, shown on the Design and Construction Documents and any other documents prepared by the Design-Builder, its Design Professionals and Design-Build Subcontractors. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project will not be construed as publication in derogation of the Owner's copyright or other reserved rights and interests.

15. ACCOUNTING RECORDS

15.1 Audit. In accordance with Government Code Section 8546.7, records of both the Owner and the Design-Builder will be subject to examination and audit by the State Auditor General for a period of 10 years after final payment. Design-Builder will make available to the Owner any of the Design-Builder's other documents related to the Work immediately upon request of the Owner as set forth in Section 15.2.

15.2 Records. The Design-Builder will keep full and detailed accounts and exercise controls as may be necessary for proper financial management under this Agreement. In addition to the State Auditor rights above, the Owner will have the right during normal business hours to audit and copy the Design-Builder's documents related to this Project including, but not limited to, records, books, estimates, correspondence, instructions, drawings, receipts and invoices for materials, supplies and equipment, temporary facilities, etc., contracts, purchase orders, vouchers, memorandums, Change Orders and all substantiating documentation, certified payroll, and other data relating to the Cost of Work, the Contract Price in order to evaluate accuracy and completeness of Design-Builder's billing. The Design-Builder will preserve all Project records for a period of at least 3 years after final payment, or for such longer period as may be required by law. The Design-Builder will incorporate Section 15 accounting and auditing provisions into all Design Professional agreements and Subcontracts and require Design Professionals and Subcontractors to keep detailed and accurate accounting records for their portion of the Work for a period of at least 3 years.

16. TERMINATION, SUSPENSION AND ABANDONMENT

16.1 Termination for Fault. The Owner may terminate this Agreement upon not less than 7 calendar days' written notice and an additional 7 calendar days to commence curing

upon the Design-Builder's failure to perform any material obligation under the Agreement. The Design-Builder will have 7 days after receiving reasonably detailed written notice thereof from the Owner, provided that, if the nature of the breach is such that it will reasonably require more than 7 days to commence curing, the Owner may not terminate so long as Design-Builder (1) promptly, upon receipt of notice to cure, submits a plan to initiate all actions reasonably necessary to correct the default and prevent its reoccurrence, and (2) Owner accepts Design-Builder's plan, and (3) Design-Builder commences and continuously implements the plan to Owner's satisfaction.

The Owner may also terminate this Agreement without notice or opportunity to cure upon the occurrence of the following Design-Builder events of default: 1) the failure to obtain and maintain any contract security instrument, 2) the failure to achieve acceptance of the Facilities through the acceptance process, and 3) the insolvency or bankruptcy of the Design-Builder. The notice will set forth the reason for termination and the effective date of termination. If the Owner terminates this Agreement for cause, the Design-Builder will not be entitled to any further payments except for work already completed. Unless otherwise limited herein, nothing stated in this paragraph will prevent the Owner from pursuing and recovering any damages allowed by law from Design-Builder arising out of a breach of this Agreement. If a court of competent jurisdiction deems that termination of the Design-Builder was wrongful or otherwise improper, the termination will be deemed a termination for convenience under Section 16.3.

16.2 Suspension By Owner. If the Project is suspended by the Owner and not due to any fault of the Design-Builder or any of its Design Professionals or Subcontractors, the Design-Builder will be entitled to receive payment for all Work performed as of the effective date of the suspension, plus any documented reasonable direct costs incurred by Design-Builder to implement the suspension. The written notice of suspension will set forth the reason for suspension and the effective date of suspension. If the Project is resumed, and provided that the suspension was not caused or due to any fault or neglect of the Design-Builder or any of its Design Professionals or Subcontractors, then the Design-Builder's compensation will be equitably adjusted through Change Order under Section 9.1.4 and the Contract Time will be equitably adjusted for the additional time required to achieve Final Completion.

16.3 Termination For Convenience. The Owner may terminate this Agreement, in whole or in part, for convenience upon 30 calendar days' written notice at any time. The notice will state the extent of the termination and effective date of termination. For convenience termination during the Preconstruction Stage and through the issuance of a Notice to Proceed for Construction Stage, the Design-Builder will be entitled to receive payment for the percentage of Preconstruction Stage work completed, not to exceed the Preconstruction Stage lump sum amount. For convenience termination following the issuance of a Notice to Proceed for Construction Stage Services, the Design-Builder will be entitled to payment for all Work performed as of the effective date of termination based on the compensation provisions set forth in Section 7 of this Agreement, as well as reasonable demobilization costs. In the event that the Owner terminates the Design-Build Agreement for convenience, Design-Builder must assign all subcontracts executed pursuant to the performance of the Design-Build Agreement to Owner promptly upon request. Design-Builder is entitled to compensation for all authorized payments made to any subcontractor prior to termination, which payments will be credited to Owner under the respective subcontracts, plus Design-Builder's approved costs that are incurred prior to any termination. In addition, in the event Owner terminates the Design-Build Agreement for convenience, Design-Builder must execute any documents establishing Owner's ownership of completed Work upon request. Any dispute over the amount to be paid upon termination will be

resolved in accordance with the dispute resolution procedures set forth in Section 15.11 of the Supplemental Conditions.

17. MISCELLANEOUS PROVISIONS

17.1 Governing Law. This Agreement will be governed and construed in accordance with the laws of the State of California without regard to the principles of the conflict of laws. The Parties agree that any claim or enforcement of a judgment or alternative dispute award will be filed with the appropriate court of law in San Mateo County.

17.2 No Solicitation of Employees. Owner will not solicit or employ any of Design-Builder's Project personnel for the duration of the Project.

17.3 Assignment. The Owner and Design-Builder, respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of the other party with respect to all covenants of this Agreement. Neither Owner nor Design-Builder will assign this Agreement without the written consent of the other, and such consent will not be unreasonably withheld or delayed.

17.4 Severability. The terms and conditions of this Agreement will be interpreted in accordance with their plain meaning, and not strictly for or against either party. Any rule of construction or interpretation to the contrary will be of no force or effect with respect to this Agreement. If a court of competent jurisdiction finds any term or provision of this Agreement to be void or unenforceable for any reason that term or provision will be deemed severed, and the remainder of the Agreement will remain in full force and effect according to its terms and provisions, to the maximum extent permitted by law.

17.5 No Third Party Beneficiaries. Nothing contained in this Agreement creates a contractual relationship with, or a cause of action in favor of any third party against, either the Owner or Design-Builder. Owner and Design-Builder acknowledge and agree that the obligations of the Design-Builder are solely for the benefit of the Owner and are not intended in any respect to benefit any other third parties.

17.6 Waiver. No action or failure to act by the Owner or Design-Builder will constitute a waiver of a right or duty afforded them under this Agreement, nor will such action or failure to act constitute approval of or acquiescence in a breach of this Agreement, unless specifically agreed to in writing.

17.7 Time is of the Essence. Time is of the essence with respect to each and every provision of the Agreement and any subsequent Change Orders.

17.8 Notice. Any notice required to be given by this Agreement will be in writing and deemed effective upon personal delivery, or 1 business day after being sent via registered or certified mail return receipt requested or by overnight commercial courier providing next business day delivery and addressed to the following respective parties:

To Owner:

Pacifica School District
Attn: Ms. Josie Peterson

375 Reina Del Mar Avenue
Pacifica, California 94044
With a copy to Owner's Representative

To Design-Builder:



17.9 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, and all of which when taken together will constitute one instrument. The counterparts of this Agreement, and all amendments, must be manually executed, but the exchange of copies of this Agreement and of manually executed signature pages by facsimile or by electronic mail as an attachment in portable document format (.pdf) to the addresses provided in this Agreement shall constitute effective delivery of this Agreement as to the Parties and may be used as a fully binding original in lieu of the original Agreement for all purposes.

17.10 Modifications. All modifications to the terms and conditions set forth in this Agreement must be in writing and signed by an authorized representative of both parties.

17.11 Section Headings. The Section headings contained in this Agreement are for reference purposes only and will not in any way affect the meaning or interpretation of this Agreement.

17.12 Legal Citations. Legal citations to statutory requirements are included in the Agreement for convenience and an omission of any statutory requirement will not relieve the Design-Builder or its Design Professionals and Subcontractors from compliance with the law.

17.13 Exhibits. The Supplemental Conditions and following Exhibits are incorporated by reference into the Agreement as though set forth in full.

17.14 Entire Agreement. This Agreement represents the entire integrated agreement between the Owner and Design-Builder and supersedes all prior oral and written negotiations, representations or agreements by the parties with respect to this subject matter.

This Agreement is entered into as of the Effective Date first written above.

PACIFICA SCHOOL DISTRICT

DESIGN-BUILDER

(Witness)

(Witness)

(Printed name)

(Printed name)

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Exhibit 1
SUPPLEMENTAL CONDITIONS



SUPPLEMENTAL CONDITIONS TO
DESIGN-BUILD AGREEMENT

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SUPPLEMENTAL CONDITIONS TO DESIGN-BUILD AGREEMENT

1. DEFINITIONS

1.1 “Agreement” means the Design-Build Agreement between Pacifica School District and Design-Builder, dated _____, 2019, including the Supplemental Conditions to the Agreement and all **Exhibits**.

1.2 “Allowance” is a non-binding, good faith, estimate of all Cost of Work attributable to the Allowance item carried in the Contract Price. An Allowance is necessary in certain circumstances because the item, components and/or systems are anticipated but undefined at the time that the Contract Price is set, and may require further development by the Architect of Record, Owner, or other Design Professionals.

1.3 “Background Documents” means any existing drawings Owner provides to Design-Builder for reference. Background Documents are not part of the Contract Documents.

1.4 “Design Criteria” is defined in Section 4.2

1.5 “Change Order” is defined in Section 9.1.

1.6 “Construction Documents” means the documents developed by Design-Builder that establish all requirements for work during the Construction Stage of the Project. The Construction Documents will be informed by, and be consistent with the Design Criteria.

1.7 “Construction Stage Services” means all labor, materials, equipment and appurtenances provided by the Design-Builder and its Subcontractors to progress the Preliminary Design for Phase One to a 100% Design, complete construction of Phase One in strict accordance with the Contract Documents, ensure that all mechanical and support systems, as applicable, are properly and fully operational, and obtain all required certificates, approvals, and temporary or permanent permits for occupancy, use and completion of Phase One have been issued by appropriate governmental authorities, as further described in Exhibit 3.

1.8 “Contract Documents” are set forth in Section 3.1 of the Agreement and include the Agreement inclusive of Exhibits, the Supplemental Conditions to the Agreement, and the Construction Documents, to be developed by the Design-Builder, and all subsequent contract modifications issued after execution of the Agreement, such as Change Orders.

1.9 “Contract Price” is set forth in Section 7 of the Agreement and reflects the sum total of all compensation due to the Design-Builder for all design and construction services under the Agreement.

1.10 “Contract Time” is the time within which the Design-Builder must achieve Final Completion of all Work on the Project. The Contract Time is set forth in Section 8.1.

1.11 “Daily Construction Reports” means the daily log kept by the Design-Builder that describes the weather, each Subcontractor’s work on the site, the number of workers per trade, identification of equipment, construction work accomplished, problems encountered, and other similar relevant data such as accidents, service connections or disconnections,

construction work stoppage, delays, material and labor shortages, and any applicable orders or requests from governing authorities.

1.12 “Design-Builder, Design-Build Entity” the entity that will enter into the Agreement with Owner and that will be the single point of accountability to Owner for delivering the services and the Project.

1.13 “Architect of Record” is the entity retained by the Design-Builder as the lead Design Professional that is responsible for the design of the Project. The Architect of Record for this Project is [REDACTED].

1.14 “Design-Build Subcontractors” means all Subcontractors that contract directly with the Design-Builder to perform design and construction services related to a specific trade or discipline.

1.15 “Design-Build Team” includes the General Contractor, Design Professionals and Design-Build Subcontractors members of the Design-Builder performing Preconstruction Stage Services and Construction Stage Services for the Project.

1.16 “Design Professionals” means the Architect of Record, the structural engineer, and any other design consultants who are performing design services for the Project on behalf of Design-Builder but do not perform any Construction Stage Services.

1.17 “Design Services” includes all required design work required to complete the Project, consistent with the Design Criteria.

1.18 “Effective Date” means the date that the Design-Builder and Owner entered into the Agreement, which is set forth on page 1 of the Agreement.

1.19 “Facilities” means all equipment, products, materials, controls, software, both individually and collectively as a completed system comprising Phase One.

1.20 “Final Completion” occurs on the date when Design-Builder has achieved Substantial Completion; all Final Punch List items have been completed and accepted by the Owner; all close-out documentation required under the Project specifications has been transmitted to the Owner’s Representative.

1.21 “Final Completion Date” is set forth in Section 8.1 of the Agreement.

1.22 “Final Punch List” is the punch list prepared by the Design-Builder in conjunction with the Owner after completing a Project walk-through upon Substantial Completion.

1.23 “Force Majeure Event” means an Act of God as defined under Public Contract Code section 7105, civil disobedience, an act of terror, or unavoidable casualties beyond the Design-Builder’s control, and not due to any act or omission of the Design-Builder or its Design Professionals and/or Subcontractors, that necessarily extends the Final Completion Date.

1.24 “Hazardous Materials and Substances” means any substance, product, waste, or other material of any nature that is or becomes listed, regulated or addressed under one or more of the following Environmental Laws: (1) CERCLA, (2) Hazardous Materials

Transportation Act, (3) RCRA, (4) the Clean Water Act, (5) the Toxic Substance Control Act, (6) HSAA, (7) the California Porter-Cologne Water Quality Control Act, (8) the California Hazardous Waste Management Act, (9) the California Safe Drinking Water Act, (10) the California Waste Management Act, and (11) any other Federal or State law or local ordinance concerning hazardous, toxic or dangerous substances, wastes, or materials.

1.25 "Key Personnel" means the Design-Builder's personnel identified as key to the overall success of the Project, and, at a minimum, including those positions defined as Key Personnel in the RFQ and RFP. The Design-Builder's Key Personnel are specifically identified in **Exhibit 5B**.

1.26 "Owner" means Pacifica School District.

1.27 "Owner-Elected Changes" are changes in the Work directed by the Owner that may impact the Contract Price, and Final Completion Date and are not: (i) reasonably inferable from the Design Criteria or Contract Documents; or (ii) required as a result of design errors and omissions.

1.28 "Owner's Suspension of Work" is when the Owner elects to suspend progress of Work on the Project under Section 16.2 of the Agreement.

1.29 "Party" or "Parties" means the Design-Builder or the Owner in the singular or the Design-Builder and Owner collectively who have executed the Agreement.

1.30 "Phase One" means the planned forty-five (45) residential units, including ancillary facilities and associated parking, as further defined in the [Exhibit 2].

1.31 "Phase Two" means the planned twenty-five (25) residential units, including associated parking, as further defined in the [Exhibit 2].

1.32 "Preconstruction Stage Services" means all services, labor, materials, equipment and appurtenances provided by the Design-Builder and its Subcontractors to obtain all necessary entitlements, complete all necessary environmental review, and prepare Preliminary Designs for Phase One and Phase Two, as further defined in Exhibit 3.

1.33 "Preconstruction Survey" Design-Builder's deliverable comprised of a comprehensive preconstruction survey of the Work site as described in more detail in the Scope of Work.

1.34 "Preliminary Design" means a preliminary set of Construction Documents, including a schedule, at a level sufficient to assure certainty of cost, schedule, program, quality levels and project definition, and other criteria specified by the District, as further defined in Exhibit 3.

1.35 "Product Data" includes illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder's Subcontractors illustrating materials or equipment for some portion of the construction work.

1.36 "Project" means the completion of the Preconstruction Stage Services for Phase One and Phase Two, and Construction Stage Services for Phase One.

1.37 "Project Site" means that certain real property designated by the San Mateo County Assessor as Parcel Number [REDACTED], commonly known as 930 Oddstad Boulevard, Pacifica, California.

1.38 "Project Baseline Schedule" means the approved critical path schedule prepared by the Design-Builder for performance of all Work within the Contract Time, as approved by the Owner. developed.

1.39 "Punch List" is a list prepared by the Design-Builder, when Design-Builder considers a portion of the construction work substantially complete, that includes all items that are incomplete or unsatisfactorily finished and a schedule for their completion.

1.40 "Request for Information" ("RFI") means written requests prepared by the Design-Builder and/or its Subcontractors requesting clarification about design or raising coordination issues that impact design, cost or schedule. RFIs will be handled internally by the Design-Builder, with copies to the Owner.

1.41 "Samples" means physical examples of materials, equipment or workmanship required by the Construction Documents that are used to establish standards by which the construction work will be judged.

1.42 "Shop Drawings" means drawings, diagrams, and other data specially prepared by the Design-Builder and/or its Subcontractors, manufacturers, suppliers or distributors to demonstrate the way in which materials and equipment will perform in accordance with the design illustrated in the Construction Documents. Shop Drawings will be approved by Design-Builder, but Owner will also review.

1.43 "Site Logistics Plan" will provide phasing, establish the areas of the site that will be used for trailers, deliveries, staging, ingress and egress, location of major pieces of equipment, storage containers, stockpiles of materials, clearways used for emergency access, environmental controls, trailers for Design-Builder and Owner, parking facilities for Design-Builders, employees, and Owner, access road, fence line, etc. and other information as further described in Exhibit 3 "Scope of Work."

1.44 "Staffing Plan" means the plan submitted by the Design-Builder with its proposal.

1.45 "Subcontractor" means all contractors under direct contract with Design-Builder for performance of a portion of the construction work as well as any lower tier-subcontractors. The term subcontractor includes Design-Build Subcontractors.

1.46 "Submittals" includes Shop Drawings, Product Data, Samples and similar documentation required by the Project specifications or other Construction Documents.

1.47 "Substantial Completion" means completion of all Preconstruction Stage Services and Construction Stage Services in accordance with the Contract Documents, and sufficient for the Owner to occupy and use the Facilities for their intended purpose; notwithstanding the foregoing, incomplete minor Punch List work that does not affect Owner's ability to occupy and use the Facilities for their intended purpose shall not prevent achievement of Substantial Completion.

1.48 “Substantial Completion Date” The Substantial Completion Date is set forth in Section 8.1 of the Agreement .

1.49 “Supplemental Conditions” means the Supplemental Conditions to the Agreement.

1.50 “Unforeseen Site Conditions” or “Differing Site Conditions” means discovery of unknown, unforeseen or differing site conditions, as defined in Public Contract Code section 7104, any unknown existing conditions in concealed spaces of the renovated portions of the Project.

1.51 “Work” means all work , including all services, labor, materials, equipment, tools, and appurtenances, necessary to complete the Preconstruction Stage Services and Construction Stage Services, as described in, or reasonably inferable from, the Contract Documents.

2. [RESERVED]

3. WORK RESTRICTIONS

3.1 Work Hours. All construction work will be performed between 7:00 a.m. and 7:00 p.m. unless further restricted by permit requirements. Design-Builder will provide Owner with written notice for any construction work that will need to be performed after hours. All after hour construction work requires Owner’s written approval prior to commencement.

3.2 Parking. All Design-Builder parking must be on the Project Site.

3.3 Staging and Storage. Material will be stored only in the areas indicated on the Site Logistics Plan. Limited short term staging areas will be designated in the Site Logistics Plan.

4. SOILS INVESTIGATIONS AND HAZARDOUS MATERIALS

4.1 Site Inspection. The Design-Builder is required to examine the Project Site before submitting its proposal. Design-Builder may not rely exclusively on Background Documents to determine the status of soil conditions.

4.2 Hazardous Materials and Substances. The Design-Builder is responsible for the proper discovery, handling, removal and disposal of the **“Hazardous Materials or Substances”** that were pre-existing at the Project Site before commencement of construction. The Design-Builder will not be considered the generator of any pre-existing hazardous materials on the Project Site. The Design-Builder is also responsible for all Hazardous Materials and Substances that it either requires through the Project design specifications or that are brought onto the Project Site by its employees and/or Subcontractors.

4.2.1 Unsafe or Hazardous Conditions. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from any Hazardous Materials or Substances encountered at the Project Site, the Design-Builder will stop any part of the Work that it deems unsafe until corrective measures have been taken. If the Design-Builder fails to take corrective measures, the Owner may do so. Failure on the part of the Owner to stop unsafe practices, or the Owner’s efforts to take corrective measures after the

Design-Builder fails to do so, does not relieve or diminish the Design-Builder's safety responsibilities.

4.2.2 Verification. Upon discovery of any Hazardous Material or Substance that has not previously been identified in the Design-Builder's Hazardous Material Survey, the Design-Builder will immediately notify the Owner's representative and stop all construction work in the area if necessary. The Design-Builder will retain the services of a licensed laboratory to verify the presence or absence of the preexisting Hazardous Material or Substance. If preexisting Hazardous Material or Substance is discovered, the Design-Builder will contact its licensed laboratory to verify that the condition has been rendered harmless before construction work recommences in the affected area. The Design-Builder may be entitled to an adjustment in the Contract Time if the Hazardous Material or Substance is deemed an Unforeseen or Differing Site Condition and impacts the Final Completion Date of the Project. If the Hazardous Material or Substance was pre-existing the Owner will pay for the services of the licensed laboratory. The Design-Builder will reimburse the Owner for the services of the licensed laboratory if the Hazardous Material or Substance was brought on-site by the Design-Builder or any of its Subcontractors or vendors.

5. SAFETY

5.1 Signs. The Design-Builder will erect and maintain, as required by existing conditions and performance of the construction work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

5.2 Weekly Safety Meetings. The Design-Builder will hold weekly meetings with its Subcontractors to review Subcontractor compliance with the Design-Builder's Health and Safety Program.

5.3 Daily Jobsite Walks. The Design-Builder will also conduct daily jobsite inspections to verify that the construction work is being performed in a safe and workmanlike manner and in accordance with the Design-Builder's Health and Safety Program. The Design-Builder will provide written notice to its Subcontractors demanding immediate correction of any known safety violation.

6. QUALITY ASSURANCE AND QUALITY CONTROL

6.1 Quality Control Plan. The Design-Builder will prepare and submit to the Owner's representative for approval a plan that describes the procedures and methods the Design-Builder will utilize to control the quality of the construction work. The Quality Control Plan must be approved before the start of construction. The Owner reserves the right to require revisions of the Quality Control Plan that are necessary to ensure the specified quality of the construction work. The Design-Builder will assign appropriate site personnel to oversee quality control. No change in the Quality Control Plan will be implemented without prior Owner approval. At a minimum the Quality Control Plan will provide information regarding the following:

6.1.1 Quality control supervision and document control.

6.1.2 Identification of personnel for required training and qualification activities.

6.1.3 Procedures for testing and inspections that identify individual inspection or testing points and acceptance criteria, and include provisions for recording results and the responsible inspection/test personnel.

6.1.4 Procedures for identifying what applicable technical and quality requirements will be required of vendors supplying materials, parts and services to ensure compliance with the Contract Documents.

6.1.5 Procedures for receiving, inspecting and accepting materials and equipment. The procedures will include, at a minimum, examination of the physical condition for compliance with the Contract Documents, purchase order and/or subcontract agreement, and identifying and processing any non-conforming goods.

6.1.6 Provisions for identifying and timely remedying non-conforming or defective construction work.

6.1.7 Documentation control to maintain records of the activities included in the Quality Control Plan. All documentation will be submitted to the Owner as part of the close-out documentation for this Project and therefore must be logically organized and indexed for reference.

6.2 Design Quality Control Plan. The Design-Builder will prepare and submit to the Owner for approval a Design-Quality Control Plan that describes the procedures and methods the Design-Builder will utilize to control the quality of the construction work. The Design Quality Control Plan must be approved before the start of construction. The Owner reserves the right to require revisions of the Design Quality Control Plan that are necessary to ensure the specified quality of the construction work. The Design-Builder will assign appropriate site personnel to oversee quality control. No change in the Design Quality Control Plan will be implemented without prior Owner approval.

6.3 Manufacturer's Field Services. To the extent required, the Design-Builder will engage in a factory-authorized service representative to inspect field-assembled components and equipment installation, including service connections. All manufacturers' field service reports must be in writing and included as part of the records turned over to Owner during close-out.

6.4 Quality Control Reports. The Design-Builder will keep daily Quality Control Reports throughout the duration of the construction process certifying that the relevant area of the construction work has been inspected. The Quality Control Reports will be prepared, signed and dated by the personnel identified as the supervisor in the Quality Control Plan and will include, at a minimum, the following information:

6.4.1 Identification of the material, equipment or component that was inspected and indicate, if applicable, if the Submittals have been reviewed and approved by the Design-Builder.

6.4.2 Indicate that materials and/or equipment comply with the requirements of Section 5.19.9 of the Agreement and are properly stored, if not yet installed.

6.4.3 Indicate that the construction work has been coordinated under Sections 5.19.4 and 5.19.5 of the Agreement, that all required preliminary work has been inspected by

Quality Control personnel, was properly performed, and that the area is ready to receive subsequent construction work. If the construction work is not acceptable, provide a written description of any rework required in the area inspected with an explanation of the cause of the re-work (including which Subcontractors are involved), any cost involved in the required re-work, and the expected completion date of the required re-work.

6.4.4 Results of any off-site testing or quality control work and any required further actions.

6.4.5 Other necessary information including, directions received, quality control problem areas, deviations from the Quality Control Plan, construction deficiencies encountered, Quality Control meetings held, acknowledgement that as-built drawings have been updated (if applicable), corrective direction given by Quality Control personnel, and corrective action taken by the Design-Builder.

6.5 Quality Control Design Reports. The Design-Builder will keep daily Quality Control Design Reports throughout the duration of the construction process certifying that the relevant area of the construction work has been inspected. The Quality Control Design Reports will be prepared, signed and dated by the personnel identified as the supervisor in the Design Quality Control Plan. Quality Control Design Reports should be submitted as part of each design submittal.

6.6 Test and Inspection Logs. The Design-Builder will maintain an on-site inspection log that is accessible by the Owner. The log will document all tests and inspections performed at the Project during construction. In addition, the Design-Builder will prepare a sequentially numbered record of tests and inspections. The record of tests will include the following information:

6.6.1 Request for Inspection.

6.6.2 Date test or inspection was conducted.

6.6.3 Identity of testing agency or special inspector.

6.6.4 Description of the construction work tested or inspected.

6.6.5 Identification of any drawings or applicable details on the Construction Documents or Submittals that were used during testing and inspection.

6.6.6 Date that the test or inspection was concluded and the date that the results were transmitted to Owner.

7. TEMPORARY FACILITIES

7.1 Temporary Electricity. Design-Builder will provide, maintain, and pay for temporary electrical power at the Project Site for construction purposes and trailers.

7.2 Temporary Communications. The Design-Builder will provide, maintain, and pay for all applicable communications and data service connections for field offices pursuant to **Exhibit 6B** of the Agreement, including all installation and connection charges.

7.3 Temporary Water. The Design-Builder will provide, maintain, and pay for all required potable water required for construction field personnel as well as water required for and in connection with the construction operations such as dust control. Unnecessary waste of water will not be permitted. The Design-Builder must use special hydrant wrenches for opening and closing fire hydrants in lieu of pipe wrenches.

7.4 Temporary Fences. The Design-Builder will provide all necessary temporary fencing and gates required for the Project Site. Temporary fencing will be subject to restrictions in the use permit. The Design-Builder will maintain all fences through Final Completion of the Project. Gates are to remain closed and locked during off-hours.

7.5 Temporary Sanitary Facilities. Provide and maintain all required temporary toilets for use of all design and construction personnel and field labor at the Project Site through Final Completion of the Project. Location of temporary sanitary facilities will be approved by Owner's Representative prior to delivery. The Design-builder will provide at least 1 temporary toilet facility for every 20 persons. The Design-Builder will cause all design and construction personnel (including field labor) to use temporary sanitary facilities rather than Owner's facilities. All temporary sanitary facilities will comply with the Department of Health standards.

7.6 Temporary Barriers and Enclosures. Provide barriers to prevent unauthorized entry to construction areas, to allow for Owner's safe use of the Project premise, and to protect existing facilities and adjacent properties from damage from construction operations per Section 8.

7.7 Water Control. Design-Builder will grade the Project Site as required by the civil design included in the Construction Document. During construction, the Design-Builder will maintain all trenches and excavated areas free from water accumulation and will provide the necessary barriers to protect the Project Site from ponding, running water and soil erosion. The Design-Builder will provide for increased drainage of storm water and any water that may be applied or discharged on the Project Site during performance of the construction work. All drainage facilities will be adequate to prevent damage to the construction work, Project Site, and adjacent property. Design-Builder will construct dikes, if necessary, to divert any increased runoff from entering adjacent property (except in natural channels), to protect Owner's facilities and the construction work, and to direct water to drainage channels or conduits. Design-Builder will provide ponding as necessary to prevent downstream flooding. Design-Builder shall be solely liable for any loss or damages resulting from Design-Builder's failure to comply with the provisions of the Stormwater Pollution Prevention Plan ("SWPPP"). All activities shall be consistent with the SWPPP".

7.8 Pollution Control. The Design-Builder will provide a plan that meets the requirements of California Storm Best Management Practices (Stormwater Quality Task Force, 1993) to prevent the pollution of drains and watercourses by sanitary wastes, sediment, debris, and other substances and/or soil erosion during construction operations:

7.8.1 No sanitary wastes will be permitted to enter any drain or watercourse other than sanitary sewers. No sediment, debris, or other substance will be permitted to enter sanitary sewers without authorization of the receiving sanitary sewer service, and all possible best management practices will be taken to prevent materials from entering into any drain to watercourse.

7.8.2 In the event that dewatering of excavations is required, Design-Builder will obtain the necessary permits from local governmental authorities for discharge of the dewatering effluent. The Design-Builder will be responsible for assuring that water quality of the discharge meets the appropriate permit requirements prior to any discharge.

7.8.3 Erosion and sedimentation control practices will include installation of silt fences, straw wattle, soil stabilization, re-vegetation, and runoff control to limit increases in sediment in stormwater runoff, including but not limited to, detention basins, straw bales, silt fences, check dams, geo-fabrics, drainage swales, and sand bag dikes.

7.8.4 The construction work will be scheduled to expose areas subject to erosion for the shortest possible time, and natural vegetation will be preserved to the greatest extent practicable. Temporary storage and construction buildings will be located, and construction traffic routed, to minimize erosion. Temporary fast-growing vegetation or other suitable ground cover will be provided as necessary to control runoff.

7.9 Construction Equipment and Aids. Design-Builder will furnish, install, maintain, and operate all construction equipment required by the performance of the construction work. Construction aids include elevators and hoists, cranes, temporary enclosures, swing staging, scaffolding and temporary stairs. When sandblasting, spray painting, spraying of insulation, or other activities inconveniencing or dangerous to property or the health of design or construction personnel, Owner's staff, or the public are in progress, Design-Builder will enclose the area of activity to contain the dust, over-spray, or other hazard.

7.10 Traffic Control. The Design-Builder will provide a traffic control plan in accordance with the California Department of Transportation Traffic Manual as part of its Site Logistics set forth in **Exhibit 6B**. The Design-Builder will submit its traffic control plan to the appropriate agency for approval, as necessary, before commencement of the construction work:

7.11 Removal of Temporary Facilities and Equipment. The Design-Builder will remove all temporary utilities, equipment, facilities, and materials before final inspection of the Project and clean and repair any damage caused by installation or use of temporary work restoring existing facilities to their original conditions.

8. SURVEYING

8.1 Field Engineering. The Design-Builder will employ a California State licensed civil engineer or land surveyor to provide field engineering services to establish benchmarks and line and grade for horizontal and vertical control.

9. DEMOLITION

9.1 Demolition Plan. Prior to commencing any required demolition work, the Design-Builder will submit a plan to the Owner's Representative for review and approval. Under no circumstances, can demolition interrupt the Owner's operations. The Design-Builder's plan, at a minimum, will address the following:

9.1.1 Identify areas that will require demolition and provide a schedule for those demolition activities that is coordinated with the Owner's operations and the approved Project Baseline Schedule.

9.1.2 Inventory materials and equipment that will be salvaged during demolition and whether the salvaged materials and equipment will be reused, returned to the Owner, or sold at fair market value on behalf of the Owner.

9.1.3 Document procedures for protecting the existing structure and/or building materials, equipment and components that are remaining, as well as protection plans for adjacent property and persons that comply with the requirements in Section 10.

9.1.4 Document procedures for proper ventilation, noise, and dust control during demolition operations and clean-up after demolition is completed.

9.1.5 Document procedures for required disruption of any utility service as a result of demolition activities and a record of any utilities that are capped during the process. Any required shut-off or interruption of service must be approved in writing by the Owner 14 business days in advance, and all necessary water, emergency power, etc., must be in place prior to shut-off or disruption.

9.1.6 Provide for all required temporary sheeting, shoring, bracing or other structural support necessary to ensure stability of the existing structure or adjacent properties and prevent movement, settlement or collapse during demolition operations. All required temporary structural support will be designed by a California licensed structural or civil engineer.

9.1.7 Document procedures to deal with encountering Hazardous Materials or Substances that comply with the requirements of Section 4.2 and procedures regarding Unforeseen or Differing Site Conditions that comply with Section 18.13.

9.1.8 Document procedures for hauling away and disposal of any demolished materials and equipment. The procedures should include, among other things, requirements for refrigerant recovery under Environmental Protection Agency, a list of all required hauling permits, requirements for hauling and disposing of Hazardous Waste, volatile organic compounds or any other substance that is regulated by Health and Safety Code, the Bay Area Air Quality Management Owner "BAAQMD" or any other governmental agency that regulates the proper hauling and disposal of certain materials and substances.

9.1.9 Document procedures to ensure that removal and replacement of equipment will not void any existing warranties.

9.1.10 Require a survey of existing conditions and video or photographic documentation before commencement of the demolition activity to demonstrate existing conditions of adjacent areas or property.

9.2 Permits and Fees. The Design-Builder will secure all required hauling permits. The Owner will reimburse the Design-Builder at cost, for all permits and dumping fees as part of the Cost of Work.

10. PROTECTION OF WORK AND PROPERTY

10.1 Design-Builder will be responsible for providing a safe place for the performance of the construction work and for the physical conditions and safety of areas affected by the construction work. Design-Builder will take all necessary precautions to provide for the safety and protection of all persons who may come in contact with the construction work and for all

property and equipment within or adjacent to the Project Site including adequate precautions to protect existing equipment, materials, utilities, and other adjoining property and structures. Design-Builder will repair any damage caused by its operations at its own expense and will provide protection to prevent damage, injury or loss to:

10.1.1 Owner's employees and other persons at the Project Site.

10.1.2 Equipment, materials, and vehicles stored at the site or off-site if under the care, custody, or control of the Design-Builder or its Design Professionals or Subcontractors.

10.1.3 Existing structures, equipment, property and the work of others when carrying out Design-Builder's Work.

10.2 These precautionary measures will apply continuously and not be limited to normal working hours.

10.3 If damage to persons or property occur as a result of the construction work, Design-Builder will be responsible for proper investigation, documentation, including video or photography, to adequately memorialize and make a record of what transpired. The Owner will be entitled to inspect and copy any documentation, video, or photographs.

11. WORKERS AND WORKERS' COMPENSATION

11.1 Design-Builder will at all times enforce strict discipline and good order among its employees. Design-Builder will not employ on the Project any unfit person or unskilled labor.

11.2 Design-Builder and its Subcontractors are required to secure the payment of compensation of its employees in accordance with Labor Code section 3700. Before commencing the Work, the Design-Builder, its Design-Build Team members, and its Subcontractors will sign and file a certification with the Owner under Labor Code section 1861 stating the following:

I am aware of the provisions of Section 3700 of the Labor Code which 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 the any work or services under the Design-Build Agreement or any subcontract or design service agreements.

12. CHANGE IN NAME OR LEGAL ENTITY

12.1 If a change in name or nature of the Design-Builder's legal entity is anticipated, the Design-Builder will notify the Owner to ensure that the change will be properly reflected on the Agreement.

13. PROHIBITED INTERESTS

13.1 No public official or representative of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, supervise, make, accept, approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with design and

construction of the Project, will be or become directly or indirectly interested financially in this Agreement.

14. LAWS AND REGULATIONS

14.1 Design-Builder will give all notices and comply with all laws, ordinances, rules and regulations bearing on conduct of Work. If Design-Builder observes that the Contract Documents are at variance with any laws, ordinances, etc., Design-Builder will promptly notify the Owner's Representative, in writing, and any necessary changes will be adjusted. If Design-Builder performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without notice to the Owner's Representative, it will bear all costs associated with any required corrections or repairs.

15. STATUTORY PUBLIC WORKS CONTRACT REQUIREMENTS

The following requirements apply to all public works construction work performed under this Agreement.

15.1 Public Works Registration. Design-Builder or its contractor, and all subcontractors, must be registered with the California Department of Industrial Relations pursuant to Labor Code Section 1725.5. This Agreement is subject to monitoring and enforcement by the DIR pursuant to Labor Code Section 1771.4. Design-Builder shall furnish the records specified in Labor Code Section 1776 directly to the Labor Commissioner on a monthly basis, and in a format prescribed by the Labor Commissioner. Design-Builder must also post notices at the work site pursuant to Title 8 California Code of Regulations Section 16451.

15.2 Use of Subcontractors. Design-Builder shall not subcontract any work to be performed by it under this Agreement without the prior written approval of Owner, which approval will not be unreasonably withheld. Design-Builder shall be solely responsible for reimbursing any subcontractors and Owner shall have no obligation to them. Attention is directed to the requirements of Section 4100 to 4113, inclusive of the California Public Contract Code which are applicable to the work covered by this Agreement.

15.3 Prohibition Against Contracting with Debarred Subcontractors. Design-Builder is prohibited from performing work on a public works project with a subcontractor who is ineligible to perform work on the public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

15.4 Prompt Payment to Subcontractors. Design-Builder shall pay any subcontractors approved by Owner for work that has been satisfactorily performed no later than seven (7) days from the date of Design-Builder's receipt of progress payments by Owner. Within thirty (30) days of receipt of retention by Design-Builder and satisfactory completion of all work required of the subcontractor, Design-Builder shall release any retention payments withheld to the subcontractor. In the event Design-Builder does not make progress payments or release retention to the subcontractors in accordance with the time periods in this section, Design-Builder will be subject to a charge of two percent (2%) per month on the untimely or improperly withheld payment. Owner may require Design-Builder to provide documentation satisfactory to Owner of Design-Builder's compliance with this requirement as a condition of final payment and release of contract retentions, if any.

15.5 Payment Bond for Construction Work. Pursuant to Civil Code Section 9550, Design-Builder shall furnish to Owner a Payment Bond in the amount of all equipment and construction costs, to provide Owner with security for Design-Builder's full payment to workers and subcontractors for costs of materials, equipment, supplies, and labor furnished in the course of the performance of the work applicable to this section. A form of payment bond is included in **Exhibit 8**.

15.6 Labor Code Provisions. In the performance of this Contract, Design-Builder's attention is directed to the following requirements of the Labor Code:

Hours of Labor. Eight hours labor constitutes a legal day's work. Design-Builder shall forfeit, as penalty to Owner, \$25 for each worker employed in the performance of the Agreement by Design-Builder or by any subcontractor under it for each calendar day during which such worker is required or permitted to work more than eight hours in any one day and 40 hours in any one calendar week in violation of the provisions of the California Labor Code and in particular, Sections 1810 to 1815, inclusive. Work performed by employees of the Design-Builder in excess of eight hours per day and 40 hours during any one week shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one-and-one-half times the basic rate of pay, as provided in Section 1815.

Prevailing Wages. Design-Builder shall comply with California Labor Code Sections 1770 to 1780, inclusive. In accordance with Section 1775, the Design-Builder shall forfeit as a penalty to Owner an amount as determined by the Labor Commissioner not to exceed \$200 for each calendar day or portion thereof for each worker paid less than stipulated prevailing wage rates for such work or craft in which such worker is employed for any work done under the Agreement by him or by any subcontractor under it in violation of the revisions of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to Section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by Design-Builder. Pursuant to the provisions of Section 1773 of the Labor Code, Owner has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work applicable to the work to be done from the Director of the Department of Industrial Relations. Copies of the prevailing wage rates are on file at Owner and are available for review upon request.

Payroll Records. The Design-Builder's attention is directed to the following provisions of Labor Code Section 1776. The Design-Builder shall be responsible for the compliance with these provisions by his subcontractors.

- a. Each contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.
- b. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Design-Builder on the following basis:

1. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 2. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to Owner, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 3. A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either Owner, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Design-Builder, subcontractor and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Design-Builder.
- c. The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.
 - d. The Design-Builder shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within ten (10) days after receipt of a written request.
 - e. Any copy of records made available for inspection as copies and furnished upon request to the public or Owner, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Design-Builder shall not be marked or obliterated.
 - f. The Design-Builder shall inform Owner of the location of records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
 - g. In the event of noncompliance with the requirements of this Section, the Design-Builder shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects such contractor must comply with this Section. Should noncompliance still be evident after such 10-day period, the Design-Builder shall, as a penalty the State or Owner, forfeit Twenty-five Dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The penalties specified in subdivision (g) of Labor Code Section 1776 for noncompliance with the provisions of said Section 1776 may be deducted from any monies due or which may become due to the Design-Builder.

- h. The Design-Builder and each subcontractor shall preserve their payroll records for a period of three (3) years from the date of completion of the Contract.

Labor Non-discrimination. Attention is directed to Section 1735 of the Labor Code which provides that Design-Builder shall not discriminate against any employee or applicant for employment because of race or color, religion, physical or mental disability, national origin or ancestry, medical condition, marital status or sex of such persons, except as provided in Section 12940 of the Government Code. Design-Builder further agrees to include a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

Apprentices. The Design-Builder and all subcontractors shall comply with the requirements of California Labor Code sections 1777.5, 1777.6 and 1777.7 regarding the employment and of apprentices.

15.7 Retention on Progress Payments. Owner will deduct and hold in retention five percent (5%) from each progress payment to Design-Builder for construction work, or portion thereof. The remainder, less any other deductions taken in accordance with the Agreement, will be paid to Design-Builder as progress payments.

15.8 Securities in Lieu of Retention. Pursuant to Public Contract Code Section 22300, Design-Builder may elect, in lieu of having progress payments retained by Owner, to deposit in escrow with Owner, or with a bank acceptable to Owner, securities eligible for investment under Government Code Section 16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Design-Builder and Owner. If Design-Builder elects to submit securities in lieu of having progress payments retained by Owner, Design-Builder shall, at the request of any subcontractor performing more than 5% of Design-Builder's total bid, make the same option available to the subcontractor.

15.9 Assignment of Claims. In entering into a public works contract or a subcontract to supply goods, services, or materials, Design-Builder or subcontractor offers and agrees to assign to Owner all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time Owner tenders final payment to Design-Builder, without further acknowledgement by the parties.

15.10 Third-Party Claims. Pursuant to Public Contracts Code Section 9201, Owner shall have full authority to compromise or otherwise settle any claim relating to the Agreement at any time. Owner shall provide for timely notification to Design-Builder of the receipt of any third-party claim, relating to the contract. Notice shall be in writing and will be provided within thirty (30) days.

15.11 Public Contract Code Claims Procedures

15.11.1 Mandatory Prerequisites to Filing a Construction Claim. Prior to filing a construction claim pursuant to Public Contract Code Sections 9203 and 20104-20104.6 and this section, Design-Builder must first complete all Change Order procedures in Section 9 of the Design-Build Agreement. Any claim submitted prior to satisfaction of the Change Order procedures will be rejected as premature and untimely. A construction claim must be submitted

no later than (a) 30 days after the completion of all Dispute Resolution Board procedures are completed, or (b) 30 days after the occurrence of the event giving rise to the claim.

15.11.2 Claims Procedures. In accordance with the procedures set forth in Public Contract Code sections 9204 and 20104-20104.6, Design-Builder may submit a claim by registered or certified mail with return receipt requested, for one or more of the following: (a) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by the Owner; (b) payment by the Owner of money or damages arising from work done by, or on behalf of, the Design-Builder pursuant to this contract and payment for which is not otherwise expressly provided or to which the Design-Builder is not otherwise entitled; or (c) payment of an amount that is disputed by the Owner.

15.11.3 Support for Claim. The Design-Builder shall furnish reasonable documentation to support the claim, including but not limited to: 1) a clear, concise recital of the basis upon which the claim is asserted, including a designation of the provisions of the Contract Documents upon which the claim is based, 2) a statement as to the amount of time and/or compensation sought pursuant to the claim; 3) whether the Design-Builder's claim arises from an ongoing occurrence, and if so a description of the specific Work activities affected by the claim, 4) a time impact analysis in the event that Design-Builder requests a time extension, 5) full and complete cost records supporting the amount of any claim for additional compensation, and 6) a notarized certification by the Design-Builder as follows: "Under the penalty of law for perjury or falsification and with specific reference to the California False Claims Act, Government Code Section 12650 et seq., the undersigned hereby certifies that the information contained herein is a true, accurate and complete statement of all features relating to the claim asserted." Failure by the Design-Builder to provide sufficient documentation will result in denial of the claim. The Owner reserves the right to request additional documentation, or clarification of the documentation provided.

15.11.4 Response to Claim. Upon receipt of a claim, the Owner will conduct a reasonable review and provide a written statement to the Design-Builder identifying what portion of the claim is disputed and what portion is undisputed within 45 days of receipt of the claim. The Owner and Design-Builder may, by mutual agreement, extend the 45 day time period. For any undisputed portion of a claim, the Owner must make payment within 60 days of its issuance of the written statement.

If the Design-Builder disputes the Owner's written statement, or if the Owner fails to respond, the Design-Builder may demand an informal conference to meet and confer for settlement of the issues in dispute. The Owner will then schedule the meet and confer conference within 30 days of the demand. Within 10 business days following the meet and confer conference, the Owner will provide a written statement identifying the portion of the claim that remain in dispute. Any payment due on an undisputed portion of the claim will be made within 60 days of the meet and confer conference.

After the meet and confer conference, any disputed portion of the claim shall be submitted to non-binding mediation. Alternatively, upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable. If mediation is unsuccessful, the parts of the claim that remain in dispute shall be subject to applicable procedures set forth below.

Failure of Owner to respond to a claim within the time periods described above shall result in the claim being deemed rejected in its entirety. Additionally, amounts not paid in a timely manner shall bear interest at 7 percent per year.

In the event that the mediation is unsuccessful, Design-Builder must file a government claim pursuant to Government Code section 910 et seq. in order to initiate a civil action.

15.12 Utility Relocation. Pursuant to California Government Code Section 4215, if during the course of the work Design-Builder encounters utility installations which are not shown or indicated in the contract plans or in the specifications or which are found in a location substantially different from that shown, and such utilities are not reasonably apparent from visual examination of the work site, then it shall promptly notify Owner in writing. Where necessary for the work of the Contract, Owner will amend the Agreement to adjust the scope of work to allow Design-Builder to make such adjustment, rearrangement, repair, removal, alteration, or special handling of such utility, including repair of the damaged utility. If Design-Builder fails to give the notice specified above and thereafter acts without instructions from Owner, then it shall be liable for any or all damage to such utilities or other work of the Agreement which arises from its operations subsequent to the discovery, and it shall repair and make good such damage at its own cost.

15.13 Trenching, Shoring, and Differing Site Conditions.

15.13.1 Compliance. Design-Builder will comply with Labor Code sections 6500, 6705, and 6707, and Public Contract Code section 7104 regarding trenching and shoring.

15.13.2 Permit Requirements for Trenches 5'-0" or More in Depth. Design-Builder agrees to comply in full with Section 6500 of the Labor Code and to provide the required permits prior to the initiation of any work, method, operation or process that involves: (i) construction of trenches or excavations that are 5'-0" or deeper and into which a person is required to descend; (ii) the construction of any building, structure, falsework, or scaffolding more than 3 stories high or the equivalent height; (iii) the demolition of any building, structure, falsework, or scaffold more than 3 stories high or the equivalent height; or (iv) the underground use of diesel engines in work in mines and tunnels.

15.13.2.1 Detailed Plans for Trenches 5'-0" or More in Depth. In compliance with Labor Code section 6705, the Design-Builder will submit to the Owner's Project Manager, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches 5'-0" or more in depth. If the plan varies from shoring system standards, the plan will be prepared by a registered civil or structural engineer. The plan will not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations.

15.13.2.2 Separate Bid Items for Sheet piling, Shoring, etc. To the extent that Design-Builder's Work involves construction of a pipeline, sewer, sewage disposal system, boring and jacking pits, or similar trenches or open excavations, which are 5'-0" or deeper, Design-Builder will comply with all applicable laws, regulations, and codes and its bid and the Contract Price will contain, as a line item, adequate sheet piling, shoring, and bracing, or equivalent method, for the protection of life or limb pursuant to Labor Code section 6707, which will conform to applicable safety orders. Nothing in this section will be construed to impose tort liability on the Owner or any of its employees.

15.13.3 Excavations Deeper than 4'-0". If Work under this Agreement involves digging trenches or other excavation that extends deeper than 4'-0" below the surface, Design-Builder will promptly, and before the following conditions are disturbed, notify Owner's Project Manager, in writing, in accordance with Public Contract Code section 7104, of any:

15.13.3.1 Material that the Design-Builder believes may be hazardous waste, as defined in Section 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

15.13.3.2 Subsurface or latent physical conditions at the site differing from those indicated.

15.13.3.3 Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the construction work of the character provided for in the Bid Documents and under this Agreement.

15.13.4 Differing Site Conditions. Design-Builder's notice to Owner shall be issued by telephone or in person and followed within 24 hours thereafter by written notice, providing a brief description of why the condition encountered is considered a Differing Site Condition. Promptly upon receipt of Design-Builder's notice, Owner will investigate the site conditions. If, during construction, the Design-Builder encounters an alleged Differing Site Condition, the Design-Builder shall immediately give written notice and may continue work; provided however that the following documents and information shall be submitted on a daily basis:

1. Digital photographs (paper and electronic copy) that detail the Differing Site Conditions;
2. An electronic copy of the pertinent data (e.g. settlement monitoring data, boring logs, dewatering production rates, etc.) for the previous 24 hours;
3. As applicable, sample of soil and groundwater in the alleged Differing Site Condition area.
4. Design-Builder's applicable daily reports for each day that the alleged Differing Site Condition exists; and
5. Detailed daily records (which shall include, but not be limited to, labor and equipment), describing the alleged Differing Site Conditions and the impact the Differing Site Conditions are having on the progress of the construction.

Immediate written notice shall describe the specific ground conditions encountered and the measures taken to deal with the ground conditions. The Design-Builder will provide the OR with written notice within 5 business days discovery of an Unforeseen and Differing Site Condition. The OR, in conjunction with the Owner and IOR, will promptly investigate the conditions, and if they find that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in Design-Builder's Contract Price or Contract Time for any part of the Work, the OR will recommend that the Owner issue a Change Order under Section 9 of the

Agreement. If it is determined that physical conditions at the site are not materially different from those indicated in Bid Documents or that no change in terms of the Contract Documents is justified, the OR will notify Design-Builder in writing, stating reasons the Design-Builder will not be entitled to an adjustment in the Contract Price or Contract Time. Such reasons may include any of the following:

15.13.4.2 Design-Builder knew of the existence of the conditions at the time Design-Builder submitted its proposal; or

15.13.4.3 Design-Builder should have known of the existence of the conditions as a result of having complied with the requirements of Contract Documents; or

15.13.4.4 The information or conditions claimed by Design-Builder to be latent or materially different consist of information, conclusions, opinions or deductions of the kind that precludes reliance upon; or

15.13.4.5 Design-Builder was required to give written notice of differing site conditions under the Contract Documents and failed to do so within the time required.

The Design-Builder will not be excused from the Contract Time to complete its Work and will proceed with all Work to be performed under the Agreement unless or until it is determined that Design-Builder is entitled to an adjustment under Section 9 of the Agreement. If the Design-Builder disagrees with the decision regarding an alleged Differing Site Condition, Design-Builder may pursue a claim under Section 15.11 of these Supplemental General Conditions.

15.14 Design-Builder's License Requirements. Design-Builder and any approved subconsultants (for architectural design, engineering, construction project management services) or subcontractors shall hold such current and valid licenses as required by California Law, including the Department of Industrial Relations (DIR) contractor and subcontractor registration requirements articulated in part by Cal. Labor Code section 1725.5.

15.15 Examination and Audit of Records. Pursuant to Government Code Section 8546.7, Design-Builder shall retain all project-related records for a period of 3 years after final payment on this DBO Contract, which shall be subject to audit or inspection by the Owner or the State Auditor during this period.

15.16 Safety Requirements. The Design-Builder shall promptly and fully comply with and carry out, and shall without separate charge therefore to the Owner, enforce compliance with the safety and first aid requirements prescribed by applicable State and Federal laws and regulations, rules and orders and as may be necessary to ensure that all Construction Work shall be done in a safe manner and that the safety and health of the employees, agents and the people of local communities is safeguarded. Compliance with the provisions of this Section by subcontractors shall be the responsibility of the Design-Builder. All installed, dismantled, and removed material, equipment and facilities, without separate charge therefore to Owner, shall fully conform with all applicable State and Federal safety laws, rules, regulations and orders and it shall be the Design-Builder's responsibility to furnish only such material, equipment and facilities.

15.17 Notice of Third-Party Claims. Pursuant to Public Contract Code section 9201, the Owner will provide Design-Builder with timely notification of the receipt of any third-party claim relating to the Agreement.

15.18 Assignment of Anti-Trust Actions. Pursuant to Public Contract Code section 7103.5 and Government Code sections 4554 and 4553, in entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, Design-Builder, its Design Professionals and Subcontractors offer and agree to assign to the Owner all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. section 15) or under the Cartwright Act (chapter 2 (commencing with section 16700) of part 2 of division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to this Agreement or any Subcontract. This assignment will be made and become effective at the time the Owner makes final payment to the Design-Builder, without further acknowledgment by the parties.

15.19 Compliance with All Applicable Laws. Design-Builder shall comply with all the applicable requirements of federal, state and local laws, statutes and ordinances relative to the execution of the Work. In the event Design-Builder fails to comply with these requirements, Owner may stop any Work until such noncompliance is remedied. No part of the time lost due to any such cessation of the Work shall be made the subject of a claim for an extension of time or increase in the compensation.

END OF DOCUMENT

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Exhibit 3 DRAFT

Scope of Work

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Exhibit 3 DRAFT

Scope of Work

The Project has two phases. Phase One of the Project includes the design and construction of forty-five (45) residential units, ancillary facilities and associated parking. Phase Two includes the design and construction of twenty-five (25) residential units and associated parking. The final design and construction of Phase Two is not included in this Scope of Work (unless later added by written Change Order).

Together, Phase One and Phase Two include Seventy (70) residential units. The playing fields and parking lot on the western portion of the Site are excluded from the Project; however, Phase One does include new restrooms and related facilities to serve the playing fields. The budget and scope of Phase One include sitework directly associated with Phase One, possibly including minimal sitework and utility connections in the physical area comprising Phase Two (for example, as required to balance cut and fill for Both Phases).

The services of the Design-Builder are divided into two stages: 1) the Preconstruction Stage, and 2) the Construction Stage, described below.

1. Preconstruction Stage.

Design-Builder services provided during the Preconstruction Stage shall include:

1.1. Rights and Entitlements. Obtaining all rights and entitlements necessary to complete both Phase One and Phase Two. If the Design-Builder knows or learns of the need to obtain easements, zoning variances, or legal authorizations regarding utilization of the Site, the Design-Builder shall promptly notify the Owner.

1.2. CEQA. Completion of the CEQA process for both Phase One and Phase Two of the Project, resulting in the milestones of a certified Final Environmental Impact Report ("FEIR") (or other appropriate environmental review document) and associated Notice of Determination ("NOD") being duly and properly filed including management of the preparation of environmental review documents.

1.3. Permits and General Plan Amendments. Securing entitlements and governmental permits needed for the Project, including General Plan Amendments, if required, to be obtained for and held by the Owner. These shall include, but not be limited to planning & zoning approvals for both Phases of the Project. Design-Builder shall serve as the Developer/Designer/Contractor on a day-to-day basis for the Owner with respect to the entitlements, development, design, permitting and construction of the Project.

1.4. Remapping of Site. Management of the remapping of the Site as needed or desired by the Owner for financing and other purposes including conditions precedent for the granting of permits by the City of Pacifica and other public agencies having jurisdiction over the Project.

1.5. Community Outreach. Regular assistance with community outreach to foster community support for the Project.

1.6. Financial Management Assistance. Financial management assistance, including the following and as further outlined in Section 3.5:

1.6.1. Assistance to the Owner in administering financial arrangements for the Project including cooperation and assistance regarding the continuing management and eventual conclusion of the current pre-construction debt funding arrangement ("Tranche 1") with the San Mateo County Housing Endowment and Regional Trust ("HEART") and, if the District wishes to continue that arrangement, then assistance with the next Loan Closing and monthly disbursement requests that would extend the current funding HEART into the next phase ("Tranche 2"), including close cooperation with HEART and the District.

1.6.2. Iterative financial modeling based on emerging residential rental market conditions and construction cost updates. The Design-Builder will be expected to design-to-cost in accordance with the Owner's Preliminary Project Budget, Design Guide Illustrations ("DGI"), and Owner's Minimum Requirements ("OMR"), all included in Exhibit 2 Design Criteria.

1.6.3. Management of the project pro-forma, including financial modeling in collaboration with the Owner and its designated Financial Consultant and Bond Counsel, together with the Owner's other authorized representatives, to assist Owner in validating the near-term development remains economically viable.

1.6.4. Assist Owner in validating that the Project (with or without the eventual completion of Phase Two) is financially sustainable from an operations and asset/property management perspective.

1.7. Demolition. Preparation of detailed environmental remediation and demolition plans for the removal of existing improvements on the Site.

1.8. Refinement of Design Criteria; Design Alternatives. Advancement and refinement of the DGI and OMR (and possibly including additional design alternatives that the Design-Builder prepares for Owner's approval) and associated documentation to the extent necessary to ensure that Design-Builder will be able to deliver the Project within the Contract Price. Design advancement may include consideration of potential design alternatives that do not materially delay or disrupt the environmental review process under the California Environmental Quality Act ("CEQA") or planning approval processes.

1.9. Essential Design Requirements. The design must account for known relevant circumstances and conditions relating to the Property; not encroach onto adjoining land or onto any easements (after taking into account appropriate lot line adjustments contemplated by Owner and Design-Builder for the Master Project); have adequate water supply, storm and sanitary sewage facilities, telephone, electricity, fire protection, means of ingress and egress to and from public roads, without limitation, other required public utilities.

1.10. Life-Cycle Costs. The Design-Builder is encouraged to propose Project enhancements that will improve life-cycle costs. Where the Design-Builder proposes such opportunities for Project enhancements that will require modification to the Owner's Design Criteria or other Project requirements, the Owner will consider them to the extent feasible.

1.11. Alternative Building Materials and Value Engineering. Alternative building materials may be utilized and assemblies as long as they are acceptable under the applicable California Building Code ("CBC") and, provided also, that the specifications for physical

performance over time are equivalent or better for the proposed material than the alternatives. The Owner is particularly interested in having the Design-Builder propose true Value Engineering changes (that, if implemented, would not diminish building performance or quality). The basis for evaluating such decisions are: cost differential, schedule changes, short-term and long-term performance and maintenance demands of the buildings.

1.12. Iterative Reviews of Design. Iterative reviews with the Owner (and its representatives) of the design development documents as they are being prepared and until they are complete, assuring that they are compliant with the detailed requirements of the Design-Build Agreement (“DBA”).

1.13. Meetings with Utility Service Providers. Design-Builder will meet with each utility (including PG&E as well as others) that will provide services to the Project and of the reviewing state, local or municipal agencies including Fire, Building, Planning and Engineering to more fully understand expectations, project limitations and specific site requirements. Subsequent meetings throughout the design and development process are anticipated to keep these departments current with the design effort for purposes of smooth permitting.

1.14. Confirmation of Contract Schedule and Price. Design-Builder’s confirmation of the Contract Schedule and Contract Price before the Owner authorizes any Stage 2 Construction Services in compliance with contractual terms and provisions.

2. Construction Stage.

Design-Builder services provided during the Construction Stage shall include:

2.1. Site Logistics Plan. Design-Builder shall submit to the Owner for approval prior to construction, a site logistics plan for Phase One of the Project (“Site Logistics Plan”) that shall address, at a minimum: access to the site, parking, material storage and related visual screening and security, on site layout, temporary storm water management in coordination with the established BMPs for the site, temporary utilities and site security. The Site Logistics Plan shall conform with local jurisdictional requirements. This document, in conjunction with the Rules of the Site document (see below), must address concerns identified in the neighborhood community outreach meetings.

2.2. Rules of the Site. Design-Builder shall submit to the Owner for approval prior to construction, a document identifying the Rules of the Site (“Rules of the Site”). This document shall address at a minimum: parking, site access, site security, safety, work hours, noise, cleaning, trash removal, parking, temporary facilities, storage of materials and loading and unloading of materials on the site. The Rules of Site shall be consistent with any Owner work site restrictions, including those regarding parking.

2.3. Governmental Agencies. Interfacing coordination with the city for the purpose of receiving the city building permit. Application fillings and acquisition of building permits, approvals from utilities, governmental agencies and other entities having jurisdiction over the Project, and obtaining temporary and final certificates of occupancy.

2.4. Facilitation of Financing. Design-Builder shall provide management and administrative support to the Owner in closing on the Certificate of Participation (“COP”) financing and related or similar financing needs and subsequent monthly construction phase disbursement requests.

2.5. Final Design. Design-Builder shall complete the final construction documents for Phase One of the Project, such documents being compliant with the DGI and OMR.

2.6. Reviews of Construction Documents. Iterative reviews with the Owner (and its representatives) of the construction documents at 50% completion, 90% completion and final completion to assure compliance with the detailed requirements of the DBA.

2.7. Demolition. Demolition of existing improvements pursuant to the approved and permitted demolition plan (including any required remediation work that might necessarily precede or be contemporaneous with demolition).

2.8. Phase One. Construction and delivery of Phase One of the Project and related improvements on and around the Site, including the restoration of the Phase Two site area (if temporarily utilized by the Design-Builder). Include the timely delivery of permits, certificates and other authorizations needed for the legal occupancy of all Phase One improvements.

2.9. Tests Etc. The Design-Builder shall provide tests, analyses, studies, or reports that may be required by the contract documents, by code or by the local jurisdiction.

2.10. Furniture and Equipment Procurement Plan. Coordination with the development of the Owner's furniture and equipment procurement plan, including interdisciplinary coordination and installation of Owner specified and purchased furnishings and equipment. Equipment and furnishings shall include but not be limited to entertainment electronics, IT equipment, laundry equipment, health club and fitness equipment and common area art and furnishings. Purchase and installation of furniture and equipment may include inter-disciplinary coordination for the placement and installation of Owner specified or purchased material and equipment. Coordinate with Owner's Representatives for a complete and functioning project.

2.11. Low Voltage Systems. Provide required design documents for low voltage systems and required permitting, i.e., fire alarm, security and other such specialty systems as required for completing project scope.

2.12. Raceway Systems Etc. Provide low voltage raceway systems, IT required power requirements, MDF/IDF closet with adequate cooling capacity, wall backing, back boxes, rated wall penetrations and fire stopping shall be provided as part of this design package.

2.13. Information Technology. Coordinate with Owners information technology ("IT") group as required for a complete and functioning Project. The Owner will provide and install the following:

2.13.1. Necessary Network Electronics;

2.13.2. Software required to support Owner's desktop devices.

2.14. Initial Occupancy. Assistance to the Owner in coordinating and facilitating the initial occupancy and use of Phase One improvements, any necessary post-construction corrective work, and performance of warranty work.

2.15. As-Builts. Delivery of as-built documents, warranties (and administration thereof) and close-out of Phase One contract(s), as further described in this document.

2.16. Monthly Project Reports: Design-Builder shall prepare and submit monthly progress reports summarizing work completed to date, work plan for the next month, and identification of key issues requiring Owner action or direction. Report shall be submitted to the Owner on or before the 10th of each month followed by a monthly meeting with the Design-Builders project Design-Builder.

3. General Duties and Obligations.

In connection with the services to be provided hereunder, Design-Builder shall render the following services to the Owner relating to the development, design and construction of the Project in accordance with the Requirements and employing the Standard of Care:

3.1. Project Schedule:

3.1.1. The Design-Builder shall submit for review by the Owner a Project Schedule prepared using a CPM (Critical Path Method) Diagram within sixty days after the Effective Date of the Contract, utilizing a full-featured software package in a form satisfactory to the Owner, showing milestone dates for receipt and approval of pertinent information relative to design, dates of design coordination meetings, preparation and processing of shop drawings and samples, and delivery of materials or equipment requiring long lead-time procurement, Owner's occupancy requirements showing any portions of the Project having occupancy priority, and proposed date of Final Completion. It should also include the dates for commencement and completion of the Work required by the Contract Documents, including coordination of mechanical, plumbing, and electrical disciplines, as well as coordination of the various subdivisions of the Work within the Contract.

3.1.2. Milestones must be clearly indicated and sequentially organized to identify the critical path of the Project. It shall have the minimum number of activities required to adequately represent to the Owner the complete scope of Work and define the Project's (and each Component's) critical path and associated activities. The format of the Project Schedule will have dependencies indicated on a monthly grid identifying milestone dates such as construction start, phase construction, structural top out, rough-framing completion, dry-in, pre-drywall inspections, drywall completion, equipment installation, systems operational, inspections for Material Completion and Occupancy Date, and Final Completion Date.

3.1.3. The Design-Builder shall submit, along with the Project Schedule, the Submittal Schedule for approval by the Owner, correlating the associated approval dates for the documents with the Project Schedule. Upon approval by the Owner, the Project Schedule shall become the Overall Project Schedule, which shall be utilized by the Owner and Design-Builder. The Design-Builder must provide the Owner with monthly updates of the Overall Project Schedule indicating completed activities and any changes in sequencing or activity durations, including approved change orders.

3.1.4. The Design-Builder is responsible for timely completion of its activities, responsibilities, and obligations under this Contract in accordance with the Preliminary Design and Construction Schedule as amended and approved by the Owner. The Owner shall seek the Design-Builder's input if any change in the Owner's requirements affects the design schedule. The Design-Builder acknowledges and agrees, absent fault of the Owner or force majeure, that if the agreed-upon design milestones in the Preliminary Design and Construction Schedule are not met, the Design-Builder will, at its own expense, accelerate its work, accelerate or replace delinquent consultants, and retain such additional resources as necessary

to return the Project to the Preliminary Design and Construction Schedule. Upon approval by Owner of the Constructor's Project Schedule, the Preliminary Design and Construction Schedule shall be amended to include the Project Schedule. The amended schedule will become the Overall Project Schedule, which shall be utilized by the Design-Builder, their Consultants and Contractors and the Owner.

3.2. Preparation of the Project Budget. The Design-Builder acknowledges that the Owner has appropriated a fixed amount of money for presented as the Project Preliminary Budget. Design-Builder shall prepare for the Project a Design-Builder's Project Budget (the "Design and Construction Budget") setting forth a preliminary estimate of Project costs utilizing a format as approved by the Owner. The Design-Builder Project Budget shall be consistent with the Contract Price for the Project.

3.2.1. The Design and Construction Budget shall be sufficiently detailed to effectively track the cost of the Project. Design-Builder shall prepare and submit the Design and Construction Budget at regular intervals during the design and construction phases of the project (see Meetings and Monthly Reports) and shall, by efficient management, supervision and value engineering, ensure that the cost of the Project will not exceed the Contract Price.

3.2.2. Estimates shall set forth in detail Design-Builder's estimate of design and construction costs, including Actual Costs, Design Contingency, Construction Contingency and Design-Builder Fees, for the construction of the Project and each component thereof. As the Construction Documents are completed, the Design-Builder shall confirm the estimates are within the established Preliminary Budget estimates through the management of the design as described in item 1 above.

3.2.3. Each of the budgets and schedules described above, together with any modifications and amendments thereto, shall be subject to the approval of Owner.

3.3. Project Meetings. The Design-Builder shall schedule regular meetings of the key principals of the Project Team in an effort to solve problems in a partnering atmosphere to facilitate the ability of each team member to meet its business objectives, so long as its business objectives are consistent with the successful completion of the Project. During Design and pre-construction and through construction, Design-Builder shall schedule and conduct weekly meetings with the Owner, the Design Consultants, the General Contractors, and appropriate Subcontractors, for the purpose of discussing the progress of the design, status and progress of the Work, and other matters of coordination. The Design-Builder shall:

3.3.1. Provide Owner's Representative with reasonable advance notice of such meetings and provide such representatives the opportunity to attend and participate in such meetings (the "Weekly Project Meetings"), which Weekly Project Meetings shall be attended by such of Design-Builder's "Key Personnel" (as defined below) as may be requested by Owner.

3.3.2. Meet with Owner's Executives ("Owner Executive Meetings") as called by Owner. Owner Executive Meetings shall be attended by such of Design-Builder's Key Personnel as may be requested by Owner. Meetings shall be held at the Project unless otherwise approved by the parties and may be attended telephonically by Owner's executives.

3.3.3. Meetings shall cover the following topics, as a minimum:

- a. Design meets the Owner's Program in all respects, including but not limited to the following areas:
- b. Design in accordance with the Design Criteria;
- c. Cost containment and cost monitoring on consideration of cost-effective decisions;
- d. Compatibility with Owner's Minimum Requirements;
- e. The appropriate provision of necessary services and utilities;
- f. The necessary level of environmental review and documentation;
- g. Review of the progress of the project confirming that the project schedule is maintained;
- h. That construction quality assurance complies with the Owner's Program that the Construction Documents are reviewed for constructability;
- i. That permits and approvals are obtained for the Owner to occupy the Project.

3.3.4. Promptly issue minutes of such meetings in a format acceptable to Owner.

3.4. Monthly Reports: Provide Monthly Reports ("Monthly Reports") (unless requested more frequently by Owner) with regard to the status of the total Construction. Design-Builder shall:

3.4.1. Review and produce for approval by Owner necessary documentation including monthly reports of Project status utilizing the Owner Approved format.

3.4.2. Report on Cost Control the Design relative to the approved Construction Budget. Report shall be sufficiently detailed to effectively track the cost of the Project. Design-Builder shall prepare and submit the Design and Construction Budget at regular intervals during the design and construction phases of the project (at least monthly) and shall, by efficient management, supervision and value engineering, ensure that the cost of the project will not exceed the Contract Price.

3.4.3. Estimates shall set forth in detail Design-Builder's estimate of design and construction costs, including Actual Costs, Design Contingency, Construction Contingency and Design.

3.4.4. Design-Builder, with each report shall show estimated Project costs by individual line item, and shall provide continual management of such control budget.

3.4.5. Throughout the Project duration, identifying potential cost problems and potential solutions for Owner's approval. The Design-Builder agrees to notify the Owner of any

change requests that may have an impact on the budget as soon as the Design-Builder becomes aware of the need for such a change request.

3.4.6. If the reports submitted by Design-Builder pursuant to Section 3.3 hereof reflect a substantial deviation from the Project Schedule or Project Budget approved by Owner, then Design-Builder shall submit to Owner with any such report an explanation of the schedule or budget change and proposed corrective steps.

3.5. Public Representation. As requested by Owner, Design-Builder shall provide general representation of Owner before any public or regulatory body in connection with any community outreach programs, zoning, environmental, site, easement, title, design, construction or other matter related to the development of the Project.

3.6. Supervision of Consultants. Design-Builder shall supervise its Project Consultants in the preparation of Plans for the construction of the Project including Preparation of bid packages: Design-Builder shall review bid proposals from proposed General Contractors and other Subcontractors, making recommendations to Owner for the selection of such contractors based upon such bid proposals and the qualifications of such contractors and negotiating contracts with the selected contractors for the Project and, with respect to Subcontractors, supervise the appropriate Improvement Contractor's selection and negotiation of contracts with such Subcontractors.

3.7. Financial Reporting Support. Obtaining and preparing such information, reports and/or documentation as may be reasonably requested by any existing or prospective lender for the Project and assisting Owner with its review of the term sheets, applications and/or documentation for Financing or bond financing obtained by Owner in connection with the Project ("Financing"); provided, however, that the parties expressly agree that:

3.7.1. Owner shall be responsible for the procurement and negotiation of Financing and for the review of documents and instruments entered into with the lender respecting any Financing (collectively, the "Financing Documents"), although Design-Builder shall cooperate with and assist Owner in connection therewith, provided that Owner shall separately retain a loan broker who shall be primarily responsible for procuring any Financing (including preparation of applications or other submittals to prospective lenders) or an employee of Owner shall perform the functions customarily provided by a loan broker and be primarily responsible for procuring any Financing (including preparation of applications or other submittals to prospective lenders), and in no event shall Design-Builder be required to perform such functions.

3.7.2. Design-Builder shall have no liability to any lender for the information provided in connection with the making of any Loan and Owner shall indemnify, defend and hold harmless Design-Builder and the Design-Builder Indemnities (as defined in Section 7.2 below) from any Losses (as defined in Section 7.1, below) in connection therewith, except to the extent such Losses arise from an act or omission of any of Design-Builder or the Design-Builder Indemnities which constitutes gross negligence, bad faith or willful misconduct or which constitutes any material breach of this Agreement by any of Design-Builder or the Design-Builder Indemnities.

3.7.3. Owner, alone, shall be responsible for exercising the business judgment in determining the terms and conditions of any Financing and for the economic consequences of any Financing, and Design-Builder shall have no liability to Owner in connection with any

Financing except to the extent Owner suffers Losses arising from an act or omission of any of Design-Builder or the Design-Builder Indemnities which constitutes gross negligence, bad faith or willful misconduct or which constitutes a material breach of the Agreement by any of Design-Builder or the Design-Builder Indemnities.

3.7.4. Design-Builder shall comply with and perform the non-monetary responsibilities of the borrower under the terms or in compliance with the Loan as they pertain to the development, construction and leasing of the Project, including, without limitation, furnishing any documents in connection therewith, including surveys, reports and certificates and providing to Owner's lender those contracts, agreements, change orders and other materials reasonably required to be provided or approved by such lender under the applicable Loan Documents, provided that:

- a. Owner shall pay charges and fees required by the Loan Documents;
- b. Documents, papers, certificates and items which are provided in the Loan Documents to be addressed to, or to be or run in favor of, or to be approved by, any party to the Loan Documents shall be required hereunder also to be addressed to, or to be or run in favor of, or to be approved by, Owner.

3.7.5. No waiver or modification of any requirement or provision of the Loan Documents shall reduce or modify the obligations hereunder except as and to the extent agreed to in writing by Owner.

3.7.6. Design-Builder shall have absolutely no liability to any lender for the performance of or failure to perform its duties under this Section and Owner shall indemnify, defend and hold harmless Design-Builder and the Design-Builder Indemnities from any Losses in connection therewith, except to the extent such Losses arise from an act or omission of any of Design-Builder or the Design-Builder Indemnities which constitutes gross negligence, bad faith or willful misconduct or which constitutes a material breach of this Agreement by any of Design-Builder or the Design-Builder Indemnities, which indemnity shall survive the termination of this Agreement.

3.7.7. Design-Builder shall have no liability to Owner in connection with any Financing except to the extent Owner suffers Losses arising from an act or omission of any of Design-Builder or the Design-Builder Indemnities which constitutes gross negligence, bad faith or willful misconduct or which constitutes any material breach of this Agreement by any of Design-Builder or the Design-Builder Indemnities.

3.8. Plans Kept On-Site. Design-Builder shall have written environmental, quality control, crisis/emergency management, health and safety programs in place with a designated (qualified) coordinator as the point of contact during the project. Such plans shall be on the Site and the superintendent and the project management team shall be familiar with and utilize such programs and conform with the Rules of Site.

3.9. Marketing Coordination. Coordinate the marketing program with the "Leasing Agent": Design-Builder Shall assist the Owner in the Coordination and supervision of the leasing of the Project, including without limitation, the following:

3.9.1. Assisting Owner, as reasonably requested by Owner, in the selection of a leasing agent for the Project (the “Leasing Agent”), including, without limitation:

- a. Negotiation of the terms of the listing agreement of the leasing agent (the “Listing Agreement”);
- b. Assisting, coordinating and supervising the Leasing Agent in the leasing of the Project, including, without limitation, development and updating of a leasing plan and leasing guidelines for the Project (collectively, the “Leasing Guidelines”) Leasing Agent’s proposed market strategy and competitive positioning for the Project based upon the results of market research;
- c. Assisting, coordinating and supervising the leasing process, including, without limitation, working with the Leasing Agent and Owner’s designated counsel to prepare standard form or forms of lease agreements for leases at the Project or providing Design-Builder’s standard lease form for such purpose (provided Design-Builder’s shall in no way be liable for any deficiencies or inadequacies contained in such form and further provided that Owner shall be responsible for the review and prior approval of the final lease form or forms used in connection with the Project);
- d. Providing such other services which are incidental to the above listed services as may be reasonably requested by Owner from time to time in connection with the Project;
- e. Design-Builder shall have no liability to Owner in connection with any leases except to the extent Owner suffers losses arising from an act or omission of any of Design-Builder or the Design-Builder Indemnitees which constitutes gross negligence, bad faith or willful misconduct or which constitute a material breach of this Agreement by any of Design-Builder or the Design-Builder Indemnitees.

3.10. Project Completion. With the completion of the Project, Design-Builder shall use Commercially Reasonable Efforts to deliver the following items (the “Completion Evidence”) to Owner, at Owner’s expense, with respect to the Project on or before the date on which the applicable portion of the improvements are to be completed in accordance with the Project Schedule, unless another date is specified below:

3.10.1. Architect’s Certificate. (“Architect’s Certificate”), from The Project Architect in a form reasonably acceptable to Owner, certifying to the Owner and its lenders that the improvements have been completed in accordance with the Requirements, subject to Permitted Punch List Items. As used herein, “Permitted Punch List Items” means minor punch list items in connection with the applicable improvements, but only if such punch list items satisfy each of the following requirements.

3.10.2. Punch List. The punch list shall include the estimate by an improvement Contractor or Contractors of the cost of and time necessary to complete or repair to each item

on such list. Design-Builder shall have obtained Owner's written approval of such punch list items (which approval shall not be unreasonably withheld).

3.10.3. Full Plans. Within 120 days after receipt of the Architect's Certificate, full and final as-built plans and specifications showing the utilities and improvements (which shall be the same as the plans and specifications identified in the architect's certificate described in subsection (a) above and shall also be the same as a complete set of the Improvement Plans with amendments and supplements approved by Owner).

3.10.4. Permits. Permits for the Project (including final certificates (subject only to conditions that are then satisfied) of occupancy relating to the entire Project), excluding items relating to, and obtainable only upon, completion of Tenant improvements not yet required to be completed hereunder (which excluded items shall be delivered upon completion of the Tenant improvements to which they relate).

3.10.5. Survey. A survey (the "Completion Survey") of the Project including all improvements thereon dated after the date of the architect's certificate described in subsection (a) above, prepared and certified to Owner and its lenders and title insurance company by a licensed surveyor in the State of California reasonably satisfactory to Owner qualifying as an ALTA completion survey, setting forth the full, accurate and applicable legal description of the Project consistent with the legal descriptions contained in the Title Policy, disclosing no encroachments, setback violations, deficiencies or other objectionable matters.

3.10.6. Surveyor's Certificate. A certificate for the Project dated after the date of the architect's certificate described in subsection (a) above, addressed to Owner and its lenders, from the surveyor who prepared the Completion Survey, in a form reasonably acceptable to Owner.

3.10.7. Final Certificates of Occupancy. Design-Builder will also have "as-built" drawings and specifications prepared and turned over to the Owner at the completion of the project.

3.10.8. Notices of Completion. Design-Builder must submit to Owner for its execution any notices of completion required or permitted to be filed or recorded upon the completion of any portion of the Project and, upon receipt from Owner, promptly filing or recording such notices, and taking such actions as may be required to obtain any appropriate temporary or final certificates of occupancy or equivalent documents required to permit the occupancy of any portion of the Project.

3.10.9. Other Evidence. To the extent not theretofore delivered to Owner by Design-Builder, evidence reasonably satisfactory to Owner that all work and materials shall have been fully paid for, except for customary holdbacks under construction contracts pursuant to the terms thereof (but in no event in an amount exceeding 10% of the stated cost under any such contract), and complete and unconditional waivers of mechanics' liens have been obtained.

Exhibit 4

Price Proposal Form

PRECONSTRUCTION STAGE	Unit	Extended Price
Completion of CEQA Process	LS	\$
Entitlements and Permitting	LS	\$
Design Services	LS	\$
SUBTOTAL PRECONSTRUCTION STAGE		\$
CONSTRUCTION STAGE DESIGN SERVICES		
Direct Construction Costs		
(insert trade work breakdown)		
	LS	\$
	LS	\$
	LS	\$
	LS	\$
	LS	
	LS	
Allowances (if any)		
	LS	\$
	LS	\$
		\$
Subtotal Direct Construction Costs		\$
Indirect Construction Costs		
General Conditions	LS	\$
General Requirements	LS	\$
Contingency	LS	\$
Insurance and Bonds	LS	\$
Lump Sum Fee (____ % of direct costs for OH and profit)	LS	\$
Subtotal Indirect Construction Costs		\$
SUBTOTAL CONSTRUCTION STAGE		\$
TOTAL CONTRACT PRICE		\$
Change Orders		
Design Builder's Fee (insert % from above for overhead and profit)		____ %
General Requirements (% for changes that do not include delay)		____ %
Average Daily Rate (includes General Conditions and General Requirements cost per work day for delay only)		\$
Completion of Preconstruction Stage (days from NTP)		
Substantial Completion Date (days from NTP)		
Final Completion Date (days from NTP)		