

PUBLIC WORKS AGREEMENT - CUPCAA Contract Form 2

FOR PROJECTS BETWEEN \$75,000.01 AND \$220,000.00 – PCC Section 22032 (b)

or

FOR PROJECTS BETWEEN \$220,000.01 AND \$235,000.00 – PCC Section 22034 (d)

THIS CONTRACT is made and entered into on _____, by and between _____, hereinafter called the "CONTRACTOR" and Glendale Community College, hereinafter called the "District" ("Contract").

The Contractor shall furnish labor and materials to the District for the following named job: _____ in accordance with the Terms & Conditions set forth in this Contract and incorporated herein by this reference and any specifications attached for a total contract price of: \$_____.

The parties hereunto have subscribed to this Contract, including any and all specifications/proposals, purchase orders, bonds and terms and conditions as stated herein and/or attached. The Contractor accepts and acknowledges by acceptance of this Contract that the provisions of this Contract shall prevail over any conflicting provisions, whether written or oral. The Contractor hereby agrees to abide by these terms and conditions upon being awarded the project as described. The dollar amount of this Contract, at time of award, cannot exceed \$200,000.00, unless the District's Board of Trustees ("Board") approves an amount up to but not exceeding \$212,500.00 with a 4/5ths vote by the Board as permitted by Public Contract Code Section 22034 (d). Informal Bidding for an award of this Contract must adhere to the procedures set forth, without limitation, in Public Contract Code Sections 22034 et seq.

1. **SCOPE OF WORK.** By Submitting a proposal, the Contractor warrants that he has made a site examination as deemed necessary as to the condition of the site and certifies all measurements, specifications and conditions affecting the work to be performed at the site. The Contractor proposes to furnish all labor, equipment and materials to complete the work called for in the attached proposal and all work shall be in accordance with the terms, conditions and specifications provided herein. In the event that the Contractor submits a proposal which is not in accordance with the terms and/or conditions as specified in this Contract, the District reserves the right to unilaterally strike and therefore disallow any portion of the Contractor's proposal which, at the District's sole discretion, is not in compliance with the terms and conditions as stated herein.

2. **TIME FOR COMPLETION AND LIQUIDATED DAMAGES.** The Completion Time shall begin on _____ and end on _____.

2.1 Liquidated Damages Payable to the District.

The Contractor shall pay the District, not as a penalty, but as liquidated damages the amount of \$_____ 1000.00 _____ per day as liquidated damages for each calendar day of unexcused delay that the work remains unfinished beyond the original Substantial Completion Date (or any revised Substantial Completion Date). The District may deduct such liquidated damages from any payments due or to become due to Contractor. This provision shall not limit any right or remedy of the District in the event any other default of the Contractor other than failing to complete the work by the original or revised Substantial Completion Date, as applicable.

2.2 Liquidated Damages Payable to the Contractor.

The District shall pay the Contractor, not as a penalty, but as liquidated damages the amount of \$_____ 500.00 _____ per day as liquidated damages for each calendar day of District caused delay that the work remains unfinished beyond the original Substantial Completion Date (or any revised Substantial Completion Date). Liquidated Damages Payable to the Contractor are the Contractor's exclusive right and remedy for recovery from the District for losses to the Contractor and its Subcontractors and subconsultants of any tier that are attributable to District caused delay regardless of the cause, duration or timing of the District caused delay.

2.3 Offsetting Liquidated Damages – Net Compensable Day(s) Calculations.

2.3.1 Documenting Liquidated Damage During the Project:

All Liquidated Damage calculations shall be documented as the Project progresses. However, no final determination of Liquidated Damages shall be addressed for formal change order and payment and/or credit purposes until the original Substantial Completion Date for the Project has been reached, subject to later revision given Project specifics.

2.3.2 Sole Remedies for Equal Concurrent Compensable Delay:

For "Concurrent" Compensable Delays (meaning where each Party, and/or those for whom a Party is legally responsible to the other Party, causes and/or contributes to a specific compensable delay in equal measure), such Concurrent Compensable Delays shall not be counted for payment of Liquidated Damages: Example #1: where there is a 14-day compensable delay and each side is responsible for 7 days and 7 days, no Liquidated Damages are recoverable by either Party. However, in such a circumstance, a non-compensatory time extension of 14 days, to the then current Substantial Completion Date, shall be deemed by each Party as their respective and sole remedy.

2.3.3 Net Compensable Delay Calculations:

Other than the Concurrent Compensable Delays situation described in 2.3.2 above, and for the purpose of determining the Net Compensable Delay(s) caused to the Project and payable from one side to the other up through the original Substantial Completion Date for the Project, the side that has the less number of Compensable Delay Days shall be entitled to have those Compensable Delay Days subtracted from the other side's higher number of Compensable Delay Days to the Project. The net amount of the number of Compensable Delay Days shall then be calculated and be deemed due and payable via change order and/or eligible for a deductive credit change order to the Contract: Example #2: After taking into consideration all Concurrent Compensable Delays which are not payable, if one side caused 30 days of Compensable Delay to the Project and the other side caused 15 days of Compensable Delay to the Project, then one side would be entitled to 15 days of Liquidated damages at the per diem rates set forth in sub-paragraphs 2.1 or 2.2 above.

3. **SCHEDULING TIME OF SERVICE.** The Contractor shall contact Richard Vanzini at RVanzini-cp@glendale.edu at 646-621-1033 to schedule date and time of service upon receipt of completed Contract and purchase order.

4. **FORCE MAJEURE.** "Force Majeure Event" means an event that cannot be controlled by either Party, which affects one or both Parties' ability to fulfill an obligation(s) under the Contracts and is restricted to any of the following: (1) Acts of God occurring at the Site and/or if not at the Site, then which affects the Site; (2) terrorism or other acts of a public enemy; (3) orders of Governmental Authorities (including, without limitation, unreasonable and unforeseeable Delay in the issuance of permits or approvals by Governmental Authorities that are required for the Work); (4) pandemics, epidemics or quarantine restrictions; (5) strikes and other organized labor action occurring at the Site and the effects thereof on the Work to the extent such strikes and other organized labor action are beyond the reasonable control of Contractor and its Subcontractors, of every Tier, and to the extent the effects thereof cannot be reasonably avoided by use of replacement workers or implementation of a dual gate system of entry to the Site; or (6) unusual shortages in materials that are supported by documented proof that: (a) the Contractor made every effort to obtain such materials from all available sources; (b) such shortage is due to the fact that such materials are not physically available from single or multiple sources or could have been obtained only at exorbitant prices entirely inconsistent with current rates taking into account the quantities involved and the usual industry practices in obtaining such quantities; and (c) such shortages and the difficulties in obtaining alternate sources of materials could not have been known or anticipated as of the Bid Date. Force Majeure Events are not Compensable Delays. Force Majeure Events may be non-compensable delays leading only to non-compensable time extensions. Moreover, any additional costs incurred by either the District and/or Contractor that are the result of a Force Majeure Event shall be borne solely by the Party that incurred such costs, as long as the additional costs are not the direct result of the failure of the other Party to meet an obligation under this Contract.

5. **INVOICES.** The Contractor shall bill the District monthly under this Contract and submit same to the District no later than the 15th of the month for the prior month's services completed in compliance with all terms, conditions and provisions of this Contract. Payment by the District shall be due within thirty (45) days from receipt of a properly submitted and supported application/invoice for payment. Invoices shall be submitted in duplicate and shall contain the following information: purchase order number, item number and description, quantity, unit price, extended totals for items delivered and all other documentation required to support the invoice. Sales tax, where applicable, shall be shown separately. Shipping/handling/delivery charges shall also be shown separately and shall include the original or a copy of the prepaid bill of lading. Failure to enter the above information on the invoice shall cause a delay in payment. Provide a current W-9 "Request for Taxpayer Identification Number and Certification" for payment processing.

6. **CONTRACTS AND BONDS.** The Contract form which the successful Bidder, as Contractor, will be required to execute, and the forms and amounts of surety bonds which he will be required to furnish at the time of execution of the Contract, are included in the Contract Documents and shall be carefully examined by the bidder. The required number of executed copies of the Contract, the Performance Bond, and the Payment Bond for Public Works is as specified in the Special Conditions.

The Payment Bond must be in the amount of 100 percent of the total amount payable. The Payment Bond must be executed by an admitted Surety approved to conduct business in the State of California which meets the highest standards the District is legally permitted to establish. Bonds shall be in the form set forth in the contract documents.

The Performance Bond must be in the amount of 100 percent of the total amount payable. The Performance Bond must be executed by an admitted Surety approved to conduct business in the State of California which meets the highest standards the District is legally permitted to establish and which it has established.

7. **INSPECTION, ACCEPTANCE AND PAYMENT.** Inspection and acceptance will be determined by the Director of Facilities, unless otherwise determined by the District. Payment shall be made upon completion and acceptance or work and receipt of proper invoice, net 30 days.

8. **CHANGE ORDERS.** The purpose of a Change Order is to establish the terms of the District's and Contractor's mutual agreement to a Contract Adjustment, additive or deductive, time related and/or any combinations thereof. The District, without invalidating Contract, and as provided by law, may order extra work or make changes by altering, adding to, or deducting from work, with the Contract sum being adjusted accordingly. All such work shall be subject to prevailing wage rates and shall be executed under the conditions of the original Contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change. In giving instructions, Contractor agrees that the District shall have authority to make minor changes in work, not involving change in cost, and not inconsistent with the purposes or approvals of the project. Otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless pursuant to a written order from District, and no claim for an addition to the Contract sum shall be valid unless so ordered. Each individual change order may not exceed ten percent (10%) of the original Contract amount (i.e., award date of this Contract).

a. **Partial Agreement Change Orders.** The purpose of a Partial Change Order is to establish the extent of the parties' mutual agreement, as far as it goes, to a Contract Adjustment, additive or deductive, time related, and/or combinations thereof.

9. **HEALTH AND SAFETY.** The Supplier certifies that all goods and equipment furnished under this Contract shall meet or exceed all applicable federal and state health and safety regulations, including CAL-OSHA codes.

10. **TERMINATION.**

10.1 For Cause

If the Contractor refuses or fails to prosecute the work or any separable part thereof with such diligence as will insure its completion within the time specified or any extension thereof, or fails to complete said work within such time, or fails or refuses to perform any obligation set forth in the Contract, or if the Contractor should be adjudged a bankrupt, or if Contractor should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of insolvency, or if Contractor should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the work in time specified, or should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, ordinances or instructions of District, or otherwise be guilty of a substantial violation of any provision of the Contract, or if Contractor or subcontractors should violate any of the provisions of this Contract, then District may, without prejudice to any other right or remedy, serve written notice upon Contractor and surety of its intention to terminate this Contract, such notice to contain the reasons for such intention to terminate, and unless within ten days after the service of such notice such condition shall cease or such violation shall cease and satisfactory arrangements for the correction thereof be made, this Contract shall upon the expiration of said ten (10) days, cease and terminate.

10.2 For Convenience

Without limitation upon any of District's other rights or remedies under the Contract Documents or Applicable Laws, District shall have the option, at its sole discretion, to terminate the Contract, in whole or in part, for its convenience by giving five (5) calendar days written notice to the Contractor.

Following a termination for convenience, and within sixty (60) calendar days after receipt of a complete and timely Application for Payment from the Contractor, an accounting shall be conducted. In such event, the amount due to the Contractor shall be calculated by the District, and there shall be added to the calculation an amount for: (1) the reasonable, actual and direct costs incurred and paid by the Contractor (and not by Subcontractors) for:

Glendale Community College / USC Keck Partnership for Physical Therapy and Occupational Therapy ("PT/OT") BID # GCC-001
CUPCAA Contract Form 2
Attachment "P" - Contract

(a) demobilizing the Contractor's facilities from the Site; and (b) the Contractor's administering the close out of its participation in the Project for a period of no longer than fifteen (15) Days, and (2) a five percent (5%) markup to the Contractor on the costs incurred under Clause (1) of this Paragraph. The Contractor agrees to accept the compensation allowed herein as its sole and exclusive compensation in the event of a termination by District for convenience and waives any claim for loss and/or damage, of all kind, related to the District's termination for convenience, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect, or incidental damages, of any kind. The Contractor shall include provisions in all of its subcontracts, purchase orders, and/or other contracts with the Subcontractors permitting termination for convenience by the Contractor on terms that are consistent with, and that afford no greater rights of recovery against the Contractor for termination than are afforded to the Contractor under this Paragraph.

10.3 Termination by Contractor. Contractor may terminate its obligation to provide further services under the Contract upon thirty (30) calendar days' written notice to District only in the event of substantial failure by GCC to perform in accordance with the terms of the Contract through no fault of the Contractor.

11. **MATERIALS.** Contractor warrants good title to all material, supplies and equipment installed or included in the work. Except as otherwise specifically stated in this contract, Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this contract within specified time. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good quality. Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of work. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or work under this contract.
12. **INDEMNIFICATION.** The Contractor shall defend, indemnify, and hold the District and its Board of Trustees, officers, agents, employees and volunteers ("Indemnitees") harmless from any and all liabilities, claims, damages, obligations, actions, lawsuits, losses, judgments, fines, penalties, costs or expenses (including reasonable attorneys' fees) arising from or relating to the Contractor's work performed under this Contract to the full extent permitted under California law for Contractor's negligence. This shall include the Contractor fully defending, indemnifying and holding harmless the District for any negligence of the Contractor arising directly or indirectly from Contractor's performance of this Contract, including, but not limited to, the use of facilities or equipment provided by the District or others. Contractor specifically acknowledges and agrees that Contractor has an independent obligation to defend the District and its employees from any liabilities or potential claims which actually or potentially fall within this indemnification provision even if such claim is or may be groundless, fraudulent, or false.
13. **INSURANCE REQUIREMENTS.** Contractor agrees that Contractor has a separate and independent obligation to procure insurance for the District. This requirement is in addition to and separate from Contractor's obligation to defend, indemnify and hold harmless the District.

As part of this Contract, Contractor agrees to procure the following insurance:

- (a) Commercial General Liability: Contractor shall obtain a commercial general liability (broad form) insurance policy which provides insurance on an occurrence basis for personal injury, death or property damage which may arise from any and all work performed by Contractor for the District, including on District facilities and grounds, with policy limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate for personal injury, bodily injury and property damage including products and completed operations; and
 - (b) Automobile Liability; \$1,000,000 per accident for bodily injury and property damage under Business Automobile Liability Coverage Form Number CA 00 01, (any auto).
 - (c) Additional Insured: The District and its Board of Trustees, officers, employees, agents and volunteers shall be named as an additional insured under the policy of insurance by Contractor, and Contractor agrees that it has a separate and independent obligation to verify the District is a named as an additional insured whenever Contractor performs work for the District; and
 - (d) Certificate of Insurance: Contractor shall obtain a certificate of insurance with the insurance company's endorsement of commercial general liability insurance setting forth the policy limits and that the District and its Board of Trustees, officers, employees, agents and volunteers are named as an additional insured under the policy and provide it to the District. (The failure to provide the certificate of insurance containing this information to the District shall not constitute a waiver of the requirement of the Contractor to obtain the specific insurance specified above). The insurance policy shall contain provisions which include that Contractor's insurance policy is primary coverage and shall apply both before the District insurance policy, and that the insurer shall not agree to request or call upon the District for any contribution in the settlement of any claim arising from the Contractor's work for the District or use of District facilities or premises.
 - (e) Waiver of Subrogation: Contractor agrees that in the event of loss due to any perils for which it has agreed to provide Commercial General and Automobile Liability insurance, Contractor shall look solely to its insurance carrier(s) for recovery and grants a waiver of any right to subrogation which any such insurer of Contractor may acquire against the District by virtue of payments of any loss under this insurance.
 - (f) District assumes no obligation to provide insurance coverages. Any other insurance required for protection of contractor or the subcontractors not outlined in this Contract is solely the responsibility of the Contractor and the subcontractors.
 - (g) Builder's Risk "All-Risk" Insurance for the Full insurable value of Work. Seismic coverage is not required.
14. **WORKERS' COMPENSATION.** The Contractor and all of their officers, employees, agents, volunteers, and subcontractors agree to: (1) procure and maintain in full force and effect Workers' Compensation and Employer's Liability insurance covering its employees and agents while these persons are participating in the scope of work hereunder: (2) The insurer for the Contractor shall agree to waive all rights of subrogation against District, its Board of Trustees, officials, employees, agents and volunteers for losses under the terms of the insurance policy which arise from work performed by the Contractor.
15. **CONFLICT OF INTEREST AND PROHIBITED INTERESTS.** No officer, employee, or any other agent of the District authorized in any capacity on behalf of the District to exercise any fiduciary, executive, or other similar functions, shall be allowed to possess or accept, directly or indirectly, or in any part thereof, any financial interest in any contract, bid or other procurement activity of the District. Additionally, no officer, employee, or any other agent of the District similarly authorized, shall be allowed to possess or accept any form of gift, payment, undue advantage or influence, directly or indirectly, or in any part thereof.

The District reserves the right, before and/or after any contract or procurement award is made, to require an affidavit from the respective bidder or contractor to disclaim in writing any conflict of interest. Furthermore, the District reserves the right to reject any bidder or contractor, and/or terminate for cause, any contract, if any such conflict is discovered. The District reserves any and all rights, remedies and defenses in connection therewith. All District contracts, bids and procurement transactions are executed in compliance with Government Codes 1090 et sequitur, 87100 et seq., and 89503 et seq., as stated in District Purchasing and Contracting Policy BP6330.

16. **INDEPENDENT CONTRACTOR.** While providing the goods or services ordered herein, the Supplier is an independent contractor and not an officer, employee or agent of the District.

- 17. NON-DISCRIMINATION ENDORSEMENT.** It is the policy of the Contractor and District mutually agree that they will comply with all applicable Federal and California state anti-discrimination laws and regulations and agree not to unlawfully discriminate against any prospective or active employee engaged in the work on the basis of race, color, age, ancestry, national origin, sex, religious creed, marital status, or physical or mental disability, or sexual orientation or any other category protected by law, including but not limited to, the California Fair Employment Practice Act, beginning with Labor Code Section 1410, and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all subcontractors employed. Contractor and District mutually agree that they will comply with all applicable federal and state anti-discrimination laws and regulations, and agree not to unlawfully discriminate against Students on the basis of race, color, creed, religion, sex, age, national origin, ancestry, marital status, physical or mental disability, sexual orientation, or any other category protected by law.
- 18. COMPLIANCE WITH GOVERNING LAWS.** The Contractor and all of its employees, volunteers, Board members and subcontractors shall be subject to and shall comply with all federal, state, and local laws and regulations, including Cal/OSHA General Industry Safety Orders, applicable with respect to its performance under this Contract, both current and future, including but not limited to, licensing and permits, employment practices and wages, hours and conditions of employment, including nondiscrimination. The Contractor shall be solely responsible and hold harmless the District against any and all costs arising from, pertaining to or relating to failure to comply with such laws, rules or regulations. To the extent compliance is required; Contractor shall comply with all the District safety rules and regulations when on the District's premises. In the event of litigation, the Contract and related matters shall be governed by and construed in accordance with the laws of the State of California. Venue shall be with the appropriate state or federal court located in San Diego County.
- 19. WAGE RATES.** Pursuant to the provisions of article 2 (commencing at Section 1770), chapter 1, part 7, division 2 of the Labor Code of California, the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages in the locality in which this public work is to be performed for each craft, classification or type of worker needed to execute the contract. Copies of said determinations are on file at District's principal office and available to any interested party on request. Refer to Web site (www.dir.ca.gov). The date of the start of construction shall be the date Contractor uses to determine the applicable prevailing wage determination. Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the general prevailing rate of per diem wages as determined by the Director of Industrial Relations, unless otherwise specified. Each worker of the Contractor or any of his subcontractors engaged in work on the project shall be paid not less than the general prevailing rate of per diem wages determined by the Director of Industrial Relations, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor and such workers.

Each worker needed to execute the work on the project shall be paid travel and subsistence payments, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed with the Department of Industrial Relations in accordance with Labor Code Section 1173.8.

The Contractor shall, as a penalty to the District, forfeit not more than two-hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the contract by him or by any subcontractor under him. Prevailing wage rates shall also be used when determining wages paid for change order items. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the Contractor's mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages, or the previous record of the Contractor in meeting his prevailing wage obligations, or the Contractor's willful failure to pay the correct rates of prevailing wages. The difference between the 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 prevailing wage rate shall be paid to each worker by the Contractor, and the Contractor shall be bound by the provisions of Labor Code Section 1775.

Any worker employed to perform work on the project, which work is not covered by any classification listed in the general prevailing rate of per diem wages determined by the Director of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to work to be performed. Such minimum wage rate shall be retroactive to the time of initial employment of such person in such classification.

Pursuant to Labor Code Section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, subsistence pay and similar purposes. Contractor shall post at appropriate conspicuous points on the site of project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.

Indemnity. As a further material part of this Contract, Contractor agrees to hold harmless and indemnify the District, its Board and each member of the Board, its officers, employees and agents (collectively referred to as "Indemnitees") from any and all claims, liability, loss, costs, damages, expenses, fines and penalties, of whatever kind or nature, including all costs of defense and attorneys' fees, arising from any alleged failure of Contractor or its subcontractors to comply with the prevailing wage laws of the State of California. If the District or any of the indemnified parties are named as a party in any dispute arising from the failure of Contractor or its subcontractors to pay prevailing wages, Contractor agrees that the District and the other indemnified parties may appoint their own independent counsel, and Contractor agrees to pay all attorneys' fees and defense costs of the District and the other indemnified parties as billed, in addition to all other damages, fines, penalties and losses incurred by the District and the other indemnified parties as a result of the action.

It shall be the responsibility of Contractor to Comply with Labor Code Section 1776 as it may be amended by the Legislature from time to time with respect to each payroll record. As of June, 2018, Labor Code Section 1776 provides in relevant part:

- (a) Contractor and each 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 in connection with the public work.
- (b) The payroll records required above shall contain or be verified by a written declaration that it is made under penalty of perjury stating both of the following: (1) the information contained in the payroll record is true and correct; and (2) the employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.
- (c) The payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor 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 shall be made available for inspection or furnished upon request to a representative of District, or the Division of Labor Standards Enforcement of the Department of Industrial Relations.

3. A certified copy of all payroll records 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 the District, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided, the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to such records at the principal office of the Contractor.
4. 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.
5. Contractor shall file a certified copy of the records required above with the District or entity that requested such records within ten (10) days after receipt of a written request. Any copies of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, 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 Contractor or the subcontractor performing the Contract shall not be marked or obliterated.
6. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186 (c)(5) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number.
7. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number.
8. Contractor shall inform the District of the location of the records required above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
9. In the event of noncompliance with the requirements of this article regarding maintenance of records, the Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this article. Should noncompliance still be evident after such ten (10) day period, the Contractor shall, as a penalty by the District, forfeit one-hundred dollars (\$100) for each calendar day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalty shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

Debarment. The Contractor, or any subcontractor working under the Contractor may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.7 of the California Labor Code. Any contract on a public works project entered into between the Contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by the Contractor on the project shall be returned to the District. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.

20. APPRENTICES. Contractor shall comply with Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code concerning employment of apprentices by the Contractor or any subcontractor under him. Knowing violations of Section 1777.5 will result in forfeiture not to exceed one-hundred dollars (\$100) for each calendar day of non-compliance pursuant to Section 1777.7.

21. WORK HOURS. As provided in article 3 (commencing at Section 1810), chapter 1, part 7, division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this contract upon the work or upon any part of the work contemplated by this contract is limited and restricted to eight (8) hours during any one-calendar day and forty (40) hours during any one-calendar week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

The Contractor and every subcontractor shall keep accurate record showing the name and actual hours worked each calendar day and each calendar week by each worker employed by him in connection with the work or any part of the work contemplated by this contract. The record shall be kept open at all reasonable hours to the inspection of the District and the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.

The Contractor shall pay to the District a penalty of twenty-five dollars (\$25) for each worker employed in the execution of this contract by the Contractor or by any subcontractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at Section 1810), chapter 1, part 7, division 2 of the Labor Code. Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to District

22. **SUBCONTRACTING.** Contractor agrees to bind every subcontractor by terms of the Contract as far as such terms are applicable to subcontractor's work. If Contractor shall subcontract any part of this Contract, Contractor shall be fully responsible to District for acts and omissions of subcontractor and of persons either directly or indirectly employed. Nothing contained in these Contract Documents shall create any contractual relation between any subcontractor and District.

District's consent to or approval of any subcontractor under this Contract shall not in any way relieve Contractor of his/her obligations under this Contract and no such consent or approval shall be deemed to waive any provision of this Contract. The District reserves the right of approval of all subcontractors proposed for use on this Project, and to this end, may require financial, performance and such additional information as is needed to secure this approval. If a Subcontractor is not approved, the Contractor shall promptly submit another of the same trade for approval.

Substitution or addition of subcontractors shall be permitted only as authorized in chapter 4 (commencing at Section 4100), part 1, division 2 of the California Public Contract Code.

23. **ASSIGNMENT.** Contractor shall not assign or transfer by operation or law or otherwise any or all of its rights, burdens, duties, or obligations under this contract without prior written consent of District.
24. **PATENTS, ROYALTIES AND INDEMNITIES.** The Contractor shall hold and save the District and its officers, agents and employees harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of this contract, including its use by the District, unless otherwise specifically stipulated in the contract documents.
25. **GUARANTEE.** Besides guarantees required elsewhere, Contractor shall, and hereby does, guarantee all work for a period of one year after date of acceptance of work by District and shall repair or replace any or all such work, together with any other work, which may be displaced in so doing, that may prove defective in workmanship and/or materials within a one-year period from date of acceptance without expense whatsoever to District, ordinary wear and tear, unusual abuse or neglect excepted. District will give notice of observed defects with reasonable promptness. Contractor shall notify District upon completion of repairs.

In the event of failure of Contractor to comply with above-mentioned conditions within one week after being notified in writing, District is hereby authorized to proceed to have defects repaired and made good at the expense of Contractor. Contractor hereby agrees to pay costs and charges therefore immediately on demand.

This article does not in any way limit the guarantee of any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish District all appropriate guarantee or warranty certificates upon completion of the project.

26. **PROTECTION OF WORK AND PROPERTY:** The Contractor shall be responsible for all damages to persons or property that occur as a result of his fault or negligence in connection with the prosecution of this contract and shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by the District. All work shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as provided by law and contract documents. Contractor shall take all necessary precautions for safety of employees on the work and shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where work is being performed. Contractor shall erect and properly maintain at all times, as required by conditions and progress of work, all necessary safeguards, signs, barriers, light and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction. Contractor shall designate a responsible member of the organization on the work, whose duty shall be prevention of accidents. Contractor shall report name and position of person so designated to District.
27. **CLEAN UP:** Contractor at all times shall keep premises free from debris such as waste, rubbish and excess materials and equipment caused by the work; debris shall be removed from premises. Contractor shall not leave debris under, in, or about the premises. Upon completion of work Contractor shall clean interior and exterior of building including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections and any areas where debris has collected so surfaces are free from foreign material or discoloration; Contractor shall clean and polish all glass, plumbing fixtures and finish hardware and similar finish surfaces and equipment and remove temporary fencing, barricades, planking and construction toilet and similar temporary facilities from site.
28. **PROVISIONS REQUIRED BY LAW DEEMED INSERTED:** Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provisions is not inserted, or is not correctly inserted, then upon application of either party the Contract shall forthwith be physically amended to make such insertion or correction.
29. **EXCAVATION DEEPER THAN FOUR FEET:** If this Contract involves digging trenches or other excavations that extend deeper than four feet below the surface, then all of the following apply:
- The Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing of any: (1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law. (2) Subsurface or latent physical conditions at the site differing from those indicated. (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.
 - Upon receiving any such notice, the District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in this Contract.
 - In the event that a dispute arises between the District and the Contractor whether the conditions materially differ or involve hazardous waste, or cause a decrease or increase in the Contractors' cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by this Contract, but shall proceed with all work to be performed under the Contract.
30. **REMOVAL OR RELOCATION OF MAIN OR TRUNKLINE UTILITY FACILITIES.** The Contractor shall not be assessed for liquidated damages for delay in completion of this project, when such delay was caused by the failure of the awarding authority of this Contract or the owner of the utility to provide for removal or relocation of the existing main or trunkline utility facilities. However, when the Contractor is aware that removal or relocation of an existing utility has not been provided for, Contractor shall promptly notify the awarding authority and the utility in writing, so that provision for such removal or relocation may be made to avoid and minimize any delay which might be caused by the failure to remove or relocate the main or trunkline utility facilities, or to provide for its removal or relocation. In accordance with Section 4215 of the Government Code, if the Contractor while performing the Contract discovers any existing main or trunkline utility facilities not identified by the public agency in the Contract Documents, he shall immediately notify the public agency and utility in writing. The public utility, where they are the owners, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Contract Documents with reasonable accuracy, and for equipment on the project necessarily idled during such work.
31. **PROCEDURE FOR RESOLVING DISPUTES.**
- Prerequisite to Initiating Claims. Contractor shall timely comply with all notices and requests for changes to the Contract Time or Contract Price, including but not limited to Changes and Extra Work, as a prerequisite to filing any claim governed by this Section. The failure to

timely submit a notice of delay or notice of change, or to timely request a change to the Contract Price or Contract Time, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Contract or at law.

- b. Intent. Effective January 1, 1991, Section 20104, et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.
- c. Claims. For purposes of this Section, "Claim" means a separate demand by the Contractor, after a change order duly requested in accordance with the terms of this Contract has been denied by GCC, for (A) a time extension, (B) payment of money or damages arising from Work done by or on behalf of Contractor pursuant to the Contract, or (C) an amount the payment of which is disputed by GCC. Claims governed by this Section may not be filed unless and until Contractor completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the change order procedures contained herein, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Section must be filed no later than the date of final payment. The claim shall be submitted in writing to GCC and shall include on its first page the following in 16 point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing in this Section is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims, including all requirements pertaining to compensation or payment for extra Work, disputed Work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.
- d. Supporting Documentation. Contractor shall submit all claims in the following format:
 - (1) Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made.
 - (2) List of documents relating to claim:
 - (a) Specifications;
 - (b) Drawings;
 - (c) Clarifications (Requests for Information);
 - (d) Schedules; and
 - (e) Others.
 - (3) Chronology of events and correspondence.
 - (4) Analysis of claim merit.
 - (5) Analysis of claim cost.
 - (6) Time impact analysis in CPM format.
- e. GCC's Response. Upon receipt of a claim pursuant to this Section, GCC shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 days after GCC issues its written statement.
 - (1) If GCC needs approval from its governing body to provide Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, GCC shall have up to three (3) days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide Contractor a written statement identifying the disputed portion and the undisputed portion.
 - (2) Within thirty (30) days of receipt of a claim, GCC may request in writing additional documentation supporting the claim or relating to defenses or claims GCC may have against Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of GCC and Contractor.
 - (3) GCC's written response to the claim, as further documented, shall be submitted to Contractor within thirty (30) days (if the claim is less than \$50,000, within 15 days) after receipt of the further documentation, or within a period of time no greater than that taken by Contractor in producing the additional information or requested documentation, whichever is greater.
- f. Meet and Confer Process. If Contractor disputes GCC's written response, or GCC fails to respond within the time prescribed, Contractor may so notify GCC, in writing, either within fifteen (15) days of receipt of GCC's response or within fifteen (15) days of GCC's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, GCC shall schedule a meet and confer conference within 30 days for settlement of the dispute.
- g. Mediation. Within ten (10) business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, GCC shall provide Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after GCC issues its written statement. Any disputed portion of the claim, as identified by Contractor in writing, shall be submitted to nonbinding mediation, with GCC and Contractor sharing the associated costs equally. GCC and Contractor shall mutually agree to a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing, unless the Parties agree to select a mediator at a later time.
 - (1) If the Parties cannot agree upon a mediator, each Party shall select a hose mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each Party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

- (2) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the Parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.
 - (3) Unless otherwise agreed to by GCC and Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.
 - (4) The mediation shall be held no earlier than the date Contractor completes the Work or the date that Contractor last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.
- h. Procedures After Mediation. If following the mediation, the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time Contractor submits its written Claim until the completion of the Meet and Confer process.

Except as provided herein, nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

- i. Civil Actions. The following procedures are established for all civil actions filed to resolve claims subject to this Section:
 - (1) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of these procedures. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.
 - (2) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.
 - (3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (a) arbitrators shall, when possible, be experienced in construction law, and (b) any Party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other Party.
- j. Government Code Claims. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against GCC. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against GCC. A Government Code claim must be filed no earlier than the date the work is completed or the date Contractor last performs work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.
- k. Non-Waiver. GCC's failure to respond to a claim from Contractor within the time periods described in this Section or to otherwise meet the time requirements of this Section shall result in the claim being deemed rejected in its entirety. GCC's failure to respond shall not waive GCC's rights to any subsequent procedures for the resolution of disputed claims.
- l. Duty to Continue Performance. Unless provided to the contrary in the Contract Documents, Contractor shall continue to perform the Work and GCC shall continue to satisfy its payment obligations to Contractor, pending the final resolution of any dispute or disagreement between Contractor and GCC.

32. DRUG FREE/SMOKE FREE/ALCOHOL FREE POLICY. All District sites are designated drug free/smoke free/alcohol free. The use or abuse of controlled substances, tobacco products, and alcohol will not be tolerated.

33. LICENSED CONTRACTOR. The Contractor shall be a licensed contractor pursuant to the Business and Professions Code and shall be licensed in the appropriate classification required for the performance of this work, as determined by state and local government ordinance. This Contract shall commence on the date specified in this purchase order, with work to be completed within the time allotted herein.

34. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR OTHER INELIGIBILITY. (applicable to all orders or agreements funded in part or in whole with federal funds) - The Contractor agrees to comply with applicable federal suspension and debarment regulations, including, but not limited to, regulations implementing Executive Order 12549 (29 C.F.R. Part 98). The Contractor certifies to the best of its knowledge and belief that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- b. Have not, within a three-year period preceding the receipt of this Contract/purchase order, been convicted of, or had a civil judgment rendered against them, for: (1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) or private transaction or contract; (2) Violation of Federal or State antitrust statutes; (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or (4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects Supplier's present responsibility;
- c. Are not presently indicted for, or otherwise criminally or civilly charged by any government entity (federal, state or local), with commission of any of the offenses enumerated above;
- d. Have not, within a three-year period preceding the receipt of this Contract/purchase order had one or more public transactions (federal state or local) terminated for cause or default;

- e. Shall not, except as otherwise provided under applicable federal regulations, knowingly enter into any lower tier covered transaction with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded by any federal department or agency from participation in such transaction; and
- f. Include in all lower tier covered transactions, and all solicitations for covered transactions, provisions substantially similar to those set forth herein.
- 35. COMPLIANCE WITH LOCAL, STATE AND FEDERAL REGULATIONS.** The Contractor shall comply with all lawful requirements of the United States, the State of California, the District, and all applicable municipalities and local agencies. Such compliance shall include, but is not limited to, all regulations regarding discharges to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
- 36. DRUG/SMOKE-FREE WORKPLACE.** GCC and all GCC projects are “drug-free” and “smoke-free” workplaces and, as such, require that the Contractor be subject to the requirements mandated by California Government Code Sections 8350, et seq., when on the Project site. The Drug-Free Workplace Act of 1990 requires that every person or entity awarded a contract or grant for the procurement of any property or service from a State agency certify that it will provide a drug-free workplace and, in that respect, comply with certain obligations set forth in that Act. In addition, the Drug-Free Workplace Act provides that each contract or grant awarded by the State agency may be subject to suspension of payments or termination for failure to comply with such Act. It is the sole responsibility of Contractor to police and oversee its personnel on the Project. If Contractor fails to comply with the Drug-Free Workplace Act or the smoke-free workplace policy of GCC, GCC may enforce its lawful rights to suspend pending or subsequent payments and to terminate this Contract and may pursue all other rights and remedies it may have against Contractor at law and/or in equity.
- 37. STORM WATER PERMIT FOR CONSTRUCTION ACTIVITY. **NOT APPLICABLE ON THIS PROJECT.**** The District has adopted a Storm Water Management Plan (SWMP). The SWMP was prepared in accordance with Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (General NPDES Permit No. CAS000004) adopted by the State Water Resources Control Board. Contractor shall comply with the District’s SWMP requirements and include all costs for compliance in the Contract amount. Contractor shall also comply with the lawful requirements of other agencies regarding discharges to the storm drain system or other watercourses, including applicable City, County, State and Federal storm water requirements.

The Contractor shall, if required, shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) prior to initiating work. The Contractor shall be responsible for complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by Permit. It shall be the responsibility of the Contractor to evaluate and include in the bid the cost of complying with the SWPPP and any necessary revisions to the SWPPP. The Contractor shall also include in their bid the cost of monitoring as required by the SWPPP Permit. All trade contractors are responsible for repair and replacement of SWPPP control measures disturbed by own operations. All trade contractors are responsible for adhering to the approved SWPPP plan.

- 38. DLSE/DIR REQUIREMENTS.** Contractor’s attention is directed to DLSE/DIR Registration Requirements. Neither Contractor, nor any Subcontractor, of any tier, shall be qualified to submit a bid and/or Proposal, or be listed in a bid and/or Proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of Work under the Contract Documents unless currently registered and qualified to perform public work pursuant to Section Labor Code §1725.5. **If an unregistered Contractor submits a bid and/or proposal, the District will deem such bid and/or proposal non-responsive.** If any Contractor or Subcontractor performs Work on this Project at any time, the District has the right to cancel the Contract for cause. Contractors and the Subcontractors, of every Tier, shall be registered with the Department of Industrial Relations pursuant to Labor Code §§ 1725.5 and 1771.1 for the duration of time the Contractor is performing the Work under the Contract Documents. Contractor shall not enter into any subcontract without proof of the potential Subcontractor’s registration.

SB 854 (Stat. 2014, chapter 28) made several changes to the laws governing how the Department of Industrial Relations (DIR) monitors compliance with prevailing wage requirements on public works projects as follows:

- No contractor or subcontractor may be listed on a bid and/or proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5 [with limited exceptions from this requirement for bid and/or proposal purposes only under Labor Code Section 1771.1(a)].
- No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5.
- This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- The prime contractor must post job site notices prescribed by regulation. (See 8 Calif. Code Reg. §16451(d) for the notice that previously was required for projects monitored by the CMU (Compliance Monitoring Unit).)

Before a Subcontractor of any tier performs any work on the Project, the Contractor shall submit to the District a Certification, that states the name and business address of the Subcontractor and that “under penalty of perjury under the laws of the state of California the information contained in this Certification is true and correct.”

Additionally, all contractors and subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner (aka Division of Labor Standards Enforcement). These new requirements will apply to all public works that are subject to the prevailing wage requirements of the Labor Code, without regard to funding source.

- 39. BACK CHARGES – SET OFFS/OFF SETS – JOINT CHECK – RIGHTS AND REMEDIES:** Notwithstanding any other rights and remedies provided elsewhere in the Contract Documents, the District shall have the right and remedy to back charge, set off and/or off set, against any monies due to the Contractor under the Contract for the Project, and/or any other Contract between the parties, the amount of any money assessed against the Contractor for the Project provided the District has set forth in writing its intention to do so and given the Contractor five (5) business days to cure the situation. These rights and remedies of back charge, set off and/or off set, include any monies the District has expended with and paid to any third party’s for performing any Work and/or services Contractor is obligated to perform for the Project and/or under the Contract for the Project. Before and/or at the time of assessing such back charge, set off and/or off set, the District shall provide to the Contractor proof of payment by the District to said third party and/or third parties. Separately, the District shall have the right and remedy, but not the obligation, to issue joint checks made payable to the Contractor and any Subcontractor, Supplier, Materialmen, or other person and/or entity, who qualifies under Applicable Law as a claimant entitled to file a Stop Payment Notice and/or Public Works Payment Bond claim, to best protect the District’s interests from and against such claims.

40. SUBSTANTIAL COMPLETION, SUBSTANTIALLY COMPLETE:

“Substantial Completion” and “Substantially Complete” mean the point at which the following conditions have occurred with respect to the entire Work or a portion of the Work designated by District in writing to be Substantially Completed before Substantial Completion of the entire Work:

- .1 such Work is sufficiently and entirely complete in accordance with Contract Documents so that such Work can be fully enjoyed and beneficially occupied and utilized by District for its intended purpose (except for minor and/or trivial items which do not impair District's ability to so occupy, use, and/or enjoy, such Work);
- .2 all permits, approvals, and certificates by Governmental Authorities have been issued free of any conditions that are the result of an act or omission of the Contractor or a Subcontractor, of any Tier, constituting negligence, willful misconduct, a violation of an Applicable Law or a failure by the Contractor to comply with the Contract Documents; and
- .3 all building systems included in such Work are operational as specified, all designated or required inspections and certifications by Governmental Authorities have been made and posted, and instruction and training of District's personnel in the operation of the systems has been completed.

41. SUBSTANTIAL COMPLETION PUNCH LIST:

"Substantial Completion Punch List" means a list of items of Work to be completed or corrected by the Contractor to achieve Substantial Completion. The items on the Substantial Completion Punch List are not priced. This list is not the Final Punch List that is prepared once Substantial Completion has been achieved. When the Contractor believes it has achieved Substantial Completion as defined herein, the Contractor shall notify the District in writing of same and the District, the Contractor, District, and the Architect of Record will review same and walk the Project. If the District believes that Substantial Completion has not been achieved the District will notify the Contractor in writing and list the items that need to be completed and/or corrected to achieve Substantial Completion. The Contractor shall then immediately proceed to complete and/or correct all items on the Substantial Completion Punch List and notify the District in writing when all such items have been completed and/or corrected.

42. FINAL COMPLETION PUNCH LIST, FINAL COMPLETION, FINALLY COMPLETE:

"Final Completion Punch List" means that upon the Contractor achieving Substantial Completion, a list of remaining minor and/or trivial items which can include, without limitation, minor or trivial items in the Work, the delivery of spare parts, delivery of owner operation manuals, final clean up, etc. Upon reaching Substantial Completion, the Contractor shall prepare a written Final Completion Punch List and place a value estimated for each item thereon which shall be sent to the District. "Final Completion" and "Finally Complete" mean the point at which the following conditions have occurred with respect to the entire Work:

- .1 the Work is fully completed, including all minor corrective, or "Final Punch List," items;
- .2 all permits, approvals and certificates by Governmental Authorities have been issued free of any conditions that are the result of an act or omission of the Contractor or a Subcontractor, of any Tier, constituting negligence, willful misconduct, a violation of an Applicable Law or a failure by the Contractor to comply with the Contract Documents;
- .3 the Work and the related portions of the Site have been thoroughly cleared of all construction debris and cleaned in accordance with the requirements of the Contract Documents, including, but not necessarily limited to where applicable, the following: removal of temporary protections; removal of marks, stains, fingerprints and other soil and dirt from painted, decorated and natural-finished woodwork and other Work; removal of spots, plaster, soil and paint from ceramic tile, marble and other finished materials; all surfaces, fixtures, cabinet work and equipment are wiped and washed clean and in an undamaged, new condition; all aluminum and other metal surfaces are cleaned in accordance with recommendations of the manufacturer; and all stone, tile and resilient floors are cleaned thoroughly in accordance with the manufacturer's recommendations and buff dried by machine to bring the surfaces to sheen;
- .4 all conditions set forth in the Contract Documents for Substantial Completion of the Work have been, and continue to be, fully satisfied;
- .5 all conditions pertaining to the Work and required for the release of District's obligations (including, but not limited to, release of District's bond obligations) to Governmental Authorities (including, but not limited to, matters involving grading, flood control, public works, transportation and traffic) have been satisfied; and
- .6 the Contractor has delivered to District all Close-Out Documents required by the Contract Documents and Applicable Law.

When the Contractor sends its written Final Completion Punch List to the District, the District, the Contractor, and Architect of Record will review same and walk the Project. If the District believes that Final Completion has not been achieved the District will notify the Contractor in writing and list the items that need to be completed and/or corrected to achieve Final Completion. The District will also place a value on each such item which may or may not be in agreement with the Contractor's value for each item. The District's valuation shall control for retention withhold purposes and the District will withhold one hundred fifty percent (150%) of the total of all such items from retention until all such items have been completed and/or corrected. Upon receipt of the District's Final Punch List determination, the Contractor shall then immediately proceed to complete and/or correct all items on the District's Final Punch List and notify the District in writing when all such items have been completed and/or corrected. When the District agrees that all items on the District's Final Punch List have been completed and/or corrected, the Contractor shall submit a billing for Final Payment, including all undisputed retention.

43. RETENTION:

Without limiting any other rights and remedies the District has under the Contract, and as permitted by statute, the District shall withhold from each progress payment an amount equal to **five percent (5%)** thereof as retention. The District will release to the Contractor all undisputed retention and disputed retention as stated hereinabove and as otherwise mandated by Public Contract Code Section 7107.

44. CONTRACT DOCUMENTS: This Contract consists of the following documents, in addition to this document, all of which are component parts of the Contract as if herein set out in full herein and are sometimes collectively referred to as the "Contract Documents" or the "Contract":

1. Attachment A - Bid Form
2. Attachment B - Summary of Costs and Bid Breakdown (Not applicable)
3. Attachment C - Bid Bond
4. Attachment D – Performance Bond;
5. Attachment E – Labor and Material Payment Bond;
6. Attachment F – Verification of Certified Payroll Records to the Labor Commissioner;
7. Attachment G - Guarantee;
8. Attachment H - Non-Collusion Affidavit;
9. Attachment I – Certificate of Workers' Compensation Insurance;
10. Attachment J – DIR Registration Verification;
11. Attachment K - Drug Free Workplace Certification;
12. Attachment L – Subcontractors List;
13. Attachment M – Labor and Material Payment Bond;

14. Attachment N - Performance Bond;
15. Attachment P - this CUPCCAA Contract Form 2;
16. Attachment R - Technical Specifications (if applicable and issued);;
17. Attachment S - Special Conditions (if applicable and issued);
18. Attachment T – Prebid walk map
19. Bid Documents; and
20. All applicable laws.

Certain "Reference Documents" may be issued on a project by project basis and listed as a part of Attachment T to the respective Instruction to Bidders document for a particular project. If issued, they are for "Reference Only" and do not form a part of the Contract/Contract Documents. However, the Contractor must review same if issued as such could affect time and price considerations and should be reviewed carefully by the Contractor for, without limitation, such reason(s).

Contractor:

By: _____
 Official Authorized Signature

 Printed Name

Its: _____
 Title

 Date

License Number: _____

DIR Registration Number: _____

District:

_____ Glendale Community College District _____

By: _____
 Official Authorized Signature

Sharlene Coleal
 Printed Name

Its: _____
Vice President for Administrative Services
 Title

 Date

Contractors are required by law to be licensed and regulated by the Contractors' State License Board and registered with the Department of Industrial Relations. Any questions concerning a contractor may be referred to the registrar of the board whose address is:

Contractors' State License Board
9821 Business Park Drive
Sacramento, CA 95827
Phone: (916) 255-3900
<http://www2.cslb.ca.gov/>