

**SAN LUIS OBISPO COUNTY COMMUNITY COLLEGE DISTRICT
TERMS AND CONDITIONS FOR
PURCHASE ORDER FOR PUBLIC WORK**

1. **Contractor's Acceptance of Purchase Order and Purchase Order Terms and Conditions.** Contractor must accept this Purchase Order and the Purchase Order Terms and Conditions in writing. The foregoing notwithstanding, if for any reason Contractor does not accept the Purchase Order and Purchase Order Terms and Conditions in writing, any conduct of Contractor reflecting acknowledgement of this Purchase Order and the Purchase Order Terms and Conditions, including without limitation, Contractor's commencement of performance of Contractor's obligations under the Purchase Order or Contractor's acceptance of payment shall be deemed Contractor's acceptance of the Purchase Order and Purchase Order Terms and Conditions. Whether Contractor's acceptance of the Purchase Order and Purchase Order Terms and Conditions is by writing or by conduct, any additional or different terms or conditions proposed by Contractor or incorporated into Contractor's acceptance of the Purchase Order and Purchase Order Terms and Conditions are deemed material alterations to these Purchase Order Terms and Conditions, and such additional or different terms are expressly rejected unless such terms are incorporated by direct reference in the Purchase Order.
2. **Labor and Materials.** The Contractor shall and pay for all labor, materials, equipment and services necessary to complete the Work in accordance with the Contract Documents. Unless otherwise expressly provided for in the Contract Documents, all materials, equipment and other items incorporated into the Work shall be new and of the most suitable grade and quality for the purpose intended. The Work is subject to tests/inspections as required by the Contract Documents. The Contractor shall afford the District, the Project Inspector, the Architect or other Design Consultant ("Architect") and test/inspection services with access to the Work, wherever located and whether in place or in progress. All of the Work shall conform to the requirements of the Contract Documents and applicable laws, ordinances, rules and regulations ("the Laws"). The Contractor confirms that it has examined the Site and reviewed all conditions at the Site that will or may affect performance of the Work or the time/costs to complete the Work. The Contractor certifies that the Work can be completed in accordance with requirements of the Contract without adjustment of the Contract Time or the Contract Price. If there are conflicts between any portions of the Contract Documents, the Contractor shall furnish and install the more stringent or higher quality requirements.
3. **Submittals.** The Contractor shall submit to the District Representative or the Architect, as designated in the Contract Documents, shop drawings, product data and other submittals (collectively "Submittals") required by the Contract Documents promptly and in an orderly sequence while allowing sufficient time for review and comment. No portion of the Work requiring Submittals shall be performed until the required Submittals have been reviewed and accepted.
4. **Construction Schedule.** If the Contract Time is more than thirty (30) calendar days, the Contractor shall prepare a Construction Schedule in such form and format required by the District. The Construction Schedule shall reflect all activities necessary to complete the Work and shall be in such detail as required by the Contract Documents. If a schedule is required, the Contractor shall update the schedule monthly or more frequently as directed by the District or required by the circumstances of the Work. The Contractor's Construction Schedule shall be submitted to the District for review and acceptance. The Contractor shall perform the Work in accordance with the District accepted Construction Schedule.
5. **Changes.**
 - 5.1 **Changes to the Work.** The District may, by written order, make Changes to the Work, issue additional instructions and to add to or delete from the Work. No Change may be made without the prior written approval and direction of the District. Adjustments of the Contract Price or the Contract Time on account of a Change authorized hereunder will only be made by written Change Order duly executed by the Contractor and the District Representative. Changes approved by the District shall be reduced to Change Order in the form and content prepared by or on behalf of the District.
 - 5.2 **Construction Change Directive.** The District may direct a change to the Work prior to and without issuance of a change order by a Construction Change Directive ("CCD"). The Contractor shall: (i) promptly commence and complete changes incorporated into a CCD; and (ii) maintain detailed contemporaneous records of labor, materials and equipment incorporated into or consumed in completing a CCD.
 - 5.3 **Substitutions.** No substitution of any specified item, product, material or system ("Specified Items") will be considered unless the Contractor submits a request to substitute Specified Items along with data substantiating the equivalency of the proposed substitution with the Specified Items not more than seven (7) days after the date of award of the Contract to the Contractor. The Contractor shall reimburse the District for all costs and expenses incurred by the District to review a proposed substitution for Specified Items. The District's acceptance or rejection of a proposed substitution shall be final. No substitution accepted by the District shall increase the Contract Price or the Contract Time; provided, however, if the cost to furnish/install an approved substitution of is less than the specified Item, the Contract Price shall be reduced by such cost difference. If any Specified Items are identified in any portion of the Contract Documents as "District Standard Materials/Equipment" "match existing in use" or similar words/phrases, in accordance with Public Contract Code §3400, the District shall be deemed to have made a finding that such Specified Items are designated as "sole source" items designed to match existing and in use items. In accordance with Public Contract Code §3400, the District will not consider or accept alternatives or substitutions for any Specified Items so identified.
 - 5.4 **Basis for Adjustment of Contract Price.** If Changes in the Work require an adjustment of the Contract Price pursuant to Article 5 above, the basis for adjustment of the Contract Price shall be as follows:
 - 5.4.1 **Allowable Labor Costs.** Except in the event adjustment of the Contract Price for a District authorized Change is computed by unit prices, the labor costs allowable for incorporation into a Contract Price adjustment for a Change shall be limited as set forth herein.
 - 5.4.2 **Limitation to Field Labor and Prevailing Wage Rates.** The Contract Price adjustment for labor necessary to complete a Change shall be limited to the laborers of the Contractor or Subcontractors actually and necessarily engaged in the performance of the Change and for which there is a prevailing wage rate classification. Wage rates for laborers shall not exceed the applicable prevailing wage rate in the locality of the Site for the classification(s) of labor necessary to complete a Change. Use of a prevailing wage rate classification which increases the costs of a Change shall not be allowed. Overtime labor charges for performing any part of the Change shall only be allowed if authorized in writing by the Architect, Construction Manager and the District prior to Contractor's performance of the overtime labor.
 - 5.4.3 **Fringe Benefits, Payroll Taxes and Labor Burdens.** The Contractor or Subcontractor may adjust the prevailing wage rate for allowable labor costs to reflect fringe benefits, payroll taxes and labor burdens actually incurred by Contractor and provided to such labor directly engaged in performing a Change, equal to the lesser of the actual costs or fifteen percent (15%) of the applicable prevailing wage rate, without any additional mark-up as set forth in Article 5.5.
 - 5.4.4 **Excluded Labor Costs.** The Contract Price adjustment for labor costs on account of a Change shall **exclude** costs: (i) for preparing estimate(s) of the costs of the Change; (ii) to maintain records relating to the costs of the Change; (iii) for coordination and

assembly of materials and information relating to the Change or performance thereof; (iv) to supervise, coordinate or manage the Work of a Change; or (v) any other general administrative overhead or general conditions costs associated with the Change or performance thereof as such costs are incorporated into the overhead and general conditions mark-up costs set forth in Article 5.5.

5.4.5 Materials and Equipment. Contractor shall be compensated for the costs of materials and equipment necessarily and actually used or consumed in connection with the performance of Changes. Costs of materials and equipment may include reasonable costs of transportation from a source closest to the site of the Work and delivery to the Site. If discounts by Material Suppliers are available for materials necessarily used in the performance of Changes, they shall be credited to the District. If materials and/or equipment necessarily used in the performance of Changes are obtained from a supplier or source owned in whole or in part by the Contractor, compensation therefor shall not exceed the current wholesale price for such materials or equipment. If, in the reasonable opinion of the District, the costs asserted by the Contractor for materials and/or equipment in connection with any Change is excessive, or if the Contractor fails to provide satisfactory evidence of the actual costs of such materials and/or equipment from its supplier or vendor of the same, the costs of such materials and/or equipment and the District's obligation for payment of the same shall be limited to the then lowest wholesale price at which similar materials and/or equipment are available in the quantities required to perform the Change.

5.5 Mark-Ups on Changes to the Work. In the event of Changes to the Work, pursuant this Article 5, the mark-up for all overhead (including home and field office overhead), general conditions costs and profit, shall not exceed the percentage of allowable direct actual costs for performance of the Change as set forth below.

5.5.1 Subcontractor Performed Changes. For the portion of any Change performed by Subcontractors of any tier, the percentage mark-up on allowable actual direct labor and materials costs incurred by all Subcontractors of any tier shall be Ten Percent (10%). In addition, for the portion of any Change performed by a Subcontractor of any tier, the Contractor may add an amount equal to Five Percent (5%) of the allowable actual direct labor and materials costs of Subcontractors performing the Change; the foregoing mark-up shall not be applied to the Subcontractor mark-up.

5.5.2 Contractor Performed Changes. For the portion of any Change performed by the Contractor's own forces, the mark-up on the allowable actual direct labor and materials costs of such portion of a Change shall be Fifteen Percent (15%).

5.5.3 Bond Premium Costs. In addition to the foregoing mark-ups on the direct costs of labor and materials, a bond premium expense in an amount equal to the lesser of the Contractor's actual bond premium rate or one percent (1%) of the total actual direct costs of labor and materials (before Subcontractor and Contractor mark-ups) will be allowed.

5.5.4 Exclusions From Mark-Up of Actual Costs. Mark-ups on the actual cost of materials/equipment incorporated into a Change or for purchase/rental of Construction Equipment shall not be applied to any portion of such costs which are for sales, use or other taxes arising out of the purchase of materials/equipment and/or for purchase/rental of Construction Equipment.

6. Safety; Security. The Contractor shall comply with Laws pertaining to safety at the Site. The Contractor shall implement

safety measures such as fencing, barricades, signs, lights and other precautions to prevent injury or death to persons or damage to property. The Contractor is responsible for securing the Site and Work in place or in progress (including materials/equipment/tools situated at the Site) to prevent theft, loss or damage. The District and employees, officers, agents or representatives of the District are not liable to the Contractor, Subcontractors or their respective personnel for the loss, theft, damage or destruction of materials, equipment, tools and other personal property items, whether or not such personal property is used to complete the Work or is incorporated into the Work. The risk of such loss, theft, damage or destruction is solely that of the Contractor or Subcontractors. The Contractor shall erect and properly maintain at all times, as required by conditions and progress of Work all necessary safeguards, signs, barriers, lights and watchmen for protection of workmen and the public and shall post signs warning against hazards during performance of the Work. In an emergency affecting life and safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from District, is hereby permitted to act, at his discretion, to prevent such threatened loss or injury.

7. Contractor Environmental / Hazardous Waste Responsibilities. The Contractor shall comply with Laws relating to construction waste management, materials re-use and/or recycling and the maintenance of records relating thereto. If required by the Laws to file materials with any public agency relating to the Contractor's compliance with environmental requirements, a material obligation of the Contractor is its timely preparation and submittal of all such required filings or reports. If any portion of the Project involves any materials deemed by the Laws to be a hazardous material, all activities of the Contractor relating to removal, transportation and/or disposal of any such hazardous material shall be in strict compliance with the Laws. The foregoing includes without limitation, the Contractor's compliance with all requirements of the Laws relating to manifests for the transportation and disposal of hazardous materials. Failure of the Contractor to strictly and timely comply with the Contractor's obligations hereunder is a material default of the Contractor hereunder. In addition to any other right or remedy of the District arising out of such default, the Contractor's failure to strictly comply with its obligations hereunder shall be a basis for the District's withholding of Contract Price disbursements until the Contractor has complied and performed its obligations hereunder.

8. Labor.

8.1 Prevailing Wage Rates; Hours of Work. The Contractor and all Subcontractors shall: (i) pay their respective workers wage rates not less than the prevailing wage rate established for the classification, trade or work performed by each worker; and (ii) maintain complete and accurate payroll records for workers engaged in the Work. The Contractor and Subcontractors shall not permit any worker to provide more than eight (8) hours of work per day or forty (40) hours per week without additional compensation as mandated by law. The Contractor shall be subject to all penalties and assessments provided by law or regulation for violation(s) of the prevailing wage rate or hours of work requirements.

8.2 Certified Payroll Records. Pursuant to California Labor Code §1776, the Contractor and each Subcontractor, of any tier, 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 person employed for the Work.

8.3 Certified Payroll Records Submittal to Labor Commissioner. The Contractor and all Subcontractors shall prepare and submit Certified Payroll Records to the Labor Commissioner in compliance with requirements established in Labor Code §1771.4. The form and content of Certified Payroll Records shall be as established by the Labor Commissioner and the frequency of Certified Payroll Records submittal to the Labor Commissioner shall be pursuant to Labor Code §1771.4.

- 8.4 Apprentices.** Apprentices, if any engaged in performing any portion of the Work shall be in strict conformity with Laws, including without limitation, Labor Code §§1777.5 through 1777.7, which are incorporated herein by this reference.
- 8.5 Competency and Discipline.** The Contractor shall enforce strict discipline and good order among the Contractor's employees, the employees of any Subcontractor and all other persons performing any part of the Work at the Site. Personnel of the Contractor or any Subcontractor shall be subject to removal from the Site for violations of Laws or District policies. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them and shall dismiss from its employ and direct any Subcontractor or Sub-subcontractor to dismiss from their employment any person deemed by the District to be unfit or incompetent to perform Work.
- 8.6 Superintendent.** The Contractor shall employ a Superintendent fluent in verbal and written English who shall be in attendance at the Site at all times during performance of Work at the Site. The Superintendent shall be deemed the Contractor's Representative for the Work; directions, instructions or other communications to or with the Contractor's Superintendent shall be deemed directions, instructions or communications to or with the Contractor.
- 9. DIR Registration.** Strict compliance with DIR Registration requirements pursuant to Labor Code §1725.5 is a material obligation of the Contractor hereunder. The foregoing includes without limitation, compliance with DIR Registration requirements at all times during performance of the Work by the Contractor and all Subcontractors of any tier. No portion of the Work is permitted to be performed by a Subcontractor of any tier unless the Subcontractor is a DIR Registered contractor. The failure of the Contractor and all Subcontractors of every tier to be DIR Registered at all times during performance of the Work is the Contractor's default of a material obligation of the Contractor under the Contract Documents.
- 10. Subcontractors.** The Work of each Subcontractor shall be set forth in a written Subcontract agreement incorporating by reference this Contract; Subcontracts shall be made available to the District for review upon request of the District. The Contractor is responsible to the District for the acts, omissions and other conduct of Subcontractors and their employees, agents and representatives. Subcontractors identified in the Subcontractors' List shall not be replaced except in strict conformity with requirements of Public Contract Code §4107. The Contractor is responsible for all fees, costs or expenses (including attorneys' fees) incurred in connection with review, evaluation and action relating to a Contractor request to replace a listed subcontractor.
- 11. Non-Discrimination.** The Contractor and its Subcontractors shall not discriminate against any active or prospective employee based upon race, color, ancestry, national origin, religion, sex, age, sexual preference or marital status. The Contractor and its Subcontractors shall comply with the Laws prohibiting workplace discrimination and/or discriminatory employment practices.
- 12. Payment of the Contract Price.** The District will make payment of the Contract Price upon completion of the Work, the Contractor's full performance of all other obligations under this Contract Documents and the Contractor's submission of a properly itemized invoice. Upon receipt of the Contractor's invoice, the District Representative will promptly verify that the Work has been completed and that the Contractor has performed all other obligations hereunder. Within thirty (30) days of the District Representative confirmation of the completion of Work and the Contractor's performance of other obligations hereunder, the District will make payment of the Contract Price. If the Contract Time is a duration of sixty (60) days or more, the Contractor may submit invoices on a monthly basis for the value of Work completed in the prior month, whereupon the District Representative will promptly verify that the Work has been completed as indicated in the Contractor's invoice. Within thirty (30) days of the date of such verification, the District will make payment equal to ninety five percent (95%) of the value of the Work completed. Within sixty (60) days of completion of all Work and all other of the Contractor's obligations hereunder, amounts previously retained from prior invoices will be released to the Contractor. The District may, in its sole discretion, condition payment of the Contract Price, or any portion thereof, upon: (a) the Contractor's preparation of a Schedule of Values for review and acceptance by the District's Representative; (b) the submittal of executed Waivers and Releases (on Progress Payment or Final Payment, as applicable) for the Contractor and all Subcontractors receiving any portion of the Contract Price; and/or (c) delivery of Certified Payroll records of the Contractor and Subcontractors. The District may withhold payment of any portion of the Contract Price if: (i) there are claims or the probability of claims being submitted by Subcontractors, Material Suppliers or others in connection with the Work; (ii) defective or non-conforming Work which is not remedied; (iii) there are any uncured Contractor defaults; (iv) Liquidated Damages due from the Contractor or (v) authorized by provisions of the Contract Documents.
- 13. Insurance.** The Contractor and its Subcontractors shall, at all times during the Work, maintain Workers Compensation, Employers Liability as required by law, and Commercial General Liability Insurance with a minimum coverage amount of \$1,000,000. The Contractor's Commercial General Liability Insurance shall name the District as an Additional Insured. All policies of insurance shall include provisions that the policy of insurance will not be materially modified, cancelled or allowed to expire without at least thirty (30) days advance notice to the District. Prior to commencing the Work, the Contractor shall deliver Certificates of Insurance of itself and its Subcontractors evidencing the required insurance coverages.
- 14. Indemnification.** Unless arising solely out of the active negligence or willful misconduct of the District, the Contractor shall indemnify, defend and hold harmless the District, the District's Board of Education and all members thereof and the District's employees, officers, agents and representatives from all claims, demands and liabilities, including without limitation, attorneys' fees, which arise out of or related in any manner to this Contract or the Work. The Contractor's obligations hereunder include without limitation: (a) injury to, or death of, persons; (b) damage to property; (c) theft or loss of property; (d) Stop Notice claims; and (e) other claims, causes of action, losses, damages or costs arising out of, in whole or in part, of the acts, omissions or other conduct of the Contractor, its Subcontractors and/or materialmen. The Contractor's obligations hereunder shall survive termination of the Contract and/or completion of the Work, and are incorporated into and made a part of the obligations of the Surety issuing the Performance Bond.
- 15. District Right to Terminate.** The Contractor's failure to comply with any term or condition of the Contract Documents shall constitute default of the Contractor; in such event, the District may terminate the Contract upon seven (7) days written notice to the Contractor. Unless the Contractor shall have commenced, and diligently thereafter prosecute to completion, all required actions to cure such default(s), this Contract shall be deemed terminated without further action of the District; such termination shall be effective the seventh (7th) day after the date of the District's written notice. If the District terminates the Contract for default of the Contractor, the Contractor and the Performance Bond Surety shall be liable to the District for all losses, costs and damages arising out of the Contractor's default and costs to complete the Work which exceeds the remaining Contract Price at the time of termination. In addition to the preceding, the District may terminate this Contract at any time for the convenience of the District by written notice to the Contractor, in which case, the payment of the Contract Price shall be limited to the value of the Work in place or in progress at the time of the termination for the District's convenience; no payment shall be made or due from the District for the unperformed portion of the Work.

16. Warranty. The Contractor warrants to the District that: (i) all materials and equipment furnished under the Contract Documents are new, of good quality and of the most suitable grade and quality for the purpose intended, unless otherwise specified in the Contract Documents; and (ii) all Work and workmanship is of good quality, free from faults and defects and in conformity with the requirements of the Contract Documents. If within one (1) year, or such other period set forth in the Contract Documents, any of the Work or workmanship is found defective or not in compliance with the Contract Documents, the Contractor shall upon the District's demand, promptly take all measures necessary to correct, repair or replace such Work or workmanship. If the Contractor fails to do so, the District may take necessary action to correct, replace or replace such Work or workmanship at the cost and expense of the Contractor.

16.1 Additional Warranties. Contractor's warranty set forth in Paragraph 16 are in addition to and not in lieu of: (i) warranties/guarantees of the fabricator/manufacturer of the Goods; and (ii) warranties arising by operation of law.

16.2 Manufacturer Warranties. Contractor shall, prior to the release of retention, provide to District a hard copy of any and all manufacturer warranties for all equipment installed by or under the direction of Contractor pursuant to this Agreement.

17. Tests/Inspections of the Work. The Work shall be subject to tests/inspections as required by the Contract Documents and/or the Laws. The Contractor shall be liable for all costs, fees or expenses of tests/inspections which result from the Work not being ready for tests/inspections or the failure of the Work to comply with the applicable test/inspection standards. The District may withhold such costs, fees or expenses from the Contract Price. If the Work is subject to the jurisdiction of the Division of State Architect ("DSA"), all of the Work shall be subject to inspection/observation by the Project Inspector retained by the District under DSA regulations. If the Project Inspector deems any portion of the Work to not be in compliance with requirements of the Contract Documents, a material obligation of the Contractor is its prompt and complete repair, replacement or correction of such portion(s) of the Project so they comply with requirements of the Contract Documents. The Project Inspector shall have access at all times to the Work, whether in place or in progress; the Contractor shall provide such access without adjustment of the Contract Price or the Contract Time.

18. Miscellaneous.

18.1 Disputes.

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

18.1.2 Public Contract Code §9204 Claims Resolution Procedures. Claims of the Contractor are subject to the non-binding dispute resolution procedures set forth in Public Contract Code §9204 ("Section 9204") provided, however, that the Contractor's initiation of Section 9204 procedures is expressly subject to the Contractor's prior full and timely compliance with requirements and procedures of the Contract Documents relating to procedures for resolution of claims, change orders, disputes and other matters in controversy under the Contract Documents.

18.1.2.1 Claim Defined. The term "Claim" shall be as defined in Section 9204.

18.1.2.2 Claim Documentation. The Contractor shall furnish reasonable documentation to support each Claim. "Reasonable documentation" includes, without limitation: (i) contractual and legal basis establishing Claim entitlement or merit; (ii) factual basis establishing District liability for the Claim; (iii) detailed breakdown of labor, materials, equipment and other costs included in the Claim; and (iv) detailed basis, including Construction Schedule analysis and fragments supporting any Contract Time adjustment or Liquidated Damages relief included in the scope of a Claim.

18.1.2.3 District Claim Review Statement. Within forty five (45) days (or such other time mutually agreed to by the District and the Contractor) after receipt of a properly submitted and properly documented Claim, the District will conduct a reasonable review of the Claim and provide the Contractor with a written statement identifying the disputed and undisputed portions of the Claim ("Claim Review Statement"). If the District does not provide the Contractor with the Claim Review Statement for any Claim within forty five (45) days (or other time mutually agreed to by the District and the Contractor) after receipt of a properly submitted and properly documented Claim, the Claim is deemed rejected in its entirety and thereupon, the Contractor may initiate the Meet and Confer process described below. A Claim deemed rejected pursuant to the foregoing does not constitute an adverse finding of Claim merit or the Contractor's responsibility or qualifications. If the Claim Review Statement identifies any undisputed portion of a Claim ("Undisputed Claim") and payment is due from the District on the Undisputed Claim, the District shall process and make payment on the Undisputed Claim within sixty (60) days after the issuance date of the Claim Review Statement.

18.1.3 Meet and Confer.

18.1.3.1 Meet and Confer Demand. If the Contractor disputes any portion of the Claim Review Statement, or if a Claim is deemed rejected by the District not providing the Contractor with the Claim Review Statement within the time permitted under Section 9204, the Contractor may demand an informal conference to meet and confer with the District for settlement of the issues in dispute ("Meet and Confer"). The Contractor's Meet and Confer request must be submitted to the District: (i) in writing; (ii) by registered mail or certified mail, return receipt requested; and (iii) within ten (10) days after the Claim Review Statement is submitted to the Contractor or within ten (10) days after the date the Claim is deemed **rejected**, as applicable. Failure of the Contractor to strictly comply with the foregoing is deemed a waiver of the Contractor's right to request the Meet and Confer and the Non-Binding Mediation procedures under Section 9204. If the Contractor strictly complies with the foregoing, the District will schedule the Meet and Confer conference within thirty (30) days of the Contractor's Meet and Confer request for settlement of disputed portions of the Claim Review Statement.

18.1.3.2 Meet and Confer Statement. Within ten (10) business days after conclusion of the Meet and Confer conference, if any portion of a Claim remains disputed, the District shall

provide the Contractor a written statement identifying the disputed and undisputed portions of the Claim ("Meet and Confer Statement"). If the Meet and Confer Statement identifies any Undisputed Claim and payment is due from the District on the Undisputed Claim, the District shall process and make payment on the Undisputed Claim within sixty (60) days after date the Meet and Confer Statement is issued.

18.1.4 Non-Binding Mediation.

18.1.4.1 Contractor Initiation. The Contractor may request nonbinding mediation ("Mediation") of disputed portions of a Claim identified in the Meet and Confer Statement. The Contractor's Mediation demand must be submitted to the District: (i) in writing; (ii) by registered mail or certified mail, return receipt requested; (iii) within ten (10) days after the Meet and Confer Statement is submitted to the Contractor; and (iv) with specific identification of the disputed Claims issues subject to Mediation. Failure of the Contractor to strictly comply with the foregoing is deemed a waiver of the Contractor's right to demand Mediation procedures under Section 9204.

18.1.4.2 Mediator Selection. The District and Contractor shall mutually agree to a mediator within ten (10) business days after the date of the Contractor's demand for Mediation. If the District and Contractor do not mutually agree to a mediator, the District and Contractor shall each select a mediator and the District/Contractor selected mediators shall select a qualified neutral third party to mediate the disputed portion of the Claim.

18.1.4.3 Mediation Procedures. 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 District and Contractor in dispute resolution through negotiation or by issuance of an evaluation.

18.1.4.4 Mediation Costs. All costs, fees and expenses of the mediator(s) and mediation administration shall be shared equally by the District and Contractor. The foregoing notwithstanding, the Contractor and District shall each bear the costs, fees and expenses of their own attorneys, experts and consultants.

18.1.4.5 Post-Mediation Disputed Claims. Any Claims issues in dispute after Mediation shall be resolved in accordance with the applicable provisions of the Contract Documents.

18.1.4.6 Waiver. The District and Contractor may mutually agree to waive, in writing, Mediation under Section 9204 and subject to the Contractor's compliance with Government Code Claim requirements, proceed directly to commencement of a civil action or binding arbitration.

18.1.5 Payments of Undisputed Claims. If a payment due from the District for Undisputed Claims identified in the Claim Review Statement or the Meet and Confer Statement issued for a Claim is not made within the time established under Section 9204 the overdue portion of such payment shall bear interest at the rate of seven percent (7%) per annum from the date due. The District's credit application of any amount due for an Undisputed Claim against amounts due from the Contractor under the Contract Documents shall be deemed payment of the Undisputed Claim.

18.1.6 Subcontractor Claims.

18.1.6.1 Subcontractor Claim Submittal. If a Subcontractor, of any tier (collectively "Subcontractor") lacks legal standing to assert a Claim against the District because privity of contract does not exist, the Contractor may present the District a Claim on behalf of the Subcontractor ("Subcontractor Claim"). Each Subcontractor requesting submittal of a Subcontractor Claim to the District shall furnish reasonable documentation to support the Subcontractor Claim. Within forty-five (45) days of receipt of a Subcontractor's written request to submit a Subcontractor Claim, the Contractor shall notify the Subcontractor in writing as to whether the Contractor presented the Subcontractor Claim to the District. If the Contractor did not present the Subcontractor Claim, the Contractor shall provide the Subcontractor with a statement of the reasons for not having done so.

18.1.6.2 Contractor Certification of Subcontractor Claim. The District's review of Subcontractor Claims is expressly subject to the Contractor's submittal of a duly completed and executed form of Contractor Certification of Subcontractor Claim certifying that the Contractor has thoroughly reviewed the Subcontractor Claim and based on the Contractor's review, certify that: (i) the Subcontractor Claim is made by the Subcontractor in good faith; (ii) the Subcontractor Claim is supported by reasonable documentation establishing entitlement to the relief requested and District liability therefor; and (iii) the Subcontractor Claim does not incorporate any request constituting a False Claim under applicable law, including the California False Claim Act (Government Code §12650 et seq). The form of Contractor Certification of Subcontractor Claim is included in the Contract Documents.

18.1.6.3 District Review of Subcontractor Claim. Subcontractor Claims presented by the Contractor to the District are subject to the Section 9204 non-binding dispute resolution procedures set forth above, as modified herein. Requests for the District to conduct Meet and Confer and/or non-binding mediation procedures must be submitted jointly by the Contractor and the Subcontractor submitting the Subcontractor Claim. If Mediation proceedings are initiated in connection with a Subcontractor Claim, mediator and mediation administration fees and costs shall be borne equally by the District, Contractor and Subcontractor.

18.1.6.4 Disputed Subcontractor Claims. Subcontractor Claims which are not fully resolved by the Section 9204 non-binding dispute resolution procedures shall be resolved by Section 20104.4 Dispute Resolution Procedures or binding arbitration, as applicable. Commencement of Section 20104.4 Dispute Resolution Procedures or binding arbitration proceedings in connection with any Subcontractor Claim is subject to compliance with Government Code Claims requirements.

18.1.7 Contractor Compliance with Government Code. Pursuant to Government Code Section 930.6, any and all claims, demands, disputes, disagreements or other matters in controversy between the Contractor and the District for money or damages, including, without limitation, a demand for arbitration, shall be deemed a "suit for money or damages" and shall be subject to the

provisions of Government Code Sections 945.4, 945.6 and 946. Notwithstanding the dispute resolution and arbitration provisions set forth in Article 18.1.3 herein, all claims, demands, disputes, disagreements or other matters in controversy between the Contractor and the District seeking money or damages in any sum shall first be presented to the District's Board of Education and acted upon or deemed rejected as a condition precedent to suit including, without limitation, demand for arbitration, in accordance with California Government Code section 900, et seq.

- 18.1.8 Claims Under Small Claims Court Limit.** All claims, disputes, disagreements or other matters in controversy between District and Contractor of \$10,000 or that fall within the current limitation for Small Claims Court shall be resolved informally or filed in the Los Angeles County Small Claims Court nearest to the District Office.
- 18.1.9 Claims Over \$10,000 and Under \$375,000.** Each dispute or claim of \$375,000 or less arising out of this Contract shall be resolved in accordance with Public Contract Code §20104.4, et seq.
- 18.1.10 Arbitration.** A dispute or claim exceeding \$375,000 shall be resolved by binding arbitration conducted before a retired judge in accordance with the arbitration rules of Judicial Arbitration Mediation Services ("JAMS") in effect as of the date that a Demand for Arbitration is filed, except as expressly modified herein. The locale for any arbitration commenced hereunder shall be the regional office of the JAMS closest to the Site. The award rendered by the Arbitrator(s) shall be final and binding upon the District and the Contractor and shall be supported by law and substantial evidence pursuant to California Code of Civil Procedure Section 1296. Any written arbitration award that does not contain findings of fact and conclusions of law in conformance with California Code of Civil Procedure Section 1296 and shall be invalid and unenforceable. The parties hereby expressly agree that the court shall, subject to Sections 1286.4 and 1296 of the California Code of Civil Procedure, vacate the award if, after review of the award, it determines either that the award is not supported by substantial evidence or that it is based on an error of law. Notwithstanding any claim or dispute arising out of this Contract or the Work, the Contractor shall continue to diligently perform the Work and prosecute the same to completion.
- 18.2 Governing Law; Interpretation.** This Contract shall be governed by the laws of the State of California. This Contract shall be interpreted as a whole and not in favor of the District or the Contractor.
- 18.3 Certification Regarding Debarment, Suspension or Ineligibility for Public Contracts.** The Contractor acknowledges that District is prohibited from contracting with parties that are suspended, debarred, ineligible, or excluded from securing public contracts or whose principals are suspended, debarred, ineligible, or excluded from securing public contracts. Contractor certifies that neither it nor any of its owners, officers partners, directors or other principals is currently suspended, debarred, ineligible, or any excluded from securing public contracts.
- 18.4 Identification Badges.** Identification badges are required for Site access. Personnel providing or performing any Work at the Site will be permitted access to the Site only if District-issued identification badges are worn.
- 18.5 Successors.** This Contract shall be binding upon and inure to the benefit of the respective successors-in-interest of the District and the Contractor. The foregoing notwithstanding, the Contractor shall not assign this

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

- 18.6 Permits; Approvals.** Unless otherwise expressly provided in the Contract Documents, the Contractor shall obtain and pay for all fees, permits or approvals necessary to complete the Work.
- 18.7 Waiver of Consequential Special Damages.** Notwithstanding any right conferred by law or arising by operation of law, by executing the Contract, the Contractor expressly waives and relinquishes any and all right or entitlement to assert or recover any damages, losses or liabilities from the District which are in the nature of special or consequential damages, losses or liabilities arising out of or related in any manner to the District's breach or default of its obligations under the Contract Documents.
- 18.8 Days.** Unless otherwise stated in the Contract Documents, all references to "days" shall be deemed references to calendar days.
- 18.9 Time.** Time is of the essence in performance and completion of obligations under the Contract.
- 18.10 No Oral Modifications.** The terms of the Contract shall be modified only by written instrument duly executed on behalf of the Contractor and District. Verbal or oral modifications to the Contract of terms thereof are not valid or enforceable.
- 18.11 District Rules and Regulations.** The Contractor, Subcontractors and their respective employees, agents or representatives shall at all times comply with District rules and regulations relating to permissible and prohibited conduct/activities and/or limitations in conduct/activities at the Site.
- 18.12 Severability.** If any term, condition or provision of this Contract is deemed invalid, illegal or unenforceable by a Court of competent jurisdiction, such term, condition or provision shall be deemed severed herefrom, but all other terms, conditions and provisions hereof shall remain unaffected and in full force and effect.

SUBCONTRACTORS LIST

Project **REPLACEMENT OF ROOF TOP HVAC UNITS, JOB # 15-5935P**
Quotation No.

Name of Bidder: JR BARTO

Authorized Signature: _____

(A) Licensed Name of Subcontractor	(B) Subcontractor Office, Mill or Shop Address	(C) Sub-contractor Trade or Portion of Work	(D) Subcontractor Contractors' License No.

Attach additional page(s) as required

NON-COLLUSION DECLARATION

STATE OF CALIFORNIA
COUNTY OF _____

I, _____, declare that I am _____ of _____, the party submitting the foregoing Quote Proposal (“the Bidder”). In connection with the foregoing Quote Proposal, the undersigned declares, states and certifies that:

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

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

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

Signature

(Address)

Name Printed or Typed

(City, County and State)

(_____) _____
(Area Code and Telephone Number)

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

I, _____ the _____ of _____
(Name) (Title)
_____, declare, state and certify that:
(Contractor Name)

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

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

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

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

(Contractor Name)

By: _____
(Signature)

(Typed or printed name)

DRUG-FREE WORKPLACE CERTIFICATION

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

(Contractor Name)

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

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

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

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

Executed at _____ this ____ day of
(City and State)

_____, 20____.

(Signature)

(Printed or Typed Name)

