

CONTRACT FOR DESIGN AND CONSTRUCTION
(EDUCATION CODE § 17250.10 ET SEQ.)
(CalSHAPE)

This Contract for Design and Construction (Education Code § 17250.10 et seq) ("**Contract**") is entered into and effective on **June ____**, **2024**, by and between **Mountain View Whisman School District** ("**District**"), and **Veregy Pacific, LLC** ("**Designer/Builder**") (individually as a "**Party**" or collectively as the "**Parties**").

RECITALS

WHEREAS, the scope of the Project is for the design (preparation of plans and specifications), construction, installation, and commissioning, for the assessment, testing and maintenance; filter installation; and CO2 monitor installation at multiple District sites pursuant to the CalSHAPE Program, as more detailed in this Contract ("**Project**"); and

WHEREAS, on or about November 8, 2023, the District issued a Request for Qualifications and Proposals to design and construct the Project, as authorized by Education Code section 17250.10 et. seq. (the "**RFQ/P**"); and

WHEREAS, the District's governing board ("**Board**") evaluated the traditional design, bid, and build process of District facility construction and the design-build process in a public meeting and made written findings that use of the design-build process for the Project will accomplish the reduction of comparable project costs, and/or expedite the Project's completion, and/or provide features not achievable through the traditional design-bid-build method; and

WHEREAS, the Board determined that it is in the best interest of the District to enter into a design-build contract for the Project prior to entering into this design-build contract for the Project; and

WHEREAS, the Board further authorized the District to enter into a design-build contract with a design-build entity that is able to provide appropriately licensed contracting, architectural, and engineering services to design and construct the Project based on the Project's criteria, including but not limited to, the design criteria documents provided by the District to Designer/Builder in the RFQ/P and which are incorporated herein by reference as though fully set forth herein ("**Design Criteria Documents**"), and based on detailed construction documents prepared by the successful Designer/Builder and approved by the Division of the State Architect ("**DSA**"), if necessary, and the District and within the Contract Price; and

WHEREAS, based on the District's review and evaluation of the proposal submitted by Designer/Builder, and subsequent negotiations by and between the District and Designer/Builder, the District determined that Designer/Builder is the firm offering the best value to the District for the Project; and

WHEREAS, District desires that Designer/Builder design and construct, and Designer/Builder desires to design and construct the Project including, without limitation, **Exhibit A**, attached hereto ("**Services**" or "**Work**"), for the Contract Price and within the Project Schedule; and

WHEREAS, the Designer/Builder certifies and warrants that it has the experience, expertise, capability, training, and any certification(s) and/or license(s) necessary to design and construct the Project based on the Project criteria furnished to the Designer/Builder during the Designer/Builder selection process, including but not limited to the Design Criteria Documents, and for the Contract Price and within the Project Schedule indicated in this Contract, and that, if it is not sufficiently licensed to design any portion of the Work as required by applicable law, Designer/Builder shall directly hire a consultant with sufficient licensure to design that portion of the Work.

NOW THEREFORE, for and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

AGREEMENT

1. **Contract Price.** The Designer/Builder shall furnish the Work described in **Exhibit A, Article 2** to the District for a total price **not to exceed \$1,114,980** (“**Contract Price**”) as more specifically indicated in **Exhibit C**.
2. **The Work.** Payment of the above Contract Price shall be Designer/Builder’s total compensation to perform all Work for the Project pursuant to the requirements of the Contract Documents, including, without limitation, **Exhibit A** and the Terms and Conditions, which are part of the Project:
 - 2.1. **Design.** Designer/Builder shall design a comprehensive plan, including final plans and specifications, to construct and install, for the assessment, testing and maintenance; filter installation; and CO2 monitor installation pursuant to the CalSHAPE Program at the following District sites:

District Site	Address
Mariano Castro Elementary School	500 Toft Street, Mountain View, CA 94041
Gabriela Mistral Elementary School	505 Escuela Avenue, Mountain View, CA 94040
Jose Antonio Vargas Elementary	220 N. Whisman Road, Mountain View, CA 94043
Benjamin Bubb Elementary School	525 Hans Avenue, Mountain View, CA 94040
Edith Landels Elementary School	115 West Dana Street, Mountain View, CA 94043
Frank L. Huff Elementary School	253 Martens Avenue, Mountain View, CA 94040
Isaac Newton Graham Middle School	1175 Castro Street, Mountain View, CA 94040
Stevenson Elementary School	750 San Pierre Way, Mountain View, CA 94043
Crittenden Middle School	1701 Rock Street, Mountain View, CA 94043
Monta Loma Elementary School	460 Thompson Avenue, Mountain View, CA 94043
Theuerkauf Elementary School	1625 San Luis Avenue, Mountain View, CA 94043

(“**Site(s)**”). The Designer/Builder shall perform this scope of work based on the Design Criteria Documents provided to Designer/Builder during the Designer/Builder selection process, which are incorporated herein by this reference. The Early Design Phase, including the HVAC Assessment under the CalSHAPE Program, Schematic Design Phase, Design Development Phase, 50% Construction Documents Phase and 100% Construction Documents Phase as further described in **Exhibit A** may be referred to collectively as the “**Design Phase Services**” or the “**Design Phase.**”

- 2.2. **Build.** Designer/Builder shall construct (including all required demolition), program, field test and commission the HVAC maintenance and perform the filter and CO2 monitor installations at the Sites, including incorporating and ensuring compatibility of all appurtenant and necessary components for a complete and fully operational system. Designer/Builder shall also complete the verification reporting under the CalSHAPE Program and train District staff on the operation and maintenance of these maintained HVAC units and the filters and CO2 monitors installed. All the work of the Project shall be based on the plans prepared by the Designer/Builder that are to be reviewed by the District and, if required, approved by the DSA. The installation, construction, and commissioning of the Work at the Site through Project Completion shall be referred to as “**Construction Phase Services**” or “**Construction Phase.**”
3. **Grant Funding.** The Project is funded in whole or in part by grant funds. The selected Firm shall be required to comply with all laws and grant program funding requirements applicable to CalSHAPE funds when performing Services for the Project, including, but not limited to, the applicable terms and conditions of the District’s grant funding agreement(s) with grantee(s) (“**Grant Agreement(s)**”) and the CalSHAPE Ventilation Program Guidelines. Copies of the Grant Agreement(s) and the CalSHAPE Ventilation Program Guidelines are attached hereto as **Exhibit G**. **Further, Designer/Builder understands that the District has newer HVAC systems**

installed at some of the sites set forth herein. The awarded Firm must determine what work can be validly performed under the CalSHAPE Program on these newer HVAC systems and will only be paid for actual work performed under the CalSHAPE Program.

4. **Contract Time / Project Schedule.** Designer/Builder shall perform the Work in phases as identified in **Exhibit B** with the Contract Price payable in each phase consistent with the requirements of the Contract, including, without limitation, the Terms and Conditions. Work for the Project and each milestone shall be completed within the time specified in **Exhibit B** attached hereto ("**Project Schedule**") from the date specified in the District's Notice(s) to Proceed (as defined below), as applicable to the Project or milestone. The time for the performance of the Work, or portion thereof, shall be the "**Contract Time,**" which shall only be adjusted consistent with the terms of the Contract Documents.
5. **Notice(s) to Proceed (NTP(s)).** The District will issue one or more notice(s) to proceed ("**Notice(s) to Proceed**" or "**NTP**") for each phase or a portion of each phase of the Project, at which time Designer/Builder shall proceed with the Work. The Parties specifically acknowledge that any Work which requires California Department of General Services, Division of the State Architect ("**DSA**") approval shall not commence until DSA approval has been obtained. Designer/Builder shall only be authorized to perform Work as indicated in the particular Notice to Proceed. The time to complete the Work authorized by a particular Notice to Proceed shall be as indicated in the Notice to Proceed. The District will issue a Notice to Proceed for the Design Phase Services, and a Notice(s) to Proceed for Construction Phase Services. For Construction Phase Services, the District reserves the right to issue a Notice to Proceed for construction for each Site individually, for a group of Sites, or for all Sites, in its sole discretion. If the District issues a Notice to Proceed for each Site individually or for a group of Sites, the Parties shall make necessary adjustments to the Project Schedule, and amend this Contract accordingly.
6. **Liquidated Damages.** Time is of the essence for all Work to be performed. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that District will sustain in the event of and by reason of Designer/Builder's delay; therefore, pursuant to Government Code section 53069.85 and Public Contract Code section 7203, Designer/Builder shall forfeit and pay to District the following sum(s) as liquidated damages ("**Liquidated Damages**"):
 - 6.1. **Project Completion. One Hundred and Fifty Dollars (\$150.00)** per day, only per Site, as Liquidated Damages for each and every day's delay beyond the Contract Time to complete all the Work at **each** Site. If there are different deadlines for completion of the Work at an individual Site(s), or group of Sites, as set forth in the Project Schedule, the District may assess liquidated damages cumulatively as set forth below if Designer/Builder fails to complete all the Work for the individual Site(s), or group of Sites, within the Contract Time as applicable.
 - 6.2. Each portion of the Liquidated Damages shall be calculated cumulatively. For example, if Designer/Builder is late in completing the Work at two Sites, Designer/Builder will forfeit and pay two separate Liquidated Damages amounts.
 - 6.3. It is hereby understood and agreed that neither the total cumulative Liquidated Damages amount nor any portion of the Liquidated Damage amount are penalties.
 - 6.4. District may deduct Liquidated Damages from money due or that may become due Designer/Builder under this Contract. Designer/Builder's forfeiture of Liquidated Damages to District, and District's right to retain Liquidated Damages, are as indicated in Government Code section 53069.85 and as indicated herein and in the General Conditions.
 - 6.5. Liquidated Damages are automatically and without notice of any kind forfeited and payable by Designer/Builder upon the accrual of each day of delay. Neither District's failure nor delay in deducting Liquidated Damages from payments otherwise due the Designer/Builder, nor District's failure or delay in

notifying Designer/Builder of the forfeiture and payment of Liquidated Damages, shall be deemed a waiver of District's right to Liquidated Damages and/or the District's right to withhold Liquidated Damages from any amounts that would otherwise be payable to the Designer/Builder.

- 6.6. Designer/Builder and its surety shall be liable for and pay to District the entire amount of Liquidated Damages including any portion that exceeds the amount of the Contract Price then held, retained or controlled by District.
- 6.7. Liquidated Damages shall be in addition, and not in lieu of, District's right to charge Designer/Builder for the District's cost of completing or correcting items of the Work.

Initials: **District** _____ **Designer/Builder** _____

7. Insurance/Bonds.

- 7.1. The Designer/Builder shall not commence any Work under this Contract until the Designer/Builder has submitted and the District has approved the endorsement(s) of insurance required under the Terms and Conditions to this Contract and the District has issued a Notice to Proceed.
- 7.2. The Designer/Builder shall not perform any Work during Construction Phase Services until the Designer/Builder has submitted and the District has approved the performance bond and the payment (labor and material) bond(s). If the Contract Price is adjusted during the performance of Construction Phase Services, Designer/Builder shall submit updated bonds in the amount equal to the adjusted Contract Price.

8. CEQA. To the extent applicable, the District and Designer/Builder recognize that the Project activities contemplated by this Contract are subject to environmental review under the California Environmental Quality Act ("CEQA"), and that the District, as a lead agency for the Project and its future use, must comply with the CEQA requirements as set forth in CEQA and in 14 California Code of Regulations sections 15000, et seq. ("**CEQA Guidelines**"). Pursuant to CEQA Guidelines Section 15004(b)(2)(A), the Parties acknowledge the following:

- 8.1. Approval and execution of this Contract by the Parties does not constitute the District authorizing, approving, or awarding a "project" as defined by CEQA.
- 8.2. The District shall retain the discretion to do all of the following:
 - 8.2.1. Modify the Project design or feature in a manner that the District decides is necessary to comply with CEQA, including, but not limited to, incorporation of mitigation measures identified in an environmental review document for the Project to mitigate environmental impacts that the Project may cause, or the adoption of alternatives to the Project.
 - 8.2.2. Balance the benefits of the proposed Project against any of the Project's significant environmental effects if the effects cannot be otherwise avoided or mitigated to a less than significant level.
 - 8.2.3. Disapprove the Project design and not proceed with construction of the Project.
- 8.3. The Construction Phase of the Project shall not commence until the District's Board provides Designer/Builder with a specific notice to proceed authorizing construction activity. In the event District does not issue such a Notice to Proceed authorizing construction activity and instead issues a notice of suspension or notice of termination, District will pay for Designer/Builder's undisputed and documented design and/or planning services rendered to the date of that notice.

9. Terms and Conditions. This Contract incorporates by this reference the Terms and Conditions attached hereto. The Designer/Builder, by executing this Contract, agrees to comply with all the Terms and Conditions herein.

10. DSA. Designer/Builder hereby acknowledges that the DSA and the District’s DSA Project Inspector(s) (“**Inspector**” or “**IOR**”), to the extent applicable, have authority to approve and/or stop Work if the Designer/Builder’s Work does not comply with the requirements of the Contract, Title 24 of the California Code of Regulations, or all applicable laws. The Designer/Builder shall be liable for any delay caused and extra work required by its non-compliant Work. Designer/Builder shall not be liable for delay to the extent caused by the District.

11. Inspection of Work. Inspection and acceptance of the Work shall be performed by:

11.1. The Inspector with whom the District will contract at or prior to the Designer/Builder’s commencement of construction of the Project;

11.2. The director of construction for the District and/or designee (“**District Representative**”);

11.3. The District’s program architect (“**Architect**”), if applicable.

12. Construction Management. Designer/Builder recognizes that the District reserves the right to obtain the services of a construction manager for this Project. The construction manager, if any, would be authorized to give Designer/Builder Services authorizations, and issue written approvals and Notices to Proceed on behalf of District. The District reserves the right to designate a different construction manager at any time. The District shall provide forty-eight (48) hours’ notice to Designer/Builder if District designates a different construction manager. Any task, including, but not limited to, reviews or approvals that the District may perform pursuant to this Contract may be performed by the construction manager, unless that task indicates it shall be performed by the District’s Board.

13. Key Personnel. The following individuals are the Designer/Builder’s key personnel:

Project Executive	\$225.00
Project Manager	\$210.00
Project Superintendent	\$190.00
Project Engineer	\$170.00
Safety Officer	\$180.00
Estimator	\$160.00
Scheduler	\$155.00

Subcontractor Name:	Portion of Work (Scope):	Location of Business:	CSLB No.:
			DIR No.:
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			DIR No.:

13.1. Key personnel, except for the Design Principal-in-Charge, Design Project Manager and the Project Architect (altogether, "**Architect Personnel**"), shall not be replaced unless approved by the District as provided herein and such approval shall not be unreasonably withheld or delayed.

13.2. The Architect of Record ("AOR") is an essential part of the Designer/Builder's commitment to the District. The Designer/Builder shall not assign, transfer, delegate or sublet any interest in the work of or replace the AOR or the AOR's Personnel designated herein unless approved by the District in its sole discretion and as indicated herein. Any purported assignment, transfer, delegation or sublease of any interest in the work of or replacement of the Architect Personnel without the District's prior approval shall be considered null and void.

14. Guarantee. Unless otherwise indicated herein for a longer period of time, the Designer/Builder shall guarantee all labor and material used in the performance of this Contract for a period of one (1) year from the date of the District's written approval of the Work.

15. Classification of Designer/Builder's License. Designer/Builder hereby acknowledges that it **currently holds a valid Type B and Type C-20 Contractor's license(s)** issued by the State of California, Contractor's State Licensing Board, in accordance with division 3, chapter 9, of the Business and Professions Code and in the classification called for in the Contract Documents as well as a current California architect or engineering license.

16. Authority of Designer/Builder's Representative. Designer/Builder hereby certifies that its legal representative(s) on the Project and the person(s) it employs on the Project at or above the level of Project superintendent, each have the authority to legally bind the Designer/Builder.

17. The Contract includes only the following documents which are incorporated herein by this reference ("**Contract Documents**"):

- | | |
|--|---|
| <input checked="" type="checkbox"/> Terms and Conditions to Contract | <input checked="" type="checkbox"/> Exhibit A (Scope of Work) |
| <input checked="" type="checkbox"/> Certifications to be Completed by Designer/Builder | <input checked="" type="checkbox"/> Exhibit B (Project Schedule) |
| <input checked="" type="checkbox"/> DVBE Certification | <input checked="" type="checkbox"/> Exhibit C (Detailed Project Cost Values and Other Pricing Components) |
| <input checked="" type="checkbox"/> Criminal Background Investigation Certification | <input checked="" type="checkbox"/> Exhibit D (District's Rules and Regulations) |
| <input checked="" type="checkbox"/> Performance Bond (District's Form) | <input checked="" type="checkbox"/> Exhibit E (List of Plans and Specifications) |
| <input checked="" type="checkbox"/> Payment Bond (District's Form) | <input checked="" type="checkbox"/> Exhibit F (Subcontractor Procurement Process) |
| <input checked="" type="checkbox"/> Insurance Certificates and Endorsements | <input checked="" type="checkbox"/> Exhibit G (Grant Agreement(s) and CalSHAPE Ventilation Program Guidelines) |

18. Integration/ Modification. The Contract Documents and any documents specifically incorporated by reference are completely integrated as the complete and exclusive statement of the terms of this Contract. This Contract supersedes all previous contracts, agreements, and/or communications, both oral and written, and constitutes the entire understanding of the District and Designer/Builder. No extrinsic evidence whatsoever shall be admissible or used to explain or supplement the terms of this Contract, Contract Documents, or any items incorporated by reference. No changes, amendments or alterations shall be effective unless in writing, signed by both Parties, and unless provided otherwise by the Contract Documents.

19. Certification. By signing the Contract, the Parties certify, under penalty of perjury, that all the information provided in the Contract is true, complete, and correct, to the best of its knowledge at the time it signs the Contract. If, at any time after signing the Contract, it becomes known that the information provided in the Contract is no longer true, complete, and correct, each Party shall have a duty to provide the updated or differing

information.

20. Notice. Any notice required or permitted to be given under this Contract shall be deemed to have been given, served, and received if given in writing and either personally delivered or sent by overnight delivery service addressed as follows:

District

Mountain View Whisman School District
1400 Montecito Avenue
Mountain View, CA 94043
ATTN: Rebecca Westover

Designer/Builder

Veregy Pacific, LLC
3090 Bristol Street, Suite 400
Costa Mesa, CA 92626
ATTN: Staffan Akerstrom

With a copy to:

Orbach Huff & Henderson LLP
6200 Stoneridge Mall Rd., Suite 225
Pleasanton, CA 94588
ATTN: Philip J. Henderson, Esq.

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service.

21. Information regarding Designer/Builder.

Type of Business Entity:

- Individual
- Sole Proprietorship
- Partnership
- Limited Partnership
- Corporation
- Limited Liability Company
- Other: _____

Employer Identification and/or Social Security Number: **46-1975495**

NOTE: United States Code, title 26, sections 6041 and 6109 require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The United States Code also provides that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these rules, the District requires your federal tax identification number or Social Security number, whichever is applicable.

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 2024

Mountain View Whisman School District

Signature: _____

Print Name: _____

Print Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Dated: _____, 2024

Veregy Pacific, LLC

Signature: _____

Print Name: _____

Print Title: _____

CA Contractor License No.: **1023083**

Architect License: _____

_____ Engineer License: _____

_____ Engineer License: _____

DIR Registration No.: **1000053722**

Designer/Builder Local Representative:

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

TERMS AND CONDITIONS TO CONTRACT

1. **SITE EXAMINATION:** Designer/Builder has examined the Sites and certifies that it accepts all measurements, specifications and conditions affecting the Work to be performed at the Site. By submitting its quote, Designer/Builder warrants that it has made all Site examination(s) that it deems necessary as to the condition of the Sites by Visually Verifying, their accessibility for materials, workers and utilities, and Designer/Builder's ability to protect existing surface and subsurface improvements, only as to the conditions affecting the Work to be performed at the Sites. No claim for allowance of time or money will be allowed as to any other Unforeseen Site Conditions (as defined herein), with the exception of hazardous materials, that could and should have been discovered through reasonable investigation of the conditions affecting the Work to be performed at the Sites. Notwithstanding the aforementioned, should the Designer/Builder discover any latent or unknown conditions or hazardous conditions (including asbestos-containing materials), which will materially affect the performance of the Work, Designer/Builder shall immediately inform the District of such fact in writing and shall not proceed until written instructions are received from the District.
2. **EQUIPMENT AND LABOR:**
 - 2.1. The Designer/Builder shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the Work herein described, the Work to be performed at such times and places as directed by and subject to the approval of the authorized District representative indicated in the Work specifications attached hereto.
3. **[If Applicable] SUBCONTRACTORS:** The Designer/Builder shall comply with the subcontract bidding process as stated in Education Code section 17250.35 and **Exhibit F** to this Agreement.
 - 3.1. The Designer/Builder shall prequalify its subcontractors performing mechanical, electrical and plumbing work. Designer/Builder shall prequalify such subcontractors in accordance with District-issued requirements relating to such prequalification. Once this process is completed, the Designer/Builder shall provide the list of prequalified subcontractors to the District for review and approval.
 - 3.2. The Designer/Builder shall make a good faith effort to obtain at least three (3) bona fide bids from subcontractors for **all** scopes of work on the Project that constitute more than five percent (5%) of the total Project scope.
 - 3.3. The Designer/Builder shall provide all bids received from subcontractors to the District and shall justify, to the District's satisfaction, any award to a subcontractor that is not the lowest bidding subcontractor for a specific scope of work.
 - 3.4. All subcontractors will be afforded the protections of State law, and all Work is subject to applicable prevailing wage laws.
 - 3.5. Subcontractors, if any, engaged by the Designer/Builder for any part of the Work under this Contract shall be subject to the approval of the District, which shall not be unreasonably withheld.
 - 3.6. Designer/Builder agrees to bind every subcontractor by the terms of the Contract as far as such terms are applicable to subcontractor's work, including, without limitation, all indemnification, insurance, bond, and warranty requirements.
 - 3.7. Designer/Builder shall be responsible for all Work performed under this Contract. All persons engaged in the Work of the Project are the responsibility and under the control of Designer/Builder. Designer/Builder shall give personal attention to fulfillment of this Contract and shall keep the Work under Designer/Builder's control. In no event shall Designer/Builder refer District to any subcontractor or consultant of Designer/Builder for response or resolution of any matters related to this Contract, the Work or any obligations of Designer/Builder hereunder. If Designer/Builder shall subcontract any part of this Contract, Designer/Builder shall be fully responsible to the District for acts and omissions of subcontractors and of persons either directly or indirectly employed by Designer/Builder.
 - 3.8. Nothing contained in the Contract shall create any contractual relations between any subcontractor and the District. Designer/Builder expressly acknowledges that its subcontractors are not third-party beneficiaries of this Contract.
4. **TERMINATION:**
 - 4.1. **Termination for Cause by District.** If Designer/Builder fails to perform Designer/Builder's duties as

required by this Contract, or if Designer/Builder fails to fulfill in a timely and professional manner Designer/Builder's material obligations under this Contract, or if Designer/Builder shall violate any of the material terms or provisions of this Contract, the District shall have the right to terminate this Contract, in whole or in part, unless such failures and violations are caused by the District, effective immediately upon the District giving fourteen (14) days prior written notice thereof to the Designer/Builder, during which time the Designer/Builder may attempt to correct such failures and violations to the District's reasonable satisfaction. In the event of a termination pursuant to this subdivision, Designer/Builder may invoice District for all Services performed from the date of the last paid invoice to the notice of termination, but District shall have the right to withhold payment and deduct any amounts equal to the District's costs because of Designer/Builder's negligent actions, errors, or omissions that caused the District to terminate the Designer/Builder. The District may, at its discretion, provide the Designer/Builder additional time to cure its default or breach.

- 4.2. **Termination for Cause by Designer/Builder.** The Designer/Builder has the right to terminate this Contract if the District does not fulfill its material obligations under this Contract. Termination shall be effective upon fourteen (14) days prior written notice to the District. Designer/Builder may invoice District and District shall pay all undisputed invoice(s) for Services performed and costs incurred until the date of termination.
- 4.3. **Termination for Convenience by District:** District shall have the right in its sole discretion to terminate the Contract for its own convenience with fourteen (14) days prior written notice. In the event of a termination for convenience, Designer/Builder may invoice District and District shall pay the Designer/Builder only (1) for materials or equipment purchased that cannot be returned, (2) restocking / cancellation fees for any materials or equipment that can be returned, (3) the fee associated with the Services actually and satisfactorily performed; all from the date of the last paid invoice to the notice of termination.
- 4.4. **Obligations Remain in Effect.** Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of termination.
- 4.5. **Suspension of Project.** If the District suspends the Project for more than one hundred twenty (120) consecutive days, the Designer/Builder shall be compensated for Services performed prior to the notice of suspension plus the reasonable costs of demobilization. When the Project is resumed, the schedule shall be adjusted and Designer/Builder's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Services. If the District suspends the Project for more than two (2) years, the Designer/Builder may terminate this Contract by giving written notice and shall receive compensation as if District terminated the Contract for its own convenience as described, above. If the District suspends this Contract because the District does not have sufficient funds to pay for the Work resulting from the District's budget for the succeeding fiscal year being reduced, and/or the State reducing funding to the District, then Designer/Builder shall not be entitled to an adjustment in compensation and the Designer/Builder may elect to either: (1) after one hundred and twenty (120) consecutive days of suspension, terminate the Contract and invoice the District for any actual costs incurred by Designer/Builder as of the date of suspension, exclusive of any delay costs; or (2) after one hundred and twenty (120) consecutive days of suspension, elect to maintain the contract and demobilize from the School Site(s) until the District gives written notice to Design/Builder to recommence the Work, except that Designer/Builder shall not be entitled to any delay costs, but may invoice the District for the reasonable costs of demobilization and mobilization.
5. **SAFETY AND SECURITY:** Designer/Builder is responsible for maintaining safety in its performance of this Contract. Designer/Builder shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present, as per the requirements of **Exhibit D ("District's Rules and Regulations")** to the extent applicable. Designer/Builder shall coordinate with the District regarding the applicability of the District's Rules and Regulations. In the event the District's Rules and Regulations conflict with other terms of this Contract, the terms of this Contract shall prevail.
6. **INFECTIOUS DISEASE**

- 6.1. **Compliance with Orders.** Designer/Builder and its Subcontractors, agents and employees thereof, are responsible for complying with all applicable and existing federal, State, and/or local statutes, orders, rules, regulations, ordinances, and/or directives in any way relating to construction site safety, the Work, the Project, and Site(s), in connection with any infectious and communicable disease in any form, whether bacterial or viral, including, without limitation, MSRA, influenza, COVID-19, and/or any similar virus or derivative strain (“**Infectious Disease**”). Designer/Builder’s obligations hereunder shall include, without limitation, providing personal protective equipment (“**PPE**”) to its employees and to ensure that its Subcontractors provide PPE to its employees to prevent the spread of an Infectious Disease at the Site(s).
- 6.2. **Infectious Disease and Contract Time.** Designer/Builder agrees that the Contract Time is based on Designer/Builder’s full compliance with all applicable and existing federal, State, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety, the Work, the Project, and the Site(s) in connection with an Infectious Disease. Any dispute concerning the Contract Time in connection with any delay associated with an Infectious Disease shall be resolved pursuant to the Claims procedures in these Terms and Conditions.
- 6.3. **Infectious Disease and Extra/Change Work.**
- 6.3.1. Designer/Builder agrees that the Contract Price and the Contract Time are based on Designer/Builder’s full compliance with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety, the Work, the Project, and the Site(s) in relation with an Infectious Disease at the time the Parties entered into the Contract, or any amendment thereto. Therefore, any additional costs to Designer/Builder associated: (i) with an Infectious Disease; (ii) **and/or** any federal, state, or local order relating thereto, shall not be considered compensable unless:
- 6.3.1.1. It occurred after the date of the award of the Project to Designer/Builder;
- 6.3.1.2. It materially increases the Contract Price or the Contract Time by imposing different, additional or more stringent requirements; and
- 6.3.1.3. Designer/Builder notifies the District within ten (10) Days of any impact arising from an Infectious Disease and/or the issuance any public health order(s), including the anticipated increase to the Contract Price or Contract Time due to either. Designer/Builder shall substantiate those costs with detailed supporting documentation as required in these General Conditions, including, without limitation, by complying with the Proposed Change Orders and, to the extent applicable, Claims provisions.
- 6.3.2. If, during the Work, the applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety, the Work, the Project, and/or the Site(s) in connection with an Infectious Disease, are changed or rescinded (e.g., by the reduction of potential exposure or risk due to vaccinations), the parties agree to reduce the Designer/Builder price and the Contract Time due to the removal of the required efforts. If the parties cannot mutually agree on the appropriate reduction, the District may issue a Unilateral Change Order for an amount of time and money it determines to be both reasonable and appropriate. Any dispute concerning the application of this procedure shall be resolved pursuant to the Claims procedures in these Terms and Conditions.
- 6.4. **Infectious Disease Release.** Designer/Builder acknowledges that it is voluntarily and freely entering into the Contract for this Project and deciding to perform the Work which will require Designer/Builder to enter upon and into the Site and that Designer/Builder use of the Site includes the possible exposure to and illness from an Infectious Disease. Designer/Builder further acknowledges the dangers involved and with full knowledge of these dangers, voluntarily agrees to assume all risks of bodily injury, death, or property damage, whether those risks are known or unknown. Designer/Builder hereby releases the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers from any and all liabilities, causes of action, lawsuits, claims, demands, or damages of any kind whatsoever that Designer/Builder, its staff, participants, relatives, children, spouse, partner, household members, family members, employees,

- guests, invitees, volunteers, agents, consultants, Subcontractors, and any other person tracing exposure or illness to Designer/Builder, now have, or may have in the future, for injury, trauma, illness, loss, unwanted contact, harassment, disability, death or property damages related to being exposed to or contracting an Infectious Disease while using the Site for the performance of the Work. Designer/Builder shall include this paragraph in all subcontracts with Subcontractors.
- 6.5. Designer/Builder shall ensure it has supervisor employees onsite that are trained and knowledgeable of all of these requirements to ensure full compliance on Site(s).
- 6.6. Any cost to comply with these "Infectious Disease" provisions shall be at Designer/Builder's sole expense, but may be included in the Contract Price.
7. **PROJECT SCHEDULE:**
- 7.1. **General Requirements:** In addition to the Project Schedule in **Exhibit B** that sets forth the milestones for the Project, Designer/Builder shall prepare a detailed Project Schedule setting forth the critical path of the Project from the Notice to Proceed to Completion of the Project.
- 7.2. **Time for Detailed Project Schedule:** Designer/Builder shall provide the detailed Project Schedule to the District within fourteen (14) days of the execution of the Contract for review and approval.
- 7.3. **Minimum Requirements for Detailed Project Schedule:** At a minimum, the detailed Project Schedule shall:
- 7.3.1. Include all milestones in **Exhibit B**;
- 7.3.2. Be in a format accessible by the District;
- 7.3.3. Include all applicable review times by Review Agencies;
- 7.3.4. Include the then current date for Completion of the Project;
- 7.3.5. For the Construction Phase **ONLY**, include:
- 7.3.5.1. Logical ties and "fragnets" of activities setting forth the critical path of the Project;
- 7.3.5.2. For any item which Designer/Builder believes may have long lead times that may be impacted by unanticipated supply chain disruptions ("**Impacted Item(s)**"):

7.3.5.2.1. Identify the item(s);

7.3.5.2.2. The anticipated lead time for the specific item(s), including a date on which Designer/Builder shall place an order for the item(s); and

7.3.5.2.3. The anticipated date of delivery for the item(s).
- 7.3.5.3. One (1) week of float for **each** Impacted Item ("**Supply Float**"). Before seeking a time extension for any delay in Project arising from the late delivery of an Impacted Item, Designer/Builder shall utilize all available Supply Float for that Impacted Item.

7.3.5.3.1. Concurrently with the detailed Project Schedule, Designer/Builder shall provide to the District a list of Impacted Item(s).

7.3.5.3.2. Designer/Builder shall retain in its files evidence that supports the specific lead time(s) and anticipated delivery schedule(s) for an Impacted Item(s), which may be used to justify a request for a time extension. Designer/Builder need not submit this information with the detailed Project Schedule, but shall present the information to the District in the event it seeks a time extension whether in a PCO or Claim as substantiation that the item constitutes an Impacted Item.
- 7.3.6. **Updated detailed Project Schedule:** With each Application for Payment, Designer/Builder shall submit an updated detailed Project Schedule that complies with the requirements herein.
8. **CHANGE IN SCOPE OF WORK:**
- 8.1. Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition, or deletion is approved in advance and in writing by a valid,

- mutually-agreed change order or amendment executed by the Parties.
- 8.2. **Uses of Contingency:** A change in the Work due to any of the following shall be payable from the contingency identified in **Exhibit C (“Contingency”)**:
- 8.2.1. Additional scope of Work requested by the District (excluding scope of Work necessary in order to construct the Project consistent with the Design Criteria Documents which Designer/Builder has certified and acknowledged to be included in the Contract Price at the time this Contract is entered);
 - 8.2.2. Changes mandated by authorities having jurisdiction over the Project and code requirements or other legal requirements, either of which could not have otherwise been anticipated;
 - 8.2.3. Unforeseen Site Conditions;
 - 8.2.4. Adjustments to the Contract terms;
 - 8.2.5. Conflicts, ambiguities or omissions in the design documents, but **not** Unforeseen Site Conditions that could have been reasonably discovered by the Designer/Builder during Designer/Builder’s Design Phase Services; and/or
 - 8.2.6. Conflicts, ambiguities, errors or omissions in the Subcontractor bid packages and bids that could have been reasonably discovered by the Designer/Builder, not including Unforeseen Site Conditions.
- 8.3. **Control/Authorizing Use of Contingency:**
- 8.3.1. The Contingency may be used upon prior written authorization by the District, in the District’s sole discretion, which shall not be unreasonably withheld.
 - 8.3.2. Designer/Builder shall prepare documents for its use of any part of the Contingency through this “Changes in the Work” section, which shall include a PCO. Any PCO shall identify that Designer/Builder shall be compensated out of the Contingency. A PCO shall include a written explanation describing how the PCO includes a change authorized by the “Use of Contingency” section. Designer/Builder shall prepare an updated Schedule of Values that includes a line item for the Work approved by the District in connection with the PCO
 - 8.3.3. The District shall authorize use of the Contingency in writing by issuing a Change Order. Designer/Builder shall not be authorized to perform Work or be entitled to any compensation from the Contingency unless the District issues and both Parties sign a Change Order; provided, however, that Designer/Builder shall diligently perform all Work authorized by a Unilateral Change Order.
- 8.4. **Contingency Mark-Up:** The Designer/Builder is entitled to mark-up its pricing for Work paid for by the Contingency in the structure provided for by a Change Order (see the “Format for Proposed Change Order” section below) when it uses any part of the Contingency, but only if the Designer/Builder did **not** include mark-up for fee, bonds and insurance, overhead or profit when pricing the Contingency to establish the Contract Price. Designer/Builder shall not include mark-up for fee, bonds and insurance, overhead or profit on changes required to correct omissions or corrections to the Construction Documents that should have been identified by a reasonable constructability check and/or coordination.
- 8.5. Once the Contingency has been fully depleted, any costs for items referenced herein shall be solely at the Designer/Builder’s expense except as to costs for additional scope of Work requested by the District, which will be the responsibility of the District. The unused portion of the Contingency shall be retained by the District at the end of the Project and returned through the issuance of a deductive, Unilateral Change Order.
- 8.6. Designer/Builder specifically understands, acknowledges, and agrees that the District shall have the right to request any reasonable alterations, deviations, reductions, or additions to the Project which are consistent with the agreed Scope of Work, and the cost thereof shall be added to or deducted from the amount of the Contract Price by fair and reasonable valuations.
- 8.7. Designer/Builder also agrees to provide the District in the form of a PCO with all information requested to substantiate the cost of the Change Order or amendment and to inform the District whether the Work will be done by the Designer/Builder or a subcontractor. In addition to any other information requested, Designer/Builder shall submit, prior to approval of the Change Order or amendment, its request for a time extension (if any), as well as all information necessary to

- substantiate any alleged delay in the completion of the Work.
- 8.8. Designer/Builder shall, within thirty (30) calendar days of any delay impacting the critical path in completing the Work, notify the District in writing of the causes of the delay including documentation and facts explaining the delay. The complete time impact analysis (“TIA”) with all backup documentation are required within thirty (30) days. If Designer/Builder fails to submit its request for a time extension or the necessary supporting information within thirty (30) days of Designer/Builder becoming aware of the need for the time extension, including without limitation, the complete TIA, Designer/Builder shall be deemed to have waived its right to request an extension and any compensation associated therewith. A TIA utilizing the approved Project Schedule shall be provided with requests for an extension of the Contract Time or portion thereof.
- 8.9. **Proposed Change Order:**
- 8.9.1. **Definition of Proposed Change Order:** A Proposed Change Order (“PCO”) is a written request prepared by the Designer/Builder requesting that the District issue a Change Order based upon a proposed change to the Work.
- 8.9.2. **Changes in Contract Price:** A PCO shall include breakdowns pursuant to the revisions herein to validate any change in Contract Price.
- 8.9.3. **Changes in Contract Time:** A PCO shall also include any changes in time required to complete the Project. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Project Schedule as defined in the Contract Documents. If Designer/Builder fails to request a time extension in a PCO, then the Designer/Builder is thereafter precluded from requesting time and/or claiming a delay.
- 8.9.4. **Time to Submit PCO:** Designer/Builder shall submit its PCO within seven (7) days of the date Designer/Builder discovers, or reasonably should discover, the circumstances giving rise to the proposed change order, unless additional time to submit a proposed change order is granted in writing by the District. Time is of the essence in Designer/Builder's written notice pursuant to the preceding sentence so that the District can promptly investigate and consider alternative measures to address the basis for the PCO. Accordingly, Designer/Builder acknowledges that its failure, for any reason, to give written notice (with Supporting Documentation to permit the District's review and evaluation) within this time frame shall be deemed Designer/Builder's waiver, release, discharge and relinquishment of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of the circumstances giving rise to the PCO.
- 8.9.5. **Unknown and/or Unforeseen Conditions:** If the Designer/Builder encounters conditions at the Project Sites that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents (“Unforeseen Site Conditions”), the Designer/Builder shall promptly provide notice to the District before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. The District will promptly investigate the conditions and, if the District determines that they differ materially and cause an increase or decrease in the Designer/Builder’s cost of, or time required for, performance of any part of the Work, Designer/Builder shall be entitled to an equitable adjustment in the Contract Price or Contract Time, or both. If the District determines that the conditions at the Project Sites are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the District shall promptly notify the Designer/Builder in writing, stating the reasons. If Designer/Builder disputes the District’s determination, the Designer/Builder shall perform the Work without any increase in Contract Price and/or Contract Time and may proceed under a reservation of rights.
- 8.9.6. **Format for Proposed Change Order:** The following format shall be used as applicable by the District and the Designer/Builder (e.g. Change Orders, PCO’s) to communicate proposed

additions and deductions to the Contract, supported by attached documentation.

	<u>SUBCONTRACTOR PERFORMED WORK</u>	ADD	DEDUCT
(a)	<u>Material</u> (attach itemized quantity and unit cost plus sales tax)		
(b)	<u>Add Labor</u> (attach itemized hours and rates, fully encumbered)		
(c)	<u>Add Equipment</u> (attach suppliers' invoice)		
(d)	<u>SUBTOTAL</u>		
(e)	<u>Add Subcontractor's overhead and profit</u> , shall be 10% multiplied against the sum of item (d)		
(f)	<u>SUBTOTAL</u>		
(g)	<u>Add Designer/Builder's fee, overhead, profit & general conditions</u> , shall be 14% multiplied against the sum of item (f)		
(h)	SUBTOTAL		
(i)	<u>Add Bond and Insurance and Builders' Risk Insurance</u> , shall be 1.5% multiplied against the sum of Item (h)		
(j)	<u>TOTAL</u>		
(k)	<u>Time</u>		_____ Days

	<u>DESIGNER/BUILDER PERFORMED WORK</u>	ADD	DEDUCT
(a)	<u>Material</u> (attach itemized quantity and unit cost plus sales tax)		
(b)	<u>Add Labor</u> (attach itemized hours and rates, fully encumbered)		
(c)	<u>Add Equipment</u> (attach suppliers' invoice)		
(d)	<u>SUBTOTAL</u>		
(e)	<u>Add Designer/Builder's fee, overhead, profit & general conditions</u> , shall be 14% multiplied against the sum of item (d)		
(f)	SUBTOTAL		
(g)	<u>Add Bond and Insurance and Builders' Risk Insurance</u> , shall be 1.5% multiplied against the sum of Item (f)		
(h)	TOTAL		
(i)	Time		_____ Days

8.9.7. **Requirement to Substantiate:** PCOs must include documentation reasonably necessary to substantiate all material, labor, and equipment included in Designer/Builder's request for an increase or decrease to the Contract Price. If the District believes that Designer/Builder failed to adequately substantiate the PCO, the District may require Designer/Builder to

provide additional reasonable substantiation for the PCO. Designer/Builder's failure to respond to the District's request for additional substantiation within a reasonable time shall constitute a waiver of Designer/Builder's claim for additional compensation for the work included in the PCO.

- 8.9.8. **Deleted Work:** All deductive change orders must be prepared pursuant to the provisions herein. Where a portion of the Work is deleted from the Contract, the reasonable value of the deleted work shall be considered the appropriate deduction. The value submitted on the Schedule of Values shall be used to calculate the credit. If the deleted work was to be performed by Designer/Builder, the deduction shall include a minimum of ten (10) percent for the total profit and overhead to be deducted with the value of the work. If the deleted work was to be performed by Designer/Builder's subcontractors, the deduction shall include a minimum of five (5) percent for the total profit and overhead to be deducted with the value of the work.
- 8.9.9. **Delay:** Any request for an extension to the Contract Price or Contract Time relating to any alleged delay shall be included in a PCO and conform to the following requirements:
- 8.9.9.1. **Designer/Builder's Notice of Delay:**
- 8.9.9.2. In addition to the requirements indicated in this subsection, Designer/Builder shall submit any request for an adjustment of the Contract Price or the Contract Time through the Change Order provisions.
- 8.9.9.3. Designer/Builder shall, within **FIVE (5)** calendar days of any delay impacting the critical path in completing the Work, notify District in writing of the causes of the delay including documentation and facts explaining the delay.
- 8.9.9.4. Any request by Designer/Builder for an adjustment of the Contract Price or the Contract Time for a delay shall be submitted in a PCO. When requesting time, requests must be submitted with full justification and documentation. Such justification must be based on the official approved Project Schedule and any applicable School Site Schedule of Work as updated and approved by the District at the time of occurrence of the delay or execution of Work related to any changes to the Work.
- 8.9.9.5. Any claim for delay must include the following information as support, without limitation:
- 8.9.9.5.1. **Duration:** The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform the activities within the stated duration.
- 8.9.9.5.2. **Logical Ties / Fragnets:** Specific logical ties to the Project Schedule for the proposed changes and/or delay showing the activity/activities in the Project Schedule that are affected by the change and/or delay (A portion of any delay of seven (7) days or more must be provided). Include a "fragnet" analysis for the portion of the schedule and the activities the Designer/Builder contends are impacted by the delay.
- 8.9.9.5.3. **Updated Project Schedule:** A recovery or updated Project Schedule for all affected Site(s).
- 8.9.9.6. District shall review the facts and extent of any noticed delay and may grant Contract Time extension(s) of time for completing Work when, in the District's judgment, the findings of fact justify an extension.
- 8.9.9.7. Extension(s) of time shall apply only to that portion of Work affected by delay and shall not apply to other portions of Work not so affected.
- 8.9.9.8. An extension of time may only be granted if Designer/Builder has timely submitted the updated Project Schedule and applicable School Site Schedule(s) of Work as required herein.
- 8.9.9.9. Following submission of a notice of delay, the District may determine whether the delay is to be considered:

- 8.9.9.9.1. Excusable and Compensable, Excusable and Non-Compensable, or Unexcused;
- 8.9.9.9.2. How long the delay continues; and
- 8.9.9.9.3. To what extent the prosecution and Completion of the Work might be delayed thereby.
- 8.9.9.10. Designer/Builder's failure to request adjustment(s) of the Contract Time in strict conformity with applicable provisions herein shall be deemed Designer/Builder's waiver of its right to assert a claim for a delay.
- 8.9.9.11. **Limitations Upon Adjustment of Contract Time on Account of Delays:** Any adjustment of the Contract Time on account of an Excusable Delay or a Compensable Delay shall be limited as set forth herein. No adjustment of the Contract Time shall be made on account of any Excusable Delays or Compensable Delays unless those delay(s) actually and directly impact Work or Work activities on the critical path of the then current and updated approved Project Schedule as of the date on which a delay first occurs. The District shall not be deemed in breach of, or otherwise in default of any obligation hereunder, if the District shall deny a request by the Designer/Builder for an adjustment of the Contract Time for any delay that does not actually and directly impact Work on the then current and updated approved Project Schedule. In submitting a request for an adjustment of Contract Time, and as a condition precedent to the District's review of that request, Designer/Builder shall insert into the then current and updated approved Project Schedule and a "fragnet" analysis representing the event that Designer/Builder claims to result in delay to the critical path as depicted in the updated approved Project Schedule. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first delay to the cessation of the delay that ends last. If an Unexcused Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, which the Excusable Delay or the Compensable Delay exceeds the period of time of the Unexcused Delay.
- 8.9.10. **Excusable and Compensable Delay(s):**
 - 8.9.10.1. Designer/Builder is **not** entitled to additional compensation for any delay, even a delay caused by an Excusable Delay, unless **all** of the following conditions are met ("**Compensable Delay(s)**"):
 - 8.9.10.1.1. The District is responsible for the delay;
 - 8.9.10.1.2. The delay is unreasonable under the circumstances involved and impacts the critical path of the Work and extends the most current Contract Completion date;
 - 8.9.10.1.3. The delay was not within the contemplation of District and Designer/Builder;
 - 8.9.10.1.4. Designer/Builder complies with the Change Order procedures, and if necessary, the Claims procedures of the Contract;
 - 8.9.10.1.5. The delay could not have been avoided or mitigated by the Designer/Builder's care, prudence, foresight, and diligence;
 - 8.9.10.1.6. The delay extends the most current Completion date (either for the Project or School Site); and
 - 8.9.10.1.7. The delay is not concurrent with a Designer/Builder -caused delay or other type of Excusable Delay.
 - 8.9.10.2. In accordance with California Public Contract Code section 7102, if the Designer/Builder's progress is delayed by the events described in the preceding subsection, Designer/Builder shall not be precluded from the recovery of damages directly and proximately resulting therefrom. In that event,

Designer/Builder's damages, if any, shall be limited to direct, actual and unavoidable additional costs of labor, materials or construction equipment directly resulting from that delay, and shall exclude special, indirect or consequential damages. In no event shall Designer/Builder seek costs or damages for delays, interruptions, hindrances or disruptions to the Work for on-Site or off-Site costs or damages based upon formulas, e.g., Eichleay or other formula. Except as expressly provided for herein, Designer/Builder shall not have any other claim, demand or right to adjustment of the Contract Price arising out of delay, interruption, hindrance or disruption to the progress of the Work. Designer/Builder shall only be entitled to the actual costs to Designer/Builder for any Compensable Delay, and Designer/Builder shall not be entitled to calculate those costs by any other formula including, without limitation, jury verdict method, total cost method, or modified total cost method.

8.9.11. Excusable and Non-Compensable Delay(s):

- 8.9.11.1. An "Excusable Delay" shall mean an interruption of the Work beyond the reasonable control of the Designer/Builder and that:
 - 8.9.11.1.1. Could have not been avoided by the Designer/Builder exercising care, prudence, foresight, and diligence, and
 - 8.9.11.1.2. Actually extended the most current date for Project Completion as reflected in the most current Project Schedule.
- 8.9.11.2. The Designer/Builder may be entitled to an extension of the Project Completion date if there is an Excusable Delay, but the Designer/Builder shall not be entitled to additional compensation for an Excusable Delay.
- 8.9.11.3. Excusable Delays are limited to interruptions that satisfy the above requirements and that are acts of God; acts of a public enemy; fires; floods; windstorms; tornadoes; earthquakes; wars; riots; insurrections; epidemics; pandemics; quarantine restrictions; strikes; lockouts; fuel shortages; freight embargoes; and Adverse Weather that satisfies the requirements herein.
 - 8.9.11.3.1. Supply chain disruptions may constitute an interruption that may support Excusable Delay for an Impacted Item **only**, if Designer/Builder demonstrates **all** the following conditions are satisfied:
 - 8.9.11.3.1.1. The supply chain disruption causes the procurement of an Impacted Item to exceed the amount of days for the delivery for the Impacted Item as indicated in the initial detailed Project Schedule;
 - 8.9.11.3.1.2. Designer/Builder has exhausted any Supply Float for that Impacted Item;
 - 8.9.11.3.1.3. Delay in the procurement of the Impacted Item materially impacts the critical path of the Project; and
 - 8.9.11.3.1.4. The Designer/Builder in no way causes the delay in the procurement of the Impacted Item. Without in any way limiting the generality of the foregoing, the Designer/Builder shall be deemed to "cause" a delay in the procurement of an Impacted Item if: (i) the Designer/Builder unreasonably delays ordering the Impacted Item; and/or (ii) the Designer/Builder fails to request permission from the District to purchase the

Impacted Item sufficiently in advance given then-current information regarding lead times for an Impacted Item and to store the Impacted Item on the Site(s) or off-Site(s), with such storage complying with the requirements of the Contract Documents.

- 8.9.11.4. Designer/Builder is aware that governmental agencies and utilities, including, without limitation, the DSA, the Department of General Services (“DGS”), gas companies, electrical utility companies, water districts, and other agencies (“Review Agencies”) may have to approve Designer/Builder -prepared drawings or approve a proposed installation. Specifically, no construction or alteration of any District facility shall commence prior to the receipt of the written approval of the plans, as to the safety of design and construction, from the DGS. Designer/Builder has included in the Contract Price and design schedule, time for possible review of its drawings and for reasonable delays and damages that may be caused by such agencies. Designer/Builder is only entitled to an extension to the Contract Time arising from delays caused by review of Designer/Builder’s drawings or other approvals of Review Agencies if any such event satisfies the conditions applicable to Review Agencies in the “Force Majeure” section below.
- 8.9.11.5. Neither the financial resources of the Designer/Builder or any person or entity directly or indirectly engaged by the Designer/Builder in performance of any portion of the Work shall be deemed conditions beyond the control of the Designer/Builder. If an event of Excusable Delay occurs, the Contract Time shall be subject to adjustment hereunder only if the Designer/Builder establishes: (i) full compliance with all applicable provisions of the Terms and Conditions relative to the method, manner and time for Designer/Builder’s notice and request for adjustment of the Contract Time; (ii) that the event(s) forming the basis for Designer/Builder’s request to adjust the Contract Time are outside the reasonable control and without any fault or neglect of the Designer/Builder or any person or entity directly or indirectly engaged by Designer/Builder in performance of any portion of the Work; and (iii) that the event(s) forming the basis for Designer/Builder’s request to adjust the Contract Time directly and adversely impacted the critical path of the Work as indicated in the approved Project Schedule or the most recent updated approved Project Schedule relative to the date(s) of the claimed event(s) of Excusable Delay.
- 8.9.12. **Unexcused Delay(s) – Liquidated Damages:**
- 8.9.12.1. An “Unexcused Delay(s)” shall mean any delay to the progress of the Work caused by events or factors other than those that constitute Compensable Delay(s) or Excused Delay(s) as set forth above. Neither the Contract Price nor the Contract Time shall be adjusted on account of Unexcused Delays.
- 8.9.12.2. Designer/Builder and District hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood that the District will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed the Designer/Builder shall forfeit and pay to District Liquidated Damages as set forth in the Contract, and not as a penalty, the amount set forth in the Contract for each calendar day of delay in Completion consistent with the requirement for Completion in the Contract Documents. Designer/Builder and its Surety shall be liable for the amount thereof pursuant to Government Code section 53069.85.
- 8.9.12.3. Designer/Builder shall not forfeit or pay liquidated damages for an Excusable

Delay or an Excusable and Compensable Delay.

8.9.13. **Adverse Weather:** Designer/Builder may obtain an extension of time in the event of Adverse Weather.

8.9.13.1. **“Adverse Weather”** shall mean only weather that satisfies all of the following conditions: (1) unusually severe precipitation, sleet, snow, hail, heat, or cold conditions in excess of the norm for the location and time of year it occurred, (2) unanticipated, and (3) at the Project.

8.9.13.2. The Designer/Builder will only be allowed a time extension for Excusable Delay caused by Adverse Weather conditions if requested by Designer/Builder and only if all the following conditions are met:

8.9.13.2.1. The weather conditions constitute Adverse Weather, as defined herein;

8.9.13.2.2. Designer/Builder can verify that the Adverse Weather caused delays in excess of five hours of the indicated labor required to complete the scheduled tasks of Work on the day affected by the Adverse Weather;

8.9.13.2.3. The Designer/Builder’s crew is dismissed as a result of the Adverse Weather; and

8.9.13.2.4. The number of days of delay for the month exceed those indicated in this table:

January	11	July	0
February	10	August	0
March	10	September	1
April	6	October	4
May	3	November	7
June	1	December	10

A day-for-day extension will only be allowed for those days in excess of those indicated in this table.

8.9.13.3. The Contract Time has been determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located.

9. **TRENCH SHORING:** If this Contract is in excess of \$25,000 and is for the excavation of any trench deeper than five (5) feet, Designer/Builder must submit and obtain District acceptance, in advance of excavation, of a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

10. **EXCAVATIONS OVER FOUR FEET:**

10.1. If this Contract includes excavations over four (4) feet, Designer/Builder shall in compliance with Public Contract Code section 7104, promptly, and before the following conditions are disturbed, notify the District, in writing, of any: (1) Material that the Designer/Builder suspects may be 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 Sites that differ from those indicated in the plans or specifications; or (3) Unknown physical conditions at the Sites of any unusual nature, or materially different from conditions ordinarily encountered and generally recognized as inherent in the character of the Work. The District shall promptly investigate the conditions, and if it finds that the conditions do materially differ, or involve hazardous waste, and cause a decrease or increase in the Designer/Builder's cost of, or the time required for, performance of any part of the Work, District shall issue a change order or amendment as provided herein.

10.2. In the event that a dispute arises between the District and the Designer/Builder regarding whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the

Designer/Builder's cost of, or time required for, performance of any part of the Work, if possible, the Designer/Builder shall proceed with other Work to be performed under the Contract which is not subject to the dispute. The Designer/Builder shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the Parties.

- 10.3. Notwithstanding the above, the Work does not include directly or indirectly performing or arranging for the detection, monitoring, handling, storage, removal, transportation, disposal or treatment of Hazardous Materials, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the regulations promulgated thereunder, and other applicable federal, state or local law ("**Hazardous Materials**"). The Work has been contemplated and priced based on the absence of Hazardous Materials at the Sites. Designer/Builder will notify the District immediately if it discovers or suspects the presence of any Hazardous Materials, and such discovery shall entitle Designer/Builder to suspend the Work until the District can arrange proper remediation and the Parties can negotiate mutually-agreeable terms to complete the rest of the Work, if feasible.
11. **LEAD-BASED PAINT:** Pursuant to the Lead-Safe Schools Protection Act (Education Code Section 32240 et seq.) and other applicable law, no lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall be utilized on this Project, and only trained and state-certified contractors, inspectors and workers shall undertake any action to abate existing risk factors for lead. Designer/Builder must execute the Lead-Based Paint Certification, if applicable.
12. **WORKERS:** Designer/Builder shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of the Designer/Builder or a subcontractor whom the District may deem incompetent or unfit shall be dismissed from the Sites and shall not again be employed at the Sites without written consent from the District.
13. **CORRECTION OF ERRORS:** Designer/Builder shall perform, at its own cost and expense and without reimbursement from the District, any work necessary to correct errors or omissions which are caused by the Designer/Builder's failure to comply with the Contract.
14. **SUBSTITUTIONS:** No substitutions of material from those specified in the approved final design shall be made without the prior written approval of the District, which shall not be unreasonably withheld.
15. **DESIGNER/BUILDER SUPERVISION:** Designer/Builder shall provide competent supervision of personnel employed on the Sites, use of equipment, and quality of workmanship. Designer/Builder shall provide a part-time Project manager and a [full time], on-Site, non-working Project superintendent subject to acceptance of the District.
16. **CLEAN UP:** Debris from the Work shall be removed from the Sites by the Designer/Builder. The Sites shall be in order at all times when Work is not being performed and shall at all times be maintained in a reasonably clean condition.
17. **ACCESS TO WORK:** District shall provide Designer/Builder with the required Site access. District representatives shall at all times have access to the Work. Designer/Builder shall provide safe and proper facilities for District's access.
18. **PROTECTION OF WORK AND PROPERTY:** Designer/Builder shall erect and properly maintain all necessary safeguards, signs, barriers, lights, and security persons for protection of workers, the public and the Work and shall post clear and conspicuous notice warning of any hazards created by the Work. In an emergency affecting life, safety, Work, or adjoining property, Designer/Builder, without special instruction or authorization from District, is permitted to take any action Designer/Builder thinks necessary to prevent such threatened loss or injury.
19. **OTHER CONTRACTS/CONTRACTORS:** Designer/Builder acknowledges that it shall not have exclusive occupancy of the Sites or of the Project. District reserves the right to let other contracts, and/or to perform other work with its own forces at the Sites. Designer/Builder shall afford District's contractors reasonable opportunity for introduction and storage of materials and execution of contractor's work at the Sites. If applicable, Designer/Builder shall properly coordinate and connect the Work with the work of District's contractors. In addition to Designer/Builder's obligation to protect its own Work, Designer/Builder shall use its best efforts to protect the work of any other contractor that Designer/Builder encounters while working on the Project. Designer/Builder shall not cause any unnecessary hindrance or delay to the use and/or school operation(s) of the Sites and/or to District or any other contractor working on the Project. If simultaneous

execution of any contract or school operation is likely to cause interference with performance of Designer/Builder's Contract, Designer/Builder shall coordinate with those contractor(s), person(s), and/or entity(s) and shall notify the District of the resolution.

20. **ASSIGNMENT OF CONTRACT:** The Designer/Builder shall not assign or transfer in any way any or all of its rights, burdens, duties, or obligations under this Contract without the prior written consent of the District. This provision shall not limit the Designer/Builder's right to subcontract portions of its Work to other entities and assign this Contract and all related contracts without the consent of the District (i) to direct affiliate of Designer/Builder; (ii) to an entity that is controlled by, controls, or is under common control with Designer/Builder; or (iii) pursuant to a merger, consolidation, transfer of substantially all its assets, or by operation of law. This Contract will be binding on, enforceable by, and inure to the benefit of, the Parties and their respective successors and permitted assigns. Any assignment made in contravention of this clause shall be void and unenforceable.

21. **COMPLETION:**

21.1. **Early Design Phase:** Designer/Builder shall be complete with this phase upon District's acceptance and/or approval of Designer/Builder's performance of all the Services in this phase, including, without limitation, the approval of any deliverables required to be provided by the Designer/Builder to the District.

21.2. **Schematic Design Phase:** Designer/Builder shall be complete with this phase upon District's acceptance of final Schematic Design Documents, including, without limitation, the approval of any deliverables required to be provided by the Designer/Builder to the District.

21.3. **Design Development Documents:** Designer/Builder shall be complete with this phase upon District's acceptance of final Design Development Documents, including, without limitation, the approval of any deliverables required to be provided by the Designer/Builder to the District.

21.4. **50% Construction Documents:** Designer/Builder shall be complete with this phase upon District's acceptance of Construction Documents at 50% of completion, including, without limitation, the approval of any deliverables required to be provided by the Designer/Builder to the District.

21.5. **100% Construction Documents:** Designer/Builder shall be complete with this phase upon:

21.5.1. District's acceptance of final Construction Documents and Designer/Builder's submittal of those documents to DSA; and

21.5.2. After the Designer/Builder procures Subcontractors to perform the Construction Phase Work within the Contract Price for the Project.

21.6. **Construction:**

21.6.1. **Walk-Through as Prerequisite to Determination of Completion:**

21.6.1.1. Designer/Builder shall notify the District when it thinks that the Work is complete except for minor corrective items. Designer/Builder shall provide to District a preliminary list of all minor corrective items that must be corrected. District and Designer/Builder shall then schedule a final walk-through of the Project to be attended by the Designer/Builder, the District, and the Inspector to determine whether and to what extent the Work is complete. Any erroneous claims of completion by the Designer/Builder resulting in a premature walk-through shall be at the Designer/Builder's sole cost and expense, and the District shall be entitled to reduce its payments to the Designer/Builder under the Contract by an amount equal to any costs incurred by the District due to the erroneous claims by the Designer/Builder that the Project is complete.

21.6.1.2. Designer/Builder's preliminary list of all minor corrective items will be used by Designer/Builder to prepare a corrective items list ("**Punch-List**") that shall be identified in the final walk-through of the Project. The District shall approve the Punch-List and may add omitted or missing items and provide a copy of an updated Punch-List to Designer/Builder.

21.6.1.3. District may, at its sole discretion, accept as complete partial scopes or phases of Work as each is completed prior to completion of the entire Work or Project.

21.6.1.4. If the Designer/Builder and the District (through its District Representative)

determine that the Work is eligible for Completion, then the date of that determination shall constitute the final day of the construction phase of the Project as relates to liquidated damages ("**Staff Determination**"). Additionally, the District shall promptly include the approval and acceptance of the Project and Notice of Completion on the District's Board's next available agenda.

- 21.6.1.5. The Designer/Builder shall attend a post-construction interview with the District and provide a narrative of lessons learned for the Project.
 - 21.6.2. **District's Acceptance of Work:** District may either:
 - 21.6.2.1. Accept the Work as complete notwithstanding Punch List items (as distinguished from incomplete Work), if the Work has otherwise been completed to the satisfaction of the District and the Inspector; or
 - 21.6.2.2. Refrain from accepting the Work as complete until the entire Work and all portions thereof, including all Punch-List items, have been completed to the satisfaction of the District and the Inspector.
 - 21.6.3. The Work shall be accepted as complete by an action of the District's Board ("**Completion**" or "**Complete**").
 - 21.6.4. **Notice of Completion:** Once the District accepts the Work, District may thereafter cause a Notice of Completion to be recorded in the County Recorder's Office.
 - 21.6.5. **Designer/Builder's Failure to Correct Punch-List Items:** If District elects to accept Work with incomplete Punch List items, and the Designer/Builder fails to complete the Punch List items within thirty-five (35) days of Completion, the District shall withhold from the final payment due Designer/Builder an amount equal to one hundred and fifty percent (150%) of the estimated cost, as reasonably determined by the District, of each Punch List item and all portions related thereto, until the item is complete.
 - 21.6.6. **Time Is of the Essence:** Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Contract.
22. **PARTIAL OCCUPANCY / BENEFICIAL USE:** The District may occupy or use any completed or partially completed portion of the Work at any stage. Neither the District's final acceptance, final payment, any provision in Contract Documents, nor the use or occupancy of the Work, in whole or in part, by District shall constitute acceptance of Work not in accordance with the Contract Documents nor relieve the Designer/Builder or the Designer/Builder's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein. The District and the Designer/Builder shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. Any dispute as to responsibilities shall be resolved pursuant to the Claims and Disputes provisions herein, with the added provision that during the dispute process, the District shall have the right to occupy or use any portion of the Work that it needs or desires to use.
23. **FORCE MAJEURE CLAUSE:**
- 23.1. The term "**Force Majeure**" shall mean those events caused beyond the control of the affected Party and which by the exercise of due diligence the Party could not reasonably avoid and which it has been unable to overcome, including acts of God and public enemy; fire; disease, strike; loss or shortage of transportation facilities; lock-out; commandeering of materials, product, plant, or facilities by the government; relocation or construction of transmission facilities or the shutdown of such facilities for the purpose of necessary repairs; work by local utility directly impacting the Project; flood; earthquake; tornado; severe storm; insurrections; epidemics; pandemics; quarantine restrictions; strikes; civil disobedience; sabotage; restraint by court order or public authority (whether valid or invalid); which is beyond the control of the affected Party and which by the exercise of due diligence the Party could not reasonably have been expected to avoid and which it has been unable to overcome.
 - 23.2. Neither Party shall be considered to be in default in the performance of any material obligation of the Contract during the time and to the extent that the Party is prevented from obtaining delivery or performing by a Force Majeure event. Neither Party shall be relieved of its obligation to perform if its

failure is due to causes arising out of the Party's negligence or due to removable or remediable causes which the Party fails to remove or remedy with the exercise of all best efforts within a reasonable time period. Either Party rendered unable to fulfill its obligations under the Contract by reason of an event of Force Majeure shall give prompt written notice of the fact to the other Party. Notwithstanding a Force Majeure event, the Party claiming a Force Majeure event shall provide the other Party satisfactory evidence that the event caused the delay or lack of performance and was not due to the fault or neglect of the Party claiming a Force Majeure event.

- 23.3. Designer/Builder is aware that Review Agencies may have to approve Designer/Builder-prepared drawings, plans or approve a proposed installation. Specifically, no construction or alteration of any District facility shall commence prior to the receipt of the written approval of the plans, as to the safety of design and construction, from the DGS. Designer/Builder shall include in the Project Schedule time for possible review of its drawings, plans, and proposed installation and for reasonable delays or damages that may be caused by the Review Agencies. Designer/Builder shall be entitled to additional time in the Project Schedule for review of Designer/Builder's drawings, plans or proposed installation or other approvals from the Review Agencies, if all of the following conditions have been satisfied:
- 23.3.1. The time for this review is in excess of the time expressly allocated for this review in the Project Schedule; and
 - 23.3.2. Designer/Builder has diligently pursued approval from the Review Agencies; and
 - 23.3.3. The delay in Review Agencies' approval is not related to an uncured defect, error, or omission in Designer/Builder's drawings, plans, or proposed installation.

24. INDEMNIFICATION / HOLD HARMLESS CLAUSE:

- 24.1. To the furthest extent permitted by California law, Designer/Builder shall defend, indemnify, and hold harmless the District, its trustees, members, agents, representatives, officers, consultants, employees, and volunteers (the "**Indemnified Parties**") from any and all third party demands, losses, liabilities, claims, suits, and actions (the "**Indemnity Claims**") of any kind, nature, and description, including, but not limited to, reasonable attorneys' fees and costs, directly or indirectly arising from personal or bodily injuries, death, property damage, or otherwise arising out of, connected with, or resulting from the performance of this Contract to the extent the Indemnity Claims are caused by the negligence, recklessness, or willful misconduct of Designer/Builder. The District shall have the right to accept or reject any legal representation that Designer/Builder proposes to defend the District. However, such acceptance shall not be unreasonably withheld. This indemnification, defense, and hold harmless obligation includes any failure or alleged failure by Designer/Builder to: (1) comply with any provision of law, and (2) timely and properly fulfill all of its obligations under the Contract, including, without limitation, any stop payment notice actions or liens, including liens by the California Department of Labor Standards Enforcement.
- 24.2. Further, Designer/Builder shall be directly liable to the Indemnified Parties for and, to the furthest extent permitted by California law, shall defend, indemnify, and hold harmless the Indemnified Parties from any Indemnity Claims of any kind, nature, and description arising out of, connected with, or resulting from the design component of the Project, to the extent the Indemnity Claims are caused by the negligence, recklessness, or willful misconduct of Designer/Builder.
- 24.3. The Designer/Builder's duty to defend under either of the above provision shall begin upon District's notification to Designer/Builder of an Indemnity Claim. At that time, Designer/Builder shall pay for the defense of the Indemnity Claim at its sole cost. At the resolution of an Indemnity Claim, either by dispute resolution, settlement, litigation, arbitration or otherwise, District and Designer/Builder shall base their proportionate percentage of fault for the Indemnity Claim either upon (1) the determination of a third-party neutral that adjudicated or settled the Indemnity Claim (e.g., a mediator, an arbitrator, a judge, etc.) or (2) if no determination was made, based on a mutual good faith determination of District and Designer/Builder. At that time the Parties shall determine the defense costs that are chargeable to Designer/Builder and a payment from one Party to the other Party shall be made within sixty (60) Days to satisfy that reconciliation. Designer/Builder's duty to indemnify and defend under this Contract shall apply during the term of this Contract and shall survive any expiration or termination of this Contract until any such Indemnity Claim(s) is barred by

the applicable statute of limitations and is in addition to any other rights or remedies that the District may have under the law or under this Contract.

25. PAYMENT:

25.1. Design Phase Services:

- 25.1.1. Invoices shall be on a form approved by the District and are to be submitted to the District via the District's authorized representative.
- 25.1.2. Designer/Builder shall submit to District on a monthly basis documentation showing proof that payments were made to its consultant(s).
- 25.1.3. Designer/Builder shall submit to the District for approval a copy of the Designer/Builder's monthly pay request format.
- 25.1.4. Upon receipt and approval of Designer/Builder's invoices, the District agrees to make payments within thirty (30) days of receipt of the invoice.

25.2. Construction Phase:

25.2.1. On a monthly basis, Designer/Builder shall submit an application for payment based upon the estimated value for materials delivered or Services and Work performed under the Contract as of the date of submission ("**Application for Payment**") and consistent with the Project Cost Values set forth in **Exhibit C**, attached hereto. Designer/Builder shall certify each Application for Payment and the Inspector shall verify that the materials, Services, or Work were delivered or performed.

25.2.2. **Schedule of Values:** The Designer/Builder shall provide a preliminary Schedule of Values for all of the Work, which must include quantities and prices of items aggregating the Contract Price and must subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction ("**Schedule of Values**"). This preliminary Schedule of Values shall include, at a minimum, the following information and the following structure:

25.2.2.1. Divided into at least the following categories:

- 25.2.2.1.1. Overhead and profit;
- 25.2.2.1.2. Supervision;
- 25.2.2.1.3. General conditions;
- 25.2.2.1.4. Layout;
- 25.2.2.1.5. Mobilization;
- 25.2.2.1.6. Submittals;
- 25.2.2.1.7. Bonds and insurance;
- 25.2.2.1.8. Closeout documentation;
- 25.2.2.1.9. Demolition;
- 25.2.2.1.10. Installation;
- 25.2.2.1.11. Rough-in;
- 25.2.2.1.12. Finishes;
- 25.2.2.1.13. Testing;
- 25.2.2.1.14. Punchlist and acceptance.

25.2.2.2. Divided by each of the following areas:

- 25.2.2.2.1. Site work;
- 25.2.2.2.2. By each building;
- 25.2.2.2.3. By each floor.

25.2.2.3. The preliminary Schedule of Values shall not provide for values any greater than the following percentages of the Contract value:

- 25.2.2.3.1. Mobilization and layout combined to equal not more than 1%;
- 25.2.2.3.2. Submittals, samples, and shop drawings combined to equal not more than 3%;
- 25.2.2.3.3. Bonds and insurance combined to equal not more than 2%.

25.2.2.4. **Closeout Documentation:** Closeout Documentation shall have a value in the preliminary schedule of not less than 5%. The value for Closeout Documentation shall be in addition to and shall not be a part of the Contract

retention. Closeout Documentation shall include the following, without limitation:

- 25.2.2.4.1. A full set of final As-Built Drawings, as further defined herein.
- 25.2.2.4.2. All Operations & Maintenance Manuals and information, as further defined herein.
- 25.2.2.4.3. All Warranties, as further defined herein.
- 25.2.2.4.4. Verified report(s) for all scope(s) of work (DSA –6-C Verified Report, Rev 10/14, or more recent revision if available).
- 25.2.2.4.5. Verification report pursuant to the CalSHAPE program requirements.
- 25.2.2.5. Notwithstanding any provision of the Contract Documents to the contrary, payment of the Designer/Builder's overhead, supervision, general conditions costs, and profit, as reflected in the Cost Breakdown, shall be paid by the District in equal installments, based on percentage complete, with the disbursement of progress payments and the final payment.
- 25.2.2.6. Designer/Builder shall certify that the preliminary Schedule of Values as submitted to the District is accurate and reflects the costs as developed in preparing Designer/Builder's bid. The preliminary Schedule of Values shall be subject to the District's review and approval of the form and content thereof. In the event that the District objects to any portion of the preliminary Schedule of Values, the District shall notify the Designer/Builder, in writing, of the District's objection(s) to the preliminary Schedule of Values. Within five (5) calendar days of the date of the District's written objection(s), Designer/Builder shall submit a revised preliminary Schedule of Values to the District for review and approval. The foregoing procedure for the preparation, review and approval of the preliminary Schedule of Values shall continue until the District has approved the entirety of the preliminary Schedule of Values.
- 25.2.2.7. Once the preliminary Schedule of Values is approved by the District, this shall become the Schedule of Values. The Schedule of Values shall not be thereafter modified or amended by the Designer/Builder without the prior consent and approval of the District, which may be granted or withheld in the sole discretion of the District.
- 25.2.3. Within thirty (30) days after District's receipt of the Application for Payment, Designer/Builder shall be paid a sum equal to **ninety-five percent (95%)** of the value of the Work performed (assuming the value of the Work performed is verified by Inspector and certified by Designer/Builder) up to the last day of the previous month, less the aggregate of previous payments and amounts to be withheld. District shall retain **five percent (5%)** from all amounts owing Designer/Builder as retention. Retention shall be paid pursuant to Public Contract Code sections 7107 and 7200.
- 25.2.4. With respect to any tax deduction and/or credit the Designer/Builder receives based on the Project per Internal Revenue Code section 179(d), the Designer/Builder shall issue a credit to the District as an offset to the Designer/Builder's fee equal to the amount of the credit minus any costs incurred by the Designer/Builder in establishing that the Project qualifies for the credit.
- 25.2.5. After advance written notice and thirty (30) days opportunity to cure, the District may deduct from any payment an amount reasonably necessary to protect the District from loss due to: (1) liquidated damages which have accrued as of the date of Application for Payment; (2) any sums expended by the District in performing any of Designer/Builder's obligations under the Contract which Designer/Builder has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop payment notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Contract Price or by the scheduled Project completion date; (6) unsatisfactory prosecution of the Work by Designer/Builder; (7) unauthorized material deviations from the

Contract; (8) failure of the Designer/Builder to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract during the performance of the Work; (9) knowingly false estimates submitted by the Designer/Builder of the value of the Work performed; (10) any sums representing expenses, losses, or damages reasonably incurred by the District for which Designer/Builder is liable under the Contract; (11) failure to comply with skilled and trained workforce requirements; and (12) any other sums which the District is entitled to recover from Designer/Builder under the terms of the Contract or pursuant to state law, including section 1727 of the California Labor Code. The failure by District to deduct any of these sums from Designer/Builder's progress payment shall not constitute a waiver of the District's right to the sums.

- 25.2.6. Payment for materials stored on or off the Sites may be allowed at the sole discretion of the District. If allowed, proof of off-site material purchases (invoices and checks and/or bills of lading) and appropriate insurance coverage shall be required. Designer/Builder shall furnish to District written consent from Designer/ Builder's Surety approving the advanced payment for materials stored off Site. The maximum prepayment allowed by District shall be **one hundred percent (100%)** of the actual value of the material being considered, less retention. Designer/Builder shall protect stored materials from damage and shall be liable for any damage thereto. Damaged materials, even though paid for, shall not be incorporated into the Work. Designer/Builder shall be responsible to replace any damaged stored materials at its sole cost and expense.
26. **LOGISTIC PLAN:** Designer/Builder shall provide a staging and logistics plan identifying laydown areas, loading and unloading areas, crane locations, fence locations, temporary utility connections, trailer locations, and emergency evacuation meeting area. This Logistics Plan must be approved by the District prior to the Designer/Builder mobilizing on the Site(s). Designer/Builder's Logistics Plan must be updated and provided to the District at each Phase and as required by the applicable Notice to Proceed.
27. **PERMITS, APPROVALS, AND LICENSES:**
- 27.1. Designer/Builder and its employees, agents, and subcontractors shall secure and maintain in force, at Designer/Builder's sole cost and expense, all licenses and permits as are required by law, in connection with the furnishing of materials, supplies, Services or Work.
- 27.2. Designer/Builder is responsible for obtaining on behalf of the District and at Designer/Builder's expense, local and county permits and approvals (including DSA approval), required for the building, installation, and start-up of the Work which are required to complete the Project.
- 27.3. District will cooperate and assist Designer/Builder in obtaining all permits required by the Contract or to perform the Work.
- 27.4. District shall be responsible for obtaining any other permits or approvals that may be required, including annual operating permits as applicable.
28. **INDEPENDENT CONTRACTOR STATUS:** While performing the Services, Designer/Builder is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the District. Designer/Builder shall be solely responsible for its Worker's Compensation insurance, taxes, and other similar charges or obligations. Designer/Builder shall be liable for its actions, including Designer/Builder's negligence or gross negligence, and shall be liable for the acts, omissions, or errors of Designer/Builder's agents or employees.
29. **ANTI-DISCRIMINATION:** It is the policy of the District that in connection with any work performed under contract with District, there be no discrimination against any employee engaged in the work because of race, national origin, ancestry, religion, age, physical or mental disability, sex, or sexual orientation of persons. Designer/Builder shall comply, and require compliance by all Designer/Builder subcontractors, with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act, Government Code section 12900 et seq., and Labor Code section 1735.
30. **DISABLED VETERAN BUSINESS ENTERPRISES (DVBE):** Pursuant to section 17076.11 of the Education Code, the District has a participation goal for disabled veteran business enterprises (DVBEs) of at least three (3) percent, per year, of funds expended each year by the District on projects that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act (the "**Act**"). This Project may use funds allocated under the Act. Therefore, to the extent feasible and pertaining to future hirings, the Designer/Builder, before it executes the Contract, shall provide to the District certification of compliance with

the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount paid to DVBEs in conjunction with the Contract, and documentation demonstrating the Designer/Builder's good faith efforts to meet these DVBE goals.

31. **PAYMENT BOND AND PERFORMANCE BOND:** Designer/Builder shall not commence Construction Phase Services until it provides the District, in the form provided by District herein, a Payment (Labor and Material) Bond and a Performance Bond, each in an amount equivalent to **one hundred percent (100%)** of the Contract Price. The Payment and Performance Bonds must be issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the District.
32. **DESIGNER/BUILDER'S INSURANCE:** During the entire term of the Contract, Designer/Builder shall have and maintain in force, the minimum policy limits indicated in this Article. Designer/Builder shall not commence Work, nor allow any subcontractor, employee, or agent to commence Work until the insurance required of the Designer/Builder, subcontractor, or agent has been obtained. Designer/Builder's policy(ies) shall be primary and any insurance carried by District shall be secondary and supplemental. All policies shall contain waivers of subrogation against the District. Excess/Umbrella policies can be used to satisfy the insurance required of Designer/Builder.
 - 32.1. All of Designer/Builder's insurance shall be placed with insurers **ADMITTED** in California with a current A.M. Best's rating of no less than **A-** or **A:VII**. Designer/Builder shall provide documentation to the District demonstrating this rating.
 - 32.2. The Designer/Builder shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.
 - 32.2.1. **Commercial General Liability.** One million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to each project/location or the general aggregate limit shall be twice the required occurrence limit.
 - 32.2.2. **Commercial Automobile Liability, Any Auto.** One million dollars (\$1,000,000) per accident for bodily injury and property damage.
 - 32.2.3. **Workers' Compensation Liability.** For all Designer/Builder's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Designer/Builder shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide employers' liability coverage with minimum liability coverage of one million dollars (\$1,000,000) per accident for bodily injury or disease. Designer/Builder shall provide an endorsement that the insurer waives the right of subrogation against District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
 - 32.2.4. **Employment Practices Liability.** For all Designer/Builder's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Designer/Builder shall keep in full force and effect, an Employment Practices Liability policy. That policy shall provide employers' liability coverage with minimum liability coverage of one million dollars (\$1,000,000) per occurrence. Designer/Builder shall provide an endorsement that the insurer waives the right of subrogation against District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
 - 32.2.5. **Sexual Molestation and Abuse Liability Insurance.** One million dollars (\$1,000,000) per incident. Designer/Builder shall procure and maintain, during the life of this Agreement, sexual molestation and abuse insurance. Designer/Builder shall require its subcontractors to procure and maintain sexual molestation and abuse insurance for all employees of subcontractors. Any class of employee or employees not covered by subcontractor's insurance shall be covered by Designer/Builder's insurance. If any class of employee or employees engaged in Services under the Agreement, on or at the Site of the Project, are not covered under the sexual molestation and abuse insurance, Designer/Builder shall provide, or shall cause a subcontractor to provide, adequate insurance coverage to cover any employee(s) not otherwise covered before any of those employee(s) commence work.
 - 32.2.6. **Professional Liability.** This insurance shall cover the prime design professional and design

professional's liability arising from the services of Designer/Builder with a minimum of one million dollars (\$1,000,000) per claim limit and two million dollars (\$2,000,000) aggregate limit, and subject to no more than **twenty-five thousand dollars (\$25,000) per claim deductible**, coverage to continue through completion of construction plus "tail" coverage for two (2) years thereafter. This policy can be on a claims-made basis.

- 32.3. **Proof of Carriage of Insurance.** The Designer/Builder shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:
- 32.3.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."
- 32.3.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
- 32.3.3. All policies except the Professional Liability Policy shall be written on an occurrence form.
- 32.4. **Waiver of Subrogation:**
- 32.4.1. Designer/Builder waives (to the extent permitted by law) any right to recover against the District for damages to the Work, any part thereof, or any and all claims arising by reason of any of the foregoing, but only to the extent that such damages and/or claims are covered by Builder's Risk insurance and only to the extent of such coverage (which shall exclude deductible amounts) by insurance actually carried by the District.
- 32.4.2. The provisions of this section are intended to restrict each Party to recovery against insurance carriers only to the extent of such coverage and waive fully and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier. The District and the Designer/Builder shall each obtain in all policies of insurance carried by either of them, a waiver by the insurance companies thereunder of all rights of recovery by way of subrogation for any damages or claims covered by the insurance.
- 32.5. **Additional Insured Endorsement Requirements:** On those policies described in this section where an additional insured requirement is included, Designer/Builder shall name the District, its trustees, members, officers, and employees as additional insureds. Subcontractors shall name the Designer/Builder, the District, its trustees, members, officers, and employees as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall be an ISO CG 20 10 (04/13), or an ISO CG 20 38 (04/13), or their equivalent as determined by the District in its sole discretion, and must state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The insurance provided by the Designer/Builder pursuant to this section must be designated in the policy as primary to any insurance obtained by the District. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.
33. **SUBCONTRACTOR INSURANCE REQUIREMENTS:** Designer/Builder shall require its Subcontractor(s) to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance, and Umbrella Liability Insurance with limits equal to the amounts required of the Designer/Builder, unless the District and Designer/Builder agree otherwise. Designer/Builder shall require its Subcontractor(s) to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance and Umbrella Liability Insurance.
34. **CERTIFICATES OF INSURANCE AND ENDORSEMENTS:** The Designer/Builder shall provide to the District certificate(s) of insurance and endorsements satisfactory to the District. The certificate of insurance shall provide that should any of the above-described policies be cancelled while the Work is in progress (except if cancellation is due to non-payment of premiums), before the expiration date thereof, notice will be delivered in accordance with the policy provisions, pursuant to ISO ACORD Form 25 (01/2014). Designer/Builder shall provide District at least thirty (30) days' prior written notice of the cancellation, or non-renewal of the insurance. Furthermore, Designer/Builder shall indemnify District for any loss suffered by District to the extent that the

loss is attributable to Designer/Builder's failure to provide District with thirty (30) days' prior written notice. Excess/Umbrella policies can be used to satisfy the insurance required of Designer/Builder.

35. **WARRANTY/QUALITY:** Except for any longer warranty called for elsewhere in the Contract, Designer/Builder, manufacturer, or assigned agents shall guarantee the Work or Services performed against defective workmanship, defects or failures of materials for a minimum period of **ONE (1)** year from date that all components of the Project commissioned and verified by Designer/Builder as being fully functional and operative, or when the District accepts Beneficial Use, whichever occurs first. If the District accepts Beneficial Use, Designer/Builder shall prepare a list of exceptions for specific items or components for which the period of warranty shall not commence ("**Exception List**"). District shall approve the Exception List. The period of warranty for any item on the Exception List shall commence upon District's acceptance of that item's Beneficial Use or completion of that item, whichever comes first. All workmanship and merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards. This warranty shall not apply to (a) equipment that has been repaired or altered by other than Designer/Builder so as to affect the same adversely, or (b) equipment that has been subject to negligence, accident, or damage by circumstances beyond Designer/Builder's control, or improper operation, maintenance or storage, or other than normal use and service. The Parties agree that any implied warranties of merchantability or fitness for a particular purpose shall also expire at the same time as the express warranties stated in this section.
- 35.1. At the District's sole option, Designer/Builder shall repair or replace any and all of that Work, together with any other Work that may be displaced in so doing, that may prove defective in workmanship and/or materials within the warranty period described above, without expense whatsoever to District. In the event of failure of Designer/Builder and/or Surety to commence and pursue with diligence said replacements or repairs within **TEN (10)** days after being notified in writing, Designer/Builder and Surety hereby acknowledge and agree that District is authorized to proceed to have defects repaired and made good at expense of Designer/Builder and/or Surety who hereby agree to pay costs and charges therefore immediately on demand.
- 35.2. If, in the opinion of District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to District or to prevent interruption of operations of District, District will attempt to give the notice required above. If Designer/Builder or Surety cannot be contacted or neither complies with District's request for correction within a reasonable time as determined by District, District may, notwithstanding the above provision, proceed to make all corrections and/or provide attentions District believes are necessary. The costs of correction or attention shall be charged against Designer/Builder and Surety of the guarantees provided in this Section or elsewhere in the Contract Documents.
- 35.3. The above provisions do not in any way limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Designer/Builder shall furnish to District all appropriate guarantee or warranty certificates as indicated in the Specifications or upon request by District.
- 35.4. Nothing herein shall limit any other rights or remedies available to District.
36. **CONFLICT OF INTEREST:** Designer/Builder understands that its professional responsibility is solely to the District. Designer/Builder warrants that it and its employees and/or subcontractors presently have no interest and will not acquire any direct or indirect interest that would conflict with its performance under the Contract, including, without limitation, any direct and/or indirect interest with: (a) entity(ies) performing construction in the same discipline and in competition with any contractor on a District project; (b) entity(ies) connected or related to a trade union or joint labor management committee; or (c) the District.
37. **COMPLIANCE WITH LAWS:** Designer/Builder shall give all notices and comply with all laws, ordinances, rules and regulations bearing on conduct of the Work as indicated or specified. If Designer/Builder observes that any of the Work is at variance with any laws, ordinances, rules or regulations, Designer/Builder shall notify the District, in writing, and, at District's option, any necessary changes to the scope of the Work shall be made and the Contract shall be appropriately amended in writing, or the Contract shall be terminated effective upon Designer/Builder's receipt of a written notice of termination. If Designer/Builder performs any Work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Designer/Builder shall bear all costs or expenses arising therefrom.

38. **STANDARD OF CARE:** Designer/Builder shall perform the Work and Services to the standard of care of an entity performing similar work for California school districts in or around the same geographic area of the District, as follows:
- 38.1. For all work other than Construction Phase Services, the standard of care of architects or professional engineers; and
 - 38.2. For Construction Phase Services, the standard of care of licensed contractors.
 - 38.3. If Designer/Builder has not met this standard of care, Designer/Builder shall be held liable consistent with the “Indemnification/Hold Harmless Clause” herein.
39. **DISTRICT’S RIGHT TO AUDIT:** District retains the right to review and audit, at District’s sole cost and expense, and the reasonable right of access to Designer/Builder’s and any sub-consultant’s non-confidential and non-proprietary records to review and audit the Designer/Builder’s compliance with the provisions of the Contract (“**District’s Right**”). The District’s Right includes the right to inspect, photocopy, and to retain copies of any and all non-confidential and non-proprietary Project-related records with appropriate safeguards. The District shall keep this information confidential, as allowed by applicable law.
- 39.1. The District’s Right includes the right to examine any and all non-confidential and non-proprietary Project books, records, documents and any other evidence of Project-related procedures and practices that are reasonably necessary to discover and verify that the Designer/Builder is in compliance with all requirements of the Contract.
 - 39.2. If there is a claim for additional compensation or for extra services or work, the District’s Right includes the right to examine non-confidential and non-proprietary Project-related books, records, documents, and accounting procedures and practices that are reasonably necessary to discover and verify all Project-related direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.
 - 39.3. The Designer/Builder shall maintain complete and accurate Project-related records in accordance with generally accepted accounting practices in the industry, and in no event for less than five (5) years after Completion. The Designer/Builder shall make available to the District for review and audit all Project-related accounting records and documents, and any other financial data. Upon District’s request, the Designer/Builder shall submit exact duplicates of originals of all requested records to the District.
 - 39.4. The Designer/Builder shall include these audit provisions in any and all of its subcontracts, and shall ensure that these sections are binding upon all subcontractors.
 - 39.5. Designer/Builder shall comply with these provisions within fifteen (15) days of the District’s written request to review and audit any or all of Designer/Builder’s Project-related records and information.
40. **CLAIMS RESOLUTION:**
- 40.1. **Exclusive Remedy:**
 - 40.1.1. Compliance with the claim resolution process and timelines described in this Claims Resolution section as well as the notice provisions of the Contract are express conditions precedent to Designer/Builder’s right to commence litigation or arbitration, file a claim under the California Government Code, or commence any other legal action related to the Project (“**Claims Resolution Process**”).
 - 40.1.2. Designer/Builder acknowledges that its failure, for any reason, to provide written notice and all required supporting documentation to permit the District’s review and evaluation within the time frame required by this Claims Resolution Process, shall be deemed Designer/Builder’s waiver, release, discharge and relinquishment of any right to assert, request, or demand any entitlement to an adjustment of the Contract Time or the Contract Price on account of any instruction, request, drawings, specifications, action, condition, omission, default or other situation.
 - 40.1.3. To the extent any provision(s) of this Claims Resolution Process conflict with or otherwise impair the timeframes and procedures of Public Contract Code section 9204, the provisions of Section 9204 shall control. If provisions of this Claims Resolution Process are supplementary and/or in addition to the requirements of Section 9204, but do not conflict with or otherwise impair the timeframes and procedures of Section 9204, the provisions of this Claims Resolution Process and the Contract shall control.

- 40.2. **Performance during Claim Resolution Process:** The Designer/Builder shall diligently proceed with Work on the Project at the same time that Claims are addressed under the Claims Resolution Process. It is the intent of District to resolve Claims with the Designer/Builder as close to the events giving rise to the Claims as possible, and to avoid stale or late Claims and the late documenting of Claims. Designer/Builder's failure to diligently proceed in accordance with the District's instructions or the Contract terms will be considered a material breach of the Contract and a waiver of Designer/Builder's rights under this Contract.
- 40.3. **Waiver:** If Designer/Builder fails to timely submit any written notices required under the terms of the Contract or in this Claims Resolution section, Designer/Builder waives and releases its rights regarding further review of its Claim, unless Designer/Builder and District mutually agree in writing to other time limits. Nothing herein shall modify or alter the Designer/Builder's obligation to comply with statutory notice requirements, including but not limited to, Government Code section 910 *et seq.*
- 40.4. **Intention:** The Claims Resolution Process required herein is intended to provide a concise mechanism for resolving Claims as they arise during the Project, while requiring accurate documentation related to contested issues as to those Claims that are not contemporaneously resolved.
- 40.5. **Other Provisions:** If portions of the Contract, other than this Claims Resolution Process, establish a specific process regarding a specific subject, then that process shall govern and control the resolutions of any disagreements thereunder. Otherwise, the provisions in this Claims Resolution Process shall control the resolution of all Claims.
- 40.6. **Claim Presentation:**
- 40.6.1. **Claim:** A claim is a written demand by Designer/Builder (or by Designer/Builder on behalf of Subcontractor(s)) that the Designer/Builder must submit by **registered mail or certified mail return receipt requested** for:
- 40.6.1.1. An extension to the Contract Time, including relief from damages or penalties assessed by the District for delay;
- 40.6.1.2. Payment of money or damages arising from work done by, or on behalf of, the Designer/Builder pursuant to the Contract and payment that is not otherwise expressly provided for in the Contract Documents or the Designer/Builder is not otherwise entitled; or
- 40.6.1.3. Payment that is disputed by the District.
- ("Claim")**
- 40.7. **Subcontractors:**
- 40.7.1. Public Contract Code section 9204(d)(5) states that the Designer/Builder may present to the District a Claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Designer/Builder present a claim for Work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the Claim be presented to the District shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, the Designer/Builder shall notify the subcontractor in writing as to whether the Designer/Builder presented the claim to the District and, if the Designer/Builder did not present the Claim, provide the subcontractor with a statement of the reasons for not having done so.
- 40.7.2. Designer/Builder is responsible for providing this Claims Resolution Process to its subcontractors and for ensuring that all subcontractors or others who may assert Claims by and through subcontractors and/or the Designer/Builder are informed of this Claims Resolution Process. No Claim submitted by any party that fails to follow the provisions of this Claims Resolution Process will be considered. Designer/Builder shall indemnify, keep and hold harmless the District and its consultants, against all suits, claims, damages, losses, and expenses, including but not limited to attorney's fees, caused by, arising out of, resulting from, or incidental to, the failure to provide this Claims Resolution Process to its subcontractors or others who may assert Claims by and through subcontractors and/or the Designer/Builder.

40.8. **Designer/Builder Must Timely Identify, Present and Document Any Claim:**

40.8.1. Every Claim shall be stated with specificity in writing and signed by Designer/Builder under penalty of perjury and presented to the District within ten (10) calendar days from the date Designer/Builder discovers or reasonably should discover, that an act, error or omission of District, its agents or employees, or action, condition or other situation has occurred that may entitle Designer/Builder to make a Claim. This shall include the Designer/Builder's actual or constructive knowledge of any instruction, request, drawings, specifications, action, condition, omission, default or other situation for which the Designer/Builder believes there should an adjustment of the Contract Price or Contract Time.

Designer/Builder shall provide this writing even if Designer/Builder has not yet been damaged, delayed, or incurred extra cost when Designer/Builder discovers, or reasonably should discover, the act, error, omission, action, condition or situation giving rise to the incidents giving rise to the Claim. The writing shall:

40.8.1.1. Identify all of the issues, events, conditions, circumstances and/or causes giving rise to the Claim;

40.8.1.2. Identify all pertinent dates and/or durations and all actual and/or anticipated effects on the Contract Price, milestones and/or Contract Time adjustments; and

40.8.1.3. Identify in detail line-item costs if the Claim seeks money.

40.8.1.4. If the Claim involves extra work, a detailed cost breakdown of the amounts the Designer/Builder is seeking, including actual cost records (including without limitation, payroll records, material and rental invoices and the like) demonstrating that those costs have actually been incurred. To the extent costs have not yet been incurred at the time the Claim is submitted, actual cost records must be submitted on a current basis not less than once a week during any periods costs are incurred. A cost record will be considered current if submitted within seven (7) days of the date the cost reflected in the record is incurred. At the request of District, extra costs may be subject to further verification procedures (such as having an inspector verify the performance of alleged extra work on a daily basis).

40.8.1.5. Include an affirmative representation under penalty of perjury by Designer/Builder and any affected Subcontractor and suppliers that the error or omission was not discovered prior to submitting a proposal for the Work, and

40.8.1.6. Include a detailed statement demonstrating that the error or omission reasonably should not have been discovered, by Designer/Builder, its Subcontractors and suppliers, prior to submitting a proposal for the Work.

40.8.2. **Escalation Costs.** If a Claim involves a request for additional compensation for escalation of materials and/or equipment costs, then this provision exclusively governs those request(s) by Designer/Builder and the following are **all** conditions precedent to Designer/Builder's submission of a Claim for escalation of materials and/or equipment costs:

40.8.2.1. Designer/Builder shall not be entitled to submit a request for compensation for escalation of materials unless the actual increase in the cost of the materials exceeds **ten percent (10%)** of the **total** material costs for the Construction Phase at the time of bid.

40.8.2.2. The cost escalation is the result of unusual market conditions not reasonably foreseeable at the time the District issued an NTP for Construction Phase Services and was not an escalated cost resulting from any action or inaction of the Designer/Builder.

40.8.2.3. Designer/Builder timely ordered and/or purchased the materials at issue, based on (1) Designer/Builder's constructive knowledge of the supply chain for required materials and (2) Designer/Builder's request to utilize the provisions in the Contract Documents related to the District's payment for materials and

- equipment purchased and stored on Site or offsite.
- 40.8.2.4. Designer/Builder's material costs were reasonable at the time of Designer/Builder's submission of the proposed cost for the Construction Phase.
- 40.8.2.5. Designer/Builder demonstrates an actual increase in the cost of materials in the cost of the Construction Phase from the time of the District issued the NTP for the Construction Phase Services compared to Designer/Builder's actual material payment cost paid either at time of purchase or delivery, whichever is earlier.
- 40.8.2.6. An actual year-to-date price increase has occurred and can be substantiated by the E.N.R. 20-City Average Material Cost Index for the material at issue that demonstrates the claim for an increase in price of the material at the time of delivery of the higher priced material to the Project.
- 40.8.3. The writing shall be accompanied by all documents substantiating Designer/Builder's position regarding the Claim.
- 40.8.4. A Claim that asserts an effect on any schedule milestones and/or Contract Time shall include all pertinent scheduling data demonstrating the impact(s) on the critical path(s), milestone(s) and/or Contract Time.
- 40.9. **Certification:** Each copy of the Claim Documentation shall be certified by a responsible officer of the Designer/Builder in accordance with the requirements of the Contract Documents. This certification shall be under penalty of perjury and must include the following language immediately above or before the Designer/Builder's signature: ***"I declare under penalty of perjury under the laws of the State of California that the information provided and statements made in this Claim are true and correct, substantiated and of merit."*** The Designer/Builder acknowledges that this requirement is not a mere formality but is intended to ensure that the Designer/Builder only submits Claims that it believes are true and correct, substantiated and have merit. Should Designer/Builder fail to submit the foregoing written statement signed under penalty of perjury, Designer/Builder waives and releases its Claim, including all rights and remedies in connection therewith. This certification must include a certification of any portion of the Claim from Subcontractors(s) or others who are asserting Claims by and through Subcontractors and/or the Designer/Builder.
- 40.10. **District's Written Statement/Decision on Claim:** The District shall issue a written statement/decision regarding the Claim to the Designer/Builder within forty-five (45) days of receipt of the written Claim from the Designer/Builder, or three (3) days after the District's first regular Board meeting after that 45-day period if the District's Board does not meet within that first 45-day period. If the District fails to timely provide a written statement/decision regarding the Claim, the Claim shall be deemed rejected in its entirety.
- 40.11. **Designer/Builder Must Demand an Informal Meet and Confer Conference if Designer/Builder Pursues Any Claim:**
- 40.11.1. **FAILURE OF A DESIGNER/BUILDER TO TIMELY DEMAND A MEET AND CONFER CONFERENCE IS A WAIVER OF ITS RIGHT TO PURSUE ALL OR A PORTION OF ITS CLAIM.**
- 40.11.2. **Where There Is No Agreement:** If there is no agreement between Designer/Builder and the District on a Claim, then within ten (10) calendar days of the date of the District's written statement/decision in response to a Claim or PCO, if Designer/Builder pursues that Claim, then Designer/Builder must demand, by **registered mail or certified mail return receipt requested**, a meet and confer conference with District staff. A meet and confer conference with District staff shall be a condition precedent to Designer/Builder seeking any further relief, including a mediation as indicated below.
- 40.11.3. **Where There Is Partial Agreement:** If Designer/Builder and the District partially agree on a Claim but do not reach complete agreement, then the Parties shall complete a change order or amendment, if applicable, for the issues and/or amounts agreed to. For those issues not agreed to, if Designer/Builder pursues those issues from that Claim, then Designer/Builder must demand, by **registered mail or certified mail return receipt requested**, a meet and confer conference with District staff regarding those issues. A meet and confer conference with District staff shall be a condition precedent to Designer/Builder seeking any further

- relief, including a mediation as indicated below, in connection with the District's rejection.
- 40.11.4. **Meet and Confer Conference:** District and Designer/Builder shall schedule the meet and confer conference as soon as reasonably possible after Designer/Builder's written demand for a meet and confer conference, but in no case later than thirty (30) days after Designer/Builder's demand.
- 40.11.5. **District's Written Decision:** Within ten (10) **business** days of the meet and confer conference, the District shall issue a written decision. If the District fails to timely provide a written statement/decision after the meet and confer conference, all Claim issues that were part of the meet and confer conference shall be deemed rejected in their entirety.
- 40.11.5.1. If the District's decision completely resolves the Claim, then the Parties shall complete a change order or amendment, if applicable, for the issues and/or amounts agreed to.
- 40.11.5.2. If the District rejects the Designer/Builder's Claim in whole or in part or does not issue a timely written response, then the parties shall mediate the remaining issues of the Claim.
- 40.11.5.3. Designer/Builder's costs incurred in seeking relief for Claims are not recoverable from District.
- 40.12. **Mediation:**
- 40.12.1. At the District's sole discretion, this mediation may be a multiple-party mediation with the Architect, the Construction Manager, the Inspector, and/or other District consultants.
- 40.12.2. The District and Designer/Builder shall mutually agree to a mediator within ten (10) **business** days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.
- 40.13. **Designer/Builder's Obligation to File a Government Code Claim:** Nothing in this Contract, including this Claims Resolution Process, waives, modifies or tolls the Designer/Builder's obligation to present a timely claim under Government Code section 910, et seq. Therefore, in addition to complying with this Claims Resolution Process, the Designer/Builder is required to present claims to the District pursuant to Government Code section 910, et seq. If after the requirements of this Claims Resolution Process are satisfied, and all or a portion of the Claim remains unresolved, and if the Government Code claim is rejected by the District, the Designer/Builder may proceed under the post-mediation provisions of this Claims Resolution Process.
- 40.14. **Post Mediation Provisions:**
- 40.14.1. **Claims of \$375,000 or Less:** The provisions of Public Contract Code § 20104.4 shall apply. Pursuant to Public Contract Code § 20104.4(a), within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. Pursuant to Public Contract Code § 9204(d)(2)(D), a mediation conducted pursuant to this Claims Resolution Process shall excuse the obligation under Public Contract Code § 20104.4(a) to mediate after litigation has been commenced unless otherwise agreed to by the parties in writing.
- 40.14.2. **Litigation of Claims in Excess of \$375,000:** If, after a mediation as indicated above, the Parties have not resolved the Claim, either Party may commence an action in a court of competent jurisdiction to contest that decision within ninety (90) days following the conclusion of that mediation or one (1) year following the accrual of the cause of action, whichever is later. By mutual agreement, the Parties can agree to instead resolve the Claim through arbitration.
- 40.15. The District shall be entitled to remedy any false claims, as defined in California Government Code section 12650 *et seq.*, made to the District by the Designer/Builder or any subcontractors under the standards set forth in Government Code section 12650 *et seq.* Any Designer/Builder or subcontractors who submits a false claim shall be liable to the District for three times the amount of

damages that the District sustains because of the false claim. A Designer/Builder or subcontractor who submits a false claim shall also be liable to the District for (a) the costs, including attorney fees, of a civil action brought to recover any of those penalties or damages, and (b) a civil penalty of up to \$11,000 for each false claim.

- 40.16. **Documentation of Resolution:** If a Claim is resolved, the District shall determine if that resolution shall be documented in an Agreement and Release of Any and All Claims form or other document, as appropriate. If the District determines that an Agreement and Release of Any and All Claims form or other document is appropriate, Designer/Builder shall cooperate and execute that form and/or other document.
- 40.17. **Claim Resolution Process – Non-Applicability:** The procedures and provisions in this Claims Resolution section shall **not** apply to:
- 40.17.1. District’s determination of what Work is or will be constructed, or whether the Work complies with the Contract Documents for purposes of accepting the Work;
- 40.17.2. District’s rights and obligations as a public entity, such as, but without limitation, the revocation of pre-qualified or qualified status, barring a Designer/Builder from District contracts, the imposition of penalties or forfeitures prescribed by statute or regulation; provided, however, that penalties imposed against a public entity by statutes such as Section 7107 of the Public Contract Code, shall be subject to the mandatory dispute resolution provisions of this Claims Resolution section and the Contract;
- 40.17.3. Personal injury, wrongful death or property damage claims;
- 40.17.4. Latent defect or breach of warranty or guarantee to repair;
- 40.17.5. Stop notices or stop payment notices; or
- 40.17.6. Any other District rights as set forth herein.
- 40.18. The District’s failure to respond to a Claim from the Designer/Builder within the time periods described herein or to otherwise meet the time requirements of Public Contract Code section 9204 shall automatically result in the Claim being deemed rejected in its entirety, with no admission by the District as to the merits of the Claim.
- 40.19. If District fails to timely issue payment for any Claim or portion of a Claim as required pursuant to these Claim Resolution Procedures, the Designer/Builder is permitted to assess interest indicated in Public Contract Code section 9204. Notwithstanding this provision, and in accordance with California Public Contract Code section 7107, the District is entitled to withhold up to 150% of disputed amounts and the District shall not be liable for payment of interest on such disputed amounts pending final adjudication of such disputes.
41. **LABOR CODE REQUIREMENTS:** Pursuant to sections 1770 et seq. of the California Labor Code, Designer/Builder and all subcontractors under the Designer/Builder shall pay all workers on all Work performed pursuant to the Contract not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the State of California Department of Industrial Relations (DIR) for the type of Work performed and the locality in which the Work is to be performed within the boundaries of the District. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by the DIR, are available from the District or on the internet (<http://www.dir.ca.gov>).
- 41.1. Designer/Builder shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its Certified Payroll Records to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations. Labor Code section 1771.1(a) states the following:
- “A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”*

- 41.2. Designer/Builder acknowledges that, for purposes of Labor Code section 1725.5, this Work is a public work to which Labor Code section 1771 applies. Designer/Builder shall comply with Labor Code section 1725.5, including without limitation the registration requirements. Additionally, all “subcontractors” (as defined by Labor Code section 1722.1) shall comply with Labor Code section 1725.5 to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of the Contract. Designer/Builder represents to the District that all “subcontractors” (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5.
- 41.3. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Designer/Builder shall post job site notices, as prescribed by regulation. Designer/Builder shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.
42. **SKILLED AND TRAINED WORKFORCE REQUIREMENT:** Designer-Builder is familiar with the hiring requirements set forth in Public Contract Code section 2601, et. seq., and as a condition of entering into this Contract, Designer/Builder understands and agrees that Designer-Builder and its Subcontractors at every tier will use a skilled and trained workforce, as defined in Public Contract Code section 2601(d) (“**Skilled and Trained Workforce**”), to perform all Work on the Project that falls within an apprenticeable occupation in the building and construction trades.
- 42.1. **Monthly Workforce Report:** Designer-Builder will provide to the District’s Board on a monthly basis while the Project is being performed, a report demonstrating compliance by Designer-Builder and its Subcontractors at every tier with the skilled work force requirements described in Public Contract Code section 2602 (“**Workforce Report(s)**”).
- 42.2. **Content of Workforce Report(s):** The Workforce Reports will state the following:
- 42.2.1. Each Subcontractor’s name and license number, or list the Designer/Builder if the Designer/Builder is self-performing the applicable scope of Work;
- 42.2.2. That each worker is either a registered apprentice in an apprenticeship program approved by the State or a skilled journeyman;
- 42.2.3. Of the skilled journeymen for each subcontractor and the Designer/Builder, which are graduates of an approved apprenticeship program. It shall be sufficient for the Designer/Builder to state the number of workers in each applicable category. The Designer/Builder is not required to identify each individual worker who performed work on the Project in the Designer/Builder’s monthly report;
- 42.2.4. The monthly and cumulative percentages that entity has achieved of those graduates. If a subcontractor (or the Designer/Builder) is meeting the percentage cumulatively, the District may utilize that information when it determines whether the report is sufficient.
- 42.3. **Time Frame:** Each monthly Workforce Report must include all work performed during the preceding month and must be submitted to the District no later than thirty (30) days after the end of the preceding month. (i.e., the monthly Workforce Report for activity during March must be submitted no later than April 30.)
- 42.4. **No Report or Incomplete Report:** If the Designer-Builder fails to provide a Workforce Report or provides a Workforce Report that is incomplete, the following shall apply:
- 42.4.1. The District shall withhold further payments until Designer-Builder provides a complete Workforce Report for that month. The District shall withhold from the Designer/Builder an amount equal to one hundred and fifty percent (150%) of the value of the monthly billing for the relevant Subcontractor(s), which the Designer/Builder shall be entitled to withhold from the Subcontractor(s).
- 42.4.2. **Plan:** If the Designer/Builder submits to the District a plan to achieve substantial compliance with Public Contract Code section 2601, et seq., the District shall resume making payments to the Designer/Builder, including all previously withheld payments, unless, within a reasonable time, the District rejects the plan as insufficient. In the event that the District rejects the Designer/Builder’s plan as insufficient, the District shall provide an explanation in writing of the basis of for the District’s rejection of the Designer/Builder’s plan.
- 42.4.3. If the Workforce Report is incomplete due to the failure of a Subcontractor to timely submit

- to Designer-Builder information demonstrating compliance at every tier with the skilled workforce requirements, the District shall only withhold from Designer-Builder an amount equal to one hundred and fifty percent (150%) of the value of the monthly billing for the Subcontractor that failed to submit the required information to Designer-Builder.
- 42.4.4. The District shall forward to the Labor Commissioner a copy of a Workforce Report submitted to the District that fails to comply with Public Contract Code section 2602, et seq. In the event that the Designer/Builder submits a plan to the District to achieve substantial compliance with Public Contract Code 2601 et. seq., the District shall forward a copy of that plan to the Labor Commissioner, and the response to that plan, if any, by the District.
- 42.5. **End-of-Project Reconciliation:**
- 42.5.1. At the end of the Project, if the Designer/Builder cannot demonstrate that it has met the applicable participation level for all work that falls within an apprenticeable occupation as defined in Public Contract Code section 2600, et seq., Designer/Builder may remedy its failure by paying to the appropriate trade apprenticeship fund(s), an amount equal to the number of additional hours required to meet the percentage, multiplied by the "Training" amount for that trade, at the Basic Hourly Rate. The Designer/Builder must provide documentation to the District reasonably sufficient to demonstrate this payment and the trade apprenticeship funds' acceptance of payment(s).
- 42.5.2. If payment(s) to the applicable trade apprenticeship fund(s) are not made or accepted, then the District shall have the right to permanently retain ten percent (10%) of the price for the out of compliance apprenticeable occupation's Work, per month, as reflected in the Project's current Schedule of Values, not to exceed the monthly amounts for first-time violations indicated in Public Contract Code 2603(a). The District shall withhold those funds until the Labor Commissioner makes its determination of violations pursuant to Public Contract Code section 2603. At that time, the District will distribute those funds as directed by the Labor Commissioner or, if the Labor Commissioner determines that no violation was made or the penalty(ies) are less than the amount the District is withholding, the District shall pay the applicable withheld amounts to the Designer/Builder, with no interest or penalty.
- 42.5.3. The Parties agree that these end-of-Project remedies are reasonable and sufficient, subject to a determination made by Department of Industrial Relations or a court of competent jurisdiction that one or both of these remedies is insufficient.
- 42.5.4. Any payments the District withholds from the Designer/Builder for noncompliance will be reflective only of the trade(s) or Subcontractor(s) out of compliance and will be paid once the subcontractor(s) and/or trade(s) are cumulatively compliant, subject to the End-of-Project Reconciliation process indicated herein above.
43. **ANTI-TRUST CLAIM:** Designer/Builder and its subcontractor(s) agree to assign to the District all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or a subcontract. This assignment shall be made and become effective at the time District tenders final payment to the Designer/Builder, without further acknowledgment by the Parties.
44. **GOVERNING LAW:** The Contract shall be governed by and construed in accordance with the laws of the State of California with venue of any action in a County in which the District administration office is located.
45. **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 this Contract shall be read and enforced as though it were included therein.
46. **BINDING CONTRACT:** This Contract shall be binding upon the Parties and upon their successors and assigns, and shall inure to the benefit of said parties and their successors and assigns.
47. **WAIVER:** Waiver by either Party of any term, condition, covenant or waiver of a breach of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant or the waiver of a breach of any other term, condition or covenant.
48. **INVALID TERM:** If any provision of this Contract is declared or determined by any court of competent

jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be a part of this Contract.

49. **ENTIRE CONTRACT:** The Contract sets forth the entire Contract between the Parties and fully supersedes any and all prior agreements, understanding, written or oral, between the Parties pertaining to the subject matter herein. The Contract may be modified only by a writing evidencing mutual consent of the Parties.
50. **OWNERSHIP OF DATA:**
- 50.1. District shall not, by virtue of the Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Project.
- 50.2. The Designer/Builder retains all rights to all copyrights, designs and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that the Designer/Builder or its consultants prepare or cause to be prepared pursuant to this Contract.
- 50.3. Pursuant to Education Code section 17316, the Contract creates a non-exclusive and perpetual, irrevocable and royalty-free license for District to use, at its discretion:
- 50.3.1. all software or other intellectual property rights necessary for District to continue to operate, maintain, and repair all equipment that is part of the Project in a manner consistent with its continued use.
- 50.3.2. all record drawings, specifications, and estimates that the Designer/Builder or its consultants, prepare or cause to be prepared pursuant to this Contract, limited to this Work.
- 50.4. In the event the District changes or uses any fully or partially completed documents without the Designer/Builder's knowledge and participation, the District agrees to release Designer/Builder of responsibility for such changes, and shall indemnify, defend and hold the Designer/Builder harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including, but not limited to, reasonable attorneys' fees, on account of any damages or losses to property or persons, including injuries or death, or economic losses, arising out of that change or use except to the extent the Designer/Builder is found to be liable in a forum of competent jurisdiction. In the event District uses any fully or partially completed documents without the Designer/Builder's full involvement, the District shall remove all title blocks and other information that might identify the Designer/Builder and the Designer/Builder's consultants.
51. **OWNERSHIP OF ANY EXISTING EQUIPMENT:** Ownership of any equipment and materials existing at the Sites at the time the Contract is executed, shall remain the property of the District even if it is replaced or its operation made unnecessary by Work performed by Designer/Builder. If applicable, Designer/Builder shall advise District in writing of all equipment and materials that will be replaced at the Sites and District shall, within five (5) business days of Designer/Builder' notice, designate in writing to Designer/Builder which replaced equipment and materials should not be disposed of off-Site by Designer/Builder (the "Retained Items"). It is understood and agreed to by both Parties that District shall be responsible for and designate the location and storage for the Retained Items. Designer/Builder shall be responsible for the disposal of replaced equipment and materials, except for the Retained Items. Designer/Builder shall use commercially reasonable efforts to remove the Retained Items in such a manner as to avoid damage thereto, or if it is unreasonable to avoid damage altogether, to minimize any damage.
52. **RESPONSIBILITIES OF THE DISTRICT:**
- 52.1. District shall examine the documents submitted by the Designer/Builder and shall render decisions so as to avoid unreasonable delay in the performance of Work.
- 52.2. District shall verbally and in writing promptly advise the Designer/Builder if the District becomes aware of any fault or defect in the Project, including any errors, omissions, or inconsistencies in the Designer/Builder's documents. Failure to provide such notice shall not relieve Designer/Builder of its responsibility therefore, if any.
- 52.3. In the event Hazardous Materials are present at the Site, and unless the District and the Designer/Builder agree that a Hazardous Materials consultant shall be a consultant of the Designer/Builder, the District shall furnish the services of a Hazardous Materials consultant or other consultants when the services are requested in writing by Designer/Builder and deemed necessary by the District or are requested by the District. These services shall include: asbestos and lead paint

survey; abatement documentation; and specifications related to said matters which are to be incorporated into documents prepared by Designer/Builder. If the hazardous materials consultant is furnished by the District and not a consultant of the Designer/Builder, the specifications shall include a note to the effect that they are included in the Designer/Builder's documents for the District's convenience and have not been prepared or reviewed by the Designer/Builder. The note shall also direct questions about the specifications to its preparer. District shall be responsible for the abatement and certification of identified hazardous materials, as applicable.

- 52.4. District personnel and/or its designated representatives shall coordinate with Designer/Builder as may be requested and desirable for the coordination or management of work related to the Project.
- 52.5. District shall provide Designer/Builder all relevant information in District's possession regarding the Project that Designer/Builder needs to perform its Services. District shall provide this information in a timely manner.
- 52.6. Review the Designer/Builder's proposed schedule throughout the Project.
- 52.7. Oversee the Designer/Builder's quality assurance/control program.
- 52.8. Select Project Inspector with approval by the Designer/Builder.
- 52.9. Review and approve payment applications from the Designer/Builder.
- 52.10. Review construction progress and adherence to the schedule (and any recovery schedules).
- 52.11. Assist with the resolution of any disagreements.
- 52.12. Periodically report Project status to Facilities Subcommittee and Board of Education.
- 52.13. Assist with preparation of report to Legislative Analyst Office, 60 days after completion of Project.
- 52.14. Facilitate Project Post-Construction Interview (Lessons Learned/Best Practices).

53. LIABILITY OF DISTRICT:

- 53.1. Other than as provided in the Contract, District's financial obligations under the Contract shall be limited to the payment of the Contract Price. In no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with the Contract for the Services or Work.
- 53.2. District shall not be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by Designer/Builder, or by its employees, even though such equipment be furnished or loaned to Designer/Builder by District.

54. WAIVER OF CONSEQUENTIAL DAMAGES

- 54.1. Except to the extent covered by insurance required under the Contract or otherwise procured by Designer/Builder, its Subcontractors, or the District, the Designer/Builder and District waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:
 - 54.1.1. damages incurred by District for rental expenses, for losses of use, income, profit, financing, business, and reputation, and for loss of management or employee productivity or of the services of such persons.
 - 54.1.2. damages incurred by the Designer/Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.
- 54.2. Nothing contained in this Section 54 shall be deemed to preclude the District from recovering liquidated damages and direct damages, when applicable, in accordance with the terms of this Contract. Liability to third parties as a result of bodily injury, wrongful death, or property damage shall not be deemed to be consequential damages.

CERTIFICATIONS TO BE COMPLETED BY DESIGNER/BUILDER

THE UNDERSIGNED MUST CHECK EACH BOX AND EXECUTE THIS FORM AND HEREBY CERTIFIES TO THE GOVERNING BOARD OF THE DISTRICT THAT:

- The undersigned is a representative of the Designer/Builder,
- The undersigned is familiar with the facts herein certified and acknowledged,
- The undersigned is authorized and qualified to execute this Agreement and these certifications on behalf of Designer/Builder and that by executing this Agreement he/she is certifying the following items.

Labor Code Sections 1860-1861 (Workers' Compensation). In accordance with Labor Code section 3700, every contractor will be required to secure the payment of compensation to his or her employees. I acknowledge and certify under penalty of perjury that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Government Code Sections 8355-8357 (Drug-Free Workplace). I acknowledge and certify under penalty of perjury that I will provide a drug-free workplace by doing all of the following:

- (1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.
- (2) Establishing a drug-free awareness program to inform employees about all of the following:
 - (A) The dangers of drug abuse in the workplace.
 - (B) The person's or organization's policy of maintaining a drug-free workplace.
 - (C) Any available drug counseling, rehabilitation, and employee assistance programs.
 - (D) The penalties that may be imposed upon employees for drug abuse violations.
- (3) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I also acknowledge that this Contract may be subject to suspension of payments under the contract or grant or termination of the contract or grant, or both, and the contractor or grantee thereunder may be subject to debarment, in accordance with the requirements of the above-referenced statute, if the contracting or granting agency determines that any of the following has occurred:

- (1) The contractor or grantee has made a false certification under Section 8355.
- (2) The contractor or grantee violates the certification by failing to carry out the requirements of subdivisions (a) to (c), inclusive, of Section 8355.

I also acknowledge that the Department of General Services shall establish and maintain a list of individuals and organizations whose contracts or grants have been canceled due to failure to comply with the above-referenced statute. This list shall be updated monthly and published each month. No state agency shall award a contract or grant to a person or organization on the published list until that person or organization has complied with the above-referenced statute.

Tobacco-Free Environment. Pursuant to, without limitation, 20 U.S.C. section 6083, Labor Code section 6400

et seq., Health & Safety Code section 104350 et seq. and District Board Policies, all District sites, including the Project site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes school buildings, school grounds, school owned vehicles and vehicles owned by others while on District property.

I acknowledge and certify under penalty of perjury that I am aware of the District's policy regarding tobacco-free environments at District sites, including the Project site and acknowledge and certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, subcontractors, or my firm's subcontractors' employees or agents to use tobacco and/or smoke on the Project site. The District also prohibits electronic cigarettes, "vaping" or similar product uses on District sites.

No Hazardous Materials. I acknowledge and certify under penalty of perjury that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations ("New Hazardous Material"), shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Designer/Builder's work on the Project for District. I have instructed our employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

- (i) Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material. Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Designer/Builder if the material is found to be New Hazardous Material.
- (ii) All Work or materials found to be New Hazardous Material or Work or material installed with equipment containing "New Hazardous Material," will be immediately rejected and this Work will be removed at Designer/Builder's expense at no additional cost to the District.

The Designer/Builder must immediately notify the District within two (2) Business Days, if the Designer/Builder finds and before it disturbs, any material that the Designer/Builder believes may be hazardous waste, as defined in section 25117 of the Health and Safety Code, and requires removal to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

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

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

Because the Designer/Builder and its employees will be providing services for the District, and because the Designer/Builder's work may disturb lead-containing building materials, **Designer/Builder is hereby notified** of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school

buildings built prior to 1993 are presumed to contain some lead-based paint until sampling proves otherwise.

(i) **Overview of California Law**

Education Code section 32240 et seq. is known as the Lead Safe Schools Protection Act. Under this act, the Department of Health Services ("DHS") is to conduct a sample survey of schools in the State of California for the purpose of developing risk factors to predict lead contamination in public schools. (Ed. Code, § 32241.)

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

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

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

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

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

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

(ii) **Renovation, Repair and Painting Rule, Section 402(c)(3) of the Toxic Substances Control Act**

In 2008, the U.S. Environmental Protection Agency, issued a rule pursuant to the authority of Section 402(c)(3) of the Toxic Substances Control Act, requiring lead safe work practices to reduce exposure to lead hazards created by renovation, repair and painting activities that disturb lead-based paint (Renovation, Repair and Painting Rule). Renovations in homes, childcare facilities, and schools built prior to 1978 must be conducted by certified renovations firms, using renovators with accredited training, and following the work practice requirements to reduce human exposures to lead.

Designer/Builder, its workers and subcontractors must fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials, including those rules and regulations appearing within title 40 of the Code of Federal Regulations as part 745 (40 CFR 745).

The requirements apply to all contractors who disturb lead-based paint in a six-square-foot area or greater indoors or a 20-square-foot area outdoors. If a DPH-certified inspector or risk assessor determines that a home constructed before 1978 is lead-free, the federal certification is not required for anyone working on that particular building.

(iii) **Designer/Builder's Liability**

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

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

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

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

I acknowledge and certify under penalty of perjury, that:

1. I have received notification of potential lead-based materials on the District's property;
 2. I am knowledgeable regarding and will comply with all applicable laws, rules, and regulations governing work with, and disposal of, lead.
-

Imported Materials. All soils, aggregate, or related materials ("Fill") that Designer/Builder, a Subcontractor, agent or supplier, in any way, provides or delivers and/or supplies to the Project Site shall be free of any and all hazardous material as defined in section 25260 of the Health and Safety Code, shall satisfy the requirements of any environmental review of the Project performed pursuant to the statutes and guidelines of the California Environmental Quality Act, sections 21000 et seq. of the Public Resources Code ("CEQA"), and shall comply with the requirements of sections 17210 et seq. of the Education Code, including requirements for a Phase I environmental assessment acceptable to the State of California Department of Education and Department of Toxic Substances Control. I acknowledge that, to the furthest extent permitted by California law, the indemnification provisions in the Contract Documents apply to, without limitation, any claim(s) connected with providing, delivering, and/or supplying Fill.

Roofing Contract Financial Interest Certification (Public Contract Code § 3006)

I, _____ **[Your Name]**, _____ **[Firm Name]**
certify that I have not offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with a roof project contract or subcontract on the Project. As used in this certification, "person" means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

I, _____ **[Your Name]**, _____ **[Firm Name]**
certify that I do not have, and throughout the duration of the Contract, I will not have, any financial relationship in connection with the performance of the Contract with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.

I, _____ **[Your Name]**, _____ **[Firm Name]**
have the following financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roof project contract:

Name of firm ("Firm"): _____
Mailing address: _____
Address of branch office used for this Project: _____
If subsidiary, name and address of parent company: _____

For Projects without substantive roofing components, check the following box and execute this certification:

The Work on the Contract (1) does not include the replacement or repair of a roof or (2) is a repair of twenty five percent (25%) or less of the roof, (3) or is a repair project that has a total cost of twenty-one thousand dollars (\$21,000) or less.

Iran Contracting Act Certification (Public Contract Code § 2204)

Pursuant to Public Contract Code (PCC) section 2204, an Iran Contracting Act certification is required for solicitations of goods or services of one million dollars (\$1,000,000) or more.

Designer/Builder shall complete **ONLY ONE** of the following three paragraphs.

1. Designer/Builder's Proposal is less than one million dollars (\$1,000,000).

OR

2. Designer/Builder's Proposal is one million dollars (\$1,000,000) or more, but Designer/Builder is **not** on the current list of persons engaged in investment activities in Iran created by the California Department of General Services ("DGS") pursuant to Public Contract Code § 2203(b), and Designer/Builder is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

OR

3. Designer/Builder's Proposal is one million dollars (\$1,000,000) or more, but the

District has given prior written permission to Designer/Builder to submit a proposal pursuant to PCC 2203(c) or (d). **A copy of the written permission from the District is included with Proposal.**

Russian Sanctions Certification

On February 21, 2022, President Biden issued Executive Order 14065 (<https://www.whitehouse.gov/briefing-room/presidential-actions/2022/02/21/executive-order-on-blocking-property-of-certain-persons-and-prohibiting-certain-transactions-with-respect-to-continued-russian-efforts-to-undermine-the-sovereignty-and-territorial-integrity-of-ukraine/>; “**Federal Order**”) imposing economic sanctions and prohibiting many activities including, but not limited to, investing in, importing to, exporting from, and contracting with, areas of Ukraine and in Russia. On March 4, 2022, California Governor Newsom issued Executive Order N-6-22 requiring state agencies to take steps to ensure any agency and entity under contract with state agencies comply with the Federal Order (<https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf>; (“**State Order**”).

The District requires the Designer/Builder, as a vendor with the District, to comply with the economic sanctions imposed in response to Russia’s actions in Ukraine, including the orders and sanctions identified on the U.S. Department of the Treasury website (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>).

If your Firm’s contract with the District has a cumulative value of \$5 million or more, your certification here constitutes your written response to the District, indicating:

- (1) that your Firm is in compliance with the required economic sanctions of the Federal and State Orders;
- (2) the steps your Firm has taken in response to Russia's actions in Ukraine, including, but not limited to, desisting from making new investments in, or engaging in financial transactions with, Russian entities, not transferring technology to Russia or Russian entities, and directly providing support to the government and people of Ukraine.

I ACKNOWLEDGE AND CERTIFY UNDER PENALTY OF PERJURY THAT I AM DULY AUTHORIZED TO LEGALLY BIND THE DESIGNER/BUILDER TO ALL PROVISIONS AND ITEMS INCLUDED IN THESE CERTIFICATIONS, THAT THE CONTENTS OF THESE CERTIFICATIONS ARE TRUE, AND THAT THESE CERTIFICATIONS ARE MADE UNDER THE LAWS OF THE STATE OF CALIFORNIA.

Date: _____

Proper Name of Designer/Builder: _____

Signature: _____

Print Name: _____

Title: _____

DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION CERTIFICATION

Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program ("Program") for the construction and/or modernization of school buildings to have a participation goal for disabled veteran business enterprises ("DVBE(s)") of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district on projects that receive state funding.

Section 2001 of the Public Contract Code requires school districts to require each Bidder to provide in its bid certain information about its Subcontractors. In addition to completing this certification as indicated herein, each Bidder must provide the information related to DVBEs as required in the Designated Subcontractors List.

1. **Disabled Veteran Business Enterprise.** A DVBE is a business enterprise certified by the California Office of Small Business as a DVBE.
2. **DVBE Participation Policy.** The District is committed to achieving this DVBE participation goal. The District encourages Designer/Builder to ensure maximum opportunities for the participation of DVBEs in the Work of the Contract.
3. **DVBE Participation Goal.** The three percent (3%) participation goal is not a quota, set-aside or rigid proportion.
4. **Certification of Participation.** At the time of execution of the Contract, the Designer/Builder will provide a statement to the District of anticipated participation of DVBEs in the contract.
5. **Submission of Report.** During performance of the Contract, Designer/Builder shall monitor the Work of the Contract, award of subcontracts and contracts for materials, equipment and supplies for the purpose of determining DVBE participation in the Work of the Contract.
 - a) Designer/Builder shall report on a monthly basis all DVBEs utilized in the performance of the Work, the type or classification of the Work performed by each DVBE, and the dollar value of the Work performed by each DVBE.
 - b) Upon completion of the Work of the Contract, Designer/Builder shall submit a report to the District in the form attached hereto identifying all DVBEs utilized in the performance of the Work, the type or classification of the Work performed by each DVBE, and the dollar value of the Work performed by each DVBE.
 - i) The submission to the District of this report is a condition precedent to the District's obligation to make payment of the Final Payment under the Contract Documents. The submission of this report shall be in addition to, and not in lieu of, any other conditions precedent set forth in the Contract Documents for the District's obligation to make payment of the Final Payment.
 - ii) The District reserves the right to request additional information or documentation from the Designer/Builder evidencing efforts to comply with the three percent (3%) DVBE participation goal.

DVBE PARTICIPATION REPORT

Designer/Builder Name: _____ **Date:** _____

Project Name: _____ **Project Number:** **PROJECT NO.**

DVBE Firm Name	Trade / Portion of Work	Subcontract/ Contract Value
Add more sheets as needed to include all information for each DVBE		

Does the cumulative dollar value of these DVBE contracts meet or exceed the participation goal of three percent (3%) of the final Contract Price, as adjusted by all change orders?

YES _____ NO _____

If your response is "NO," please attach to this report a detailed description of the reasons your firm did not achieve the participation goal of three percent (3%) of the final Contract Price.

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

Date: _____

Proper Name of Designer/Builder: _____

Signature: _____

Print Name: _____

Title: _____

CRIMINAL BACKGROUND INVESTIGATION / FINGERPRINTING CERTIFICATION

The undersigned does hereby certify to the governing board of the District that he/she is a representative of the Designer/Builder, is familiar with the facts herein certified, is authorized and qualified to execute this certificate on behalf of Designer/Builder; and that the information in this Criminal Background Investigation / Fingerprinting Certification is true and correct.

1. **Education Code.** Designer/Builder has taken at least one of the following actions (check all that apply):

All Workers Fingerprinted. The Designer/Builder has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Designer/Builder’s employees and all of its subcontractors’ employees who interact with pupils, outside of the immediate supervision and control of the pupil’s parent or guardian or a school employee, has a valid criminal records summary as described in Education Code Section 44237 (Designer/Builder shall “require each applicant for employment in a position requiring contact with minor pupils to submit two sets of fingerprints prepared for submittal by the employer to the Department of Justice for the purpose of obtaining criminal record summary information from the Department of Justice and the Federal Bureau of Investigation.”). A complete and accurate list of Designer/Builder’s employees and of all of its subcontractors’ employees who may interact with District pupils during the course and scope of the Contract is attached hereto; and/or

Physical Barrier. Pursuant to Education Code section 45125.2, Designer/Builder has installed or will install, prior to commencement of work, a physical barrier at the Project site, that will limit contact between Designer/Builder’s employees and District pupils at all times; and/or

Continual Supervision by Fingerprinted Employee. Pursuant to Education Code section 45125.2, Designer/Builder certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Designer/Builder who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Designer/Builder’s employees and its subcontractors’ employees is:

Name: _____ **Title:** _____

Unoccupied Site. The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

2. **Megan’s Law (Sex Offenders).** I have verified and will continue to verify that the employees of Designer/Builder that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California’s “Megan’s Law” Website (<http://www.meganslaw.ca.gov/>).

Designer/Builder’s responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Designer/Builder.

Date: _____

Proper Name of Designer/Builder: _____

Signature: _____

Print Name: _____

Title: _____

PERFORMANCE BOND (100% of Contract Price)

(Note: Designer/Builders must use this form, NOT a surety company form.)

WHEREAS, the governing board (“Board”) of the **Mountain View Whisman School District**, (“District”) and

_____, (“Principal”)

have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

CalSHAPE Project (“Project” or “Contract”)

which Contract dated _____, 2023, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

WHEREAS, the Principal is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract;

NOW, THEREFORE, the Principal and _____ (“Surety”) are held and firmly bound unto the District in the penal sum of:

\$ _____ **DOLLARS,**

lawful money of the United States, for payment to the District and will and truly be made pursuant to the provisions herein. Principal and Surety, each of us, bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally to:

- Perform all the work required to complete the Project; and
- Pay to the District all damages the District incurs as a result of the Principal’s failure to perform all the Work required to complete the Project.

In the event the Principal is declared by the District to be in breach or default in the performance of the Contract, then, after written notice from the District to the Surety, as provided for herein, the Surety shall either remedy the default or breach of the Principal or shall take charge of the Work of the Contract and complete the Contract with a Designer/Builder other than the Principal at its own expense; provided, however, that the procedure by which the Surety undertakes to discharge its obligations under this Bond shall be subject to the advance written approval of the District.

The condition of the obligation is such that, if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on his or its part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warranties of materials and workmanship, and shall indemnify and save harmless the District, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period equal to the warranty and/or guarantee period of the Contract, during which time Surety’s obligation shall continue if Designer/Builder shall fail to make full, complete, and satisfactory repair, replace, and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Designer/Builder remains. Nothing herein shall limit the District’s rights or the Designer/Builder’s or Surety’s obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the Contract Documents or to the Work.

Any claims under this bond may be addressed to the Surety at the following address. This cannot be the Designer/Builder's broker for this bond, but must be an employee of the Surety or the Surety's legal counsel:

Attention: _____

Telephone No.: (_____) _____ - _____

Fax No.: (_____) _____ - _____

E-mail Address: _____

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____, 20__.

Principal

Surety

(Name of Principal)

(Name of Surety)

(Signature of Person with Authority)

(Signature of Person with Authority)

(Print Name)

(Print Name)

(Name of California Agent of Surety)

(Address of California Agent of Surety)

(Telephone Number of California Agent of Surety)

Designer/Builder must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

PAYMENT BOND -- Designer/Builder's Labor & Material Bond (100% of Contract Price)
(Note: Designer/Builders must use this form, NOT a surety company form.)

WHEREAS, the governing board ("Board") of the **Mountain View Whisman School District**, ("District") and

_____, ("Principal")

have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

CalSHAPE Project ("Project" or "Contract")

which Contract dated _____, 2023, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

WHEREAS, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to 100 percent (100%) of the Contract price, to secure the claims to which reference is made in the Civil Code of California, including section 9100, and the Labor Code of California, including section 1741.

NOW, THEREFORE, the Principal and _____ ("Surety") are held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in the penal sum of:

\$ _____ **DOLLARS,**

lawful money of the United States, being a sum not less than the total amount payable by the terms of Contract, for the payment of which sum well and truly to be made pursuant to all applicable statutes and laws applicable to the provisions herein. Principal and Surety, each of us, bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, to those applicable statutes and laws, and to the provisions herein.

The condition of this obligation is that if the Principal or any of his or its subcontractors, of the heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, equipment, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to that work or labor, that the Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay a reasonable attorney's fee to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under sections 9000 through 9566 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise it shall be and remain in full force and affect.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the Contract Documents or to the Work.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be

deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____, 20__.

Principal

Surety

(Name of Principal)

(Name of Surety)

(Signature of Person with Authority)

(Signature of Person with Authority)

(Print Name)

(Print Name)

(Name of California Agent of Surety)

(Address of California Agent of Surety)

(Telephone Number of California Agent of Surety)

Designer/Builder must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

Exhibit A

SCOPE OF WORK

The Parties acknowledge and agree that the Designer/Builder's Proposal for this Project is not incorporated into this Contract.

Article 1. DESIGN SERVICES

- 1.1. During the course of all Work, Designer/Builder will meet with District to review Project specifications, the Project Schedule, conceptual documents, design documents, the Quality Assurance Plan and basis of design.
- 1.2. During course of all Work, Designer/Builder will meet with District to review equipment, scope of work, and installation plans that relate to the design and construction of the Project.
- 1.3. During the course of all Work, and at least weekly, Designer/Builder will meet with the District so that Designer/Builder may provide reports to the District of the general status and progress of the Work, and to review the general status and progress of the Work.
- 1.4. Although the Parties acknowledge that the Designer/Builder's Services are not completely severable between assessment, design, procurement, installation, construction, commissioning, programming, field testing, preparation of verification reports, and training, the following scope of services will be generally referred to as the Services that the Designer/Builder shall perform during the Design Phase Services and during the Construction Phase of the Project, for the scope of work for which Designer/Builder is designing the Project, which shall be as indicated in the Construction Documents.
- 1.5. **Scope, Responsibilities, and Services of Designer/Builder**
 - 1.5.1. Designer/Builder shall provide Services that shall comply with professional engineering standards, recognized industry standards professional skill and judgment, and applicable requirements of federal, state, and local law.
 - 1.5.2. Designer/Builder agrees to design and construct the Project in consideration for the District's payment up to the Contract Price, which may only be adjusted pursuant to the provisions of this Contract.
 - 1.5.3. At all stages in the Design Phase Services, Designer/Builder shall conduct value engineering analysis on building components to determine the best value based on initial cost, life expectancy, cost of operation and maintenance.
 - 1.5.4. Designer/Builder shall prepare and update at each document submittal milestone, detailed estimates of cost of construction to substantiate that the Project will not exceed the Contract Price.
 - 1.5.5. Prepare and update monthly the detailed construction schedule to confirm the Project delivery within the milestones as set forth in **Exhibit B**.
 - 1.5.6. Designer/Builder acknowledges that all California school districts are now obligated to develop and implement storm water requirements.
 - 1.5.7. Designer/Builder is responsible to include in its schedule District quality assurance reviews of deliverables prepared during Design Phase Services.
 - 1.5.8. During the course of the Work, and at least weekly, Designer/Builder shall provide reports to the District of the general status and progress of the Work appropriate for dissemination to community and end-users. Report shall include Budget, Schedule, Scope, Quality and

Communication.

- 1.5.9. Designer/Builder shall receive written approval by the District before proceeding with each phase of the Design Phase Services and before commencing the Construction Phase.
- 1.5.10. At the conclusion of each phase of the Design Phase, Designer/Builder shall prepare and submit to the District an estimate for the cost of the Construction Phase Services ("**Cost Estimate(s)**"). Designer/Builder acknowledges that the purpose of the Cost Estimate(s) is to ensure that the cost of the applicable Construction Phase Services shall not exceed the Contract Price associated with Construction Phase Services. If there is a Contingency, Contingency preparation and use shall comply with the Contract Documents. If at any time during Design Phase Services, Designer/Builder believes that the cost of Construction Phase Services shall exceed the cost indicated in the Contract Price, Designer/Builder shall immediately notify the District.
- 1.5.11. Designer/Builder shall submit with each phase an estimate of the cost of construction. Any and all contingencies shall be reviewed and approved by the District.
- 1.5.12. Designer/Builder shall maintain consistency of formatting all documents during the Design Phase Services and during the Construction Phase throughout for all engineering disciplines and subcontractors.
- 1.5.13. Designer/Builder will conduct an economic analysis by evaluating the relative cost effectiveness of alternative building-related systems or components at each phase in the Design Phase Services.
- 1.5.14. Designer/Builder shall contract for or employ at Designer/Builder's expense, consultant(s) to the extent deemed necessary for completion of its Services on the Project including, but not limited to, architects, mechanical, electrical (to include a lighting consultant), structural, civil engineers, landscape architects, low voltage, acoustical, data, energy, and telephone consultants as necessary, licensed as required by the State of California. Nothing in the foregoing procedure shall create any contractual relationship between the District and any consultant employed by the Designer/Builder under terms of the Contract.
- 1.5.15. Designer/Builder is responsible for all areas of contract administration, including but not limited to Document Controls, Project Cost Controls, Project Scope control, Schedules, Communication, Quality Assurance and Control, and Value-Engineering Studies. All documents shall be available to the District in PDF digital format. The Designer/Builder shall review on-going contract administration and deliverables during the Construction Phase with the District prior to commencement of the Construction Phase Services. The Designer/Builder shall provide the District with any and all software required to review its documentation and/or submittals.
- 1.5.16. The District shall provide to Designer/Builder information and documentation that the District currently has related to the Sites including geotechnical reports, topographic surveys, and related items. If Designer/Builder believes that the information or documentation the District provides is insufficient for purposes of design or if the Designer/Builder believes it needs additional information, including a topographical survey; geotechnical report; structural, mechanical, and/or chemical tests; tests for air and/or water pollution; test borings; test pits; determinations of soil bearing values; determinations of the location of all subsurface utilities; percolation tests; ground corrosion tests; resistivity tests; tests for hazardous materials; tests for anticipating subsoil conditions; and/or other tests reasonably related to performance of the Project, the Designer/Builder shall inform the District of that fact and the Parties shall mutually agree on the items required and the process and responsibility to procure those items.
- 1.5.17. Designer/Builder shall coordinate with District personnel and/or its designated

representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination, or management of other work on the Site.

- 1.5.18. Where applicable, Designer/Builder shall identify the authorities having jurisdiction over essential building and design elements and coordinate with and implement the requirements of the regulatory agencies or their authorized agents, including, without limitation, California Department of Education (“CDE”), the Office of Public School Construction (“OPSC”), the DGS, DSA Fire/Life Safety, DSA Access Compliance Section, DSA Structural Safety, State and local Fire Marshal, County and City Health Inspectors and any regulatory office or authority having jurisdiction or supervision of school district construction projects.
- 1.5.19. If applicable, Designer/Builder shall provide Services required to obtain the approval of any authorities having jurisdiction (e.g., City, County, etc.) for off-Site work related to the Project including review by regulatory agencies having jurisdiction over the Project.
- 1.5.20. Designer/Builder shall coordinate with the District’s DSA Project Inspector(s).
- 1.5.21. Designer/Builder shall coordinate with the District’s other consultants on the Project, including, but not limited to the construction manager, building enclosure commissioning consultant, systems commissioning consultant, and cost estimator.
- 1.5.22. Designer/Builder shall use its best efforts to provide pictures downloaded to computer files, updated as requested by the District, that the District may use on its website. Pictures shall be limited to Designer/Builder’s Project scope.
- 1.5.23. Designer/Builder Deliverables shall include but are not limited to (for applicable phases):
 - 1.5.23.1. Design Phase Deliverables.
 - 1.5.23.1.1. HVAC Assessment Reporting under the CalSHAPE Program.
 - 1.5.23.1.2. Monthly Project Status Report.
 - 1.5.23.1.3. Issues Log.
 - 1.5.23.1.4. Schematic Design Documents with Basis of Design Documents.
 - 1.5.23.1.4.1. Estimates with subcontractor bids.
 - 1.5.23.1.5. Design Documents at 50% and 100% based on approved schedule.
 - 1.5.23.1.5.1. Estimates with subcontractor bids.
 - 1.5.23.1.6. Construction Documents at 50%, 90%, at time of DSA submittal based on approved schedule.
 - 1.5.23.1.6.1. Estimates with subcontractor bids.
 - 1.5.23.1.7. DSA Stamped Construction Documents.
 - 1.5.23.1.7.1. Review and approved by the District.
 - 1.5.23.1.7.2. Estimate with subcontractor bids.
 - 1.5.23.1.8. Schedule updates at each phase of design submittal.
 - 1.5.23.1.9. All documents evidencing Designer/Builder’s compliance with the Subcontractor Procurement Process attached hereto in **Exhibit F**.
 - 1.5.23.1.10. At 100% Construction Documents, Designer/Builder shall provide an updated final Cost Estimate to perform Construction Phase Services within the Contract Price with documentation supporting that cost,

broken down by scope of work (Subcontractor and self-performed), line-item cost for Designer/Builder's General Conditions, and mark-ups.

1.5.23.1.11. Final Project Schedule and, if applicable, Phasing Plan for Construction.

1.5.23.1.12. Schedule of Values.

1.5.23.2. Construction Deliverables.

1.5.23.2.1. Project Management Plan.

1.5.23.2.1.1. Update as required.

1.5.23.2.2. Safety Plan

1.5.23.2.2.1. Safety Site Inspections.

1.5.23.2.2.2. Site Inspections.

1.5.23.2.3. Monthly Project status report with progress photos.

1.5.23.2.4. Monthly Community Newsletter.

1.5.23.2.5. Verification report(s) under the CalSHAPE Program.

1.5.24. As part of the Services, Designer/Builder is **NOT** responsible for the following, however, it shall coordinate and integrate its Work with any of the following information and/or services provided by District:

1.5.24.1. Ground contamination or hazardous material analysis.

1.5.24.2. Any asbestos and/or lead testing, design, or abatement.

1.5.24.3. Compliance with CEQA.

1.6. Designer/Builder Staff

1.6.1. The Designer/Builder has been selected to perform the Services herein because of its skills and expertise and because of the AOR.

1.6.2. The Designer/Builder shall not change any of the key personnel without prior written approval by District, unless said personnel cease to be employed by Designer/Builder. In either case, District shall be allowed to interview and approve replacement personnel. For key personnel, except for Architect Personnel, such approval shall not be unreasonably withheld or delayed. For the AOR and the AOR's Personnel, such approval shall be within the District's sole discretion.

1.6.3. If any designated lead or key person fails to perform to the reasonable satisfaction of the District, then upon written notice the Designer/Builder shall have five (5) days to remove that person from the Project and replace that person with one reasonably acceptable to the District.

1.6.4. Designer/Builder shall comply with Education Code section 17302(a) and agrees that any plans and/or specifications included in the Services shall be prepared under the supervision of licensed personnel, and that licensed personnel shall be in "responsible charge" of persons who observe the construction.

1.7. Design Document Management

1.7.1. The Designer/Builder shall perform the Services and prepare design documents under the Contract with the assistance of Computer Aided Design Drafting ("**CADD**") (e.g., AutoCAD) Technology. The Designer/Builder shall deliver the design documents to the District, on request, in a "thumb" drive, and/or compact disc format, and compatible with AutoCAD

2020 (not .pdf), or a more recent version if available. As to any drawings that Designer/Builder provides in a CADD file format, the District acknowledges that anomalies and errors may be introduced into data when it is transferred or used in a computer environment, and that the District should rely on hard copies of all documents.

- 1.7.2. Only if directed in writing by the District, Designer/Builder will use BIM for managing the coordination/conflicts with major building and structural systems. The Designer/Builder will include Revit® to optimize building performance early in the design process, run cost estimate and monitor performance changes over the Project's and building's lifetime.
- 1.7.3. In order to document exactly what CADD information was given to the District, Designer/Builder and District shall each sign a "hard" copy of reproducible documents that depict the information at the time Designer/Builder produces the CADD information. District agrees to release Designer/Builder from all liability, damages, and/or claims that arise due to any changes made to this information by anyone other than the Designer/Builder or Consultant(s) subsequent to it being given to the District.
- 1.7.4. Following the termination of the Contract, for any reason whatsoever, the Designer/Builder shall promptly deliver to the District upon written request the following items (hereinafter "Instruments of Service") in electronic format (Microsoft Word), assuming the District has made all payments to Designer/Builder as required by the termination provisions in this Contract.
 - 1.7.4.1. One set of the Contract, including the bidding requirements, specifications, and all existing cost estimates for the Project, in hard copy, reproducible format.
 - 1.7.4.2. Where applicable, one set of fixed image CADD files in DXF format of the drawings that are part of the Contract.
 - 1.7.4.3. Where applicable, one set of non-fixed image CADD drawing files in DXF and/or DWG format of the site plan, floor plans (architectural, plumbing, structural mechanical and electrical), roof plan, sections and exterior elevations of the Project.
 - 1.7.4.4. All finished or unfinished documents, studies, reports, calculations, drawings, maps, models, photographs, and reports prepared by the Designer/Builder under the Contract.

- 1.8. **Certificate of Designer/Builder.** Designer/Builder certifies that the Designer/Builder is properly licensed under the laws and regulations of the State of California to provide the professional Services that it has herein agreed to perform.

Article 2. DESIGN SERVICES BY PHASE

- 2.1. **Early Design Phase.** Designer/Builder agrees to provide the services for the Early Design Phase as described below:
 - 2.1.1. Designer/Builder shall perform, and provide required reporting, for the HVAC assessment under the CalSHAPE Program.
 - 2.1.2. Designer/Builder shall be responsible for the professional quality and technical accuracy of all studies, reports, projections, master plans, designs, drawings, specifications and other Services furnished by Designer/Builder under the Contract, as well as coordination with all Master plans, studies, reports and other information provided by District. Designer/Builder shall, without additional compensation, correct or revise any errors or omissions in its studies, reports, projections, master plans, design, drawings, specifications and other Services.
 - 2.1.3. The District shall provide all information available to it to the extent the information relates to Designer/Builder's scope of work. This information shall include, if available,

- 2.1.3.1. Physical characteristics;
- 2.1.3.2. Legal limitations and utility locations for the Project site(s);
- 2.1.3.3. Written legal description(s) of the Project site(s);
- 2.1.3.4. Grades and lines of streets, alleys, pavements, and adjoining property and structures;
- 2.1.3.5. Adjacent drainage;
- 2.1.3.6. Rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, and boundaries and contours of the Project site(s);
- 2.1.3.7. Locations, dimensions and necessary data with respect to existing buildings, other improvements and trees;
- 2.1.3.8. Information concerning available utility services and lines, mechanical and other services, both public and private, above and below grade, including inverts and depths;
- 2.1.3.9. Surveys, reports, as-built drawings;
- 2.1.3.10. Subsoil data, chemical data, and other data logs of borings;
- 2.1.3.11. DSA Numbers for all buildings, as necessary to obtain DSA approval of plans to be submitted by Designer/Builder under the contracted scope of Work.
- 2.1.4. Designer/Builder shall Visually Verify this information and all existing utilities and systems related to the Project, including capacity, and document the location of existing utility lines, vents, telephone, water, sewage, storm drains and other lines on or around the Project to the extent determinable by the documents provided by the District. "Visually Verify" means to verify to the fullest extent possible by physical inspection and reasonable investigation and without any destructive action.
- 2.1.5. **Deliverables and Numbers of Copies.** Designer/Builder shall provide to the District one hard copy of the above noted items produced in this phase, together with one copy of each item in electronic format:
 - 2.1.5.1. HVAC Assessment Report under the CalSHAPE Program.

2.2. Schematic Design Phase

Upon District's acceptance of Designer/Builder's Work in the Early Design Phase and assuming District has not delayed or terminated the Contract, the Designer/Builder shall prepare for the District's review a Schematic Design (the "**Schematic Design Phase**"), containing the following items as applicable to the Project scope, as follows:

- 2.2.1. **Technology Backbone.** Designer/Builder shall be responsible for the coordination of the design and the layout of the technology backbone system of the Work with the District's Information Technology Department and/or the District's technology consultant, and lay out any included technology backbone system. The coordination effort shall include location and routing of raceways, conduits and outlets and the required spaces to accommodate electrical, data and communication wiring as well as any necessary temporary or permanent relocation of the technology backbone system for or during the performance of the Work. Designer/Builder and consultant(s) shall prepare and be responsible for documents prepared by the Designer/Builder based on the information provided by the District's technology consultant as appropriate to the level of design completion.
- 2.2.2. Prepare and review with District staff a scope of Work list and Work plan identifying specific tasks including, but not limited to: interviews, data collection, analysis, report preparation,

planning, architectural programming, demolition, concepts and schematic design preparation and estimating that are part of the work of the Project. Also identified will be milestone activities or dates, specific task responsibilities of the Designer/Builder, required completion times necessary for the review and approval by the District and by pertinent regulatory agencies and additional definition of deliverables.

- 2.2.3. Designer/Builder to provide furnishing and fixture design.
- 2.2.4. Review the developed Work plan with the District and its representatives to familiarize them with the proposed tasks and schedule and develop necessary modifications.
- 2.2.5. Quality Management Plan.
- 2.2.6. Risk Management and Issues Log.
- 2.2.7. **Architectural**
 - 2.2.7.1. Scaled floor plans showing overall dimensions, identifying the various major areas and their relationship. Include circulation and room-by-room tabulation of all net usable floor areas and a summary of gross floor area. Also, provide typical layouts of major equipment or operational layout.
 - 2.2.7.2. Preliminary building exterior elevations and sections in sufficient detail to demonstrate design concept indicating location and size of fenestration.
 - 2.2.7.3. As applicable, identify proposed roof system, deck, insulation system, and drainage technique.
 - 2.2.7.4. Identify on the floor plans all door sizes and swings, interior and exterior window locations and sizes, and the use of movable partitions or other unique openings.
 - 2.2.7.5. Identify minimum finish requirements, including ceiling, floors, walls, doors, windows, and types of hardware.
 - 2.2.7.6. Identify code requirements, include occupancy classification(s) and type of construction.
- 2.2.8. **Structural**
 - 2.2.8.1. Layout structural systems with dimensions and floor elevations. Identify structural systems (including pre-cast, structural steel with composite deck, structural steel bar joists, post and beams, and sheer walls); with preliminary sizing identified.
 - 2.2.8.2. Identify foundation systems (including fill requirements, piles, caissons, spread footings); with preliminary sizing identified.
- 2.2.9. **Mechanical**
 - 2.2.9.1. Calculate block heating, ventilation, and cooling loads including skin versus internal loading.
 - 2.2.9.2. Select a minimum of two (2) HVAC systems that appear compatible with loading conditions for subsequent life cycle costing.
 - 2.2.9.3. Show selected system on drawings as follows:
 - 2.2.9.4. Single line drawing(s) of all mechanical equipment spaces, ductwork and pipe chases.
 - 2.2.9.5. Location and preliminary sizing of all major equipment and duct work in allocated spaces.
 - 2.2.9.6. Schematic piping.

- 2.2.9.7. Temperature control zoning.
- 2.2.9.8. Provide design criteria to include the intent base of design for the Project.
- 2.2.9.9. Evaluate and confirm the load requirements of all equipment and systems, the impact of those on existing facilities, and the requirements to increase these loads to accommodate the increase.
- 2.2.10. **Electrical**
 - 2.2.10.1. Calculate overall approximate electrical loads.
 - 2.2.10.2. Identify proposed electrical system for service, power, lighting, low voltage and communication loads.
 - 2.2.10.3. Show system(s) selected on drawings as follows:
 - 2.2.10.4. Single line drawing(s) showing major distribution system.
 - 2.2.10.5. Location and preliminary sizing of all major electrical systems and components including:
 - 2.2.10.5.1. Load centers.
 - 2.2.10.5.2. Main panels.
 - 2.2.10.5.3. Switch gear.
 - 2.2.10.6. Provide design criteria to include the intent base of design for the Project.
 - 2.2.10.7. Evaluate and confirm the load requirements of all equipment and systems, the impact of those on existing facilities, and the requirements to increase these loads to accommodate the increase.
- 2.2.11. **Civil**
 - 2.2.11.1. Develop on and off-site utility systems such as sewer, water, storm drain, firewater lines, and fire hydrants.
 - 2.2.11.2. Identify surface improvements including roadways, walkways, parking (with assumed wheel weights), preliminary finish grades, and drainage.
 - 2.2.11.3. Coordinate finish floor elevations with architectural site plan.
- 2.2.12. **Landscape.** Develop and coordinate landscape design concepts entailing analysis of existing conditions, proposed components and how the occupants will use the facility. Include location and description of planting, ground improvements, and visual barriers.
- 2.2.13. **Specifications.** Prepare proposed revisions to the specifications of proposed architectural, structural, mechanical and electrical materials, systems and equipment and their criteria and quality standards. Designer/Builder is to use District's standardized equipment/material list for new construction and modernization in development of the Project design and specifications.
- 2.2.14. **Meetings.** During this Phase, Designer/Builder shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops as required for the Work and as requested by the District. There will be a Project cost reconciliation meeting with the District's cost estimator at the end of this Phase.
- 2.2.15. **Deliverables and Numbers of Copies.** Designer/Builder shall provide to the District one hard copy of the above noted items produced in this phase, together with one copy of each item in electronic format:
 - 2.2.15.1. Two copies of meeting Reports/Minutes;

- 2.2.15.2. Two copies of Schematic Design Package with alternatives;
- 2.2.15.3. Two copies of a statement indicating changes made to the Architectural Program and Schedule;
- 2.2.15.4. Two copies of DSA file, including all correspondence and meeting notes to date, or notification in writing that Designer/Builder has not met or corresponded with DSA;
- 2.2.15.5. Two copies of Schedule;
- 2.2.15.6. Two copies of Commissioning Plan;
- 2.2.15.7. Two copies of Preliminary Cost Estimate;
- 2.2.15.8. Two copies of Risk Management and Issues Log.

2.2.16. Presentation

- 2.2.16.1. Designer/Builder shall present and review with the District the detailed Schematic Design.
- 2.2.16.2. The Schematic Design shall be revised within the accepted program parameters until a final concept within the accepted Construction Cost Budget has been accepted and approved by the District at no additional cost to the District.
- 2.2.16.3. Designer/Builder to include in its schedule a Quality Assurance Review by the District.
- 2.2.16.4. Designer/Builder to present its Issues Log. All issues shall be identified and reviewed by the District.

2.3. Design Development Phase

Upon District's acceptance of Designer/Builder's Work in the Schematic Design Phase and assuming District has not delayed or terminated the Contract, the Designer/Builder shall prepare from the accepted deliverables from the Schematic Design Phase the Design Development documents (the "**Design Development Phase**") consisting of the following for each proposed system within Designer/Builder's scope of Work:

2.3.1. Architectural

- 2.3.1.1. Scaled, dimensioned floor plans with final room locations including all openings.
- 2.3.1.2. 1/8" scale building sections showing dimensional relationships, materials, and component relationships.
- 2.3.1.3. Identification of all fixed equipment to be installed in contract.
- 2.3.1.4. Site plan completely drawn with beginning notes and dimensions including grading and paving.
- 2.3.1.5. Preliminary development of details and large-scale blow-ups.
- 2.3.1.6. Layout plans for all spaces.
- 2.3.1.7. ¼" scale of Restrooms.
- 2.3.1.8. ¼" scale of Wall Types and classroom acoustical requirements.
- 2.3.1.9. Elevation drawings of exterior and interior where equipment, material or fixtures are wall mounted.
- 2.3.1.10. Abbreviations that are specific to the Project.
- 2.3.1.11. Plans that are consistently formatted, including title block, for all disciplines.

- 2.3.1.12. Legend showing all symbols used on drawings.
- 2.3.1.13. Floor plans identifying all fixed and major movable equipment and furniture.
- 2.3.1.14. Further refinement of Outline Specification for architectural, structural, mechanical, electrical, low voltage, controls, civil and landscape manuals, systems and equipment.
- 2.3.1.15. Typical reflected ceiling development including ceiling grid and heights for each ceiling to be used, showing:
- 2.3.1.16. Light fixtures.
- 2.3.1.17. Ceiling registers or diffusers.
- 2.3.1.18. Access Panels.
- 2.3.2. **Structural**
 - 2.3.2.1. Structural drawing with all major members located and sized.
 - 2.3.2.2. Establish final building and floor elevations.
 - 2.3.2.3. Preliminary specifications.
 - 2.3.2.4. Identify foundation requirement (including fill requirement, piles) with associated soil pressure, water table and seismic center requirements.
- 2.3.3. **Mechanical**
 - 2.3.3.1. Heating and cooling load calculations as required and major duct or pipe runs sized to interface with structural.
 - 2.3.3.2. Major mechanical equipment should be scheduled indicating size and capacity.
 - 2.3.3.3. Ductwork and piping should be substantially located and sized.
 - 2.3.3.4. Devices in ceiling should be located.
 - 2.3.3.5. Legend showing all symbols used on drawings.
 - 2.3.3.6. More developed Outline Specifications indicating quality level and manufacture.
 - 2.3.3.7. Riser diagram should be substantially complete.
 - 2.3.3.8. Control Systems to be identified.
 - 2.3.3.9. Further evaluation and confirmation of the load requirements of all equipment and systems, the impact of those on existing facilities, and the requirements to increase these loads to accommodate the increase.
- 2.3.4. **Electrical**
 - 2.3.4.1. All lighting fixtures should be located and scheduled showing all types and quantities of fixtures to be used, including proposed lighting levels for each usable space.
 - 2.3.4.2. All major electrical equipment should be scheduled indicating size and capacity.
 - 2.3.4.3. Complete electrical distribution including a single line diagram indicating final location of switchboards, communications, controls (high and low voltage), motor control centers, panels, transformers, and emergency generators, if required. Low voltage system includes fire alarm system, security system, clock and public address system, voice data system, and telecom/technology system.
 - 2.3.4.4. Legend showing all symbols used on drawings.

- 2.3.4.5. More developed and detailed Outline Specifications indicating quality level and manufacture.
- 2.3.4.6. Further evaluation and confirmation of the load requirements of all equipment and systems, the impact of those on existing facilities, and the requirements to increase these loads to accommodate the increase.
- 2.3.5. **Civil**
 - 2.3.5.1. Further refinement of Schematic Design Phase development of on and off-site utility systems for gas, sewer, electrical, water, storm drain and fire water. Includes, without limitation, pipe sizes, materials, invert elevation location and installation details.
 - 2.3.5.2. Further refinement of Schematic Design Phase roadways, walkways, parking and storm drainage improvements. Includes details and large scale drawings of curb and gutter, manhole, thrust blocks, paved parking and roadway sections.
- 2.3.6. **Landscape.** Further refinement of Schematic Design concepts. Includes coordination of hardscape, landscape planting, ground cover and irrigation main distribution lines.
- 2.3.7. **Deliverables and Numbers of Copies**
 - 2.3.7.1. Two copies of Design Development drawing set from all professional disciplines necessary to deliver the Project;
 - 2.3.7.2. Two copies of continued proposed revision to Specifications;
 - 2.3.7.3. Two copies of DSA file, including all correspondence and meeting notes to date, or notification in writing that Designer/Builder has not met or corresponded with DSA;
 - 2.3.7.4. Two copies of Cost Estimate;
 - 2.3.7.5. Two copies of Schedule;
 - 2.3.7.6. The Design Development deliverables shall be revised within the accepted program parameters until a final concept within the accepted Construction Cost Budget.
 - 2.3.7.7. The Design Development Phase will be reviewed and approved after Quality Assurance review by the District. Designer/Builder to include Quality Assurance Review in its schedule.
 - 2.3.7.8. Designer/Builder to maintain both a Risk Management Plan and Issues Log. All risks shall be reviewed by the District. Both perceived risks and issues shall be reviewed and approved by the District before proceeding to the Construction Documents Phase.
 - 2.3.7.9. Narrative resolving any/all outstanding quality issues from the Schematic Design Quality Assurance review.
- 2.3.8. **Meetings.** During this Phase, Designer/Builder shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops required for the Work and as requested by the District. There will be a Project cost reconciliation meeting with the District's cost estimator at the end of this Phase.

2.4. Construction Documents Phase (50% and 100%)

Upon District's acceptance of Designer/Builder's Work in the Design Development Phase and assuming District has not delayed or terminated the Contract, Designer/Builder shall prepare a set of 90% complete construction documents for review by the District. Upon approval by District, those construction documents shall be completed and then submitted to, as required, local planning or inspection office, DSA, or other agency with approval jurisdiction over the Project. Designer/Builder

shall then incorporate any comments or requested revisions from the DSA, or other agency with approval jurisdiction, over the Project and prepare a set of 100% construction documents for the Project. The Designer/Builder shall prepare from the accepted deliverables from the Design Development Phase the Construction Documents consisting of the following for each proposed system within Designer/Builder's scope of Work:

- 2.4.1. **General.** Verify lead times and availability of all Project equipment, materials, supplies, and furnishings and ensure that all of these will be available to the contractor(s) in a timely fashion so as to not delay the Project and/or delay the District's Beneficial Use of the Project. The Designer/Builder shall also provide other options to the District regarding other possible and more available equipment, materials, supplies, or furnishings.
- 2.4.2. **Architectural**
 - 2.4.2.1. Completed site plan.
 - 2.4.2.2. Completed floor plans, elevations, and sections.
 - 2.4.2.3. Architectural details and large blow-ups completed.
 - 2.4.2.4. Layout plans for all spaces.
 - 2.4.2.5. Finish, door, and hardware schedules completed, including all details.
 - 2.4.2.6. Fixed equipment details and identification completed.
 - 2.4.2.7. Reflected ceiling plans completed.
 - 2.4.2.8. Completed inter and intra disciplinary coordination between civil, landscape, structural, mechanical, electrical and specialties such as Elevator and Food Service, Fire Alarm and Fire Sprinkler Systems.
- 2.4.3. **Structural**
 - 2.4.3.1. Structural floor plans and sections with detailing completed.
 - 2.4.3.2. Structural calculations completed.
 - 2.4.3.3. Completed cover sheet with general notes, symbols, and legends.
- 2.4.4. **Mechanical**
 - 2.4.4.1. Large scale mechanical details complete.
 - 2.4.4.2. Mechanical schedules for equipment completed.
 - 2.4.4.3. Completed electrical schematic for environmental cooling and exhaust equipment.
 - 2.4.4.4. Complete design of Emergency Management System ("EMS").
 - 2.4.4.5. Complete energy conservation calculations and report.
- 2.4.5. **Electrical**
 - 2.4.5.1. Lighting and power plan showing all switching and controls. Fixture schedule and lighting details completed.
 - 2.4.5.2. Distribution information on all power consuming equipment, including lighting, power, signal, and communication device(s) branch wiring completed.
 - 2.4.5.3. All electrical equipment schedules completed.
 - 2.4.5.4. Special system components plans completed.
 - 2.4.5.5. Electrical load calculations completed.

- 2.4.5.6. Complete design of low voltage system. Low voltage system includes fire alarm system, security system, clock and public address system, voice data system, and telecom/technology system.
- 2.4.6. **Civil.** All site plans, site utilities, parking and roadway systems completed.
 - 2.4.6.1. Completed Demolition plan.
- 2.4.7. **Landscape.** All landscape, hardscape, and irrigation plans completed and reflecting updated revisions from Design Development Phase Documents.
- 2.4.8. **Specifications**
 - 2.4.8.1. Complete proposed revisions to the technical specifications describing materials, systems and equipment, workmanship, quality, and performance criteria required for the construction of the Project.
 - 2.4.8.2. No part of the specifications shall call for a designated material, product, thing, or service by specific brand or trade name unless the District has given prior approval.
- 2.4.9. **Quality Assurance Review.** The District and/or its designee shall conduct a construction review of the Construction Documents (“**Quality Assurance Review**”). The Quality Assurance review will include program scope, space checklist validation of spacing, materials and product verification of sole source materials/equipment along with inter and intra-disciplinary coordination. A report shall be given to the Designer/Builder who shall make necessary changes along with providing written comments for each item listed in the report.
- 2.4.10. The Designer/Builder is responsible to conduct its own Quality Assurance prior to submission to the District.
- 2.4.11. **Deliverables and Numbers of Copies.** Designer/Builder shall provide to the District a hard copy of the following items produced in this phase, together with one copy of each item in electronic format:
 - 2.4.11.1. Two copies of reproducible copies of working drawings;
 - 2.4.11.2. Two copies of proposed revisions to specifications;
 - 2.4.11.3. Two copies of engineering calculations;
 - 2.4.11.4. Two copies of statement of requirements for testing and inspection of service for compliance with Contract Documents and applicable codes;
 - 2.4.11.5. Two copies of DSA file including all correspondence, meeting, back check comments, checklists to date;
 - 2.4.11.6. Two copies of a statement indicating any authorized changes made to the design from the last Phase and the cost impact of each change. If no design changes occur but shifts of costs occur between disciplines, identify for District review;
 - 2.4.11.7. Two copies of Cost Estimate;
 - 2.4.11.8. Two copies of Schedule; and
 - 2.4.11.9. Narrative resolving any/all outstanding quality issues from the Design Development Quality Assurance review.
- 2.4.12. The deliverables submitted during this portion of the Construction Document Phase will be reviewed and approved after Quality Assurance Review by the District. Designer/Builder is responsible for code compliance quality assurance review.

- 2.4.13. Designer/Builder shall maintain both a Risk Management Plan and Issues Log. All risks shall be reviewed by the District. Both perceived risks and issues shall be reviewed and approved by the District before proceeding to the Bidding Documents phase.
- 2.4.14. **Construction Documents (CD) Final Back-Check / 100% Construction Documents (where applicable)**
- 2.4.14.1. The Construction Documents final back-check phase (“**100% Construction Documents Phase Services**”) shall be for the purpose of Designer/Builder incorporating all regulatory agencies' comments into the drawings, specifications, and schedules. All changes made by the Designer/Builder during this stage shall be at no additional cost to the District.
- 2.4.14.2. The final Construction Documents delivered to the District upon completion of the Designer/Builder's Work shall be the final set and shall consist of the original drawings with designers' and engineers' State license stamp.
- 2.4.14.3. **Meetings.** Designer/Builder shall attend, take part in, and, conduct meetings and site visits as required for the Work and Services at no additional cost to the District. There will be a Project cost reconciliation meeting with the District's cost estimator after preparation of the 100% Construction Documents.
- 2.4.15. **Early Procurement and Storage of Materials, Supplies, and Equipment.**
- 2.4.15.1. **Early Purchase Item(s).** The term “**Early Purchase Item(s)**” means material(s), supply(ies) and equipment for the Project identified in Designer/Builder's Early Purchase Proposal to be purchased early based on the terms set forth hereunder, and in the quantities and at the price indicated in the Early Purchase Proposal, except that, if applicable, the Early Purchase Allowance (as defined below) is an amount set aside for Potential Purchase Item(s) (as defined below) and is not a cost to which Designer/Builder is entitled unless otherwise provided.
- 2.4.15.2. **Early Purchase Proposal.** The term “**Early Purchase Proposal**” means the proposal that Designer/Builder will submit to the District identifying Early Purchase Item(s) and the associated quantities and price for each Early Purchase Item as well as the Total Early Purchase Price (as defined below).
- 2.4.15.3. **Early Purchase Price & Total Purchase Price.** The term “**Early Purchase Price**” means the individual price per item for one (1) Early Purchase Item as indicated in the Early Purchase Proposal. The term “**Total Early Purchase Price**” is the total cost of Early Purchase Items in the Early Purchase Proposal inclusive any additional costs, including, without limitation, delivery, tax, and freight.
- 2.4.15.4. **Option for Early Purchase of Materials, Supplies, and Equipment.** In the District's sole discretion, prior to the District's issuance of an NTP for Construction Phase Services, the District may direct Designer/Builder to purchase the Early Purchase Item(s) consistent with the requirements hereunder. Designer/Builder shall submit to the District an Early Purchase Proposal setting for the Early Purchase Items, the associated Early Purchase Price, and the Total Early Purchase Price. The District will review the Early Purchase Proposal and provide Designer/Builder authorization in writing to commence the purchase of the Early Purchase Items.
- 2.4.15.5. **Authorization & Evidence of Order.** Within **three (3)** calendar days of Designer/Builder's receipt of the District's authorization to purchase the Early Purchase Item(s), Designer/Builder shall provide the District with a purchase order, bill of sale, invoice, or any other document demonstrating that Designer/Builder has ordered the Early Purchase Item(s).

- 2.4.15.6. **Payment.** District shall pay Designer/Builder **Ninety-Five Percent (95%)** of the Early Purchase Price for each Early Purchase Item within thirty (30) days of delivery of the Early Purchase Item(s) to (1) a Site or (2) off-site as permitted and approved by the District pursuant to the Terms and Conditions to the Contract. When any Early Purchase Payment becomes due as set forth above, Designer/Builder shall submit an invoice to the District requesting that the District make any applicable Early Purchase Payment.
- 2.4.15.7. **Retention.** District shall retain **Five Percent (5%)** of the amount owed to Designer/Builder from each Early Purchase Payment. Upon issuance of a Notice to Proceed for Construction Phase Services, Designer/Builder agrees that all retained amounts held from any Early Purchase Payment shall become part of the “Retention” for the Project pursuant to the Terms and Conditions of the Contract. Retention shall be released when the Designer/Builder achieves Completion of the Project consistent with the Terms and Conditions of the Contract.
- 2.4.15.8. **Deduction from Contract Price.** Designer/Builder agrees and acknowledges that Total Early Purchase Price for the Early Purchase Item(s) is a component of the cost of Construction Phase Services. If District makes payment of any portion of the Total Early Purchase Price prior to the District issuing the NTP for Construction Phase Services, the District shall direct Designer/Builder to:
- 2.4.15.8.1. Deduct any portion of the Total Early Purchase Price paid to Designer/Builder from the cost for Construction Phase Services; **or**
 - 2.4.15.8.2. Include any paid portion of the Total Early Purchase Price in the cost for Construction Phase Services and Designer/Builder will prepare a Schedule of Values consistent with the “Schedule of Values” section below that indicates that the District has paid for the Early Purchase Items.
- 2.4.15.9. **Schedule of Values.** If Designer/Builder prepares a Schedule of Values for construction of the Project that includes the Early Purchase Item(s), Designer/Builder shall include a line item(s) for each Early Purchase Item consistent with the requirements of the Terms and Conditions of the Contract.
- 2.4.15.10. **Storage and Related Requirements.**
- 2.4.15.10.1. Designer/Builder shall comply with all requirements in Terms and Conditions of the Contract related to the storage of equipment and materials when Designer/Builder stores the Early Purchase Item(s).
 - 2.4.15.10.2. If Designer/Builder intends to store off-site any Early Purchase Item(s), Designer/Builder shall comply with all requirements Terms and Conditions of the Contract related to off-site storage.
 - 2.4.15.10.3. In addition to the insurance requirements of this Agreement, Designer/Builder shall ensure that its policies of insurance comply with all requirements set in Terms and Conditions of the Contract related to procuring insurance coverage to protect District property.
- 2.4.15.11. **No Adjustment to the Contract Price and/or Contract Time.** Designer/Builder agrees and acknowledges that this process for the early purchase of equipment and materials is a contractual mitigation measure so the Parties can avoid increased costs and delay(s) to the construction of the Project that may arise from factors including supply chain challenges. The District’s direction to Designer/Builder to comply with this process hereunder shall in no way entitle

the Designer/Builder to an increase in the Contract Price or an extension of the Contract Time after the issuance of the Notice to Proceed for the construction Work of the Project, unless otherwise permitted by, and consistent with the requirements of, Terms and Conditions of the Contract.

- 2.4.15.12. Upon the District's receipt and approval of the above-referenced items, the District shall review and shall determine whether to approve of final pricing. Any approval by the District shall be made in writing in its sole and absolute discretion.
- 2.5. **Record Drawings.** During the Construction Phase Services, Designer/Builder shall incorporate all information on As-Builts, sketches, details, and clarifications, and prepare one set of final Record Drawings for the District. The Record Drawings shall incorporate onto one set of electronic drawings, changes from As-Builts, sketches, details, and clarifications. The Designer/Builder shall deliver the Record Drawings to the District at completion of the construction and it shall be a condition precedent to the District's approval of the Designer/Builder's final payment.
- 2.6. **O&M Manuals / Warranties.** Designer/Builder shall review equipment, operation and maintenance manuals, and a complete set of warranty documents for all equipment and installed materials and systems, to ensure that they meet the requirements of the plans and specifications. The Designer/Builder shall deliver one hard copy sets and electronic PDF set of the O&M Manuals / Warranties to the District at completion of the construction and it shall be a condition precedent to the District's approval of the Designer/Builder's final payment.
 - 2.6.1. Training and videos shall be provided for all major equipment installation.
 - 2.6.2. All products and equipment will include manufacturer's warranty and labor installation guarantee.
 - 2.6.3. O&M Manuals and Warranties will be in PDF digital format packaged for the Project with an outline of information included in the package and a schedule of warranty periods for each product or equipment determined at beneficial occupancy or filing of Notice of Completion.
- 2.7. **Design Errors.** Designer/Builder shall be solely responsible for all design errors and for the correction of same at no additional cost to District, including, but not limited to, errors, inconsistencies or omissions in the Construction Documents, and errors, omissions and inconsistencies that do not conform to the standards established Contract Documents.

Article 3. CONSTRUCTION PHASE SERVICES

3.1. General

- 3.1.1. Designer/Builder shall design, install, construct, field test, commission, program and prepare verification reports as required for the Work at the Site. The Work shall be installed and constructed to conform to Division of the State Architect ("DSA") requirements and all applicable building codes. Designer/Builder's Work shall include meetings and discussions as needed with DSA and others as needed to achieve Project approval.
- 3.1.2. Construction Services shall commence only upon the District's issuance of a Notice to Proceed for Construction Phase services. The District may issue more than one Notice to Proceed for Construction Phase Services depending on the phasing of those services.
- 3.1.3. Designer Builder's performance of Work for Construction Phase Services shall comply with all requirements of the Contract, including, without limitation, the Terms and Conditions of this Contract.
- 3.1.4. In addition to all other requirement herein, the Designer/Builder shall comply with all requirements of the Plans and Specifications referenced herein in **Exhibit E**.
- 3.1.5. Upon Designer/Builder's completion of Construction Phase Services, the Designer/Builder

shall provide the District with all required deliverables.

3.2. DSA Approvals & Permits

- 3.2.1. Designer/Builder, its designers, contractors, and inspectors shall provide documentation required for all approvals by DSA.
- 3.2.2. Designer/Builder shall notify the District and the District's Project Inspector(s) of required inspections and shall provide reasonable access and accommodations for inspections.

3.3. Protection of Existing Structures and Utilities

- 3.3.1. The Sites have above-grade and below-grade structures, utility lines, and other installations that are known or believed to exist in the area of the Work. Designer/Builder shall locate these existing installations before proceeding with demolition and other operations that could damage same; maintain them in service, where appropriate; and repair damage to them caused by the performance of the Work. Should damage occur to these existing installations, then the costs of repair shall be at the Designer/Builder's expense and made to the District's satisfaction.
- 3.3.2. Designer/Builder shall be alert to the possibility of the existence of additional structures and utilities. If Designer/Builder encounters additional structures and utilities, Designer/Builder will immediately report to the District for disposition of same as indicated in the Terms and Conditions to Contract.
- 3.3.3. Designer/Builder shall conduct an engineering evaluation to determine whether any undergrounding power lines will create the potential for electrolytic corrosion of any other underground utilities near such power lines. Where the potential for electrolytic corrosion exists, Designer/Builder shall also design and install a cathodic protection system to protect such utilities.

3.4. Specific measures include:

- 3.4.1. Written Designer/Builder Safety Plans, signs and temporary fencing as needed.
- 3.4.2. Written Designer/Builder Quality Management Plan.
- 3.4.3. Engineering and stamped drawings for District and DSA approval.
- 3.4.4. Layout drawings for Fire Department review.
- 3.4.5. Single line and electrical drawings for Pacific Gas & Electric.
- 3.4.6. Layout drawings for District Technology Department review.

3.5. Commissioning

3.5.1. Summary

- 3.5.1.1. Commissioning is a process for validating and documenting that the facility and its systems are constructed and perform in conformity with the Contract.
- 3.5.1.2. The objective of the commissioning process is to verify that the performance of the facility and its systems meet or exceed the design intent.
- 3.5.1.3. Commissioning includes special facility start-up processes used to bring the facility to a fully operational state, free of deficiencies in an efficient and timely manner.
- 3.5.1.4. Training on related systems and equipment operation and maintenance shall be scheduled to commence only after start-up is complete and systems are verified to be 100% complete and functional.

3.5.2. Description

- 3.5.2.1. Designer/Builder Startup: prior to District's acceptance of Work, Designer/Builder shall perform a program of activities including starting, testing, inspecting, adjusting balancing, correcting deficiencies and other similar activities.
 - 3.5.2.1.1. The District and if applicable, the DSA Project Inspector (IOR) shall be present to observe, inspect, and identify deficiencies in Building Systems Operations.
- 3.5.2.2. The completion of startup means the entire Project including startup and fine tuning has been performed to the requirements of the Contract and is verified in writing by the District and the IOR.
- 3.5.2.3. Fine Tuning: Fine tuning is the responsibility of Designer/Builder after District occupancy and ending one year after District occupancy. During this time, the Designer/Builder is responsible for optimizing systems and correcting deficiencies arising under normal operating conditions.
 - 3.5.2.3.1. Includes a period after occupancy where systems are optimized under "live" operating conditions and any outstanding construction deficiencies are corrected.
 - 3.5.2.3.2. Fine Tuning shall extend from date of District occupancy to one year after occupancy.
 - 3.5.2.3.3. The Designer/Builder is to include in its Building Life Cycle Cost Analysis the Commissioning scope of work.
- 3.5.3. **Definition of Terms**
 - 3.5.3.1. Designer/Builder's Pre-Commissioning Checklists: Includes installation and start-up items as specified to be completed by the appropriate contractors prior to operational verification through the functional testing process.
 - 3.5.3.2. Installation Verification Process: Includes the on-site inspection and review of related system components for conformance to the Contract. The Designer/Builder shall verify systems readiness for functional testing procedures prior to the start of functional testing. Deficiencies will be documented by the District and the IOR for future resolution.
 - 3.5.3.3. Functional Performance Testing Process: Includes the documented testing of system parameters, under actual or simulated operating conditions. Final performance commissioning of systems will begin only after the appropriate Designer/Builder certifies that systems are 100% complete and ready for functional testing. The contractors will be required to schedule, coordinate and perform device tests, calibration and functional performance test procedures.
 - 3.5.3.4. Deficiencies and Resolutions List: Includes a list of noted deficiencies discovered as a result of the commissioning process. This list also includes the current disposition of issues, and the date of final resolution as confirmed by the District and the IOR. Deficiencies are defined as those issues where products execution or performance does not satisfy the Contract and/or the design intent.
- 3.5.4. **Commissioning Duties and Responsibilities**
 - 3.5.4.1. Designer/Builder Duties and Responsibilities:
 - 3.5.4.1.1. Assure the participation and cooperation of subcontractors and suppliers under their jurisdictions as required to complete the commissioning process.

- 3.5.4.1.2. Complete Commissioning Report Forms. Reports are to be completed in a neat easily readable condition.
- 3.5.4.1.3. Complete the respective start-up and check out procedures and insure readiness of equipment and systems prior to the start of the functional performance testing. Written confirmation of system readiness for performance testing is required.
- 3.5.4.1.4. Provide qualified representatives for the functional performance commissioning process.
- 3.5.4.2. Assure that all subcontractors and suppliers include in their respective contracts cost necessary to participate in and complete the commissioning process.
- 3.5.4.3. Duties and responsibilities of others for Commissioning: The commissioning process requires the active participation of the District and the IOR, and any other related Consultants on the Project.

3.6. Preparation of Verification Reports.

- 3.6.1. Upon completion of the construction and commissioning of the Project, the Designer/Builder shall prepare verification reports as required by the CalSHAPE requirements.

Article 4. PROJECT DESCRIPTION

See Section 1 of the Contract.

Article 5. ADDITIONAL CLARIFICATIONS TO THE SUMMARY OF WORK

Exhibit B

**PROJECT SCHEDULE
(MILESTONE SCHEDULE)**

The days indicated below will begin once the District issues a Notice to Proceed for the Project. The Parties acknowledge the following:

- The District intends to issue a Notice to Proceed for the Project on or before June 20, 2024.
- Except for the Project Completion milestone date indicated herein, the other milestone dates are for reference only. Any delay in achieving the milestone dates indicated herein shall not be a basis upon which Designer/Builder can request an extension of the last milestone – Project Completion.
- Designer/Builder shall have no right to request additional time to perform the Work unless the condition(s) constitute a Force Majeure event as defined in the Contract or Adverse Weather as indicated in this Exhibit.
- **Design Phase - April 15, 2024 through June 7, 2024.**
- **Construction Phase - June 10, 2024 through August 2, 2024**

Milestone	Date to Complete	Liquidated Damages Per Site, Per Calendar Day
District Issues a Notice to Proceed for Design Phase Services	June 20, 2024	n/a
Designer/Builder Completes Final Engineering, Construction Documents and Permitting	August 5, 2024	n/a
District Issues a Notice(s) to Proceed for Construction Phase Services	September 1, 2024	n/a
Construction Mobilization	September 15, 2024	n/a
Commissioning	November 30, 2024	n/a
Project Completion (or “Staff Determination” that the Work is complete at a Site, as defined in the Contract’s “Completion” section.)	November 30, 2024	\$250.00

- The Designer/Builder shall work seven (7) days per week, if necessary, irrespective of inclement weather, to maintain access and the Project Schedule, and to protect the Work under construction from the effects of weather, all at no further cost to the District.
- The Contract Time has been determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located.

Exhibit C

**DETAILED PROJECT COST VALUES
AND
OTHER PRICING COMPONENTS**

Project Site	HVAC Assessment	Filter Replacement	Carbon Dioxide Monitor Installation	Reporting	20% Program Contingency	Total
Mariano Castro Elementary	\$102,000	\$13,125	\$26,400	\$10,000	\$30,305	\$181,830
Gabriela Mistral Elementary	\$35,000	\$6,750	\$15,600	\$10,000	\$13,470	\$80,820
Jose Antonio Vargas Elementary	\$35,000	\$7,500	\$14,400	\$10,000	\$13,380	\$80,280
Benjamin Bubb Elementary	\$36,000	\$5,625	\$13,200	\$10,000	\$12,965	\$77,790
Edith Landels Elementary	\$35,000	\$6,750	\$16,200	\$10,000	\$13,590	\$81,540
Frank L. Huff Elementary	\$32,000	\$6,750	\$14,400	\$10,000	\$12,630	\$75,780
Isaac Newton Graham Middle	\$65,000	\$14,250	\$30,600	\$10,000	\$23,970	\$143,820
Stevenson Elementary	\$41,000	\$8,250	\$16,200	\$10,000	\$15,090	\$90,540
Crittenden Middle	\$65,000	\$13,500	\$31,200	\$10,000	\$23,940	\$143,640
Monta Loma Elementary	\$35,000	\$7,125	\$14,400	\$10,000	\$13,305	\$79,830
Theuerkauf Elementary	\$35,000	\$7,125	\$13,800	\$10,000	\$13,185	\$79,110
Total	\$516,000	\$96,750	\$206,400	\$110,000	\$185,830	\$1,114,980

Exhibit D

DISTRICT'S RULES AND REGULATIONS

1. **Access.** Access to the school buildings and entry to buildings, classrooms, restrooms, mechanical rooms, electrical rooms, or other rooms, for construction purposes, must be coordinated with District and onsite District personnel before Work is to start. Unless agreed to otherwise in writing, only a school custodian will be allowed to unlock and lock doors in existing building(s). The custodian will be available only while school is in session. If a custodian is required to arrive before 7:00 a.m. or leave after 3:30 p.m. to accommodate Designer/Builder's Work, the overtime wages for the custodian will be paid by the Designer/Builder, unless, at the discretion of the District, other arrangements are made in advance.
2. **Maintaining Services.** The Designer/Builder is advised that Work is to be performed in spaces regularly scheduled for instruction. Interruption and/or periods of shutdown of public access, electrical service, water service, lighting, or other utilities may be required in connection with the Project. These shall be only as arranged in advance with the District. Designer/Builder shall provide temporary services to all facilities interrupted by Designer/Builder's Work.
3. **Maintaining Utilities.** The Designer/Builder shall maintain in operation during duration of Contract, drainage lines, storm drains, sewers, water, gas, electrical, steam, and other utility service lines within working area.
4. **Alcohol & Firearms.** Designer/Builder shall ensure that no alcohol, firearms, weapons, or controlled substances enter or are used at the Site. Designer/Builder shall immediately remove from the Sites and terminate the employment of any employee(s) found in violation of this provision.
5. **Work during Instructional Time.** Designer/Builder affirms that Work may be performed during ongoing instruction in existing facilities. If so, Designer/Builder agrees to cooperate to the best of its ability to minimize any disruption to the school up to, and including, rescheduling specific work activities, at no additional cost to District.
6. **No Work during Student Testing.** Designer/Builder shall, at no additional cost to the District and at the District's request, coordinate its Work to not disturb District students including, without limitation, not performing any Work when students at the Sites are taking State-required tests.
7. **Badge Policy For Designer/Builders.** All Designer/Builders doing Work for the District will provide their workers with identification badges. These badges will be worn by all members of the Designer/Builder's staff who are working in a District facility.
 - 7.1. Badges must be filled out in full and contain the following information:
 - 7.1.1. Name of Designer/Builder
 - 7.1.2. Name of Employee
 - 7.1.3. Designer/Builder's address and phone number
 - 7.2. Badges are to be worn when the Designer/Builder or his/her employees are on site and must be visible at all times. Designer/Builders must inform their employees that they are required to allow District employees or the Project Inspector to review the information on the badges upon request.
 - 7.3. Failure to display identification badges as required by this policy may result in the assessment of fines against the Designer/Builder.
8. **Language.** Unacceptable and/or loud language will not be tolerated, "cat calls" or other derogatory language toward students or public will not be allowed.

9. Disturbing the Peace (Noise and Lighting).

- 9.1. Designer/Builder shall observe the noise ordinance of the Sites at all times including, without limitation, all applicable local, city, and/or state laws, ordinances, and/or regulations regarding noise and allowable noise levels.
- 9.2. The use of radios, etc., shall be controlled to keep all sound at a level that cannot be heard beyond the immediate area of use. The District reserves the right to prohibit the use of radios at the Site, except for handheld communication radios (e.g., Nextel phones or radios).
- 9.3. If portable lights are used after dark, all light must be located so as not to direct light into neighboring property.
- 9.4. Equipment and impact tools shall have intake and exhaust mufflers.
- 9.5. Designer/Builder shall cooperate with District to minimize and/or cease the use of noisy and vibratory equipment if that equipment becomes objectionable by its longevity.
- 9.6. Designer/Builder acknowledges that adjacent facilities may remain in operation during all or a portion of the Work period, and it shall take all reasonable precautions to minimize noise as required by applicable laws and the Contract Documents.
- 9.7. Notice of proposed noisy operations, including without limitation, operation of pneumatic demolition tools, concrete saws, and other equipment, shall be submitted to the District a minimum of forty-eight (48) hours in advance of their performance.

10. Utility Shutdowns And Interruptions.

- 10.1. Designer/Builder shall give the District a minimum of three (3) days written notice in advance of any need to shut off existing utility services or to effect equipment interruptions. The District will set exact time and duration for shutdown, and will assist Designer/Builder with shutdown. Work required to re-establish utility services shall be performed by the Designer/Builder.

11. Traffic.

- 11.1. Driving on the Premises shall be limited to periods when students and public are not present. If driving or deliveries must be made during the school hours, two (2) or more ground guides shall lead the vehicle across the area of travel. In no case shall driving take place across playgrounds or other pedestrian paths during recess, lunch, and/or class period changes. The speed limit on-the Premises shall be five (5) miles per hour (maximum) or less if conditions require.
- 11.2. All paths of travel for deliveries, including without limitation, material, equipment, and supply deliveries, shall be reviewed and approved by District in advance. Any damage will be repaired to the pre-damaged condition by the Designer/Builder.
- 11.3. The District shall designate a construction entry to the Site. If Designer/Builder requests, the District determines it is required, and to the extent possible, the District shall designate a staging area so as not to interfere with the normal functioning of school facilities. Location of gates and fencing shall be approved in advance with the District and at Designer/Builder's expense.
- 11.4. Parking areas shall be reviewed and approved by District in advance. No parking is to occur under the drip line of trees or in areas that could otherwise be damaged.

12. Barriers and Enclosures.

- 12.1. Designer/Builder shall obtain the District's written permission for locations and types of temporary barriers and enclosures, including fire-rated materials proposed for use, prior to their installation.
- 12.2. Designer/Builder shall provide and maintain temporary enclosures to prevent public entry and to protect persons using other buildings and portions of the Sites and/or Premises, the public, and workers. Designer/Builder shall also protect the Work and existing facilities from the elements, and adjacent construction and improvements, persons, and trees and plants from damage and injury from demolition and construction operations.
- 12.3. Designer/Builder shall provide site access to existing facilities for persons using other buildings and portions of the Site, the public, and for deliveries and other services and activities.

13. Tree and Plant Protection.

- 13.1. Designer/Builder shall preserve and protect existing trees and plants on the Premises that are not designated or required to be removed, and those adjacent to the Premises.
- 13.2. Designer/Builder shall provide barriers to a minimum height of 4'-0" around drip line of each tree and plant, around each group of trees and plants, as applicable, in the proximity of demolition and construction operations.
- 13.3. Designer/Builder shall not park trucks, store materials, perform Work or cross over landscaped areas. Designer/Builder shall not dispose of paint thinners, water from cleaning, plastering or concrete operations, or other deleterious materials in landscaped areas, storm drain systems, or sewers. Plant materials damaged as a result of the performance of the Work shall, at the option of the District and at Designer/Builder's expense, either be replaced with new plant materials equal in size to those damaged or by payment of an amount representing the value of the damaged materials as determined by the District.
- 13.4. Designer/Builder shall remove soil that has been contaminated during the performance of the Work by oil, solvents, and other materials which could be harmful to trees and plants, and replace with good soil, at Designer/Builder's expense.

14. Excavation around Trees.

- 14.1. Excavation within drip lines of trees shall be done only where absolutely necessary and with written permission from the District.
- 14.2. Where trenching for utilities is required within drip lines, tunneling under and around roots shall be by hand digging and shall be approved by the District. Main lateral roots and taproots shall not be cut. All roots 2 inches in diameter and larger shall be tunneled under and heavily wrapped with wet burlap so as to prevent scarring or excessive drying. Smaller roots that interfere with installation of new work may be cut with prior approval by the District. Roots must first be cut with a Vermeer, or equivalent, root cutter prior to any trenching.
- 14.3. Where excavation for new construction is required within drip line of trees, hand excavation shall be employed to minimize damage to root system. Roots shall be relocated in backfill areas wherever possible. If encountered immediately adjacent to location of new construction, roots shall be cut approximately 6 inches back from new construction.

- 14.4. Approved excavations shall be carefully backfilled with the excavated materials approved for backfilling. Backfill shall conform to adjacent grades without dips, sunken areas, humps, or other surface irregularities. Do not use mechanical equipment to compact backfill. Tamp carefully using hand tools, refilling and tamping until Final Acceptance as necessary to offset settlement.
- 14.5. Exposed roots shall not be allowed to dry out before permanent backfill is placed. Temporary earth cover shall be provided, or roots shall be wrapped with four layers of wet, untreated burlap and temporarily supported and protected from damage until permanently relocated and covered with backfill.
- 14.6. Accidentally broken roots should be sawed cleanly 3 inches behind ragged end.

15. Security.

- 15.1. The Designer/Builder shall be responsible for Project security for materials, tools, equipment, supplies, and completed and partially completed Work.

16. Dust and Dirt.

- 16.1. Designer/Builder shall conduct demolition and construction operations to minimize the generation of dust and dirt, and prevent dust and dirt from interfering with the progress of the Work and from accumulating in the Work and adjacent areas including, without limitation, occupied facilities.
 - 16.2. Designer/Builder shall periodically water exterior demolition and construction areas to minimize the generation of dust and dirt.
 - 16.3. Designer/Builder shall ensure that all hauling equipment and trucks carrying loads of soil and debris shall have their loads sprayed with water or covered with tarpaulins, and as otherwise required by local and state ordinance.
 - 16.4. Designer/Builder shall prevent dust and dirt from accumulating on walks, roadways, parking areas, and planting, and from washing into sewer and storm drain lines.
- 17. Job Sign(s):** Signs other than a District-approved Project sign and/or signs required by law, for safety, or for egress, shall not be permitted, unless otherwise approved in advance by the District.
- 18. Publicity Releases.** Designer/Builder shall not release any information, story, photograph, plan, or drawing relating information about the Project to anyone, including press and other public communications medium, including, without limitation, on website(s).
- 19. Infectious Disease.** Designer/Builder shall comply with all of the “Infectious Disease” provisions in the Contract Documents related to the Designer/Builder’s staffing requirements and its compliance with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with any Infectious Disease.

Exhibit E

LIST OF PLANS AND SPECIFICATIONS

[INSERT/REVISE PERTINENT PLANS AND SPECIFICATIONS AS APPROPRIATE]

The Parties agree to amend the Contract and replace this **Exhibit E** after execution of the Contract to include those technical plans, drawings, or specifications relevant to Designer/Builder's Scope of Work and required for plan check and permitting.

Plans:

Specifications:

Exhibit F

SUBCONTRACTOR PROCUREMENT PROCESS

If the Designer/Builder submitted a final price in its Proposal for this Project at the time it is competing against other Designer/Builders, the Designer/Builder must comply with the applicable subcontractor procurement requirements of Education Code section 17250.35, but may otherwise select subcontractors based on its own non-discriminatory process.

If the District issues an RFQ/P and selects one Designer/Builder who will later provide a final price for this Project, that Designer/Builder shall, in addition to all legal requirements, including without limitation Education Code section 17250.35, take the following steps when the District directs the Designer/Builder to procure Subcontractors so that Designer/Builder can provide a final Contract Price for construction of the Project.

Bidding for Subcontractor Work. Designer/Builder's procurement/bidding for its Subcontractors shall comply with the requirements set forth in Education Code section 17250.35 and as required by the District. The subcontractor procurement process for all Designer/Builder's subcontractors performing work valued in excess of ½ of 1% of the Contract Price shall be the following:

1. **Public Notice.** Designer/Builder shall "provide public notice of availability of work to be subcontracted" and provide "a fixed date and time on which qualifications statements, bids, or proposals will be due" to solicit Subcontractors in compliance with statutory requirements and the District's process. (Ed. Code §, 17250.35(b)(1).) **The District intends to work with the Designer/Builder to issue an advertisement to solicit Subcontractors in compliance with statutory requirements and the District's process. Designer/Builder's Subcontractor advertisement must be approved by the District prior to publication.**
2. **District Review of Bid Packages and Notice.** At least fourteen (14) days prior to the bidding of subcontractor bid packages, Designer/Builder shall provide the District with a copy of the written notice it will publish (including newspaper advertising) to solicit subcontractors, and the subcontractor bid packages for each scope of work. The District reserves the right to request that Designer/Builder reasonably revise its published notice and adjust bid packages.
3. **Three Bona Fide Bids.** Designer/Builder is required to receive at least three (3) bona fide bids from subcontractors for all scopes of Work on the Project that constitute more than five percent (5%) of the total Project scope of Work. Prior to the Designer/Builder seeking bids, the District may, in its sole discretion, and upon Designer/Builder's written request, authorize Designer/Builder to utilize a different minimum number of bona fide bids from subcontractors.
4. **Prequalification or Qualification.** Designer/Builder may not prequalify non-MEP subcontractors solicited for work on this Project, unless the Designer/Builder provides any prequalification or qualification criteria, process or questionnaire to the District for approval at least fourteen (14) days prior to the bidding of subcontractor bid packages. Designer/Builder acknowledges that this process – the prequalification or any associated qualification process – is the only "best value" selection process as identified in Education Code Section 17250.35 that the District has approved for this project.
5. **Open-Book / Bid Opening.** Designer/Builder shall invite the District to attend all bid opening(s) for the Project and shall within 48 hours of the bid opening(s) provide copies or access to all bid documents provided by all Subcontractors.

6. **Missing Scopes of Work in Subcontractor Bids (“Bid Leveling”).** When Designer/Builder has received all Subcontractor bids, Designer/Builder shall identify all scope(s) of construction Work for which Designer/Builder did not receive a bid and provide a written justification as to why the scope(s) of construction Work was either not included in a subcontractor bid or was not bid on (“**Unbid Work**”). The District expects very little if any Unbid Work, far less than 1% of the Contract Price. After the District reviews the Designer/Builder’s justification, the Parties shall meet and confer and the District shall reasonably determine, in its sole discretion, whether to:
 - a. Direct the Designer/Builder to rebid the Unbid Work; or
 - b. If Designer/Builder requests, allow the Designer/Builder to self-perform the Unbid Work. If Designer/Builder self-performs the Unbid Work, Designer/Builder shall provide substantiation for the pricing for the Unbid Work that Designer/Builder intends to self-perform. The Parties shall negotiate in good faith to determine a reasonable price for the Unbid Work that Designer/Builder intends to self-perform. The District reserves the right to seek its own pricing of that Work to verify the value of Designer/Builder proposed pricing.
7. **Low Bid.** Because the “best value” process was implemented as part of the subcontractor procurement process, once the Designer/Builder receives Subcontractor bids, the Designer/Builder shall award subcontracts to subcontractors with the **lowest responsive, responsible bid** that have satisfied the above prequalification and/or qualification steps, as applicable.
8. **Self-Performing Construction Work.** If Designer/Builder intends to propose to self-perform portion(s) of the construction Work, it must:
 - a. Receive the District’s prior written approval.
 - b. Provide its pricing (its bid) to the District 48 hours prior to Designer/Builder receipt of subcontractor bids for those portion(s) of the Work.
 - c. Receive a minimum number of two (2) bona fide bids from subcontractors for scope(s) of Work that the Designer/Builder is bidding to self-perform, not including the Designer/Builder pricing/bid.

Exhibit G

GRANT AGREEMENT(S) AND CALSHAPE VENTILATION PROGRAM GUIDELINES

CalSHAPE Ventilation Program Guidelines: <https://www.energy.ca.gov/publications/2023/california-schools-healthy-air-plumbing-and-efficiency-ventilation-program>

Grant Agreement(s):

STATE OF CALIFORNIA
AGREEMENT SUMMARY

STD 215 (Rev. 04/2020)

AGREEMENT NUMBER 21R2VA1225	AMENDMENT NUMBER
---------------------------------------	-------------------------

CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED

1. CONTRACTOR'S NAME Mountain View Whisman Sch Dist		2. FEDERAL I.D. NUMBER 93-0991812
3. AGENCY TRANSMITTING AGREEMENT California Energy Commission	4. DIVISION, BUREAU, OR OTHER UNIT Renewable Energy Division - School Stimulus	5. AGENCY BILLING CODE 3360
6a. CONTRACT ANALYST NAME Ryan Kastigar	6b. EMAIL CalSHAPE@energy.ca.gov	6c. PHONE NUMBER

7. HAS YOUR AGENCY CONTRACTED FOR THESE SERVICES BEFORE?
 No Yes (If Yes, enter prior Contractor Name and Agreement Number)
 PRIOR CONTRACTOR NAME PRIOR AGREEMENT NUMBER
n/a

8. BRIEF DESCRIPTION OF SERVICES
 n/a

9. AGREEMENT OUTLINE (Include reason for Agreement: Identify specific problem, administrative requirement, program need or other circumstances making the Agreement necessary; include special or unusual terms and conditions.)
 n/a

10. PAYMENT TERMS (More than one may apply)

Monthly Flat Rate
 Quarterly
 One-Time Payment
 Progress Payment
 Itemized Invoice
 Withhold _____ %
 Advanced Payment Not To Exceed _____ or _____ %
 Reimbursement / Revenue
 Other (Explain)

11. PROJECTED EXPENDITURES

FUND TITLE	ITEM	FISCAL YEAR	CHAPTER	STATUTE	PROJECTED EXPENDITURES
<input type="checkbox"/> + <input type="checkbox"/> -	See encumbrance page included				

OBJECT CODE	AGREEMENT TOTAL	\$181,830.00
-------------	------------------------	---------------------

OPTIONAL USE	AMOUNT ENCUMBERED BY THIS DOCUMENT	\$181,830.00
	PRIOR AMOUNT ENCUMBERED FOR THIS AGREEMENT	

I certify upon my own personal knowledge that the budgeted funds for the current budget year are available for the period and purpose of the expenditure stated above.

	TOTAL AMOUNT ENCUMBERED TO DATE	\$181,830.00
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ACCOUNTING OFFICER'S SIGNATURE	ACCOUNTING OFFICER'S NAME (Print or Type)	DATE SIGNED
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12. AGREEMENT

STATE OF CALIFORNIA
AGREEMENT SUMMARY
 STD 215 (Rev. 04/2020)

AGREEMENT NUMBER 21R2VA1225	AMENDMENT NUMBER
---------------------------------------	-------------------------

AGREEMENT	TERM FROM	TERM THROUGH	TOTAL COST OF THIS TRANSACTION	BID, SOLE SOURCE, EXEMPT
Original	8/12/2022	12/01/2026	\$181,830.00	Grant
<input type="checkbox"/> + <input type="checkbox"/> - Amendment 1				
TOTAL				

13. BIDDING METHOD USED

Request for Proposal (RFP) *(Attach justification if secondary method is used)*
 Use of Master Service Agreement
 Invitation for Bid (IFB)
 Exempt from Bidding *(Give authority for exempt status)*
 Sole Source Contract *(Attach STD. 821)*
 Other *(Explain)* Grant

Note: Proof of advertisement in the State Contracts Register or an approved form STD. 821, Contract Advertising Exemption Request, must be attached

14. SUMMARY OF BIDS *(List of bidders, bid amount and small business status) (If an amendment, sole source, or exempt, leave blank)*
 n/a

15. IF AWARD OF AGREEMENT IS TO OTHER THAN THE LOWER BIDDER, EXPLAIN REASON(S) *(If an amendment, sole source, or exempt, leave blank)*
 n/a

16. WHAT IS THE BASIS FOR DETERMINING THAT THE PRICE OR RATE IS REASONABLE?
 n/a

17a. JUSTIFICATION FOR CONTRACTING OUT *(Check one)*

Contracting out is based on cost savings per Government Code 19130(a). The State Personnel Board has been so notified.
 Contracting out is justified based on Government Code 19130(b). When this box is checked, a completed JUSTIFICATION - CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 547.60 must be attached to this document.
 Not Applicable *(Interagency / Public Works / Other Grant)*

17b. EMPLOYEE BARGAINING UNIT NOTIFICATION
 By checking this box, I hereby certify compliance with Government Code section 19132(b)(1).

AUTHORIZED SIGNATURE	SIGNER'S NAME <i>(Print or Type)</i>	DATE SIGNED
----------------------	--------------------------------------	-------------

18. FOR AGREEMENTS IN EXCESS OF \$5,000: Has the letting of the agreement been reported to the Department of Fair Employment and Housing? No Yes N/A

19. HAVE CONFLICT OF INTEREST ISSUES BEEN IDENTIFIED AND RESOLVED AS REQUIRED BY THE STATE CONTRACT MANUAL SECTION 7.10? No Yes N/A

20. FOR CONSULTING AGREEMENTS: Did you review any contractor evaluations on file with the DGS Legal Office? None on file No Yes N/A

21. IS A SIGNED COPY OF THE FOLLOWING ON FILE AT YOUR AGENCY FOR THIS CONTRACTOR?

A. Contractor Certification Clauses No Yes N/A

B. STD 204 Vendor Data Record No Yes N/A

22. REQUIRED RESOLUTIONS ARE ATTACHED
 No Yes N/A

23. IS THIS A SMALL BUSINESS AND/OR A DISABLED VETERAN BUSINESS CERTIFIED BY DGS?
 No Yes
 SB/DVBE Certification Number: _____

24. ARE DISABLED VETERANS BUSINESS ENTERPRISE GOALS REQUIRED? *(If an amendment, explain changes if any)* No *(Explain below)* Yes _____ % of Agreement

25. IS THIS AGREEMENT (WITH AMENDMENTS) FOR A PERIOD OF TIME LONGER THAN THREE YEARS? No Yes *(If Yes, provide justification below)*

I certify that all copies of the referenced Agreement will conform to the original agreement sent to the Department of General Services.

SIGNATURE	NAME/TITLE <i>(Print or Type)</i>	DATE SIGNED
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STATE OF CALIFORNIA

AGREEMENT SUMMARY

STD 215 (Rev. 04/2020)

AGREEMENT NUMBER 21R2VA1225	AMENDMENT NUMBER
---------------------------------------	-------------------------

JUSTIFICATION - CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 547.60

In the space provided below, the undersigned authorized state representative documents, with specificity and detailed factual information, the reasons why the contract satisfies one or more of the conditions set forth in Government Code section 19130(b). Please specify the applicable subsection. Attach extra pages if necessary.

The undersigned represents that, based upon his or her personal knowledge, information or belief the above justification correctly reflects the reasons why the contract satisfies Government Code section 19130(b).

SIGNATURE	NAME/TITLE <i>(Print or Type)</i>	DATE SIGNED
PHONE NUMBER	STREET ADDRESS	
EMAIL	CITY	STATE ZIP



RECIPIENT Mountain View Whisman Sch Dist	AGREEMENT NUMBER 21R2VA1225
ADDRESS Rebecca Westover 1400 Montecito Ave. Mountain View, CA 94043	AGREEMENT TERM Ends 24 months after Effective Date The effective date of this Agreement is either the start date or the approval signature date by the California Energy Commission representative below, whichever is later. The California Energy Commission shall be the last party to sign. No work is authorized, nor shall any work begin, until on or after the effective date.


PROJECT DESCRIPTION

The parties agree to comply with the terms and conditions of the following Exhibits which are by this reference made a part of the agreement.

- Exhibit A** – Scope of Work
- Exhibit B** – Budget
- Exhibit C** – Agreement Contacts
- Exhibit D** – Terms and Conditions

REIMBURSABLE AMOUNT \$181,830.00
Total of REIMBURSABLE AMOUNT \$181,830.00

The undersigned parties have read the attachments to this agreement and will comply with the standards and requirements contained therein.

CALIFORNIA ENERGY COMMISSION		RECIPIENT	
AUTHORIZED SIGNATURE 	DATE 	AUTHORIZED SIGNATURE 	DATE 8-4-22
NAME Adrienne Winuk		NAME Ron Wheelahan	
TITLE Contracts, Grants, and Loans Office Manager		TITLE Interim Chief Business Officer	
CALIFORNIA ENERGY COMMISSION ADDRESS 1516 9th Street, MS 18, Sacramento, CA 95814			

**EXHIBIT A
Scope of Work**

Mountain View Whisman 43695910000000

Total Number of Sites 1

Site Name

Mariano Castro Elementary

CDS Code

43695916048003

Mariano Castro Elementary

Category

Assessment & Maintenance

Filter

Monitor

Unit Count

102

175

44

**EXHIBIT B
Budget**

**Mountain View Whisman
4369591000000**

**Total Requested Amount
\$181,830.00**

Site Name
Mariano Castro Elementary

Requested Amount
\$181,830.00

**Mariano Castro Elementary
Category**

Assessment & Maintenance
Filter
Monitor
Contingency

Requested Amount
\$112,000.00
\$13,125.00
\$26,400.00
\$30,305.00

Total Grant Award

Initial Payment
Final Payment

\$181,830.00
\$90,915.00
\$90,915.00

EXHIBIT C Contacts

CalSHAPE Program Staff

California Energy Commission
715 P Street
Sacramento, CA 95814
E-mail: CalSHAPE@energy.ca.gov

Confidential Deliverables/Products

Adrienne Winuk, Manager
California Energy Commission
Contracts, Grants and Loans Office
715 P Street, MS - 18
Sacramento, CA 95814
E-mail: Adrienne.Winuk@energy.ca.gov

Invoices, Progress Reports and Non-Confidential Deliverables to

Mary Hung
California Energy Commission
Accounting Office
714 P Street MS - 2
Sacramento, CA 95813
E-mail: Mary.Hung@energy.ca.gov

EXHIBIT C

Contacts

LEA Contact (Primary)

Name Dr. Ayinde Rudolph
Address 1400 Montecito Ave.
City, State, Zip Mountain View, CA, 94043
E-mail supt@mvwsd.org

LEA Contact (Alternate)

Name Ron Wheelehan
Address 1400 Montecito Ave.
City, State, Zip Mountain View, CA, 94043
E-mail rwheelehan@mvwsd.org

LEA Contact (Alternate)

Name Brian Perron
Address 1400 Montecito Ave.
City, State, Zip Mountain View, CA, 94043
E-mail bperron@mvwsd.org

EXHIBIT D

**CALIFORNIA SCHOOLS HEALTHY AIR, PLUMBING, AND EFFICIENCY
(CALSHAPE) STANDARD GRANT TERMS AND CONDITIONS**

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1. **Introduction**

This grant agreement (Agreement) between the California Energy Commission (Energy Commission, or Commission) and the Recipient is funded by the School Energy Efficiency Stimulus Program, established by Assembly Bill 841 (Ting, Chapter 372, Statutes of 2020), which in part provides grants to assess, maintain, adjust, repair, or upgrade heating, ventilation, and air conditioning systems. This grant program is referred to as the California Schools Healthy Air, Plumbing, and Efficiency (CalSHAPE) Ventilation Program.

This Agreement includes: (1) the Agreement signature page (**form CEC-146**); (2) the scope of work (**Exhibit A**); (3) the budget (**Exhibit B**); (4) a contacts list (**Exhibit C**); (5) these terms and conditions, which are standard requirements for CalSHAPE ventilation program grant awards (**Exhibit D**); (6) any special terms and conditions that the Energy Commission may impose to address the unique circumstances of the funded project, which take precedence in the event of a conflict with any provision of these terms and conditions (**Exhibit E**); (7) all attachments; and (8) all documents incorporated by reference.

All work and expenditure of Commission-reimbursed funds must occur prior to the Agreement term end date specified on the CEC-146 form.

2. **Documents Incorporated by Reference**

The documents below are incorporated by reference into this Agreement. These terms and conditions will govern in the event of a conflict with the documents below, with the exception of the documents in subsections (f) and (g) below. Where this Agreement or California laws and regulations are silent or do not apply, the Energy Commission will use the federal cost principles and acquisition regulations listed below as guidance in determining whether reimbursement of claimed costs is allowable. Documents incorporated by reference include:

Funding Documents

- a. The notice of funding availability for the project supported by this Agreement
- b. The Recipient's application submitted in response to the notice of funding availability

Program Guidelines

- c. CalSHAPE Ventilation Program Commission Guidelines, available at <https://www.energy.ca.gov/programs-and-topics/programs/california-schools-healthy-air-plumbing-and-efficiency-program>

Federal Cost Principles (*applicable to state and local governments, Indian tribes, institutions of higher education, and nonprofit organizations*)

- d. 2 Code of Federal Regulations (CFR) Part 200, Subpart E (Sections 200.400 et seq.)

Federal Acquisition Regulations (*applicable to commercial organizations*)

- e. 48 CFR, Ch.1, Subchapter E, Part 31, Subpart 31.2: Contracts with Commercial Organizations (supplemented by 48 CFR, Ch. 9, Subchapter E, Part 931, Subpart 931.2 for Department of Energy grants)

Nondiscrimination

- f. 2 California Code of Regulations, Section 11099 et seq.: Contractor Nondiscrimination and Compliance

General Laws

- g. Any federal, state, or local laws or regulations applicable to the project that are not expressly listed in this Agreement

3. **Standard of Performance**

In performing work under the Agreement, the Recipient, its subcontractors, and their employees are responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures for the type of work performed.

4. **Due Diligence**

- a. The Recipient must take timely actions that, taken collectively, move this project to completion.
- b. Energy Commission staff will periodically evaluate the project schedule for completion of Scope of Work tasks. This evaluation may include but not be limited to random checks of project progress at periodic intervals set by the Energy Commission. Recipients subject to a project check must complete a progress report using a template prepared by the Energy Commission to provide information on the project status and expected completion date.
- c. If Energy Commission staff determines that: (1) the Recipient is not diligently completing the tasks in the Scope of Work; or (2) the time remaining in this Agreement is insufficient to complete all project tasks by the Agreement end date, Energy Commission staff may recommend that this Agreement be terminated, and the Commission may terminate this Agreement without prejudice to any of its other remedies.

5. **Products**

- a. **“Products”** are any tangible item specified for delivery to the Energy Commission in the Scope of Work, such as reports and summaries. The Recipient will submit all products identified in the Scope of Work to Energy Commission staff, in the manner and form specified in the Scope of Work.

If Energy Commission staff determines that a product is substandard given its description and intended use as described in this Agreement, Energy Commission staff, without prejudice to any of the Commission’s other remedies, may refuse to authorize payment for the product and any subsequent products that rely on or are based upon the product under this Agreement.

- b. **Failure to Submit Products**

Failure to submit a product required in the Scope of Work may be considered material noncompliance with the Agreement terms. Without prejudice to any other remedies, noncompliance may result in actions such as the withholding of future payments or awards, or the suspension or termination of the Agreement.

- c. **Legal Statements on Products**

All documents that result from work funded by this Agreement and are released to the public must include the following statement to ensure no Commission endorsement of documents:

LEGAL NOTICE

This document was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. Neither the Commission, the State of California, nor the Commission's employees, contractors, or subcontractors makes any warranty, express or implied, or assumes any legal liability for the information in this document; nor does any party represent that the use of this information will not infringe upon privately owned rights. This document has not been approved or disapproved by the Commission, nor has the Commission passed upon the accuracy of the information in this document.

6. Amendments

a. Procedure for Requesting Extensions

The Recipient must submit a written request to the CalSHAPE Program for a one-time only extension to the Agreement, not to exceed six-months nor the final program reporting deadline date of June 1, 2026. The request must include:

- A brief summary of the proposed extension; and
- A brief summary of the reason(s) for the extension

b. Approval of Changes

No amendment or variation of this Agreement shall be valid unless made in writing and signed by both of the parties except for the Commission's unilateral termination rights in Section 16 of these terms. No oral understanding or agreement is binding on any of the parties.

7. Contracting and Procurement Procedures

This section provides general requirements for agreements entered into between the Recipient and subcontractors for the performance of this Agreement.

a. Contractor's Obligations to Subcontractors

1) The Recipient is responsible for handling all contractual and administrative issues arising out of or related to any subcontracts it enters into for the performance of this Agreement.

2) Nothing contained in this Agreement or otherwise creates any contractual relation between the Commission and any subcontractors, and no subcontract may relieve the Recipient of its responsibilities under this Agreement. The Recipient agrees to be as fully responsible to the Commission for the acts and omissions of its subcontractors or persons directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Recipient.

The Recipient's obligation to pay its subcontractors is an independent obligation from the Commission's obligation to make payments to the Recipient. As a result, the Commission has no obligation to pay or enforce the payment of any funds to any subcontractor.

3) The Recipient is responsible for establishing and maintaining contractual agreements with and reimbursing each subcontractor for work performed in accordance with the terms of this Agreement.

b. Flow-Down Provisions

Subcontracts funded in whole or in part by this Agreement must include language conforming to the provisions below, unless the subcontracts are entered into by the University of California (UC) or the U.S. Department of Energy (DOE) national laboratories. UC may use the terms and conditions negotiated by the Energy Commission with UC for its subcontracts. DOE national laboratories may use the terms and conditions negotiated with DOE (please contact the Commission Grants Officer for these terms).

- Standard of Performance (Section 3)
- Legal Statements on Products (included in Section 5, “Products”)
- Prevailing Wage (Section 10)
- Recordkeeping, Cost Accounting, and Auditing (Section 11)
- Equipment (Section 14)
- Indemnification (Section 17)
- Intellectual Property (Section 20)
- Access to Sites and Records (included in Section 22, “General Provisions”)
- Nondiscrimination (included in Section 23, “Certifications and Compliance”)
- Survival of the following sections:
 - Equipment (Section 14)
 - Recordkeeping, Cost Accounting, and Auditing (Section 11)
 - Intellectual Property (Section 20)
 - Access to Sites and Records (included in Section 22, “General Provisions”)

Subcontracts funded in whole or in part by this Agreement must also include the following:

- A clear and accurate description of the material, products, or services to be procured.
- A detailed budget and timeline.
- Provisions that allow for administrative, contractual, or legal remedies in instances where subcontractors breach contract terms, in addition to sanctions and penalties as may be appropriate.
- Provisions for termination by the Recipient, including termination procedures and the basis for settlement.
- A statement that further assignments will not be made to any third or subsequent tier subcontractor without additional advance written consent of the Commission.

c. Audits

All subcontracts entered into for the performance of this Agreement are subject to examination and audit by the Energy Commission, Bureau of State Audits, or the California Public Utilities Commission for a period of three (3) years after payment of the Recipient’s final invoice under this Agreement.

d. Copies of Subcontracts

The Recipient must provide a copy of its subcontracts upon request by the Energy Commission.

e. Conflicting Subcontract Terms

Prior to the execution of this Agreement, the Recipient will notify the CalSHAPE Program of any known or reasonably foreseeable conflicts between this Agreement and its agreements with any subcontractors (e.g., conflicting intellectual property or payment terms). If the Recipient discovers any such conflicts after the execution of this Agreement, it will notify the CalSHAPE Program of the conflict within fifteen (15) days of discovery. The Energy Commission may, without prejudice to its other remedies, terminate this Agreement if any conflict impairs or diminishes its value.

f. Penalties for Noncompliance

Without limiting the Commission's other remedies, failure to comply with the above requirements may result in the termination of this Agreement.

8. Payment of Funds

a. Timing of Payment

See Chapter 3, Section G, Timing of Payment, of the CalSHAPE Ventilation Commission Guidelines.

Final payment will only be made after the Energy Commission: (1) receives and approves the Recipient's final reporting; and (2) receives and accepts all other required documentation necessary for the Energy Commission to determine the total final amount due to the Recipient, based on actual and allowable Incurred Costs and Paid Costs under this Agreement, up to the total grant award amount.

Without limiting any other rights and remedies available to the Energy Commission, Recipient must return funds to the Energy Commission received under this Agreement if, for example, the Recipient was overpaid in the first payment, did not complete the project, or did not meet other program requirements.

b. Reimbursable Cost Requirements

In addition to any other requirements in this Agreement, the Energy Commission is only obligated to reimburse the Recipient for Incurred and Paid Costs that are (1) incurred during the Agreement Term; (2) invoiced within the required timeframes of this Agreement; (3) made in accordance with the Agreement's Budget; and (4) actual and allowable expenses under this Agreement.

ALL of the items in the Budget are capped amounts (i.e., maximums), and the Recipient can only bill its ACTUAL amount up to capped amounts listed in the Budget. For example, if the Budget includes an employee's hourly rate of \$50/hour but the employee is only paid \$40/hour, the Recipient can only bill for \$40/hour. Under the same example, if the employee earned \$70/hour but the Budget only lists \$50/hour, the Recipient can only bill for \$50. If the actual rates exceed the approved rates in the Budget, the difference may be charged to the agreement as a match share expenditure.

c. Payment Requests

Recipient agrees and acknowledges that time is of the essence in submitting the final payment request. The Commission has a limited period of time, set by law, in which it can reimburse funds under this Agreement. Without prejudice to the Commission's other rights, the Recipient risks not receiving any funds, and relieves the Commission of any duty and liability whatsoever to pay, for any payment requests received after the end of the Agreement.

d. Invoice Approval and Disputes:

Payment is subject to Energy Commission staff's approval. Payments will be made to the Recipient for undisputed invoices. An undisputed invoice is an invoice submitted by the Recipient for work performed, for which project expenditures and products meet all Agreement conditions, and for which additional evidence is not required to determine its validity.

The invoice will be disputed if all products due for the billing period have not been received and approved, if the invoice is inaccurate, or if it does not comply with the terms of this Agreement. If the invoice is disputed, the Recipient will be notified by the CEC.

e. Multiple Non-Energy Commission Funding Sources:

No payment will be made for costs identified in recipient invoices that have been or will be reimbursed by another source, including but not limited to an agreement with another government entity.

"Government Entity" means: (1) a state governmental agency; (2) a state college or university; (3) a local government entity or agency, including those created as a Joint Powers Authority; (4) an auxiliary organization of the California State University or a California community college; (5) the federal government; (6) a foundation organized to support the Board of Governors of the California Community Colleges; and (7) an auxiliary organization of the Student Aid Commission established under California Education Code Section 69522.

f. Reduced funding:

If the Energy Commission does not receive sufficient funds under the Budget Act or from the investor-owned utility administrators of the CalSHAPE program to fully fund the work identified in Exhibit A (Scope of Work), the following will occur:

- 1) If the Energy Commission has received a reduced amount of funds for the work, it may: (1) offer an Agreement amendment to the Recipient to reflect the reduced amount; or (2) cancel this Agreement (with no liability occurring to the State).
- 2) If the Energy Commission has received no funds for the work identified in Exhibit A: (1) this Agreement will be of no force and effect; (2) the State will have no obligation to pay any funds to the Recipient; and (3) the Recipient will have no obligation to perform any work under this Agreement.

g. Allowability of Costs

- 1) Allowable Costs

The costs for which the Recipient will be reimbursed under this Agreement include all costs, direct and indirect, incurred in the performance of the work identified in the Scope of Work. Costs must be incurred within the Agreement term. Factors to be considered in determining whether an individual item of cost is allowable include: (i) reasonableness of the item, including necessity of the item for the work; (ii) applicable federal cost principles or acquisition regulations incorporated by reference in Section 2 of this Agreement; and (iii) the terms and conditions of this Agreement.

2) Unallowable Costs

See Chapter 3, Section I, Ineligible Costs, of the CalSHAPE Ventilation Program Commission Guidelines.

3) Except as provided for in this Agreement or applicable California law or regulations, the Recipient will use the federal cost principles and/or acquisition regulations incorporated by reference in Section 2 of this Agreement when determining allowable and unallowable costs. In the event of a conflict, this Agreement takes precedence over the federal cost principles and/or acquisition regulations.

h. Final Invoice for Remaining Funds

See Chapter 4, Section C, Final Documentation and Invoice for Remaining Funds, of the CalSHAPE Ventilation Program Commission Guidelines. The Recipient must submit all invoices electronically by uploading them to the CalSHAPE Online System, which is found at <https://calshape.energy.ca.gov/>.

i. If the Recipient has not otherwise provided to the Commission documentation showing the Recipient's payment of Incurred Costs, the Recipient shall provide such documentation as soon as possible and not later than three working days from a request from Commission personnel.

j. Certification

The following certification will be included on each payment request form and signed by the Recipient's authorized officer:

The documents included in this request for payment are true and correct to the best of my knowledge and I have authority to submit this request. I certify that reimbursement for these costs has not and will not be received from any other sources, including but not limited to a government entity contract, subcontract, or other procurement method. For projects considered to be a public work, prevailing wages were paid to eligible workers who provided labor for the work covered by this invoice; the Recipient and all subcontractors have complied with prevailing wage laws.

9. **Reserved**

10. **Prevailing Wage**

a. Requirement

Projects funded by the Energy Commission often involve construction, alteration, demolition, installation, repair, or maintenance work over \$1,000. Such projects might be considered “public works” under the California Labor Code (See California Labor Code Section 1720 et seq. and Title 8 California Code of Regulations, Section 16000 et seq.). Public works projects require the payment of prevailing wages. Prevailing wage rates can be significantly higher than non-prevailing wage rates.

b. Determination of Project’s Status

Only the California Department of Industrial Relations (DIR) and courts of competent jurisdiction may issue legally binding determinations that a particular project is or is not a public work. If the Recipient is unsure whether the project funded by the Agreement is a “public work” as defined in the California Labor Code, it may wish to seek a timely determination from DIR or an appropriate court. As such processes can be time consuming, it may not be possible to obtain a timely determination before the date for performance of the Agreement.

By accepting this grant, the Recipient is fully responsible for complying with all California public works requirements, including but not limited to payment of prevailing wage. As a material term of this grant, the Recipient must either:

- 1) Timely obtain a legally binding determination from DIR or a court of competent jurisdiction before work begins on the project that the proposed project is not a public work; or
- 2) Assume that the project is a public work and ensure that:
 - Prevailing wages are paid unless and until DIR or a court of competent jurisdiction determines that the project is not a public work;
 - The project budget for labor reflects these prevailing wage requirements; and
 - The project complies with all other requirements of prevailing wage law, including but not limited to keeping accurate payroll records and complying with all working hour requirements and apprenticeship obligations.

California Prevailing Wage law provides for substantial damages and financial penalties for failure to pay prevailing wages when such payment is required.

c. Subcontractors and Flow-down Requirements

The Recipient will ensure that its subcontractors also comply with the public works/prevailing wage requirements above. The Recipient will ensure that all agreements with its subcontractors to perform work related to this Project contain the above terms regarding payment of prevailing wages on public works projects. The Recipient is responsible for any failure of its subcontractors to comply with California prevailing wage and public works laws.

d. Indemnification and Breach

Any failure of the Recipient or its subcontractors to comply with the above requirements will constitute breach of this Agreement which excuses the Commission's performance of this Agreement at the Commission's option, and will be at the Recipient's sole risk. In such a case, the Commission will refuse payment to the Recipient of any amount under this award and the Commission will be released, at its option, from any further performance of this Agreement or any portion thereof. The Recipient will indemnify the Energy Commission and hold it harmless for any and all financial consequences arising out of or resulting from the failure of the Recipient and/or any of its subcontractors to pay prevailing wages or to otherwise comply with the requirements of prevailing wage law.

e. Budget

The Recipient's budget on public works projects must indicate which job classifications are subject to prevailing wage. For detailed information about prevailing wage and the process to determine if the proposed project is a public work, the Recipient may wish to contact DIR or a qualified labor attorney for guidance.

f. Covered Trades

For public works projects, the Recipient may contact DIR for a list of covered trades and the applicable prevailing wage.

g. Questions

If the Recipient has any questions about this contractual requirement or the wage, record keeping, apprenticeship, or other significant requirements of California prevailing wage law, the Recipient should consult DIR and/or a qualified labor attorney before entering into this Agreement.

h. Certification

The Recipient will certify to the Energy Commission on each payment request form either that: (a) prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and the Recipient and all contractors and subcontractors otherwise complied with all California prevailing wage laws; or (b) the project is not a public work requiring the payment of prevailing wages. In the latter case, the Recipient will provide competent proof of a DIR or court determination that the project is not a public work requiring the payment of prevailing wages.

Prior to the release of any retained funds under this Agreement, the Recipient will submit to the Energy Commission the above-described certificate signed by the Recipient and all contractors and subcontractors performing public works activities on the project. Absent this certificate, the Recipient will have no right to any funds under this Agreement, and Commission will be relieved of any obligation to pay any funds.

11. Recordkeeping, Cost Accounting, and Auditing

a. Cost Accounting

The Recipient will keep separate, complete, and correct accounting of the costs involved in completing the project and any match-funded portion of the project. The Commission or its agent will have the right to examine the Recipient's books of accounts at all reasonable times, to the extent necessary to verify the accuracy of the Recipient's reports.

b. Accounting Procedures

The Recipient's costs will be determined on the basis of its accounting system procedures and practices employed as of the effective date of this Agreement, provided that the Recipient uses generally accepted accounting principles and cost reimbursement practices. The Recipient's cost accounting practices used in accumulating and reporting costs during the performance of this Agreement will be consistent with the practices used in estimating costs for any proposal to which this Agreement relates; provided that such practices are consistent with the other terms of this Agreement and that such costs may be accumulated and reported in greater detail during performance of this Agreement.

The Recipient's accounting system will distinguish between direct and indirect costs. All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to costs incurred under this Agreement.

c. Inspections, Assessment, and Studies

If selected, the Recipient must cooperate with and participate in the following:

- 1) An assessment of a funded project's greenhouse gas reductions and energy savings. This may include, but is not limited to, requests from Energy Commission staff or its delegate for data, project and equipment information, and reasonable access to the project site to assist with determining greenhouse gas reductions and energy savings attributable to the funded project. Costs associated with any activities associated with such an assessment will not be funded by a CalSHAPE Program grant.
- 2) A site inspection and verification of installation and operation of new fixtures and appliances. This may include, but is not limited to, providing Energy Commission staff or its delegates reasonable access to the funded project site to inspect and verify installation and operation. Recipient understands that any such inspection and verification by Energy Commission staff or its delegates is not a safety inspection.
- 3) A measurement and evaluation study that will be used to analyze current program performance and improve future program designs. This may include but is not limited to providing Energy Commission staff or its delegates data, project and equipment information, and reasonable access to the funded project site.

d. Audit Rights

The Recipient will maintain books, records, documents, and other evidence, based on the procedures set forth above, sufficient to reflect properly all costs claimed to have been incurred in the performance of this Agreement. The Energy Commission, another state agency, and/or a public accounting firm designated by the Energy Commission may audit the Recipient's accounting records at all reasonable times, with prior notice by the Energy Commission.

It is the intent of the parties that the audits will ordinarily be performed not more frequently than once every twelve (12) months during the performance of the work and once at any time within three (3) years after payment by the Energy Commission of the Recipient's final invoice. However, performance of any such interim audits by the Energy Commission does not preclude further audit. The Energy Commission may audit books, records, documents, and other evidence relevant to the Recipient's royalty payment obligations (see Section 21) for a period of ten (10) years after payment of the Recipient's final invoice.

The Recipient will allow the auditor(s) to access such records during normal business hours, and will allow interviews of any employees who might reasonably have information related to such records. The Recipient will include a similar right of the state to audit records and interview staff in any subcontract related to the performance of this Agreement.

e. Refund to the Energy Commission

If the Energy Commission determines that any invoiced and paid amounts exceed the actual allowable incurred costs, the Recipient will repay the amounts to the Energy Commission within thirty (30) days of request or as otherwise agreed by the Energy Commission and the Recipient. If the Energy Commission does not receive such repayments, it will be entitled to take any actions enforce any remedies available to it, such as withholding further payments to the Recipient and seeking repayment from the Recipient.

f. Audit Cost

The Recipient will bear its cost of participating in any audit (e.g., mailing or travel expenses). The Energy Commission will bear the cost of conducting the audit unless the audit reveals an error detrimental to the Energy Commission that exceeds more than ten percent (10%) or \$5,000 (whichever is greater) of the amount audited. The Recipient will pay the refund as specified in subsection (d), and will reimburse the Energy Commission for reasonable costs and expenses incurred by the Commission in conducting the audit.

g. Match or Cost Share

If the budget includes a match share requirement, the Recipient's commitment of resources, as described in this Agreement, is a required expenditure for receipt of Energy Commission funds. The funds will be released only if the required match percentages are expended. The Recipient must maintain accounting records detailing the expenditure of the match (actual cash and in-kind, non-cash services), and report on match share expenditures on its request for payment.

12. Workers' Compensation Insurance

- a. The Recipient warrants that it carries Worker's Compensation Insurance for all of its employees who will be engaged in the performance of this Agreement, and agrees to furnish to the CalSHAPE Program satisfactory evidence of this insurance upon the CalSHAPE Program's request.
- b. If the Recipient is self-insured for worker's compensation, it warrants that the self-insurance is permissible under the laws of the State of California and agrees to furnish to the CalSHAPE Program satisfactory evidence of the insurance upon the CalSHAPE Program's request.

13. Permits and Clearances

The Recipient is responsible for ensuring that all necessary permits and environmental documents are prepared and that clearances are obtained from the appropriate agencies.

14. Equipment

Title to equipment acquired by the Recipient with grant funds will vest in the Recipient. The Recipient may use the equipment in the project or program for which it was acquired as long as needed, regardless of whether the project or program continues to be supported by grant funds. However, the Recipient may not sell, lease, or encumber the property (i.e., place a legal burden on the property such as a lien) during the Agreement term without Energy Commission Staff's prior written approval.

The Recipient may refer to the applicable federal regulations incorporated by reference in this Agreement for guidance regarding additional equipment requirements.

15. Stop Work

Energy Commission staff may, at any time by written notice to the Recipient, require the Recipient to stop all or any part of the work tasks in this Agreement. Stop work orders may be issued for reasons such as a project exceeding budget, noncompliance with the standard of performance, out of scope work, project delays, and misrepresentations.

- a. Compliance. Upon receipt of a stop work order, the Recipient must immediately take all necessary steps to comply with the order and to stop the incurrence of costs allocable to the Energy Commission.
- b. Canceling a Stop Work Order. The Recipient may resume the work only upon receipt of written instructions from Energy Commission staff.

16. Termination

a. Purpose

Because the Energy Commission is a state entity and provides funding on behalf of all California ratepayers, it must be able to terminate the Agreement upon the default of the Recipient and to proceed with the work required under the Agreement in any manner it deems proper. The Recipient agrees that upon any of the events triggering the termination of the Agreement by the Energy Commission, the Energy Commission has the right to terminate the Agreement, and it would constitute bad faith of the Recipient to interfere with the immediate termination of the Agreement by the Energy Commission.

b. With Cause

The Energy Commission may, for cause, terminate this Agreement upon giving five (5) calendar days advance written notice to the Recipient. In this event, the Recipient will use all reasonable efforts to mitigate its expenses and obligations. The Recipient will relinquish possession of equipment purchased for this Agreement with Energy Commission funds to the Commission, or the Recipient may purchase the equipment as provided by the terms of this Agreement, with approval of the Energy Commission.

The term “for cause” includes but is not limited to the following:

- Partial or complete loss of match funds;
- Reorganization to a business entity unsatisfactory to the Energy Commission;
- Retention or hiring of subcontractors, or replacement or addition of personnel, that fail to perform to the standards and requirements of this Agreement;
- The Recipient’s inability to pay its debts as they become due and/or the Recipient’s default of an obligation that impacts its ability to perform under this Agreement; or
- Significant change in state or Energy Commission policy such that the work or product being funded would not be supported by the Commission.

c. Without Cause

The Energy Commission may terminate this Agreement without cause upon giving thirty (30) days advance written notice to the Recipient. In this event, the Recipient will use all reasonable efforts to mitigate its expenses and obligations.

17. Indemnification

To the extent allowed under California law, the Recipient will indemnify, defend, and hold harmless the state (including the Energy Commission) and state officers, agents, and employees from any and all claims and losses in connection with the performance of this Agreement.

18. Reserved

19. Reserved

20. Intellectual Property

- a. The Energy Commission makes no claim to intellectual property developed under this Agreement that is not specified for delivery, except as expressly provided herein.

“Intellectual property” means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice with Agreement or match funds during or after the Agreement term; (b) any associated proprietary rights to these items, such as patent and copyright; and (c) any upgrades or revisions to these items.

“Works of authorship” does not include written products created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices.

- b. The Energy Commission owns all products identified in the Scope of Work, with the exception of products that fall within the definition of “intellectual property.”

“Product” means any tangible item specified for delivery to the Energy Commission in the Scope of Work.

- c. Both the Energy Commission and the California Public Utilities Commission have a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce intellectual property for governmental purposes, including but not limited to providing data and reports to the California Public Utilities Commission, State legislature, and Utilities and using data for the development of future programs.

- d. Intellectual Property Indemnity

The Recipient may not, in supplying work under this Agreement, knowingly infringe or misappropriate any intellectual property right of a third party, and will take reasonable actions to avoid infringement.

To the extent allowed under California law, the Recipient will defend and indemnify the Energy Commission and the California Public Utilities Commission from and against any claim, lawsuit, or other proceeding, loss, cost, liability, or expense (including court costs and reasonable fees of attorneys and other professionals) to the extent arising out of: (i) any third party claim that a product infringes any patent, copyright, trade secret, or other intellectual property right of any third party; or (ii) any third party claim arising out of the negligent or other tortious acts or omissions by the Recipient or its employees, subcontractors, or agents in connection with or related to the products or the Recipient's performance under this Agreement.

21. Reserved

22. General Provisions

a. Governing Law

This Agreement is governed by the laws of the State of California as to interpretation and performance.

b. Independent Capacity

In the performance of this Agreement, the Recipient and its agents, subcontractors, and employees will act in an independent capacity and not as officers, employees, or agents of the State of California.

c. Assignment

This Agreement is not assignable or transferable by the Recipient either in whole or in part without the consent of the Energy Commission in the form of an amendment.

d. Timeliness

Time is of the essence in this Agreement.

e. Severability

If any provision of this Agreement is unenforceable or held to be unenforceable, all other provisions of this Agreement will remain in full force and effect.

f. Waiver

No waiver of any breach of this Agreement constitutes waiver of any other breach. All remedies in this Agreement will be taken and construed as cumulative, meaning in addition to every other remedy provided in the Agreement or by law.

g. Assurances

The Commission reserves the right to seek further written assurances from the Recipient and its team that the work under this Agreement will be performed in accordance with the terms of the Agreement.

h. Change in Business

- 1) The Recipient will promptly notify the Energy Commission of the occurrence of any of the following:
 - a) A change of address.
 - b) A change in business name or ownership.
 - c) The existence of any litigation or other legal proceeding affecting the project or Agreement.

- d) The occurrence of any casualty or other loss to project personnel, equipment, or third parties.
 - e) Receipt of notice of any claim or potential claim against the Recipient for patent, copyright, trademark, service mark, and/or trade secret infringement that could affect the Energy Commission's rights.
- 2) The Recipient must provide the CalSHAPE Program with written notice of a planned change or reorganization of the type of business entity under which it does business. A change of business entity or name change requires an amendment assigning or novating the Agreement to the changed entity. If the Energy Commission does not seek to amend this Agreement or enter into a new agreement with the changed or new entity for any reason (including that the Commission is not satisfied that the new entity can perform in the same manner as the Recipient), it may terminate this Agreement as provided in the "Termination" section.
- i. Access to Sites and Records
Energy Commission and California Public Utilities Commission staff and representatives will have reasonable access to all project sites and to all records related to this Agreement.
 - j. Prior Dealings, Custom, or Trade Usage
These terms and conditions may not be modified or supplemented by prior dealings, custom, or trade usage.
 - k. Survival of Terms
Certain provisions will survive the completion or termination date of this Agreement for any reason. The provisions include but are not limited to:
 - Legal Statements on Products (included in Section 5, "Products")
 - Payment of Funds (Section 8)
 - Recordkeeping, Cost Accounting, and Auditing (Section 11)
 - Equipment (Section 14)
 - Termination (Section 16)
 - Indemnification (Section 17)
 - Intellectual Property (Section 20)
 - Change in Business (see this section)
 - Access to Sites and Records (see this section)

23. Certifications and Compliance

- a. Federal, State, and Local Laws

The Recipient must obtain all required permits and shall comply with all applicable federal, state and local laws, codes, rules, and regulations for all work performed under the Agreement.

b. Nondiscrimination Statement of Compliance

During the performance of this Agreement, the Recipient and its subcontractors will not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital status, or denial of family care leave. The Recipient and its subcontractors will ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

The Recipient and its subcontractors will comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full. The Recipient and its subcontractors will give written notice of their obligations under this section to labor organizations with which they have a collective bargaining or other Agreement.

The Recipient will include the nondiscrimination and compliance provisions of this section in all subcontracts to perform work under this Agreement.

c. Drug-Free Workplace Certification

By signing this Agreement, the Recipient certifies under penalty of perjury under the laws of the State of California that it will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- 1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited, and specifying actions to be taken against employees for violations as required by Government Code Section 8355(a).
- 2) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - The dangers of drug abuse in the workplace;
 - The person's or organization's policy of maintaining a drug-free workplace;
 - Any available counseling, rehabilitation, and employee assistance programs; and
 - Penalties that may be imposed upon employees for drug abuse violations.
- 3) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed project:
 - Will receive a copy of the company's drug-free policy statement; and
 - Will agree to abide by the terms of the company's statement as a condition of employment on the project.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both, and the Recipient may be ineligible for any future state awards if the Commission determines that any of the following has occurred: (1) the Recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

d. National Labor Relations Board Certification (Not applicable to public entities)

The Recipient, by signing this Agreement, swears under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Recipient within the immediately preceding two year period because of the Recipient's failure to comply with an order of a federal court that orders the Recipient to comply with an order of the National Labor Relations Board.

e. Child Support Compliance Act (Applicable to California Employers)

For any agreement in excess of \$100,000, the Recipient acknowledges that:

- 1) It recognizes the importance of child and family support obligations and will fully comply with all applicable state and federal laws relating to child and family support enforcement, including but not limited to disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- 2) To the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

f. Air or Water Pollution Violation

Under state laws, the Recipient will not be:

- 1) In violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;
- 2) Subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or
- 3) Finally determined to be in violation of provisions of federal law relating to air or water pollution.

g. Americans With Disabilities Act

By signing this Agreement, the Recipient assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. Section 12101, et seq.), which prohibits discrimination on the basis of disability, as well as applicable regulations and guidelines issued pursuant to the ADA.

24. Reserved

25. Commission Remedies for Recipient's Non-Compliance

Without limiting any of its other remedies, the Commission may, for Recipient's noncompliance of any Agreement requirement, withhold future payments, demand and be entitled to repayment of past reimbursements, or suspend or terminate this Agreement. The tasks in the Scope of Work are non-severable, and completion of all of them is material to this Agreement. Thus, the Commission, without limiting its other remedies, is entitled to repayment of all funds paid to Recipient if the Recipient does not timely complete all tasks in the Scope of Work.

26. Definitions

- **Agreement Term** means the length of this Agreement, as specified on the Agreement signature page (form CEC-146).
- **Data** means any recorded information that relates to the project funded by the Agreement, whether created or collected before or after the Agreement's effective date.
- **Effective Date** means the date on which this Agreement is signed by the last party required to sign, provided that signature occurs after the Agreement has been approved by the Energy Commission at a business meeting or by the Executive Director or his/her designee.
- **Equipment** means products, objects, machinery, apparatus, implements, or tools that are purchased or constructed with Energy Commission funds for the project, and that have a useful life of at least one year and an acquisition unit cost of at least \$5,000. "Equipment" includes products, objects, machinery, apparatus, implements, or tools that are composed by over thirty percent (30%) of materials purchased for the project. For purposes of determining depreciated value of equipment used in the Agreement, the project will terminate at the end of the normal useful life of the equipment purchased and/or developed with Energy Commission funds. The Energy Commission may determine the normal useful life of the equipment.
- **Intellectual Property** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice with Agreement or match funds during or after the Agreement term; (b) any associated proprietary rights to these items, such as patent and copyright; and (c) any upgrades or revisions to these items.

"Works of authorship" does not include written products created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices.
- **Invention** means intellectual property that is patentable.
- **Match Funds** means cash or in-kind (i.e., non-cash) contributions provided by the Recipient or a third party for a project funded by the Energy Commission. If this Agreement resulted from a solicitation, refer to the solicitation's discussion of match funding for guidelines specific to the project.

- **Materials** means the substances used to construct, or as part of, a finished object, commodity, device, article, or product and that does not meet the definition of Equipment.
- **Ownership** means exclusive possession of all rights to property, including the right to use and transfer property.
- **Product** means any tangible item specified for delivery to the Energy Commission in the Scope of Work.
- **Project** means the entire effort undertaken and planned by the Recipient and consisting of the work funded by the Energy Commission. The project may coincide with or extend beyond the Agreement term.
- **State** means the state of California and all California state agencies within it, including but not limited to commissions, boards, offices, and departments.

Agreement # **21R2VA1225**
 LEA: **Mountain View Whisman Sch Dist**
 FI\$Cal Supplier ID: 0000042157

CalSHAPE Encumbrance Sheet

Amount Encumbered	Item	Chapter	ENY	Fund	Approp Ref	Program	Account	Rptg Structure	PC Bus Unit	Project	Activity
\$181,830.00	8129-3360-601	77	2021	8129	601	2385019	5432000	33605800	3360	CALSHAPE-8129	PGE_VENT_ELEC

I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.	
Signature of Accounting/Budgeting Officer <div style="display: flex; align-items: center;"> <div style="font-size: 24pt; font-weight: bold; margin-right: 20px;">Jesse Vang</div> <div style="font-size: 12pt; color: #ccc;"> Digitally signed by Jesse Vang Date: 2022.08.31 10:03:17 -07'00' </div> </div>	Date

DOCKETED

Docket Number:	20-RENEW-01
Project Title:	California Schools Healthy Air, Plumbing, and Efficiency
TN #:	239307
Document Title:	California Schools Healthy Air, Plumbing, and Efficiency Ventilation Program Revised Commission Guidelines
Description:	California Schools Healthy Air, Plumbing, and Efficiency Ventilation Program Revised Commission Guidelines
Filer:	Theresa Daniels
Organization:	California Energy Commission
Submitter Role:	Commission Staff
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**CALIFORNIA
ENERGY COMMISSION**



**CALIFORNIA
natural
resources
AGENCY**

California Energy Commission

REVISED COMMISSION GUIDELINES

California Schools Healthy Air, Plumbing, and Efficiency Ventilation Program Guidelines

**Gavin Newsom, Governor
August 2021 | CEC-300-2021-007-REV-CMF**

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ABSTRACT

The School Reopening Ventilation and Energy Efficiency Verification and Repair Program is one of the two grant programs under the School Energy Efficiency Stimulus Program, established by Assembly Bill 841 (Ting, Chapter 372, Statutes of 2020). The program authorizes funding to local educational agencies for assessing, maintaining, and repairing or upgrading school ventilation systems to ensure that systems meet certain classroom ventilation requirements. These guidelines provide requirements for program participation including eligible applicants and projects, the application process, funding awards and distribution, as well as project documentation and reporting requirements. For the purposes of administering the program, the program will be referred to as the California Schools Healthy Air, Plumbing, and Efficiency Program. The California Energy Commission envisions rolling out the program in phases to ensure prioritization of schools in Underserved Communities. The first edition of these guidelines addresses the initial phase of program awards, which are limited to assessment and maintenance projects for schools in an Underserved Community as defined in California Public Utilities Code, section 1601. Additional eligibility under the program guidelines may be addressed in updates to these guidelines.

Keywords: CalSHAPE, School Energy Efficiency Stimulus, SEES, School Reopening Ventilation and Energy Efficiency Verification and Repair Program, grant, energy efficiency, school, local educational agency, Underserved Community, HVAC, ventilation, assessment

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CHAPTER 1: Program Overview

A. Introduction

The School Energy Efficiency Stimulus (SEES) Program, established by Assembly Bill (AB) 841 (Ting, Chapter 372, Statutes of 2020) provides grants to local educational agencies (LEAs) as defined in Table 1 to, among other things, assess, maintain, adjust, repair, or upgrade heating, ventilation, and air conditioning (HVAC) systems in schools. The SEES Program also provides grants to LEAs and California state agencies to replace noncompliant plumbing fixtures and appliances. AB 841 requires the California Energy Commission (CEC) as the program administrator to design, administer, and implement the program in collaboration with the utilities funding the program. The SEES Program consists of the School Reopening Ventilation and Energy Efficiency Verification and Repair (SRVEVR) Program and the School Noncompliant Plumbing Fixture and Appliance (SNPFA) Program. For administering these programs, the SRVEVR Program will be referred to as the California Schools Healthy Air, Plumbing, and Efficiency (CalSHAPE) Ventilation Program. The SNPFA Program will be referred to as the CalSHAPE Plumbing Program.

These guidelines describe the program design, application process, and reporting requirements for the CalSHAPE Ventilation Program. The requirements of the CalSHAPE Plumbing Program are provided in separate guidelines.

These program guidelines provide potential applicants with information on how the program will be structured, who is eligible to apply for funding, and program requirements. All grant applicants and recipients are required to follow all program requirements, including those outlined in Public Utilities Code (PUC) Division 1, Part 1, Chapter 8.7, and as further outlined in these guidelines.

The CalSHAPE Program is established as part of each of the utilities' energy efficiency portfolios as a joint program among all the participating utilities and shall be consistent across the utility territories. The CalSHAPE Ventilation and Plumbing Programs are separate programs, and grant awards will be made specific to each program.

The CEC is rolling out the CalSHAPE Ventilation Program in phases to ensure prioritization of schools in Underserved Communities, as defined in Table 1 below. These guidelines address the initial phase of program awards, which are limited to projects for schools identified as being in an Underserved Community as defined. The CEC will continually evaluate the effectiveness of the program guidelines in achieving the purposes of AB 841 and publish new editions to update eligibility and prioritization as funding is available.

Future editions of the program guidelines will include updates necessary to prioritize schools with a boundary within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor or within 1,000 feet of a Clean Air Act (42 U.S.C. Section 7661 et seq.) Title V permit facility, as well as incorporate schools outside Underserved Communities. Furthermore, this first edition addresses only Assessment and Maintenance Grants to perform

assessments, assessment reports, general maintenance, adjustments of ventilation rates, filter replacements, and carbon dioxide monitor installation. An additional 20 percent of the requested amount is provided for repairs, upgrades, or replacements necessary to make the HVAC systems functional or more energy-efficient.

The continued evaluation of program guidelines will also examine potential updates to address repairs, upgrades, or replacements that are greater than the contingency amount provided in the Assessment and Maintenance Grants. While not covered by this first edition of the guidelines, grants for work in excess of the 20 percent contingency will be referred to as HVAC Upgrade and Repair Grants.

B. Keywords/Terms

Table 1 identifies the key words or terms used in the program guidelines.

Table 1: Key Words and Terms

Word/Term	Definition
AB	Assembly Bill
ASHRAE	American Society of Heating, Refrigerating and Air-Conditioning Engineers
Assessment and Maintenance Grant	A grant provided as part of the program to improve the energy efficiency and performance of school ventilation systems and support the safety of schools through one of three grant pathways: the HVAC Assessment and Maintenance Pathway, Scheduled for Replacement Pathway, or the Limited or No Mechanical Ventilation Pathway.
ATTCP	Acceptance Test Technician Certification Provider. The ATTCP Program was developed to support the California Building Energy Efficiency Standards. The requirements for ATTCPs can be found on the ATTCP webpage : https://www.energy.ca.gov/programs-and-topics/programs/acceptance-test-technician-certification-provider-program .
CalSHAPE Plumbing Program	The CalSHAPE Plumbing Program administers the requirements of the School Noncompliant Plumbing Fixture and Appliance Program as specified in Article 4 of Chapter 8.7 (commencing with Section 1630) of Part 1 of Division 1 of the PUC.
CalSHAPE Program	California Schools Healthy Air, Plumbing, and Efficiency Program, which includes two grant programs: CalSHAPE Ventilation Program and CalSHAPE Plumbing Program.
CalSHAPE Ventilation Program	The CalSHAPE Ventilation Program administers the requirements of the School Reopening Ventilation and Energy Efficiency Verification and Repair Program as specified in Article 3 of Chapter 8.7 (commencing with Section 1620) of Part 1 of Division 1 of the PUC.

Word/Term	Definition
CalSHAPE Ventilation Program Guidelines	California Schools Healthy Air, Plumbing, and Efficiency Ventilation Program Guidelines
CEC	California Energy Commission
CEQA	The California Environmental Quality Act found in California Public Resources Code Section 21000 et seq., and the CEQA Guidelines, promulgated by the California Natural Resources Agency, California Code of Regulations, Title 14, Section 15000 et seq. CEQA generally requires state and local government agencies to identify and consider potential environmental impacts of proposed projects, and to reduce or avoid those impacts to the extent feasible.
Certified TAB Technician	A technician certified to perform testing, adjusting, and balancing of HVAC systems by the Associated Air Balance Council (AABC), the National Environmental Balancing Bureau (NEBB), or the Testing, Adjusting and Balancing Bureau (TABB).
Contractor	A person or company with the appropriate license classification, as determined by the Contractors State License Board.
CPUC	California Public Utilities Commission
DIR	California Department of Industrial Relations
HVAC	Heating, ventilation, and air conditioning
HVAC Assessment and Maintenance Pathway	One of the three grant pathways for sites receiving an Assessment and Maintenance Grant. This pathway requires an HVAC Assessment and Maintenance, completion of an HVAC Assessment Report, carbon dioxide monitor installation, and completion of an HVAC Verification Report as described in Chapter 2. The grant pathway includes an additional 20 percent of the requested amount as a contingency fund for repairs, upgrades, or replacements necessary to make the system functional or more energy-efficient.
HVAC Assessment and Maintenance	An assessment of and adjustments to an HVAC system as described in Chapter 2.B. These include, as applicable, filtration, economizer dampers, ventilation, coil condition, and other requirements.
HVAC Assessment Report	A report prepared by a Qualified Testing Personnel or Qualified Adjusting Personnel as described in Chapter 2.F of these guidelines for review by a Licensed Professional. The HVAC Assessment Report must be submitted to the CEC as part of the final document package as specified in Chapter 4.C of these guidelines.

Word/Term	Definition
HVAC system	Any air-handling units, rooftop units, and unitary and single-zone equipment in the HVAC system or systems of a site, as described in PUC Section 1622.
HVAC Verification Report	A report prepared by an LEA upon completion of all work funded by an Assessment and Maintenance Grant as described in Chapter 2.G of these guidelines. The HVAC Verification Report must be submitted to the CEC as part of the final document package as specified in Chapter 4.C of these guidelines.
LEA	Local educational agency. A school district as defined in Section 41302.5 of the Education Code, a charter school that has been granted a charter pursuant to Part 26.8 (commencing with Section 47600) of Division 4 of Title 2 of the Education Code, or a regional occupational center established pursuant to Section 52301 of the Education Code that is operated by a joint powers authority and that has an active career technical education advisory committee pursuant to Section 8070 of the Education Code.
Licensed Professional	A professional eligible under Division 3 (commencing with Section 5000) of the Business and Professions Code in the applicable classification to perform system design, construction, or installation of features, materials, components, or manufactured devices for mechanical systems.
Limited or No Mechanical Ventilation Pathway	One of the three grant pathways for sites receiving an Assessment and Maintenance Grant. This pathway requires a modified assessment, completion of a modified HVAC Assessment Report, installation of carbon dioxide monitors in each classroom, and completion of an HVAC Verification Report as described in Chapter 2.
MERV	Minimum efficiency reporting value
Notice of proposed award	CEC notification to the LEA following approval of a grant application.
Notice of funding availability	A notice issued by the CEC to identify anticipated funding that will be made available in each round of CalSHAPE Program grants. The notice will provide relevant application dates and any funding restrictions applicable to that funding round.
PPM	Parts per million
Project	"Project" refers to all assessments, HVAC general maintenance, adjustments of ventilation rates, filter replacements, carbon dioxide monitor installations, repairs, upgrades, and replacements that are funded by an Assessment and Maintenance Grant.

Word/Term	Definition
PUC	Public Utilities Code
Qualified Adjusting Personnel	Means either of the following: (1) A certified TAB technician. (2) A Skilled and Trained Workforce under the supervision of a TAB Technician.
Qualified Testing Personnel	Means either of the following: (1) An HVAC acceptance test technician certified to complete the forms set forth in subparagraph (B) of paragraph (1) of subdivision (b) of Section 10-103.2 of Part 1 of Title 24 of the California Code of Regulations by an Acceptance Test Technician Certification Provider (ATTCP) that is approved by the CEC to provide that certification. (2) A certified TAB technician.
Scheduled for Replacement Pathway	One of the three grant pathways for sites receiving an Assessment and Maintenance Grant. This pathway allows for filter replacement and requires the installation of carbon dioxide monitors, completion of a modified HVAC Assessment Report, and completion of an HVAC Verification Report as described in Chapter 2.
SEES Program	School Energy Efficiency Stimulus Program established in Chapter 8.7 Article 1 of the PUC. For program administration purposes, the SEES Program will be referred to as the CalSHAPE Program.
Service territory requirement	Sites must be located in a participating utility's service territory to receive a CalSHAPE Program grant. PUC Section 1615(c) requires the CEC to ensure that moneys from each utility are used for projects in the service territory of that utility from which the moneys are received.
Site	School where Assessment and Maintenance Grant work will be performed.
Skilled and Trained Workforce	Has the same meaning as set forth in Section 2601 of the Public Contract Code.
TAB	Testing, adjusting, and balancing
Underserved Community	A community that meets one of the following criteria: (1) Is a "disadvantaged community" as defined by subdivision (g) of Section 75005 of the Public Resources Code. (2) Is included within the definition of "low-income communities" as defined by paragraph (2) of subdivision (d) of Section 39713 of the Health and Safety Code. (3) Is within an area identified as among the most disadvantaged 25 percent in the state according to the California Environmental

Word/Term	Definition
	<p>Protection Agency and based on the most recent California Communities Environmental Health Screening Tool, also known as CalEnviroScreen.</p> <p>(4) Is a community in which at least 75 percent of public school students in the project area are eligible to receive free or reduced-price meals under the National School Lunch Program.</p> <p>(5) Is a community located on lands belonging to a federally recognized California Indian tribe.</p>
HVAC Upgrade and Repair Grant	A category of potential awards for a future phase of the CalSHAPE Ventilation Program for HVAC repairs, upgrades, or replacements.
Utility or utilities	<p>Means both of the following:</p> <p>(1) An electrical corporation with 250,000 or more customer accounts within the state.</p> <p>(2) A gas corporation with 400,000 or more customer accounts within the state.</p> <p>This definition currently includes Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and Southern California Gas Company (SCG).</p>
UVGI	Ultraviolet germicidal irradiation is an established means of disinfection and can be used to prevent the spread of certain infectious diseases. Low-pressure mercury (Hg) discharge lamps are commonly used in UVGI applications and emit shortwave ultraviolet-C radiation.

C. Budget

Funding for the CalSHAPE Program comes from the energy efficiency budgets of California’s large electric and gas investor-owned utilities. Specifically, this includes electrical corporations with 250,000 or more customer accounts within the state and gas corporations with 400,000 or more customer accounts within the state as determined by the California Public Utilities Commission (CPUC). These utilities are Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and Southern California Gas Company (SCG).

The program will accumulate funding in 2021, 2022, and 2023. The annual funding for the program is derived from a combination of current year available funds and prior year unspent and uncommitted energy efficiency funds as described in PUC Section 1615(a). Each year, from 2021 through 2023, it is expected that the utilities will be required to prepare a joint advice letter detailing that year’s budget for CPUC approval. Funding awards must be distributed proportionally to each utility area based on program funds contributed by that

utility and used for projects located in the utility’s service territory. PG&E has both electric and gas service territories, and the available funding attributed to each service territory will be in accordance with the energy efficiency portfolio budget recovery electric and gas funding percentages provided by PG&E in the utilities’ joint advice letter to the CPUC.

CEC will allocate the available funding contributed by each utility using five funding categories. The funding category available to each eligible school site is determined based on the utility service territory in which the site is located. Table 2 identifies the funding categories and the associated utility service territories from which an award will be made. All projects funded by a program grant must meet the same requirements, as described by these guidelines, regardless of funding category.

CEC will provide notices of annual budget accrual, total program funding, and available funds for each funding category at least once per year. Funds are allocated to the two grant programs per PUC Section 1616, with 75 percent to CalSHAPE Ventilation and 25 percent to CalSHAPE Plumbing.

Table 2: Utility Service Territory Funding Categories

Funding Category	Utility Service Territories
PG&E Electric	PG&E electric/PG&E gas PG&E electric/Nonparticipating utility gas PG&E electric/SCG gas
PG&E Gas	Nonparticipating utility electric/PG&E gas
SCE	SCE electric/Nonparticipating utility gas SCE electric/SCG gas
SCG	Nonparticipating utility electric/SCG gas
SDG&E	SDG&E electric/SDG&E gas SDG&E electric/ Nonparticipating utility gas SDG&E electric/SCG gas

Source: California Energy Commission

Following PUC Section 1615(e), the CEC shall return all unused funds to each utility by December 1, 2026. To accomplish this, all projects, reporting, and reconciliation must be completed and any unused funds returned to the CEC as described in Chapter 4. LEAs will be provided instructions for returning any unused funds to the CEC.

D. CalSHAPE Ventilation Eligibility

1. Eligible Applicants

California LEAs are the eligible applicants for grants. An LEA is defined as any of the following:

- a. A school district as defined in Section 41302.5 of the Education Code, which includes:

1. County boards of education.
 2. County superintendents of schools.
 3. Direct elementary and secondary level instructional services provided by the state, including the Diagnostic Schools for Neurologically Handicapped Children as established under Article 1 (commencing with Section 59200) of Chapter 3 of Part 32 of the Education Code.
- b. A charter school that has been granted a charter following Part 26.8 (commencing with Section 47600) of Division 4 of Title 2 of the Education Code.
 - c. A regional occupational center established pursuant to Section 52301 of the Education Code that is operated by a joint powers authority and that has an active career technical education advisory committee pursuant to Section 8070 of the Education Code.

California LEAs may apply for funding to be used for projects at schools that are in the service territory of utilities as defined herein. LEAs must demonstrate that each site meets service territory requirements. CEC staff will verify submitted information as needed to ensure compliance with the service territory requirements.

Authorized third parties may complete applications on behalf of LEAs but may not sign or enter into agreements on behalf of LEAs. A letter of authorization from the LEA, specifying any authority or responsibility delegated to the third party, is required as part of the application package. No funding will be provided for the costs of completing an application for funding or for third-party consultant fees for application or project-related work.

2. Utility Service Territories and Application Tiers

PUC Section 1615(c) states that CEC shall ensure that funds from each utility are used for projects located in the utility service territory from which the money is received; for example, the funds collected from PG&E will be distributed in PG&E territory.

For implementing the program, CEC has established an approach based on the method employed for the CEC’s Energy Conservation Assistance Act — Education Subaccount (ECAA-Ed) Competitive Loan Program to ensure that program funds are available to a range of LEAs within each utility service territory. LEAs in each utility service territory funding category are divided into three tiers based on LEA student enrollment. LEA tiers are detailed in Table 3.

Table 3: LEA Tier by Enrollment Numbers

Tier	Number of Students
1	Less than 1,000
2	Between 1,000 and 5,000
3	More than 5,000

Source: California Energy Commission

LEAs will be included in one or more of the application tiers as detailed in Table 4 corresponding to a utility service territory funding category and the size of the LEA.

Table 4: LEA Application Tiers

Tier	PG&E Electric	PG&E Gas	SCE	SDG&E	SCG
1	PG&E-E1	PG&E-G1	SCE1	SDG&E1	SCG1
2	PG&E-E2	PG&E-G2	SCE2	SDG&E2	SCG2
3	PG&E-E3	PG&E-G3	SCE3	SDG&E3	SCG3

Source: California Energy Commission

3. Allocation of Funds Method

To allocate program funds for each program year, CEC will calculate the available funds by tiers presented in Table 4 for each utility service territory funding category. The calculation will be based on the final budget for each utility as approved by the CPUC for each program year as described in PUC 1615(a)(1).

CEC will allocate funds by application tier for each utility service territory funding category using the percentages shown in Table 5.

Table 5: Available Funds by Application Tier

Tier	PG&E Electric	PG&E Gas	SCE	SDG&E	SCG
1	PG&E-E1: 10%	PG&E-G1: 10%	SCE1: 10%	SDG&E1: 10%	SCG1 10%
2	PG&E-E2: 10%	PG&E-G2: 10%	SCE2: 10%	SDG&E2: 10%	SCG2 10%
3	PG&E-E3: 80%	PG&E-G3: 80%	SCE3: 80%	SDG&E3: 80%	SCG3 80%

Source: California Energy Commission

CEC will provide the amount of funds available for each utility service territory funding category and the funds available in each application tier in the notice of funding availability as described in Chapter 3.A, which will be issued for each funding round.

4. Funds Not Used in an Application Tier

If all funding originally allocated to a particular application tier is not disbursed at the conclusion of the applicable funding round, undisbursed funds may be reallocated to one or more other application tiers, or reserved for a future funding round depending on current and projected applicant demand. Consistent with PUC Section 1615(c), funds cannot be reallocated to fund projects from one utility service territory to another.

5. Eligible Schools

LEAs may apply for grants to conduct activities at schools that:

- a. Are on a site owned by the LEA.
- b. Are on a publicly owned site, such as a site owned by a school district or other public entity, whether the LEA has a lease with that entity.

- c. Are on a privately owned site, for which there is a lease with a term that exceeds the program duration, ending after December 1, 2026.

LEAs must provide proof of ownership or complying leases. Charter schools will be required to submit a current Certificate of Good Standing with the application package.

Sites that are located within the service territory of a community choice aggregator (CCA) or local publicly owned electric utility (POU) are not prohibited from participating in the program. School sites located within a CCA or POU that meet the underserved community criteria, as specified in Section E, may be eligible for funding based on the appropriate utility service territory funding category as described in Section C and Table 2.

6. Number of Applications

An LEA may submit up to three applications for program funds in each funding round. For the initial phase of program awards, only sites meeting one or more of the definitions of an Underserved Community may be included. There is no restriction on how many sites an LEA can include in a single application. A site can be included only once and cannot be included in multiple applications.

7. Relationship to CalSHAPE Plumbing Applications and Awards

CalSHAPE Ventilation and CalSHAPE Plumbing are separate programs. LEAs are required to submit separate applications specific to each program.

8. Multiple Sources of Funding

Participation in another program does not prevent participation in the program. However, an LEA receiving program funding may not receive additional funds from another program that, when combined with program funding, exceed the total cost of the project. Furthermore, program funds shall be used only for distinct, eligible costs described in these guidelines that are not funded by another funding source. CEC reserves the right to review and audit all grant and funding award documents to ensure compliance with this requirement.

E. Priority Awards

PUC Section 1612 requires that the program offer funds to schools that are in an Underserved Community before schools that are not in an Underserved Community. The program defines an Underserved Community as meeting one of the following criteria:

1. Is a "disadvantaged community" as defined by Public Resources Code Section 75005(g)¹

¹ Public Resources Code Section 75005(g) currently defines "disadvantaged community" as a community with a median household income less than 80 percent of the statewide average.

2. Is included within the definition of “low-income communities” as defined by Health and Safety Code Section 39713(d)(2)²
3. Is within an area identified as among the most disadvantaged 25 percent in the state according to the California Environmental Protection Agency and based on the most recent California Communities Environmental Health Screening Tool, also known as CalEnviroScreen
4. Is a community in which at least 75 percent of public school students in the project area are eligible to receive free or reduced-price meals under the National School Lunch Program
5. Is a community located on lands belonging to a federally recognized California Indian tribe

PUC Section 1612 requires that at least 25 percent of program projects be in Underserved Communities.

To meet the statutory requirement that schools meeting one or more Underserved Community criteria be offered funding before other schools, CEC is limiting applications and awards for the initial funding round of Assessment and Maintenance Grant Awards to schools meeting one or more of the Underserved Community criteria referenced in PUC Section 1601(e) and described in these guidelines.

These guidelines may be updated, and additional notice provided as necessary, including the possibility of addressing additional eligibility.

² Health and Safety Code Section 39713(d)(2) defines “low-income communities” as census tracts with median household incomes at or below 80 percent of the statewide median income or with median household incomes at or below the threshold designated as low income by the Department of Housing and Community Development’s list of state income limits adopted under Health and Safety Code Section 50093.

CHAPTER 2:

Project Requirements

A. Assessment and Maintenance Grants

An LEA may apply for a grant to improve the energy efficiency and performance of school ventilation systems and support the safety of schools through one of three grant pathways: (1) HVAC Assessment and Maintenance Pathway, (2) Scheduled for Replacement Pathway, and (3) Limited or No Mechanical Ventilation Pathway. Each grant pathway has specific requirements, which are provided in this chapter.

Each site awarded grant funding will follow only one grant pathway and must complete the process and meet the requirements as described for that grant pathway. The grant pathway and qualification criteria for each pathway are as follows:

1. HVAC Assessment and Maintenance Pathway — A site has at least one HVAC system, as defined in Table 1, that is not scheduled for replacement within two years of the application submittal date. An HVAC system is deemed scheduled for replacement if the LEA can provide the supporting documentation specified in Chapter 3.B for a site to qualify for this pathway. The project requirements specific to this pathway are provided in Section B.
2. Scheduled for Replacement Pathway — A site where all the HVAC systems at the site are scheduled for replacement within the two years of the application submittal date. The LEA must provide the supporting documentation specified in Chapter 3.B for the site to qualify for this pathway. The project requirements specific to this pathway are provided in Section D.
3. Limited or No Mechanical Ventilation Pathway — A site does not have an HVAC system, as defined by these guidelines in Table 1. The LEA must provide the supporting documentation specified in Chapter 3.B for the site to qualify for this pathway. The project requirements specific to this pathway are provided in Section E.

The project requirements that must be met for each grant pathway are shown in Table 6.

Table 6: Project Requirements by Grant Pathway

Assessment and Maintenance Grant Requirements	HVAC Assessment and Maintenance Pathway	Scheduled for Replacement Pathway	Limited or No Mechanical Ventilation Pathway
Filter Installation	Yes	Yes	No
HVAC Assessment	Yes	No	No
HVAC Maintenance	Yes	No	No
CO2 Monitor Installation	Yes	Yes	Yes
20% Contingency Fund for Repairs/Additional Maintenance	Yes	No	No
Limited or No Mechanical Ventilation Assessment	No	No	Yes
HVAC Assessment Report	Yes	Yes	Yes
HVAC Verification Report	Yes	Yes	Yes
Eligible for HVAC Upgrade and Repair Grant	Yes	No	Yes
Justification for Grant Pathway	No	Yes	Yes

Source: California Energy Commission

Grant applications must specify the details of each site and provide contractor estimates for costs specific to complete the project requirements at each site. Awards will be made based on contractor estimates not to exceed the maximum award amount as described in Section H. Additional details on application requirements are provided in Chapter 3.

Certain work must be done by Qualified Personnel, and certain other work must be done by Licensed Professionals. An LEA receiving a grant must ensure that Qualified Personnel and Licensed Professionals, as defined in Table 1, perform their respective required work as set forth below. Moreover, the results and findings from assessments must be recorded in the HVAC Assessment Report as described in this chapter.

B. HVAC Assessment and Maintenance Pathway Requirements

The HVAC Assessment and Maintenance Pathway requires an HVAC Assessment and Maintenance, as defined in Table 1 and described in this section; completion of an HVAC Assessment Report; and carbon dioxide monitor installation. The grant award includes an additional 20 percent of the requested amount as a contingency fund for repairs, upgrades, or replacements necessary to make the system functional or more energy-efficient.

The prescriptive process for HVAC Assessment and Maintenance described in this section must be completed for all HVAC system units at the site that are not scheduled for replacement. Sites awarded a grant for this pathway must also complete the requirements of Section C, as well as Sections D and E to the extent applicable, and complete the HVAC Assessment Report and HVAC Verification Report as specified in Sections F and G, respectively.

As mentioned above, the Assessment and Maintenance Grant includes a 20 percent contingency fund that may be used for repairs, upgrades, or replacements necessary to make the HVAC system functional or more energy-efficient. Any additional repairs, upgrades, or replacements determined to be necessary during the assessment may be funded using the 20 percent contingency fund. These repairs, upgrades, or replacements must be documented as necessary to make the HVAC system functional or more energy-efficient in the HVAC Assessment and Verification Reports to be determined as an eligible use of the contingency funds.

Deficiencies in the HVAC system operation or ability to meet ventilation requirements or complete the HVAC Assessment and Maintenance process must be documented in the HVAC Assessment Report for review by a Licensed Professional as described in this chapter. Grant funding for repairs and replacements identified in the HVAC Assessment and Verification Reports in excess of the 20 percent contingency amount might be eligible for an award in a future phase of program awards as part of an HVAC Upgrade and Repair Grant.

1. Filtration

The LEA receiving a program grant shall install filtration with a minimum efficiency reporting value (MERV) of 13 or better in the HVAC system where feasible. If MERV 13 is not feasible, then the highest MERV filtration that can be used in the HVAC system without adversely impacting the equipment shall be installed. The expected cost of filter replacement or upgrade must be included in the cost estimate provided with the grant application. The purchase of additional replacement filters is not an eligible cost and may not be included in the contractor estimate.

- a. Qualified Testing Personnel shall test system capacity and airflow to determine the highest MERV filtration that can be installed without adversely impacting equipment, shall replace or upgrade filters where needed, and shall verify that those filters are installed correctly. The cost associated with any additional repairs such as adjustments or repairs to increase fan capacity is not an eligible cost as part of the Assessment and Maintenance Grant but may be funded by the 20 percent contingency fund.
- b. If a system uses ultraviolet germicidal irradiation (UVGI) to disinfect the air, the UVGI lamp shall be checked for proper operation, replacing bulbs as needed and verifying that the ultraviolet light does not shine on filters. The expected cost of a UVGI lamp replacement must be included in the cost estimate provided with the grant application. The purchase of additional UVGI lamps is not an eligible cost and may not be included in the contractor estimate. The cost associated with any additional repairs and replacements is not an eligible cost as part of the Assessment and Maintenance Grant but may be funded by the 20 percent contingency fund.
- c. For systems with economizers, Qualified Testing Personnel shall test system economizer dampers pursuant to Section B of CEC form [CEC-NRCA-MCH-05-A-Air Economizer Controls](#)

(https://energycodeace.com/download/39547/file_path/fieldList/2019-NRCA-MCH-05-A-AirEconomizerControls.pdf).

1. Economizer dampers and controls that are not properly functioning shall be repaired by a Skilled and Trained Workforce. The cost associated with any additional repairs and replacements is not an eligible cost as part of the Assessment and Maintenance Grant but may be funded by the 20 percent contingency fund.
- d. Recommendations for additional maintenance, replacement, or upgrades to the above shall be recorded in the HVAC Assessment Report required under PUC Section 1626 and these guidelines.

2. Ventilation

After completing the filtration requirements described above, a Qualified Testing Personnel shall verify the ventilation rates in the facility classrooms, auditoriums, gymnasiums, nurses offices, restrooms, and other occupied areas to assess whether they meet the minimum ventilation rate requirements set forth in Table 120.1-A of Part 6 (commencing with Section 100.0) of Title 24 California Code of Regulations. The assessment shall include:

- a. Calculation of the required minimum outside air ventilation rates for each occupied area based on the anticipated occupancy and the minimum required ventilation rate per occupant set forth in Table 120.1-A. Calculations shall be based on maximum anticipated classroom or other occupied area occupancy rates and determined by the performing technician. Natural ventilation shall be designed in accordance with Section 402.2 of the California Mechanical Code (Part 4 [commencing with Section 1.1.0] of Title 24 of the California Code of Regulations) and shall include mechanical ventilation systems designed in accordance with Section 403.0, Section 404.0, or both sections of the California Mechanical Code.
- b. Measurement of outside air under Section B of CEC form [CEC-NRCA-MCH-02-A-Outdoor Air Acceptance](https://energycodeace.com/NonresidentialForms/2019) (<https://energycodeace.com/NonresidentialForms/2019>) and verification of whether the system provides the minimum outside air ventilation rates calculated in subparagraph a) directly above.
- c. Survey readings of inlets and outlets to verify all ventilation is reaching the served zone and there is adequate distribution. Verify if inlets and outlets are balanced within tolerance of the system design. Document read values and deficiencies. If the original system design values are not available, document available information and note unavailability of system design values in the assessment report.
- d. Verification of building pressure relative to the outdoors to ensure positive pressure differential and ensure the building is not over-pressurized.
- e. Verification of coil velocities and coil and unit discharge air temperatures required to maintain desired indoor conditions and avoid moisture carryover from cooling coils.

- f. Verification that separation between outdoor air intakes and exhaust discharge outlets meet requirements of the California Building Code, including Section 120.1.
- g. Confirmation that the air-handling unit is bringing in outdoor air and removing exhaust air as intended by the system design.
- h. Measurement of all exhaust air volume for exhaust fans, including restrooms. Document any discrepancies from system design.
- i. If the system does not meet the minimum ventilation rate requirements set forth in Table 120.1-A, the system shall be adjusted to the highest minimum ventilation possible without adversely impacting equipment performance. This deficiency should be documented in the HVAC Assessment Report along with the actual ventilation rate and the occupancy it can serve. A Licensed Professional or Qualified Adjusting Personnel, as defined in Table 1, shall review the system airflow and capacity to determine if additional ventilation can be provided.
 - 1. If additional ventilation can be provided, a Qualified Adjusting Personnel must adjust ventilation rates to meet the minimum ventilation rate requirements set forth in Table 120.1-A to the extent feasible. After the adjustment, the measurement and verifications required by b., d., and e., in the section above must be repeated. The costs of the adjustment of ventilation rates to meet the minimum ventilation rate requirements with existing equipment shall be included in the contractor estimate.
 - 2. If minimum ventilation rate requirements set forth in Table 120.1-A cannot be met, this deficiency shall be reported in the HVAC Assessment Report and the HVAC Verification Report (outlined in Section E below) and addressed by a Licensed Professional as required by this chapter.

3. Demand Control Ventilation

- a. If a demand control ventilation is installed, it must be adjusted to a carbon dioxide set point of 800 parts per million (ppm) or less and tested by Qualified Testing Personnel pursuant to Section B of [CEC-NRCA-MCH-06-A-Demand Control Ventilation Systems Acceptance](https://energycodeace.com/NonresidentialForms/2019) (<https://energycodeace.com/NonresidentialForms/2019>).
 - 1. If the demand control ventilation system does not maintain average daily maximum carbon dioxide levels below 1,100 ppm, it must be disabled until such time as the LEA determines that the COVID-19 crisis has passed unless disabling the control would adversely affect operation of the overall system.
 - 2. When disabling a demand control ventilation system, the system must be configured to meet the minimum ventilation rate requirements and tested and adjusted to provide a notification through a visual indicator on the monitor, such as an indicator light or other alert system, including but not limited to an electronic mail, text, or cellular telephone application, when the carbon dioxide levels in the classroom have exceeded 1,100 ppm.

- b. Recommendations for additional maintenance, replacement, or upgrades for the demand control ventilation shall be recorded in the HVAC Assessment Report, described in Section D. The cost associated with the additional maintenance, replacements, or upgrades is not an eligible cost as part of the Assessment and Maintenance Grant but may be funded by the 20 percent contingency fund.

4. Coil Condition

- a. A Qualified Testing Personnel or a Skilled and Trained Workforce shall verify:
 - 1. Coil condition.
 - 2. Condensate drainage.
 - 3. Cooling coil air temperature differentials (entering and leaving dry bulb).
 - 4. Heat exchanger operation.
 - 5. Drive assembly.
- b. If repairs, replacement, or upgrades are necessary, these deficiencies shall be reported in the HVAC Assessment Report and the HVAC Verification Report and addressed by the Licensed Professional pursuant to PUC Sections 1626–1627, as described in Section D. The cost associated with the repairs, upgrades, or replacements is not an eligible cost as part of the Assessment and Maintenance Grant but may be funded by the 20 percent contingency fund.

5. Additional Requirements

- a. A Qualified Testing or Adjusting Personnel shall review control sequences to verify systems will maintain intended ventilation, temperature, and humidity conditions during school operation.
 - 1. For previously unoccupied buildings, perform the recommended practices of reopening a building as covered in the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Building Readiness document — Restarting a Building. Additional information can be found on ASHRAE’s webpage for [Building Readiness](https://www.ashrae.org/technical-resources/building-readiness) (<https://www.ashrae.org/technical-resources/building-readiness>).
 - 2. Verify a daily flush is scheduled per ASHRAE Guidance for Reopening and Operating Schools and Buildings or otherwise applicable local or state guidance. Additional information can be found on ASHRAE’s webpage for [Reopening of Schools and Universities](https://www.ashrae.org/technical-resources/reopening-of-schools-and-universities) (<https://www.ashrae.org/technical-resources/reopening-of-schools-and-universities>).
 - 3. Verify that HVAC system operational times, exhaust fans operation times, setpoints, and enabled features meet ASHRAE Guidance for Reopening and Operating Schools and Buildings or otherwise applicable local or state guidance.
- b. If installed HVAC systems or system components are broken, fail to meet minimum ventilation requirements, or are unable to operate to the original design and intent, this information will be included in the HVAC Assessment Report prepared pursuant to PUC Section 1626, and described in Section D, which will be provided to a

Licensed Professional for determination of appropriate corrective measures pursuant to PUC Section 1626. Repairs, upgrades, or replacements shall be performed by a Skilled and Trained Workforce. The cost associated with the repairs, upgrades, or replacements will be limited to the contingency fund.

- c. Requirements for filtration levels, ventilation rates, and ventilation schedules may be amended by the CEC based on the latest COVID-19 or other applicable guidance.

C. Carbon Dioxide Monitoring

1. Installation

To ensure proper ventilation is maintained throughout the school year, all classrooms in schools receiving a program grant shall be equipped with a carbon dioxide monitor that meets all the following:

- a. The monitor is hard-wired or plugged-in and mounted to the wall between three and six feet above the floor and at least five feet away from the door and operable windows.
- b. The monitor displays the carbon dioxide readings to the teacher through a display on the device or other means such as a web-based application or cellular phone application.
- c. The monitor provides a notification through a visual indicator on the monitor, such as an indicator light or other alert system, including but not limited to an electronic mail, text, or cellular telephone application, when the carbon dioxide levels in the classroom have exceeded 1,100 ppm.
- d. The monitor maintains a record of previous data that includes at least the maximum carbon dioxide concentration measured.
- e. The monitor has a range of 400 ppm to 2,000 ppm or greater.
- f. The monitor is certified by the manufacturer to be accurate within 75 ppm at 1,000 ppm carbon dioxide concentration and is certified by the manufacturer to require calibration no more frequently than once every five years.
- g. The monitor and installation and initial adjustment of the monitor are the only costs eligible for grant funding and the only costs that shall be included in the contractor estimate. The total cost for all three of these items must not exceed the maximum award for monitor installation as specified in Section K.

2. Continued Monitoring of Classroom Carbon Dioxide Level

If a classroom carbon dioxide concentration exceeds 1,100 ppm more than once a week as observed by the teacher or the facility staff, the classroom ventilation rates shall be adjusted by Qualified Testing or Adjusting Personnel, as defined in Table 1, to ensure that peak carbon dioxide concentrations in the classroom remain below the maximum allowable carbon dioxide ppm set point.

The LEA is responsible for continued monitoring. The requirement for future adjustments by a Qualified Testing or Adjusting Personnel shall not be included in the contractor estimate.

Verification of the installation of carbon dioxide monitors in all classrooms shall be included in the HVAC Assessment Report, described below.

D. Scheduled for Replacement Pathway Requirements

The Scheduled for Replacement Pathway allows filter replacement as described below and requires the installation of carbon dioxide monitors in each classroom consistent with the requirements of Section C, completion of an HVAC Assessment Report as specified in Section F, and an HVAC Verification Report as specified in Section G. This pathway does not include an assessment. As such, sites that receive grant funding for this pathway will not be eligible for the 20 percent contingency funds nor additional funding through an HVAC Upgrade and Repair Grant should funding become available for such purposes.

Filtration

The LEA receiving a grant for the Scheduled for Replacement Pathway may replace or upgrade system filtration as needed. If filtration is replaced or upgraded, the LEA shall install filtration with a MERV of 13 or better in the HVAC system where feasible. If MERV 13 is not feasible, then the highest MERV filtration that can be used in the HVAC system without adversely impacting the equipment shall be installed.

Qualified Testing Personnel shall test system capacity and airflow to determine the highest MERV filtration that can be installed without adversely impacting equipment, shall replace or upgrade filters where needed, and shall verify that those filters are installed correctly. The expected cost of filter replacement or upgrade shall be included in the cost estimate provided with the grant application. The purchase of additional replacement filters is not an eligible cost and must not be included in the contractor estimate. The cost associated with any additional repairs or adjustments will not be funded by a program grant.

E. Limited or No Mechanical Ventilation Pathway Requirements

The Limited or No Mechanical Ventilation Pathway requires an assessment as described in this section, completion of an HVAC Assessment Report as specified in this section and in Section F, installation of carbon dioxide monitors in each classroom consistent with the requirements of Section C, and completion of an HVAC Verification Report as specified in Section G.

A Qualified Testing or Adjusting Personnel must complete the following assessment requirements and HVAC Assessment Report. The HVAC Assessment Report will provide the Licensed Professional with documentation to provide mechanical ventilation options to the LEA with limited assumptions.

1. Assessment Requirements

- a. Verify the functionality and document nameplate data on any existing HVAC equipment (that is, heating only units, exhaust fans, and so forth), if any.

- b. Verify and document the location of windows and doors that can be opened.
 - 1. Verify if windows have any switches or controls that initiate exhaust fans, motorized dampers or other devices.
- c. Verify if any existing mechanical, architectural, structural drawings match current conditions.
- d. Provide a sketch of actual roof penetrations, penetration type (that is, vent pipe) and approximate locations if different from drawings.
- e. Document locations of any vents that could contaminate outside air intake locations.
- f. Document locations for potential installation of mechanical ventilation
- g. Photograph existing building, existing mechanical equipment (if applicable) and potential locations for mechanical ventilation equipment.
- h. Document roof and wall type/material to the best of the technician's ability.
- i. Document if existing mechanical equipment can be altered to provide outside air or if a dedicated outside air system is required.
- j. Obtain information on central plant capacity (if applicable)
- k. Document whether outside air conditions may make reliance on windows or other sources of nonfiltered outside air potentially hazardous to occupants.
- l. Document recommendations for adding mechanical ventilation and filtration where none exists or for replacing a mechanical ventilation system where the current system is nonoperational.

2. Limited or No Mechanical Ventilation Assessment Report Requirements

A Qualified Testing Personnel or Qualified Adjusting Personnel shall prepare a HVAC Assessment Report for review by a Licensed Professional, as defined in Table 1, based on the requirements specified in the Assessment Requirements section above. The HVAC Assessment Report shall include all the information described below. Additional requirements for the HVAC Assessment Report that must be completed for the Limited or No Mechanical Ventilation Pathway are provided in Section F and Appendix B.

- a. Name and address of school facility and person or contractor preparing and certifying HVAC Assessment Report.
- b. Documentation of existing HVAC infrastructure, including the functionality and nameplate data.
- c. Documentation of the location of windows and doors that can be opened and windows with any switches or controls that initiate exhaust fans, motorized dampers or other devices.
- d. The verified existing mechanical, architectural, structural drawings match current conditions.
- e. The sketch of actual roof penetrations, penetration type (that is, vent pipe) and approximate locations if different from drawings.

- f. Documentation locations of any vents that could contaminate outside air intake locations.
- g. Photographs of existing building, existing mechanical equipment (if applicable), and potential locations for mechanical ventilation equipment.
- h. Documentation roof and wall type/material.
- i. Documentation of existing mechanical equipment can be altered to provide outside air or if a Dedicated Outside Air System is required.
- j. Information on central plant capacity (if applicable).
- k. Documentation of whether outside air conditions may make reliance on windows or other sources of nonfiltered outside air potentially hazardous to occupants.
- l. Documentation of recommendations for adding mechanical ventilation and filtration where none exists or for replacing a mechanical ventilation system where the current system is nonoperational.
- m. Monthly electricity meter data, if requested by CEC program staff.
- n. LEAs may be required to submit additional information as described or otherwise required by these guidelines, including but not limited to the information described in Appendix B.

F. HVAC Assessment Report

A Qualified Testing Personnel or Qualified Adjusting Personnel shall prepare an HVAC Assessment Report based on the requirements specified for each pathway in Sections B, C, D, and E above. The HVAC Assessment Reports completed for sites following the HVAC Assessment and Maintenance and Limited or No Mechanical Ventilation Pathways shall be reviewed by a Licensed Professional, as defined in Table 1, as described in this section. The HVAC Assessment Report completed for the Scheduled for Replacement Pathway is not required to be reviewed by a Licensed Professional because this pathway does not require an assessment and is not eligible for additional funding through an HVAC Upgrade and Repair Grant should funding become available for such purposes.

The HVAC Assessment Report completed for each pathway shall include the following information as specified in Table 7, below, in the required form or formats.

1. Name and address of school facility and person or contractor preparing and certifying HVAC Assessment Report.
2. Documentation of HVAC equipment model number, serial number, general condition of unit, and any additional information that could be used to assess replacement and repair options given potential for increased energy efficiency benefits.
3. Either verification that MERV 13 filters have been installed or verification that the maximum MERV-rated filter that the system is able to effectively handle has been installed and what that MERV rating is.
4. The verified ventilation rates for facility classrooms, auditoriums, gymnasiums, nurses' offices, restrooms, offices, and other occupied areas, and whether those rates meet the requirements set forth in Table 120.1-A. If ventilation rates do not meet applicable

requirements, then an explanation for why the current system is unable to meet those rates shall be provided.

5. The verified exhaust for facility classrooms, auditoriums, gymnasiums, nurses' offices, restrooms, and other occupied areas and whether those rates meet the requirements set forth in the design intent.
6. Documentation of system deficiencies and recommendations for additional maintenance, replacement, or upgrades to improve energy efficiency, safety, or performance.
7. Name of the utility that provides electricity service and monthly electricity meter data.
8. Documentation on existing HVAC infrastructure to assist the Design Professional in determining ventilation options, as described in Section E for the Limited or No Mechanical Ventilation Pathway.

LEAs may be required to submit additional information as described or otherwise required by these guidelines, including but not limited to the information described in Appendix B.

The HVAC Assessment Report Worksheets will be made available for use in developing the report on the [program webpage](https://www.energy.ca.gov/programs-and-topics/programs/california-schools-healthy-air-plumbing-and-efficiency-program) (https://www.energy.ca.gov/programs-and-topics/programs/california-schools-healthy-air-plumbing-and-efficiency-program).

The HVAC Assessment Report Worksheets includes 10 worksheets as described in Appendix B and listed in Table 7, below. Table 7 provides information on which worksheets of the HVAC Assessment Report must be completed and submitted with the final reporting for each of the three grant pathways.

Table 7: HVAC Assessment Report Requirements by Grant Pathway

HVAC Assessment Report Required Information	HVAC Assessment and Maintenance Pathway	Scheduled for Replacement Pathway	Limited or No Mechanical Ventilation Pathway
1. System Overview	Yes	No	No
2. Filtration System	Yes	Yes	No
3. Ventilation Rate	Yes	No	No
4. Economizer Operation	Yes	No	No
5. Demand Control Ventilation	Yes	No	No
6. Air Distribution and Building Pressure	Yes	No	No
7. General Maintenance	Yes	No	No
8. Operational Controls	Yes	No	No
9. CO2 Monitoring	Yes	Yes	Yes
10. Limited or No Existing Mechanical	No	No	Yes

Source: California Energy Commission

1. Review of HVAC Assessment Report

A Licensed Professional shall review the HVAC Assessment Report completed for sites following the HVAC Assessment and Maintenance Pathway and:

- a. Determine what, if any, additional adjustments or repairs would be necessary to meet the minimum ventilation and filtration requirements.
- b. Determine whether any cost-effective energy efficiency upgrades or replacements are warranted or recommended.
- c. Provide an estimated cost for all identified work.

If the cost of recommended repairs, upgrades, or replacements are greater than the 20 percent contingency amount provided in the grant, then the Licensed Professional and the LEA may apply for additional funding through an HVAC Upgrade and Repair Grant, should funding become available for such purposes.

The provision of any additional funding for repairs, upgrades, or replacements shall be conditioned on the applicant ensuring that all construction work funded, in whole or in part, by the additional funding is performed by a Skilled and Trained Workforce.

2. Review of Limited or No Mechanical Ventilation HVAC Assessment Report

A Licensed Professional shall review the HVAC Assessment Report completed for sites following the Limited or No Mechanical Ventilation Pathway and:

- a. Determine recommendations for adding mechanical ventilation and filtration where none exists or for replacing a mechanical ventilation system where the current system is nonoperational.
- b. Provide an estimated cost for all identified recommendations.

The LEA may apply for funding for this work through an HVAC Upgrade and Repair Grant should funding become available for such purposes. The provision of any additional funding for repairs, upgrades, or replacements shall be conditioned on the applicant ensuring that all construction work funded, in whole or in part, by the additional funding is performed by a Skilled and Trained Workforce.

G. HVAC Verification Report

Upon completion of all work funded by a program grant, the LEA shall prepare and submit an HVAC Verification Report for each site included in the grant. The HVAC Verification Report must include the following information as specified for each grant pathway in Table 8, below, in the required form or formats.

1. Name and address of school facility and person or contractor preparing and certifying report.
2. Description of assessment, maintenance, adjustment, repair, upgrade, and replacement activities and outcomes.

3. Verification that the LEA has complied with all applicable program requirements, including Article 3 of Chapter 8.7 of Part 1 of Division 1 starting with Section 1620 of the PUC and as described in these guidelines
4. Verification that either MERV 13 filters have been installed or that the maximum MERV-rated filter that the system is able to effectively handle has been installed and what that MERV rating is.
5. The verified ventilation rates for facility classrooms, auditoriums, gymnasiums, nurses' offices, restrooms, offices, and other occupied areas and whether those rates meet the requirements set forth in Table 120.1-A. If ventilation rates do not meet applicable guidance, then an explanation for why the current system is unable to meet those rates shall be provided.
6. The verified exhaust for facility classrooms, auditoriums, gymnasiums, nurses' offices, restrooms, and other occupied areas and whether those rates meet the requirements set forth in the design intent.
7. Documentation of system deficiencies and recommendations for additional maintenance, replacement, or upgrades to improve energy efficiency, safety, or performance, or for additions of mechanical ventilation and filtration where none exists.
8. Documentation of initial operating verifications, adjustments, and final operating verifications, and documentation of any adjustments or repairs performed.
9. Verification of installation of carbon dioxide monitors, including make and model of monitors.
10. Verification that all required work has been performed by Qualified Testing or Adjusting Personnel or other qualified technician as specified by the program guidelines, including the provision of the contractor's name and license; acceptance test technician name and certification number, where applicable; TAB technician name and certification number, where applicable; and verification that all construction work has been performed by a Skilled and Trained Workforce.

Table 8: HVAC Verification Report Requirements by Grant Pathway

HVAC Verification Report Required Information (Items 1–10 listed above)	HVAC Assessment and Maintenance Pathway	Scheduled for Replacement Pathway	Limited or No Mechanical Ventilation Pathway
1	Yes	Yes	Yes
2	Yes	Yes	Yes
3	Yes	No	No
4	Yes	No	No
5	Yes	No	No
6	Yes	No	No
7	Yes	No	No
8	Yes	No	No
9	Yes	Yes	Yes
10	Yes	Yes	Yes

Source: California Energy Commission

The HVAC Verification Report form will be made available for use in developing the report on the [program webpage](https://www.energy.ca.gov/programs-and-topics/programs/california-schools-healthy-air-plumbing-and-efficiency-program) (<https://www.energy.ca.gov/programs-and-topics/programs/california-schools-healthy-air-plumbing-and-efficiency-program>).

LEAs may be required to submit additional information as described or otherwise required by these guidelines.

The LEA must maintain a copy of the HVAC Verification Report for at least three years from the grant award date and make it available to anyone upon request.

H. Reimbursement of Work Already Performed

Under PUC Section 1621(c)(3), LEAs may submit grant applications for reimbursement of assessment and maintenance projects where the work was **contracted and performed** after August 1, 2020, and the project meets the requirements of PUC Sections 1622 to 1627, inclusive. Any projects seeking reimbursement must also meet all requirements as specified in these guidelines. Any grant applications for reimbursement of work contracted and performed after August 1, 2020, shall make clear which work is being requested to be paid on a reimbursement basis.

The LEA must also provide documentation or a certification that the work was **contracted and performed** after August 1, 2020 and provide a description of the documentation supporting this certification. CEC retains the right to request copies of all referenced documentation. PUC Section 1621(c)(3) requires both the work contract and performance to occur after August 1, 2020. If the LEA contracted for the work **before** August 1, 2020, but the work was performed after August 1, 2020, it is not eligible for funding.

Grant applications for work contracted and performed after August 1, 2020, must also include all final reporting information as described in Chapter 4. All estimates, assessment, and

verification reports must be dated and indicate that all work was completed after August 1, 2020.

The applicant must provide the required documentation confirming that all grant work was done by Qualified Personnel, Licensed Professionals and a Skilled and Trained Workforce as required and defined in these guidelines.

I. Skilled and Trained Workforce Requirement

All repair, upgrade, replacement, or other technical work completed as part of the Assessment and Maintenance Grant must be performed by a Skilled and Trained Workforce, which has the same meaning as in Section 2601 of the Public Contract Code, and meet all other labor requirements as described in these guidelines. LEAs may use in-house staff or contractors to complete the work as long as all staff meet applicable Skilled and Trained Workforce requirements and all other labor requirements as described in these guidelines appropriate to each activity completed.

J. Grant Budget

The budget for each LEA grant award will be equal to the sum of approved individual site budgets for all eligible sites included in the LEA grant application. Each site budget will be equal to the amount of the contractor estimate for eligible work to be completed at that site not to exceed the maximum award as specified in Section K. CEC program staff will review the contractor estimate and determine the approved site budget based on program requirements, including eligible cost requirements in these guidelines and SEES Program statutes.

The approved site budget for a site in the HVAC Assessment and Maintenance Pathway will include a 20 percent contingency fund for repairs, upgrades, or replacements necessary to make the system functional or more energy-efficient. The 20 percent contingency fund will be calculated by taking 20 percent of the total approved budget for all eligible items in the HVAC Assessment and Maintenance Pathway. Table 9 provides a description and calculation of an example site's approved site budget following the HVAC Assessment and Maintenance Pathway's formula for maximum award amounts. The calculation of an actual approved site budget will use the amounts requested in the application and verified by a contractor estimate not to exceed the maximum award amounts.

Table 9: Example of Approved Site Budget for HVAC Assessment and Maintenance Pathway

Example Site: School with 50 HVAC system units, 50 filters, and 20 classrooms	
Calculation Description	Calculation Example
HVAC Assessment and Maintenance and HVAC Assessment Report — Approved budget	$\$10,000 + (\$1,000 \times 50) = \$60,000$
Filter Replacement — Approved budget for purchase and installation	$\$75 \times 50 = \$3,750$
Carbon Dioxide Monitors — Approved budget for purchase and installation	$\$600 \times 20 = \$12,000$
20 Percent Contingency Fund = 20 percent of sum of approved budgets for: <ul style="list-style-type: none"> • HVAC Assessment and Maintenance • HVAC Assessment Report • Filter Replacement • Carbon Dioxide Monitors 	$0.20 \times (\$60,000 + \$3,750 + \$12,000) = \$15,150$
Approved Site Budget = Sum of 20 Percent Contingency Fund and approved budgets for: <ul style="list-style-type: none"> • HVAC Assessment and Maintenance • HVAC Assessment Report • Filter Replacement • Carbon Dioxide Monitors 	$\$15,150 + \$60,000 + \$3,750 + \$12,000 = \$90,900$

Source: California Energy Commission

The 20 percent contingency fund will be added to the approved site budget and will be part of the total grant award. The approved site budget for sites following the Scheduled for Replacement and Limited or No Mechanical Ventilation Pathways will not include a 20 percent contingency fund.

Approved budgets are site-specific, and the 20 percent in contingency funds must be spent for the site for which the 20 percent is allocated. The 20 percent contingency awarded for one site may not be used to complete work at another site, even within the same LEA. No additional funding will be awarded if costs exceed the applied and approved site budget, so applicants are encouraged to prepare their application accordingly.

Any grant award funding, including any 20 percent contingency awarded funds, shall be returned to the CEC if not used for eligible purposes as specified in these guidelines. See Chapter 3 for more information.

K. Maximum Award

The approved site budget will not exceed the following maximum award amounts for each of the items specified:

1. \$10,000 plus \$1,000 per HVAC system unit for the HVAC Assessment and Maintenance, as defined in Table 1, and completion of the HVAC Assessment Report in the HVAC Assessment and Maintenance Pathway
2. \$4,000 for the modified assessment and completion of the HVAC Assessment Report in the Limited or No Mechanical Ventilation Pathway
3. \$2,000 for the completion of the HVAC Assessment Report for the Scheduled for Replacement Pathway
4. \$75 for the purchase and installation of each filter replacement
5. \$600 for the purchase and installation of carbon dioxide monitors in each classroom

L. Payment of Prevailing Wage

The applicant shall ensure, to the extent applicable, the budget considers the payment of prevailing wages. These grants may be subject to public works requirements (Labor Code Section 1720 et seq.), a requirement of which is to pay prevailing wages. Applicants are responsible for complying with all applicable laws, which can include public works requirements.

Only the California Department of Industrial Relations (DIR) and courts of competent jurisdiction may issue legally binding determinations that a project is or is not a public works project. Applicants shall assume their projects are public works unless they obtain a determination to the contrary from DIR or an appropriate court. As such processes can be time-consuming, please plan accordingly given the application deadline. Without such a determination, applicants shall explain how they have included appropriate budgets for prevailing wages.

M. Project Term

For each Assessment and Maintenance Grant project, the LEA will have up to 24 months to complete all work and submit the final reporting documentation described in Chapter 4.

CHAPTER 3:

Grant Applications and Awards

This chapter provides information for participation in the initial phase of program awards including the application process, required application forms and supporting documentation, a description of the process used by the CEC to approve applications and determine grant awards, payment of funds, and project and reporting requirements.

As described, PUC Section 1612 requires that schools in Underserved Communities be offered funding before schools that are not in an Underserved Community. Consistent with the statute and anticipated funding availability, CEC will only offer funding in this initial phase of program awards for projects for an assessment, completion of an HVAC Assessment Report, general HVAC maintenance, adjustment of ventilation rates, filter replacement, and carbon dioxide monitor installation. Depending on the pathway, some or all of these elements comprise an Assessment and Maintenance Grant. The funding award amounts will be made based on a contractor's site-specific estimate for the eligible work not to exceed the maximum award plus an additional 20 percent contingency fund for the HVAC Assessment and Maintenance Pathway. CEC will not award funds for upgrade, repair or replacement costs above the 20 percent contingency amount in this initial phase of program awards.

CEC anticipates that in subsequent phases of program awards, LEAs may be able to submit applications for grants addressing upgrade, repair, or replacement costs above the 20 percent contingency amount, referred to as HVAC Upgrade and Repair Grants. These guidelines will be updated to address additional program requirements specific to these awards if and when appropriate.

CEC will issue a notice of funding availability identifying the anticipated funding to be made available in each round of grants. The notice of funding availability will identify any relevant application dates including the first and last date applications can be submitted and any funding restrictions applicable to that funding round. Dates may be adjusted by the CEC through the issuance of a notice updating information.

A. Application Process

The application process has been designed to simplify the submission of an initial application and to provide access to funding for projects that have been contracted and performed after August 1, 2020, seeking reimbursement or for projects that are planned. For planned projects, upon request by an LEA and pursuant to the program requirements, CEC will also provide an option for the LEA to receive a portion of funds in advance of work being completed.

The application and award process is expected to generally follow the following steps.

1. CEC issues a notice of funding availability with details of the total funding available, start and end dates for application acceptance, and the breakdown of funds by funding category and by tiers, as described in these guidelines.

2. LEAs submit grant applications electronically as required in the notice of funding availability.
3. CEC will begin to review applications in the order that complete applications are received.
 - a. CEC staff will accept and review all applications submitted by the posted deadline.
 - b. At any time, should the CEC determine that all funds in a single funding category and tier have been reserved, the CEC may provide public notification of that determination but will continue to accept applications and identify LEAs that may be funded should additional funding become available.
4. CEC will grant funding awards for complete applications, at which time funds will be reserved for the LEA for approved projects.
5. Incomplete applications and applications deemed not to have met the application requirements (collectively referred to as “noncompliant” applications) will not be considered.
 - a. CEC will notify applicants if an application is noncompliant, and the applicant may reapply during the open application period. Depending on the volume and timing of applications received, the CEC may not always be able to review and notify applicants of noncompliant applications during the open application period. Accordingly, applicants are encouraged to apply as early in the process as possible.
6. CEC will issue a notice of proposed award to an LEA with a complete application. The LEA will be required to submit the additional required documents and complete a grant agreement to reserve the grant award funding.
7. If the project has already been contracted and performed after August 1, 2020, and the LEA is seeking reimbursement, the LEA will be instructed on how to complete and submit final project reporting and invoicing for review and payment.
8. The LEA will automatically receive a funding advance of 50 percent of the overall grant award after completion of the grant agreement.
9. All planned projects will also receive additional guidance on project completion, reporting, and invoice submittal.
10. All projects must adhere to the requirements provided in these guidelines and must use all required forms to receive a grant award and funding.

B. Application Package

Eligible applicants must submit a complete application package for an Assessment and Maintenance Grant using the electronic submission process and system identified in the notice of funding availability issued by the CEC. The application package must include the following in the required form or formats. The information required in the application form is listed in Appendix A of these guidelines and all forms will be made available for use in developing the application package on the [program webpage](https://www.energy.ca.gov/programs-and-topics/programs/california-schools-healthy-air-plumbing-and-efficiency-program) (<https://www.energy.ca.gov/programs-and-topics/programs/california-schools-healthy-air-plumbing-and-efficiency-program>)

1. Applicant Details (Ventilation-1): LEA information including official name, address, responsible parties, contact information, description of LEA territory, schools, and specific site information to determine the applicable grant pathway.
2. Overall Grant Request Summary (Ventilation-2): Grant site and budget summary page and status of all site-specific work including start date and projected end date. Identification of whether the grant application is seeking reimbursement for work contracted for and completed after August 1, 2020, or for work planned to be completed. The status will be entered individually for each site. Only applications with all sites completed are considered for reimbursement grants.
3. Site-Specific Details (Ventilation-3): Detailed information identifying all sites to be addressed by the grant, general site information, identification of the number and type of HVAC units on site, number of buildings for carbon dioxide monitoring, project completion status, and total site-specific estimate for assessment and maintenance project.
4. The LEA self-certifies:
 - a. It will follow the program guidelines.
 - b. The information included in the application package is true and correct to the best of the LEA's knowledge.
 - c. It will obtain Division of the State Architect (DSA) project approval as applicable under California Code Regulations, Title 24.
 - d. It acknowledges that the expended funds may be subject to audit, including a financial audit.
 - e. It will comply with all reporting requirements.
 - f. It will comply with all Assessment and Maintenance Grant terms and conditions.
 - g. It will comply with all Skilled and Trained Workforce requirements.
 - h. All applicable DIR and Labor Code requirements on public works, including the payment of prevailing wage, will be followed.
 - i. It acknowledges that it may be subject to a post-program site visit and measurement and evaluation study conducted by the CEC or its delegate.
5. Supporting documentation:
 - a. Site-specific contractor estimate supporting each site-specific amount requested.
 1. To be deemed complete, a contractor estimate must be itemized and include all required details.
 - b. Certificate of Good Standing for Charter School Applicants.
 - c. Letter of authorization for third-party applicants.
 - d. Required documentation for the Scheduled for Replacement Pathway:
 1. A facility master plan, or similar document, showing a plan for the system to be replaced within two years. Documentation should also identify funding reserved for the proposed project; and

2. An executed contract for the system replacement.
- e. Required documentation for the Limited or No Mechanical Ventilation Pathway:
 1. Documentation that confirms the site does not have an HVAC system, as defined in Table 1. Documentation may include site photographs, or mechanical/ site drawings.

C. Contractor Estimates

The amount requested in the application package may only be for reasonable costs to complete the work and requirements of the site's grant pathway, as described in Chapter 2, which includes:

1. HVAC Assessment and Maintenance Pathway:
 - a. Assessments and general maintenance as specified in Chapter 2.B - HVAC Assessment and Maintenance Pathway Requirements
 - b. Carbon Dioxide monitor installation or replacement as specified in Chapter 2.C – Carbon Dioxide Monitoring
 - c. HVAC Assessment reports as specified in Chapter 2.F – HVAC Assessment Report
 - d. Review of HVAC Assessment Report as specified in Chapter 2.F – HVAC Assessment Report
2. Scheduled for Replacement Pathway:
 - a. Filter replacement as specified in Chapter 2.D – Scheduled for Replacement Pathway Requirements
 - b. Carbon Dioxide monitor installation or replacement as specified in Chapter 2.C – Carbon Dioxide Monitoring
 - c. Modified HVAC Assessment Report as specified in Chapter 2.F – HVAC Assessment Report
3. Limited or No Mechanical Ventilation Pathway:
 - a. Modified assessment as specified in Chapter 2.E – Limited or No Mechanical Ventilation Pathway Requirements
 - b. Carbon Dioxide monitor installation or replacement as specified in Chapter 2.C – Carbon Dioxide Monitoring
 - c. Modified HVAC Assessment Report as specified in Chapter 2.F – HVAC Assessment Report
 - d. Review of Limited or No Existing Mechanical Ventilation Assessment Worksheet as specified in Chapter 2.F – HVAC Assessment Report

The contractor estimate must include a detailed site-specific budget, timeline, and a clear and accurate description of the work that will be provided. The site-specific budget needs to show line item cost estimates for materials, labor, and other costs. Any amount included as other costs must include a brief narrative explaining the use of these funds.

The LEA will be required to submit the original contractor estimate as part of the application package to demonstrate that all costs are reasonable for the work to be completed. The contractor estimate should include supporting documentation demonstrating that the scope of work is consistent with the requirements of these guidelines, as listed in Chapter 2.

Ineligible costs, as described in Chapter 3.I, cannot be included as part of the contractor estimate. Additional information consistent with these guidelines may be required from applicants to complete the grant agreement after notification of the grant award. Additional costs not provided for in applicable program statute or these guidelines will not be approved as part of the grant award. As noted, grants can be provided on a reimbursement basis for work **contracted for and completed** after August 1, 2020. The contractor estimate provided in support of a reimbursement grant must indicate that the estimate was completed after the August 1, 2020, date. Projects that have completed an estimate prior to August 1, 2020, will still be eligible to apply for an award, but funding will cover only work completed after that date.

The CEC does not have authority to authorize LEAs to use a particular procurement method for use of these funds. LEAs will have to rely on their own existing authority and shall comply with applicable law.

D. Application Review

Applications will be accepted only electronically through the CEC's electronic submission system, and all applications submitted will be identified by the date and time received. Any applications received after the noticed deadline will not be accepted, and a notice of rejection will be sent to the applicant. Any application forms or links and deadlines shall be described in the notice of funding availability. The CEC will not accept applications via email or fax. Applications must use the CEC's electronic submission system.

The CEC will review each submitted application package to ensure all the required information has been provided. An application with minor errors or inconsistencies that do not affect the completeness of the package may still be considered for funding. If an applicant or the CEC discovers any minor errors or inconsistencies, the applicant will be given 10 calendar days or until the application deadline, whichever occurs first, to resubmit the application to resolve any errors or inconsistencies. If the application is resubmitted, but there are remaining or additional errors or inconsistencies discovered in the application, the applicant will be given an additional 10 calendar days or until the application deadline, whichever occurs first, to resubmit the application to resolve the errors or inconsistencies. If the applicant does not resubmit the application in the allowed time frame, the application will be rejected.

If an application is rejected during the open application period, the LEA may revise and resubmit the application during the open application period. Depending on the volume and timing of applications received, the CEC may not always be able to review and notify applicants of errors during the open application period. If the applicant does resolve the errors or inconsistencies before the application deadline, the application will be approved or not approved accordingly pursuant to program requirements.

CEC staff will rank all approved applications by the date and time the final approved application was received. Grant applications will be processed until all available funds within each funding category and tier are awarded. Any approved grant applications received that exceed the amount of funds available in the current funding round for the funding category and application tier will be placed in order of date and time received on a priority list for funding if and when additional funds are made available.

E. Notice of Proposed Award and Completion of Grant Agreement

Following approval of an application, CEC staff will send a notice of proposed award to the successful LEA and will request the following additional information to complete the grant agreement, consistent with these guidelines:

1. Payee Data Record (STD-204): Required for grant award payment.
2. An authorizing document from the governing body, such as a resolution authorizing acceptance of the award and entering award agreement.
3. A signed grant agreement indicating that the LEA has read and accepts the terms and conditions.

Failure to agree to the terms and conditions by taking actions such as failing to sign the grant agreement or indicating that acceptance is based on modification of the terms will result in rejection of the application. CEC reserves the right to modify the terms and conditions prior to executing the grant agreement.

At the time the grant agreement is fully executed and received by the CEC, the grant award funding will be reserved for the LEA. Grantees will receive an advance payment of 50 percent of the total grant award after notification of the funding reservation.

For grants seeking reimbursement for projects contracted for and completed after August 1, 2020, the grantee will first need to enter into a grant agreement with CEC and then provide the final required project reporting and invoicing documentation to receive payment of the full grant award. Additional information on project reporting and invoicing is provided in these guidelines and further guidance will be made available to grantees.

F. Payment of Grant Funds

The CEC expects to receive funding for the program from participating utilities quarterly. Payment to grantees is conditioned on CEC receipt of funding.

The CEC will issue an email notice to approved grant applicants identifying the amount of the award. As noted above, the LEA will be awarded the CEC approved amount requested, which must equal the total of each site-specific budget not to exceed the maximum award, as specified in Chapter 2.K.

The grant award for sites meeting the requirements of the HVAC Assessment and Maintenance Pathway will include a contingency fund of an additional 20 percent of the approved amount for the HVAC assessment, general maintenance, adjustment of ventilation rates, and completion of the HVAC Assessment Report. The 20 percent contingency funds can only be used for HVAC repairs, upgrades, or replacements necessary to make the HVAC system

functional or more energy-efficient as described below. Although not required to be included in the estimate of work to be done, after the project is completed, the LEA will be required to provide documentation demonstrating how the contingency funds were spent.

At the conclusion of the project, all unspent funds including any unspent contingency funds shall be returned to the CEC. Additionally, any grant funds not used in accordance with program requirements, including grant agreement terms and conditions, shall be returned to the CEC.

Contingency Funds Eligible Costs

Only costs required to complete work identified in the HVAC Assessment and Verification Reports as necessary to make the HVAC system functional or more energy-efficient will be deemed eligible costs for purposes of expending the 20 percent contingency funds. The contingency funds may be used to cover cost overruns but cannot be used to pay for consultant fees or any portable equipment not directly connected to the eligible HVAC systems as described in PUC section 1622.

Funds must be used on the specific site for which they were awarded and cannot be transferred or used at another site. In documenting the appropriate use of the funds during final reporting, the LEA will be required to identify specifically where in the HVAC Assessment Report the identified repairs or upgrades are called for and the related expenditures using the contingency funds were spent in accordance with the assessment.

G. Timing of Payment

For projects that have not been completed at time of application (also called planned projects), upon request by the LEA, the CEC will issue a portion of funds in advance equal to 50 percent of the overall grant award. Upon approval of an award, the grantee will receive a notice of proposed award from the CEC and a grant agreement will be executed. After grant agreement execution, the CEC will approve payment of advance funds equal to 50 percent of the overall award for all sites represented in the grant agreement to be issued by the State Controller's Office (SCO). SCO expects to be able to issue payments within four weeks once the LEA completes the grant agreement and all required documentation is reviewed and approved by CEC.

The remaining 50 percent of the grant funds will be issued upon receipt and review of all final required reporting, including complete reporting of how contingency funds were spent on a site-specific level of detail. The LEA shall provide the CEC with additional documentation, as specified in the Reporting section of these guidelines, demonstrating how contingency funds were used.

All project requirements, as specified in Chapter 2, must be completed to receive Assessment and Maintenance Grant funding. There will be no payment issued for the partial completion of the project requirements. If the LEA received advanced funds and does not complete all the project requirements, any grant award funding, including any 20 percent contingency awarded funds, shall be promptly returned to the CEC.

CEC staff will issue payment only for the final invoice once and only when all final reporting is submitted and approved by CEC staff.

H. Additional Funding for Repair or Replacement

A Licensed Professional must review the HVAC Assessment Report and determine what, if any, additional adjustments or repairs would be necessary to meet the minimum ventilation and filtration requirements; determine whether any cost-effective energy efficiency upgrades or replacements are warranted or recommended; and provide an estimated cost for this work. If a Licensed Professional identifies cost-effective energy efficiency upgrades or repairs that would exceed the 20 percent contingency amount awarded, those repairs must be documented as described in the HVAC Assessment Report and HVAC Verification Report sections of these guidelines.

For sites that completed the Limited or No Mechanical Ventilation Pathway, a Licensed Professional must review the Modified HVAC Assessment Report and determine recommendations for adding mechanical ventilation and filtration where none currently exists or replacing a system that is non-operational, and then provide a cost estimate for this work. These recommendations must be documented as described in the modified HVAC Assessment Report and HVAC Verification Report sections of these guidelines.

The ability for LEAs to apply for additional funding for these additionally identified upgrades or a portion thereof will be determined in future program and funding phases as appropriate.

I. Ineligible Costs

Grant award funding can only be used for direct costs and work performed in accordance with the terms of the grant agreement.

Costs that are ineligible to be paid with grant funding include, but are not limited to:

1. Costs, other than those noted above, incurred outside the terms of the grant agreement with the CEC.
2. Costs associated with the use and continuous monitoring of the carbon dioxide monitors, such as electrical improvements, subscription services, storage, and central hubs.
3. Purchase of equipment not an integral part of the project.
4. Replacement of existing funding sources for ongoing programs.
5. Costs stemming from DSA requirements.
6. Consultant fees.

CHAPTER 4:

Project Completion and Reporting

A. Completion of Projects

As noted, grant recipients will have 24 months to complete all Assessment and Maintenance Grant work and final reporting requirements. Although the CEC may issue a reminder of the project deadline, it is the grant recipients' responsibility to monitor project completion and meet all required reporting and invoicing deadlines.

LEAs shall submit final reporting electronically using the system or process required by the CEC at the time the reporting is due. The CEC will provide all forms, formats, and guidance needed to assist in reporting on the CalSHAPE Program webpage.

B. Reporting

PUC Section 1618 states that the reduction in greenhouse gases (GHG) and energy savings attributed to a project funded by the CalSHAPE Program shall be attributed to the utility that provided those funds when determining compliance with applicable GHG or energy efficiency saving mandates. The baseline for determining reductions in emissions of greenhouse gases and energy savings from the program shall be the energy demand and emissions of GHG that would have occurred if ventilation and filtration recommendations for reopening schools were met without the assessment, adjustment, maintenance, repairs, and efficiency upgrades funded under the CalSHAPE Ventilation Program.

Energy and GHG savings are not a required element of the HVAC Assessment or Verification Report. Nonetheless, additional data or information may be requested from the grantee to allow the CEC to determine the GHG reductions and energy savings pursuant to PUC Section 1618. The LEA, contractor, or Licensed Professional, or a combination thereof, shall cooperate with CEC staff or CEC consultants in any assessment of an individual project's energy and GHG savings, including providing access to the project site and providing project and equipment information. The cost associated with any additional reporting or assessment will not be funded by a program grant.

C. Final Reporting and Invoice for Remaining Funds

After the Assessment and Maintenance Grant project has been completed, the applicant will submit a final document package to the CEC that includes:

1. HVAC Assessment Report, as specified in Chapter 2.F.
2. HVAC Verification Report as specified in Chapter 2.G.
3. Site-specific project summary detailing the use of contingency funding.
4. Final invoice and any other supporting documentation for all expended grant funds up to the original grant award amount.

5. Any reporting required to determine compliance with PUC Section 1618 as described in Section B, above, to calculate or confirm energy savings or reduction in greenhouse gas emissions resulting from the project.
6. The LEA self-certifies:
 - a. It followed the program guidelines.
 - b. The information included in the final document package is true and correct to the best of the LEA's knowledge.
 - c. All California Environmental Quality Act (CEQA) requirements are completed.
 - d. It has obtained any required DSA project approvals as applicable under California Code Regulations, Title 24.
 - e. It acknowledges that the expended funds may be subject to an audit, including a financial audit.
 - f. It complied with all reporting requirements.
 - g. It complied with all Assessment and Maintenance Grant terms and conditions.
 - h. It complied with all Skilled and Trained Workforce and other labor requirements.
 - i. It complied with any applicable labor code requirements on the payment of prevailing wage.
 - j. All DIR requirements for public works, including payment of prevailing wages, were followed.
 - k. It commits to participate with the CEC or its delegate in the assessment of energy savings or GHG emission reductions, including providing access to project sites and project and equipment information.
 - l. It acknowledges that it may be subject to a post-program site visit and measurement and evaluation study conducted by the CEC or its delegate.

D. Time Extension Requests

Grant recipients may request a one-time extension to complete final reporting. The extension will be no more than six months and will not exceed the final program reporting deadline date of June 1, 2026.

CHAPTER 5:

Administration

A. Guidelines Authority

These program guidelines are adopted under Public Utilities Code Division 1, Part 1, Chapter 8.7 added by AB 841 (Chap. 372, Stats. 2020), which directs the CEC to implement the CalSHAPE Ventilation Program as part of the CalSHAPE Program. Under PUC Section 1614(b), the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) does not apply to the adoption of these guidelines.

B. Effective Date of Guidelines

These program guidelines are not effective until adopted by the CEC at a publicly noticed business meeting. The CEC will post the adopted [CalSHAPE Ventilation Program Guidelines](https://www.energy.ca.gov/programs-and-topics/programs/california-schools-healthy-air-plumbing-and-efficiency-program) on its website: <https://www.energy.ca.gov/programs-and-topics/programs/california-schools-healthy-air-plumbing-and-efficiency-program>. Applicants may also obtain the program Guidelines by contacting CalSHAPE@energy.ca.gov.

C. California Environmental Quality Act

The CEC must comply with CEQA (Public Resources Code section 21000 et seq.; see also California Code of Regulations Title 14, section 15000 et seq.), which generally requires public agencies to identify and consider potential environmental impacts of proposed projects. Applicants may be required to submit CEQA documentation as part of their application to determine CEQA compliance. Refer to Appendix A: Application and Forms for further information.

D. Division of the State Architect Review

DSA provides design and construction oversight for school districts. To ensure buildings are safe and compliant with accessibility standards, DSA must review and approve public school construction for compliance with the California Code of Regulations, Title 24, the California Building Code (CBC), when alterations or additions are made to existing buildings.

Certain equipment replacements and upgrades funded by the program might be exempt or excluded from DSA review and approval for structural safety, depending on the scope of work and estimated construction cost. To help LEAs determine the various requirements and possible exemptions, DSA provides resources and guidelines on its [website](https://www.dgs.ca.gov/DSA/Resources/Page-Content/Resources-List-Folder/Plan-Review-Appointment-Process-for-School-Essential-Services-Construction-Project) at <https://www.dgs.ca.gov/DSA/Resources/Page-Content/Resources-List-Folder/Plan-Review-Appointment-Process-for-School-Essential-Services-Construction-Project>.

In cases where DSA review is required, DSA will verify that the original building construction was certified before it can issue approval of plans for alterations on that building. DSA regional office staff can help LEAs identify whether a particular building is suitably certified and what steps are required to achieve certification.

LEAs are advised to consider DSA requirements early in their planning for HVAC work and contact the appropriate DSA regional office with jurisdiction over the area in which the project is located.

Visit the DSA Construction Project Submittal webpage for more information regarding plan submission at Plan Review Appointment Process.

E. Enforcement

In addition to any other rights the CEC has, the CEC can take all the following actions necessary to enforce its rights and program requirements:

1. Recovery of Overpayment

The CEC may direct its chief counsel to commence formal legal action against any applicant, former applicant, or recipient to recover any portion of a payment under a grant agreement that the executive director determines the applicant, former applicant, or recipient was not otherwise entitled to receive, retain (that is, advanced funds), or spend in the manner it was spent.

2. Fraud and Misrepresentation

The executive director may initiate an investigation of any applicant that the executive director has reason to believe may have misstated, falsified, or misrepresented information in submitting an application, payment request, or any reporting or other information required under the program. Based on the results of the investigation, the executive director may take any action deemed appropriate, including, but not limited to, cancellation of the reservation of funds, termination of the award or award agreement, recovery of any overpayment, and, with the concurrence of the CEC, recommending the attorney general initiate an investigation and prosecution under Government Code Section 12650, et seq., or other provisions of law.

3. Noncompliance With Agreement

The CEC may seek remedies for noncompliance with agreement terms, work scope, and project milestones including but not limited to stop work, termination, withholding requested payments, recovery of funds, or any other administrative or civil action.

F. Use and Disclosure of Information and Records and Confidentiality

With very few exceptions, documents submitted to the CEC or its technical consultant(s), including as part of any audit, are considered public records subject to disclosure under the California Public Records Act. The CEC or other state agencies may also use any of these documents or information for any purpose, including to determine eligibility and compliance with the CalSHAPE Program, applicable law, or a particular solicitation or guideline document; to evaluate related or relevant programs or program elements; or to prepare reports. These documents and information include but are not limited to applications for funding, the agreement itself, invoices and any documentation submitted in support of applications, all

agreement deliverables, final project report, and documents prepared for other reporting requirements, materials and documents developed as part of technology transfer.

If the CEC requires an applicant or recipient to provide copies of records that the recipient believes contain confidential/proprietary information entitled to an exemption under the California Public Records Act or protection under another law, the recipient may request that such records be designated confidential according to the CEC's regulations for confidential designation, Title 20, California Code of Regulations, Section 2505.

Applicants considering confidentiality should note that CalSHAPE funds are subject to information disclosure requirements to ensure transparency. Information concerning the identity of recipients and the grant amount is public information and will be disclosed according to the California Public Records Act. This information, as well as other public information, may also be disclosed through the CEC's website, another State of California agency website, or through other means.

The CEC can be required by law to disclose confidential information and records to other governmental entities and policing authorities for civil and criminal investigation and enforcement.

G. Substantive Changes in Guidelines

After adoption, substantive changes to the adopted program guidelines may be made with the approval of the CEC at a publicly noticed meeting with no fewer than 15 days' notice. Unless stated otherwise in the resolution approving substantive changes, such changes shall take effect upon adoption by the CEC. Substantive changes to design or requirements include but are not limited to:

1. Program eligibility.
2. Technical requirements.
3. Measurement and verification reporting.

H. Nonsubstantive Changes in Guidelines

If the program guidelines require nonsubstantive changes, including, but not limited to typographical errors, the CEC will provide a notice of the changes to the CalSHAPE list serve (school_ee_stimulus) and post the amended guidelines on the program web page.

APPENDIX A:

Application Information

This appendix describes the information that will be required in the application form. The application will be completed and submitted by the LEA using the electronic submission process and system identified in the notice of funding availability issued by the CEC. The application form will be made available for use in developing the application package on the [program webpage](https://www.energy.ca.gov/programs-and-topics/programs/california-schools-healthy-air-plumbing-and-efficiency-program) (<https://www.energy.ca.gov/programs-and-topics/programs/california-schools-healthy-air-plumbing-and-efficiency-program>).

Refer to Chapter 3.B for more detailed information about the application process.

Assessment and Maintenance Grant Application Form

1. Application Information
 - Applicant name
 - Type of entity/CDS Code
 - Application region
 - Address
 - Contact information
 - Utility provider(s)
2. Project Information (Table format for multiple projects in LEA's application)
 - Type of project (new or reimbursement)
 - School address
 - School size (classrooms/students)
 - Project description
3. Project Schedule
 - Estimated start date
 - Estimated completion date
4. Project Budget
5. CEQA-related information
6. Supporting Documentation
7. Self-Certifications

APPENDIX B:

HVAC Assessment Report Information

This appendix describes the information that will be required in the HVAC Assessment Report. The assessment report form will be completed by Qualified Testing Personnel and submitted using the electronic submission process and system identified in the notice of funding availability issued by the CEC. The assessment report forms will be made available for use in on the [program webpage](https://www.energy.ca.gov/programs-and-topics/programs/california-schools-healthy-air-plumbing-and-efficiency-program) (<https://www.energy.ca.gov/programs-and-topics/programs/california-schools-healthy-air-plumbing-and-efficiency-program>)

Refer to Chapter 2.D for more detailed information about the assessment report requirements.

1. Overview Form (checklist)

- Unit/Model No./Serial No./SEER Rating/Refrigerant
- Filtration
- Ventilation rate
- Ventilation system operation
- Air distribution
- Building pressure
- General maintenance
- Operational controls
- CO₂ monitoring
- HVAC Assessment Report
- Energy and ventilation upgrades

2. Filtration Form

- Existing filter data
- Installation audit
- Frame condition
- Motor and control type
- MERV 13 verification

3. Ventilation Rate Form

- Determine minimum required outside air
- Verify minimum required outside air
- Increased outside air

4. Economizer Operation Form

- Verify economizer operation
- Economizer functions as designed Y/N
- Documentation of adjustments and repairs required

5. Demand Control Ventilation Operation Form

- Verify DCV operation
- Verify DCV function at setpoint of 800 ppm
- Document adjustments or repairs required

6. Air Distribution and Building Pressure Form

- Supply outlets measurement
- Return inlets measurement
- Exhaust inlets measurement
- Measured supply air = measured outside air + measured return air determination
- Measured supply air slightly great than measured return air determination
- Air distribution notes
- Document repairs and adjustments required

7. General Maintenance Form

- Verify coil condition
- Verify condensate drainage
- Measure and document temperature differential
- Verify condition of drive assembly
- Document deficiencies
- Document required repairs and adjustments

8. Operational Controls Form

- Review control sequences – verify systems will maintain intended conditions during operation
- Ventilation schedule operation
- Document deficiencies and recommendations for maintenance, replacement or upgrades.

9. CO₂ Monitoring Form

- Verify installation or install a CO₂ monitor
- Verify and document CO₂ monitor meets required capabilities

10. Limited or No Existing Mechanical Form

- Verify existing HVAC infrastructure
- Collect information on the building and potential locations for the installation of mechanical ventilation

APPENDIX C:
Table 120.1-A

Appendix for reference purposes only.

Table 120.1-A – Minimum Ventilation Rates

Occupancy Category	Area Outdoor Air Rate ¹ Ra	Min Air Rate for DCV ²	Air Class	Notes
		fm/ft ²	cfm/ft ²	
Educational Facilities				
Daycare (through age 4)	0.21	0.15	2	
Daycare sickroom	0.15	3		
Classrooms (ages 5-8)	0.38	0.15	1	
Classrooms (age 9-18)	0.38	0.15	1	
Lecture/postsecondary classroom	0.38	0.15	1	F
Lecture hall (fixed seats)	-	0.15	1	F
Art classroom	0.15	2		
Science laboratories	0.15	2		
University/college laboratories	0.15	2		
Wood/metal shop	0.15	2		
Computer lab	0.15	1		
Media center	0.15	1	A	
Music/theater/dance	1.07	0.15	1	F
Multiuse assembly	0.50	0.15	1	F
Food and Beverage Service				
Restaurant dining rooms	0.50	0.15	2	
Cafeteria/fast-food dining	0.50	0.15	2	
Bars, cocktail lounges	0.50	0.20	2	
Kitchen (cooking)	0.15	2		
General				
Break rooms	0.50	0.15	1	F
Coffee Stations	0.50	0.15	1	F
Conference/meeting	0.50	0.15	1	F
Corridors	0.15	1	F	
Occupiable storage rooms for liquids or gels	0.15	2	B	

Hotels, Motels, Resorts, Dormitories				
Bedroom/living room	0.15	1	F	
Barracks sleeping areas	0.15	1	F	
Laundry rooms, central	0.15	2		
Laundry rooms within dwelling units	0.15	1		
Lobbies/pre-function	0.50	0.15	1	F
Multipurpose assembly	0.50	1	F	

APPENDIX D:

Additional References

Assembly Bill No. 841 Energy: transportation electrification: energy efficiency programs:
School Energy Efficiency Stimulus Program. (2019-2020) (Ting)
http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB841



RECIPIENT Mountain View Whisman	AGREEMENT NUMBER 22R3VA0850
ADDRESS Ron Wheelehan 1400 Montecito Ave. Mountain View, CA 94043	AGREEMENT TERM <p style="text-align: center;">Ends 24 months after Effective Date</p> The effective date of this Agreement is either the start date or the approval signature date by the California Energy Commission representative below, whichever is later. The California Energy Commission shall be the last party to sign. No work is authorized, nor shall any work begin, until on or after the effective date.

PROJECT DESCRIPTION

The parties agree to comply with the terms and conditions of the following Exhibits which are by this reference made a part of the agreement.

- Exhibit A** – Scope of Work
- Exhibit B** – Budget
- Exhibit C** – Agreement Contacts
- Exhibit D** – Terms and Conditions

REIMBURSABLE AMOUNT \$933,150.00
Total of REIMBURSABLE AMOUNT \$933,150.00

The undersigned parties have read the attachments to this agreement and will comply with the standards and requirements contained therein.

CALIFORNIA ENERGY COMMISSION		RECIPIENT	
AUTHORIZED SIGNATURE	DATE	AUTHORIZED SIGNATURE	DATE
NAME Adrienne Winuk		NAME	
TITLE Contracts, Grants, and Loans Office Manager		TITLE	
CALIFORNIA ENERGY COMMISSION ADDRESS 1516 9th Street, MS 18, Sacramento, CA 95814			

EXHIBIT A Scope of Work

Mountain View Whisman 43695910000000

**Total Number of Sites
10**

Site Name	CDS Code
Gabriela Mistral Elementary	43695910132373
Jose Antonio Vargas Elementary	43695910138750
Benjamin Bubb Elementary	43695916047955
Edith Landels Elementary	43695916047963
Frank L. Huff Elementary	43695916047971
Isaac Newton Graham Middle	43695916047989
Stevenson Elementary	43695916049464
Crittenden Middle	43695916049472
Monta Loma Elementary	43695916049480
Theuerkauf Elementary	43695916049514

**Gabriela Mistral Elementary
Category**

	Unit Count
Assessment & Maintenance	35
Filter	90
Monitor	26

**Jose Antonio Vargas Elementary
Category**

	Unit Count
Assessment & Maintenance	35
Filter	100
Monitor	24

**Benjamin Bubb Elementary
Category**

	Unit Count
Assessment & Maintenance	36
Filter	75
Monitor	22

**Edith Landels Elementary
Category**

	Unit Count
Assessment & Maintenance	35
Filter	90
Monitor	27

**Frank L. Huff Elementary
Category**

	Unit Count
Assessment & Maintenance	32
Filter	90

Monitor	24
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Isaac Newton Graham Middle

Category	Unit Count
Assessment & Maintenance	65
Filter	190
Monitor	51

Stevenson Elementary

Category	Unit Count
Assessment & Maintenance	41
Filter	110
Monitor	27

Crittenden Middle

Category	Unit Count
Assessment & Maintenance	65
Filter	180
Monitor	52

Monta Loma Elementary

Category	Unit Count
Assessment & Maintenance	35
Filter	95
Monitor	24

Theuerkauf Elementary

Category	Unit Count
Assessment & Maintenance	35
Filter	95
Monitor	23

EXHIBIT B Budget

**Mountain View Whisman
4369591000000**

**Total Requested Amount
\$933,150.00**

Site Name	Requested Amount
Gabriela Mistral Elementary	\$80,820.00
Jose Antonio Vargas Elementary	\$80,280.00
Benjamin Bubb Elementary	\$77,790.00
Edith Landels Elementary	\$81,540.00
Frank L. Huff Elementary	\$75,780.00
Isaac Newton Graham Middle	\$143,820.00
Stevenson Elementary	\$90,540.00
Crittenden Middle	\$143,640.00
Monta Loma Elementary	\$79,830.00
Theuerkauf Elementary	\$79,110.00

**Gabriela Mistral Elementary
Category**

	Requested Amount
Assessment & Maintenance	\$45,000.00
Filter	\$6,750.00
Monitor	\$15,600.00
Contingency	\$13,470.00

**Jose Antonio Vargas Elementary
Category**

	Requested Amount
Assessment & Maintenance	\$45,000.00
Filter	\$7,500.00
Monitor	\$14,400.00
Contingency	\$13,380.00

**Benjamin Bubb Elementary
Category**

	Requested Amount
Assessment & Maintenance	\$46,000.00
Filter	\$5,625.00
Monitor	\$13,200.00
Contingency	\$12,965.00

**Edith Landels Elementary
Category**

	Requested Amount
Assessment & Maintenance	\$45,000.00
Filter	\$6,750.00
Monitor	\$16,200.00
Contingency	\$13,590.00

Frank L. Huff Elementary**Category**

Assessment & Maintenance
Filter
Monitor
Contingency

Requested Amount

\$42,000.00
\$6,750.00
\$14,400.00
\$12,630.00

Isaac Newton Graham Middle**Category**

Assessment & Maintenance
Filter
Monitor
Contingency

Requested Amount

\$75,000.00
\$14,250.00
\$30,600.00
\$23,970.00

Stevenson Elementary**Category**

Assessment & Maintenance
Filter
Monitor
Contingency

Requested Amount

\$51,000.00
\$8,250.00
\$16,200.00
\$15,090.00

Crittenden Middle**Category**

Assessment & Maintenance
Filter
Monitor
Contingency

Requested Amount

\$75,000.00
\$13,500.00
\$31,200.00
\$23,940.00

Monta Loma Elementary**Category**

Assessment & Maintenance
Filter
Monitor
Contingency

Requested Amount

\$45,000.00
\$7,125.00
\$14,400.00
\$13,305.00

Theuerkauf Elementary**Category**

Assessment & Maintenance
Filter
Monitor
Contingency

Requested Amount

\$45,000.00
\$7,125.00
\$13,800.00
\$13,185.00

Total Grant Award

Initial Payment
Final Payment

\$933,150.00
\$466,575.00
\$466,575.00

EXHIBIT C Contacts

CalSHAPE Program Staff

California Energy Commission
715 P Street
Sacramento, CA 95814
E-mail: CalSHAPE@energy.ca.gov

Confidential Deliverables/Products

Adrienne Winuk, Manager
California Energy Commission
Contracts, Grants and Loans Office
715 P Street, MS - 18
Sacramento, CA 95814
E-mail: Adrienne.Winuk@energy.ca.gov

Invoices, Progress Reports and Non-Confidential Deliverables to

Mary Hung
California Energy Commission
Accounting Office
714 P Street MS - 2
Sacramento, CA 95813
E-mail: Mary.Hung@energy.ca.gov

EXHIBIT C Contacts

LEA Contact (Primary)

Name
Address
City, State, Zip
E-mail

LEA Contact (Alternate)

Name
Address
City, State, Zip
E-mail

LEA Contact (Alternate)

Name
Address
City, State, Zip
E-mail

EXHIBIT D

**CALIFORNIA SCHOOLS HEALTHY AIR, PLUMBING, AND EFFICIENCY
(CALSHAPE) STANDARD GRANT TERMS AND CONDITIONS**

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1. **Introduction**

This grant agreement (Agreement) between the California Energy Commission (Energy Commission, or Commission) and the Recipient is funded by the School Energy Efficiency Stimulus Program, established by Assembly Bill 841 (Ting, Chapter 372, Statutes of 2020), which in part provides grants to assess, maintain, adjust, repair, or upgrade heating, ventilation, and air conditioning systems. This grant program is referred to as the California Schools Healthy Air, Plumbing, and Efficiency (CalSHAPE) Ventilation Program.

This Agreement includes: (1) the Agreement signature page (**form CEC-146**); (2) the scope of work (**Exhibit A**); (3) the budget (**Exhibit B**); (4) a contacts list (**Exhibit C**); (5) these terms and conditions, which are standard requirements for CalSHAPE ventilation program grant awards (**Exhibit D**); (6) any special terms and conditions that the Energy Commission may impose to address the unique circumstances of the funded project, which take precedence in the event of a conflict with any provision of these terms and conditions (**Exhibit E**); (7) all attachments; and (8) all documents incorporated by reference.

All work and expenditure of Commission-reimbursed funds must occur prior to the Agreement term end date specified on the CEC-146 form.

2. **Documents Incorporated by Reference**

The documents below are incorporated by reference into this Agreement. These terms and conditions will govern in the event of a conflict with the documents below, with the exception of the documents in subsections (f) and (g) below. Where this Agreement or California laws and regulations are silent or do not apply, the Energy Commission will use the federal cost principles and acquisition regulations listed below as guidance in determining whether reimbursement of claimed costs is allowable. Documents incorporated by reference include:

Funding Documents

- a. The notice of funding availability for the project supported by this Agreement
- b. The Recipient's application submitted in response to the notice of funding availability

Program Guidelines

- c. CalSHAPE Ventilation Program Commission Guidelines, available at <https://www.energy.ca.gov/programs-and-topics/programs/california-schools-healthy-air-plumbing-and-efficiency-program>

Federal Cost Principles (*applicable to state and local governments, Indian tribes, institutions of higher education, and nonprofit organizations*)

- d. 2 Code of Federal Regulations (CFR) Part 200, Subpart E (Sections 200.400 et seq.)

Federal Acquisition Regulations (*applicable to commercial organizations*)

- e. 48 CFR, Ch.1, Subchapter E, Part 31, Subpart 31.2: Contracts with Commercial Organizations (supplemented by 48 CFR, Ch. 9, Subchapter E, Part 931, Subpart 931.2 for Department of Energy grants)

Nondiscrimination

- f. 2 California Code of Regulations, Section 11099 et seq.: Contractor Nondiscrimination and Compliance

General Laws

- g. Any federal, state, or local laws or regulations applicable to the project that are not expressly listed in this Agreement

3. **Standard of Performance**

In performing work under the Agreement, the Recipient, its subcontractors, and their employees are responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures for the type of work performed.

4. **Due Diligence**

- a. The Recipient must take timely actions that, taken collectively, move this project to completion.
- b. Energy Commission staff will periodically evaluate the project schedule for completion of Scope of Work tasks. This evaluation may include but not be limited to random checks of project progress at periodic intervals set by the Energy Commission. Recipients subject to a project check must complete a progress report using a template prepared by the Energy Commission to provide information on the project status and expected completion date.
- c. If Energy Commission staff determines that: (1) the Recipient is not diligently completing the tasks in the Scope of Work; or (2) the time remaining in this Agreement is insufficient to complete all project tasks by the Agreement end date, Energy Commission staff may recommend that this Agreement be terminated, and the Commission may terminate this Agreement without prejudice to any of its other remedies.

5. **Products**

- a. **“Products”** are any tangible item specified for delivery to the Energy Commission in the Scope of Work, such as reports and summaries. The Recipient will submit all products identified in the Scope of Work to Energy Commission staff, in the manner and form specified in the Scope of Work.

If Energy Commission staff determines that a product is substandard given its description and intended use as described in this Agreement, Energy Commission staff, without prejudice to any of the Commission’s other remedies, may refuse to authorize payment for the product and any subsequent products that rely on or are based upon the product under this Agreement.

- b. **Failure to Submit Products**

Failure to submit a product required in the Scope of Work may be considered material noncompliance with the Agreement terms. Without prejudice to any other remedies, noncompliance may result in actions such as the withholding of future payments or awards, or the suspension or termination of the Agreement.

- c. **Legal Statements on Products**

All documents that result from work funded by this Agreement and are released to the public must include the following statement to ensure no Commission endorsement of documents:

LEGAL NOTICE

This document was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. Neither the Commission, the State of California, nor the Commission's employees, contractors, or subcontractors makes any warranty, express or implied, or assumes any legal liability for the information in this document; nor does any party represent that the use of this information will not infringe upon privately owned rights. This document has not been approved or disapproved by the Commission, nor has the Commission passed upon the accuracy of the information in this document.

6. Amendments

a. Procedure for Requesting Extensions

The Recipient must submit a written request to the CalSHAPE Program for a one-time only extension to the Agreement, not to exceed six-months nor the final program reporting deadline date of June 1, 2026. The request must include:

- A brief summary of the proposed extension; and
- A brief summary of the reason(s) for the extension

b. Approval of Changes

No amendment or variation of this Agreement shall be valid unless made in writing and signed by both of the parties except for the Commission's unilateral termination rights in Section 16 of these terms. No oral understanding or agreement is binding on any of the parties.

7. Contracting and Procurement Procedures

This section provides general requirements for agreements entered into between the Recipient and subcontractors for the performance of this Agreement.

a. Contractor's Obligations to Subcontractors

1) The Recipient is responsible for handling all contractual and administrative issues arising out of or related to any subcontracts it enters into for the performance of this Agreement.

2) Nothing contained in this Agreement or otherwise creates any contractual relation between the Commission and any subcontractors, and no subcontract may relieve the Recipient of its responsibilities under this Agreement. The Recipient agrees to be as fully responsible to the Commission for the acts and omissions of its subcontractors or persons directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Recipient.

The Recipient's obligation to pay its subcontractors is an independent obligation from the Commission's obligation to make payments to the Recipient. As a result, the Commission has no obligation to pay or enforce the payment of any funds to any subcontractor.

3) The Recipient is responsible for establishing and maintaining contractual agreements with and reimbursing each subcontractor for work performed in accordance with the terms of this Agreement.

b. Flow-Down Provisions

Subcontracts funded in whole or in part by this Agreement must include language conforming to the provisions below, unless the subcontracts are entered into by the University of California (UC) or the U.S. Department of Energy (DOE) national laboratories. UC may use the terms and conditions negotiated by the Energy Commission with UC for its subcontracts. DOE national laboratories may use the terms and conditions negotiated with DOE (please contact the Commission Grants Officer for these terms).

- Standard of Performance (Section 3)
- Legal Statements on Products (included in Section 5, "Products")
- Prevailing Wage (Section 10)
- Recordkeeping, Cost Accounting, and Auditing (Section 11)
- Equipment (Section 14)
- Indemnification (Section 17)
- Intellectual Property (Section 20)
- Access to Sites and Records (included in Section 22, "General Provisions")
- Nondiscrimination (included in Section 23, "Certifications and Compliance")
- Survival of the following sections:
 - Equipment (Section 14)
 - Recordkeeping, Cost Accounting, and Auditing (Section 11)
 - Intellectual Property (Section 20)
 - Access to Sites and Records (included in Section 22, "General Provisions")

Subcontracts funded in whole or in part by this Agreement must also include the following:

- A clear and accurate description of the material, products, or services to be procured.
- A detailed budget and timeline.
- Provisions that allow for administrative, contractual, or legal remedies in instances where subcontractors breach contract terms, in addition to sanctions and penalties as may be appropriate.
- Provisions for termination by the Recipient, including termination procedures and the basis for settlement.
- A statement that further assignments will not be made to any third or subsequent tier subcontractor without additional advance written consent of the Commission.

c. Audits

All subcontracts entered into for the performance of this Agreement are subject to examination and audit by the Energy Commission, Bureau of State Audits, or the California Public Utilities Commission for a period of three (3) years after payment of the Recipient's final invoice under this Agreement.

d. Copies of Subcontracts

The Recipient must provide a copy of its subcontracts upon request by the Energy Commission.

e. Conflicting Subcontract Terms

Prior to the execution of this Agreement, the Recipient will notify the CalSHAPE Program of any known or reasonably foreseeable conflicts between this Agreement and its agreements with any subcontractors (e.g., conflicting intellectual property or payment terms). If the Recipient discovers any such conflicts after the execution of this Agreement, it will notify the CalSHAPE Program of the conflict within fifteen (15) days of discovery. The Energy Commission may, without prejudice to its other remedies, terminate this Agreement if any conflict impairs or diminishes its value.

f. Penalties for Noncompliance

Without limiting the Commission's other remedies, failure to comply with the above requirements may result in the termination of this Agreement.

8. Payment of Funds

a. Timing of Payment

See Chapter 3, Section G, Timing of Payment, of the CalSHAPE Ventilation Commission Guidelines.

Final payment will only be made after the Energy Commission: (1) receives and approves the Recipient's final reporting; and (2) receives and accepts all other required documentation necessary for the Energy Commission to determine the total final amount due to the Recipient, based on actual and allowable Incurred Costs and Paid Costs under this Agreement, up to the total grant award amount.

Without limiting any other rights and remedies available to the Energy Commission, Recipient must return funds to the Energy Commission received under this Agreement if, for example, the Recipient was overpaid in the first payment, did not complete the project, or did not meet other program requirements.

b. Reimbursable Cost Requirements

In addition to any other requirements in this Agreement, the Energy Commission is only obligated to reimburse the Recipient for Incurred and Paid Costs that are (1) incurred during the Agreement Term; (2) invoiced within the required timeframes of this Agreement; (3) made in accordance with the Agreement's Budget; and (4) actual and allowable expenses under this Agreement.

ALL of the items in the Budget are capped amounts (i.e., maximums), and the Recipient can only bill its ACTUAL amount up to capped amounts listed in the Budget. For example, if the Budget includes an employee's hourly rate of \$50/hour but the employee is only paid \$40/hour, the Recipient can only bill for \$40/hour. Under the same example, if the employee earned \$70/hour but the Budget only lists \$50/hour, the Recipient can only bill for \$50. If the actual rates exceed the approved rates in the Budget, the difference may be charged to the agreement as a match share expenditure.

c. Payment Requests

Recipient agrees and acknowledges that time is of the essence in submitting the final payment request. The Commission has a limited period of time, set by law, in which it can reimburse funds under this Agreement. Without prejudice to the Commission's other rights, the Recipient risks not receiving any funds, and relieves the Commission of any duty and liability whatsoever to pay, for any payment requests received after the end of the Agreement.

d. Invoice Approval and Disputes:

Payment is subject to Energy Commission staff's approval. Payments will be made to the Recipient for undisputed invoices. An undisputed invoice is an invoice submitted by the Recipient for work performed, for which project expenditures and products meet all Agreement conditions, and for which additional evidence is not required to determine its validity.

The invoice will be disputed if all products due for the billing period have not been received and approved, if the invoice is inaccurate, or if it does not comply with the terms of this Agreement. If the invoice is disputed, the Recipient will be notified by the CEC.

e. Multiple Non-Energy Commission Funding Sources:

No payment will be made for costs identified in recipient invoices that have been or will be reimbursed by another source, including but not limited to an agreement with another government entity.

"Government Entity" means: (1) a state governmental agency; (2) a state college or university; (3) a local government entity or agency, including those created as a Joint Powers Authority; (4) an auxiliary organization of the California State University or a California community college; (5) the federal government; (6) a foundation organized to support the Board of Governors of the California Community Colleges; and (7) an auxiliary organization of the Student Aid Commission established under California Education Code Section 69522.

f. Reduced funding:

If the Energy Commission does not receive sufficient funds under the Budget Act or from the investor-owned utility administrators of the CalSHAPE program to fully fund the work identified in Exhibit A (Scope of Work), the following will occur:

- 1) If the Energy Commission has received a reduced amount of funds for the work, it may: (1) offer an Agreement amendment to the Recipient to reflect the reduced amount; or (2) cancel this Agreement (with no liability occurring to the State).
- 2) If the Energy Commission has received no funds for the work identified in Exhibit A: (1) this Agreement will be of no force and effect; (2) the State will have no obligation to pay any funds to the Recipient; and (3) the Recipient will have no obligation to perform any work under this Agreement.

g. Allowability of Costs

- 1) Allowable Costs

The costs for which the Recipient will be reimbursed under this Agreement include all costs, direct and indirect, incurred in the performance of the work identified in the Scope of Work. Costs must be incurred within the Agreement term. Factors to be considered in determining whether an individual item of cost is allowable include: (i) reasonableness of the item, including necessity of the item for the work; (ii) applicable federal cost principles or acquisition regulations incorporated by reference in Section 2 of this Agreement; and (iii) the terms and conditions of this Agreement.

2) Unallowable Costs

See Chapter 3, Section I, Ineligible Costs, of the CalSHAPE Ventilation Program Commission Guidelines.

3) Except as provided for in this Agreement or applicable California law or regulations, the Recipient will use the federal cost principles and/or acquisition regulations incorporated by reference in Section 2 of this Agreement when determining allowable and unallowable costs. In the event of a conflict, this Agreement takes precedence over the federal cost principles and/or acquisition regulations.

h. Final Invoice for Remaining Funds

See Chapter 4, Section C, Final Documentation and Invoice for Remaining Funds, of the CalSHAPE Ventilation Program Commission Guidelines. The Recipient must submit all invoices electronically by uploading them to the CalSHAPE Online System, which is found at <https://calshape.energy.ca.gov/>.

i. If the Recipient has not otherwise provided to the Commission documentation showing the Recipient's payment of Incurred Costs, the Recipient shall provide such documentation as soon as possible and not later than three working days from a request from Commission personnel.

j. Certification

The following certification will be included on each payment request form and signed by the Recipient's authorized officer:

The documents included in this request for payment are true and correct to the best of my knowledge and I have authority to submit this request. I certify that reimbursement for these costs has not and will not be received from any other sources, including but not limited to a government entity contract, subcontract, or other procurement method. For projects considered to be a public work, prevailing wages were paid to eligible workers who provided labor for the work covered by this invoice; the Recipient and all subcontractors have complied with prevailing wage laws.

9. **Reserved**

10. **Prevailing Wage**

a. Requirement

Projects funded by the Energy Commission often involve construction, alteration, demolition, installation, repair, or maintenance work over \$1,000. Such projects might be considered “public works” under the California Labor Code (See California Labor Code Section 1720 et seq. and Title 8 California Code of Regulations, Section 16000 et seq.). Public works projects require the payment of prevailing wages. Prevailing wage rates can be significantly higher than non-prevailing wage rates.

b. Determination of Project’s Status

Only the California Department of Industrial Relations (DIR) and courts of competent jurisdiction may issue legally binding determinations that a particular project is or is not a public work. If the Recipient is unsure whether the project funded by the Agreement is a “public work” as defined in the California Labor Code, it may wish to seek a timely determination from DIR or an appropriate court. As such processes can be time consuming, it may not be possible to obtain a timely determination before the date for performance of the Agreement.

By accepting this grant, the Recipient is fully responsible for complying with all California public works requirements, including but not limited to payment of prevailing wage. As a material term of this grant, the Recipient must either:

- 1) Timely obtain a legally binding determination from DIR or a court of competent jurisdiction before work begins on the project that the proposed project is not a public work; or
- 2) Assume that the project is a public work and ensure that:
 - Prevailing wages are paid unless and until DIR or a court of competent jurisdiction determines that the project is not a public work;
 - The project budget for labor reflects these prevailing wage requirements; and
 - The project complies with all other requirements of prevailing wage law, including but not limited to keeping accurate payroll records and complying with all working hour requirements and apprenticeship obligations.

California Prevailing Wage law provides for substantial damages and financial penalties for failure to pay prevailing wages when such payment is required.

c. Subcontractors and Flow-down Requirements

The Recipient will ensure that its subcontractors also comply with the public works/prevailing wage requirements above. The Recipient will ensure that all agreements with its subcontractors to perform work related to this Project contain the above terms regarding payment of prevailing wages on public works projects. The Recipient is responsible for any failure of its subcontractors to comply with California prevailing wage and public works laws.

d. Indemnification and Breach

Any failure of the Recipient or its subcontractors to comply with the above requirements will constitute breach of this Agreement which excuses the Commission's performance of this Agreement at the Commission's option, and will be at the Recipient's sole risk. In such a case, the Commission will refuse payment to the Recipient of any amount under this award and the Commission will be released, at its option, from any further performance of this Agreement or any portion thereof. The Recipient will indemnify the Energy Commission and hold it harmless for any and all financial consequences arising out of or resulting from the failure of the Recipient and/or any of its subcontractors to pay prevailing wages or to otherwise comply with the requirements of prevailing wage law.

e. Budget

The Recipient's budget on public works projects must indicate which job classifications are subject to prevailing wage. For detailed information about prevailing wage and the process to determine if the proposed project is a public work, the Recipient may wish to contact DIR or a qualified labor attorney for guidance.

f. Covered Trades

For public works projects, the Recipient may contact DIR for a list of covered trades and the applicable prevailing wage.

g. Questions

If the Recipient has any questions about this contractual requirement or the wage, record keeping, apprenticeship, or other significant requirements of California prevailing wage law, the Recipient should consult DIR and/or a qualified labor attorney before entering into this Agreement.

h. Certification

The Recipient will certify to the Energy Commission on each payment request form either that: (a) prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and the Recipient and all contractors and subcontractors otherwise complied with all California prevailing wage laws; or (b) the project is not a public work requiring the payment of prevailing wages. In the latter case, the Recipient will provide competent proof of a DIR or court determination that the project is not a public work requiring the payment of prevailing wages.

Prior to the release of any retained funds under this Agreement, the Recipient will submit to the Energy Commission the above-described certificate signed by the Recipient and all contractors and subcontractors performing public works activities on the project. Absent this certificate, the Recipient will have no right to any funds under this Agreement, and Commission will be relieved of any obligation to pay any funds.

11. Recordkeeping, Cost Accounting, and Auditing

a. Cost Accounting

The Recipient will keep separate, complete, and correct accounting of the costs involved in completing the project and any match-funded portion of the project. The Commission or its agent will have the right to examine the Recipient's books of accounts at all reasonable times, to the extent necessary to verify the accuracy of the Recipient's reports.

b. Accounting Procedures

The Recipient's costs will be determined on the basis of its accounting system procedures and practices employed as of the effective date of this Agreement, provided that the Recipient uses generally accepted accounting principles and cost reimbursement practices. The Recipient's cost accounting practices used in accumulating and reporting costs during the performance of this Agreement will be consistent with the practices used in estimating costs for any proposal to which this Agreement relates; provided that such practices are consistent with the other terms of this Agreement and that such costs may be accumulated and reported in greater detail during performance of this Agreement.

The Recipient's accounting system will distinguish between direct and indirect costs. All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to costs incurred under this Agreement.

c. Inspections, Assessment, and Studies

If selected, the Recipient must cooperate with and participate in the following:

- 1) An assessment of a funded project's greenhouse gas reductions and energy savings. This may include, but is not limited to, requests from Energy Commission staff or its delegate for data, project and equipment information, and reasonable access to the project site to assist with determining greenhouse gas reductions and energy savings attributable to the funded project. Costs associated with any activities associated with such an assessment will not be funded by a CalSHAPE Program grant.
- 2) A site inspection and verification of installation and operation of new fixtures and appliances. This may include, but is not limited to, providing Energy Commission staff or its delegates reasonable access to the funded project site to inspect and verify installation and operation. Recipient understands that any such inspection and verification by Energy Commission staff or its delegates is not a safety inspection.
- 3) A measurement and evaluation study that will be used to analyze current program performance and improve future program designs. This may include but is not limited to providing Energy Commission staff or its delegates data, project and equipment information, and reasonable access to the funded project site.

d. Audit Rights

The Recipient will maintain books, records, documents, and other evidence, based on the procedures set forth above, sufficient to reflect properly all costs claimed to have been incurred in the performance of this Agreement. The Energy Commission, another state agency, and/or a public accounting firm designated by the Energy Commission may audit the Recipient's accounting records at all reasonable times, with prior notice by the Energy Commission.

It is the intent of the parties that the audits will ordinarily be performed not more frequently than once every twelve (12) months during the performance of the work and once at any time within three (3) years after payment by the Energy Commission of the Recipient's final invoice. However, performance of any such interim audits by the Energy Commission does not preclude further audit. The Energy Commission may audit books, records, documents, and other evidence relevant to the Recipient's royalty payment obligations (see Section 21) for a period of ten (10) years after payment of the Recipient's final invoice.

The Recipient will allow the auditor(s) to access such records during normal business hours, and will allow interviews of any employees who might reasonably have information related to such records. The Recipient will include a similar right of the state to audit records and interview staff in any subcontract related to the performance of this Agreement.

e. Refund to the Energy Commission

If the Energy Commission determines that any invoiced and paid amounts exceed the actual allowable incurred costs, the Recipient will repay the amounts to the Energy Commission within thirty (30) days of request or as otherwise agreed by the Energy Commission and the Recipient. If the Energy Commission does not receive such repayments, it will be entitled to take any actions enforce any remedies available to it, such as withholding further payments to the Recipient and seeking repayment from the Recipient.

f. Audit Cost

The Recipient will bear its cost of participating in any audit (e.g., mailing or travel expenses). The Energy Commission will bear the cost of conducting the audit unless the audit reveals an error detrimental to the Energy Commission that exceeds more than ten percent (10%) or \$5,000 (whichever is greater) of the amount audited. The Recipient will pay the refund as specified in subsection (d), and will reimburse the Energy Commission for reasonable costs and expenses incurred by the Commission in conducting the audit.

g. Match or Cost Share

If the budget includes a match share requirement, the Recipient's commitment of resources, as described in this Agreement, is a required expenditure for receipt of Energy Commission funds. The funds will be released only if the required match percentages are expended. The Recipient must maintain accounting records detailing the expenditure of the match (actual cash and in-kind, non-cash services), and report on match share expenditures on its request for payment.

12. Workers' Compensation Insurance

- a. The Recipient warrants that it carries Worker's Compensation Insurance for all of its employees who will be engaged in the performance of this Agreement, and agrees to furnish to the CalSHAPE Program satisfactory evidence of this insurance upon the CalSHAPE Program's request.
- b. If the Recipient is self-insured for worker's compensation, it warrants that the self-insurance is permissible under the laws of the State of California and agrees to furnish to the CalSHAPE Program satisfactory evidence of the insurance upon the CalSHAPE Program's request.

13. Permits and Clearances

The Recipient is responsible for ensuring that all necessary permits and environmental documents are prepared and that clearances are obtained from the appropriate agencies.

14. Equipment

Title to equipment acquired by the Recipient with grant funds will vest in the Recipient. The Recipient may use the equipment in the project or program for which it was acquired as long as needed, regardless of whether the project or program continues to be supported by grant funds. However, the Recipient may not sell, lease, or encumber the property (i.e., place a legal burden on the property such as a lien) during the Agreement term without Energy Commission Staff's prior written approval.

The Recipient may refer to the applicable federal regulations incorporated by reference in this Agreement for guidance regarding additional equipment requirements.

15. Stop Work

Energy Commission staff may, at any time by written notice to the Recipient, require the Recipient to stop all or any part of the work tasks in this Agreement. Stop work orders may be issued for reasons such as a project exceeding budget, noncompliance with the standard of performance, out of scope work, project delays, and misrepresentations.

- a. Compliance. Upon receipt of a stop work order, the Recipient must immediately take all necessary steps to comply with the order and to stop the incurrence of costs allocable to the Energy Commission.
- b. Canceling a Stop Work Order. The Recipient may resume the work only upon receipt of written instructions from Energy Commission staff.

16. Termination

a. Purpose

Because the Energy Commission is a state entity and provides funding on behalf of all California ratepayers, it must be able to terminate the Agreement upon the default of the Recipient and to proceed with the work required under the Agreement in any manner it deems proper. The Recipient agrees that upon any of the events triggering the termination of the Agreement by the Energy Commission, the Energy Commission has the right to terminate the Agreement, and it would constitute bad faith of the Recipient to interfere with the immediate termination of the Agreement by the Energy Commission.

b. With Cause

The Energy Commission may, for cause, terminate this Agreement upon giving five (5) calendar days advance written notice to the Recipient. In this event, the Recipient will use all reasonable efforts to mitigate its expenses and obligations. The Recipient will relinquish possession of equipment purchased for this Agreement with Energy Commission funds to the Commission, or the Recipient may purchase the equipment as provided by the terms of this Agreement, with approval of the Energy Commission.

The term "for cause" includes but is not limited to the following:

- Partial or complete loss of match funds;
- Reorganization to a business entity unsatisfactory to the Energy Commission;
- Retention or hiring of subcontractors, or replacement or addition of personnel, that fail to perform to the standards and requirements of this Agreement;
- The Recipient's inability to pay its debts as they become due and/or the Recipient's default of an obligation that impacts its ability to perform under this Agreement; or
- Significant change in state or Energy Commission policy such that the work or product being funded would not be supported by the Commission.

c. Without Cause

The Energy Commission may terminate this Agreement without cause upon giving thirty (30) days advance written notice to the Recipient. In this event, the Recipient will use all reasonable efforts to mitigate its expenses and obligations.

17. Indemnification

To the extent allowed under California law, the Recipient will indemnify, defend, and hold harmless the state (including the Energy Commission) and state officers, agents, and employees from any and all claims and losses in connection with the performance of this Agreement.

18. Reserved

19. Reserved

20. Intellectual Property

- a. The Energy Commission makes no claim to intellectual property developed under this Agreement that is not specified for delivery, except as expressly provided herein.

“Intellectual property” means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice with Agreement or match funds during or after the Agreement term; (b) any associated proprietary rights to these items, such as patent and copyright; and (c) any upgrades or revisions to these items.

“Works of authorship” does not include written products created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices.

- b. The Energy Commission owns all products identified in the Scope of Work, with the exception of products that fall within the definition of “intellectual property.”

“Product” means any tangible item specified for delivery to the Energy Commission in the Scope of Work.

- c. Both the Energy Commission and the California Public Utilities Commission have a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce intellectual property for governmental purposes, including but not limited to providing data and reports to the California Public Utilities Commission, State legislature, and Utilities and using data for the development of future programs.

- d. Intellectual Property Indemnity

The Recipient may not, in supplying work under this Agreement, knowingly infringe or misappropriate any intellectual property right of a third party, and will take reasonable actions to avoid infringement.

To the extent allowed under California law, the Recipient will defend and indemnify the Energy Commission and the California Public Utilities Commission from and against any claim, lawsuit, or other proceeding, loss, cost, liability, or expense (including court costs and reasonable fees of attorneys and other professionals) to the extent arising out of: (i) any third party claim that a product infringes any patent, copyright, trade secret, or other intellectual property right of any third party; or (ii) any third party claim arising out of the negligent or other tortious acts or omissions by the Recipient or its employees, subcontractors, or agents in connection with or related to the products or the Recipient's performance under this Agreement.

21. Reserved

22. General Provisions

a. Governing Law

This Agreement is governed by the laws of the State of California as to interpretation and performance.

b. Independent Capacity

In the performance of this Agreement, the Recipient and its agents, subcontractors, and employees will act in an independent capacity and not as officers, employees, or agents of the State of California.

c. Assignment

This Agreement is not assignable or transferable by the Recipient either in whole or in part without the consent of the Energy Commission in the form of an amendment.

d. Timeliness

Time is of the essence in this Agreement.

e. Severability

If any provision of this Agreement is unenforceable or held to be unenforceable, all other provisions of this Agreement will remain in full force and effect.

f. Waiver

No waiver of any breach of this Agreement constitutes waiver of any other breach. All remedies in this Agreement will be taken and construed as cumulative, meaning in addition to every other remedy provided in the Agreement or by law.

g. Assurances

The Commission reserves the right to seek further written assurances from the Recipient and its team that the work under this Agreement will be performed in accordance with the terms of the Agreement.

h. Change in Business

- 1) The Recipient will promptly notify the Energy Commission of the occurrence of any of the following:
 - a) A change of address.
 - b) A change in business name or ownership.
 - c) The existence of any litigation or other legal proceeding affecting the project or Agreement.

- d) The occurrence of any casualty or other loss to project personnel, equipment, or third parties.
 - e) Receipt of notice of any claim or potential claim against the Recipient for patent, copyright, trademark, service mark, and/or trade secret infringement that could affect the Energy Commission's rights.
- 2) The Recipient must provide the CalSHAPE Program with written notice of a planned change or reorganization of the type of business entity under which it does business. A change of business entity or name change requires an amendment assigning or novating the Agreement to the changed entity. If the Energy Commission does not seek to amend this Agreement or enter into a new agreement with the changed or new entity for any reason (including that the Commission is not satisfied that the new entity can perform in the same manner as the Recipient), it may terminate this Agreement as provided in the "Termination" section.
- i. Access to Sites and Records
Energy Commission and California Public Utilities Commission staff and representatives will have reasonable access to all project sites and to all records related to this Agreement.
 - j. Prior Dealings, Custom, or Trade Usage
These terms and conditions may not be modified or supplemented by prior dealings, custom, or trade usage.
 - k. Survival of Terms
Certain provisions will survive the completion or termination date of this Agreement for any reason. The provisions include but are not limited to:
 - Legal Statements on Products (included in Section 5, "Products")
 - Payment of Funds (Section 8)
 - Recordkeeping, Cost Accounting, and Auditing (Section 11)
 - Equipment (Section 14)
 - Termination (Section 16)
 - Indemnification (Section 17)
 - Intellectual Property (Section 20)
 - Change in Business (see this section)
 - Access to Sites and Records (see this section)

23. *Certifications and Compliance*

- a. Federal, State, and Local Laws

The Recipient must obtain all required permits and shall comply with all applicable federal, state and local laws, codes, rules, and regulations for all work performed under the Agreement.

b. Nondiscrimination Statement of Compliance

During the performance of this Agreement, the Recipient and its subcontractors will not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital status, or denial of family care leave. The Recipient and its subcontractors will ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

The Recipient and its subcontractors will comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full. The Recipient and its subcontractors will give written notice of their obligations under this section to labor organizations with which they have a collective bargaining or other Agreement.

The Recipient will include the nondiscrimination and compliance provisions of this section in all subcontracts to perform work under this Agreement.

c. Drug-Free Workplace Certification

By signing this Agreement, the Recipient certifies under penalty of perjury under the laws of the State of California that it will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- 1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited, and specifying actions to be taken against employees for violations as required by Government Code Section 8355(a).
- 2) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - The dangers of drug abuse in the workplace;
 - The person's or organization's policy of maintaining a drug-free workplace;
 - Any available counseling, rehabilitation, and employee assistance programs; and
 - Penalties that may be imposed upon employees for drug abuse violations.
- 3) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed project:
 - Will receive a copy of the company's drug-free policy statement; and
 - Will agree to abide by the terms of the company's statement as a condition of employment on the project.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both, and the Recipient may be ineligible for any future state awards if the Commission determines that any of the following has occurred: (1) the Recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

d. National Labor Relations Board Certification (Not applicable to public entities)

The Recipient, by signing this Agreement, swears under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Recipient within the immediately preceding two year period because of the Recipient's failure to comply with an order of a federal court that orders the Recipient to comply with an order of the National Labor Relations Board.

e. Child Support Compliance Act (Applicable to California Employers)

For any agreement in excess of \$100,000, the Recipient acknowledges that:

- 1) It recognizes the importance of child and family support obligations and will fully comply with all applicable state and federal laws relating to child and family support enforcement, including but not limited to disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- 2) To the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

f. Air or Water Pollution Violation

Under state laws, the Recipient will not be:

- 1) In violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;
- 2) Subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or
- 3) Finally determined to be in violation of provisions of federal law relating to air or water pollution.

g. Americans With Disabilities Act

By signing this Agreement, the Recipient assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. Section 12101, et seq.), which prohibits discrimination on the basis of disability, as well as applicable regulations and guidelines issued pursuant to the ADA.

24. Reserved

25. Commission Remedies for Recipient's Non-Compliance

Without limiting any of its other remedies, the Commission may, for Recipient's noncompliance of any Agreement requirement, withhold future payments, demand and be entitled to repayment of past reimbursements, or suspend or terminate this Agreement. The tasks in the Scope of Work are non-severable, and completion of all of them is material to this Agreement. Thus, the Commission, without limiting its other remedies, is entitled to repayment of all funds paid to Recipient if the Recipient does not timely complete all tasks in the Scope of Work.

26. Definitions

- **Agreement Term** means the length of this Agreement, as specified on the Agreement signature page (form CEC-146).
- **Data** means any recorded information that relates to the project funded by the Agreement, whether created or collected before or after the Agreement's effective date.
- **Effective Date** means the date on which this Agreement is signed by the last party required to sign, provided that signature occurs after the Agreement has been approved by the Energy Commission at a business meeting or by the Executive Director or his/her designee.
- **Equipment** means products, objects, machinery, apparatus, implements, or tools that are purchased or constructed with Energy Commission funds for the project, and that have a useful life of at least one year and an acquisition unit cost of at least \$5,000. "Equipment" includes products, objects, machinery, apparatus, implements, or tools that are composed by over thirty percent (30%) of materials purchased for the project. For purposes of determining depreciated value of equipment used in the Agreement, the project will terminate at the end of the normal useful life of the equipment purchased and/or developed with Energy Commission funds. The Energy Commission may determine the normal useful life of the equipment.
- **Intellectual Property** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice with Agreement or match funds during or after the Agreement term; (b) any associated proprietary rights to these items, such as patent and copyright; and (c) any upgrades or revisions to these items.

"Works of authorship" does not include written products created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices.
- **Invention** means intellectual property that is patentable.
- **Match Funds** means cash or in-kind (i.e., non-cash) contributions provided by the Recipient or a third party for a project funded by the Energy Commission. If this Agreement resulted from a solicitation, refer to the solicitation's discussion of match funding for guidelines specific to the project.

- **Materials** means the substances used to construct, or as part of, a finished object, commodity, device, article, or product and that does not meet the definition of Equipment.
- **Ownership** means exclusive possession of all rights to property, including the right to use and transfer property.
- **Product** means any tangible item specified for delivery to the Energy Commission in the Scope of Work.
- **Project** means the entire effort undertaken and planned by the Recipient and consisting of the work funded by the Energy Commission. The project may coincide with or extend beyond the Agreement term.
- **State** means the state of California and all California state agencies within it, including but not limited to commissions, boards, offices, and departments.