

MAINTENANCE SERVICES AGREEMENT; TERMS AND CONDITIONS

1. Payment of the Contract Price. The District shall pay the Contractor the Contract Price as full compensation for the complete and satisfactory performance of all Services and other obligations under this Agreement. Payment shall be made within thirty (30) calendar days of the District's receipt of a properly itemized invoice, subject to verification by the District's Representative that the invoiced Services have been performed in accordance with the Agreement. The Contractor shall submit monthly invoices for Services rendered in the preceding month. The District shall pay the approved invoice amount within thirty (30) calendar days of verification by the District's Representative.

The District may withhold payment, in whole or in part, if (i) there are unresolved claims or the likelihood of claims from subcontractors, suppliers, or other third parties; (ii) any Services are defective, incomplete, or nonconforming and have not been remedied; or (iii) the Contractor is in default of any material obligation under this Agreement.

2. Insurance. The Contractor and Subcontractors shall maintain in force during performance of Services the following policies of insurance:

a. Workers Compensation and Employer's Liability. The Workers Compensation insurance shall cover claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Services. The Contractor acknowledges that it is aware of the requirements under Labor Code §3700 for the Contractor to obtain and maintain workers compensation insurance; at all times during the Services, the Contractor shall comply with the requirements of Labor Code §3700. The Employer's Liability Insurance shall cover bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment by Contractor. The Employer's Liability Insurance may be obtained as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance policy.

b. Commercial General Liability Insurance. The General Liability insurance policies shall cover personal injury, bodily injury, death, other injury and property damage losses.

c. Contractor's Pollution Liability. As required by the Contract Documents, the Contractor Pollution Liability policy shall cover losses for bodily injury, property damage, defense, and cleanup as a result of pollution conditions (sudden/accidental and gradual) arising from contracting operations performed by or on behalf of the Contractor, except for fungus/spore coverage.

d. Automobile Liability. If the Contractor's commercial general liability insurance policy does not

include automobile liability coverage, the Contractor shall obtain a separate automobile liability insurance policy. The Automobile Liability insurance shall cover losses for bodily injury, death or property damage arising out of use or operation of owned, non-owned and hired vehicles.

e. Primary Insurance. Any insurance or self-insurance maintained by the District shall be excess of the Contractor's insurance and shall not contribute with it.

f. Waiver of Subrogation. Contractor agrees that in the event of loss due to any perils for which it has agreed to provide Commercial General and Automobile Liability insurance, Contractor shall look solely to its insurance carrier(s) for recovery and grants a waiver of any right to subrogation which any such insurer of Contractor may acquire against the District by virtue of payments of any loss under this insurance.

g. Additional Insured. Insurance shall name the District and its Board, officers, employees, agents, and volunteers as Additional Insured under its Commercial General Liability and Automobile Liability policies.

h. Certificates Of Insurance. Before commencing with Services, the Contractor and its Subcontractors shall provide to the District Representative certificate(s) of insurance and endorsements establishing conformity to insurance coverage requirements. No Services are permitted at the Site until the Contractor delivers Certificates of Insurance to the District Representative evidencing insurance policies/coverages required by the Contract. The Contract Term is not subject to extension for the Contractor's delayed delivery of Certificates of Insurance to the District Representative.

3. Emergencies. In an emergency affecting life, life safety, property damage, the Services or adjoining property, Contractor, without special instruction or authorization from District, shall take such actions reasonably necessary to prevent such threatened loss or injury. Contractor shall immediately report in writing to the District Representative if such action is taken.

4. Prevailing Wages and Labor Compliance. This Agreement is for public works subject to prevailing wage requirements under California Labor Code section 1720, et seq. The Contractor and all subcontractors of any tier shall pay not less than the applicable prevailing wage rates to all workers employed in the performance of the Services, as determined by the Director of the California Department of Industrial Relations ("DIR"). This Agreement is subject to compliance monitoring and enforcement by the DIR.

The Contractor and all subcontractors must be registered with the DIR pursuant to Labor Code section 1725.5 for the duration of the Agreement. The Contractor shall verify the DIR registration status of all subcontractors

and shall not permit any unregistered subcontractor to perform Services under this Agreement.

The Contractor and all subcontractors shall maintain and submit certified payroll records in accordance with Labor Code sections 1771.4 and 1776. Submission of certified payroll records to the DIR no less than every 30 days during the performance of the Services is a condition precedent to payment. The District may withhold payment until the Contractor demonstrates compliance with these requirements.

The Contractor shall also comply with Labor Code sections 1810 and 1813 concerning work hours. No worker shall be employed more than eight (8) hours per day or forty (40) hours per week without proper overtime compensation.

The Contractor shall enforce good order and discipline among its employees and those of its subcontractors and shall ensure that only competent and qualified personnel perform the Services. The District may require the removal of any worker who violates applicable law or District policy.

5. Subcontractors. The Services provided by a subcontractor shall be set forth in a written subcontract agreement incorporating by reference this Agreement. Subcontracts shall be made available to the District for review upon request of the District. The Contractor is responsible to the District for the acts, omissions and other conduct of subcontractors. Each subcontractor shall maintain insurance as required by this Agreement.

The Contractor shall complete the attached Subcontractors List and provide a signed copy to the District. The Contractor shall also provide updated Subcontractors Lists to the District as applicable, and prior to the commencement of any services by listed Subcontractors.

6. Limitation on Damages. In the event of the District's breach or default under this Agreement, the Contractor's recovery shall be limited to direct, actual damages proximately caused by such breach or default. The Contractor expressly waives the right to recover any special, incidental, indirect, punitive, or consequential damages, including but not limited to: (i) loss of anticipated profits on current or future contracts, or (ii) claims for loss of productivity. By executing this Agreement, the Contractor acknowledges and agrees to this limitation of damages.

7. Payment Bond And Performance Bond. As required by the Contract Documents, the Contractor shall not commence Services until it has provided to the District, a Payment (Labor and Material) Bond and a Performance Bond issued by a California Admitted Surety Insurer, each in a penal sum equal to the Contract Price. The form and content of Bonds are incorporated into the Contract Documents. The Contract Term is not subject to adjustment for Contractor delay in submitting the Bonds to the District Representative

8. Indemnification. To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold

harmless the District, its Governing Board, officers, employees, agents, and representatives from and against any and all claims, demands, losses, liabilities, damages, or expenses, including attorneys' fees and costs, arising out of or related to the performance of this Agreement, except to the extent caused solely by the gross negligence or willful misconduct of the District. This indemnification obligation includes, but is not limited to: (i) injury to or death of any person; (ii) damage to or loss of property; (iii) theft; and (iv) claims arising out of the acts or omissions of the Contractor or any of its subcontractors. If a Performance Bond is issued, the obligations of the Performance Bond Surety include assumption of the Contractor's obligations hereunder if the Contractor fails or refuses to do so. This obligation shall survive the termination or expiration of this Agreement.

9. District Right to Terminate. The District may terminate this Agreement for cause upon seven (7) calendar days' written notice to the Contractor if the Contractor fails to perform any material obligation under this Agreement. If Bonds are not required by the Contract Documents and the Contractor fails to cure such default within the seven-day notice period, this Agreement shall terminate without further action by the District, and the Contractor shall be liable for all costs, losses, or damages incurred by the District as a result of the default, including costs to complete the Services that exceed the unpaid balance of the Contract Price. If Bonds are required by the Contract Documents and the Contractor fails to cure such default within the seven-day notice period, this Agreement shall terminate without further action by the District, and the Contractor and the Performance Bond Surety are liable to the District for all losses, costs and damages arising out of the Contractor's default and costs to complete the Services which exceeds the remaining Contract Price at the time of termination.

In addition, the District may terminate this Agreement, in whole or in part, at any time for its convenience, by providing written notice to the Contractor. In the event of termination for convenience, the District shall pay the Contractor only for Services properly performed and accepted by the District up to the effective date of termination. No payment shall be due for any unperformed or incomplete Services.

10. Warranty. The Contractor warrants that all labor, materials, equipment, and services provided under this Agreement shall be of good quality, free from defects, and in compliance with applicable industry standards and the requirements of this Agreement. If any portion of the Services is found to be defective or non-conforming within one (1) year from the date of acceptance by the District (or such longer period as may be specified elsewhere in this Agreement), the Contractor shall, at its sole expense and upon written notice from the District, promptly correct, repair, or replace the defective portion. If the Contractor fails to do so, the District may make such corrections and recover the costs from the Contractor. If a Performance Bond is issued, the surety issuing the Performance Bond is

liable to the District for correction, repair or replacement of defective/non-conforming parts of the Project or workmanship if the Contractor fails or refuses to perform in accordance with the preceding.

11. Manufacturer Warranties. Within seven (7) business days of completion of Services, the Contractor shall provide the District Representative with hard copies of all manufacturer warranties for all equipment and materials furnished, installed and incorporated into the Services.

12. Correction Of Errors. Contractor 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 Contractor's failure to comply with the scope of work or the applicable standard of care.

13. Non-Asbestos Containing Construction Materials; Hazardous Materials. The Contractor warrants and represents to the District that no materials, equipment or other items furnished, installed or incorporated into the Services contains, or in itself be composed of, any asbestos, polychlorinated biphenyl (PCB), any material listed by the federal or state EPA or federal or state health agencies as a hazardous material, or defined as being hazardous under federal or state laws, rules or regulations.

14. District Policies; Noise, Drugs, Tobacco, And Alcohol

Use, possession, consumption or work under the influence of alcohol or illegal drugs at the Site is prohibited. District Board Policies prohibit the use of any form of tobacco products at the Site. Use of music/audio devices, including radios or wearing any headphone devices for entertainment while performing Services at the Site is prohibited. The Contractor shall implement measures to: (i) notify all personnel at the Site of such prohibitions and (ii) prevent violations of such prohibited conduct. The District expressly reserves the right to remove construction personnel violating the foregoing.

In additions, the Contractor shall comply with the Drug-Free Workplace Act ("Act"), Government Code §8350 et seq. Failure of the Contractor to comply with requirements of the Act will subject the Contractor to all penalties, assessments and other remedies established by the Act.

15. Site Examination. By accepting this Contract, Contractor warrants that it is familiar with the work site, is satisfied as to the condition of the site, its accessibility for materials, workers and utilities, and Contractor's ability to protect existing surface and subsurface improvements. No claim for time or money will be allowed as to such matters.

16. District Site Access. The District and the District's employees, agents or representatives shall at all times have access to the Site and the Services. The Contractor shall provide safe and proper facilities for such access.

17. Safety; Security. The Contractor shall comply with all applicable federal, state, and local laws, regulations, ordinances and codes, as well as the District's policies and

procedures, including but not limited to such laws, ordinances, rules, regulations, and policies and procedures relating to COVID-19 or any other pandemic or epidemic. The Contractor shall ensure that all Services are performed safely, efficiently, and with minimal disruption to the District's operations. The Contractor shall implement safety measures such as fencing, barricades, signs, lights and other precautions to prevent injury or death to persons or damage to property. The Contractor is responsible for securing the Site and Work in place or in progress (including materials/equipment/tools situated at the Site) to prevent theft, loss or damage. The District and employees, officers, agents or representatives of the District are not liable to the Contractor, Subcontractors or their respective personnel for the loss, theft, damage or destruction of materials, equipment, tools and other personal property items, whether or not such personal property is used to complete the Work or is incorporated into the Work. The risk of such loss, theft, damage or destruction is solely that of the Contractor or Subcontractors. All contractors, including all subcontractors, laborers and any individual performing work on any District project, are required to wear hard hats and safety vests at all times while on any District site or campus without exception.

18. Successors and Assignment. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the District and the Contractor. Notwithstanding the foregoing, the Contractor shall not assign this Agreement, or any portion thereof, nor delegate any duties or obligations under this Agreement without the prior written consent of the District.

19. Attorneys' Fees. Except as expressly provided for in the Contract Documents, or authorized by the Laws, neither the District nor the Contractor shall recover from the other any attorneys' fees or other costs associated with or arising out of any legal, administrative or other proceedings filed or instituted in connection with or arising out of the Contract Documents or the performance of either the District or the Contractor thereunder

20. Governing Law; Interpretation; Venue. This Contract is governed by the laws of the state of California and shall be interpreted as a whole and not in favor of the District or the Contractor. Venue for any legal proceeding shall be the Superior Court for the County in which the Site is situated at the Superior Court branch situated closest to the Site.

21. Force Majeure. Neither party shall be held liable for any delay or failure in performance under this Agreement resulting from causes beyond its reasonable control, including but not limited to acts of God, natural disasters, pandemics, government-imposed quarantines, labor disputes, material shortages, utility failures, riots, war, or acts of terrorism. The affected party shall (i) provide prompt written notice to the other party, (ii) use commercially reasonable efforts to mitigate the effects of such delay or failure, and (iii) resume performance as soon as reasonably

practicable. Any such delay shall be deemed an excusable, non-compensable delay.

22. Non-Discrimination. The Contractor and its subcontractors shall not discriminate against any employee or applicant for employment based on race, color, ancestry, national origin, religion, sex, gender identity, age, sexual orientation, disability, marital status, or any other protected classification under applicable federal, state, or local law. The Contractor shall comply with all applicable laws and regulations prohibiting workplace discrimination and harassment.

23. Audit. The District and Contractor are subject to the examination and audit of the California State Auditor for a period of three (3) years after the final payment under this Contract, in compliance with Government Code section 8546.7.

24. Changes. The terms of the Contract shall be modified only by written instrument duly executed on behalf of the Contractor and District. No term or condition of the Contract shall be modified or amended except by a subsequent writing executed by the District and Contractor and approved or ratified by the District's Board. Verbal or oral modifications to the Contract are not enforceable.

25. No District Waiver. District's waiver or delayed enforcement of any term, condition, covenant or obligation of the Contractor under the Contract Documents shall not: (i) constitute the District's waiver or modification of such term, condition, covenant or obligation; or (ii) limit, restrict or impair the District's enforcement of such term, condition, covenant or obligation.

26. Provisions Required By The Laws Deemed Inserted. Provisions required by the Laws to be incorporated into the Contract Documents are deemed incorporated herein and the Contract Documents shall be read and enforced as though such provisions are incorporated herein.

27. Independent Contractor Status. While engaged in carrying out the terms and conditions of the Contract, the Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the District.

28. Severability. If any provision of this Agreement is found to be invalid, illegal, or unenforceable by a court of competent jurisdiction, such provision shall be deemed severed from the Agreement, and the remaining provisions shall remain in full force and effect.

[END OF SECTION]