

**Agreement for Proposition 39 Energy  
Expenditure Plan (EEP) Implementation Services**

This AGREEMENT FOR PROPOSITION 39 ENERGY EXPENDITURE PLAN (EEP) & IMPLEMENTATION SERVICES ("Agreement") is made as of **MARCH 20<sup>TH</sup>, 2018**, by and between the LA CAÑADA UNIFIED SCHOOL DISTRICT, a California public school district ("District"), and **BAKER ELECTRIC, INC.**, a California corporation registered to do business in California ("Design-Builder").

**RECITALS**

**WHEREAS**, on **June, 21<sup>st</sup> 2017**, the California Energy Commission (CEC) approved District's Proposition 39 Energy Expenditure Plan (EEP) application for energy efficiency projects at four campuses: (1) La Cañada High School, 4463 Oak Grove Drive, La Cañada 91011, (2) Paradise Canyon Elementary, 471 Knight Way, La Cañada 91011, (3) La Cañada Elementary, 4540 Encinas Drive, La Cañada 91011, and (4) Palm Crest Elementary, 5025 Palm Drive, La Cañada 91011.

**WHEREAS**, District desires to reduce its facilities' energy costs at the Project Sites and improve the Project Sites' facilities' energy quality, reliability, and efficiency by contracting to implement energy efficiency measures identified in the EEP and/or, subject to CEC approval, modified energy efficiency measures that enhance the District's energy and cost savings; and

**WHEREAS**, Design-Builder is a full-service design-build energy services firm with the technical capabilities to provide services to the District, including, but not limited to, EEP and energy efficiency consultation services, energy and energy system engineering, design, procurement, construction management, installation, construction, commissioning, training, monitoring, measurement and verification, and audit compliance services; and

**WHEREAS**, pursuant to Section 26235, subdivision (c), of the California Public Resources Code, the District shall not use a sole source process to award Proposition 39 funds; and

**WHEREAS**, Government Code section 4217.12 authorizes a public agency to enter into an energy service contract with respect to an energy conservation facility on terms that the public agency's governing board determines are in the best interests of the public agency and if the governing board finds that the anticipated cost to the public agency for the energy provided by the energy conservation facility will be less than the anticipated marginal cost to the District of thermal, electrical or other energy that would have been consumed by the public agency in the absence of those purchases;

**WHEREAS**, the District is a public agency under the provision of Government Code section 4217.10 *et seq.* pertaining to energy service contracts; and

**WHEREAS**, the District has engaged in a process to select a qualified full-service design-build energy services firm based on several criteria, including, without limitation, firm qualifications and financial viability, experience working on energy efficiency projects and with school districts, and proposed scope of work and price; and

**WHEREAS**, the Parties intend to enter into this agreement as provided under those statutory guidelines; and

**WHEREAS, BAKER ELECTRIC, INC.**, a California Corporation] registered to do business in California as corporation **BAKER ELECTRIC, INC.**, was selected by the District by means of responses to the Request for Qualifications and Proposals ("RFQ/P") for Proposition 39 Energy Expenditure Plan (EEP) Implementation Services (RFP/Q #17-18/007) dated **FEBRUARY 12<sup>TH</sup>, 2018**.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, Design-Builder and the District each agree to the following:

### **AGREEMENT**

- 1. Services.** Design-Builder shall furnish to the District the labor, equipment, material, and services as described in **Exhibit "A"** ("EEP") and **Exhibit "B"** ("Scope of Work") attached hereto and incorporated herein by this reference (collectively "Services" or "Work" or "Project") located at the Project Sites identifies in Section 9, below ("Site" or "Sites").
- 2. Term.** It is hereby understood and agreed that the work under this Agreement shall be completed within **ONE HUNDRED TWENTY DAYS (120)** consecutive calendar days ("Contract Time") from the date specified in the District's Notice to Proceed. Should the Design-Builder fail to complete this Agreement, and the Work provided herein, within the time fixed for completion, due allowance being made for the contingencies provided for herein, the Design-Builder shall become liable to the District for all loss and damage that the District may suffer on account thereof.
- 3. Liquidated Damages.** Time is of the essence for all Work under this Agreement. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that the District will sustain in the event of and by reason of Design Builder's delay; therefore, Design-Builder agrees that it shall pay to the District the sum of Five Hundred DOLLARS (\$500) per day as liquidated damages for each and every day's delay beyond the Contract Time that final completion is not achieved. Such Liquidated Damages shall be the sole measure of damages due to solely to delay.

It is hereby understood and agreed that this amount is not a penalty.

In the event any portion of the liquidated damages is not paid to the District, the District may deduct that amount from any money due or that may become due the Design-Builder under this Agreement, the District may seek recovery of Liquidated Damages from the Design-Builder's Performance Bond Surety and/or the District may seek recovery of Liquidated Damages from the Design-Builder or the Performance Bond Surety without having exhausted remedies against the other.

- 4. Grants/Rebates/Incentives.** Design-Builder shall use commercially reasonable efforts to support the District in obtaining or maintaining grants/rebates/incentives for the Project. Design-Builder shall use commercially reasonable efforts to support the District in obtaining an extension, if allowed and if necessary. Design-Builder makes no guarantee that the District will receive funding from California Proposition 39 or any other energy efficiency rebate, incentive, and/or loan program(s) (collectively, "Incentive Funds"), or any portion thereof; Design-Builder expressly disclaims any liability for the District's failure to receive any portion of the Incentive Funds unless caused by Design-Builder's willful, reckless, or negligent act(s) or omission(s), and the District acknowledges and agrees that Design-Builder will have no liability for any failure to receive all or any portion of the Incentive Funds unless caused by Design-Builder's willful, reckless, or negligent act(s) or omission(s). If the District does not obtain extensions for the grants/rebates/incentives on terms satisfactory to the District on its sole discretion, the District may terminate the Contract Documents upon written notice to Design-Builder without liability to either Party.

**5. Contract Documents.** The following documents comprise the "Contract Documents" for the Work under this Agreement:

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Signed Agreement   | <input checked="" type="checkbox"/> Insurance Certificates and Endorsements |
| <input checked="" type="checkbox"/> Request for Qualifications/Proposals and all addenda           | <input checked="" type="checkbox"/> Performance Bond                        |
| <input checked="" type="checkbox"/> Design-Builder Proposal in response to RFQ/P                   | <input checked="" type="checkbox"/> Payment Bond                            |
| <input checked="" type="checkbox"/> Notices to Proceed   | <input type="checkbox"/> Specifications                                     |
| <input checked="" type="checkbox"/> Prevailing Wage Certification                                  | <input type="checkbox"/> Plans  |
| <input checked="" type="checkbox"/> Workers' Compensation Certification                            | <input type="checkbox"/> Project Schedule                                   |
| <input type="checkbox"/> Drug-Free Workplace Certification   | <input checked="" type="checkbox"/> Exhibit "A" ("EEP")                     |
| <input type="checkbox"/> Tobacco-Free Environment Certification                                    | <input checked="" type="checkbox"/> Exhibit "B" ("Scope of Work")           |
| <input checked="" type="checkbox"/> Fingerprinting/Criminal Background Investigation Certification | <input checked="" type="checkbox"/> Exhibit "C" ("General Conditions")      |
| <input type="checkbox"/> Asbestos & Other Hazardous Materials Certification                        | <input checked="" type="checkbox"/> Exhibit "D" ("Special Conditions")      |
| <input type="checkbox"/> Lead-Product(s) Certification   |   |
| <input checked="" type="checkbox"/> Iran Contracting Act Certification                             |   |

The complete Agreement consists of all Contract Documents as defined above and incorporated herein by this reference. Any and all obligations of the District and Design-Builder are fully set forth and described in the Contract Documents. All Contract Documents are intended to cooperate so that any Work called for in one and not mentioned in the other or vice versa is to be executed the same as if mentioned in all Contract Documents.

Should any question arise concerning the intent or meaning of Contract Documents, including the Drawings or Specifications, the question shall be submitted to the District for interpretation. If a conflict exists in the Contract Documents, modifications, beginning with the most recent, shall control over this Agreement (if any). In no case shall a document calling for lower quality and/or quantity material or workmanship control. The decision of the District in the matter shall be final.

**6. Submittal of Documents.** Those documents identified in the Notice of Award shall be presented to the District for approval within ten (10) business days after execution of the Agreement. Design-Builder shall not commence the Work under this Agreement until the Design-Builder has submitted and the District has approved the performance bond, payment (labor and material) bond, the certificate(s) and affidavit(s), and the endorsement(s) of insurance required and the District issues the Notice to Proceed with Services.

**7. Project Inspector.** The project inspector on the Project is Adam Todd of Cumming Construction Management ("Project Inspector"). Design-Builder hereby acknowledges that the Construction Manager, the Project Inspector have authority to approve and/or stop Work if the Design-Builder's Work does not comply with the requirements of the Contract Documents, Title 24 of the California Code of Regulations, and all applicable laws. No work shall be carried on except with the knowledge and under the inspection of said

Project Inspector. Project Inspector shall have free access to any or all parts of work at any time. Design-Builder shall furnish Project Inspector reasonable opportunities for obtaining such information as may be necessary to keep Project Inspector fully informed respecting progress, manner of work, and character of materials. The Design-Builder shall be liable for any delay caused by its non-compliant Work or its failure to provide proper notification for inspection.

8. Inspection and acceptance of the Work shall be performed by Adam Todd of Cumming Construction Management, upon the recommendation of the Construction Manager and Inspector of Record.
9. **Compensation.** As compensation for the Work, the District shall pay to the Design-Builder an amount not to exceed EIGHT HUNDRED SEVENTY FOUR THOUSAND ONE HUNDRED TWENTY FIVE DOLLARS AND NINETY-SEVEN CENTS **(\$874,125.97)** ("Total Contract Price") allocated by Project Site as follows:

<b>Project Site</b>	<b>Site-Specific Compensation Not To Exceed</b>
La Cañada High School, 4463 Oak Grove Drive, La Cañada 91011	FIVE HUNDRED NINETY SEVEN THOUSAND NINE HUNDRED SIXTY THREE DOLLARS AND NINTYNINE CENTS <b>(\$597,963.99)</b>
Paradise Canyon Elementary, 471 Knight Way, La Cañada 91011	FIFTY TWO THOUSAND FIVE HUNDRED EIGHTY TWO DOLLARS AND NINETY EIGHT CENTS <b>(\$52,582.98)</b>
La Cañada Elementary, 4540 Encinas Drive, La Cañada 91011	FORTY SEVEN THOUSAND FIFTY THREE DOLLARS AND FIFTY CENTS <b>(\$47,053.50)</b>
Palm Crest Elementary, 5025 Palm Drive, La Cañada 91011	SIXTY ONE THOUSAND EIGHTEEN DOLLARS AND FORTY EIGHT CENTS <b>(\$61,018.48)</b>
Increase in contract value attributable scope change across all four (4) school sites. Retrofit materials in all 2' x 4' fixtures modified to replace entire housing instead of internals only. Addition of robust lighting controls at all four (sites) in MPR's and IRC at LCHS.	SIXTY FIVE THOUSAND FIVE HUNDRED SEVEN DOLLARS AND TWO CENTS <b>(\$65,507.02)</b>
Proposal Allowance	FIFTY THOUSAND DOLLARS <b>(\$50,000.00)</b>

- 9.1. The Total Contract Price and Site-Specific Compensation shall not be increased without the express approval of the District's governing board.
- 9.2. The Total Contract Price includes Proposal Allowance which will be used at the districts discretion. Any Proposal Allowance not used on this project will be returned to the district in the form of a Deductive Change Order upon the completion of the project.

**10.Expenses.** District shall not be liable to Design-Builder for any costs or expenses paid or incurred by Design-Builder in performing Services for District.

**11.Payment.** On a monthly basis, Design-Builder shall submit an application for payment based upon the estimated value for materials delivered or services performed under the Agreement as of the date of submission pursuant to a separate schedule of values to be agreed upon by the Parties for each Project Site ("Application for Payment"); each Payment Application shall include a separate schedule of values for each Project Site and site-specific backup documentation necessary to substantiate the total amount claimed in the Payment Application. Within thirty (30) days after District's approval of the Application for Payment, Design-Builder shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as verified by the District's designated representative and Inspector and certified by Design-Builder) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. The District may deduct from any payment an amount necessary to protect the District from loss because of: (a) any sums expended by the District in performing any of Design-Builder's obligations under the Agreement which Design-Builder has failed to perform or has performed inadequately; (b) defective Work not remedied; (c) stop payment notices as allowed by state law; (d) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract Price or by the scheduled completion date; (e) unsatisfactory prosecution of the Work by Design-Builder; (f) unauthorized deviations from the Agreement; (g) failure of the Design-Builder to maintain or submit on a timely basis proper and sufficient documentation as required by the Agreement or by the District during the prosecution of the Work; (h) erroneous or false estimates by the Design-Builder of the value of the Work performed; (i) cost of purchasing additional insurance due to Design-Builder's failure to maintain the required insurance coverage set forth herein; (j) any sums representing expenses, losses, or damages, as reasonably determined by the District, incurred by the District for which Design-Builder is liable under the Agreement; and (k) any other sums which the District is entitled to recover from Design-Builder under the terms of the Agreement or pursuant to state law, including section 1727 of the Labor Code. The failure by the District to deduct any of these sums from a progress payment shall not constitute a waiver of the District's right to such sums. The District shall retain 5% from all amounts owing as retention. Retention shall be paid pursuant to Public Contract Code sections 7107, 7200 and 7201.

**12.Independent Contractor.** Design-Builder, in the performance of this Agreement, shall be and act as an independent contractor. Design-Builder understands and agrees that he and all of his employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Design-Builder shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Design-Builder's employees. Design-Builder shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its agents or employees.

**13.Licensing.** Design-Builder certifies that the design professional is properly certified or licensed under the laws and regulations of the State of California to provide the professional services that it has herein agreed to perform. Design-Builder and all Subcontractors shall be properly licensed and regulated by the Contractors State License Board, 3132 Bradshaw Road, Post Office Box 2600, Sacramento, California 98826, <http://www.cslb.ca.gov> throughout the duration of the Work. Design-Builder hereby

acknowledges that it or its subcontractors performing the work hold valid B Classification Contractor's license.

**14.Registration as Public Works Contractor:** Design-Builder and all Subcontractors currently are registered as public works contractors with the Department of Industrial Relations, State of California, in accordance with Labor Code section 1771.4.

**14.1. SUBMISSION OF UPDATED REGISTERED SUBCONTRACTORS LIST.** Design-Builder further acknowledges and agrees that it shall timely submit updated Registered Subcontractors List, attached hereto as Exhibit "F," and as detailed further therein.

**15.Standard of Care.** Design-Builder's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of the industry and all applicable law, including the applicable provisions of California Code of Regulations, Title 24, Proposition 39, the requirements of the DSA and CEC, and any applicable District Design Guides and Technical Specifications. Design-Builder represents and warrants that it is fully experienced in projects of the nature and scope of Work, and that it is properly qualified, licensed and equipped to supply and perform the Work. The Work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.

**16.Originality of Services.** Design-Builder agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Design-Builder and shall not be copied in whole or in part from any other source, except that submitted to Design-Builder by District as a basis for such services.

**17.Ownership of Data.** Pursuant to Education Code section 17316, this Agreement creates a non-exclusive and perpetual license for the District to use, at its discretion, all plans including, but not limited to, record drawings, specifications, estimates and other documents that Design-Builder prepared or cause to be prepared pursuant to this Agreement. Design-Builder retains all rights to all copyrights over designs and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that Design-Builder prepares or cause to be prepared pursuant to this Agreement.

In the event the District changes or uses any fully or partially completed documents without Design-Builder's knowledge or participation or both, the District agrees to release Design-Builder of responsibility for such changes or use, and shall hold Design-Builder harmless from and against any and all claims on account of any damages or losses to property or persons, or economic losses, arising out of that change or use. In the event that the District uses any fully or partially completed documents without the Design-Builder's full involvement, the District shall remove all title blocks and other information that might identify Design-Builder.

**18.Notice to Proceed with Construction.** After the design of the energy efficiency measures is approved by the District, the District shall provide a Notice to Proceed to Design-Builder at which time Design-Builder shall proceed with the applicable Work.

**19.Site Examination.** Within two (2) weeks after District Board approval of this Agreement, Design-Builder agrees to examine each and every Project Site as further described in Exhibit "B," and to provide District with Design-Builder's complete list of issues ("Issues

List”), identified per site. The Issues List shall clearly identify any and all observable pre-existing conditions or any other conditions that Design-Builder believes are not within its scope and which Design-Builder believes may impact its provision of Services or Work under this Agreement, including but not limited to such conditions as hazardous materials, poorly or non-functioning equipment or electrical wiring, code-required updates, etc.

**19.1.** After Design-Builder submits its Issues List, District shall review and determine whether Design-Builder’s list contains incomplete, unclear, or otherwise unacceptable items. District and Design-Builder shall meet and confer regarding the individual items on the Issues List, and Design-Builder shall cooperate with District and provide reasonable assistance in reviewing the list. If District and Design-Builder are unable to agree upon an acceptable, final Issues List, District may terminate this Agreement with no liability to either Party.

**19.2.** Design-Builder’s Issues List, must include the following written certification, under penalty of perjury:

**BAKER ELECTRIC, INC.** hereby certifies that it has examined the each and every Project Site identified in Exhibit “B” to its Agreement for Proposition 39 Energy Expenditure Plan (EEP) Implementation Services with the La Cañada Unified School District, and certifies that it accepts all measurements, specifications and conditions affecting the Work to be performed at the Site, excepting those identified in **BAKER ELECTRIC, INC.**’s accepted, final Issues List.

**BAKER ELECTRIC, INC.** warrants that it has made all Project Site examination(s) that it deems necessary as to the condition of the each Project Site, its accessibility for materials, workers and utilities, and Design-Builder’s ability to protect existing surface and subsurface improvements. No claim for allowance of time or money will be allowed as to any other undiscovered condition on the Site.

**20.Materials.** Design-Builder shall furnish, at his own expense, all labor, materials, equipment, supplies and other items necessary to complete the Services to be provided pursuant to this Agreement. Design-Builder shall use all new components (photovoltaic panels and inverters) that have not been previously placed in service in any other location or for any other application. Rebuilt, refurbished, or relocated equipment is not acceptable under this Agreement.

**20.1. Anti-Trust Claim.** Design-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 15 U.S.C. Title 15 or under the Cartwright Act (commencing with section 16700 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Agreement or a subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the Design-Builder, without further acknowledgment by the parties.

**20.2. Substitutions.** No substitutions of material from those specified in the Work Specifications shall be made without the prior written approval of the District.

**20.3. Codes, Standards, and Methodologies.** All products and components outlined in this Agreement must conform to all applicable codes, standards, and rating methodologies, including, without limitation, all applicable building and electrical codes.

**21. Equipment and Labor.** Design-Builder shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the services herein described, the services 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.

**22. Warranty/Quality.** Unless a longer warranty is called for elsewhere in this Agreement, the Design-Builder, manufacturer, or their assigned agents shall guarantee the workmanship, product or service performed against defective workmanship, defects or failures of materials for a period of one (1) year from filing the Notice of Completion with the county in which the Site is located. All workmanship and merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards.

**22.1.** Design-Builder shall provide a copy of the installation and product warranties prior to installation. Upon completion of the Project, Design-Builder shall transfer and convey to the District, all warranty documentation and shall assist the District in completing any warranty or submittal forms which are required in order to effectuate coverage of the warranties required herein and all my otherwise be available to the District.

**23. Correction of Errors.** Design-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 Design-Builder's failure to comply with the standard of care required herein. Notwithstanding the expiration of the warranty period, Design-builder may still have liability to District as allowed under California law for breach of the standard of care, or any latent or patent defect pursuant to California Code of Civil Procedure §§337.1 and 337.15.

**24. Trench Shoring.** If this Agreement is in excess of \$25,000 and is for the excavation of any trench deeper than five (5) feet, Design-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.

**25. Excavations Over Four Feet.** If this Agreement includes excavations over four (4) feet, Design-Builder shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any: (a) material that the Design-Builder believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (b) subsurface or latent physical conditions at the site differing from those indicated; or (c) unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Agreement. The District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Design-Builder's cost of, or the time required for, performance of any part of the Work shall issue a change order under the procedures described in the Agreement. In the event that a dispute arises between the District and the Design-Builder whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Design-Builder's cost of, or time required for, performance of any part of the work, the Design-Builder shall not be excused from any scheduled completion date provided for by



the Agreement, but shall proceed with all Work to be performed under the Agreement. Design-Builder shall retain any and all rights provided either by the Agreement or by law which pertain to the resolution of disputes and protests between the contracting parties.

**26. 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. Design-Builder must execute the Lead-Based Paint Certification, if applicable.

**27. Change in Scope of Work.** 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 change order executed by the District and Design-Builder. Design-Builder specifically understands, acknowledges, and agrees that the District shall have the right to request any alterations, deviations, reductions, or additions to the Project and the cost thereof shall be added to or deducted from the amount of the Total Contract Price by fair and reasonable valuations. Design-Builder also agrees to provide the District with all information requested to substantiate the cost of the change order and to inform the District whether the Work will be done by the Design-Builder or a subcontractor. In addition to any other information requested, Design-Builder shall submit, prior to approval of the change order, its request for a time extension (if any), as well as all information necessary to substantiate its belief that such change will delay the completion of the Work. If Design-Builder fails to submit its request for a time extension or the necessary supporting information, it shall be deemed to have waived its right to request such extension.

For all approved changes in the scope of work that result in a net increase in costs to Design-Builder, the following format shall be used, supported by attached documentation.

	<b>WORK PERFORMED BY OTHER THAN DESIGN-BUILDER:</b>	<b>ADD:</b>
(a)	Material (attach itemized quantity & unit cost plus sales tax)	\$
(b)	Add Labor (attach itemized hours & rates, fully encumbered)	\$
(c)	Add Equipment (attach suppliers' invoice)	\$
(d)	Subtotal	\$
(e)	Add overhead and profit for any and all tiers of subcontractor, the total not to exceed 10% of item (d)	\$
(f)	Subtotal	\$
(g)	Add overhead and profit for Design-Builder, not to exceed 5% of Item (f)	\$
(h)	Subtotal	\$
(i)	Add Bond and Insurance, not to exceed 2% of Item (h)	\$
(j)	<u>TOTAL</u>	\$
(k)	Time	___ Days

	<b>WORK PERFORMED BY DESIGN-BUILDER:</b>	<b>ADD:</b>
(a)	Material (attach itemized quantity & unit cost plus sales tax)	
(b)	Add Labor (attach itemized hours & rates, fully encumbered)	
(c)	Add Equipment (attach suppliers' invoice)	
(d)	Subtotal	
(e)	Add overhead and profit for Design-Builder, not to exceed 15% of item (d).	
(f)	Subtotal	
(g)	Add Bond and Insurance, not to exceed 2% of Item (f)	
(h)	TOTAL	
(i)	Time	___ Days

All deductive Change Order(s) must be prepared pursuant to the provisions herein. Where a portion of the Work is deleted from the scope of Work, the reasonable value of the deducted Work less the value of Work performed shall be considered the appropriate deduction. The amount submitted on the Application for Payment shall be used to calculate the credit amount unless the bid documentation is being held in escrow as part of the Contract Documents. Unit Prices, if any, may be used in District's discretion in calculating reasonable value. If Design-Builder offers a proposed amount for a deductive Change Order(s), Design-Builder shall include a minimum of five percent (5%) total profit and overhead to be deducted with the amount of the Work of the Change Order(s). If subcontractor work is involved, subcontractors shall also include a minimum of five percent (5%) profit and overhead to be deducted with the amount of its deducted work. Any deviation from this provision shall not be allowed.

**28.Workers.** Design-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. The District may evaluate the Design-Builder in any manner which is permissible under the law. Any person in the employ of the Design-Builder or a subcontractor whom the District may deem incompetent or unfit shall be dismissed from the Project and shall not again be employed at Project without written consent from the District.

**29.Design-Builder Supervision.** Design-Builder shall provide competent supervision of personnel employed on the job Site, use of equipment, and quality of workmanship.

**30.Fingerprinting of Employees.** Pursuant to Education Code section 45125.2, District has determined on the basis of scope of Work in this Agreement of this Project, that Design-Builder, subcontractors, and their employees will have only limited contact with pupils at most. Design-Builder shall promptly notify District in writing of any facts or circumstances which might reasonably lead District to determine that contact will be more than limited as defined by Education Code section 45125.1(d). If Design-Builder will have contact with any pupils, Design-Builder shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. Design-Builder shall not permit any employee to have any contact with District pupils until such time as the Design-Builder has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. Design-Builder's responsibility shall extend to all employees, subcontractors, agents, and employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Design-Builder. Verification of compliance with this section

and the Criminal Background Investigation Certification that may be required with this Agreement, shall be provided in writing to the District prior to each individual's commencement of employment or performing any portion of the Work and prior to permitting contact with any student.

**31.Employee Identification.** At all times during the Project, while on District property, Design-Builder, and all of its individual employees, agents, consultants, suppliers and subcontractors shall wear a name badge with their name clearly written as well as the firm with whom they are employed. Design-Builder shall ensure that only those necessary individual employees, agents, consultants, suppliers and subcontractors possess the name badge and shall collect the name badge from its individual employees, agents, consultants, suppliers and subcontractors once their work has been completed.

**32.Safety and Security.** Design-Builder is responsible for maintaining safety in the performance of this Agreement. Design-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.

**33.Clean Up.** Debris shall be removed from the Site(s). The Site(s) shall be in order at all times when work is not actually being performed and shall be maintained in a reasonably clean condition.

**34.Access to Work.** District representatives shall at all times have access to the Work wherever it is in preparation or in progress. Design-Builder shall provide safe and proper facilities for such access.

**35.Protection of Work and Property.** Design-Builder shall erect and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public, and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of life or of Work or of adjoining property, Design-Builder, without special instruction or authorization from District, is permitted to act at his discretion to prevent such threatened loss or injury.

**36.Occupancy.** District reserves the right to occupy the Site at any time before formal completion and such occupancy shall not constitute final acceptance or approval of any part of the Work covered by this Agreement, nor shall such occupancy extend the date specified for completion of the Work.

**37.Continuous Electrical Service While School in Session.** Design-Builder shall ensure that school facilities are not without power at any time while school or school-related activities are in session. All work must be closely coordinated with operations staff at the District to ensure continuity of service while the school facilities are in use.

**38.Force Majeure.** Design-Builder shall be excused from performance hereunder during the time and to the extent that it is prevented from obtaining delivery, or performing by act of God, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, product, plant, or facilities by the government, when satisfactory evidence thereof is presented to the District, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the Design-Builder.

### **39.Termination.**

**39.1. For Convenience by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Design-Builder only for services

satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Design-Builder. Notice shall be deemed given when received by the Design-Builder or no later than three (3) days after the day of mailing, whichever is sooner. In the event that District terminates this Agreement pursuant to this section, District shall compensate Design-Builder for work completed to date as a pro-rata amount of the full fees, costs, and expenses.

**39.2. With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

**39.2.1.** material violation of this Agreement by the Design-Builder; or

**39.2.2.** any act by Design-Builder exposing the District to liability to others for personal injury or property damage; or

**39.2.3.** Design-Builder is adjudged a bankrupt, Design-Builder makes a general assignment for the benefit of creditors or a receiver is appointed on account of Design-Builder's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within five (5) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the five (5) calendar days cease and terminate. In the event of this termination, the District may secure the required services from another Design-Builder. If the expense, fees, and costs to the District exceed the cost of providing the Service pursuant to this Agreement, Design-Builder shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

**39.3.** Upon termination, Design-Builder shall provide the District with all documents produced maintained or collected by Design-Builder pursuant to this Agreement, whether or not such documents are final or draft documents.

**40. Indemnification.** To the furthest extent permitted by California law, Design-Builder shall indemnify and hold harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "Indemnified Parties") from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Design-Builder. Design-Builder shall also, to the furthest extent permitted by California law, defend the Indemnified Parties at Design-Builder's own expense, including attorneys' fees and costs, from any and all Claim(s) and allegations relating thereto. The District shall have the right to accept or reject any legal representation that Design-Builder proposes to defend the indemnified parties.

#### **41. Insurance.**

**41.1.** The Design-Builder shall procure and maintain at all times it performs any portion of the Services the following insurance:

**41.1.1. General Liability.** One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate for bodily injury, personal injury and property damage in the form of Comprehensive General Liability and Contractual Liability. 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.

**41.1.2. Automobile Liability Insurance.** One Hundred Thousand Dollars (\$100,000) per person, Three Hundred Thousand Dollars (\$300,000) per accident, Fifty Thousand Dollars (\$50,000) in property damage, or One Million Dollars (\$1,000,000) combined single limit for any automobile that shall protect the Design-Builder and the District from all claims of bodily injury, property damage, personal injury, death, and medical payments arising performing any portion of the Services by Design-Builder.

**41.1.3. Workers' Compensation and Employers' Liability Insurance.** For all of the Design-Builder's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Design-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. Design-Builder shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

**41.1.4. Professional Liability (Errors and Omissions).** One Million Dollars (\$1,000,000) aggregate for errors and omissions as appropriate to profession of engineer designing energy efficiency measures, coverage to continue through completion of construction plus two (2) years thereafter.

**41.1.5. Builder's Risk Insurance.** On a replacement cost value basis, Design-Builder shall procure and maintain, during the life of this Agreement, Builder's Risk (Course of Construction), or similar first party property coverage to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, theft, sonic disturbance, earthquake, flood, collapse, wind, fire, war, terrorism, lightning, smoke, and rioting. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof.

**41.1.6. Umbrella or Excess Liability.** Four Million Dollars (\$4,000,000) per occurrence to meet the policy limit requirements of the required policies if Design Builder's underlying policy limits are less than required. There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Umbrella Liability Insurance Policy. Any Umbrella Liability Insurance Policy shall protect Design-Builder, District, State, and Project Manager(s) in amounts, and that complies with all requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance.

**41.1.7. Other Insurance Provisions:** The policies are to contain, or be endorsed to contain, the following provisions:

**41.1.7.1.** For the general liability and automobile liability policies:

**41.1.7.1.1.** The District, their representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds with respect to liability arising out of activities performed by or on behalf of Design-Builder; instruments of Service and completed operations of the Design-Builder; premises owned, occupied or used by Design-Builder; or automobiles owned, leased, hired or borrowed by Design-Builder. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.

**41.1.7.1.2.** For any claims related to the projects, Design-Builder's insurance coverage shall be primary insurance with respect to the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Design-Builder's insurance and shall not contribute with it.

**41.1.7.1.3.** Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.

**41.1.7.2.** Design-Builder's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

**41.1.7.3.** Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either Party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.

**41.1.7.4.** Design-Builder shall furnish the District with Certificates of Insurance showing maintenance of the required insurance coverage and original endorsements affecting coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to

be received and approved by the District before Work commences. Design-Builder must provide updates on the insurance coverage throughout the term of the Agreement to ensure that there is no break in coverage during the performance of the Work. Failure to provide evidence of current coverage shall be grounds for termination for breach of contract.

**41.1.8. Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

**42.Payment Bond and Performance Bond.** Design-Builder shall not commence the Work until it has provided to the District, in a form acceptable to the District, a Payment (Labor and Material) Bond and a Performance Bond, each in an amount equivalent to One Hundred Percent (100%) of the Total Contract Price issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the District.

**43.Permits and Licenses.** Design-Builder and all Design-Builder's employees or agents shall secure and maintain in force, at Design-Builder's sole cost and expense, such permits, licenses and registrations as are required by law in connection with the furnishing of materials, supplies, or services pursuant to this Agreement. Design-Builder is responsible for obtaining, on behalf of District and at Design-Builder's expense, permits and approvals (including CEC and DSA approval) required for the building, installation, and start-up of the Work hereunder which are required to complete the Project, and District shall provide reasonable assistance to Design-Builder regarding the same. District shall hire and pay for all inspectors, including DSA and other special inspectors, however, if Design-Builder requires overtime inspections, including but not limited to acceleration of the Work, Design-Builder shall reimburse District for overtime and/or additional fees and expenses for inspectors, including DSA and other special inspectors.

**44.Assignment.** The rights, burdens, duties, or obligations of Design-Builder pursuant to this Agreement shall not be assigned by the Design-Builder without the prior written consent of the District.

**45.Subcontractors.** Subcontractors, if any, engaged by the Design-Builder for any Service or Work under this Agreement shall be subject to the approval of the District. Design-Builder agrees to bind every subcontractor by the terms of the Agreement as far as such terms are applicable to subcontractor's work, including, without limitation, all indemnification, insurance, bond, and warranty requirements. If Design-Builder shall subcontract any part of this Agreement, Design-Builder shall be fully responsible to the District for acts and omissions of its subcontractor(s) and of persons either directly or indirectly employed by it. Nothing contained in this Agreement shall create any contractual relations between any subcontractor and the District.

**45.1. Prompt Payment of Subcontractors.** Design-Builder will promptly pay, when due, all amounts payable for labor and materials furnished in the performance of the Agreement and will endeavor to prevent any lien or other claim under any provision of Applicable Law from arising against any District property, against Design-Builder's rights to payments hereunder, or against District.

**46.Compliance with Laws.** Design-Builder shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Design-Builder shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified.

If Design-Builder observes that any of the Work required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Design-Builder shall notify the District, in writing, and any necessary changes to the scope of the Work shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Design-Builder's receipt of a written termination notice from the District. If Design-Builder performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Design-Builder shall bear all costs arising therefrom.

**46.1.** Design-Builder hereby acknowledges that the Construction Manager(s), the Project Inspector(s), and the Division of the State Architect have authority to approve and/or stop Work if the Design-Builder's Work does not comply with the requirements of the Contract Documents, Title 24 of the California Code of Regulations, and all applicable laws. Design-Builder shall be liable for any delay caused by its non-compliant Work.

**46.2. Labor Code Requirements.** Design-Builder shall familiarize itself with and comply with all applicable provisions of the Labor Code, sections 1720 through 1861. Design-Builder and its subcontractors shall pay all workers on all work performed 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 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 La Cañada Unified School District, pursuant to sections 1770, et seq., of the California Labor Code. In performing the Work, Design-Builder and its subcontractors shall comply with all applicable provisions of Division 2, Part 7, Chapter 1, of the California Labor Code and Title 8 of the California Code of Regulations, including, without limitation, the requirement that the contractor and all of its subcontractors shall maintain timely, complete, and accurate electronic certified payroll records as set forth herein. Design-Builder and its subcontractors shall complete and submit the Prevailing Wage and Related Labor Requirements Certification attached hereto, and Design-Builder shall provide a copy of the Certification(s) to District prior to commencement of the Work. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts.

**46.2.1. Certified Payroll Records.** Design-Builder and its subcontractor(s) shall keep accurate certified payroll records ("CPRs") of workers and shall electronically submit certified payroll records directly to the Labor Commissioner using DIR's eCPR System by uploading the CPRs by electronic XML file or entering each record manually using the DIR's iForm (or current form) online on a weekly basis and within ten (10) days of any request by the District or the Labor Commissioner. (See <http://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html>).

**46.2.2. Labor Compliance:** Design-Builder shall perform the Work of the Project while complying with all the applicable regulations, including section 16000, et seq., of Title 8 of the California Code of Regulations and is subject to labor compliance monitoring and enforcement by the Department of Industrial Relations.

**47.Audit.** Design-Builder shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Design-Builder transacted under this Agreement. Design-Builder shall retain these books, records, and systems of account during the Term of this



Agreement and for three (3) years thereafter. Design-Builder shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Design-Builder and shall conduct audit(s) during Design-Builder's normal business hours, unless Design-Builder otherwise consents.

**48.Anti-Discrimination.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Design-Builder agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act (beginning with Government Code section 12900) and Labor Code section 1735. In addition, the Design-Builder agrees to require like compliance by all its subcontractors.

**49.Environmental Attributes and Energy Credits.** District shall own all right, title, and interest associated with or resulting from the development, construction, installation and ownership of any facilities installed on the Project. This ownership includes without limitation, all rights, credits (including tax credits), rebates, reporting rights, benefits, reductions, offsets and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like arising from the energy efficiency measures and Project.

**50.Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, 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 this Agreement for the services performed in connection with this Agreement.

**51.Confidentiality.** Design-Builder and all Design-Builder's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services to the extent allowed by law. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

**52.Claims & Disputes.** In the event of any demand by Design-Builder for (A) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by the District under the Agreement, (B) payment by the District of money or damages arising from work done by, or on behalf of, the Design-Builder pursuant to the Agreement and payment of which is not otherwise expressly provided for or to which Design-Builder is not otherwise entitled to, or (C) an amount of payment disputed by the District, the parties shall attempt to resolve the dispute by those procedures set forth in Public Contract Code section 9204 and/or Article 1.5 (commencing with section 20104) of Chapter 1, Part, 3, Division 2, of the Public Contract Code, if applicable, the provisions of which are each attached hereto and incorporated herein by this reference. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Design-Builder shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Design-Builder's right to bring a civil action against the

District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Design-Builder submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process. Pending resolution of the dispute, Design-Builder and its subcontractors shall continue to perform the Work under the Agreement and shall not cause a delay of the Work during any dispute, claim, negotiation, mediation, or arbitration proceeding, except by written agreement of the District.

**53. Attorney Fees and Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each Party shall bear its own litigation and collection expenses, witness fees, court costs, and attorney's fees.

**54. Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or email, addressed as follows:

To District:  
La Cañada Unified School District  
4490 Cornishon Ave.  
La Cañada, CA 91011

ATTN: MARK EVANS  
Email: MEVANS@LCUSD.NET

To Design-Builder:  
Baker Electric, Inc.  
1298 Pacific Oaks Place  
Escondido, CA 92029

ATTN: OSCAR LOPEZ  
Email: OLOPEZ@BAKER-ELECTRIC.COM

Any notice personally given or sent by email 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. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

**55. Governing Law.** This Agreement shall be governed by, and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with, the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located.

**56. Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

**57. Waiver.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

**58. Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a Party because that Party of its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

**59. Use of Pronouns.** All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, will include all other genders; the singular will include the plural and the plural will include the singular.

**60. Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

**61. Cooperation.** The Parties hereby agree to execute all such other documents and to take all such other action as may be reasonably necessary to effect the purposes of this Agreement.

**62. Binding Contract.** This Agreement 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.

**63. Authority to Bind Parties.** Neither Party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.

**64. No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

**65. Signature Authority.** Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.

**66. Counterparts.** This Agreement and all amendments to it may be executed in counterparts, each of which shall be deemed an original. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one document binding all the Parties.

**67. Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.

**68. Entire Contract.** This Agreement sets forth the entire contract between the parties hereto and fully supersedes any and all prior agreements, understanding, written or oral, between the parties hereto pertaining to the subject matter thereof. This Agreement may be modified only in writing upon mutual consent.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below.

**La Cañada Unified School District**

**BAKER ELECTRIC, INC.**

Date: \_\_\_\_\_, 2018

Date: \_\_\_\_\_, 2018

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

**Information Regarding Design-Builder:**

Proper Name: \_\_\_\_\_

License No.: \_\_\_\_\_

Registration No.: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Type of Business Entity:

\_\_\_\_ Individual

\_\_\_\_ Sole Proprietorship

\_\_\_\_ Partnership

\_\_\_\_ Limited Partnership

\_\_\_\_ Corporation, State: \_\_\_\_\_

\_\_\_\_ Limited Liability Company

\_\_\_\_ Other: \_\_\_\_\_

\_\_\_\_:

Employer Identification and/or Social  
Security Number

**NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, the District requires the Design-Builder to furnish the information requested in this section.**

## **Public Contract Code section 9204**

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3) (A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2) (A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 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. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity 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 contractor 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 public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

## **Public Contract Code sections 20104 – 20104.6**

### **§ 20104.**

(a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b) (1) "Public work" means "public works contract" as defined in Section 1101 but does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

### **§ 20104.2.**

For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

**§ 20104.4.**

The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

**§ 20104.6.**

(a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.



**PREVAILING WAGE CERTIFICATION**

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours' notice, payroll records, and apprentice and trainee employment requirements, for all Work on the Project.

Date: \_\_\_\_\_  
Name of Design-Builder: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

### **WORKERS' COMPENSATION CERTIFICATION**

Labor Code section 3700 in relevant part provides:

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

1. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
2. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

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 Agreement.

Date: \_\_\_\_\_  
Name of Design-Builder: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(In accordance with Article 5 - commencing at section 1860 of the Labor Code, Division 2, Part 7, Chapter 1, the above certificate must be signed and filed with the District to performing any Work under this Agreement.)

## **FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION**

One (1) of the three (3) boxes below **must** be checked, with the corresponding certification provided, and this form attached to the Agreement:

*Design-Builder's employees will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Design-Builder's employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Design-Builder for the services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Education Code section 45125.1(c))*

Date: \_\_\_\_\_

District Representative's Name and Title: \_\_\_\_\_

Signature: \_\_\_\_\_

- ☐ *The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Design-Builder's services under this Agreement and Design-Builder certifies its compliance with these provisions as follows:*

*Design-Builder certifies that it has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Design-Builder's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Design-Builder, who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto.*

- ☐ *Design-Builder's services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility and although all Employees will have contact, other than limited contact, with District pupils, pursuant to Education Code section 45125.2, District shall ensure the safety of the pupils by at least one of the following as marked:*

\_\_\_\_\_ Installation of a physical barrier at the worksite to limit contact with pupils.

\_\_\_\_\_ Continual supervision and monitoring of all Employees by an employee of Design-Builder, \_\_\_\_\_, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

\_\_\_\_\_ Surveillance of Employees by District personnel.

Date: \_\_\_\_\_

District Representative's Name and Title: \_\_\_\_\_

Signature: \_\_\_\_\_

*I am a representative of the Design-Builder entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Design-Builder.*

Date: \_\_\_\_\_

Name of Design-Builder: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Representative's Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PERFORMANCE BOND**  
**(100% of Total Contract Price)**

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of **La Cañada Unified 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:

\_\_\_\_\_ **Project**

("Project"), which Agreement dated \_\_\_\_\_, 20\_\_, and all of the Contract Documents attached to or forming a part of the Agreement, are hereby referred to and made a part hereof ("Agreement"), and

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

NOW, THEREFORE, the Principal and \_\_\_\_\_ ("Surety") are held and firmly bound unto the Board of the District in the penal sum of \_\_\_\_\_ **Dollars (\$\_\_\_\_\_)**, lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents, to:

1. Perform all the work required to complete the Project; and
2. 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.

Or, at the District's sole discretion and election, the Surety shall obtain a bid or bids for completing the Agreement in accordance with its terms and conditions, and upon determination by the District of the lowest responsible bidder, arrange for a contract between such bidder and the District and make available as Work progresses sufficient funds to pay the cost of completion less the "balance of the Total Contract Price," and to pay and perform all obligations of Principals under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages. The term "balance of the Total Contract Price," as used in this paragraph, shall mean the total amount payable to Principal by the District under the Agreement and any modifications thereto, less the amount previously paid by the District to the Principal, less any withholdings by the District allowed under the Contract. Surety shall not utilize Principal in completing the Project nor shall Surety accept a Bid from Principal for completion of the Work if the District, when declaring the Principal in default, notifies Surety of the District's objection to Principal's further participation in the completion of the Work. Surety expressly agrees that the District may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal.

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 Agreement 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 virtue.

As a condition precedent to the satisfactory completion of the Agreement, the above obligation shall hold good for a period ending one year after the date of Final Completion during which time Surety's obligation shall continue if Principal shall fail to make full, complete, and satisfactory repair and replacements and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The above obligation is separate from and does not affect to the obligations under a performance guarantee, a maintenance services agreement, or any warranty obligations that are effective for any period longer than one year following the Final Completion date.

Nothing herein shall limit the District's rights or the Principal's or Surety's obligations under the Agreement, law or equity, including, but not limited to, the District's rights against Principal under 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 Agreement or to the work to be performed thereunder or the specifications accompanying the same 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 terms of the Agreement or to the work or to the specifications.

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

\_\_\_\_\_  
By

\_\_\_\_\_  
Surety

\_\_\_\_\_  
By

\_\_\_\_\_  
Name of California Agent of Surety

\_\_\_\_\_  
Address of California Agent of Surety

\_\_\_\_\_  
Telephone Number of California Agent of Surety

**Please 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**

**Design-Builder's Labor & Material Bond  
(100% of Total Contract Price)**

KNOW ALL PERSONS BY THESE PRESENTS:

That WHEREAS, the governing board ("Board") of **La Cañada Unified 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:

\_\_\_\_\_ **Project**

("Project") which Agreement dated \_\_\_\_\_, 20\_\_, and all of the Contract Documents attached to or forming a part of the Agreement, are hereby referred to and made a part hereof ("Agreement"), and

WHEREAS, pursuant to law and the Agreement, 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 Agreement is awarded in an amount equal to one hundred percent (100%) of the Total Contract Price, to secure the claims to which reference is made in sections 9000 through 9510 and 9550 through 9566 of the California Civil Code, and division 2, part 7, of the Labor Code.

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 sum of \_\_\_\_\_ **Dollars (\$\_\_\_\_\_)**, lawful money of the United States, being a sum not less than the total amount payable by the terms of Agreement, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the Principal or any of its subcontractors, or the heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, provender, 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 such 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 section 9100 of the California 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.

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of Agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

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

\_\_\_\_\_  
By

\_\_\_\_\_  
Surety

\_\_\_\_\_  
By

\_\_\_\_\_  
Name of California Agent of Surety

\_\_\_\_\_  
Address of California Agent of Surety

\_\_\_\_\_  
Telephone Number of California Agent of Surety

**Please 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"

## EEP (For Informational Purposes Only)

STATE OF CALIFORNIA  
**CALIFORNIA ENERGY COMMISSION**

Proposition 39 Program  
Energy Expenditure Plan Report

June 21, 2017  
1 of 5

**APPLICATION APPROVED**

Submission ID: 1144 Tier: 4  
Expenditure Plans this Fiscal Year: 2016-17  
Grant Amount Requested: \$604,695.00  
Grant Balance Available: \$366,723.00  
Submittal Option: Multiple-Year (bundled) Award Expenditure Plan

**Energy Planning Reservation Information**  
Did you request Energy Planning Funds? (If no, move on to next section) Yes  
Budget for Screening and Energy Audits: \$41,500.00  
Budget for Proposition 39 Program Assistance: \$33,159.00  
Amount Spent for Screening and Audits: \$41,500.00  
Amount Spent for Program Assistance: \$33,159.00  
Budget for Energy Manager: \$74,659.00  
Amount Spent for Energy Manager: \$74,659.00  
Budget for Training Totals: \$74,659.00  
Totals: \$74,659.00

**Energy Manager and Training**  
Are you hiring an Energy Manager with Funds Requested in this Expenditure Plan? No  
Are you using Proposition 39 funds for energy related training costs? No  
Amount Requesting for Energy Manager: \$74,659.00  
Amount Requesting for Training: \$74,659.00

**Summary of Schools/Sites**  
Estimated Totals: Total Project Cost \$1,508,961.11 Proposition 39 Share \$604,695.00  
Summation is for 4 Schools

**Job Creation Benefits Estimation**  
Type of Project Budget Estimated Direct Job-Years Created  
Energy Efficiency \$604,695.00 3.39  
Renewable Generation  
Distributed Energy  
Total: 3.39  
Please list any state-certified apprenticeship programs being used:

**Apprenticeship Information**  
Budget Estimated Apprenticeship Job-Years Created No  
Will this project be subject to a community benefits agreement, community workforce agreement, or other mechanism that defines project co-benefits?

**Other Trainee Position Title**  
Estimated Other Trainee Jobs Created  
Total:

**Self-Certifications**  
Yes The LEA followed the Proposition 39 Guidelines regarding Eligible Energy Project Prioritization Considerations.  
Yes The LEA followed the guidelines regarding Sequencing of Facility Improvements  
Yes The LEA commits to use the funds for the eligible energy project(s) approved in its energy expenditure plan.  
Yes The LEA commits that the information included in the application is true and correct based to the best of the LEA's knowledge.  
Yes The LEA commits that all California Environmental Quality Act (CEQA) requirements are completed.  
Yes The LEA will obtain DSA project approval as applicable pursuant to California Code Regulations, Title 14.  
Yes The LEA acknowledges that the expenditures are subject to financial audit requirements  
Yes The LEA commits to complying with all reporting requirements.  
Authorized Representative: Mark Evans Date: 5/10/2017 Version 6

STATE OF CALIFORNIA  
**CALIFORNIA ENERGY COMMISSION**

Prop. 39 Energy Expenditure Plan System  
Energy Expenditure Plan Report  
June 21, 2017 - Page 1 of 5

**Site Information**  
Project Start Date: 12/4/2017  
Completion Date: 6/30/2020  
Local Education Agency: La Canada Unified School District  
LEA CDS Code: 19646590000000

**Benchmarking**  
Square Footage of School/Site: 63,780  
Average Peak Demand (kW):  
Total Annual Electric Use (kWh): 299,391  
Total Annual Electric Charges (\$): \$56,060.00  
Total Annual Gas Use (therms): 3,714  
Total Annual Gas Charges (\$): \$3,062.00  
Total Annual Propane Use (gals):  
Total Annual Propane Charges (\$):  
Total Annual Fuel Oil Use (gals):  
Total Annual Fuel Oil Charges (\$):  
Energy Bill Fiscal Year: 2015-16  
Electric Utility: SCE  
Electric Utility Account #: 121030605, 19064856  
Gas Utility: SCG  
Gas Utility Account #: 113 219 8000 2

**Energy Efficiency Project Summary**  
Measure Savings Source: Energy audit/feasibility study  
Proposition 39 Share to be used for Measure Implementation (\$): \$160,332.00

**Energy Use Intensity Calculator**

Electricity	Natural Gas	Other Fuels
4.69 kWh/SF	06 Therms/SF	
\$ 88 Cost/SF	\$ 05 Cost/SF	
Energy Costs/SF/Year: \$ 93	Energy Use(kbtu)/SF/Year: 56.12	

**Energy Efficiency Measure**

Energy Efficiency Measure	Description	Demand Savings (kW)	Annual Electric Savings	Annual Nat. Gas Savings	Annual Propane Savings	Annual Fuel Oil Savings	Annual Energy Cost Savings (\$)	Measure Cost (\$)	Rebates and Grants (\$)	EEM SIR
Lighting- Retrofit Interior Lamps to LED	EEM 1: Interior Lighting- Retrofit (573) Fluorescent fixtures with LED tubes and retrofit kits		35,736				\$6,562.22	\$115,988.26		1.17
Lighting- Exterior Fixture Retrofit	EEM 2: Exterior Lighting- Remove and replace (94) Fluorescent and HID fixtures with New LED Fixtures		36,174				\$6,773.48	\$31,452.42		3.40
Lighting Controls	EEM 3: Lighting Controls- Install (17) Ceiling Motion sensors and (74) Wall sensors to cut down energy in times of no use		7,497				\$1,376.67	\$12,892.10		1.05

**Energy Efficiency Narrative Description**  
EEM 1: Interior Lighting- Retrofit (573) Fluorescent fixtures with LED tubes and retrofit kits  
EEM 2: Exterior Lighting- Remove and replace (94) Fluorescent and HID fixtures with New LED Fixtures  
EEM 3: Lighting Controls- Install (17) Ceiling Motion sensors and (74) Wall sensors to cut down energy in times of no use.

**Site Project Summary**

Total Demand Savings	Total Annual Fuel Oil Savings	Total Prop 39 Share
Total Annual Electric Savings 79,407	Total Annual Cost Savings \$14,712.37	\$160,332.00
Total Annual Natural Gas Savings	Total Project Cost \$160,332.78	Savings-to-Investment Ratio (SIR) 1.60
Total Annual Propane Savings	Total Rebates	Total Cost Paid Under PPA



**Exhibit "B"**  
**Scope of Work**

Design-Builder shall provide all professional services and work ("Services" or "Work") necessary for completing the following: Refer to Attachment A- Scope of Work in ***LCUSD RFQ-RFP LED Lighting Retrofit Services Four School Sites 17-18/007 REV II***

## **Exhibit "C"**

### **General Conditions**

#### **ARTICLE 1. DEFINITIONS**

For purposes of the Agreement and its Exhibits, defined terms will have the following meanings:

**"Abnormally Severe Weather Conditions"** means typhoons, hurricanes, tornadoes, lightning storms and other climatic and weather conditions that are abnormally severe for the period of time when, and the area where, such storms or conditions occur, in each case occurring at a property, the access roads to a property, or any other location where Work or Services are then being performed. The term "Abnormally Severe Weather Conditions" specifically includes rain, snow or sleet in excess of one hundred fifty percent (150%) of the median level over the preceding ten (10) year period for the local geographic area and time of year in which such rain, snow or sleet accumulates.

**"Applicable Law"** means any statute, law, treaty, building code, rule, regulation, ordinance, code, enactment, injunction, writ, order, decision, authorization, judgment, decree, protocol, procedure or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, as may be in effect at the time the Work or Services are undertaken.

**"Applicable Permits"** means all permits, approvals, inspections and certifications required to be issued by any Governmental Authority in connection with the Services or the building, installation and start-up of the Work as of the Contract Effective Date.

**"Beneficial Use"** means when major new equipment and systems included in the Scope of Work are properly installed, inspected, operational, and are capable of being used for their intended purpose. Criteria for Beneficial Use of equipment / systems will be established as defined in Exhibit B.

**"Business Day"** means any calendar day other than a Saturday, a Sunday or a calendar day on which banking institutions in La Cañada, California, are authorized or obligated by law or executive order to be closed.

**"CEQA"** means the California Environmental Quality Act, codified at California Public Resource Code § 21000 *et seq.*, and the applicable state and local guidelines promulgated thereunder.

**"Certificate of Final Completion"** means the certificate issued by Design-Builder to District, in accordance with. A Certificate of Final Completion may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

**"Certificate of Substantial Completion"** means the certificate issued by Design-Builder to District, in accordance with. A Certificate of Substantial Completion may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

**"Change"** means any addition to, deletion from, suspension of, or other modification to the quality, function, or intent of the Work or Services.

**"Change in Law"** means any of the following events or circumstances occurring after the Contract Effective Date: (i) an amendment, modification, interpretation, construction, enforcement standard, supplement or other change in or repeal of an existing Applicable Law; or (ii) an enactment or making of a new Applicable Law (excluding a change in any income or franchise tax law, worker's compensation, payroll or withholding tax law).

**“Change Order”** means a written document, signed by both Parties authorizing Design-Builder to perform a Change. The Change Order must identify: (i) the applicable Change; (ii) any change to the Total Contract Price resulting from the Change; and (iii) any extension of the Contract Time resulting from the Change.

**“Construction”** means any and all Work to be performed that involves construction, alteration, repair, installation or removal of equipment, addition to, subtraction from, improving, moving, wrecking or demolishing any building, parking facility, excavation, or other structure or improvement, or any part thereof.

**“Construction Documents”** means the final designs, drawings, specifications and submittals that are used for Construction, and any Change Orders affecting those documents, that describe the technical requirements for the installation of all the materials and equipment pursuant to the Agreement.

**“Excusable Event”** means an act, event, occurrence, condition or cause beyond the control of Design-Builder which materially impacts the cost of or the time required to complete the Work and which could not have been avoided or mitigated by the exercise of due diligence, including, but not limited to, the following: (i) any act or failure to act of, or other delay caused by the District or a Governmental Authority; (ii) changes in the design, scope or schedule of the Work required by any Governmental Authority or District, if not due to the failure of Design-Builder to meet the requirements of the Agreement; (iii) undisclosed or unforeseen conditions encountered at the Project Site; (iv) any Change in Law; (v) acts of God, terrorists or the public enemy; (vi) flood, earthquake, tornado, storm, fire, explosions, landslide or similar cataclysmic occurrence; (vii) sabotage, vandalism, riots or civil disobedience; (viii) labor disputes or strikes; (ix) labor or material shortages, delay in manufacturing and deliveries of equipment; (x) Abnormally Severe Weather Conditions; and (xi) power outage at a Site.

**“Final Completion”** means the stage in the progress of the Work at which the Construction Work as identified in the Scope of Work, or a designated portion thereof, has been completed and commissioned, including completion of all Punch List items, completion of all required training, and delivery to District of the final documentation (as-built drawings, operation and maintenance manuals, warranty documentation and final submittals).

**“Governmental Authority”** means any federal, state, regional, town, county, city, municipal or local government agency, department or regulatory body having jurisdiction under Applicable Law over the matter in question.

**“Hazardous Substances”** means (i) any hazardous, toxic, or dangerous wastes, substances, chemicals, constituents, contaminants, pollutants, and materials and any other carcinogenic, liquids, corrosive, ignitable, radioactive, reactive, toxic, or otherwise hazardous substances or mixtures (whether solids, liquids, gases) now or at any time subject to regulation, control, remediation, or otherwise addressed under Applicable Laws; (ii) any “hazardous substance” as defined by the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. §6901 *et seq.*), as amended, and regulations promulgated thereunder; (iii) any “hazardous, toxic or dangerous waste, substance or material” specifically defined as such in 42 U.S.C. §9601 *et seq.*), as amended and regulations promulgated thereunder; and (iv) any hazardous, toxic or dangerous waste, substance, or material as defined in any so-called “superfund” or “superlien” law.

**“Punch List”** means, with respect to any portion of the Work, a list of minor corrective items which need to be completed or corrected in order to complete such portion of the Work, but do not impair District’s ability to beneficially operate and utilize such portion of the Work.

**“Scope of Work”** means the Work set forth in Exhibits B, as modified by any Change Order.

- (a) **“Substantial Completion” means the stage in the progress of the Work at which the Work, or a designated portion thereof, is sufficiently complete, in conformance with the Scope of Work, the Construction Documents and any Change Orders, so that District can take Beneficial Use thereof.**

1. **Minor Changes to Scope of Work**. Design-Builder has the authority to make minor changes that do not change the Total Contract Price and are consistent with the intent of the Construction Documents, only with prior notice to District detailing the requested change(s), and with District’s written approval before the minor changes are performed. For any such minor changes performed without District written approval, Design-Builder may be required by District to correct the Work at no extra cost to the District. Design-Builder will make available to District at the site a set of as-built drawings that will be kept current to show those minor changes.

2. **Hazardous Substances**. Design-Builder will promptly provide written notice to District if Design-Builder observes any Hazardous Substance, as defined herein, at or around the Project Site(s) during the course of construction or installation of any equipment which have not been addressed as part of the Scope of Work. Design-Builder will comply with all Applicable Laws in connection with the use, handling, and disposal of any Hazardous Substances in the performance of its Work.

3. **Pre-Existing Conditions**. Certain pre-existing conditions may be present within the Project Site(s) that (i) are non-compliant with applicable codes, (ii) may become non-compliant with applicable codes upon completion of Design-Builder’s Work, (iii) may cause Design-Builder’s completed Work to be non-compliant with applicable codes, (iv) may prevent District from realizing the full benefits of Design-Builder’s Work, (v) may present a safety or equipment hazard, or (vi) are otherwise outside the scope of Design-Builder’s Work. Design-Builder will not be responsible for repairing such pre-existing conditions unless such pre-existing conditions were not readily identifiable during a Site Examination, or responsibility is expressly provided for in the Scope of Work or an approved Change Order.

4. **Project Completion**.

a. **Substantial Completion**. When Design-Builder considers the Work, or any portion thereof, to be Substantially Complete, Design-Builder will supply to District a written Certificate of Substantial Completion with respect to such portion of the Work, including a Punch List of items and the time for their completion or correction. District will within ten (10) Business Days of receipt of the Certificate of Substantial Completion, review such portion of the Work for the sole purpose of determining that it is Substantially Complete, and if District concurs that the Work is Substantially Complete, sign and return the Certificate of Substantial Completion to Design-Builder acknowledging and agreeing: (i) that such portion of the Work is Substantially Complete; (ii) the date of such Substantial Completion; (iii) that from the date of Substantial Completion District will assume responsibility for the security of, insurance coverage for, maintenance, utilities for, and damage to or destruction of such portion of the Work. District agrees that approval of a Certificate of Substantial Completion will not be unreasonably withheld, delayed or conditioned.

b. **Final Completion**. When Design-Builder considers the entirety of the Work to be Finally Complete, Design-Builder will notify District that the Work is fully complete and ready for final inspection. Administrative DSA closeout will not be a condition to achieving Final Completion. District will inspect the Work to verify the status of Final Completion within ten (10) Business Days after its receipt of Design-Builder’s certification that the Work is complete. When District agrees that the Work is fully completed, Design-Builder will issue a Certificate of Final Completion, which District must sign. District agrees that its signing of the Certificate of Final Completion will not be unreasonably withheld, delayed or conditioned. At that time, District will pay Design-Builder any remaining Total Contract Price due and any outstanding Retention being withheld by District. District may give Design-Builder written notice of acceptance of the Work

and will promptly record a notice of completion or notice of acceptance in the office of the county recorder in accordance with California Civil Code §9204.

5. **Transfer of Title; Risk of Loss**. Title to all or a portion of the Project equipment, supplies and other components of the Construction Work will pass to District upon the earlier of (i) the date payment for such Project equipment, supplies or components is made by District or (ii) the date any such items are incorporated into the Project Site. Design-Builder will retain care, custody and control and risk of loss of such Project equipment, supplies and components until the earlier of Beneficial Use or Substantial Completion. Transfer of title to District will in no way affect District's and Design-Builder's rights and obligations as set forth in other provisions of the Contract.

## **Exhibit "D"**

### **Special Conditions**

#### **1. Project Site Requirements**

**1.1 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 Design-Builder's Work, the overtime wages for the custodian will be paid by the Design-Builder, unless at the discretion of the District, other arrangements are made in advance.

**1.2 Keys.** Upon request, the District may, at its own discretion, provide keys to the school site for the convenience of the Design-Builder. The Design-Builder agrees to pay all expenses to re-key the entire school site and all other affected District buildings if the keys are lost or stolen, or if any unauthorized party obtains a copy of the key or access to the school.

**1.3 Maintaining Services.** The Design-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 shall be only as arranged in advance with the District. Design-Builder shall provide temporary services to all facilities interrupted by Design-Builder's Work.

**1.4 Maintaining Utilities.** The Design-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.

**1.5 Confidentiality.** Design-Builder shall maintain the confidentiality of all information, documents, programs, procedures and all other items that Design-Builder encounters while performing the Work. This requirement shall be ongoing and shall survive the expiration or termination of this Agreement and specifically includes, without limitation, all student, parent, and employee disciplinary information and health information.

**1.6 Work during Instructional Time.** By submitting its bid, Design-Builder affirms that Work may be performed during ongoing instruction in existing facilities. If so, Design-Builder agrees to cooperate to the best of its ability to minimize any disruption to school operations and any use of school facilities by the public up to, and including, rescheduling specific work activities, at no additional cost to District.

**1.7 No Work during Student Testing.** Design-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 Site are taking State or Federally-required tests.

#### **2. Badge Policy for Design-Builder and All Contractors**

Design-Builder and all Contractors (hereinafter "Contractor" or "Contractors") doing work for the District will provide their workers with identification badges. These badges will be worn by all members of the Contractor's staff who are working in a District facility.

**2.1** Badges must be filled out in full and contain the following information:

**2.1.1** Name of Contractor

**2.1.2** Name of Employee

**2.1.3** Contractor's address and phone number

**2.2** Badges are to be worn when the Contractor or his/her employees are on site and must be visible at all times. Contractors must inform their employees that they are required to allow District employees, the Architect, the Construction Manager, the Program Manager, or the Project Inspector to review the information on the badges upon request.

**2.3** Continued failure to display identification badges as required by this policy may result in the individual being removed from the Project or assessment of fines against the Contractor.

### **3. Substitution for Specified Items**

**3.1** Whenever in the Specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name, or by name of manufacturer, that Specification shall be deemed to be followed by the words "or equal." Design-Builder may, unless otherwise stated, offer any material, process, or article that shall be substantially equal or better in every respect to that so indicated or specified.

**3.1.1** If the material, process, or article offered by Design-Builder is not, in the opinion of the District, substantially equal or better in every respect to that specified, then Design-Builder shall furnish the material, process, or article specified in the Specifications without any additional compensation or change order.

**3.1.2** This provision shall not be applicable with respect to any material, product, thing or service for which District made findings and gave notice in accordance with Public Contract Code section 3400(c); therefore, Design-Builder shall not be entitled to request a substitution with respect to those materials, products or services.

**3.2** A request for a substitution shall be submitted within thirty-five (35) days of the date of Board approval of the Agreement, within which time, Design-Builder shall provide data substantiating a request for substitution of "an equal" item, including but not limited to the following:

**3.2.1** All variations of the proposed substitute from the material specified including, but not limited to, principles of operation, materials, or construction finish, thickness or gauge of materials, dimensions, weight, and tolerances;

**3.2.2** Available maintenance, repair or replacement services;

**3.2.3** Increases or decreases in operating, maintenance, repair, replacement, and spare parts costs;

**3.2.4** Whether or not acceptance of the substitute will require other changes in the Work (or in work performed by the District or others under Contract with the District); and

**3.2.5** The time impact on any part of the Work resulting directly or indirectly from acceptance of the proposed substitute.

**3.3** No substitutions shall be made until approved, in writing, by the District. The burden of proof as to equality of any material, process, or article shall rest with Design-Builder. The Design-Builder warrants that if substitutes are approved:

**3.3.1** The proposed substitute is equal or superior in all respects to that specified, and that such proposed substitute is suitable and fit for the intended purpose and will perform adequately the function and achieve the results called for by the general design and the Contract Documents;

**3.3.2** The Design-Builder provides the same warranties and guarantees for the substitute that would be provided for that specified;

**3.3.3** The Design-Builder shall be fully responsible for the installation of the substitute and any changes in the Work required, either directly or indirectly, because of the acceptance of such substitute, with no increase in Contract Price or Contract Time. Incidental changes or extra component parts required to accommodate the substitute will be made by the Design-Builder without a change in the Contract Price or Contract Time;

**3.3.4** The Design-Builder shall be responsible for any re-design costs occasioned by District's acceptance and/or approval of any substitute; and

**3.3.5** The Design-Builder shall, in the event that a substitute is less costly than that specified, credit the District with one hundred percent (100%) of the net difference between the substitute and the originally specified material. In this event, the Design-Builder agrees to execute a deductive Change Order to reflect that credit.

**3.4** In the event Design-Builder furnishes a material, process, or article more expensive than that specified, the difference in the cost of that material, process, or article so furnished shall be borne by Design-Builder.

**3.5** In no event shall the District be liable for any increase in Contract Price or Contract Time due to any claimed delay in the evaluation of any proposed substitute or in the acceptance or rejection of any proposed substitute.

**3.6** Design-Builder shall be responsible for any costs the District incurs for professional services, DSA fees, or delay to the Project Schedule, if applicable, while DSA reviews changes for the convenience of Design-Builder and/or to accommodate Design-Builder's means and methods. District may deduct those costs from any amounts owing to the Design-Builder for the review of the request for substitution, even if the request for substitution is not approved. District, at its sole discretion, shall deduct from the payments due to and/or invoice Design-Builder for all the professional services and/or DSA fees or delay to the Project Schedule, if applicable, while DSA reviews changes for the convenience of Design-Builder and/or to accommodate Design-Builder's means and methods arising herein.

**4. [RESERVED]**

[END OF EXHIBIT]



**Exhibit "E"**  
**REGISTERED SUBCONTRACTORS LIST**  
**(Labor Code Section 1771.1)**

PROJECT: \_\_\_\_\_

Date Submitted (for Updates): \_\_\_\_\_

Design-Builder acknowledges and agrees that it must clearly set forth below the name and Department of Industrial Relations (DIR) registration number of each subcontractor **for all tiers** who will perform work or labor or render service to Design-Builder or its subcontractors in or about the construction of the Work **at least two (2) weeks before the subcontractor is scheduled to perform work**. This document is to be updated as all tiers of subcontractors are identified.

Design-Builder acknowledges and agrees that, if Design-Builder fails to list as to any subcontractor of any tier who performs any portion of Work, the Agreement is subject to cancellation and the Design-Builder will be subjected to penalty under applicable law.

If further space is required for the list of proposed subcontractors, attach additional copies of page 2 showing the required information, as indicated below.

**Subcontractor Name:** \_\_\_\_\_

DIR Registration #: \_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

DIR Registration #: \_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

DIR Registration #: \_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

DIR Registration #: \_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

DIR Registration #: \_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

DIR Registration #: \_\_\_\_\_  
\_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

DIR Registration #: \_\_\_\_\_  
\_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

DIR Registration #: \_\_\_\_\_  
\_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

DIR Registration #: \_\_\_\_\_  
\_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

DIR Registration #: \_\_\_\_\_  
\_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

DIR Registration #: \_\_\_\_\_  
\_\_\_\_\_

Portion of Work: \_\_\_\_\_

Date: \_\_\_\_\_

Name of Design-Builder: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

[END OF DOCUMENT]