



Kensington Police Protection and Community Services District

A G E N D A

Thursday, April 11, 2019
59 Arlington Avenue, Kensington, California

Special Meeting – Closed Session 6:30 P.M.
Regular Meeting: 7:30 P.M.

1. **Call to Order/Roll Call – 6:30 P.M.**
2. **Special Meeting: Closed Session – Public Comments:** Members of the public may address the Board on items listed on the agenda. Please observe our five-minute per person limit and twenty-minute total limit, per Board Policy 5030.41.
3. **Adjourn to Closed Session**
 - a. CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION
 - i. █████ et al. v. KPPCSD
 - ii. Foley Temporary Restraining Order Against General Manager , Section 54956.9 (d)(1)
4. **Regular Meeting – Call to Order/Roll Call 7:30 P.M.**
5. **New Officer:** Interim Chief of Police Rickey Hull will introduce and swear-in new Officer Tamiko Fodor
6. **Public Comments:** Members of the public may address the Board on items not listed on the agenda but that are within the jurisdiction of the District. Comments on matters that are listed on the agenda and requiring Board action may be made at the time the Board is considering each item. Please observe our five-minute per person limit and twenty-minute total limit, per Board Policy 5030.41.

Note: Items that are informational only and that used to appear as part of the Consent Calendar have been moved to the agenda packet's addendum. Public comments about such items made be made at this time.

To comment on agenda items, please complete speaker cards and submit them to staff.
7. **Board/Staff Comments**
 - a. General Manager Report
 - b. Interim Chief of Police Report
8. **New Business**
 - a. Community Center Renovations
 - i. Award Construction Contract to General Contractor (for action)
 1. Staff Report
 2. Glass Renovation Report
 3. Draft Community Center renovations contract
 - ii. Award Abatement Contract (for action)
 1. Staff Report
 2. Glass Abatement Report
 3. Draft abatement contract

- iii. Consideration of replacing floor in Meeting Rooms 2 and 3 and remaining hallway (for possible action). Estimates should be available later this week. The Board of Directors can discuss and vote to add this item to the contract. A oral report will be made at the meeting.

ADJOURNMENT

Our next meeting will be April 25.

Rules of Decorum at Meetings

- Persons wishing to speak shall line up on the left side of the room. If there are several speakers, please try to be brief to give others the opportunity to speak.
- All persons wishing to speak shall do so at the podium and address their comments to the Board.
- Each member of the public attending the meeting has the right to speak during the public comments period. If the allotted time for public comments has been reached, we will begin the meeting and allow for additional public comment on items not on the agenda but within our jurisdiction after the business portion of our meeting.
- Each member of the public attending the meeting has the right to comment on each item on the agenda. However, the Board President may restrict the number of times that an individual may speak on the same agenda item as necessary to ensure that all persons wishing to comment on that item are heard and that the meeting proceeds in an orderly fashion.
- If any meeting is willfully interrupted so as to render the orderly conduct of the meeting unfeasible, the Board President may order the person or group of persons causing the disruption removed.
- If removal of the person or group of persons causing the disruption of the meeting does not restore order, the Board President may order the room cleared of all members of the public except members of the media and proceed to address the remaining items on the agenda.

General Information

- All proceedings of the Open Session will be audio recorded and, if the equipment works, video recorded.
- The Community Center has devices for hearing assistance. Please contact GM Anthony Constantouros for information about the equipment.
- The Community Center is Wi-Fi accessible.
- Upon request, the Kensington Police Protection and Community Services District will provide written agenda materials in appropriate alternative formats or disability-related modification of disabilities to participate in public meeting. Please send written request, including your name, mailing address, phone number, and a brief description of the requested materials and preferred alternative format or auxiliary aid or service at least two days before the meeting. Requests should be sent to: Kensington Police Protection & Community Services District, 217 Arlington Ave, Kensington, CA 94707

POSTED: Public Safety Building – Colusa Food – Arlington Kiosk and at www.kppcsd.org
Complete agenda packets are available at the Public Safety Building.

All public records that relate to an open session item of a meeting of the Kensington Police Protection & Community Services District that are distributed to a majority of the Board less than 72 hours before the meeting, excluding records that are exempt from disclosure pursuant to the California Public Records Act, will be available for inspection at the **District offices, 217 Arlington Ave, Kensington, CA 94707** at the same time that those records are distributed or made available to a majority of the Board

Items formerly included under the Board Packet Addendum are now posted separately on the District's website, under the title "Monthly Reports."

Communications and information submitted by community members and others will be included in the Correspondence section of this report and available to the public.

General Manager Report

April 8, 2019

This report updates the following projects:

Police Study – Community Meetings

The final Matrix report and recommendations are still on schedule to be presented to the Board of Directors at their next meeting on April 25.

California Law Enforcement Telecommunications System (CLETS)

CLETS is the computer system that connects public safety organizations to various data bases. An investigator has been reviewing alleged improper access and is nearing completion of his study. It is hoped that the review will be completed in the next few weeks.

Draft Audit

The financial portion of the report has been completed. The management discussion and analysis is the last remaining section to be completed. When finalized, the audit will be presented to the Finance Committee.

Policy and Procedures Manual

A rough draft has been completed and is being edited and formatted. The revised draft manual should be ready for public review at a Board Meeting in May. Updating this document has been a major task that will improve District operations.

Fiscal Year 2019/20 Proposed Budget

The current target is to present the proposed draft budget in May to the Finance Committee and to the Board of Directors in June.

Best regards,

Tony Constantouros

KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

BOARD OF DIRECTORS MEETING

April 11, 2019

ITEM 8.a.i

KENSINGTON COMMUNITY CENTER: SEISMIC UPGRADE AND BUILDING ALTERATIONS; AWARD OF CONTRACT TO LOW BIDDER, EAGLE BUILDERS

SUMMARY

The bidding results for this project were previously reported at the March 14, 2019 and March 28, 2019 meetings of the Board of Directors. The District is obligated to award a contract by Saturday, April 20, 2019. At the March 28, 2019 Board Meeting, it was indicated that the contract award can take place at the April 11, 2019 regular meeting of the Board of Directors. A further project update, from William Glass of Glass Associates, Inc. is attached. Mr. Glass recommends that the contract be awarded to Eagle Builders, the low bidder, who bid \$1,481,200.

At the March 28, 2019 Meeting, the Board of Directors considered bid alternates which were additive to the bid amount. The approved bid alternates are detailed in the attached memorandum. The combined basic scope and approved bid alternates bring the total for the contract award to \$1,594,200.

RECOMMENDATION:

1. Award the contract for the seismic upgrades and building alterations, including bid alternates of the Kensington Community Center to Eagle Builders for a total of \$1,594,200.
2. Authorize the General Manager to sign the contract with Eagle Builders subject to the review and approval of the General Counsel.

FISCAL IMPACT:

This project involves the expenditure of significant District funds and will include debt financing.

ATTACHMENTS:

1. Memorandum from William Glass, Principal of Glass Associates, Inc
2. Construction contract

SUBMITTED BY: Anthony Constantouros, General Manager

April 8, 2019

TO: Tony Constantouros
General Manager
Kensington Police Protection Community Service District
Public Safety Building
217 Arlington Avenue
Kensington, CA 94707-1401
TConstantouros@kensingtoncalifornia.org

RE: **PROJECT STATUS REPORT - UPDATE 04/08/19**
Seismic Upgrades and Building Alterations, Kensington Community Center

This memo is forwarded to provide an update of the status of the Kensington Community Center Project through the bid and bid selection process. In summary, the bidding has been completed, the evaluation of the contractors' proposals is completed, and the District is prepared to award the contract, with selected Bid Alternates, at its scheduled April 11 meeting. The following outlines the status in greater detail:

Bid Period & Process & Results were reviewed in my March 13, 2019 memo.

The three low bids considered to be responsible were retained for further consideration prior to selection of the designation of the successful bidder and Contract Award:

Low Bid: Eagle Builders, \$ 1,481,200
Second Low Bid: KCK Builders, \$ 1,531,400
Third Low Bid: EVRA Construction, \$ 1,794,000

In accordance with Invitation for Bids, the District has returned the bid guarantee to the other two bidders. As previously noted, the District is obligated to award the contract by April 20 or return all bids.

Bid Review

At its meeting of March 28, 2019, the Board approved the bid of \$1,481,200 by the low bidder, Eagle Builders.

The Board also approved the following five Bid Alternates of the nine provided in the bids, all additive:

Bid Alt. 1 (New flooring at Meeting Hall): \$13,000
Bid Alt. 2 (New flooring at Meeting Room 3): \$13,500
Bid Alt. 3 (New partial-height cabinet work at west wall of Meeting Hall): \$52,000
Bid Alt. 4 (Integrate existing A.V. system into new cabinet work at west wall of Meeting Hall): \$6,500
Bid Alt. 8 (New acoustical ceiling tile at Meeting Hall): \$28,000

Glass Associates, Inc.
Architecture & Planning
337 17th Street
Oakland, California 94612
(510) 788-5888
www.glassarchplan.com

PROJECT STATUS REPORT

Seismic Upgrades and Building Alterations, Kensington Community Center

April 8, 2019

Page 2 of 2

The above combined Basic Scope and Bid Alternates bid totals \$1,594,200. At its meeting of March 28, 2019, the Board also reviewed and approved the funding measures for bid award and construction. The Board may also consider the addition of new flooring at Meeting Rooms 1 and 2 to the scope as a Change Order, based on an evaluation of the selected contractor's proposed cost.

Bid Award

The Board will present the above-proposed Bid Award, including the selected Bid Alternates, for approval at the District's scheduled April 11 meeting. Both the District's General Counsel and Architects concur with the proposed Award.

Please let me know if you have any questions regarding the above.

Very truly yours,
GLASS ASSOCIATES, INC.



William R. Glass, FAIA
Principal

CC: Sylvia Hacaj, Kensington Police Protection & Community Services District
Ann R. Danforth. General Counsel, Kensington Police Protection & Community Services District

CONTRACT

KENSINGTON POLICE PROTECTION & COMMUNITY SERVICES DISTRICT

CALIFORNIA

**Seismic Upgrades and Building Alterations
Kensington Community Center**

This Contract is made and entered into as of date to be added upon award at Kensington, California, between the Kensington Police Protection & Community Services District and _____ of _____ ("Contractor").

ARTICLE I- For and in consideration of the payment and agreement herein after mentioned, to be made and performed by Kensington Police Protection & Community Services District, and under the conditions expressed in the required bonds hereunto annexed, Contractor agrees that for the benefit of Kensington Police Protection & Community Services District, at its own cost and expense, to do all the work and furnish all the materials, except such as are mentioned in the Special Provisions to be furnished by Kensington Police Protection & Community Services District, necessary to construct and complete the work herein described in a good, workmanlike, and substantial manner. The work embraced herein shall be done in accordance with the Standard Specifications of the State of California Department of Transportation, dated 2010, insofar as the same may apply (Standard Specifications) (see attachment A pages 1-129 for reference only); California Building Code (CBC), 2016 Edition, and Uniform Mechanical Code, Latest Edition, and National Electric Code, Latest Edition (collectively "Contract Documents") and in accordance with the Special Provisions hereinabove set forth, all of which are hereby incorporated into and made part of this Contract.

The work to be performed is further shown upon Project Drawings and Specifications consisting of 79 sheets entitled, Seismic Upgrades and Building Alterations Kensington Community Center, approved by the Owner's Representative, hereinafter referred to as the Project Plan(s).

ARTICLE II - Contractor agrees to receive and accept the following prices as full compensation for furnishing all materials and doing all the work contemplated and embraced in this Contract; also for all loss or damages arising out of the nature of the work aforesaid, or from the acts of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by Kensington Police Protection & Community Services District and for all expenses incurred by or in consequence of the suspension or discontinuance of work, and for well and faithfully completing the work, and the whole thereof in the manner and according to the Project Plans and Invitation for Bids therefor, and the requirements of the Engineer under them to wit:

<u>ITEM NUMBER</u>	<u>QUANTITY</u>	<u>DESCRIPTION</u>	<u>UNIT PRICE</u>	<u>TOTAL</u>
			\$ _____	\$ _____
TOTAL BASE BID(SUM OF "TOTAL" COLUMN)			\$ _____	

**BID ITEMS IN THIS SECTION WILL BE INSERTED
UPON AWARD OF THE CONTRACT AND SHALL BE
THE SAME AS THOSE BID UPON.**

ARTICLE III - Kensington Police Protection & Community Services District and Contractor hereby promise and agree that Contractor shall provide the materials and do the work according to the terms and conditions herein contained and referred to, for the prices aforesaid, and Kensington Police Protection & Community Services District hereby agrees to pay for the same at the time, in the manner, and upon the conditions set forth; and the parties for themselves, their heirs, executors, administrators, successors, and assigns, do hereby agree to full performance of the covenants herein stated.

ARTICLE IV - By execution of this Contract, Contractor hereby represents and certifies that Contractor is aware of the provisions of Labor Code section 3700 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 Contractor hereby agrees to comply with such provisions before commencing the performance of the work of this Contract.

ARTICLE V - It is further expressly agreed by and between the parties hereto that the Invitation for Bids, containing the Notice to Bidders including any required Bonds, the Contract Documents, and any Addenda are all essential parts of this Contract and are specially referred to and by such reference made apart hereof. In the event of any conflict in the provisions thereof, the terms of said documents shall control each over the other, in the following order:

1. Special Provisions
2. Project Plans, consisting of 79 sheets entitled Seismic Upgrades and Building Alternations Kensington Community Center
3. State of California Department of Transportation Standard Specifications 2010 (Standard Specifications)
4. California Building Code (CBC), 2016 Edition
5. Uniform Mechanical Code, Latest Edition
6. National Electric Code, Latest Edition

ARTICLE VI - Contractor agrees to commence work pursuant to this Contract within ten calendar days from the date authorized in the Notice to Proceed and to diligently prosecute the same to completion in accordance with Section 8 - 1.048 of the Special Provisions. All required licenses and registrations shall be maintained in an active status for the term of the agreement.

This Contract shall not be transferred or assigned without the prior written consent of Kensington Police Protection & Community Services District, which may be withheld by Kensington Police Protection & Community Services District in its sole and absolute discretion.

If Contractor is a corporation, two corporate officers of Contractor, one from each of the following two groups shall execute this Contract: a) the chairman of the board, president or any vice-president; b) the secretary, any assistant secretary, chief financial officer, or any assistant treasurer. The name and title of the corporate officers shall be printed under the signature.

In witness whereof, the parties hereto have executed this Contract as of the date first written above.

District:
Kensington Police Protection & Community Services
District

Contractor:
Name of Contractor, Type of entity

By: _____
Title: _____

By: _____
Name: _____
Title: _____

ATTEST:
By: _____
Title: _____

By: _____
Name: _____

Approved as to form:

By _____
Kensington Police Protection & Community
Services District Attorney

KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

BOARD OF DIRECTORS MEETING

April 11, 2019

ITEM 8.a.ii

KENSINGTON COMMUNITY CENTER: SEISMIC UPGRADE AND BUILDING ALTERATIONS; HAZARDOUS MATERIALS ABATEMENT, AWARD OF CONTRACT TO LOW BIDDER, ECO BAY SERVICES

SUMMARY

At the March 28, 2019 meeting of the Board of Directors, it was noted the General Contractor's scope did not include the abatement of hazardous material. Requests for proposals for abatement work were based on a scope described in the February 2018 Hazardous Materials Inspection Report. This scope, prepared by Sensible Environmental Solutions, was forwarded to several abatement contractors with bids due on March 27, 2019.

Attached is a memorandum from Farhat Daud, Associate of Glass Associates, Inc that summarizes the bid process and results. The low bidder is Eco Bay Services, Inc. for a bid amount of \$25,000 + flooring bid alternate of \$8,500.

RECOMMENDATION:

1. Award the contract for the hazardous materials abatement of the Kensington Community Center to Eco Bay Services, Inc. for a total of \$25,000 + flooring bid alternate of \$8,500.
2. Authorize the General Manager to sign the contract with Eco Bay Services, Inc. subject to the review and approval of the General Counsel.

FISCAL IMPACT:

This project involves the expenditure of \$33,500 of District funds.

ATTACHMENTS:

1. Memorandum from Farhat Daud, Associate of Glass Associates, Inc
2. Construction contract

SUBMITTED BY: Anthony Constantouros, General Manager

April 8, 2019

TO: Tony Constantouros
General Manager
Kensington Police Protection Community Service District
Public Safety Building
217 Arlington Avenue
Kensington, CA 94707-1401
TConstantouros@kensingtoncalifornia.org

RE: **PROJECT STATUS REPORT – ABATEMENT UPDATE 04/8/19**
Seismic Upgrades and Building Alterations, Kensington Community Center

This memo is forwarded to provide an update of the status of the Kensington Community Center Project through the current abatement bid process. In summary, the bidding has been completed and the final evaluation of the contractors' proposals is in process. District plans to award the contract by April 11th. The following outlines the abatement scope, bid process and bid results in greater detail:

Abatement Project Scope

According to the Hazardous Materials Inspection Report prepared by environmental consultant Sensible Environmental Solutions, Inc., (SESI) commissioned by the District on February 28, 2018, there are three areas of hazardous materials in the Community Center that require abatement by a certified abatement contractor. These are the lower layer of flooring and mastic at the Main Hall and Hallway, roof flashings and mastic and skim-coats at the exterior CMU walls. The Abatement Specifications, prepared on March 11, 2019, were structured to address abatement as follows:

- Item 1: Asbestos-containing-material in the roof flashings and mastic at roof perimeters and roof penetrations, such as skylights.
- Item 2: Asbestos-containing-material in the skim-coat (below the grey paint) of the exterior CMU wall scheduled for demolition.
- Item 3: A 12" strip of asbestos-containing-material in skim-coat of remaining CMU walls adjacent to demolition to provide adequate cover for installation of new steel frame.
- Bid Alternate: Asbestos-containing-material in the lower layer of flooring and mastic of the Main Hall and Hallway.

Invitation to Bid

Four abatement contractors were notified of the project via phone and email from March 5, 2019 to March 7, 2019 and invited to submit a bid. The Drawings, Hazardous Materials Inspection Report and Abatement Specifications were sent to bidders via email attachments.

Glass Associates, Inc.
Architecture & Planning
337 17th Street
Oakland, California 94612
(510) 788-5888
www.glassarchplan.com

PROJECT STATUS REPORT – ABATEMENT UPDATE

Seismic Upgrades and Building Alterations, Kensington Community Center

April 8, 2019

Page 2 of 3

Bid Process & Results

There was a non-mandatory pre-bid walk-through of the building and site on March 18, 2019. Three Contractors, as well as Bob Sutton, Principal, SESI., were able to attend. Subsequent to the walk-thru, the specifications were revised by SESI with Addendum 1. Bidders were asked to structure their bids per the basic project scope (Items 1, 2 & 3) and additionally with a bid for the Flooring Alternate. The bids were due on March 27th by noon.

Three contractors submitted bid proposals but only two of these were within the deadline. The two qualifying bids were as follows:

<u>Contractor</u>	<u>Base Bid</u>	<u>Bid Alternate</u>
Bayview Environmental Solutions, Inc.:	\$39,386	\$33,636
Eco Bay Services, Inc.:	\$25,000	\$ 8,500

The lowest bid considered to be responsible will be retained for further consideration prior to selection of the designation of the successful bidder and Abatement Contract Award:

Low Bid: Eco Bay Services, Inc. \$25,000

The District is obligated to return the bid guarantee to the other two bidders. The KPPCSD Board voted on their March 27th meeting to accept Bid Alternate 1 in the General Contract for installing new flooring in the Main Hall and Hallway. The District has decided to vote to award the abatement bid, with bid alternate, at its April 11th meeting.

Hazmat Abatement Schedule

The District plans to have completed as much abatement work as possible prior to turning over the building to the General Contractor by May 1, 2019. This will include Items 2, 3 & the Bid Alternate. The abatement work for Item 1 will need coordination with the GC and will be done later after GC assumes contract.

The abatement contractor must notify Bay Area Air Quality Management District of the project 10 business days prior to commencing work. Once the abatement contractor is awarded bid, coordination can begin to expedite abatement work in accordance with project schedule before handing over abated building to the GC.

PROJECT STATUS REPORT – ABATEMENT UPDATE

Seismic Upgrades and Building Alterations, Kensington Community Center

April 8, 2019

Page 3 of 3

Please let me know if you have any questions regarding the above.

Very truly yours,
GLASS ASSOCIATES, INC.



Farhat Daud, AIA
Associate

CC: Sylvia Haçaj, Kensington Police Protection & Community Services District
Ann R. Danforth, General Counsel, Kensington Police Protection & Community Services District

**KENSINGTON POLICE PROTECTION AND
COMMUNITY SERVICES DISTRICT**

OWNER-CONTRACTOR AGREEMENT

**HAZARDOUS WASTE REMOVAL
KENSINGTON COMMUNITY CENTER**

THIS OWNER-CONTRACTOR AGREEMENT ("Agreement") is made and entered into this day of April __, 2019, by and between the Kensington Police Protection and Community Services District, a California Community Services District ("Owner"), Eco Bay Inc., a California Corporation ("Contractor").

In consideration of the mutual covenants and agreements set forth herein, Contractor and Owner hereby agree as follows:

**ARTICLE I
HAZARDOUS WASTE REMOVAL PROJECT**

Owner owns and maintains the Kensington Community Center, located at 59 Arlington Avenue, in Kensington, California ("Site"). Owner is preparing the Site for renovation, which requires the removal of hazardous materials and related work, as set forth more fully in Exhibit A ("Project") and subject to the general conditions set forth in the Exhibit B. The Contractor shall do all the work and furnish all the labor, services and materials necessary to complete the Project, in a good, workmanlike and substantial manner, to the satisfaction of Owner and in accordance with the terms of this Agreement. In the event of any conflict between Exhibit A and Exhibit B, Exhibit B shall prevail.

**ARTICLE II
CONTRACT SUM**

Contractor compensation under this Agreement shall be known as the "Contract Sum." The Contract Sum for the Base Bid work described in Exhibit A shall be \$25,000.00 (twenty-five thousand dollars) as full compensation for the Work. In the event that the Owner decides to proceed with the Alternate described in Exhibit A, the additional Contract Sum for said work shall be \$8,500.00 (eight thousand five dollars) as full compensation. All payments shall be Exhibit B.

**ARTICLE III
TIME FOR PERFORMANCE**

Contractor shall commence performance of the Work on a date to be specified by Owner to Contractor to proceed. Contractor shall diligently proceed with performance of the Work and agrees to achieve Completion of the Project within __ working days after receiving the Owner's notice to proceed ("Scheduled Completion Date").

ARTICLE IV
EXHIBITS

This Contract includes the following Exhibits, which are attached hereto and incorporated herein by reference:

Exhibit A	The Project
Exhibit B	General Conditions

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the day and year first herein above written.

OWNER

APPROVED AS TO FORM
Community Services District.

By _____
Anthony Costantouros
General Manager
Kensington Police Protection and

By _____
Ann R. Danforth, District General Counsel

CONTRACTOR: Eco Bay Services, Inc.

Signed: _____

Print _____

Contractor's License No. _____

Expiration Date: _____

Exhibit A

THE PROJECT

[Attach detailed description of Project work]

Exhibit B
GENERAL CONDITIONS

ARTICLE 1
IN GENERAL

1.1 DEFINITIONS

1.1.1 “Day” shall mean calendar day unless specifically designated otherwise.

1.1.2 “Work” shall mean the Project, the Project’s constituent components and the Project Site.

1.2 PERFORMANCE OF THE WORK

1.2.1 At the time the contract is awarded, all contractors and subcontractors shall be properly licensed in accordance with the applicable provisions of Chapter 9 of Division 3 of the Business and Professions Code.

1.2.2 Unless otherwise provided in this Contract, the Contractor shall provide, pay for and be responsible for all labor and materials necessary for the proper execution of the Work. The Contractor shall supervise and direct the Work, using the best skill and attention necessary for a contractor experienced and expert in this type of construction. The Contractor shall employ only persons skilled in the task assigned to them and only machinery and equipment of suitable capacity to the task, and operated by an experienced operator. The Contractor shall be responsible to the Owner for the acts and omissions of the Contractor's employees, subcontractors and their agents and employees. Notwithstanding the forgoing, nothing in this Contract shall be interpreted to make the Contractor an agent of the Owner.

1.3 INDEMNIFICATION

1.3.1 To the fullest extent permitted by law, the Contractor shall (1) immediately defend and (2) indemnify the District, and its officials, officers, and employees from and against all liabilities regardless of nature, type, or cause, arising out of or resulting from or in connection with the performance of the Contract. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys’ fees; court costs; and costs of alternative dispute resolution. The Contractor's obligation to indemnify applies regardless of whether a liability is a result of the negligence of any other person, unless it is adjudicated that the liability is caused by the sole active negligence or sole willful misconduct of an indemnified party.

1.3.2 The duty to defend is a separate and distinct obligation from the Contractor’s duty to indemnify. The Contractor shall be obligated to defend, with counsel approved by the District, in all legal, equitable, administrative, or special proceedings, the District and its

directors, officers, and employees, immediately upon submittal to the Contractor of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. A determination of comparative active negligence or willful misconduct by an indemnified party does not relieve the Contractor from its separate and distinct obligation to defend District. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Contractor asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Contractor may submit a claim to the District for reimbursement of reasonable attorneys' fees and defense costs.

1.3.3 The review, acceptance or approval of the Contractor's work or work product by any indemnified party shall not affect, relieve or reduce the Contractor's indemnification or defense obligations. This Section survives completion of the services or the termination of this contract. The provisions of this Section are not limited by and do not affect the provisions of this contract relating to insurance.

1.3.3 Liabilities subject to this Section include any claim of discrimination or harassment, including but not limited to sexual harassment, arising from the conduct of the Contractor or any of the Contractor's officers, employees, agents, licensees, or subcontractors. In the event of a discrimination or harassment complaint against any employee, agent, licensee or subcontractor of the Contractor or its subcontractors, the Contractor shall take immediate and appropriate action in response to such complaint, including, but not limited to termination or appropriate discipline of any responsible employee, agent, licensee or subcontractor.

ARTICLE 2 PAYMENTS AND COMPLETION

2.1 PAYMENTS

2.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments thereto, is the total amount payable by the Owner to the Contractor for the performance of the Work under this Contract. The Contract Sum shall be payable upon satisfactory completion of the Project.

2.1.2 The Contractor following receipt of payment by the Owner shall promptly pay each subcontractor, out of the amount paid to the Contractor on account of such subcontractor's Work, the amount to which said subcontractor is entitled.

ARTICLE 3 WORK MANAGEMENT RESPONSIBILITIES

3.1 SAFETY PRECAUTIONS AND PUBLIC CONVENIENCE

The Contractor shall be responsible for initiating, maintaining and supervising all applicable safety federal and California requirements and industry standards and precautions and programs] in connection with the Work. This duty shall extend, without limitation, to the safety of all employees and other persons who may be affected by the Work; all the Work and all materials and equipment to be incorporated therein; and other property at the Site or adjacent thereto. Without limiting the foregoing, Contractor, not Owner, shall remain fully responsible for the disposition and the exposure to persons of materials, whether or not hazardous. The Contractor shall so conduct his operations as to offer the least possible obstruction and inconvenience to the public. The Contractor shall provide for the convenience of abutting owners along the right-of-way as far as practicable. No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic.

3.2 SITE MANAGEMENT AND CLEAN UP

The Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits and this Contract, and shall not unreasonably encumber the Site with any materials or equipment. The Contractor shall keep the Site free from accumulation of waste material or rubbish caused by his operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project such waste and rubbish, and the Contractor's tools, construction machinery, equipment, surplus materials and other property.

ARTICLE 4 INSURANCE

4.1 CONTRACTOR'S LIABILITY INSURANCE

Contractor shall provide and maintain insurance as set forth in this Article on behalf of the Owner.

4.1.1 Insurance Requirement. Contractor shall procure and maintain during the period of performance of this Master Contract and for 24 months following completion, insurance from insurance companies authorized to do business in the State of California, as set forth in this section. These policies shall be primary insurance as to the District so that any other coverage held by the District shall not contribute to any loss under Contractor's insurance. General liability: (with coverage at least as broad as ISO form CG 00 01 10 01) coverage in an amount not less than \$2,000,000 general aggregate and \$3,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage. Automobile liability: (with coverage at least as broad as ISO form CA 00 01 10 01, for "any auto") coverage in an amount not less than \$3,000,000 per accident for personal injury, including death, and property damage. Contractor's pollution legal liability and/or asbestos legal liability and/or errors and omission \$1 million per occurrence or claim If the work involves lead-based paint or asbestos identification/remediation, the pollution liability policy must not contain lead-based paint or asbestos exclusions. If the work involves mold identification, the pollution liability

policy must not contain a mold exclusion and a definition of "Pollution" in said policy shall include microbial matter including mold. Workers' compensation and employer's liability: coverage shall comply with the laws of the State of California, but not less than an employer's liability limit of \$1,000,000. A deductible or retention may be utilized, subject to approval by the District.

4.1.2 Endorsements: The insurance policies shall be endorsed as follows:

For the commercial general liability insurance, the District (including its officers, employees, and agents) shall be named as additional insured, and the policy shall be endorsed with a form equivalent to ISO form CG 20 10 10 93, that contain the provisions required by this contract. Contractor's insurance is primary to any other insurance available to the District with respect to any claim arising out of this Contract. Any insurance maintained by the District shall be excess of the Contractor's insurance and shall not contribute with it. The Contractor's endorsement of insurance shall include a waiver of any rights of subrogation against the District, and its directors, officers, employees and agents. Contractor's insurance will not be canceled, limited, amended, reduced in coverage amount, or allowed to expire without renewal until after 30 days' written notice has been given to the District, or after 10 days' written notice in the case of cancellation for non-payment of premium.

4.1.3 Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by the District, which satisfies the following minimum requirements: An insurance carrier admitted to do business in California and maintaining an agent for process within the state. Such insurance carrier shall maintain a current A.M. Best rating classification of "A-" or better and a financial size of "\$10 million to \$24 million (Class V) or better", or A Lloyds of London program provided by syndicates of Lloyds of London and other London insurance carriers, providing all participants are qualified to do business in California and the policy provides for an agent for process in the state. Workers' Compensation and Employer's Liability shall be provided by an A-V rated carrier or by the California State Compensation Fund. If provided by a carrier other than California State Compensation Fund, Contractor shall provide proof of the carrier's A-V rating to District.

4.1.4 . Provision of Insurance Prior to Commencement of Services. Before commencing any services, Contractor shall furnish certificates of insurance and endorsements affecting coverage on forms provided by District, or on equivalent ISO forms that contain provisions required by this contract.

4.2 Business Auto Coverage shall be written on ISO Business Auto Coverage from CA 00 01 06 92 including symbol 1 (Any Auto). Limits shall be no less than one million dollars per accident. This policy shall be scheduled as underlying insurance to any umbrella policy required above for a total limit of no less than five million dollars each accident.

4.3 Workers' Compensation/Employer's Liability shall provide workers= compensation statutory benefits as required by law. Employer's liability limits shall be no less than one million dollars per accident or disease. Employer's liability coverage shall be scheduled under any umbrella policy described above. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects the Owner.

4.4 Contractor and Owner further agree as follows:

4.4.1 All insurance coverage and limits provided pursuant to this Contract shall apply to the full extent of the policies involved, available or applicable. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

4.4.2 Contractor shall require all subcontractors or other parties hired for this project to purchase and maintain insurance of the type specified above naming as additional insureds all parties to this Contract. Contractor shall make reasonable efforts to ensure that such coverage is provided as required here.

4.4.3 Contractor shall provide immediate notice to Owner of any claim or loss against Contractor that includes Owner as a defendant. Owner assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling or any such claim or claims if they are likely to involve Owner.

4.4.3 In the event of any loss that is not insured due to the failure of Contractor to comply with these requirements, Contractor shall be personally responsible for any an all losses, claims, suits, damages, defense obligations and liability of any kind attributed to Owner as a result of such failure.

4.4.5 Contractor shall not attempt to avoid its defense and indemnity obligations to Owner by using as a defense Contractors statutory immunity under workers compensation and similar statutes.

4.4.5 Contractor shall ensure that coverage provided to meet these requirements is applicable separately to each insured and that there will be no cross liability exclusions that preclude coverage for suits between Contractor and Owner or between Owner and any other insured or Named Insured under the policy, or between Owner and any party associated with Owner.

4.5 SUBCONTRACTORS

Contractor shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

ARTICLE 5
PREVAILING WAGE

5.1 GENERAL REQUIREMENTS

5.1.1 This is a public works contract and is subject to all applicable provisions of State law, including, without limitation, Sections 1770 – 1780, inclusive, of the California Labor Code. These laws require Contractor to pay prevailing wages as set forth in this Article and further regulate matters including, without limitation, hours of work, employment of apprentices, holiday pay, and travel and subsistence payments.

5.1.2 Notwithstanding any other provision of this Contract, the general prevailing rate of wages in this locality for each craft, classification, or type of workman needed to perform this Contract (which rate includes employer payments for items of compensation listed in Section 1773.8 of the Labor Code and apprenticeship or other training programs authorized by Section 3093 of the Labor Code and similar purposes) applicable to the Work is that ascertained by the Director of the Department of Industrial Relations of the State of California and determined by the Owner. Said rates are incorporated herein by reference as though fully set forth. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of workman employed on the Project.

5.1.3 The Contractor shall forfeit as penalty to the Owner up to \$200.00 for each calendar day or portion thereof, for each workman paid less than the stipulated prevailing rates for such work or craft in which such workman is employed for any work done under the Contract by him or by any subcontractor under him, in violation of the applicable provisions of the California Labor Code. The actual amount shall be determined in accordance with Section 1775 of the California Labor Code or its successor statute. The general rate of prevailing wages is on file in the Owner's offices.]

5.1.4 The Contractor and each subcontractor shall keep an accurate payroll record showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by the Contractor or subcontractor in connection with the Work. The payroll records shall be kept in accordance with the applicable provisions of Section 1776 of the California Labor Code and Contractor and each subcontractor shall otherwise comply with all requirements of such Section 1776.

5.2 HOURS OF LABOR

The Contractor shall forfeit to the Owner, as a penalty, the sum of Twenty-five Dollars (\$25.00) for each workman employed in the execution of the Contract for each calendar day during which such laborer, workman or mechanic is required or permitted to labor more than eight (8) hours in violation of the provisions of Sections 1810 to 1816, inclusive, of the Labor Code of the State of California.

ARTICLE 6
DISPUTE RESOLUTION - MEDIATION

Any Claim arising out of or related to the Contract shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. Unless the parties mutually agree otherwise, mediation shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. The parties shall share the mediator's fee and other mediation costs equally. The mediation shall be held in the place where the Project is located, unless the parties mutually agree to another location. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

ARTICLE 7
MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW

7.1.1 The laws of the State of California shall govern this Contract. In the event that a dispute arises from this contract, the venue for resolving said dispute shall be the County of Contra Costa Superior Court.

7.1.2 The Contractor and all subcontractors shall conform to and abide by all applicable local, state and federal building, sanitary, health and safety laws, rules, and regulations including all District ordinances and regulations.

7.2 SUCCESSORS AND ASSIGNS

The Owner and the Contractor, respectively, bind themselves, their partners, successors and assigns to this Contract. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other.

7.3 RIGHTS AND REMEDIES

The duties and obligations imposed by this Contract and the rights and remedies available thereunder shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Owner shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

7.4 PENALTY FOR COLLUSION

If, at any time, it is determined by the Owner that the person, firm or corporation to whom the Contract has been awarded has, in presenting any bid or bids, colluded with any other party or parties, then the Contract shall be null and void, and the Contractor and

his sureties shall be liable for loss or damage which the Owner may suffer thereby, and the Owner may advertise for new bids for said work.

7.5 EQUAL OPPORTUNITY

Contractor shall comply with the provisions of Section 1735 of the Labor Code of the State of California, which provides as follows:

"No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons except as provided in Section 12940 of the Government Code, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of this chapter."

END OF GENERAL CONDITIONS