



Dan Haverty  
Interim Fire Chief

# Sacramento Metropolitan Fire District

10545 Armstrong Ave., Suite 200 · Mather, California 95655 · Phone (916) 859-4300 · Fax (916) 859-3700

D'Elman Clark  
Board President  
Division 6

Grant Goold  
Board Vice President  
Division 2

Ted Wood  
Board Secretary  
Division 4

Cinthia Saylor  
Board Member  
Division 1

Robert Webber  
Board Member  
Division 3

Jennifer Sheetz  
Board Member  
Division 5

Brian Rice  
Board Member  
Division 7

Gay Jones  
Board Member  
Division 8

John Costa  
Board Member  
Division 9

## BOARD OF DIRECTORS - REGULAR MEETING

**Thursday, January 12, 2023 – 6:00 PM**

**Sacramento Metropolitan Fire District**

**10545 Armstrong Avenue**

**Board Room – Second Floor**

**Mather, California**

**&**

**Remotely Via Zoom**

**Phone: (669) 900-6833**

**Webinar ID: 867 7274 3633#**

**Passcode: 723 800 541#**

*The mission of the Sacramento Metropolitan Fire District is to provide professional and compassionate protection, education and service to our community.*

The Governor has declared a State of Emergency to exist in California as a result of the threat of COVID-19 (aka the “Coronavirus”). The Governor issued Executive Order N-25-20 and N-29-20, which directs Californians to follow public health directives including canceling large gatherings. Per the State of Emergency effective March 2, 2020, the Board of Directors of the Sacramento Metropolitan Fire District proclaimed that a local emergency exists, and authorized remote teleconference meetings from January 4, 2023 through February 2, 2023 pursuant to Brown Act provisions.

The Public's health and well-being are the top priority for the Board of Directors of the Sacramento Metropolitan Fire District and you are urged to take all appropriate health safety precautions. If you would like to view the meeting via the Zoom Application, please contact Board Clerk Penilla via email at the address listed below.

Members of the public seeking to attend and to address the Board who require reasonable accommodations to access the meeting, based on disability or other reasons, should contact the following person at least forty-eight (48) hours in advance of a Regular meeting to make arrangements for such reasonable accommodations:

Melissa Penilla  
Board Clerk  
(916) 859-4305  
[penilla.melissa@metrofire.ca.gov](mailto:penilla.melissa@metrofire.ca.gov)

The Board will convene in open session at 6:00 p.m.



# Sacramento Metropolitan Fire District

10545 Armstrong Ave., Suite 200 · Mather, California 95655 · Phone (916) 859-4300 · Fax (916) 859-3700

REGULAR BOARD MEETING

THURSDAY, JANUARY 12, 2023

## CALL TO ORDER

## ROLL CALL

## PLEDGE TO FLAG

### METRO CABLE ANNOUNCEMENT

The Open Session Meeting is videotaped for cablecast on Metro Cable 14. Replay on Sunday, January 15<sup>th</sup> 12:00 noon and Monday, January 16<sup>th</sup> at 6:00pm on Channel 14; Webcast at [metro14live.saccounty.gov](http://metro14live.saccounty.gov).

### PUBLIC OPPORTUNITY TO DISCUSS MATTERS OF PUBLIC INTEREST WITHIN DISTRICT JURISDICTION INCLUDING ITEMS ON OR NOT ON AGENDA

*The Board of Directors of the Sacramento Metropolitan Fire District appreciates and encourages public interest and welcomes questions and opinions at its meetings. Public members desiring to address the Board are requested to first be recognized by the presiding officer and identify themselves for the record. The presiding officer may in the interest of time and good order limit the number of public member presentations. Speakers' comments will be limited to three minutes (Per Section 31 of the Board of Directors Policies and Procedures).*

*In accordance with Section 31 of the Board of Directors Policies and Procedures, members of the Public requesting their written comments be read into the meeting record must be present or have a representative present to read their comments during the time allotted.*

### CONSENT ITEMS

*Matters of routine approval including but not limited to action summary minutes, referral of issues to committee, committee referrals to the full Board, items that require yearly approval, declaration of surplus equipment, and other consent matters. Consent Agenda is acted upon as one unit unless a Board member requests separate discussion and/or action.*

### CONSENT ITEMS

	<u>Page No.</u>
1. Action Summary Minutes	5
Recommendation: Approve the Action Summary Minutes for the Regular Board meeting of December 8, 2022.	
2. Action Summary Minutes	12
Recommendation: Approve the Action Summary Minutes for the Special Board meeting of January 4, 2023.	
3. Bid Award Recommendation – RFB 22-06 Fire Station 68 Patio Coverings	14
Recommendation: Adopt a resolution approving the bid award and authorize the Fire Chief to administer the project in accordance with the approved budget.	
4. Development Impact Fee Report	42
Recommendation: Adopt a resolution accepting the Development Impact Fee Report for FY ending June 30, 2022.	



## Sacramento Metropolitan Fire District

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REGULAR BOARD MEETING

THURSDAY, JANUARY 12, 2023

### PRESENTATION ITEMS

1. Explorer Program (*Deputy Chief Mitchell and Firefighter White*)  
Recommendation: Receive presentation, no action required.

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### ACTION ITEMS

1. Surplus Property – Oak Avenue (*Jeff Frye, Chief Development Officer*)  
Recommendation: Declare the vacant 1.7 acre site as surplus and authorize the Fire Chief to begin the disposition process.

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### REPORTS

1. PRESIDENT'S REPORT—(*President Clark*)
2. FIRE CHIEF'S REPORT—(*Interim Fire Chief Haverty*)  
OPERATIONS REPORT – (*Deputy Chief Mitchell*)  
ADMINISTRATIVE REPORT – (*Deputy Chief Bailey*)  
SUPPORT SERVICES REPORT – (*Deputy Chief Wagaman*)
3. SMFD – FIREFIGHTERS LOCAL 522 REPORT – (BC Matt Cole, Local 522 Vice President)

### 4. COMMITTEE AND DELEGATE REPORTS

All Committee Meetings will be held at the Sacramento Metropolitan Fire District Board Room, 10545 Armstrong Avenue, Mather, California unless otherwise specified.

- A. Executive Committee – (*President Clark*)

Report Out: January 12, 2023 at 5:30 PM  
Next Meeting: TBD

- B. Communications Center JPA – (*DC Wagaman*)

Report Out: January 10, 2023 at 9:00 AM

- C. Finance and Audit Committee – (*Director Wood*)

Next Meeting: January 26, 2023 at 5:30 PM

- D. Policy Committee – (*Director Goold*)

Next Meeting: February 9, 2023 at TBD

### BOARD MEMBER QUESTIONS AND COMMENTS

### CLOSED SESSION

1. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION –  
Pursuant to California Government Code Section 54956.9(d)(1): One case  
Case No. 34-2020-00286706-CU-BC-GDS  
Medic Ambulance Service, Inc. v. Sacramento Metropolitan Fire District

### CLOSED SESSION REPORT OUT

### ADJOURNMENT



## Sacramento Metropolitan Fire District

10545 Armstrong Ave., Suite 200 · Mather, California 95655 · Phone (916) 859-4300 · Fax (916) 859-3700

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REGULAR BOARD MEETING

THURSDAY, JANUARY 12, 2023

**NEXT BOARD MEETING(S):**

*Unless specified differently, all meetings of the Board are held at Sacramento Metropolitan Fire District, 10545 Armstrong Avenue, Mather, CA*

- Regular Board Meeting – January 26, 2023 at 6:00 PM

*The following action and presentation items are scheduled for the next board meeting agenda. Board members are requested to identify additional action or presentation items they desire to be scheduled on the agenda.*

**ANTICIPATED AGENDA ITEMS:** TBD

Posted on January 9, 2023

A handwritten signature in blue ink that reads "Melissa Penilla".

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Melissa Penilla, Clerk of the Board

\* No written report

\*\* **PDF** Separate Attachment

**DISABILITY INFORMATION:**

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Clerk of the Board at (916) 859-4305. Notification at least 48 hours prior to the meeting will enable the District to make reasonable arrangements to ensure accessibility to this meeting.



TODD HARMS  
Fire Chief

# Sacramento Metropolitan Fire District

10545 Armstrong Ave., Suite 200 · Mather, CA 95655 · Phone (916) 859-4300 · Fax (916) 859-3702

## ACTION SUMMARY MINUTES – REGULAR MEETING

### BOARD OF DIRECTORS

### SACRAMENTO METROPOLITAN FIRE DISTRICT

Thursday, December 8, 2022

Held at the following locations:

10545 Armstrong Avenue – Board Room

Mather, California

&

Remotely Via Zoom

### CALL TO ORDER

The meeting was called to order at 6:03 pm by President Saylor. Board members present in person: Clark, Goold, Jones, Saylor, Sheetz, Wood. Board members present virtually via Zoom: None. Board members absent: Division 3, Division 9 and Rice. Staff present: Chief Harms and Board Clerk Penilla.

### PUBLIC COMMENT - None

### CONSENT ITEMS

**Action:** Moved by Clark, seconded by Wood, and carried unanimously by members present to adopt the consent calendar as follows:

#### 1. Action Summary Minutes

**Recommendation:** Approve the Action Summary Minutes for the Regular Board meeting of November 10, 2022.

**Action:** Approved the Action Summary Minutes.

#### 2. Action Summary Minutes

**Recommendation:** Approve the Action Summary Minutes for the Special Board meeting of November 12, 2022.

**Action:** Approved the Action Summary Minutes.

#### 3. Action Summary Minutes

**Recommendation:** Approve the Action Summary Minutes for the Special Board meeting of November 15, 2022.

**Action:** Approved the Action Summary Minutes.

#### 4. 2023 Schedule of Regular and Committee Board Meetings

**Recommendation:** Approve the 2023 schedule of regular and committee board meetings and cancel meetings that fall on or near holidays.

**Action:** Approved the 2023 schedule for meetings.

#### 5. Quarterly Investment Report from September 2022

**Recommendation:** Receive and file the investment report for the 1<sup>st</sup> quarter of Fiscal Year 2022-23.

**Action:** Received and filed the report.

#### 6. Certified Election Results – General Election, November 8, 2022

**Recommendation:** Accept certified results of the November 8, 2022 General District Election as provided by the Certificate of Facts from the Registrar of Voters, County of Sacramento and County of Placer.

**Action:** Accepted the certified results.

**7. Purchase of Motorola 800 MHz Radios**

**Recommendation:** Approve the purchase of new Motorola 800 MHz Radios and related accessories not to exceed the budgeted amount of \$165,000.

**Action:** Approved the purchase not to exceed \$165,000.

**8. Award Recommendation – RFP 22-05 Real Estate Brokerage Services**

**Recommendation:** Adopt a resolution authorizing the Fire Chief to execute non-exclusive agreements for real estate brokerage services with Turton Commercial Real Estate, CBRE Inc., and Cushman and Wakefield for an initial term of five years.

**Action:** Adopted Resolution No. 2022-099.

**PRESENTATION ITEM**

**1. Board Member Swearing-In Ceremony (*Chief Harms*)**

**Recommendation:** Swear-In elected officials for Divisions 1, 3, 7, and 9 for the 2022-2026 term.

**Action:** Chief Harms swore in Director Saylors, Director Webber, and Director Costa for the 2022-2026 term. Director Webber and Director Costa participated in the remainder of the meeting.

**2. Present Chief Harms with Retirement Resolution (*President Saylors*)**

**Recommendation:** Receive presentation, no action required.

**Action:** Presentation received, no action taken.

**3. Honor Guard (*Captain Steve Mayer*)**

**Recommendation:** Receive presentation, no action required.

**Action:** Presentation received, no action taken.

**ACTION ITEMS**

**1. Labor Negotiations - Memorandums of Understanding and Unrepresented Resolutions**

**\*\*PDF Separate Attachment for items A-D**

- A. Resolution – Memorandum of Understanding by and between SMFD and the Sacramento Area Firefighters Local 522
- B. Resolution – Memorandum of Understanding by and between SMFD and the Battalion Chief's Organization
- C. Resolution – Memorandum of Understanding by and between SMFD and the Administrative Support Personnel (ASP)
- D. Resolution – Memorandum of Understanding by and between SMFD and EMT and Paramedic
- E. Resolution – Senior Safety Management and Safety Management Employees
- F. Resolution – Non-Safety Senior Management, Management, and Unrepresented Confidential Employees

**Recommendation:** Adopt Labor Negotiation Resolutions.

Taken out of order, action taken after reconvening from closed session.

**Action:**

- A. Moved by Costa, seconded by Rice, and carried unanimously by all members to adopt Resolution No. 2022-100 for the Memorandum of Understanding by and between SMFD and the Sacramento Area Firefighters Local 522.
- B. Moved by Webber, seconded by Costa, and carried unanimously by all members to adopt Resolution No. 2022-101 for the Memorandum of Understanding by and between SMFD and the Battalion Chief's Organization.
- C. Moved by Costa, seconded by Rice, and carried unanimously by all members to adopt Resolution No. 2022-102 for the Memorandum of Understanding by and between SMFD and the Administrative Support Personnel (ASP).
- D. Moved by Costa, seconded by Webber, and carried unanimously by all members to adopt Resolution No. 2022-103 for the Memorandum of Understanding by and between SMFD and EMT and Paramedic.
- E. Moved by Rice, seconded by Webber, and carried unanimously by all members to adopt Resolution No. 2022-104 for Senior Safety Management and Safety Management Employees.
- F. Moved by Costa, seconded by Webber, and carried unanimously by all members to adopt Resolution No. 2022-105 for Non-Safety Senior Management, Management, and Unrepresented Confidential Employees.

**2. Ratification of Resolution to Extend Teleconference of Board Meetings  
(Government Code 54953(e) (3)) (President Sailors)**

**Recommendation:** Consider adopting a Resolution which would extend the ability to teleconference without compliance of Government Code paragraph (3) of subdivision (b) of section 54953 from December 8, 2022 – January 6, 2023 or until further re-ratified.

**Action:** Moved by Sheetz, seconded by Wood, and carried unanimously by members present to adopt Resolution No. 2022-106.

**3. Election of Board Officers (Board Clerk Penilla)**

**Recommendation:** Nominate and elect members of the Board to serve as: a) President, b) Vice President, and c) Secretary for one (1) year terms to commence January 1, 2023.

**Action:** Moved by Wood, seconded by Jones, and carried unanimously by the members present to elect Director Clark as President.

Moved by Clark seconded by Wood, and carried (Aye: Clark, Costa, Jones, Sailors, Sheetz, Webber, and Wood; Abstain: Goold; Absent: Rice) to elect Director Goold as Vice President.

Moved by Jones seconded by Clark, and carried unanimously by the member present to elect Director Wood as Secretary.

**4. Resolution – Commending Director White (Chief Harms and Board Clerk Penilla)**

**Recommendation:** Adopt Resolution commending Director White.

**Action:** Moved by Jones, seconded by Wood, and carried unanimously by the members present to adopt Resolution No. 2022-107.

## **REPORTS**

### **1. PRESIDENT'S REPORT—(President Saylors)**

The 2023 Cap-to-Cap program is taking place April 21<sup>st</sup> through April 26<sup>th</sup>. Please review your calendars and let Board Clerk Penilla know if you are interesting in attending. This event fills up quickly, so we will reserve spots early in 2023.

### **2. FIRE CHIEF'S REPORT—(Chief Harms)**

**Director Rice joined at 6:31pm during the Chief's Report.**

Chief Harms shares his experience as Fire Chief from the past six years. He and his wife Katie took the risky path to come to Metro Fire and they are very happy they did. He also thanked his long-time friends who were in the audience. Chief Harms is looking forward to returning to Arizona and spending time with his grandkids. This has been a highlight in his career, and he thanked the membership for their service and commitment to Metro Fire, and the support staff who keep this organization moving forward.

## **OPERATIONS' REPORT**

Deputy Chief Mitchell congratulated the newest Board Members, Director White, and Chief Harms for his leadership over the last six years. He shared that we responded to 8,949 total incidents since our last report on November 10, 2022; an average of 319 calls per day. Of those, 275 were fire incidents, an average of just under 10 calls per day.

As for medic draw down and surge contract he reported we have seen a steep rise in call volume and transports in the last two weeks related to flu, colds, RSV, COVID. We were at draw down 74 times which is measured by how many times EMS24 was notified by dispatch. For example, on last week we were notified 17 times, and one time we were at 100% drawdown with 0 medics in the system for a few minutes. We have requested surge coverage eight times in the last two weeks. Fills were two (2) once, one (1) five times, and zero(0) once. We have found so far that in times of drawdown, the surge companies are in the same situation with call volume and wall times, which diminishes the availability of their units. We have been, and continue to be committed to, supporting our members while collaborating with our regional partners to address these issues in the short term.

As for recent training, all 3 shifts were involved in the regional rescue drill this week involving the heavy rescue companies from Metro, Sac City, Cosumnes, Folsom, West Sac and Roseville. The scenario was a level 3 RIC deployment at a commercial fire with a structural collapse and 2 Firefighters trapped. Crews had to breach a concrete wall and navigate a debris' field to reach the victims then extricate. The scenario took approximately three hours to complete. The drill was hosted by Sac City, and our members performed extremely well while demonstrating high levels of proficiency. Great job!

Lastly, Chief Mitchell shared about a recent EMS incident where outcome was very favorable thanks to the responding crew.

### **3. SMFD – FIREFIGHTERS LOCAL 522 REPORT**

Vice President Cole thanked the Honor Guard for coming to the meeting tonight and for their informative presentation. He also thanked Director White for his service to the Board and appreciates what he provided to the community.

A special thank you to Chief Harms, for being the longest serving Fire Chief for Metro Fire. He also thanked Mrs. Harms for taking the risk. He thanked Chief Harms for what he did for the membership, and always cared about the men and women of Metro Fire.

He thanked the Board who will be serving in 2023, he is very excited about what the future holds. Thank you to Chief Haverty for answering the call, he is excited to see how things flourish.

Lastly, he thanked the membership, especially everyone in the room tonight. He is looking forward to a happy 2023!

### **4. COMMITTEE AND DELEGATE REPORTS**

*All Committee Meetings will be held at the Sacramento Metropolitan Fire District Board Room,  
10545 Armstrong Avenue, Mather, California unless otherwise specified.*

**A. Executive Committee – (President Sailors)**

Next Meeting: January 12, 2023 at 5:30 pm

**B. Communications Center JPA – (DC Wagaman)**

Next Meeting: December 13, 2022 at 9:00 AM

Deputy Chief Wagaman reported out as the delegate for dispatch. The JPA Board met for two presentation items, an audit presentation from Richardson and Co. with eight recommendations all of which have been met, and a change in the Board Clerk position. They also took action on approving a contract for janitorial services.

**C. Finance and Audit Committee – (Director Wood)**

Next Meeting: January 26, 2023 at TBD

**D. Policy Committee – (Director Goold)**

Next Meeting: TBD

### **BOARD MEMBER QUESTIONS AND COMMENTS**

The Board collectively congratulated Chief Harms, and thanked both him and Mrs. Harms for their service to Metro Fire for the past six years.

Director Jones thanked Captain Steve Mayer and the Honor Guard along with everyone who serves throughout the nation, Director White for serving the Board over the last few years, President Sailors for her leadership this year. She welcomes Director Webber and Director Costa, congratulates the newly appointed Executive Committee for 2023, and welcomes Interim Chief Haverty.

Director Rice congratulated Chief Harms especially for their work together when he was President of Local 522. As we move forward into the New Year Director Rice is looking forward to working with staff to address poor staffing models, and working with our workers' comp TPA

to refer to employees by their appropriate rank. He highly respects the men and women in the Boardroom tonight, he was once in their shoes, and is going to work with the membership to make the future of Metro Fire better.

Director Sheetz welcomes Chief Haverty and the new Board Members, and wished Director White well in his future endeavors. She thanked President Sailors for her leadership during these unprecedeted times. Lastly, she wished everyone a safe Christmas and thanked all the members who would be spending the holiday away from their loved ones, thank you for their sacrifice.

Director Wood welcomed Directors Webber and Costa, and thanked Captain Lawrence and the crew at engine 62 and medic 62, BC Cole for coordinating station visits, and President Sailors. He appreciates the communication that was established over the years, and has enjoyed watching the Peer Support Program over the last few years. He wishes everyone a Merry Christmas and encourages everyone to take care of each other.

Director Webber thanked everyone for a warm welcome, and wishes Chief Harms well into retirement. He thanked Captain Mayer for bringing the presentation on the Honor Guard tonight. Lastly, he thanked his family and the Metro Fire family for all the support in this new role.

Director Goold speaks to Chief Harms' tenure as a "Grand Slam" in selecting him as the Fire Chief. He thanked the men and women who put their name in for the position of Interim Fire Chief, and made the Board's decision very difficult in who will fulfill the role. He commended the negotiations team for being at this point of the year and having nearly completed the agreements. He asks for the men and women to think about those who are lonely during this holiday season, and reach out to them and let them know you care and they are not alone.

Director Clark thanked the Board for their nomination as the next Board President, he thanked President Sailors for her leadership in 2022. He welcomed the new Board Members, and thanked the Honor Guard for their presentation tonight.

**The Board recessed to closed session at 7:15 pm.**

**CLOSED SESSION**

**1. Conference with Labor Negotiator**

**Pursuant to California Government Code Section 54957.6**

A. District Negotiator: Jack Hughes, Liebert Cassidy Whitmore  
Employee Organization: Sacramento Area Fire Fighters Local 522

B. District Negotiator: Jack Hughes, Liebert Cassidy Whitmore  
Employee Organization: Battalion Chiefs Bargaining Group,  
Sacramento Area Fire Fighters Local 522

C. District Negotiator: Jack Hughes, Liebert Cassidy Whitmore  
Employee Organization: Administrative Support Personnel (ASP)  
Affiliate of Sacramento Area Fire Fighters Local 522

- D. District Negotiator: Jack Hughes, Liebert Cassidy Whitmore  
Employee Organization: Safety Senior Management, Management and Unrepresented Confidential Employees
- E. District Negotiator: Jack Hughes, Liebert Cassidy Whitmore  
Employee Organization: Non-Safety Senior Management, Management and Unrepresented Confidential Employees

**Action:** No reportable action taken.

**The board reconvened to open session at 7:43 pm and heard action item number 1.**

**ADJOURNMENT** - The meeting was adjourned at 7:50 pm.

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Cinthia Saylors, President

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Melissa Penilla, Board Clerk



# Sacramento Metropolitan Fire District

10545 Armstrong Ave., Suite 200 · Mather, CA 95655 · Phone (916) 859-4300 · Fax (916) 859-3702

## ACTION SUMMARY MINUTES – SPECIAL MEETING

### BOARD OF DIRECTORS SACRAMENTO METROPOLITAN FIRE DISTRICT

Wednesday, January 4, 2023

Held at the following locations:

10545 Armstrong Avenue – Board Room  
Mather, California  
&  
Remotely Via Zoom

#### CALL TO ORDER

The meeting was called to order at 6:06 pm by President Clark. Board members present in person: Clark, Costa, Rice, Webber, and Wood. Board members present via Zoom: Goold, Jones, Saylor, and Sheetz. Staff present: General Counsel Lavra and Board Clerk Penilla.

#### PLEDGE TO FLAG

PUBLIC COMMENT: None

#### CLOSED SESSION:

The Board recessed to Closed Session at 6:07 pm.

#### CLOSED SESSION GOVERNMENT CODES:

1. **Personnel Matters – Public Employee Employment**  
**Pursuant to California Government Code Section 54957**  
Fire Chief Employment

**Action:** No action taken.

The Board reconvened to Open Session at 6:32 pm.

1. **Fire Chief Base Salary Adjustment (General Counsel Lavra)**  
**Recommendation:** Approve the adjusted base salary for the position of Fire Chief.  
**Action:** Moved by Goold, seconded by Webber, and carried unanimously by members present to adjust the base salary for the position of Fire Chief from \$23,539.92 to a new rate of \$26,684.85.
2. **Interim Fire Chief Employment Agreement Daniel Haverty (General Counsel Lavra)**  
**Recommendation:** Approve the Employment Agreement for Interim Fire Chief Haverty.  
**Action:** Moved by Goold, seconded by Jones, and carried unanimously by members present to approve the Employment Agreement for Interim Chief Haverty.
3. **Ratification of Resolution to Extend Teleconference of Board Meetings (Government Code 54953(e) (3)) (President Clark)**  
**Recommendation:** Consider adopting a Resolution which would extend the ability to teleconference without compliance of Government Code paragraph (3) of subdivision (b) of section 54953 from January 4, 2023 – February 2, 2023 or until further ratified.

**Action:** Moved by Rice, seconded by Costa, and carried unanimously by members present to adopt Resolution No. 2023-001.

**ADJOURNMENT** - The meeting adjourned at 6:39 pm.

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D'Elman Clark, President

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Ted Wood, Secretary

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Melissa Penilla, Clerk of the Board



# Sacramento Metropolitan Fire District

10545 Armstrong Ave., Suite #200, Mather, CA 95655 · (916) 859-4300 · Fax (916) 859-3700

**DATE:** January 12, 2023

**TO:** Board of Directors

**SUBJECT:** Bid Award Recommendation – RFB 22-06 Fire Station 68 Patio Coverings

## BACKGROUND

On December 10, 2020, the Sacramento Metropolitan Fire District's (District) Board of Directors authorized the Fire Station 68 construction project to move forward with an anticipated total budget of \$9 million. During the design and construction process, scope was reduced to ensure the project did not exceed the approved budget. Patio coverings for the dining and fitness patios were one such item deferred from the scope of the project.

Subsequently, the Fire Station 68 construction project was completed under budget, which left funds available to complete certain scope items that had previously been deferred. Staff submitted a capital project request for the Fire Station 68 Patio Coverings, which was approved in the amount of \$150,000 as part of the District's FY2022/2023 Capital Improvement Plan.

## DISCUSSION

Request for Bid (RFB) 22-06 Fire Station 68 Patio Coverings was issued on December 9, 2022. A mandatory pre-bid conference and job walk was conducted on December 16, 2022 and was attended by three potential bidders. A public bid opening was conducted on January 4, 2023 and one bid was received. R.A.L. Builders, Inc. was identified as the lowest responsible and responsive bidder.

In accordance with the terms of the RFB, staff negotiated an agreement with R.A.L. Builders, Inc. totaling \$135,620. Staff anticipates permitting and other required project implementation costs not to exceed \$14,380 for a total project budget of \$150,000.

## FISCAL IMPACT

The total cost for the Fire Station 68 Patio Coverings project is \$150,000, which is already included in the FY2022/2023 Final Budget.

## RECOMMENDATION

Staff recommends the Board approve the bid award for RFB 22-06 Fire Station 68 Patio Coverings to R.A.L. Builders, Inc. and authorize the Fire Chief or his designee to administer the project in accordance with the approved project budget.

Submitted by:

A blue ink signature of the name "Erin Castleberry".

Erin Castleberry  
Administrative Analyst

Approved by:

A blue ink signature of the name "Jeff Fife".

Jeff Fife  
Chief Development Officer



Dan Haverty  
*Interim Fire Chief*

# Sacramento Metropolitan Fire District

10545 Armstrong Ave., Suite #200, Mather, CA 95655 · (916) 859-4300 · Fax (916) 859-3700

RESOLUTION NO. 2023-\_\_

## AUTHORIZING THE FUTURE FIRE STATION 68 CONSTRUCTION PROJECT

**WHEREAS**, the Sacramento Metropolitan Fire District (District) Board of Directors authorized the Fire Station 68 construction project in the amount of \$9 million; and

**WHEREAS**, scope was reduced in order to keep the project within the approved budget; and

**WHEREAS**, the project was subsequently completed under budget; and

**WHEREAS**, the District's Board of Directors approved the Fire Station 68 Patio Coverings project (Project) totaling \$150,000 as part of the FY2022/2023 Capital Improvement Plan; and

**WHEREAS**, the District conducted a competitive bidding process for the completion of the Project; and

**WHEREAS**, R.A.L. Builders, Inc. was identified as the lowest responsive and responsible bidder; and

**WHEREAS**, in order for the Project to move be implemented, the District must execute the required agreements, submit required documentation, and pay associated fees.

**THEREFORE, BE IT RESOLVED**, that the Sacramento Metropolitan Fire District, a public entity established under the laws of the State of California, does hereby:

1. Authorized the Project to move forward in accordance with the anticipated \$150,000 total budget;
2. Approve a bid award for RFB 22-06 Fire Station 68 Patio Coverings to R.A.L. Builders, Inc.;
3. Authorize the Fire Chief or his designee to execute all necessary agreements, submit all required documents, and pay all required fees for the completion of the Project as described herein.

**PASSED AND APPROVED** this 12<sup>th</sup> day of January, 2023, by the following vote, to wit:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

**Sacramento Metropolitan Fire District**

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President, Board of Directors

**Attested by:**

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Clerk of the Board

**SACRAMENTO METROPOLITAN FIRE DISTRICT  
PUBLIC WORKS PROJECT AGREEMENT**

This Agreement, dated as of January 13, 2023, is by and between the Sacramento Metropolitan Fire District ("DISTRICT"), and R.A.L. Builders, Inc. ("CONTRACTOR"), hereinafter collectively referred to as the "Parties". This Agreement will be effective upon final execution by the Parties.

**RECITALS**

**WHEREAS**, the DISTRICT is the owner of certain real property located at 12065 Cobble Brook Drive, Rancho Cordova, CA 95630 ("Site"); and

**WHEREAS**, the DISTRICT issued Request for Bids (RFB) 22-06 Fire Station 68 Patio Coverings for the installation of two (2) patio coverings at the Site ("Project"); and

**WHEREAS**, the CONTRACTOR submitted a bid in response to RFB 22-06 and was determined to be the lowest responsive and responsible bidder; and

**WHEREAS**, the CONTRACTOR is professionally qualified and eligible to complete the work of the Project and agrees to complete such work in accordance with the Contract Documents, including the terms and conditions set forth herein.

**NOW, THEREFORE**, the Parties agree as follow;

**1. HEADINGS**

Headings herein are for convenience of reference only and shall in no way affect interpretation of this Agreement.

**2. EXHIBITS**

Exhibits A and B are attached hereto and included by reference.

**3. CONTRACT DOCUMENTS**

This Agreement consists of the following documents ("Contract Documents"), all of which are incorporated herein and made a part of this Agreement as if set forth in full. In the event of a conflict between or among the Contract Documents, precedence will be in the following order:

- a) This Agreement, any amendments hereto, and any change orders signed by authorized representatives of the DISTRICT and the CONTRACTOR
- b) Exhibit A: Scope of Work
- c) RFB 22-06 Fire Station 68 Patio Coverings

**4. INTERPRETATION OF CONTRACT DOCUMENTS**

Any questions concerning intent or meaning of any provision of the Contract Documents must be submitted to the DISTRICT for issuance of an interpretation and/or decision by the DISTRICT, in accordance with the requirements of the Contract Documents. Interpretations or decisions by any other method concerning the Contract Documents will not be binding on the DISTRICT. The decision of the DISTRICT shall be final.

**5. SCOPE OF WORK**

The CONTRACTOR agrees to perform all services described in Exhibit A, in accordance with the Contract Time described in Section 6.0, for payment pursuant to Exhibit B, and in accordance with the terms and conditions of this Agreement and those conditions described in RFB 22-06 Fire Station 68 Patio Coverings, incorporated herein by reference.

The CONTRACTOR shall furnish all equipment, tools, apparatus, facilities, materials, labor, and skill necessary to perform and complete, in a good and workmanlike manner, the Project in accordance with the Contract Documents (as defined herein) and applicable law.

**6. CONTRACT TIME**

The CONTRACTOR must complete the Project in accordance with the Contract Documents within 90 calendar days from the date of this Agreement ("Contract Time"). The CONTRACTOR represents to the DISTRICT that the Contract Time is reasonable for completing the Project and that the CONTRACTOR is able to complete the Project within the Contract Time. Remedies for failure to timely complete the Project shall be in accordance with the Contract Documents.

The CONTRACTOR shall not, except by agreement or instruction of the DISTRICT in writing, commence operations on the Project site(s) or elsewhere prior to the effective date of insurance required by this Agreement to be furnished by the CONTRACTOR. The dates of commencement and Final Completion of the Project shall not be changed by the effective date of such insurance.

The CONTRACTOR shall proceed expeditiously with adequate forces and shall achieve Final Completion of the Project within the Contract Time. If the DISTRICT determines and notifies the CONTRACTOR that the CONTRACTOR's progress is such that the CONTRACTOR will not achieve Final Completion of the Project within the Contract Time, the CONTRACTOR shall immediately and at no additional cost to the DISTRICT, take all measures necessary, including working such overtime, additional shifts, weekends, or holidays as may be required to ensure that the Project is fully completed within the Contract Time. Upon receipt of such notice from the DISTRICT, the CONTRACTOR shall immediately notify the DISTRICT of all measures to be taken to ensure Final Completion of the Project within the Contract Time. The CONTRACTOR shall reimburse the DISTRICT for any extra costs or expenses (including the reasonable value of any services provided by the DISTRICT's employees) incurred by the DISTRICT as the result of such measures.

The terms and conditions of this Agreement, which relate to indemnification and other related matters, shall survive the expiration of this Agreement.

**7. CONTRACT PRICE**

As full compensation in consideration of completion of the Project in accordance with the Contract Documents, and in consideration of the fulfilment of all of the CONTRACTOR's obligations under the Contract Documents, the DISTRICT will pay to the CONTRACTOR in lawful money of the United States the total price of **\$135,620**.

For work performed in accordance with this Agreement, payments shall be made to the CONTRACTOR as provided in Exhibit B hereto.

**8. TAXES**

Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the CONTRACTOR.

**9. INDEPENDENT CONTRACTOR**

No relationship of employer and employee is created by this Agreement; it being understood and agreed that the CONTRACTOR is at all times an independent contractor, and can perform work for others. The CONTRACTOR is not the agent or employee of the DISTRICT in any capacity whatsoever and the DISTRICT shall not be liable in any manner for any acts or omissions by the CONTRACTOR or for any obligations or liabilities incurred by the CONTRACTOR, its employees, or agents.

Neither the CONTRACTOR, nor its agents or employees shall have any claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, health insurance medical care, hospital care, retirement benefits, social security, disability, workers' compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

The CONTRACTOR shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees, and the CONTRACTOR agrees to indemnify and hold the DISTRICT harmless from any and all liability which the DISTRICT may incur because of the CONTRACTOR's failure to pay such amounts.

In carrying out the work contemplated herein, the CONTRACTOR shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as independent contractors and shall not be treated or considered in any way as officers, agents, and/or employees of the DISTRICT.

The CONTRACTOR shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which the CONTRACTOR is engaged in the geographical area in which the CONTRACTOR practices its profession.

Notwithstanding the foregoing, if the DISTRICT in its discretion determines that pursuant to state and federal law the CONTRACTOR is an employee for purposes of income tax withholding, DISTRICT may upon two (2) weeks' notice to the CONTRACTOR, withhold from payments otherwise due to the CONTRACTOR hereunder federal and state income taxes and to pay said sums to the federal and state governments.

**10. CONFLICT OF INTEREST**

The CONTRACTOR covenants that it presently has no interest, and shall not obtain any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement, including but not limited to any provision of services to any federal, state or local regulatory or other public agency which has any interest adverse or potentially adverse to the DISTRICT, as determined in the reasonable judgment of the Board of Directors of the DISTRICT. Entering into this Agreement does not preclude the CONTRACTOR from working for others as long as the CONTRACTOR ensures that such work does not constitute a conflict of interest.

**11. ELIGIBILITY**

By executing the Agreement, the CONTRACTOR certifies that the CONTRACTOR is not ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7. In accordance with California Public Contract Code Section 6109(a), contractors who are ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7 may neither bid on, be awarded or perform the Project. The CONTRACTOR shall hold harmless and indemnify the DISTRICT from and against any and all damages, costs, and liability arising from or as a consequence of any violation of Public Contract Code Section 6109.

**12. INDEMNIFICATION**

The CONTRACTOR shall indemnify, defend and hold harmless the DISTRICT, its officers, directors, officials, employees, consultants, and volunteers from and against losses (including without limitation the cost of repairing defective work and remedying the consequences of defective work) arising out of, resulting from, or relating to the following:

- a) The failure of the CONTRACTOR or its subcontractors to perform its obligations under this Agreement
- b) The inaccuracy of any representation or warranty by the CONTRACTOR or its subcontractors given in accordance with or contained in the Contract Documents
- c) Any claim of damage or loss by any subcontractor against the DISTRICT arising out of any alleged act or omission of the CONTRACTOR or any other subcontractor, or anyone directly or indirectly employed by the CONTRACTOR or any subcontractor
- d) Any claim of damage or loss resulting from hazardous materials introduced, discharged, or disturbed by the CONTRACTOR or its subcontractors as required in the Contract Documents

The DISTRICT shall not be liable or responsible for any accidents, loss, injury (including death) or damages happening or accruing during the term of the performance of the work herein referred to or in connection therewith, to persons and/or property, and the CONTRACTOR shall fully indemnify, defend and hold harmless the DISTRICT and protect the DISTRICT from and against the same as provided above. In addition to the liability imposed by law upon the CONTRACTOR for damage or injury (including death) to persons or property by reason of the negligence of the CONTRACTOR, its officers, agents, employees/ or subcontractors, which liability is not impaired or otherwise affected hereby, the CONTRACTOR shall defend, indemnify, hold harmless, release and forever discharge the DISTRICT, its officers, directors, officials,

employees, consultants, and volunteers from and against and waive any and all responsibility for same for every expense, liability, or payment by reason of any damage or injury (including death) to persons or property suffered or claimed to have been suffered through any negligent act, omission, or willful misconduct of the CONTRACTOR, its officers, agents, employees, or any of its subcontractors, or anyone directly or indirectly employed by either of them or from the condition of the premises or any part of the premises while in control of the CONTRACTOR, its officers, agents, employees, or any of its subcontractors or anyone directly or indirectly employed by either of them, arising out of the performance of the work called for by this Agreement. The CONTRACTOR agrees that this indemnity and hold harmless shall apply even in the event of negligence of the DISTRICT, its officers, directors, officials, employees, consultants, and volunteers regardless of whether such negligence is contributory to any claim, demand, loss, damage, injury, expense, and/or liability; but such indemnity and hold harmless shall not apply (i) in the event of the sole negligence of the DISTRICT, its officers, directors, officials, employees, consultants, and volunteers; or (ii) to the extent that the DISTRICT shall indemnify and hold harmless the CONTRACTOR for hazardous materials pursuant to the Contract Documents.

In claims against any person or entity indemnified under this section that are made by an employee of the CONTRACTOR or any subcontractor, a person indirectly employed by the CONTRACTOR or any subcontractor, or anyone for whose acts the CONTRACTOR or any subcontractor may be liable, the indemnification obligation under this section shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or any subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

The indemnification obligations under this section shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.

The CONTRACTOR shall indemnify the DISTRICT from and against losses resulting from any claim of damage made by any separate contractor against the DISTRICT arising out of any alleged acts or omissions of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable.

The CONTRACTOR shall indemnify separate contractors from and against losses arising out of the negligent acts, omissions, or willful misconduct of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable.

This DISTRICT shall provide to the CONTRACTOR reasonably, timely notification of the receipt of any third party claim relating to this Agreement.

These indemnity provisions shall survive any termination of the Agreement and/or the final performance of the Agreement by the CONTRACTOR.

**13. LIMITATION OF LIABILITY**

Under no circumstances will the CONTRACTOR be entitled to consequential damages for any loss of profit or damage to reputation. Under no circumstances will the CONTRACTOR be permitted to limit their liability to an amount less than one million (\$1,000,000.00) dollars. Under no circumstances will the CONTRACTOR be entitled to limit special or consequential damages claimed by the DISTRICT.

**14. NON-DISCRIMINATION**

No person will be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the DISTRICT's contracted programs or activities on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or state constitutional or statutory law; nor will they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the DISTRICT or in the employment practices of the DISTRICT's contractors.

Accordingly, the CONTRACTOR will, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

15. **INSURANCE**

Within ten (10) days following the execution of this Agreement by the Parties, the CONTRACTOR shall furnish the DISTRICT with a certificate evidencing the insurance coverages outlined below. Copies of required endorsements must be attached to the provided certificates. It is the responsibility of the CONTRACTOR to notify its insurance advisor or insurance carrier(s) regarding coverage, limits, forms, and other insurance requirements specified below. All documents must be received and approved by the DISTRICT prior to the commencement of any services. Please note, the required coverages outlined below shall not limit the amount of coverage provided, but shall be the minimum requirements acceptable to the DISTRICT.

General Liability – shall be on an Occurrence basis, not a Claims Made basis. Minimum limits and structure shall be:

- |                                 |             |
|---------------------------------|-------------|
| a) General Liability Aggregate: | \$2,000,000 |
| b) Products Comp/Op Aggregate:  | \$2,000,000 |
| c) Personal & Adv Injury:       | \$1,000,000 |
| d) Each Occurrence:             | \$1,000,000 |
| e) Fire Damage:                 | \$100,000   |

Automobile Liability

- a) Commercial Automobile Liability (for corporate/business owned vehicles, including non-owned and hired vehicles) - \$1,000,000 Combined Single Limit
- b) Personal Lines Automobile Liability (for individually owned vehicles) - \$250,000 per person, \$500,000 each accident, \$100,000 property damage

Workers' Compensation and Employer's Liability

- a) Per Statute
- b) \$1,000,000 per accident for each accident
- c) \$1,000,000 for disease
- d) This policy shall be endorsed to waive the insurers' subrogation rights against the DISTRICT.

Additional Insured

- a) The DISTRICT, its officers, directors, officials, employees, and volunteers are to be endorsed as additional insureds as respects to liability arising out of activities performed by or on behalf of the CONTRACTOR, products and completed operations of the CONTRACTOR, premises owned, occupied or used by the CONTRACTOR, or automobiles owned, leased, hired, or borrowed by the CONTRACTOR. The coverage shall contain no endorsed limitations on the scope of protection afforded to the DISTRICT, its officers, directors, officials, employees, or volunteers.

Insurance policies shall include a provision for the DISTRICT to be given thirty (30) days prior written notice of cancellation and thirty (30) days written notice of any material change(s) requested by the policy holder of said insurance policies. The CONTRACTOR shall furnish documentary evidence of such policies and the renewal or continuance of such insurances within ten (10) business days of any expiration date(s) thereof during the life of this Agreement.

The DISTRICT will not be responsible for any deductible that may apply in any of the said insurance policies.

The CONTRACTOR covenants and agrees that the DISTRICT's insurance requirements shall not be construed to and in no manner limit or restrict the liability of the CONTRACTOR.

Certificates of Insurance shall be sent to:

Sacramento Metropolitan Fire District  
Attn: Purchasing Division  
3012 Gold Canal Drive  
Rancho Cordova, CA 95670  
(916) 859-4372  
**OR**  
purchasing@metrofire.ca.gov

**16. SURETY**

Within ten (10) days following the execution of this Agreement by the Parties, the CONTRACTOR will be required to furnish to the DISTRICT performance and payment bonds in the amount equal to 100% of the contract value. Only bonds executed by admitted surety insurers satisfactory to the DISTRICT and that qualify as defined in the California Civil Procedures Code, Section 995.120 shall be accepted. The surety must be a California-admitted surety and listed by the U.S. Treasury with a bonding capacity in excess of the contract value.

The performance and payment bonds shall be sent to:

Sacramento Metropolitan Fire District  
Attn: Purchasing Division  
3012 Gold Canal Drive  
Rancho Cordova, CA 95670  
(916) 859-4372  
purchasing@metrofire.ca.gov

**17. REVIEW OF CONTRACT DOCUMENTS**

If the CONTRACTOR and/or its subcontractors performs any work involving any error, inconsistency, or omission in the Contract Documents, without giving notice in writing to the DISTRICT and obtaining the written consent of the DISTRICT, the CONTRACTOR shall be responsible for the resultant losses, including, without limitation, the costs of correcting defective work.

**18. ITEMS NECESSARY FOR COMPLETION OF THE PROJECT**

Except as otherwise noted in the Contract Documents, the CONTRACTOR shall provide and pay for all labor, materials, equipment, permits, fees, licenses, facilities and services necessary for the proper execution and timely completion of the Project in accordance with the Contract Documents.

**19. OWNERSHIP OF DOCUMENTS**

The Contract Documents and all copies thereof furnished to or provided by the CONTRACTOR are the property of the DISTRICT and are not to be used by the CONTRACTOR on any other work.

**20. CONFIDENTIALITY**

The CONTRACTOR agrees that any information, whether proprietary or not, made known or discovered during the performance of or in connection with this Agreement for the DISTRICT will be kept confidential and not be disclosed to any other person or entity except as required by law. The CONTRACTOR agrees to immediately notify the DISTRICT if it is requested to disclose to others any information made known or discovered during the performance of or in connection with this Agreement. These conflict of interest and future service provisions and limitations shall remain fully effective for five (5) years after the CONTRACTOR's termination of services to the DISTRICT hereunder.

**21. COMPLIANCE WITH APPLICABLE CODE REQUIREMENTS**

The CONTRACTOR and its subcontractors engaged in the performance of the Project shall conform to the following specific rules and regulations, as well as all other laws, ordinances, rules and regulations that are applicable to the Project.

- a) All laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over the DISTRICT, the CONTRACTOR, any subcontractor, the Project, the Project site(s), the Scope of Work, or the prosecution of the Scope of Work;

- b) All requirements of any insurance company issuing insurance required hereunder;
- c) The Federal Occupational Safety and Health Act (OSHA) and all other applicable code requirements relating to safety;
- d) Applicable titles in the State of California Code of Regulations;
- e) Applicable sections in the State of California Labor Code;
- f) All applicable code requirements relating to nondiscrimination, payment of prevailing wages, payroll records, apprentices, and work day.

Without limiting the foregoing, the CONTRACTOR shall comply with the provisions regarding nondiscrimination, payment of prevailing wages, payroll records, apprentices, and work day set forth in this Agreement.

The CONTRACTOR shall comply with and give notices required by all applicable code requirements, including all environmental laws and all notice requirements under the State of California Safe Drinking Water and Enforcement Act of 1986 (State of California Health and Safety Code Section 25249.5 and applicable sections that follow). The CONTRACTOR shall promptly notify the DISTRICT in writing if the CONTRACTOR becomes aware during the performance of the work that the Contract Documents are at variance with applicable code requirements.

If the CONTRACTOR performs work on the Project which it knows or should know is contrary to applicable code requirements, without prior written notice to the DISTRICT, the CONTRACTOR shall be responsible for such construction work and any resulting damages including, without limitation, the costs of correcting defective work.

**22. CONFORMITY WITH LAW AND SAFETY**

In performing services under this Agreement, the CONTRACTOR shall observe and comply with all applicable laws, ordinances, codes, and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services performed.

**23. SAFETY OF PERSONS AND PROPERTY**

In accordance with generally accepted construction practices and applicable law, the CONTRACTOR shall be solely and completely responsible for conditions of the Project site(s), and shall take adequate precautions and provide adequate protection against damage, injury, or loss to the following:

- a) Employees and subcontractors involved in the Project and other persons who may be affected thereby;
- b) The Project in place and materials and equipment to be incorporated therein, whether in storage on or off the Project site(s), under care, custody, or control of the CONTRACTOR or subcontractors;
- c) Other property at the Project site(s) and adjoining property.

This requirement will apply continuously and not be limited to normal working hours. For purposes of California Labor Code Section 6400 and related provisions of law, the CONTRACTOR and the CONTRACTOR's privities and any other entities engaged in the performance of the Project shall be "employers" responsible for furnishing employment and a place of employment that is safe and healthful for the employees, if any, of such entities engaged in the performance of the Project. Neither the DISTRICT nor its officials, officers, employees, agents, volunteers or consultants will be "employers" pursuant to California Labor Code Section 6400 and related provisions of law with respect to the CONTRACTOR, the CONTRACTOR's privities or other entities engaged in the performance of the Project.

The CONTRACTOR shall erect and maintain, as required by existing conditions and performance of the Project, adequate safeguards for safety and protection, including providing adequate lighting and ventilation, posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities. The CONTRACTOR shall provide and maintain any other necessary systems or devices required to secure safety of life or property at the Project site(s) in accordance with accepted standards of the industry and applicable law. The CONTRACTOR shall maintain during all night hours sufficient lights to prevent accident or damage to life or property.

The CONTRACTOR shall not load or permit any part of the Project or the Project site(s) to be loaded so as to endanger the safety of persons or property. When use or storage of explosives, other hazardous materials, equipment, or unusual methods are necessary for execution of the Project, the CONTRACTOR shall exercise the utmost care and carry on such activities only under the supervision of properly qualified personnel.

In such instance where the CONTRACTOR's scope of work includes the abatement and removal of hazardous materials found anywhere on or within the Project site(s), the CONTRACTOR shall comply with all laws, including, without limitation, the requirements of the Environmental Protection Agency and all jurisdictional agencies and all laws relating to safety, health welfare, and protection of the environment, in removing, treating, encapsulating, passivating, and/or disposing of hazardous materials, including, but not limited to, removal, treatment, encapsulation, passivation, and/or disposal of the hazardous materials. If any notices to governmental authorities are required, the CONTRACTOR shall also give those notices at the appropriate times. The CONTRACTOR shall ensure abatement subcontractors and disposal sites are appropriately licensed and qualified. The CONTRACTOR's obligations under this section shall include signing (as the agent for the DISTRICT) any manifests required for the disposal of hazardous materials.

The CONTRACTOR shall designate a responsible member of the CONTRACTOR's organization at the Project site(s) whose duty shall be the prevention of accidents. That person shall be the superintendent, unless otherwise designated by the CONTRACTOR in writing to the DISTRICT.

**24. USE OF DISTRICT PROPERTY**

The CONTRACTOR shall not use DISTRICT property (including equipment, instruments, and supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

**25. USE OF PROJECT SITE(S)**

The CONTRACTOR shall confine operations at the Project site(s) to areas permitted by law, ordinances, permits, and the Contract Documents. The CONTRACTOR shall not unreasonably encumber the Project site(s) with materials or equipment. Personnel of the CONTRACTOR and subcontractors shall not occupy, live upon, or otherwise make use of the Project site(s) during any time that work is not being performed at the Project site(s), except as otherwise provided in the Contract Documents.

The CONTRACTOR shall keep the Project site(s) and surrounding areas free from accumulations of waste material and rubbish generated by the CONTRACTOR and its subcontractors. The CONTRACTOR shall remove all rubbish, tools, equipment, and surplus materials leaving the area "broom clean" upon completion of the Project. Trash and rubbish must be transported daily from the site and legally disposed of. Contaminated or dangerous materials must be removed and promptly disposed of if encountered. No materials may be burned, buried, or otherwise disposed of on site. Tools, equipment, and site protections measured are to be removed upon Project completion.

**26. STAGING**

As necessary, the CONTRACTOR shall coordinate the preparation of construction staging areas on-site for the Project and the preparation of the site(s) for construction, including, but not limited to fencing, barricades, access parking, or other items reasonably necessary for efficient prosecution of the Project. The CONTRACTOR shall coordinate all required utility shut downs, road closures, traffic closures, and the like. The CONTRACTOR shall be responsible for the cost of temporary power used during the prosecution of the Project, including, but not limited to, the cost of installing such temporary wiring as may be required to bring power to the site. The CONTRACTOR shall also be responsible for the cost of all temporary construction and facilities necessary for the Project site(s).

**27. RIGHT OF ACCESS**

The DISTRICT and its authorized representatives will at all reasonable times while such office facilities are located at the Project site(s) (including, at a minimum, all times during which the work is performed), have access to any such site office facilities used by the CONTRACTOR and/or its subcontractors. With respect to the right of access of the DISTRICT and its authorized representatives, neither the CONTRACTOR nor its subcontractors shall have a reasonable expectation of privacy pursuant to the Fourth Amendment to the

United States Constitution or other applicable law concerning such site office facilities used by the CONTRACTOR and/or its subcontractors. Without exception, any and all Project related materials located at such site office facilities will be deemed at all times to be DISTRICT property subject to inspection and copying by the DISTRICT and its authorized representatives at all reasonable times while such facilities are located at the Project site(s) (including, at a minimum, all times during which the work is performed). Any interference by the CONTRACTOR or its subcontractors with the DISTRICT's rights of access and/or ownership pursuant to this section will constitute a material breach of the Agreement subject to any and all remedies available pursuant to the Contract Documents and at law and equity.

28. **WORK HOURS**

The CONTRACTOR shall comply with any applicable noise ordinance and neither it nor its subcontractors shall undertake work on the Project site(s) other than at the times and sound level permitted by the noise ordinance.

29. **PARKING**

The CONTRACTOR shall organize its work in such a manner so as to minimize the impact of its operations on the surrounding community and on the operations of the DISTRICT. To the extent that the number of workers on the site(s) is likely to have an adverse impact on neighborhood parking, the CONTRACTOR shall develop a parking plan for those individuals working on the site(s) that is reasonably acceptable to the DISTRICT.

30. **PERSONNEL**

The CONTRACTOR shall at all times enforce strict discipline and good order among the CONTRACTOR's employees and may not employ on the Project any unfit person or anyone not skilled in the work assigned, or anyone incompetent or unfit for the duties of that person. When the DISTRICT determines that a CONTRACTOR's employee or subcontractor does not satisfy the requirements of this provision, upon notice from the DISTRICT, the CONTRACTOR shall ensure that employee performs no further work and is no longer present at the Project site. Any such employee shall not again be employed on the Project without the DISTRICT's approval.

31. **SUBCONTRACTING**

By execution of this Agreement, the CONTRACTOR certifies that no subcontractor included on the list of proposed subcontractors included in Exhibit A is ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7. In accordance with California Public Contract Code Section 6109(a), subcontractors who are ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7 may neither bid on, be awarded or perform as a subcontractor on the Project. In accordance with California Public Contract Code Section 6109(b), any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. The CONTRACTOR shall ensure that no debarred subcontractor receives any public money for performing the Project, and any public money that may have been paid to a debarred subcontractor for the Project is returned to the DISTRICT. The CONTRACTOR shall be responsible for payment of wages to workers of a debarred subcontractor who has been allowed to perform on the Project.

The Agreement and the performance of the Project are subject to the requirements of the Subletting and Subcontracting Fair Practices Act codified at California Public Contract Code Section 4100 and following. If the CONTRACTOR fails to specify a subcontractor or specifies more than one subcontractor for the same portion of the Project in excess of 0.5% of the Contract Value, the CONTRACTOR agrees that the CONTRACTOR is fully qualified to perform that portion of the Project with the CONTRACTOR's own forces, and that the CONTRACTOR will perform that portion of the Project with the CONTRACTOR's own forces. If, after the execution of this Agreement, the CONTRACTOR subcontracts, except as provided for in California Public Contract Code Sections 4107 or 4109, any such portion of the Project, the CONTRACTOR will be subject to the penalties set forth in California Public Contract Code Sections 4110 and 4111, including cancellation of the Agreement, assessment of a penalty of up to 10% of the amount of the subcontract, and disciplinary action by the Contractors State License Board.

Any portion of the Project performed for the CONTRACTOR by a first-tier subcontractor shall be pursuant to a written subcontract. Each such subcontract shall require the subcontractor, to the extent of the work to be performed by the subcontractor, to be bound to the CONTRACTOR by the terms of the Contract Documents, to assume toward the CONTRACTOR all the obligations and responsibilities which the CONTRACTOR assumes towards the DISTRICT by the Contract Documents, and to perform such portion of the Project in accordance with the Contract Documents. Each such subcontract shall preserve and protect the rights of the DISTRICT under the Contract Documents, with respect to the work to be performed by subcontractor, so that subcontracting thereof will not prejudice such rights. Nothing contained in any subcontract shall create any contractual relationship between any subcontractor and the DISTRICT. The CONTRACTOR shall also cause any first-tier subcontractor to incorporate the Contract Documents in any lower-tier subcontracts as described herein.

The CONTRACTOR is responsible for scheduling the work of subcontractors so as to avoid delay or injury to either work or materials. The CONTRACTOR shall be solely responsible for any delay or additional costs incurred as a result of its failure to provide adequate or accurate information to a subcontractor that results in improper submittals and/or work, or time or other impacts.

32. **PAYMENT TO SUBCONTRACTORS**

Attention is directed to the provisions in Section 7108.5 of the Business and Professions Code concerning prompt payment to subcontractors. The CONTRACTOR shall return all monies withheld in retention from the subcontractor within thirty (30) days after receiving payment for work satisfactorily completed, even if the other contract work is not completed and has not been accepted in accordance with the terms and conditions of this Agreement. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the CONTRACTOR or subcontractor in the event of a dispute involving late payment or nonpayment by the CONTRACTOR or deficient subcontract performance or noncompliance by a subcontractor.

33. **RIGHT TO REFUSE PERSONNEL**

The DISTRICT reserves the right to refuse, at its sole discretion, any subcontractors or any personnel provided by the CONTRACTOR or its subcontractors. The CONTRACTOR's staff and/or subcontractors may be subject to the DISTRICT's background and drug testing processes at any time.

34. **PREVAILING WAGE**

In accordance with California Labor Code Section 1810, eight (8) hours of labor in performance of the Project shall constitute a legal day's work under the Agreement. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the Project is limited to eight (8) hours during any one (1) calendar day, and forty (40) hours during any one (1) calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of eight (8) hours during any one (1) calendar day and forty (40) hours during any one (1) calendar week is permitted upon compensation for all hours worked in excess of eight (8) hours during any one (1) calendar day and forty (40) hours during any one (1) calendar week at not less than one-and-one-half times the basic rate of pay.

The CONTRACTOR shall comply and shall ensure that all subcontractors, at any tier, comply with prevailing wage law pursuant to the State of California Labor Code, including but not limited to Section 1720 et seq. of the State of California Labor Code. Compliance with these sections is required by the Agreement. The work under the Agreement is subject to compliance monitoring and enforcement by the State of California Department of Industrial Relations (DIR).

The DIR has ascertained the general prevailing per diem wage rates in the locality in which the work is to be performed for each craft, classification, or type of worker required to perform the work. The CONTRACTOR shall post a copy of the general prevailing per diem wage rates as well as job site notices as prescribed by regulation at the Project site(s). By this reference, such schedule is made part of the Contract Documents. The CONTRACTOR shall pay not less than the prevailing wage rates, as specified in the schedule and any amendments thereto, to all workers employed by the CONTRACTOR in the execution of the Project. The CONTRACTOR shall cause all subcontracts, at any tier, to include the provision that all subcontractors

shall pay not less than the prevailing rates to all workers employed by subcontractors in the execution of the Project.

The CONTRACTOR shall forfeit to the DISTRICT, as a penalty, not more than \$200 for each calendar day or portion thereof for each worker that is paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any portion of the work done by the CONTRACTOR or any subcontractor. The amount of this penalty shall be determined pursuant to applicable law. Such forfeiture amounts may be deducted from the contract value or sought directly from the surety under its Performance Bond if there are insufficient funds remaining in the contract value. The CONTRACTOR shall also pay to any worker who was paid less than the prevailing wage rate for the work or craft for which the worker was employed for any portion of the work, for each day, or portion thereof, for which the worker was paid less than the specified prevailing per diem wage rate, an amount equal to the difference between the specified prevailing per diem wage rate and the amount which was paid to the worker. Review of any civil wage and penalty assessment shall be made pursuant to section 1742 of the California Labor Code.

If a subcontractor worker engaged in performance of the Project is not paid the general prevailing per diem wages by the subcontractor, the CONTRACTOR is not liable for any penalties therefore unless the CONTRACTOR had knowledge of that failure or unless the CONTRACTOR fails to comply with all of the following requirements:

- a) The contract executed between the CONTRACTOR and the subcontractor for the performance of part of the Project must include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
- b) The CONTRACTOR shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.
- c) Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the CONTRACTOR shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the Project.
- d) Prior to making final payment to the subcontractor, the CONTRACTOR shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to employees engaged in the performance of the Project and any amounts due pursuant to California Labor Code Section 1813.

In accordance with California Labor Code Section 1777.5, the CONTRACTOR, on behalf of the CONTRACTOR and any subcontractors engaged in performance of the Project, shall be responsible for ensuring compliance with California Labor Code Section 1777.5, governing employment and payment of apprentices on public works contracts.

In case it becomes necessary for the CONTRACTOR or any subcontractor engaged in performance of the Project to employ on the work any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate has been determined by the DIR, the CONTRACTOR shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to work to be performed by that person. The minimum rate thus furnished will be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

35. **CERTIFIED PAYROLL**

In accordance with California Labor Code, the CONTRACTOR and all subcontractors engaged in performance of the Project, shall keep accurate payroll records 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 in performance of the Project. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating that the information contained in the payroll record is true and correct and that the employer has complied with the requirements of California Labor Code Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project. The payroll records required

pursuant to California Labor Code Section 1776 shall be certified and shall be available for inspection at all reasonable hours at the principal office of the CONTRACTOR on the following basis:

- a) A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or the employee's authorized representative on request;
- b) A certified copy of all payroll records shall be made available for inspection upon request to the DISTRICT, the State of California Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State of California Department of Industrial Relations;
- c) A certified copy of all payroll records shall be made available upon request by the public for inspection or copies thereof made; provided, however, that the request by the public shall be made to either the DISTRICT, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal offices of the CONTRACTOR or subcontractors. Any copy of the records made available for inspection as copies and furnished upon request to the public or any public agency by the DISTRICT shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the CONTRACTOR performing the work shall not be marked or obliterated.
- d) The CONTRACTOR shall file a certified copy of the payroll records with the entity that requested the records within ten (10) days after receipt of a written request.

The CONTRACTOR shall regularly submit electronic certified payroll records to the Labor Commissioner using the DIR's eCPR online system, in accordance with monitoring and enforcement requirements, no less frequently than monthly.

In the event of noncompliance with the requirements of this section or with the State of California Labor Code Section 1776, the CONTRACTOR shall have ten (10) days in which to comply following receipt of notice specifying in what respects the CONTRACTOR must comply. Should noncompliance still be evident after the ten (10) day period, the CONTRACTOR shall forfeit to the DISTRICT, as a penalty, \$100 for each day, or portion thereof, for each worker, until strict compliance is accomplished. Such forfeiture amounts may be deducted from the contract value.

### 36.

#### **CHANGE ORDERS**

Change order requests for work that falls outside of the Scope of Work of this Agreement must be submitted in writing to the DISTRICT prior to the commencement of any work for which the change order applies. The DISTRICT reserves the right to reject any change order requests.

All change order requests shall itemize all cost impacts of the proposed change and include a total price for the change order. All change orders shall identify any change to the Project schedule or milestone delivery date(s) as a result of the proposed change.

Pricing for change orders shall be calculated by adding the itemized direct cost that would be added and credit for any work not performed under the change order and an allowance for indirect costs in accordance with this section. Itemization for direct costs for required labor must include the classifications of labor required, the total hours required for each classification, the hourly rate for each classification and other labor related costs such as liability and workers compensation insurance, social security, retirement and unemployment insurance. All other direct cost impacts must be itemized as appropriate, including the cost of any rental equipment, required materials, or supplies.

Indirect costs for a subcontractor added under a change order if the subcontractor performed the work may not exceed an allowance of fifteen (15) percent of the total subcontractor direct costs added under the change order. Indirect costs for the CONTRACTOR added under a change order if a subcontractor performs the work shall not exceed seven (7) percent of the sum of the subcontractor's direct costs and indirect costs.

If the CONTRACTOR performs the change order work, the indirect costs for the CONTRACTOR added under change order may not exceed an allowance of fifteen (15) percent of the CONTRACTOR's total direct costs added under the change order. Such indirect cost allowances cover CONTRACTOR and subcontractor

overhead and profit under the change order, and include the cost of insurance in addition to that required pursuant herein, bond premiums, superintendent labor, clerical labor, home office expenses, worksite office expenses, and utility costs under the change order. Such costs may not be itemized as direct costs under a change order. Indirect costs deducted under a change order will be calculated in exactly the same way as indirect costs added under a change order, except indirect costs deducted under a change order shall be calculated as an amount equal to three (3) percent of the total of combined CONTRACTOR and subcontractor direct costs deducted under the change order.

The CONTRACTOR shall be solely responsible for any and all losses, costs, or liabilities of any kind incurred by the CONTRACTOR, any subcontractor engaged in the performance of the Project, any party supplying materials or equipment for the Project, or any third party that are incurred as a result of a proposed change order prior to the issuance of an approved change order executed by the DISTRICT in writing in accordance with this section.

The DISTRICT reserves the right to direct the prosecution of change order work while pricing is being negotiated and prior to the formal execution of the approved change order. In this instance, the DISTRICT shall provide such direction to the CONTRACTOR in writing.

37. **DELAY**

The CONTRACTOR will not be held responsible for delays in performance of the Project caused by delay beyond the control of both the DISTRICT and the CONTRACTOR, such as by strikes, lockouts, or labor disturbances that are not within the control of the CONTRACTOR to resolve. This provision will not apply where the delay would not have occurred but for a previous CONTRACTOR caused delay in the prosecution of the Project.

The DISTRICT will not be liable to the CONTRACTOR, any subcontractor or other entity engaged in the performance of the Project, any supplier, or any other person or organization, or to any surety or employee or agent of any of them, for damages arising out of or resulting from delays beyond the control of the DISTRICT and the CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, earthquakes and acts of God or acts or neglect by utility owners or other contractors performing other work. An extension of the Contract Time in an amount equal to the time loss due to such delay(s) will be the Contractor's sole and exclusive remedy for such delay(s).

The CONTRACTOR shall not be entitled to additional compensation for extended field or home office overhead, field supervision, costs of capital, interest, escalation charges, acceleration costs or other impacts for any delays to the extent such delays are caused by the failure of the CONTRACTOR or any subcontractor or other entity engaged in performance of the Project to perform the work in accordance with the Contract Documents.

The CONTRACTOR will not be entitled to damages for delay to the Project caused by the following, which the DISTRICT and the CONTRACTOR agree will be deemed for purposes of California Public Contract Code Section 7102 either not caused by the DISTRICT, and/or within the contemplation of the DISTRICT and the CONTRACTOR, and/or reasonable under the circumstances:

- a) Exercise of the DISTRICT's right to sequence the Project in a manner that would avoid disruption to the DISTRICT and other contractors based on: the failure of the CONTRACTOR or any subcontractor or other entity engaged in the performance of the Project to perform the work in accordance with the Contract Documents, enforcement by the DISTRICT or any other governmental agency of competent jurisdiction of any government act or regulation, or enforcement by the DISTRICT of any provisions of the Agreement.
- b) Requests for clarification or information concerning the Contract Documents or proposed change orders or modifications to the Contract Documents, including extensive and/or numerous such requests for clarification or information or proposed change orders or modifications, provided such clarifications or information or proposed change orders or modifications are processed by the DISTRICT or its representatives in a reasonable time in accordance with the Contract Documents.

38. **ADJUSTMENTS TO CONTRACT TIME FOR DELAY**

Either the DISTRICT or the CONTRACTOR may propose a change in the Contract Time for extensive and unreasonable delays that are purported to be caused by the DISTRICT and/or its privities. Such proposed changes in the Contract Time will constitute change order proposals subject to the terms and conditions in this Agreement. In accordance with the change order procedures, the DISTRICT and the CONTRACTOR may agree upon pricing for the cost impacts, if any, resulting from such delays. If such pricing is in anticipation of cost impacts that may, but have not yet occurred, the DISTRICT will be obligated to pay the CONTRACTOR for such anticipated impacts in accordance with the Agreement and any applicable, approved change orders only to the extent the CONTRACTOR actually incurs the anticipated cost impacts. Notwithstanding anything to the contrary in the terms and conditions of this Agreement, the DISTRICT and the CONTRACTOR may agree to a daily rate or cap or lump sum that will apply to the cost impacts, if any, resulting from delay purportedly caused by the DISTRICT and/or its privities subject to this provision. However, if such daily rate or cap or lump sum is in anticipation of cost impacts that have not yet occurred, the DISTRICT will be obligated to pay such daily rate or cap or lump sum only to the extent the CONTRACTOR actually incurs such cost impacts.

Extensions of the Contract Time will not be allowed for weather conditions that are consistent with the anticipated average number of rain days in the Sacramento area, established as follows (where measurable precipitation is equal to or greater than 0.1" in a 24-hour period):

January	7.5 days	July	0.0 days
February	9.0 days	August	0.0 days
March	6.0 days	September	0.0 days
April	4.5 days	October	2.0 days
May	3.0 days	November	5.5 days
June	0.5 days	December	7.0 days

Extensions of the Contract Time for delays due to adverse weather will be allowed only if the number of rain days (greater than 0.1" in a 24-hour period) for a consecutive 3 month period exceeds the respective 3-month average total specified above and the CONTRACTOR can demonstrate to the DISTRICT's reasonable satisfaction that such adverse weather caused actual delay in the timely completion of the Project. No extensions of the Contract Time will be granted for rain days in addition to those specified herein that do not or would not, themselves, result in failure to complete the Project in accordance with the Project schedule. An extension of the Contract Time in an amount equal to the time loss due to rain days will be the CONTRACTOR's sole and exclusive remedy for such delay(s).

Whenever the CONTRACTOR claims a delay for which the Contract Time may be extended, the CONTRACTOR shall request an extension of time within seven (7) calendar days of the start of the delay. The request must be in writing and shall include a Time Impact Analysis (TIA) that describes in detail the cause for the delay, impact of the delay on the milestone durations, and, if possible, the foreseeable extent of the delay. Failure of the CONTRACTOR to submit such a request with the specified time frame shall constitute a waiver by the CONTRACTOR of any request for extension, and no extension shall be granted as a consequence of such delay.

39. **SUSPENSION BY DISTRICT FOR CONVENIENCE**

The DISTRICT may, at any time and from time to time, without cause, order the CONTRACTOR, in writing, to suspend, delay, or interrupt the Project in whole or in part for such period of time, up to ninety (90) days, as the DISTRICT may determine, with such period of suspension to be computed from the date of delivery of the written order. Such order shall be specifically identified as a "Suspension Order" under this section. The Project may be stopped for such further period as the Parties may agree. Upon receipt of a Suspension Order, the CONTRACTOR shall, at the DISTRICT's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the Project covered by the Suspension Order during the period of stoppage. Within ninety (90) days after the issuance of the Suspension Order, or such extension to that period as is agreed upon by the CONTRACTOR and the DISTRICT, the DISTRICT shall either cancel the Suspension Order or delete the work covered by such Suspension Order by issuing a change order.

If a Suspension Order is canceled or expires, the CONTRACTOR shall continue with the Project. A change order will be issued to cover any adjustments of the contract value or the Contract Time necessarily caused by such suspension. Any Claim by the CONTRACTOR for an adjustment of the contract value or the Contract Time shall be made within twenty-one (21) days after the end of the suspension. The CONTRACTOR agrees that submission of its claim within said twenty-one (21) days is an express condition precedent to its right to arbitrate or litigate such a claim.

The provisions of this section shall not apply if a Suspension Order is not issued by the DISTRICT. A Suspension Order shall not be required to stop the Project as permitted or required under any other provision of the Contract Documents.

**40. LIQUIDATED DAMAGES**

Time is of the essence in this Agreement. The DISTRICT and the CONTRACTOR agree that it will be difficult and/or impossible to determine the actual damage which the DISTRICT will sustain in the event of the CONTRACTOR's failure to fully perform the Project or to fully perform all of the CONTRACTOR's obligations that have accrued pursuant to the Agreement by the Contract Time. Accordingly, the DISTRICT and the CONTRACTOR agree in accordance with California Government Code Section 53069.85 that the CONTRACTOR will forfeit and pay to the DISTRICT liquidated damages in the sum of \$1,000.00 per day for each and every calendar day completion of the Project and/or performance of all of the CONTRACTOR's obligations that have accrued pursuant to the Agreement is delayed beyond the Contract Time. The DISTRICT and the CONTRACTOR further agree in accordance with California Government Code Section 53069.85 that the liquidated damages sum specified in this provision is not manifestly unreasonable under the circumstances existing at the time the Agreement was made, and that the DISTRICT may deduct liquidated damages sums in accordance with this provision from any payments due or that may become due the CONTRACTOR under the Agreement.

**41. SUBSTANTIAL COMPLETION**

Substantial Completion means the stage in the progress of the Project when the Project is complete in accordance with the Contract Documents, except only for completion of minor items which do not impair the DISTRICT's ability to occupy and fully utilize the Project for its intended purpose.

When the CONTRACTOR gives notice to the DISTRICT that the Project is substantially complete, unless the DISTRICT determines that the Project is not sufficiently complete to warrant an inspection to determine Substantial Completion, the DISTRICT will inspect the Project. If the DISTRICT determines that the Project is not substantially completed, the DISTRICT will prepare and give to the CONTRACTOR a comprehensive list of items to be completed or corrected before establishing Substantial Completion. The CONTRACTOR shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the CONTRACTOR to complete the Project in accordance with the Contract Documents. The DISTRICT will make an inspection to determine whether the Project is substantially complete.

**42. PUNCH LIST**

Once Substantial Completion has been determined, the CONTRACTOR shall conduct a site walk with the DISTRICT and prepare a punch list. The CONTRACTOR shall complete all punch list items within twenty-one (21) calendar days after the issuance of the punch list. The CONTRACTOR shall conduct follow-up punch walks as needed until all items have been completed to the satisfaction of the DISTRICT. The CONTRACTOR shall be the single point of contact for all punch list and warranty items and be responsible for all warranty items for the life of the Guaranty Period.

**43. FINAL COMPLETION**

All finished work will be subject to inspection and acceptance or rejection by the DISTRICT and any other government agencies having jurisdiction over the Project. Final Completion of the Project will be at the discretion of the DISTRICT.

Once all punch list work has been completed and upon notification from the CONTRACTOR that the Project is ready for final inspection, the DISTRICT will make such inspection. In evaluating the Project, no allowance

will be made for deviations from the Contract Documents unless already approved in writing in accordance with the terms and conditions of this Agreement.

Prior to acceptance of the Project, the CONTRACTOR shall perform the final clean-up of the Project site(s) including, but not limited to, trash and debris disposal, glass cleaning, trash chutes, and street cleaning, as applicable.

Before the DISTRICT determines Final Completion, the CONTRACTOR must:

- a) Submit the final Application for Payment and all submittals required in accordance with this Agreement; and
- b) Submit all guarantees and warranties procured by the CONTRACTOR from subcontractors, all operating manuals for equipment installed in the Project, as-built documents, and all other submittals required by the Contract Documents, as applicable.

The DISTRICT will accept the Project in writing only when the Project has been fully completed to the DISTRICT's reasonable satisfaction and in accordance with the Contract Documents, including, without limitation, satisfaction of all punch list items and submittals of required documents. When the DISTRICT determines that the Project has reached Final Completion, a Notice of Completion will be sent in writing to the CONTRACTOR.

The fact that the work and materials have been inspected from time to time and that progress payments have been made shall in no way be construed as acceptance of any part of the Project and does not relieve the CONTRACTOR of the responsibility of replacing and making good any defective or omitted work or materials in accordance with the requirements of the Contract Documents.

Acceptance of final payment by the CONTRACTOR shall constitute a waiver of all claims, except claims for retention and claims previously made in writing and identified by the CONTRACTOR as unsettled at the time of the final Application for Payment.

44.

#### **GUARANTY**

The CONTRACTOR warrants to the DISTRICT that all materials and equipment furnished under this Agreement will be of good quality, new, and free of liens, claims, and security interests of third Parties; that the construction work will be of good quality and free from defects; and that the construction work will conform to the requirements of the Contract Documents. If required by the DISTRICT, the CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

The CONTRACTOR guarantees the entirety of the Project for one (1) year from the date of Final Completion for the correction of defective work (Guaranty Period). Defective work is work that is unsatisfactory, faulty, omitted, incomplete, deficient, or does not conform to the requirements of the Contract Documents, directives of the DISTRICT, or the requirements of any inspection, reference standard, test, or approval specified in the Contract Documents.

The CONTRACTOR shall (1) correct defective work that becomes apparent during the progress of the Project or during the Guaranty Period and (2) replace, repair, or restore to the DISTRICT's satisfaction any other parts of the Project and any other real or personal property which is damaged or destroyed as a result of defective work or the correction of defective work. The CONTRACTOR shall promptly commence such correction, replacement, repair, or restoration upon notice from the DISTRICT, but in no case later than ten (10) days after receipt of such notice; and the CONTRACTOR shall diligently and continuously prosecute such correction to completion. The CONTRACTOR shall bear all costs of such correction, replacement, repair, or restoration, and all losses resulting from such defective work, including additional testing and inspection. The CONTRACTOR shall perform corrective work at such times that are acceptable to the DISTRICT and in such a manner as to avoid, to the extent practicable, disruption to the DISTRICT's operations.

If immediate correction of defective work is required for life safety or the protection of property and is performed by the DISTRICT or separate contractors, the CONTRACTOR shall pay to the DISTRICT all

reasonable costs of correcting such defective work. The CONTRACTOR shall replace, repair, or restore to the DISTRICT's satisfaction any other parts of the Project and any other real or personal property which is damaged or destroyed as a result of such defective work or the correction of such defective work.

The CONTRACTOR shall remove from the Project site(s) portions of the Project and materials which are not in accordance with the Contract Documents and which are neither corrected by the CONTRACTOR nor accepted by the DISTRICT.

If the CONTRACTOR fails to commence correction of defective work within ten (10) days after notice from the DISTRICT or fails to diligently prosecute such correction to completion, the DISTRICT may correct the defective work; and, in addition, the DISTRICT may remove the defective work and store salvageable materials and equipment at the CONTRACTOR's expense.

If the CONTRACTOR fails to pay the costs of such removal and storage as required by this section within ten (10) days after written demand, the DISTRICT may, without prejudice to other remedies, sell such materials at auction or at private sale, or otherwise dispose of such material. The CONTRACTOR shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which the CONTRACTOR is liable to the DISTRICT. If such proceeds of sale do not cover costs and damages for which the CONTRACTOR is liable to the DISTRICT, the contract value shall be reduced by such deficiency. If there are no remaining payments due the CONTRACTOR or the remaining payments are insufficient to cover such deficiency, the CONTRACTOR shall promptly pay the difference to the DISTRICT.

The CONTRACTOR's obligations under this section are in addition to and not in limitation of its Warranty in accordance with this Agreement or any other obligation of the CONTRACTOR under the Contract Documents. Enforcement of the CONTRACTOR's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies the DISTRICT may have under the Contract Documents or at law or in equity for defective work. Nothing contained in this section shall be construed to establish a period of limitation with respect to other obligations of the CONTRACTOR under the Contract Documents. Establishment of the Guarantee to Repair Period relates only to the specific obligation of the CONTRACTOR to correct the defective work and in no way limits either the CONTRACTOR's liability for defective work or the time within which proceedings may be commenced to enforce the CONTRACTOR's obligations under the Contract Documents.

**45. ASSURANCE OF PERFORMANCE**

If at any time DISTRICT believes the CONTRACTOR may not be adequately performing its obligations under this Agreement or that the CONTRACTOR may fail to complete the services as required by this Agreement, DISTRICT may, at its option, request from the CONTRACTOR prompt written assurances of performance and a written plan acceptable to DISTRICT, to correct the observed deficiencies in the CONTRACTOR's performance. The CONTRACTOR shall provide such written assurances and written plan within ten (10) calendar days of the receipt of DISTRICT request and shall thereafter diligently commence and fully perform such written plan. The CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time shall constitute grounds for termination pursuant to the terms and conditions of this Agreement.

**46. TERMINATION BY CONTRACTOR FOR CAUSE**

The CONTRACTOR shall have the right to terminate this Agreement only upon the occurrence of one of the following:

- a) Provided that the DISTRICT has not commenced reasonable action to remove any order of a court within the ninety (90) day period, the Project is stopped for ninety (90) consecutive days, through no act or fault of the CONTRACTOR, any subcontractor, or any employee or agent of the CONTRACTOR or any subcontractor, due to an issuance of an order of a court or other public authority having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable.
- b) The DISTRICT fails to perform any material obligation under the Contract Documents and fails to cure such default within thirty (30) days, or the DISTRICT has not commenced to cure such default within thirty (30) days where such cure will require a reasonable period beyond thirty (30) days

- and diligently prosecutes the same to completion, after receipt of notice from the CONTRACTOR stating the nature of such default.
- c) Repeated suspensions by the DISTRICT, other than such suspensions as are agreed to by the CONTRACTOR, which constitute in the aggregate more than 20% of the Contract Time.

Upon the occurrence of one of the events listed in above, the CONTRACTOR may, upon ten (10) days additional notice to the DISTRICT, and provided that the condition giving rise to the CONTRACTOR's right to terminate is continuing, terminate this Agreement.

Upon such termination by the CONTRACTOR, the DISTRICT shall pay to the CONTRACTOR the sum of the following:

- a) The amount of the contract value allocable to the portion of the Project properly performed by the CONTRACTOR as of the date of termination, less sums previously paid to the CONTRACTOR;
- b) Plus an amount equal to 5% of the difference between the contract value and the amount of the contract value allocable to the portion of the Project properly performed by the CONTRACTOR as of the date of termination;
- c) Plus previously unpaid costs of any items delivered to the Project site which were fabricated for subsequent incorporation in the Project;
- d) Plus any proven losses with respect to materials and equipment directly resulting from such termination;
- e) Plus reasonable demobilization costs;
- f) Plus reasonable costs of preparing a statement of the aforesaid costs, expenses, and losses in connection with such termination.

Such payment will be the sole and exclusive remedy to which the CONTRACTOR is entitled in the event of termination of this Agreement by the CONTRACTOR pursuant to this section; and the CONTRACTOR will be entitled to no other compensation or damages and expressly waives the same.

47. **TERMINATION BY DISTRICT FOR CAUSE**

The DISTRICT will have the right to terminate this Agreement for cause at any time after the occurrence of any of the following events:

- a) The CONTRACTOR becomes insolvent or files for relief under the bankruptcy laws of the United States.
- b) The CONTRACTOR makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.
- c) A receiver is appointed to take charge of the CONTRACTOR's property.
- d) The commencement or completion of any activity on the critical path is more than thirty (30) days behind the date set forth in the Contract Time for such activity, and which results in an inexcusable delay.
- e) The CONTRACTOR abandons the Project.

Upon the occurrence of any of the following events, the DISTRICT will have the right to terminate this Agreement for cause if the CONTRACTOR fails to promptly commence to cure such default and diligently prosecute such cure within five (5) days after notice from the DISTRICT, or within such longer period of time as is reasonably necessary to complete such cure:

- a) The CONTRACTOR persistently or repeatedly refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the Project in accordance with the Contract Documents.
- b) The CONTRACTOR fails to make prompt payment of amounts properly due subcontractors after receiving payment from the DISTRICT.
- c) The CONTRACTOR disregards applicable code requirements.
- d) The CONTRACTOR persistently or materially fails to execute the Project in accordance with the Contract Documents.
- e) The CONTRACTOR is in default of any other material obligation under the Contract Documents.
- f) The CONTRACTOR persistently or materially fails to comply with applicable safety requirements.

Upon any of the occurrences referred to in above, the DISTRICT may, at its election and by notice to the CONTRACTOR, terminate this Agreement and take possession of the Project site(s) and all materials, supplies, equipment, tools, and construction equipment and machinery thereon owned by the CONTRACTOR; accept the assignment of any or all of the subcontracts; and then complete the Project by any method the DISTRICT may deem expedient. If requested by the DISTRICT, the CONTRACTOR shall remove any part or all of the CONTRACTOR's materials, supplies, equipment, tools, and construction equipment and machinery from the Project site(s) within seven (7) days of such request; and if the CONTRACTOR fails to do so, the DISTRICT may remove or store, and after ninety (90) days sell, any of the same at the CONTRACTOR's expense.

If this Agreement is terminated by the DISTRICT as provided in this section, the CONTRACTOR shall not be entitled to receive any further payment until the expiration of thirty-five (35) days after Final Completion and acceptance of the Project by the DISTRICT.

If the unpaid balance of the contract value exceeds the cost of completing the Project, including all additional costs and expenses made necessary thereby, including costs for the DISTRICT's staff time, plus all losses sustained, including any liquidated damages provided under this Agreement, such excess shall be paid to the CONTRACTOR. If such costs, expenses, losses, and liquidated damages exceed the unpaid balance of the contract value, the CONTRACTOR shall pay such excess to the DISTRICT.

No termination or action taken by the DISTRICT after termination shall prejudice any other rights or remedies of the DISTRICT provided by law or by the Contract Documents upon such termination; and the DISTRICT may proceed against the CONTRACTOR to recover all losses suffered by the DISTRICT.

48. **TERMINATION BY DISTRICT FOR CONVENIENCE**

The DISTRICT may, at its option, terminate this Agreement, in whole or from time to time in part, at any time by giving notice to the CONTRACTOR. Upon such termination, the CONTRACTOR agrees to waive any claims for damages, including loss of anticipated profits, on account thereof; and, as the sole right and remedy of the CONTRACTOR, the DISTRICT shall pay the CONTRACTOR as outlined below.

Upon receipt of notice of termination under this section, the CONTRACTOR shall, unless the notice directs otherwise, do the following:

- a) Immediately discontinue work on the Project to the extent specified in the notice.
- b) Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the Project as is not discontinued.
- c) Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent they relate to the performance of the discontinued portion of the Project.
- d) Thereafter do only such work as may be necessary to preserve and protect work on the Project already in progress and to protect materials, plants, and equipment on the Project site(s) or in transit thereto.

Upon such termination, the obligations of this Agreement shall continue as to portions of the Project already performed and, subject to the CONTRACTOR's obligations outlined above, as to bona fide obligations assumed by the CONTRACTOR prior to the date of termination.

Upon such termination, the DISTRICT shall pay to the CONTRACTOR the sum of the following:

- a) The amount of the contract value allocable to the portion of the Project properly performed by the CONTRACTOR as of the date of termination, less sums previously paid to the CONTRACTOR;
- b) Plus an amount equal to 5% of the difference between the contract value and the amount of the contract value allocable to the portion of the Project properly performed by the CONTRACTOR as of the date of termination;
- c) Plus previously unpaid costs of any items delivered to the Project site(s) which were fabricated for subsequent incorporation in the Project;
- d) Plus any proven losses with respect to materials and equipment directly resulting from such termination;
- e) Plus reasonable demobilization costs;

- f) Plus reasonable costs of preparing a statement of the aforesaid costs, expenses, and losses in connection with such termination.

The above payment shall be the sole and exclusive remedy to which the CONTRACTOR is entitled in the event of termination of this Agreement by the DISTRICT pursuant to this section; and the CONTRACTOR will be entitled to no other compensation or damages and expressly waives same.

49. **DISPUTE RESOLUTION AND CONTINUANCE OF WORK**

In the event of a dispute between the Parties as to performance of the work or the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the Parties shall attempt to resolve the dispute. The CONTRACTOR or the DISTRICT may demand in writing an informal meet and confer conference to attempt to settle any matter in dispute. If the Parties are unable to settle the dispute, the matter shall be submitted to mediation, pursuant to the terms of California Public Contract Code 9204(d)(2)(B). Pending resolution of this dispute, the CONTRACTOR agrees to continue the Project diligently to completion. If the dispute is not resolved, the CONTRACTOR agrees it shall neither rescind this Agreement nor stop the progress of the Project. If the matter is not resolved after mediation, the CONTRACTOR's sole remedy shall be to submit such controversy to binding arbitration. Such arbitration shall be conducted in accordance with California Code of Civil Procedure 1280-1294.4 which provisions are expressly incorporated herein. The prevailing party shall be entitled, as part of its costs, to a reasonable attorney's fee to be fixed by the court or the arbitrator.

50. **ASSIGNMENT OF UNFAIR BUSINESS PRACTICES CLAIMS**

In accordance with California Public Contract Code Section 7103.5, the CONTRACTOR and any subcontractors offer and agree to assign to the DISTRICT all rights, title, and interest in and to all causes of action the CONTRACTOR or any subcontractors may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to this contract. This assignment shall be made and become effective at the time the DISTRICT tenders final payment to the CONTRACTOR, without further acknowledgement by the Parties.

51. **CLAIMS**

In accordance with California Public Contract Code Section 20104.2, the following procedures apply to claims of \$375,000 or less between the CONTRACTOR and the DISTRICT.

- a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be delivered within twenty-one (21) calendar days after the occurrence of the event giving rise to such claim or within twenty one (21) calendar days after the claimant first recognizes the condition giving rise to the claim, whichever is later. Failure to submit a claim within the specified time frame shall be reason to reject 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) For claims of less than fifty thousand dollars (\$50,000), the DISTRICT shall respond in writing to any written claim within forty-five (45) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the DISTRICT may have against the CONTRACTOR. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the DISTRICT and the CONTRACTOR. The DISTRICT's written response to the claim, as further documented, shall be submitted to the CONTRACTOR within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by the CONTRACTOR in producing the additional information, whichever is greater.
- c) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the DISTRICT shall respond in writing to all written claims within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the DISTRICT may have against the CONTRACTOR. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the DISTRICT and the CONTRACT. The DISTRICT's written response to the claim, as further

- documented, shall be submitted to the CONTRACTOR within thirty (30) days after receipt of the further documentation, or within a period of time no greater than that taken by the CONTRACTOR in producing the additional information or requested documentation, whichever is greater.
- d) If the CONTRACTOR disputes the DISTRICT's written response, or the DISTRICT fails to respond within the time prescribed, the CONTRACTOR may so notify the DISTRICT, in writing, either within fifteen (15) days of receipt of the DISTRICT's response or within fifteen (15) days of the DISTRICT'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 DISTRICT shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.
  - e) Following the meet and confer conference, if the claim or any portion remains in dispute, the CONTRACTOR 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 CONTRACTOR 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.

In accordance with California Public Contract Code Section 20104.4, the following procedures apply to civil actions to resolve claims of \$375,000 or less between the DISTRICT and the CONTRACTOR:

- a) Within sixty (60) days, but no earlier than thirty (30) days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both Parties. The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days of the submittal, and shall be concluded within fifteen (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) 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 of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 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.
- c) 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. 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 is 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.
- d) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

In accordance with California Public Contract Code Section 20104.6, the DISTRICT shall not fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the Agreement. In any suit filed under Public Contract Code Section 20104.4 concerning the Agreement, the DISTRICT shall pay interest at the legal rate on any arbitration award or judgment. Such interest shall accrue from date the suit was filed.

52. **CHOICE OF LAW**  
The CONTRACTOR agrees that if a dispute arises in the performance of this Agreement the laws of the State of California will govern.

53. **ENTIRE AGREEMENT**  
This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between DISTRICT and the CONTRACTOR relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments.

This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the Parties and sets forth the entire understanding of the Parties regarding the subject matter thereof.

54. **ACCESS AND RETENTION OF RECORDS**  
The CONTRACTOR shall provide the DISTRICT and its designees, upon request, access to all records related to this Agreement, and the CONTRACTOR shall maintain its records related to this Agreement for a period of not less than five (5) years after the final payment to the CONTRACTOR is made by the DISTRICT.

55. **MODIFICATION OF AGREEMENT**  
This Agreement may be supplemented, amended, or modified only by the mutual agreement of the Parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both Parties.

56. **SEVERABILITY**  
If any part of this Agreement or the application thereof is declared to be invalid for any reason, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are deemed severable.

57. **SUCCESSORS AND ASSIGNS**  
This Agreement is binding upon and inures to the benefit of the successor, executors, administrators, and assigns of each party to this Agreement, provided, however, that the CONTRACTOR shall not assign or transfer by operation of law or otherwise any or all rights, burdens, duties, or obligations without prior written consent of the DISTRICT. Any attempted assignment without such consent shall be invalid.

58. **NOTICES**  
All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

**Personal delivery:** When personally delivered to the recipient, notices are effective on delivery.

**First Class Mail:** When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox.

**Certified Mail:** When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

**Overnight Delivery:** When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL Worldwide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Addresses for purpose of giving notice are as follows:

To DISTRICT:  
Sacramento Metropolitan Fire District  
Attn: Erin Castleberry, Administrative Analyst  
10545 Armstrong Avenue, Suite 200  
Mather, CA 95655

To CONTRACTOR: R.A.L. Builders, Inc.  
Attn: Phil Raynal, President/Owner  
500 Giuseppe Court, Suite 1  
Roseville, CA 95678

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address by giving the other party notice of the change in any manner permitted by this Agreement.

59. **SIGNATORIES**

By signing this Agreement, signatories warrant and represent that they have executed this Agreement in their authorized capacity.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year above written.

DISTRICT:

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

Printed Name: \_\_\_\_\_

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

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

CONTRACTOR:

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

Printed Name: \_\_\_\_\_

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

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

**EXHIBIT A**  
**SCOPE OF WORK**

The Contractor shall furnish and install two (2) new freestanding patio coverings at Fire Station 68. The specifications and general conditions are outlined below.

**1. SPECIFICATIONS**

- A. Type: Freestanding, Class A
- B. Size: Dining patio covering (26' x 25'), fitness patio covering (28'6" x 29')
- C. Cover/Roof: Solid covered, flat pan (painted to match existing building)
- D. Span: Clear span
- E. Load requirements: 20lb load
- F. Structure: Galvanized steel posts, double headers with double C beam inserts (painted to match existing building)
- G. Groundwork: Footings (including saw cut)
- H. Electrical: Dining patio covering (8 LED can lights, 4 overhead fans, 2 electrical outlets), fitness patio covering (8 LED can lights, 4 overhead fans, 2 electrical outlets)

**2. GENERAL CONDITIONS**

- A. The Scope of Work, including Specifications, are to be treated by the Contractor as documents that indicate the general scope of the Project in terms of the District's Project criteria, the overall dimensions, the type of structural, electrical, utility, and all other systems, and an outline of the major elements. This Scope of Work does not necessarily indicate or describe all items required for the proper completion of the Project; but it is to be understood that the intent is a complete Project in every respect.
- B. The Contractor shall provide all services, materials, equipment, and labor necessary for a complete installation. Any other item necessary or required for the Project, such as the insurance required to be carried by Contractor, travel costs of Contractor, disposal of waste materials, fees of testing laboratories and royalties and licenses, if any, are the responsibility of the Contractor.
- C. Contractor shall provide all services necessary for obtaining and satisfying permitting requirements including, but not limited to, site specific engineering (if required), Title-24 calculations, submitting permit applications and required documents for permit issuance. Inspections required during the course of construction shall be arranged by the Contractor as required. Upon completion of the Project, furnish the District with certificates of inspection. The District will pay any applicable permit fees directly to the permitting agency upon notification by the Contractor.
- D. Contractor is responsible for protecting existing structure from damage. The District shall walk the Project with the Contractor to review existing conditions prior to the start of any work, and Contractor shall document such conditions in writing. Contractor shall restore to original condition, all surfaces damaged during accessing the areas of work, as necessary.
- E. The Contractor shall coordinate the scheduling of all work with the District. Within ten (10) days following the execution of the contract, the Contractor shall provide to the District a Project schedule including milestones and critical path activities. The Contractor shall coordinate Project commencement and site access with the District.

- F. A submittal schedule shall be issued by the Contractor within fifteen (15) days of contract award. This schedule shall allow for timely review and approval as required by the Contract Documents. Submittals shall include the following:
  - i) Shop drawings for structure
  - ii) Specifications for lighting and overhead fans
- G. Submittals will be reviewed for general acceptability, not necessarily including all details. The District's review is for general conformance with the intent of the Project and the information given in the Contract Documents. The Contractor is solely responsible for confirming and correlating all quantities and dimensions; selecting fabrication processes and techniques of construction; coordinating the work with that of other trades and performing all work in a safe and satisfactory manner, in accordance with all applicable codes and regulations. Corrections or comments made on submittals during review do not relieve Contractor from compliance with the requirements of the Contract Documents or with its responsibilities listed herein.
- H. Contractor shall be responsible for delivery, storage, protection and placing of all equipment and materials. Equipment stored and installed at the job site shall be covered and protected from all dust, water, weather or other potentially damaging exposures.
- I. Contractor shall provide the District with "as-built" record drawings (Project Record Documents) detailing all work completed. Further, Contractor shall provide the District with a minimum one (1) year written warranty on all labor, materials, and equipment upon final completion of the Project, and shall provide the District with two (2) copies of the operations and maintenance manuals for all new equipment. Contractor shall demonstrate proper operating and maintenance procedures for the District.

**EXHIBIT B**  
**Payment Terms**

**1. CONTRACT PRICE**

- A. Contract Price. As full compensation in consideration of completion of the Project in accordance with the Contract Documents, and in consideration of the fulfilment of all of the CONTRACTOR's obligations under the Contract Documents, the DISTRICT will pay to the CONTRACTOR in lawful money of the United States the total price of **\$135,620**.
- B. Additives. The additives below may be added to the Contract Price at the discretion of the DISTRICT if required for Project completion:
- |   |                       |
|---|-----------------------|
| 1) Site Specific Engineering (if required for permitting) | \$2,000               |
| 2) Underground work for unmarked conduits (if required)   | Not to Exceed \$7,000 |

**2. PAYMENT TERMS**

Payment will be made to the CONTRACTOR in accordance with the following:

- A. Basis of Payment. Payment shall be made for work actually performed on a percent completed basis. Applications for payment shall specify the percentage of completion as to each milestone that is subject to the application, and no advance payment shall be made for the goods or services furnished by the CONTRACTOR pursuant to the Agreement. From each progress payment, a retention of five percent (5%) shall be withheld as security for final performance on the Project.

The CONTRACTOR shall accept a purchase order from the DISTRICT with Net 60 day payment terms from the date of the application for payment.

- B. Applications for Payment. Applications for payment shall be provided to the DISTRICT no less than monthly once work on the Project has commenced. To be eligible for payment, the CONTRACTOR's applications for payment shall include a copy of internal certified payroll reports from the CONTRACTOR and any subcontractors, and all necessary supporting documentation (such as fringe benefits statement), prepared in accordance with California Labor Code Section 1776 and the Agreement for each employee of the CONTRACTOR and any subcontractors engaged in the performance of the Project during the preceding months. The certified payroll records shall be on the forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division (<https://www.dir.ca.gov/ilse/DLSE-PublicWorks.htm>). Separately, the CONTRACTOR and all subcontractors shall also submit their certified payroll records directly to the Labor Commissioner using the DIR's data-driven electronic Certified Payroll Record (eCPR) reporting system as required by the Agreement. Applications for payment will not be processed without the required internal certified payroll reports and verification that such certified payroll reports have been uploaded to the DIR as described herein. Copies of submitted eCPRs may be provided to the DISTRICT as a supplement to the required internal certified payroll reports, but in no way shall be considered a substitute for the required internal certified payroll reports. Failure to comply with these requirements or to provide an application for payment in conformance with this section may delay payment.
- C. Final Payment. The DISTRICT shall pay the CONTRACTOR's final application for payment and release retention in accordance with applicable law and this section, following acceptance of the Project provided that:
- 1) The CONTRACTOR has furnished satisfactory evidence that all claims for labor and material have been paid, or the time for filing valid stop notices has passed and no stop notices have been filed, or all stop notices filed have been released by valid release or release bond acceptable to the DISTRICT.
  - 2) No claim has been presented to the DISTRICT by any person based upon any acts or omissions of the CONTRACTOR or any subcontractor engaged in the performance of the Project.
  - 3) No other claim or dispute exists under the Agreement or applicable law concerning payment of the CONTRACTOR's final invoice and/or release of the Agreement retention.
  - 4) The CONTRACTOR's application for final payment contains a written waiver of all claims against the DISTRICT of which the CONTRACTOR may not yet have asserted at the time of the submission of the application for final payment.



DAN HAVERTY  
*Interim Fire Chief*

# Sacramento Metropolitan Fire District

10545 Armstrong Ave., Suite 200 · Mather, CA 95655 · Phone (916) 859-4300 · Fax (916) 859-3702

**DATE:** January 12, 2023  
**TO:** Board of Directors  
**SUBJECT:** Development Impact Fee Report FY 2021-22

## SUMMARY

Fire capital facilities fees are collected at the time a building permit is issued to ensure that new development pays a proportionate share of the capital investments made by the District. These fees fund fire protection, fire suppression, emergency medical services, and other emergency services necessary for a growing service population. Government Code §66000 et seq. requires the District to review the status of collected development impact fees annually. The attached report provides information related to the status of development impact fee funds for the fiscal year ended June 30, 2022.

## DISCUSSION

At the end of Fiscal Year 2021-22, the District has one development impact fee supported by a nexus study and accounted for in one separate fund. The fee is administered by Sacramento County on behalf of the District.

The attached development impact fee report provides the revenues, expenditures, and fund balances for the development impact fee fund for the fiscal year ended June 30, 2022, and the prior four fiscal years. The report describes how the fees are being spent timely and includes supporting project information used to make certain findings about the fees.

As of June 30, 2022, all reportable fees, collections and expenditures have been received, deposited, invested, and expended in compliance with the relevant sections of the California Government Code and all other applicable laws.

## FISCAL IMPACT

None.

## **RECOMMENDATION**

Staff recommends that the Board approve the Resolution accepting the attached report and making the required findings pursuant to Government Code §66000 et seq.

Submitted By:

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Dave O'Toole  
Chief Financial Officer

Attachments:

1. Development Impact Fee Report FY 2021-22
2. Board resolution

# **SACRAMENTO METROPOLITAN FIRE DISTRICT**

**DEVELOPMENT IMPACT FEE REPORT  
FOR THE FISCAL YEAR ENDED JUNE 30, 2022**





DAN HAVERTY  
Fire Chief

## Sacramento Metropolitan Fire District

10545 Armstrong Ave., Suite 200 • Mather, CA 95655 • Phone (916) 859-4300 • Fax (916) 859-3702

January 12, 2023

Board of Directors  
Sacramento Metropolitan Fire District  
10545 Armstrong Ave, Suite 200  
Mather, California 95655

Members of the Board:

State law requires any local agency that imposes development impact fees to prepare an annual report providing specific information about those fees and specifies that the report be made available to the public within 180 days after the last day of each fiscal year. Development Impact Fees (DIF) are charged by local governmental agencies in connection with approval of development projects to pay for critical services and infrastructure to support new communities. The legal requirements for enactment of a DIF program are set forth in Government Code §66000-66025 (the "Mitigation Fee Act"), the bulk of which was established by AB 1600 (Chapter 927, Statutes of 1987), and are commonly referred to as "AB 1600 requirements."

In the Sacramento Metropolitan Fire District, DIFs are collected at the time a building permit is issued to a developer. The purpose of the fee is to ensure that new development within the District boundaries pays a proportionate share of the capital investments necessary to provide fire protection, fire suppression, emergency medical services, and other emergency services adequate to a larger service population.

A Fire Department Growth Analysis Report was prepared for the District in 2013 that identified the fire station, apparatus and staffing necessary to serve future development and, in 2015, the current fee structure was adopted. The District applied current fire station construction costs to facilities identified in the report to develop an overall facilities master plan for the District. This information was used to perform a capital facilities impact fee study and analysis which determined the portion of the projected facilities cost attributable to new development over the ensuing 20-year planning horizon. Using that information and following recent California court decisions indicating that DIF-type fees should meet an "essential nexus" legal standard, fees are set using a calculation of community need, benefit to the developed area, and cost proportionality for different types and amounts of development. An updated nexus study was completed in 2021, resulting in the adoption of an updated fee schedule by the District's Board of Directors in May 2021.

The Board of Directors must review the annual report at a regularly scheduled public meeting after the information is made available to the public. This report was posted on the District's website and made available for public review on November 2, 2022. Therefore, in accordance with the provisions of the California Government Code §66006(b) and 66001(d) the Development Impact Fee (DIF) Report for the Sacramento Metropolitan Fire District for the fiscal year ended June 30, 2022, is submitted for your consideration and approval.

  
Dave O'Toole  
Chief Financial Officer



The statutory requirements for this report and current status of DIF and related projects are described in this section.

**Government Code §66006(b)**

This section defines the specific reporting requirements for local agencies that impose DIFs on new development. For each separate fund established for the collection and expenditure of DIFs, the local agency shall, within 180 days after the last day of each fiscal year, make available to the public the information shown below for the most recent fiscal year. Page numbers indicating where each item can be found in the report, or an explanation for its absence, are provided for reference.

- A brief description of the type of fee in the account or fund. (*Page 2*)
- The amount of the fee. (*Page 2*)
- The beginning and ending balance of the account or fund. (*Page 3*)
- The amount of the fees collected and interest earned. (*Page 3*)
- An identification of each public improvement on which fees were expended and the amount of expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees. (*Page 4*)
- An identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement. (*Page 4*)
- A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid and the rate of interest that the account or fund will receive on the loan. (*No interfund transfers or loans made*)
- The amount of refunds made due to sufficient funds being collected to complete financing on incomplete public improvements, and the amount of reallocation of funds made due to administrative costs of refunding unexpended revenues exceeding the amount to be refunded. (*No refunds required to date*)

**Government Code §66001(d)**

Government Code §66001(d) provides additional requirements for all funds established for the collection and expenditure of DIFs. For the fifth fiscal year following the first deposit into the fund and every five years thereafter, the local agency shall make all of the following findings with respect to that portion of the fund remaining unexpended, whether committed or uncommitted:

- Identify the purpose to which the fee is to be put.
- Demonstrate a reasonable relationship between the fee and purpose for which it is charged.
- Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements.
- Designate the approximate dates on which the funding is expected to be deposited into the appropriate account or fund.

*As of June 30, 2022, the District's DIF Fund did not hold any funds past the fifth year of first deposit, therefore, no additional findings are required.*



### Major CIP Projects

The District has recently completed the construction of the new Station 68 at 12065 Cobble Brook Drive in the City of Rancho Cordova. The new station has a total area of 9,191 square feet sitting on a 2.62-acre parcel. It also includes a 2,400 square-foot metal storage building and truck washing station with a 1,000 gallon above ground fuel storage tank. The fire station serves a population of over 14,000 residents in the City of Rancho Cordova, including the communities of Anatolia, Kavala Ranch, Sunridge, and Americana. The station was put into operational service on May 27, 2022.



### Capital Fire Facilities Fees

Capital fire facilities fees provide funding for additional fire stations and fire equipment that will safeguard the lives and property of those who will occupy new developments. The fee is first established by the District and updated annually to reflect cost changes in the Engineering News Record Building Cost Index. Below is the fee schedule effective as of September 26, 2022.

#### **SACRAMENTO METROPOLITAN FIRE DISTRICT CAPITAL FIRE FACILITIES FEE**

<b>Land Use</b>	<b>Fee Basis</b>	<b>Fee</b>
Single-Family Residential	per dwelling unit	\$1,576
Multi-Family Residential	per dwelling unit	\$1,235
Commercial/Retail	per 1,000 sq. ft. of building space	\$1,306
Office	per 1,000 sq. ft. of building space	\$1,658
Industrial	per 1,000 sq. ft. of building space	\$887
Institutional/Other	per 1,000 sq. ft. of building space	\$1,580

All DIF collected has been earmarked for current or future capital projects necessary to provide current levels of service for existing service areas to new development areas.



## DEVELOPMENT IMPACT FEE REPORT

### Sacramento Metropolitan Fire District

### Statements of Revenues, Expenditures, and Changes in Fund Balances Development Impact Fee Fund

#### Last Five Fiscal Years

	2022	2021	2020	2019	2018
<b>REVENUES</b>					
Development Fees	\$ 2,635,223	\$ 2,842,887	\$ 1,492,492	\$ 1,600,941	\$ 1,231,621
Interest Income <sup>(1)</sup>	(39,693)	(2,455)	174,317	156,115	38,028
Total Revenues	<u>2,595,530</u>	<u>2,840,432</u>	<u>1,666,809</u>	<u>1,757,056</u>	<u>1,269,649</u>
<b>EXPENDITURES</b>					
Services and Supplies <sup>(2)</sup>	108,488	64,658	67,634	64,722	64,201
Capital Outlay	4,854,284	3,256,507	406,315	7,437	-
Total Expenditures	<u>4,962,772</u>	<u>3,321,165</u>	<u>473,949</u>	<u>72,159</u>	<u>64,201</u>
Excess (Deficiency) of Revenues Over (Under) Expenditures	<u>(2,367,242)</u>	<u>(480,733)</u>	<u>1,192,860</u>	<u>1,684,897</u>	<u>1,205,448</u>
<b>OTHER FINANCING SOURCES</b>					
Transfers In (out)	-	-	-	-	-
Net Change in Fund Balance	<u>(2,367,242)</u>	<u>(480,733)</u>	<u>1,192,860</u>	<u>1,684,897</u>	<u>1,205,448</u>
Fund Balance, Beginning of Year	<u>6,537,556</u>	<u>7,018,289</u>	<u>5,825,429</u>	<u>4,140,532</u>	<u>2,935,084</u>
Fund Balance, End of Year	<u>\$ 4,170,314</u>	<u>\$ 6,537,556</u>	<u>\$ 7,018,289</u>	<u>\$ 5,825,429</u>	<u>\$ 4,140,532</u>
<b>Five-Year Revenue Test <sup>(3)</sup></b>					
Revenue Available:					
Current Fiscal Year	\$ 2,595,530	\$ 2,840,432	\$ 1,666,809	\$ 1,757,056	\$ 1,269,649
Prior Fiscal Year (2-yr old funds)	1,574,784	1,666,809	1,757,056	1,269,649	1,521,508
Prior Fiscal Year (3-yr old funds)	-	1,757,056	1,269,649	1,521,508	1,349,375
Prior Fiscal Year (4-yr old funds)	-	273,259	1,521,508	1,277,216	-
Prior Fiscal Year (5-yr old funds)	-	-	803,267	-	-
In Excess of Five Prior Fiscal Years	-	-	-	-	-
Total Revenue Available	<u>\$ 4,170,314</u>	<u>\$ 6,537,556</u>	<u>\$ 7,018,289</u>	<u>\$ 5,825,429</u>	<u>\$ 4,140,532</u>

**Result:** No excess funds held. Five-year revenue test met in accordance with Government Code § 66001(d).  
No additional findings required.

#### Notes:

- (1) Negative interest income is mainly due to unrealized investment losses in the Fund's portfolio that resulted from rising interest rates. As rates rise, the market value of fixed income security holdings with lower fixed rates are negatively impacted.
- (2) Represents service fees charged by the County of Sacramento for collecting impact fees in behalf of the District.
- (3) For purposes of determining funds that have been held past the fifth year of first deposit, expenditures are deemed to come from the earliest source of funds (first-in first-out method). Any remaining funds past the fifth year must be reported in accordance with Government Code § 66001 (d).



## DEVELOPMENT IMPACT FEE REPORT

### Development Impact Fee Project Identification As of June 30, 2022

Project Name	Project Phase	Construction Start Date	Completion Date	Estimated Project Cost <sup>(1)</sup>	Actual Cost To Date <sup>(1)</sup>	Estimated % of Project Funded with Fees
Fire Station 68	Completed	2/17/2021	5/27/2022	\$9,000,000	\$ 8,558,570	100%

#### Notes

(1) Estimated project cost is the total estimated costs for the duration of the project. Actual cost to date is the amount of impact fees spent for the project from its inception.



DAN HAVERTY  
Interim Fire Chief

# Sacramento Metropolitan Fire District

10545 Armstrong Ave., Suite #200, Mather, CA 95655 · (916) 859-4300 · Fax (916) 859-3700

RESOLUTION NO. 2023-\_\_

## A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SACRAMENTO METROPOLITAN FIRE DISTRICT TO RECEIVE AND FILE THE 2020/21 DEVELOPMENT IMPACT FEE REPORT AND MAKE CERTAIN FINDINGS, AS REQUIRED BY CALIFORNIA GOVERNMENT CODE §66006(b) AND §66001(d)

**WHEREAS**, California Government Code §66006(b) requires that for each separate account or fund established for the collection and expenditure of Development Impact Fees, the District shall make available to the public within one hundred eighty (180) days after the last day of each fiscal year a report describing the fee, balances, and associated public improvements; and

**WHEREAS**, California Government Code §66001(d) provides that for the fifth fiscal year following the first deposit into the fund, and every five years thereafter, the District shall make findings with respect to that portion of the fund remaining unexpended, whether committed or uncommitted; and

**WHEREAS**, when findings are required by California Government Code §66001(d), they shall be made in connection with the public information required by California Government Code §66006(b); and

**WHEREAS**, California Government Code §66006(b)(2) requires that the District review the information made available to the public at a regularly scheduled public meeting not less than 15 days after the information is made available to the public; and

**WHEREAS**, this report was posted on the District's website and made available for public review on November 2, 2022; and

**WHEREAS**, the District has complied with all of the foregoing provisions.

**NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE SACRAMENTO METROPOLITAN FIRE DISTRICT DOES HERBY RESOLVE AS FOLLOWS:**

**Section 1.** The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

**Section 2.** That the Board of Directors of the Sacramento Metropolitan Fire District at a public meeting has reviewed the following information pursuant to California Government Code §66006(b)(1), as is required by California Government Code §66006(b)(2), including:

- (A) A brief description of the type of fee in the account or fund;
- (B) The amount of the fee;

**Resolution No. 2023-\_\_\_\_\_**

- (C) The beginning and ending balance of the account or fund;
- (D) The amount of the fees collected and interest earned;
- (E) An identification of each public improvement on which fees were expended and the amount of expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees;
- (F) An identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement;
- (G) A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid and the rate of interest that the account or fund will receive on the loan; and
- (H) The amount of refunds made due to sufficient funds being collected to complete financing on incomplete public improvements, and the amount of reallocation of funds made due to administrative costs of refunding unexpended revenues exceeding the amount to be refunded.

**Section 3.** That the Board of Directors hereby determines that all reportable fees, collections and expenditures have been received, deposited, invested, and expended in compliance with the relevant sections of the California Government Code and all other applicable laws for the fiscal year ended June 30, 2022.

**Section 4.** That the Board of Directors hereby determines that there are no additional findings with respect to excess funds held past the fifth year of first deposit and that there are no refunds and allocations of reportable fees deemed payable at this time, as required by California Government Code §66001.

**PASSED AND APPROVED** this 12<sup>th</sup> day of January, 2023, by the following vote, to wit:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

**Sacramento Metropolitan Fire District**

By: \_\_\_\_\_  
President, Board of Directors

**Attested by:**

Clerk of the Board



# Sacramento Metropolitan Fire District

10545 Armstrong Ave., Suite #200, Mather, CA 95655 · (916) 859-4300 · Fax (916) 859-3700

TODD HARMS  
Fire Chief

**DATE:** January 12, 2023

**TO:** Board of Directors

**SUBJECT:** Surplus Real Property – Oak Avenue (APN #'s 213-0014-038 and 213-0014-039)

## BACKGROUND

The Sacramento Metro Fire District (District) took possession of two vacant parcels of real property, totaling 1.7 acres along the 8800 block of Oak Avenue in Orangevale (Site) after its merger with Sacramento County Fire Protection District, who had owned the parcels since 1993. The Site had been an intended station location for Sacramento County Fire Protection District, but the Site has remained undeveloped since it was acquired by the District.

## DISCUSSION

The intended first-due area for the Site encompasses just over three square miles in the northeast portion of the District's jurisdiction. Per the District's adopted response standards, the intended first due is designated as an Emerging Suburban Area (population 500-1,000/sq. mile), requiring first-due response (travel time) within 10 minutes. While drive-time modeling shows that existing adjacent stations (Stations 22, 28, and 29) can provide 10-minute response to 93% of the Site's intended first due area, leaving a response gap of approximately 0.24 square miles, actual average travel time for the past two years has been 7 minutes. Likewise, drive-time modeling shows that the 0.24 square mile gap area can be reached by Stations 22, 28, and 29 within 14 minutes, and actual average travel time over the past two years has been 10 minutes. Because the area served by this Site already receives sufficient response in accordance with the District's adopted standards, the Site is not considered an operationally necessary station location.

District Policy #106.1 requires the Board of Directors (Board) to designate property as surplus prior to disposing of the asset. Since the Site is not considered operationally relevant to the District's service delivery, the District no longer has use for the Site. If the Board designates the Site as surplus, the District must comply with California Surplus Land Act disposal procedures, which requires a Notice of Availability be sent to public agencies and affordable housing developers. If no qualified offers are received within 60 days, the District may then market the Site for sale. The disposition of the Site will require subsequent Board action.

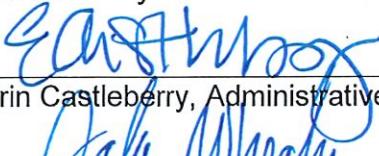
## FISCAL IMPACT

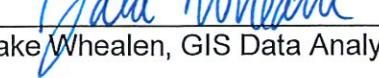
An appraisal report for the Site was obtained and the fair market value of the Site is \$495,000.

## RECOMMENDATION

Staff recommends that the Board declare the vacant 1.7 acre Site as surplus and authorize the Fire Chief or his designee to begin the disposition process.

Submitted by:

  
Erin Castleberry, Administrative Analyst

  
Jake Whealen, GIS Data Analyst

Approved by:

  
Jeff Frye, Chief Development Officer



Dan Haverty  
Interim Fire Chief

# Sacramento Metropolitan Fire District

10545 Armstrong Ave., Suite #200, Mather, CA 95655 · (916) 859-4300 · Fax (916) 859-3700

RESOLUTION NO. 2023-\_\_\_\_

BEFORE THE GOVERNING BOARD OF

THE SACRAMENTO METROPOLITAN FIRE DISTRICT

County of Sacramento, State of California

## A RESOLUTION DECLARING SURPLUS REAL PROPERTY FOR APN #'s 213-0014-038 and 213-0014-039

**WHEREAS**, the Sacramento Metropolitan Fire District (Metro Fire) provides fire protection, emergency medical services and hazardous material response to a population of over 720,000 throughout a 359 square mile area; and

**WHEREAS**, Metro Fire is the owner of 2 parcels totaling 1.7 acres located along the 8800 block of Oak Avenue in Orangevale (Site); and

**WHEREAS**, the Site is undeveloped and vacant; and

**WHEREAS**, Metro Fire has determined that the Site is not operationally viable;

**THEREFORE, BE IT RESOLVED**, that the Sacramento Metropolitan Fire District, a public entity established under the laws of the State of California, does hereby:

1. Declare the aforementioned Site surplus real property.
2. Authorize the Fire Chief or his designee as its Authorized Agent(s) to begin the disposition process for the aforementioned Site.

PASSED AND APPROVED this 12<sup>th</sup> day of January, 2023, by the following vote, to wit:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

Sacramento Metropolitan Fire District

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President, Board of Directors

Attested by:

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Clerk of the Board