



## Section 11

### Construction Project Closeout

#### Covered in this Section

- A. Close-Out Log
- B. Punch List
- C. Completion of ADA Work
- D. General Final Clean-up
- E. As-Builts
- F. DSA Close-out Requirements
- G. Warranty and Maintenance Manuals
- H. Documents to be Provided to District
- I. Notice of Completion
- J. Partial Completion and Substantial Completion

Closeout is the process for final completion of the project including the requirements for DSA certification. Final completion means all work for the project is complete, including punch lists, and all work complies with the approved contract documents, change orders and DSA requirements.

#### **A. CLOSE-OUT LOG**

A close-out log will be generated at the start of the project to ensure a complete and thorough close out of documents, certifications, procedures and materials can take place throughout the course of the project. All documents and contract materials related to closeout shall be transmitted formally using an itemized transmittal for tracking and confirmation of transfer receipt. Transmitted items will be acknowledged using date and signature either in writing or electronically.

#### **B. PUNCH LIST**

A punch list is prepared only after the project is substantially complete. The Bond Manager, IOR, and design professional will prepare a punch list of items required to complete the contract documents and ensure compliance with the DSA approved plans so the project may be completed by the contractor and a final DSA closeout approved.

The Bond Manager will provide contractor with a specified time to complete the punch list on a project. If the punch list is not completed by the end of the punch list time, the Bond Manager may issue a valued punch list to the contractor and withhold a percentage of the value of the punch list work until completed.

#### **C. COMPLETION OF ADA WORK**

The Bond Manager will ensure that ADA work is completed/corrected to comply with and receive DSA certification.

#### **D. GENERAL FINAL CLEAN-UP**

Upon completion of the work, contractor shall employ experienced workers or professional cleaners for final cleaning. Each surface will be cleaned to the condition expected in a normal, commercial, building cleaning and maintenance program.

#### **E. AS-BUILTS**

The Bond Manager will ensure that the following information is correctly drawn on the prints and accurately located on as-built drawings:

- Indications of changes to original drawings, inclusive of all architects supplemental instructions, RFI clarifications, addenda and change orders;
- Location and elevations of covered utilities, including valves, cleanouts, etc. ;
- Architect of record approval of “as-built” information;
- DSA Inspector’s approval of the “as-built” information.

Contractor shall deliver a bound copy and an electronic file in a format acceptable to the District.

**F. DSA CLOSE-OUT REQUIREMENTS**

The Bond Manager will ensure that contractor performs all work within its scope to comply with the DSA requirements per PR-13-06.

Bond Manager shall ensure that contractor executes a Form DSA 6-C as required under Title 24 Sections 4-343 and PR-13-01. The contractor understands that the filing with DSA of a Form 6-C is a requirement to obtain final DSA approval of the construction by the contractor and utilized to verify under penalty of perjury that the work performed by the contractor complies with the DSA approved contract documents.

**G. WARRANTY AND MAINTENANCE MANUALS**

Bond Manager will ensure that three hard copies and one electronic copy of complete warranty and O&M documents (including warranties and operations and maintenance instructions consistent with the requirements of the contract and contract documents including repair parts lists, service instructions for all electrical and mechanical equipment, and equipment warranties) are submitted in bound 8½" x 11" binders and electronically, including a table of contents in front and indexed with tabs.

Each manual will contain of a list of subcontractors, with their addresses and the names of persons to contact in cases of emergency. Identifying labels will provide names of manufactures, their addresses, ratings, and capacities of equipment and machinery.

**H. DOCUMENTS TO BE PROVIDED TO THE DISTRICT**

Contractor shall provide all project documents and files, including but not limited to contractor's daily reports, RFIs, submittals, correspondence, certifications, forms, meeting minutes, and unconditional releases.

The IOR will provide the DSA job file per T-24 4-342 and PR 13-01.

**I. NOTICE OF COMPLETION**

At the completion of the overall project, and submission by the contractor and acceptance of all contract requirements by the Bond Manager, the BOE shall accept the project as complete and authorize the filing of a notice of completion with the county clerk and recorder. The BOE has delegated authority to Superintendent to accept negotiated projects as complete if the contract value is less than \$45,000.<sup>1</sup>

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<sup>1</sup> See Section 4 page 4



## **J. PARTIAL COMPLETION AND SUBSTANTIAL COMPLETION**

The District reserves the right to partially occupy complete or partially complete portions of the project. If the District opts to occupy portions of the project, the Bond Manager will issue partial acceptance for that portion of the project being occupied. The partial acceptance will be subject to a punch list that will be prepared by the design professional for that portion of the project being occupied. This partial occupancy shall not constitute the commencement of the warranty period.

Substantial completion shall be defined as that time in the project when the work has been substantially completed such that the project can be utilized for its intended purpose. The District may at its option fully occupy the project. A punch list will be established by the design professional for the entire project prior to establishing the date for substantial completion.

Warranties required by the contract documents shall commence on the date of completion of the entire work. Warranty periods do not commence at substantial completion or when a particular subcontractor work is complete. No additional charges, extras, change orders, or claims may be sought for warranties commencing from the notice of completion.

The District shall have the right to utilize equipment, test and operate as necessary for acclimation, or testing without voiding or starting warranties. Taking beneficial occupancy shall not start warranties except in the case where the District agrees, in writing, that warranties shall commence running or where the District is taking phased occupancy of specific buildings or areas and completes separate punch lists.



## Section 9

# Payment Procedures

**Included in this section:**

### **Payment Procedures**

- A. General Invoices**
- B. Contractor Payment Application**

## A. GENERAL INVOICES<sup>1</sup>

The District will strive to pay invoices within 30 days of receiving an invoice. The following process has been implemented to comply with this policy:

As Invoices are received for payment, they are date stamped, and routed for management review and approval within three days. The invoices are then counter-signed and dated by two members of the bond management team, then authorized as OK to Pay.

Approved invoices are copied and registered in the invoice log. The copy is then placed in the corresponding purchase order file, and the original is placed in an inter-office envelope and transmitted to the Assistant Superintendent Business for signature.

Upon signature, the Assistant Superintendent Business will have the invoices delivered to the Accounts Payable Department for processing payment with LACOE. *(Note: If Assistant Superintendent Business is out of office for a period of time and unable to execute invoices, then anyone designated by the District can complete the invoice approval.)*

Five days after transmittal to the Assistant Superintendent Business, there is a follow up to verify the invoice has been delivered to Accounts Payable. If the invoice has not been delivered, the Assistant Superintendent Business is contacted.

Accounts Payable receives a warrant from LACOE, and issues payment to Contractor/Vendor.

At the end of each month, a copy of the commercial warrant register is downloaded and reviewed to confirm and update the invoice log.

The RAD Expenditure Report is to be run on the 1st of the month, for the previous month and transmitted electronically to CFS. If the first of the month falls on a Saturday or Sunday, reports are transmitted on the following Monday.

## B. CONTRACTOR PAYMENT APPLICATION<sup>2</sup>

An approved Monthly Pay Application shall be paid by the District within 45 days after receipt and acceptance by the Design Professional, the IOR, and the Bond Manager in accordance with the California Prompt Payment Act. The following process has been implemented to comply with the Prompt Payment Act.

Within ten calendar days after the date of the Notice to Proceed, the Contractor will furnish a schedule of values (SOV) which is the basis for payment requests. The SOV will identify costs for each itemized activity and a breakdown of anticipated monthly earnings for payments in accordance with the contract.

The SOV is the basis for the Monthly Application for Payment. The Contractor shall be required to provide this breakdown by building and site, labor and material, allowances, and bonds. All work identified on

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<sup>1</sup> Performance Audit 2016-17 Observation 4A Improvement Recommendation

<sup>2</sup> Performance Audit 2016-17 Observation 4B Improvement Recommendation



## Beverly Hills Unified School District

schedule of values is required to be categorized by either modernization or new construction. The SOV shall be required to be updated with each monthly billing, as COs are added. SOV shall not change once it has been approved.

The following forms must also be submitted along with application for payment and SOV:

- conditional waiver and release upon progress payment (For the present month);
- unconditional waiver and release upon progress payment (For the previous month);
- conditional waiver and release upon final payment (For final payment request);
- unconditional waiver and release upon final payment (For final payment request);
- safety program compliance form .

All payments to the contractor are subject to five percent retention. The District may increase this retention to the traditional ten percent level only if the BOE approves the increase and makes findings that the project is sufficiently complex to justify the increased retention. The District may offer or approve requests for retention reduction after 50 percent completion.

No payments will be made until unconditional release upon progress payment form that covers the full period through the last payment received by the contractor is submitted by the contractor for itself and its subcontractors/suppliers that have performed work during the period in question.

The Contractor may submit payment requests monthly that show the percentage of work for each line item in the SOV. A member of the bond management team, design professional, and IOR will review the percentage of work completed compared to the approved SOV. The percentage complete must be justified by verified quantities of materials and labor. If the payment request is acceptable, then the design professional, IOR and bond management team member will sign the payment request and forward for processing.

Upon receipt of the approved payment request, the pay application will be date stamped, a copy will be made for the purchase order file, and the pay application will be registered in the invoice log.

Original pay applications are placed in an inter-office enveloped along with a transmittal (requesting that the warrant be sent to the facilities office for delivery to the contractor) to the Assistant Superintendent Business for signature. Upon signature, the Assistant Superintendent Business will have the invoices delivered to accounts payable department for processing payment with LACOE.

When the accounts payable department receives a warrant from LACOE, it will be mailed to the Contractor unless otherwise requested by the facilities office.

Note: If the Assistant Superintendent Business is out of office for a period of time and unable to execute invoices, then the Superintendent or designee will approve the invoices.

Note: Five business days after the transmittal to the Assistant Superintendent Business, the pay application status will be checked to ensure it was delivered to accounts payable. If not, a call will be placed to the Assistant Superintendent Business.

Note: At the end of each month, a copy of the commercial warrant register will be downloaded and used to update and balance the invoice log.



## Beverly Hills Unified School District

On the monthly payment request, the Contractor may request payment for certain construction materials and equipment delivered to the site (or off-site) but not yet installed, subject to strict conditions.

If a Contractor wants to receive payment for stored materials, a listing of these materials must be submitted. The list is subject to the review and approval from the bond management team. In reviewing and recommending approval of material and equipment listed for payment, the following criteria must be met:

- Payments for major items only;
- Materials must meet the requirements of the specifications, be stored or stockpiled in a bonded warehouse or on-site or as specified in the contract and must be adequately safeguarded; Requests for materials payment must be accompanied by paid invoices for materials stored on site. Before payment can be made for delivered materials off-site, the Contractor will furnish as evidence of ownership properly executed bills of sale for the delivered materials for which payment is requested;
- IOR and a member of the bond management team will inspect items prior to payment.

Once stored material and equipment items are approved for payment, records are kept documenting these payments. Quantities are recorded upon receipt of approved invoices. In cases of multiple invoices, balances will be accumulated and payment made on the basis of "first in, first out".

Subtractions from the accumulated balances are made as the material and equipment is incorporated in the contract work. The management team will verify item balances periodically by physically inspecting contractor inventories. Attention must be paid to the material invoices for proof of payment, discounts, taxes, etc. Payments for stored material and equipment are subject to retention.

Prior to the payment of final retention, the management team will use the project closeout log to assure receipt of all close-out documentation. The notice of completion (NOC) must be issued for the contract prior to the final payment. If the NOC is filed with the county recorder's office within 15 days of completion, then the time for subcontractors to record a mechanic's lien or file a stop payment notice is 30 days after recordation. If the NOC is not recorded, the time for filing liens and stop notices is extended to 90 to 150 days.



## Section 10

### Commissioning

**Included in this Section:**

- A. Commissioning definition**
- B. Stages of Commissioning**
  - 1. Pre-design**
  - 2. Design**
  - 3. Installation/Construction**
  - 4. Acceptance**
  - 5. Post-acceptance/Warranty**
- C. Verification Checks**
- D. Retro-Commissioning**
  - 1. Planning**
  - 2. Investigation**
  - 3. Implementation**
  - 4. Handoff**
- E. Recommissioning**

## **A. COMMISSIONING DEFINITION**

Commissioning ensures that the building and its systems and equipment operate as designed. The work is performed either by the owner's commissioning authority (OCA), an Independent contractor hired by the owner, or the project's construction manager. Systems are checked once during new construction or renovation for systems verification and functional performance testing.

## **B. STAGES OF COMMISSIONING**

### **1. Pre-design**

- a. Determine project objectives and develop owner's Criteria.
- b. Develop commissioning requirements.
- c. Hire or assign owner commissioning authority (OCA).

### **2. Design**

- a. Design team develops project design; OCA (or representative) reviews design intent, basis of design documents, and drawings and provides feedback to design team.
- b. OCA develops commissioning plan.
- c. Design team develops project specifications based on owner specifications.

### **3. Installation/Construction**

- a. OCA gathers and reviews design and project documentation.
- b. OCA works with contractors, and holds periodic commissioning meetings to integrate the process and schedule into the overall construction project.
- c. OCA develops verification checklists and functional performance test (FPT) forms.
- d. OCA monitors construction progress.
- e. OCA ensures selected maintenance staff members are given the training opportunity of observing the installation and testing of specific systems for which they will inherit maintenance responsibilities.
- f. OCA works with installing contractors to verify start-up and perform verification to ready systems and equipment for FPT.

### **4. Acceptance**

- a. OCA directs and oversees installing contractors' performance of FPT, observed by OCA's selected maintenance staff; deficiencies are reported.
- b. OCA validates building testing and balancing (TAB) report data.
- c. OCA directs and oversees installing contractors' performance of equipment condition acceptance testing, observed by OCA's selected maintenance staff; deficiencies are corrected and condition baseline data is included in the final commissioning report and O&M manual.
- d. OCA works with installing contractors to reschedule FPT as needed when deficiencies are present; corrections to deficiencies are verified by OCA.

- e. OCA reviews and verifies O&M manuals for completeness and applicability.
- f. OCA oversees, Contractor conducts, and OCA coordinates prescribed training for the O&M staff.

**5. Post-acceptance/Warranty**

- a. OCA prepares the Final Commissioning Report.
- b. OCA conducts site visits to interview O&M staff on system performance.
- c. Deferred and/or seasonal testing is performed.

**C. VERIFICATION CHECKS**

Verifications checks are equipment inspections that ensure proper installation and configuration. This testing employs checklists to verify that the equipment or system is ready for initial start-up (e.g., flexible conduit is connected, belt tension is correct, oil levels are adequate, labels are affixed, gauges are in place, and sensors are calibrated). Some verification checklist items entail the simple testing of the function of a component, a piece of equipment, or system (such as measuring the voltage imbalance on a three-phase pump motor of a chiller system). For most equipment, the installing contractors execute the checklists on their own. The OCA requires that the procedures and results be documented in writing and usually witnesses only the verification testing of the larger or more critical pieces of equipment. Other components are validated randomly by the OCA.

Functional performance tests are a series of tests of the function and operation (and sometimes, condition) of equipment and systems using manual (direct observation) or monitoring methods. Functional performance testing is the dynamic testing of systems (rather than just components) under full operation (e.g., the chiller pump is tested interactively with the chiller functions to see if the pump ramps up and down to maintain the differential pressure set point). Systems are tested under various modes, such as during low cooling or heating loads, high loads, component failures, unoccupied condition, varying outside air temperatures, fire alarm, and power failure. The systems are run through all the control system's sequences of operation, and components are verified to respond as the prescribed sequences state

The OCA develops the functional test procedures in a sequential written form, coordinates, oversees, and documents the actual testing, which is usually performed by the installing contractor or vendor. In addition, seasonal functional performance tests may also be performed, during which the installing contractor and/or OCA performs the functional performance test during different seasonal weather conditions. Functional performance testing also may include procedures for condition acceptance testing. Condition acceptance testing uses condition monitoring techniques, usually associated with reliability centered maintenance, to identify latent manufacturing, transportation, and installation defects that affect the condition of the equipment at the time of acceptance. The most common techniques will use vibration analysis to inspect for mechanical alignment and balance, soft foot, and internal and bearing defects; infrared thermography to determine the presence of high resistance and other problematic electrical connections; ultrasound to determine the presence of fluid (e.g., compressed air, steam, gas)

leaks; lube oil analysis to determine the quality, condition, and appropriateness of lubricating oils and their additives; and/or motor testing and electrical testing, where the condition of the insulation is of major importance.

Not all commissioning programs include condition acceptance testing. However, there is no better time to determine the physical hidden condition of the equipment (while functional performance testing looks at operating parameters). Hidden conditions are then noted as a condition for acceptance while the warranties are still active and this process establishes the condition baseline for the ensuing maintenance program. System testing (TAB) may or may not be included as part of the commissioning (that is, the TAB technicians may or may not work for the OCA). However, validation of the TAB results by random spot checking actual output against the documented TAB data normally will be included in the commissioning process regardless of the TAB contractor's relationship within the commissioning team.

#### **D. RETRO-COMMISSIONING**

Retro-commissioning is not tied to a specific new construction or renovation project, and therefore does not necessarily follow the same process as commissioning. Retro-commissioning typically follows a four-part process:

1. **Planning:** Identify project objectives, decide which building systems should be analyzed for improvements, and define tasks and assign responsibilities;
2. **Investigation:** Determine how the selected systems are supposed to operate, or how they could operate more efficiently; perform tests to measure and monitor how the targeted systems currently operate; and prepare a prioritized list of the operating deficiencies found and recommended corrective actions;
3. **Implementation:** Correct operating deficiencies (highest priority to lowest) and perform tests to verify proper and/or improved operation.
4. **Hand-off:** Prepare a report of improvements made and provide training and documentation on how to sustain proper and/or improved operation.

#### **E. RECOMMISSIONING**

During recommissioning, the tests that were performed during the original commissioning are performed again, with the goal of ensuring that the building is operating as designed or according to newer operating requirements. The development of new project documentation and testing procedures and forms is not required. However, these documents can be updated if the building and its systems and equipment have changed dramatically since the original commissioning. Recommissioning can be undertaken as an independent process in response to a specific requirement or or periodically scheduled as part of the building's operations and maintenance program. In general, the more substantial changes that a facility goes through, the more often it should be recommissioned if a continuous commissioning program is not in place. If there are no known substantial changes to the facility and its operation, it is recommended in general that the facility be recommissioned every three to five years. An independent OCA can be hired

to perform recommissioning, or the facility and O&M staff can use the existing test forms to perform recommissioning in house.

Recommissioning starts with:

1. Site observation;
2. Interviews with occupants;
3. Analyses of energy metering data (if available);
4. Review of current O&M practices and service contracts;
5. Spot testing of equipment and controls; and
6. Trending or electronic data logging of pressure, temperatures, power, flows, and lighting levels and use to determine current conditions (this replaces verification checks).



## Section 11

# Construction Project Closeout

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- A. Close-Out Log
- B. Punch List
- C. Completion of ADA Work
- D. General Final Clean-up
- E. As-Builts
- F. DSA Close-out Requirements
- G. Warranty and Maintenance Manuals
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The District shall have the right to utilize equipment, test and operate as necessary for acclimation, or testing without voiding or starting warranties. Taking beneficial occupancy shall not start warranties except in the case where the District agrees, in writing, that warranties shall commence running or where the District is taking phased occupancy of specific buildings or areas and completes separate punch lists.

## Section 12

# Claims Avoidance & Management Procedures Warranty of Construction and Correction Period

### Covered in this Section

- A. CLAIMS AVOIDANCE PROCEDURES
  - 1. Recommended Steps When Reviewing RFIs
  - 2. Recommended Steps When Review PCOs
  - 3. When District and Contractor Cannot Come to Terms
- B. CLAIMS MANAGEMENT PROCEDURES
  - 1. Construction Claims Procedures
  - 2. Bond Manager's Responsibilities regarding alleged claims
  - 3. Contractor Claims Analysis
  - 4. Evaluation of Entitlement
- C. WARRANTY OF CONSTRUCTION
- D. CORRECTION PERIOD

## **A. CLAIMS AVOIDANCE PROCEDURES<sup>1</sup>**

Steps must be taken to avoid having formal claims filed by contractors whenever it is practically possible. If the quantity of Requests for Information (RFIs) or Potential Change Orders (PCOs) on a given project seems excessive, the bond manager will anticipate a potential claim. If the contractor submits unreasonable costs for additional work, the District must establish a means of pricing the work. The Bond Manager will be timely in these actions as the longer it takes to resolve pricing issues, the greater the potential delay claim.

These recommendations are intended to minimize the likelihood of the contractor initiating a formal claims process that may result in project delays, attorneys' fees, and other negative and costly outcomes. It is important that the Bond Manager act in good faith on behalf of the district at all times, even when it appears that the contractor is not doing so.

### **1. Recommended Steps When Reviewing RFIs**

- a. Confirm that the design professional is responding within the time frame set forth in the contract documents. Contractors may complain about the length of time it takes to receive responses to RFIs. If the architect is missing contractual deadlines, the contractor may be entitled to compensation for delay, assuming that the RFI affects work that is in the critical path for the project.
- b. Confirm that the contractor is not submitting "nuisance" RFIs. Contractors may submit RFIs asking for information that is readily available in the bid documents.
- c. Confirm that the architect or other design professional is giving thorough and complete responses to RFIs. When multiple "back-and-forth" responses occur, contractors may attempt to initiate a delay claim.
- d. Document RFIs that are incomplete or vague when submitted by the contractor. Do not allow the contractor to claim delay for an RFI that could not be answered by the District's design professional because of the contractor's inadequate wording of the question.

### **2. Recommended Steps When Reviewing Potential Change Orders (PCOs)**

- a. Examine contractor initiated PCOs to determine if all or part of the proposed additional work should have been included in the bid price.
- b. Review only cost of work if a PCO is clearly necessary or if it was initiated by the District. Varying methods for determining cost are available to the District, and the general conditions allow for flexibility. Examples include:
  - Lump sum as agreed upon by both parties.
  - Unit costs established at bid time.
  - Time and materials.

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<sup>1</sup> Performance Audit 2016-17 Observation 11 Improvement Recommendation

- Generally accepted and agreed upon basis of establishing cost (e.g., Means Building Construction Costs Book).

It is up to the Bond Manager to implement the best methodology to determine reasonable cost for extra work. Typically, lump sum pricing is simplest, but it requires that a level of trust exists between the owner and the contractor.

If unit costs were included in bid pricing, they are a definitive method of avoiding disputed costs.

Time and material pricing is an effective method of making sure that the owner pays only actual costs associated with the extra work. However, this method requires that the contractor's activities be monitored by the IOR.

Using an established pricing standard such as the Means Building Construction Costs Book can be subject to interpretation and should be used with the appropriate level of consideration.

### **3. When District and Contractor Cannot Come to Terms**

- a. The Bond Manager must establish a fair value for the work in dispute. This value will be needed as a benchmark for purposes of negotiation.
- b. The Bond Manager will need to compile backup documentation and exhibits to support the cost established by the District as fair value for the work.
- c. The Bond Manager will advise the contractor to proceed with the work under protest as required. Article 13 of the general conditions states that filing of a claim is not a basis to discontinue work.
- d. A meeting should occur that includes the contractor, Bond Manager, IOR and design professional to review the issues.
- e. The Bond Manager may engage in informal conflict resolution with the affected parties.

If none of these steps results in resolution of the disputed costs, an informal mediation may be scheduled.

## **B. CLAIMS MANAGEMENT PROCEDURES**

A claim usually involves a contractor or subcontractor requesting additional disputed compensation for work completed that was outside the scope of work defined by the contract or for work that was completed within the contract scope but under conditions that were neither bid nor anticipated. The claims process is set forth in the contract. Once the claims process is set in motion, all parties involved in the project play a role in the resolution of the claim, including the District, architect, inspector of record, contractor/subcontractors, and legal counsel.

Claims issues that may arise during construction include (but are not limited to) requests for:

- A time extension;
- Payment of money or damages arising from Work done by or on behalf of the contractor pursuant to the contract and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to; or
- Payment of money that the District disputes that it owes.

## **1. Construction Claims Procedures**

At the pre-construction meeting, the Bond Manager will remind the contractor that all claims must be submitted in writing to the Bond Manager for processing and distribution.

Upon receipt of intent to claim or a claim from the contractor, the Bond Manager will immediately take the following steps:

- a. Establish a separate file folder for all pertinent documentation;
- b. File the original letter of intent to claim in the project file;  
Acknowledge to the contractor, in writing, without commitment, receipt of intent to claim or claims. (Care must be taken that no indication of the Bond Manager's opinion regarding the contractor's allegations is either given or implied);
- c. Assemble all documentation regarding the claim; (This documentation will include, but not be limited to, all relevant reports, diary entries, photographs, and correspondence.)
- d. For all claims from the contractor, the Bond Manager will prepare a factual analysis, with detailed citations of the evidence that will either support or rebut the contractor's position. The analysis will reference daily reports, diary entries, photographs, etc.;
- e. If the Bond Manager determines that the claim has merit, the Bond Manager will evaluate entitlement (time and money), and initiate a contract modification (Change Order);
- f. If the claim is rejected by the Bond Manager, the Bond Manager will inform the contractor in writing;
- g. After intent to claim has been presented by the contractor and at completion of all work associated with the intent to claim, the Bond Manager will, in writing, request the contractor to present the claim in a timely manner.

## **2. Bond Manager's Responsibilities Regarding Alleged Claims**

Whenever an event occurs or a situation arises which has the potential of delaying the contractor with respect to his contract completion date, and it can be demonstrated that the cause of the potential delay is beyond the contractor's control (e.g., strikes, unusually severe weather, etc.), the Bond Manager and the contractor will make a determination of the extent of the potential delay.

If, and when, it is determined by the contractor that the contract completion date cannot be met, the contractor will present to the Bond Manager for review and analysis a request for an extension of time in the form of a TIA. The request should demonstrate the reasons behind the failure to meet the contract completion date and present practical alternatives such as re-sequencing of items of work or methods of accelerating the work, with time and dollar values assigned.

After a detailed analysis by the Bond Manager and the contractor, a determination will be made as to the following:

- What is the time impact on the contract completion date? This evaluation is made after unused float time, etc., is taken into account.
- What, if any, remedial action can be taken to compress the schedule and allow

for on-time completion? What will this action or actions cost in terms of time and dollars?

- What would the impact on the contractor be if the time extension is disallowed and liquidated damages are assessed?
- If the Bond Manager recognizes the contractor's request as having merit, the Bond Manager will initiate a contract modification (Change Order) for extended time.
- If the Bond Manager denies the contractor's request for a time extension, the Bond Manager will notify the Contractor of the denial.

### **3. Contractor Claims Analysis**

For each claim submitted by the contractor, the Bond Manager, and design professional will prepare an in-depth, factual analysis, with detailed citations of evidence that will either support or rebut the contractor's position. The analysis of each claim will reference daily inspection reports, construction summaries, as-built schedules, photographs and/or video documentation as appropriate. The design professional will forward the completed factual analysis to the Bond Manager with a recommendation as to the claim's merit.

### **4. Evaluation of Entitlement**

If the Bond Manager determines that the claim has merit, the Bond Manager, in conjunction with the design professional, will complete an evaluation of entitlement (time and/or money) and initiate a proposed change order to the contract.

## **C. WARRANTY OF CONSTRUCTION**

The contractor warrants that the work performed meets the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the contractor or any subcontractor or supplier at any time.

With respect to all warranties, expressed or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the contractor will:

- Obtain all warranties required by the contract documents;
- Require all warranties to be executed, in writing, for the benefit of the District;
- Enforce all warranties for the benefit of the District.

## **D. CORRECTION OF WORK**

For the period specified in the contract or warranty, from the date of beneficial occupancy, the contractor will remedy at the contractor's expense any failure to conform to the contract requirements or any defect. If the District takes possession of any part of the work before final completion, the correction period for such part of the work will continue for the period specified in the contract. The contractor will remedy at the contractor's expense any damage to real or personal property owned or controlled by the District when the damage is the result of:



- Contractor's failure to conform to contract requirements.
- Any defect of equipment, material, workmanship, or design furnished by the contractor.

The contractor will restore any work damaged in the correction of work. The contractor's warranty with respect to work repaired or replaced will begin or resume from the date of repair or replacement.

The Bond Manager and design professional will notify the contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

If the contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Bond Manager will have the right to replace, remove, or otherwise remedy the failure, defect, or damage at the contractor's expense.

DRAFT

## APPENDIX A

Resolution No. 2008-2009-014 Establishing the COC

Resolution 2018-2019-001 Expanding Powers of the COC and Approving Amended  
Related Bylaws

Amended and Related Bylaws



**RESOLUTION OF THE BOARD OF EDUCATION OF THE  
BEVERLY HILLS UNIFIED SCHOOL DISTRICT  
ESTABLISHING A CITIZENS' OVERSIGHT COMMITTEE TO  
OVERSEE BOND PROCEEDS, EXPENDITURES AND AUDITS**

**RESOLUTION 2008-2009-014**

**WHEREAS,** on August 6, 2008, the Board of Education (the "Board") of the Beverly Hills Unified School District (the "District") adopted Resolution number 2008-2009-005 (the "Resolution") ordering a school bond election, establishing specifications of the election order, and requesting consolidation with other elections;

**WHEREAS,** the Board adopted the Resolution for the purpose of submitting to the electors the question of whether the bonds of the District ("Bonds") shall be issued and sold for purposes outlined in the Facilities Master Plans completed during 2008.

**WHEREAS,** by way of the Resolution, the Board declared its intent to establish a citizens' oversight committee to ensure that the proceeds of the Bonds are expended only for the specific projects identified on the bond measure approved by the voters.

**WHEREAS,** consistent with the Resolution, the Board of Education is required to establish a citizens' oversight committee to increase accountability, communication, oversight and representation for the planning, scheduling, budgeting and execution of plans outlined in the Measure E Resolution.

**NOW, THEREFORE,** the Board of Education of the Beverly Hills Unified School District does hereby resolve, determine and order as follows:

Section 1 – Establishment of the Citizens' Oversight Committee

A Citizens' Oversight Committee is hereby established for the purpose, and operating under the criteria, listed below.

Section 2 – Purpose of the Citizens' Oversight Committee

The purpose of the Citizens' Oversight Committee shall be to:

1. Review spending of Measure E proceeds and ensure that these funds are used only on school improvements, as described in the official ballot "To repair/upgrade and improve security and safety at all Beverly Hills Unified School District schools, qualify for state grants if possible, address building safety/health issues and make other improvements to school sites and buildings, shall the District issue \$334,000,000 of bonds at interest rates within the legal limit with annual audits and citizens' oversight."
2. Establish and maintain quality communications between the Beverly Hills Unified School District and the community.
3. Assure the Board of Education that the goals of the Measure E bond are being met.

### Section 3 – Membership on the Citizens’ Oversight Committee

1. The Citizens’ Oversight Committee shall consist of a minimum of seven citizens who have had no current or past financial relationship with the School District.
2. Committee Members shall serve a term of two years and for no more than three consecutive terms, without compensation.
3. Citizens’ Oversight Committee membership shall include no vendors and no current Board of Education Members; it shall not have any overemphasis on government employees or on union or employee association members.
4. Qualifications for membership will be based on:
  - a. broad representation of the community;
  - b. interest and experience in construction, finance and/or auditing;
  - c. volunteering and involvement in school activities;
  - d. length of time in the community.
5. Committee members shall be Board appointed after completing an application process established by the Board of Education.

### Section 4 – Responsibilities of the Citizens’ Oversight Committee

The Citizens’ Oversight Committee will pursue five primary goals in order to achieve its charter.

1. Receive an annual auditor’s report.
2. Ensure that funds are used only on school building improvements, not district salaries or administration.
3. Provide regular quarterly reports to the Beverly Hills Unified School District Board of Education that the expenditures match those promised during the bond campaign. In addition, release these findings to the general public.
4. Review the district’s maintenance effort ensuring proper maintenance of school buildings after repair and renovation.
5. Review district’s school building repair funding plan comprised of local and state bond funds, and other funding sources.

### Section 5 – Operation and Organization of the Citizens’ Oversight Committee

1. The committee shall conduct its business in compliance with the Ralph M. Brown Act.
2. The committee shall follow parliamentary procedures and keep and provide regular minutes of all meetings.
3. The committee shall review the annual financial audit of the Bond proceeds and State School Facility Program funds.
4. The committee shall review the annual performance audit to ensure that Bond funds and State School Facility Program funds have been expended only on the specified projects.
5. The members of the committee shall serve for two year terms and shall serve no more than two consecutive terms.
6. The committee shall elect a chair and a co-chair who shall each serve a one-year term and for no longer than two consecutive years.
7. The total committee shall have an odd number of appointees.
8. Unless excused by the committee chair or co-chair, members who have been absent for more than two consecutive meetings shall be deemed to have resigned from the committee.
9. Vacancies on the committee shall be filled based on the original appointment criteria and process.

10. The committee shall be disbanded when the Bond proceeds and the State School Facility Program funds intended to fund identified projects have been fully expended and all projects completed.

Section 6 – Oversight Defined

1. Ensure to the Board of Education, the Superintendent and the general public that Measure E ballot language and plans are followed.
2. Review and comment to the Board of Education regarding the Measure E audit.
3. Report and comment to the Board of Education regarding the Measure E construction reports provided by Strategic Concepts, LLC and District personnel.
4. Submit accountability assessments to the Board of Education.
5. Review and comment on various aspects of Bond Plans as required by the Board of Education or the Superintendent.

**PASSED AND ADOPTED** by the Beverly Hills Unified School District Board of Education at a meeting held on the 3<sup>rd</sup> of February 2009.

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

\_\_\_\_\_  
Clerk to the Board of Education

**BEVERLY HILLS UNIFIED SCHOOL DISTRICT**

**RESOLUTION NO. 2018-2019-001**

**RESOLUTION OF THE BOARD OF EDUCATION OF THE BEVERLY HILLS UNIFIED SCHOOL DISTRICT EXPANDING THE POWERS OF ITS INDEPENDENT CITIZENS' BOND OVERSIGHT COMMITTEE AND APPROVING AMENDED AND RESTATED BYLAWS THEREFORE**

**WHEREAS**, the Board of Education of the Beverly Hills Unified School District (the "District") previously adopted a resolution requesting Los Angeles County, California (the "County") to call an election for general obligation bonds (the "2008 Election") held on November 4, 2008 ("Measure E"); and

**WHEREAS**, notice of the 2008 Election was duly given; and on November 4, 2008, the 2008 Election was duly held and conducted for the purpose of voting a measure for the issuance of bonds of the District in the amount of \$334,000,000; and

**WHEREAS**, based on the Canvass and Statement of Results for the County, more than fifty-five percent of the votes cast on Measure E were in favor of issuing the aforementioned bonds; and

**WHEREAS**, the Board of Education of the District previously adopted a resolution requesting the County to call an election for general obligation bonds (the "2018 Election") held on June 5, 2018 ("Measure BH"); and

**WHEREAS**, notice of the 2018 Election was duly given; and on June 5, 2018, the 2018 Election was duly held and conducted for the purpose of voting a measure for the issuance of bonds of the District in the amount of \$385,000,000; and

**WHEREAS**, based on the Canvass and Statement of Results for the County, more than fifty-five percent of the votes cast on Measure BH were in favor of issuing the aforementioned bonds; and

**WHEREAS**, the Board of Education of the District (the "Board") previously has established an independent citizens' bond oversight committee (the "Committee") in connection with issuance of bonds under Measure E; and

**WHEREAS**, the Board has also previously approved Bylaws governing such Committee; and

**WHEREAS**, the Board now desires to further amend and restate such Bylaws, in whole, to include within the Committee's responsibilities review of Measure BH (so amended and restated, the "Amended and Restated Bylaws").

**NOW, THEREFORE, THE BOARD OF EDUCATION OF THE BEVERLY HILLS UNIFIED SCHOOL DISTRICT DOES HEREBY FIND, DETERMINE AND CERTIFY AS FOLLOWS:**

Section 1. **Authorization.** Measures E and BH was authorized pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and subdivision (b) of Section 18 of Article XVI of the California Constitution in accordance with the requirements of the Strict Accountability In Local School Construction Bonds Act of 2000 (the "Act").

Section 2. **Powers of the Committee.** An Independent Citizens' Bond Oversight Committee (the "Committee") has been established for the purposes set forth in the Act and the Board grants it jurisdiction over Measures E and BH.

Section 3. **Bylaws.** The Committee shall operate pursuant to the Board approved Amended and Restated Bylaws. The Committee shall have only those responsibilities granted to them in the Act and in the Amended and Restated Bylaws. The Amended and Restated Bylaws, as submitted herewith and attached hereto, are hereby approved, and any prior Bylaws are terminated.

Section 4. **Other Actions.** Officers of the Board and members of the Committee established hereunder are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to give effect to and comply with the terms and intent of this Resolution. Such actions heretofore taken by such officers, officials and staff are hereby ratified, confirmed and approved.

ADOPTED, SIGNED AND APPROVED this 24 day of July, 2018.

BOARD OF EDUCATION OF THE BEVERLY  
HILLS UNIFIED SCHOOL DISTRICT



President

ATTEST:



Secretary

[illegible]

I, Michael Bregy, do hereby certify that the foregoing is a true and correct copy of Resolution No. 2018-19-02 which was duly adopted by the Board of Education of the Beverly Hills Unified School District at the meeting thereof held on the 24 day of July, 2018, and that it was so adopted by the following vote:

AYES: 3 (Korbatov, Margo, Spitz)

NOES: *e*

ABSENT: 2 (Hacker, Goldstein)

ABSTENTIONS:  $\emptyset$

By Michael Perry  
Secretary

## **EXHIBIT A**

### **INDEPENDENT CITIZENS' OVERSIGHT COMMITTEE BYLAWS**

#### **Section 1. COMMITTEE ESTABLISHED**

The Board of Education (the "Board") of the Beverly Hills Unified School District (the "District") hereby establishes the Independent Citizens' Oversight Committee (the "Committee") which shall have the purposes and duties set forth in these Bylaws.

#### **Section 2. PURPOSE**

The purpose of the Committee is to inform the public annually concerning the expenditure of Measure E bond (the "Bond") proceeds, approved by the voters in November, 2008, by issuing a written report.

#### **Section 3. DUTIES**

To carry out its stated purpose, the Committee shall perform the following duties:

3.1 Review Expenditures. The Committee shall review expenditure reports produced by the District to (a) ensure that Bond proceeds are expended only for the purposes set forth in the ballot measure; and (b) ensure that no Bond funds are used for any teacher or administrator salaries or any other operating expenses.

3.2 Annual Report. The Committee shall present to the Board an annual written report (the "Annual Report") which shall include the following:

(a) A statement indicating whether the District is in compliance with the requirements of Article XIII A, Section 1(b)(3) of the California Constitution; and

(b) A summary of the Committee's proceedings and activities for the preceding year.

#### **Section 4. AUTHORIZED ACTIVITIES**

4.1 In order to perform the duties set forth in Section 3 hereof, the Committee may engage in the following authorized activities:

(a) Receive and review copies of the District's annual independent performance audit and annual independent financial audit required by Article XIII A of the California Constitution.

(b) Inspect school facilities and grounds for which Bond proceeds have been or will be expended to ensure that bond funds are expended in compliance with the requirements of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution in accordance with any access procedure established by the Superintendent or designee.

(c) Receive and review copies of any deferred maintenance proposals or plans developed by the District, including any reports required by Section 17584.1 of the California Education Code (the “Education Code”).

(d) Review efforts by the District to maximize Bond proceeds by implementing cost-saving measures, including, but not limited to, all of the following: (1) mechanisms designed to reduce the costs of professional fees; (2) mechanisms designed to reduce the costs of site preparation; (3) recommendations regarding the joint use of core facilities; (4) recommendations regarding the use of cost-effective and efficient reusable facility plans; or (5) mechanisms designed to reduce costs by incorporating efficiencies in school site design.

4.2 Any Committee requests for copies or inspection of District records shall be made in writing to the Superintendent or designee.

## **SECTION 5. MEMBERSHIP**

5.1 Number. The Committee shall consist of not more than fourteen members, as follows:

(a) The Board shall appoint at least five members of the Committee from nominees provided by the following organizations:

- (1) one member from a Business Organization in Beverly Hills; and
- (2) one member of the PTSA who is also a parent or guardian of a child enrolled in the District; and
- (3) one member with a Finance Background Member; and
- (4) one member from the Beverly Hills Taxpayers Association.
- (5) one member from a Construction Background Member; and

(b) The Board shall also appoint at least two members from applications received by the District as follows:

- (1) one member who is active in a senior citizens’ organization;
- (2) one member from the City of Beverly Hills of whom is the parent or guardian of a child currently enrolled in the District.

5.2 Qualification Standard.

(a) To be a qualified member of the Committee, a person must:

- (1) be at least 18 years of age and a citizen of the State of California in accordance with Section 1020 of the California Government Code (the “Government Code”).
- (2) not be an employee or official of the District; and



(3) not be a vendor, contractor, or consultant of the District.

(b) If a member fails to meet the qualification standards set forth above at any time during the term of service, such member shall be disqualified and the position shall be declared vacant. The Board shall appoint a new person to serve the remainder of the term, in accordance with the appointment process set forth in Section 5.3 below.

5.3 Appointment. The Board shall appoint members to the Committee at each vacancy or at the termination of each two year term. Prior to appointment, the District Superintendent shall conduct a nomination process to ensure that each person nominated meets the qualification standards set forth in Sections 5.1 and 5.2. The Superintendent shall establish a process that provides reasonable notice to Board members, specified nominating organizations and individuals. When an appointment is necessary to fill a vacancy, the Superintendent shall ensure that a nomination is received from a like organization or category as the Committee member whose position is vacant.

5.4 Ethics: Conflicts of Interest. By accepting appointment to the Committee, each member agrees to comply with Article 4 (commencing with Section 1090) and 4.7 (commencing with Section 1125) of Division 4 of Title 1 of the Government Code and the Political Reform Act (Government Code §§ 81000 *et seq.*), and to complete the Form 700 as required by certain designated employees of the District.

5.5 Term. Each member of the Committee shall serve for a term of two years and for no more than two consecutive terms, except at its first meeting the members shall draw lots to establish which four members will serve an initial one year term in order to stagger the terms of office of members.

5.6 Removal; Vacancy. The Board may remove any Committee member for cause, including failure to attend three consecutive committee meetings. Upon the removal of a member, his or her seat shall be declared vacant. The Board shall fill any vacancies on the Committee in accordance with the appointment process set forth in Section 5.3 hereof.

5.7 Compensation. The Committee members shall not be compensated for their services.

## **Section 6. MEETINGS OF THE COMMITTEE**

6.1 Regular Meetings. The Committee shall establish a schedule for the date and time of regular meetings to be held at least quarterly to include an annual organizational meeting to be held in June.

6.2 Location. All meetings shall be held at the administrative offices of the District located at 255 S. Lasky Dr., Beverly Hills, California, or other District facilities.

6.3 Procedures. All meetings shall be open and public in accordance with the Ralph M. Brown Act, Government Code Section 54950 *et seq.* (the "Brown Act"). Meetings shall be conducted according to such procedural rules as the Committee may adopt. A majority of the number of Committee members shall constitute a quorum for the transaction of any business except adjournment.

## **Section 7. DISTRICT SUPPORT**

7.1 The District shall provide to the Committee necessary technical and administrative assistance as follows:

(a) preparation of and posting of public notices as required by the Brown Act ensuring that all notices to the public are provided in the same manner as notices regarding meetings of the Board;

(b) provision of a meeting room, including any necessary audio/visual equipment;

(c) preparation and copies of any documentary meeting materials, such as agendas and reports; and

(d) retention of all Committee records and public access to such records, including the posting of Committee records on the internet website maintained by the District.

7.2 District shall maintain all Committee records and provide public access to such records.

7.3 The District shall not use any Bond proceeds to provide the support set forth in this Section 7.

## **Section 8. OFFICERS**

The Committee shall elect a Chair and a Vice-Chair who shall act as Chair only when the Chair is absent; such positions shall continue for two year terms. No person shall serve as Chair for more than two consecutive terms.

## **Section 9. POWERS RESERVED TO THE GOVERNING BOARD**

9.1 In order to clarify that the Committee's duties and activities are limited to those set forth in Sections 3 and 4 respectively, by way of example the Governing Board maintains the exclusive authority with respect to all, but not limited to, the following powers and activities:

(a) projects financed through the State of California, developer fees, redevelopment tax increment, certificates of participation, CFD Bonds, the general fund or the sale of surplus property without bond proceeds.

(b) the establishment of priorities and order of construction for Bond projects.

(c) the selection of architects, engineers, soils engineers, construction managers, project managers, CEQA consultants and such other professional service firms as are required to complete the Bond projects.

(d) the approval of the design for each Bond project including exterior materials, paint color, interior finishes, site plan and construction methods.

(e) the selection of independent audit firm(s), performance audit consultants and such other consultants as are necessary to support the activities of the Committee.

(f) the approval of an annual budget for the Committee that is sufficient to carry out the activities set forth in Proposition 39 and included herein.

(g) the allocation of State School Building Program grant funds to projects in the order and in an amount determined by the Board.

(h) the adoption of a plan for publicizing the activities of the Committee.

(i) the appointment or reappointment of qualified applicants to serve on the Committee, subject to legal limitations, and based on criteria adopted by the Governing Board.

#### **Section 10. AMENDMENT OF BYLAWS**

Any amendment to these Bylaws shall be approved by the Board prior to becoming effective.

#### **Section 11. TERMINATION**

The Committee shall automatically terminate and disband at the earliest of the date when (a) all Bond proceeds are spent, or (b) all projects funded by Bond proceeds are completed.

#### **Section 12. APPLICABILITY OF THE CALIFORNIA LAW**

The Committee was established by the District in order to comply with Sections 15278 *et seq.* of the Education Code. Nothing in these Bylaws shall be interpreted in a manner that is inconsistent with such provisions of the Education Code.