

CONSTRUCTION SERVICES AGREEMENT

FOR

_____PROJECT

Dated as of _____, 2018

Between The

SAN MARCOS UNIFIED SCHOOL DISTRICT

And

**CONSTRUCTION SERVICES AGREEMENT
FOR THE
[PROJECT NAME]**

This Construction Services Agreement is made this _____ day of _____, 2018, by and between the **SAN MARCOS UNIFIED SCHOOL DISTRICT**, a California School District organized and existing under the laws of the State of California (the "District"), and _____, a California corporation with its principal place of business at **[INSERT BUSINESS ADDRESS OF CONTRACTOR]** ("Contractor").

RECITALS

WHEREAS, the District intends to finance the construction of school facilities and improvements, including the construction and installation of certain improvements to be known as the _____ **[INSERT ADDITIONAL TITLE INFORMATION AS NEEDED]** at the existing school sites (the "Project"); and

WHEREAS, the District has contracted with **[INSERT NAME OF ARCHITECT]** (the "Architect") to provide architectural services for the District for the purpose of developing plans and specifications for the Project; and

WHEREAS, the District has determined that it is necessary to retain the services of a construction firm to assist in modifying the plans and specifications for, and to provide for the construction of, the Project; and

WHEREAS, California Education Code section 17406 permits the governing board of a school the District, without advertising for bids, to lease to any person, firm, or corporation any real property owned by the District if the instrument by which such property is leased requires the lessee to construct on the leased premises, or provide for the construction thereon, of a building for the use of the school the District, during the term of the lease, and provides that title to that building shall vest in the school the District at the expiration of the lease; and

WHEREAS, in connection with the approval of this Construction Services Agreement, the District will enter into a site lease with Contractor (the "Site Lease"), under which it will lease to the Contractor the Site, and improvements thereon, as described in Exhibit "A" of the Site Lease (the "Site") in order for Contractor to construct improvements to the Project; and

WHEREAS, the Contractor will lease the Site and the Project back to the District pursuant to a Sublease Agreement (the "Sublease") under which the District will be required to make Sublease Payments and may make Sublease Prepayments to the Contractor for the use and occupancy of the Site and Project; and

WHEREAS, at the expiration of the Lease and Sublease terms, title in the Project shall vest in the District; and

WHEREAS, the District and Contractor desire to enter into this Construction Services Agreement to ensure that the Project will meet the District's expectations prior to the construction of the Project and the Lease of the Project back to the District; and

WHEREAS, Contractor is experienced in construction of the type of improvements included in the Project that are desired by the District, is duly licensed as a contractor in the State of California, and is willing to perform construction work for the District, all as more fully set forth herein.

NOW, THEREFORE, in consideration of the covenants hereinafter set forth, the District and Contractor agree as follows:

SECTION 1 **CONTRACTOR'S DUTIES AND STATUS**

Contractor accepts the contractual relationship established between it and the District by this Construction Services Agreement, and Contractor covenants with the District to furnish reasonable skill and judgment in constructing the Project as set forth in the Construction Documents for the Project, as defined in Section 2(D) for the Project which are described and/or set forth herein as Exhibit "A." Contractor agrees to furnish efficient business administration and superintendence and to attempt to furnish at all times an adequate supply of professionals, workers, and materials and to perform the work appropriately, expeditiously, economically, and consistent with the Construction Services Agreement and Construction Documents as defined in Section 2 (A) and (D), below.

SECTION 2 **DEFINITIONS**

- A. **"Construction Services Agreement"** means this Construction Services Agreement, together with any duly authorized and executed amendments hereto.
- B. **"Construction" or "Construction Services"** means all labor and services necessary for the construction of the Project, and all materials, equipment, tools, supplies and incidentals incorporated or to be incorporated in such construction as fully described in the Construction Scope of Work set forth in Section 8 and Exhibit "A." Unless otherwise expressly stipulated, Contractor shall perform all work and provide and pay for all materials, labor, tools, equipment and utilities necessary for the proper execution and completion of the Project shown on the drawings and described in the Construction Documents for the Project as defined in Section 2 (D), which are described and/or set forth in Exhibit "A."
- C. **"Construction Costs"** means any and all costs incurred by Contractor including, but not limited to, costs for labor, materials, equipment and general conditions with respect to the construction, of the Project, whether paid or incurred prior to or after the date hereof, including, without limitation, costs for Site preparation, the removal or demolition of existing structures, the construction of the Project and related facilities and improvements, and all other work in connection therewith, Contractors' overhead and supervisors' fees and costs directly allocable to the Project, all costs and expenses including any taxes or insurance premiums paid by Contractor with respect to the Property, administrative and other expenses necessary or incident to the Project. The term "Construction Costs" includes all Contractor's costs associated with preparing or generating additional copies of any Construction Documents, as defined below, related to or required for the Project, including preparation or generation of additional plans and specifications for Contractor's subcontractors. Construction Costs shall not exceed the Final Guaranteed Maximum Price as defined in Section 2(f) below.
- D. **"Compensation for Design Errors and Omissions"**. The parties agree and acknowledge that it has been Contractor's duty to review the Construction Documents for the Project, as defined below, for value engineering opportunities and for constructability. In the event that additional work resulting from discrepancies in the Construction Documents that are due to the Architect's errors and omissions which could not have been identified by Contractor utilizing reasonable due diligence during the pre-

construction phase is required, as determined in the District's sole reasonable discretion, the parties hereby agree and acknowledge that Contractor shall be compensated for such services in accordance with the applicable provisions of this Construction Services Agreement.

The parties acknowledge that Contractor is a licensed general contractor, and not a licensed engineer or architect and is therefore not responsible for design errors and omissions, the discovery of which would reasonably require the expertise of a licensed engineer or architect. For purposes of illustration only, and not by way of limitation, Contractor will generally not be responsible for the adequacy of specific technical design elements such as footing designs, wire and switch gear sizes, structural member sizes, connection details/calculations, and HVAC duct and equipment specifications. However, notwithstanding the foregoing, the District is purchasing and Contractor agrees to provide a complete building with all necessary systems and components required for the building to function properly and meet the industry standards and codes with which a reasonably prudent licensed general contractor should be familiar. Contractor and its subcontractors are required to exercise the reasonable professional standard of care of a licensed general contractor in reviewing the contract documents and must supply sufficient quantities of devices, wires, pipes, ducts or other features that are a) reasonably inferable from the contract documents; or b) required to make all systems complete and functional.

- E. **"Construction Documents"** means the final drawings, profiles, cross sections, design development drawings, construction drawings, and supplemental drawings based on the plans and specifications developed for the Project, including any reference specifications or reproductions prepared by the Architect and plans and specifications approved by the District and/or the Division of the State Architect ("DSA") which show or describe the location, character, dimensions or details of the Project and specifications for construction thereof. **The term "Construction Documents" shall also include the plans and specifications.** The District shall provide the Contractor with **One** master sets of the Construction Documents.]
- F. **"Contract Documents"** means those documents which form the entire Contract by and between the District and Contractor. The Contract Documents consist of this Construction Services Agreement, including all exhibits and attachments thereto, the Construction Documents, the Site Lease and the Sublease.
- G. **"Guaranteed Maximum Price" or "GMP"** means the Guaranteed Maximum Price established pursuant to Section 4 to be paid to Contractor for Contractor's construction of the Project hereunder, subject to any adjustments for Extra Work/Modifications as provided in Section 9.
- H. **"Project"** means the improvements and equipment to be constructed and installed by the Contractor, as more particularly described and/or referenced in Exhibit "A" attached hereto.
- I. **"Site"** means those certain parcels of real property and improvements thereon (if any) more particularly described in Exhibit "A" of the Site Lease.
- J. **"Site Lease"** means the Site Lease of even date herewith, by and between the District and the Contractor together with any duly authorized and executed amendment thereto under which the District leases the Site to the Contractor.

- K. **"Subcontractor"** means any person or entity, including trade contractors, who have a contract with Contractor to perform any work on the improvements to the Site.
- L. **"Sublease"** means the Sublease of even date herewith by and between the District and Contractor together with any duly authorized and executed amendment hereto under which the District subleases the Site from the Contractor.
- M. **"Sublease Payment"** means any payment to be made by the District pursuant to Section 7 of the Sublease.
- N. **"Sublease Prepayment"** means any payment to be made by the District pursuant to Section 26 of the Sublease.

SECTION 3 **ADDITIONAL SERVICES**

If the District requests Contractor to perform additional services ("Additional Services" not described in this Construction Services Agreement, Contractor shall provide a cost estimate and a written description of the Additional Services required to perform such work. Compensation for such Additional Services shall be negotiated and agreed upon in writing, in advance of Contractor's performing or contracting for such Additional Services and paid to Contractor in addition to the GMP established pursuant to Section 4 hereof. In the absence of such written agreement, the District will not compensate Contractor for such work, and the Contractor will not be required to perform it. Nothing in this Construction Services Agreement shall be construed as limiting the valuation and amount to be paid to Contractor for such Additional Services or its implementation should a written agreement for such services be executed. Contractor shall not be entitled to compensation for Additional Services required as a result of Contractor's acts, errors or omissions.

SECTION 4 **ESTABLISHMENT OF GUARANTEED MAXIMUM PRICE "GMP"**

- A. The preliminary "Estimated GMP" for the Project shall be \$**[INSERT AMOUNT OF ESTIMATED GMP]**. The Estimated GMP shall be subject to modification when the Construction Documents are finalized and approved by the Division of the State Architect ("Final GMP"). The Estimated GMP is based upon plans and specifications existing and reviewed by the Contractor at the time this Construction Services Agreement is entered into as more fully described and referenced in the Scope of Work set forth in Exhibit "A," Sublease Payments and/or Sublease Prepayments to be made by the District pursuant to the Sublease and Section 26 hereof shall be commensurate with the GMP. The Final GMP shall be subject to adjustments for Extra Work/Modifications in accordance with the provisions of Section 9 and adjustments for reductions in the Scope of Work pursuant to the provisions of Section 4(B), below. The Estimated GMP includes, and the Final GMP shall include, the cost of all labor, materials, equipment, general conditions, overhead, profit, **District Contingency** and Contractor contingency in an amount to be negotiated upon the finalization of the GMP.
- (1) Contractor Contingency. Within the GMP shall be a line item amount of _____ **representing** (___%) percent of the GMP to cover the Contractor Contingency ("Contractor Contingency"). The Contractor Contingency is for the exclusive use of Contractor, as approved by District, to pay for miscellaneous work items, which are required to complete the Project.

Contractor shall not use the Contractor Contingency to pay for costs related to the following: (a) errors or omissions in the Construction Documents; (b) discrepancies with the plans and specifications as it pertains to applicable building code requirements; and/or (c) enhancements or additions to the Scope of Work desired by District. Costs related to (a)-(c) above will be paid for pursuant to the provisions of Section 9, below, the allowance set forth in this Section, subsection (2), or the District Contingency set forth in subsection (3).

- (2) District Contingency. There shall be a District Contingency for the exclusive use of the District within the GMP in the event the District requests Contractor to perform any additional services (“Additional Services”) not described in this Construction Services Agreement. The District shall set aside a contingency amount of _____ **representing** (___%) of the GMP for the Project (“District Contingency”). If such Additional Services are requested by the District, Contractor shall provide a cost estimate and a written description of the Additional Services required to perform such work in accordance with the provisions of Section 9 below. Compensation for such Additional Services from the District Contingency shall be negotiated and agreed upon in writing, in advance of Contractor’s performing or contracting for such Additional Services and paid to Contractor in accordance with the provisions of this Agreement. In the absence of such written agreement, District will not compensate Contractor for such work, and Contractor will not be required to perform it. Nothing in this Construction Services Agreement shall be construed as limiting the valuation and amount to be paid to Contractor for such Additional Services or its implementation should a written agreement for such services be executed. Contractor shall not be entitled to compensation from the District Contingency for Additional Services required as a result of Contractor’s acts, errors, or omissions. The District shall, in its sole discretion, be in no way limited by the manner in which it decides to utilize the District Contingency. Any funds remaining in the District Contingency at the completion of the Project that remain unspent shall belong to the District.

- B. The District at all times shall have the right to reduce the scope of the Project. If the District reduces the scope of the Project, the GMP shall be reduced to contemplate the reduced Scope of Work, pursuant to the provisions of Section 9. To the extent possible, it is the mutual goal of the District and Contractor to maximize the Scope of Work as allowed by the GMP.

SECTION 5 **NOTICE TO PROCEED**

- A. The District shall issue one or more written notices to the Contractor to proceed (“Notice to Proceed”) with the Project or any component or phase thereof, except that the District shall not issue a written Notice to Proceed for the Project, or any phase/component thereof until the date the District's adopted Plans and Specifications for the Project or the applicable phase/component, have been approved pursuant to the Field Act, Education Code section 17280 et seq., as the District is statutorily precluded from issuing a Notice to Proceed with construction until the District receives DSA approval of such plans and specifications. In the event a Notice to Proceed for the Project is not issued for the reason set forth in this Section, the District will notify the Contractor in writing of its decision not to issue a Notice to Proceed for the Project, and Contractor shall not be entitled to any

compensation for work performed in connection with the services set forth in this Construction Services Agreement, except as otherwise provided herein.

SECTION 6 **SAVINGS**

- A. The purpose of Savings is to minimize the expenditure of funds for the construction of the Project on items that exceed the minimum criteria required without a corresponding benefit to the District. The District also wishes to eliminate any excess quality levels or performance criteria provided in the Construction Documents so long as such elimination does not alter the design, aesthetics, safety standards or configuration or space, and does not increase future maintenance and operation costs. The District and the Contractor shall work cooperatively with each other, in good faith, to identify appropriate opportunities to reduce the Project costs and promote Savings.

- B. If Contractor realizes a savings on any aspect of the Project such savings shall be added to the contingency portion of the GMP and shall be expended in a manner consistent with other funds in the contingency portion of the GMP. Contractor shall document all savings on an ongoing Project budget tracking summary and presented to the District at regularly scheduled construction meetings with the District. Any savings, including unspent contingency, realized on the Project will be returned to the District at Project completion.

SECTION 7 **SELECTION OF SUBCONTRACTORS**

In the interest of minimizing the expenditure of funds for the construction of the Project, the Contractor agrees to select appropriately State of California licensed subcontractors for each trade component of the Project in a manner that fosters competition. Contractor agrees that it will also prequalify all subcontractors subject to Public Contract Code section 20111.6, using the District's standard prequalification package. Contractor will also either solicit bids from subcontractors pursuant to the competitive bid procedures set forth in the Public Contract Code, including the specific provisions of Public Contract Code section 20110 et seq., or that it will utilize an informal bidding process established by the Contractor which also incorporates competitive bid procedures. Regardless of the method Contractor employs, the Contractor will make a good faith effort to contact and utilize DVBE contractors and suppliers in securing bids for performance of the Project in accordance with the provisions of Section 7(A)(1) below. In the event that the Contractor chooses to select subcontractors pursuant to an informal bidding process, Contractor shall ensure that it receives at least three competitive quotes from subcontractors for each trade component of the Project, unless the parties otherwise agree in writing on a trade by trade basis. The District reserves the right to oversee the bidding process. Contractor shall inform all bidders that the District will not be a party to any contracts for construction services executed by the Contractor and selected bidders. Contractor shall submit a listing of proposed subcontractors to the District for the District's review. In no case will the Contractor award any subcontracts until the District has concurred to the scope and price of the subcontracted services. In addition, Contractor shall provide the District with full documentation regarding the bids or competitive quotes received by Contractor. In no event shall such documentation be redacted or obliterated. In the event the Contractor does not comply with this provision, the District may terminate this Construction Services Agreement in accordance with the provisions of Section 12 below. Subcontracts awarded in excess of one-half of one percent (.5%) shall be afforded all rights and protections of listed subcontractors under the provisions of the Subletting and

Subcontracting Fair Practices Act, Public Contract Code section 4107, et seq. In addition, Contractor shall, at all times, ensure that all subcontractors, regardless of tier, are appropriately registered with the Department of Industrial Relations in accordance with Labor Code section 1771.1. Contractor shall provide evidence of such registration information upon request of the District.

(1) DVBE Requirements

Compliance with Disabled Veteran Business Enterprise (DVBE) contracting goals is required under this Construction Services Agreement. In accordance with Education Code section 17076.11 the District has a DVBE participation goal of 3% per year of the overall dollar amount of state funds allocated to the District pursuant to the Leroy F. Greene School Facilities Act of 1998, and expended each year by the District. The District is seeking DVBE participation under this Construction Services Agreement.

The Contractor must make a good faith effort to contact and utilize DVBE contractors and suppliers in securing bids for performance of the Project. Information regarding certified DVBE firms can be obtained from the Office of Small Business Certification and Resources (OSBCR) at (916) 323 5478 or (916) 322 5060 as well as the OSBCR website at www.dgs.ca.gov/osbcr. Verification of DVBE status must be obtained from the OSBCR by receiving an approved certification letter and reference number from that office. The Contractor is required, as a material condition of this Construction Services Agreement, to retain documentation of its good faith efforts, in the event such documentation is requested by the District. Good faith efforts are demonstrated by evidence of the following: a) Contact was made with the District regarding the identification of DVBEs; b) Contact was made with other state agencies and with local DVBE organizations to identify DVBEs; c) Advertising was published in trade papers and papers focusing on DVBEs; d) Invitations to bid were submitted to potential DVBE contractors; and e) Available DVBEs were considered.

The Contractor shall certify, under penalty of perjury, that it has made a good faith effort to include DVBE contractors and suppliers in the Project.

(2) Skilled and Trained Workforce

In accordance with Education Code section 17407.5, Contractor shall ensure that it and its subcontractors at every tier use a skilled and trained workforce to perform all work on the Project that falls within an apprenticeable occupation in the building and construction trades. For the duration of the contract, Contractor and its subcontractors at every tier will provide to the District, on a monthly basis, a report demonstrating that the Contractor and its subcontractors are in compliance with the skilled workforce requirements of Education Code section 17407.5. This report shall include appropriate documentation of the “skilled and trained workforce” meeting the applicable requirements and percentages set forth in Education Code section 17407.5(b) (3). In the event Contractor fails to provide a monthly report, the District may consider such failure a breach of this contract and may exercise any of its rights and remedies available under the contract or the Education Code, including but not limited to withholding payment to the Contractor.

CONSTRUCTION SCOPE OF WORK

- A. **CPM Master Schedule.** Prior to commencing construction, Contractor shall submit to the District a reasonably detailed CPM (Critical Path Method) Master Schedule for the construction, as set forth in Section 11(E) herein.
- B. **Pre-Construction Orientation/Construction Meetings.** The Contractor, in conjunction with the Architect, shall conduct pre construction orientation conferences for the benefit of Subcontractors to orient the Subcontractors to the various reporting procedures and site rules prior to the commencement of actual construction. The Contractor shall also conduct construction and progress meetings with the District Representatives and other interested parties, as requested by the District, to discuss such matters as procedures, progress problems and scheduling. The Contractor shall prepare and promptly distribute official minutes of such meetings to all parties in attendance including Architect, the District and Inspector.
- C. **Budget/Cash Flow Reports.** The Contractor shall incorporate approved changes as they occur, and develop cash flow reports and forecasts for submittal to the District on a monthly basis. The Contractor shall provide regular monitoring of the approved estimates of Construction Costs, showing actual costs for activities in progress, and estimates for uncompleted tasks. The Contractor shall identify variances between actual and budgeted or estimated costs, and advise the District and the Architect whenever Project costs exceed budgets or estimates. The Contractor shall maintain cost accounting records on authorized additional services or work performed under unit costs, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.
- D. **Progress Reports.** The Contractor shall record the progress of the Project, and shall submit monthly written progress reports to the District and the Architect including information on the entire Project, showing percentages of completion and the number and amounts of proposed Extra Work/Modifications and their effect on the Construction Costs as of the date of the report. The Contractor shall also keep a daily log containing a record of weather, Contractors, work on the site, number of workers, work accomplished, problems encountered, and other similar relevant data as the District may require. The Contractor shall make the log available to the District, and the Architect. The District shall be promptly informed of all anticipated delays. In the event that the Contractor determines that a schedule modification is necessary, the Contractor shall promptly submit a revised Schedule for approval by the District.
- E. **Scheduling.** Contractor shall complete the construction pursuant to the CPM Construction Documents, subject to DSA approval and reduction in scope, performing all work set forth in the Scope of Work (Exhibit "A" to this Construction Services Agreement) and shall make reasonable efforts in scheduling to prevent disruption to classes.
- F. **The District Permit and Other Obligations.** It is expressly understood that the District shall pay for the DSA inspector, DSA permits, city permits, utility permits, soils testing, DSA fees, special testing, etc. If additional review or permits become necessary for reasons not due to Contractor's fault or because of DSA requirements or regulations implemented after the date the Final GMP is established and not reasonably anticipated at the time the Final GMP is established, Contractor may seek additional compensation for

the cost of that review as an additional cost. In the alternative, the District may pay such costs directly to DSA.

- G. **Contractor Permit Obligations.** The District shall pay for all remaining general building permits and ancillary permits and licenses not paid by the District prior to the commencement of this Construction Services Agreement. The District shall also be responsible for arranging and overseeing, all necessary inspections and tests, including inspections by the DSA, permits and occupancy permits, and ensure compliance with any Federal and State laws. Contractor shall be responsible for arranging and overseeing safety procedures and requirements, construction employee training programs which cover among other items, hazardous chemicals and materials.
- H. **Protection.** The Contractor shall establish procedures for the protection of all existing structures, equipment, utilities, and other existing improvements, both on site and off site, including securing and locking all areas with property exposure.
- I. **Nuisance Abatement.** The Contractor shall develop a mutually agreed upon program with the District to abate and minimize noise, dust, and disruption to normal activities at the existing facilities on the Site, including procedures to control on site noise, dust, and pollution during construction.
- J. **Site Mitigation and Remediation.** The District shall perform any required Site mitigation or remediation at its sole cost, unless such Site mitigation or remediation is necessitated by any of the conditions described in Section 33 hereof, in which event the provisions of that section shall govern. The District shall be responsible for any asbestos and lead abatement and/or remediation work.
- K. **Utilities.** The Contractor shall perform and pay for all temporary utility hook ups and connections and shall pay for use of utilities during construction, as well as any fees owed to utility suppliers for connection to existing mainline facilities. Contractor shall be responsible for all utility costs prior to the District's occupancy of the Project.

SECTION 9 **EXTRA WORK/MODIFICATIONS**

- A. The District may prescribe extra work or a modification or reduction of requirements or of methods of performing the Construction which differ from the work or requirements set forth in the Construction Documents ("Extra Work/Modifications"); and for such purposes, the District may at any time during the life of this Construction Services Agreement by written order, make such changes as it shall find necessary in the design, line, grade, form, location, dimensions, plan, or material of any part of the work or equipment specified herein or in the Construction Documents, or in the quantity or character of the work or equipment to be furnished. In the event conditions develop which make strict compliance with the specifications impractical, Contractor shall notify the District of the need for such Extra Work/Modification by placing the matter on the agenda of regularly scheduled construction meetings with the District for discussion as soon as practicable after the need for such Extra Work/Modification is determined. Additionally, Contractor shall submit to the District for its consideration and approval or disapproval, a written request for Extra Work/Modifications before such work is performed. If the District approves such request in writing, the costs of the Extra Work/Modifications, as established pursuant to this Section 9, shall be added to or deducted from the GMP, as applicable.

B. Value of any such Extra Work/Modification, change, or deduction shall be determined at the discretion of the District, in consultation with the Architect, in one or more of the following ways:

- (1) By acceptable lump sum proposal from Contractor with itemization as required by the District and/or the Architect.
- (2) By unit prices contained in Contractor's cost estimates and incorporated in the Contract Documents or fixed by subsequent agreement between the District and Contractor.
- (3) By the cost of material and labor and a percentage for the Contractor's construction management fee. The following form shall be followed as applicable for additions and deductions to the Construction Services Agreement:

		EXTRA/ (CREDIT)
(a)	Material (attach itemized quantity and unit cost plus sales tax)	_____
(b)	Labor including subcontractor's labor and profit/overhead (profit/overhead not to exceed 10%) (attach itemized hours and base rates from identified prevailing wage rate schedules)	_____
(c)	Commercial General Liability and Property Damage Insurance, Workers' Compensation Insurance, Social Security and Unemployment taxes at actual and verified cost.	_____
(d)	Subtotal	_____
(e)	Contractor's profit/overhead not to exceed [] of Item (d) if applicable	_____
(f)	Subtotal	_____
(g)	Bond Premium and Builder's Risk, not to exceed [] of Item (f)	_____
(h)	Total	_____

C. Regardless of whether the cost of the Extra Work/Modification is determined pursuant to 1, 2, or 3, above, in addition to the cost of the material and labor for deleted items, Contractor shall credit back an appropriate and reasonable amount for the bonding mark up for deleted items at the time of the request for the Extra Work/Modification.

- D. Should Contractor claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation (i) obligates the District to pay additional compensation to the Contractor; or (ii) obligates the District to grant an extension of time for the completion of the Construction Services Agreement; or (iii) constitutes a waiver of any provision in this Construction Services Agreement, **CONTRACTOR SHALL NOTIFY the District, IN WRITING, OF SUCH CLAIM AS SOON AS POSSIBLE, BUT IN NO EVENT WITHIN MORE THAN TEN (10) BUSINESS DAYS FROM THE DATE CONTRACTOR HAS ACTUAL OR CONSTRUCTIVE NOTICE OF THE CLAIM. CONTRACTOR SHALL ALSO PROVIDE the District WITH SUFFICIENT WRITTEN DOCUMENTATION SUPPORTING THE FACTUAL BASIS OF THE CLAIM** including in the documentation items (B)(3) a-h described in this Section. Contractor shall be required to certify under penalty of perjury the validity and accuracy of any claims submitted. The Contractor's failure to notify the District within such ten (10) business day period shall be deemed a waiver and relinquishment of the claim against the District. If such notice be given within the specified time, the procedure for its consideration shall be as stated above in this Section.
- E. In the event a mutual agreement cannot be reached on the cost of an Extra Work/Modification item, Contractor and the District agree that an industry estimating guide, such as an estimating guide published by Means, shall be used to determine the cost of a disputed Extra Work/Modification item.
- F. All costs associated with the Extra Work/Modification may be in terms of time, money or both.
- G. Expenses of reconstruction and/or costs to replace and/or repair damaged materials and supplies, provided that Contractor is not fully compensated for such expenses and/or costs by insurance or otherwise, may be added to the GMP, if said expenses are the result of the sole established negligent acts or omissions or willful misconduct of the District, or its subcontractors, principals, agents, servants, or employees.
- H. The term "profit/overhead" for any subcontractors shall be considered to include insurance other than mentioned in Section 9(c) above, field and office supervisors and assistants, watchmen, use of small tools, consumables and general field and home office expenses, and no separate allowance will be made therefor.

SECTION 10 **SUBSTITUTION OF AN "OR EQUAL"**

- A. For purposes of this provision the term "substitution" shall mean the substitution of any material, product, thing or service that is substantially equal or better in every respect to that so indicated or specified in the plans and specifications.
- B. Pursuant to Public Contract Code section 3400(c) the District **HAS NOT** made a finding designating certain materials, products, things, or services by specific brand or trade name for the statutorily enumerated purposes. These findings if made, as well as the materials, products, things, or services and their specific brand or trade names that must be used for the Project may be found in Exhibit "B," if applicable.
- C. Unless specifically designated in Exhibit "B," whenever in specifications any material, product, thing or service is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specifications shall be deemed to be used for the purpose

of facilitating the description of the material, product thing, or service desired and shall be deemed to be followed by words "or equal." Contractor may, unless otherwise stated, offer for substitution any material, product, thing or service which shall be substantially equal or better in every respect to that so indicated or specified. However, the District has adopted certain uniform standards for certain materials, products, things, and/or services. If any material, product, thing, or service offered for substitution by Contractor is not, in the opinion of the Architect and the District, substantially equal or better in every respect to that specified, Contractor shall furnish the material, product, thing, or service specified. The burden of proof as to the equality of any material, product, thing, or service shall rest with the Contractor.

- D. Contractor shall submit requests together with substantiating data for substitution of any "or equal" material, product, thing, or service no later **thirty (30) days** after execution of this Agreement. Provisions authorizing submission of "or equal" substitution justification data shall not in any way authorize an extension of time for performance of this Contract. The District shall not be responsible for any costs of Contractor associated with "or equal" substitution requests. The District has the complete and sole discretion to determine if a material, product, thing, or service is an "or equal" material, product, thing, or service that may be substituted.
- E. For purposes of subdivision (D) above, data required to substantiate requests for substitutions of an "or equal" material, product, thing, or service data shall include a signed affidavit from the Contractor stating that the substituted "or equal" material, product, thing, or service is equivalent to that specified in the specification in every way except as listed on the affidavit. Substantiating data shall also include any and all illustrations, specifications, and other relevant data including catalogue information which describes the requested substituted "or equal" material, product, thing, or service and substantiates that it is an "or equal" to the material product, thing, or service specified. In addition, the submittal documentation must also include a statement of the cost implications of the substitution being requested stating whether and why the substitution of the "or equal" material, product, thing, or service will reduce or increase the GMP. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted "or equal" material, product, thing, or service. Failure to submit all the needed substantiating data, including the signed affidavit, to the Architect in a timely fashion so that the substitution can be adequately reviewed may result in the rejection of the proposed substitution. The Architect is not obligated to review multiple substitution submittals for the same materials, products, things, or services due to the Contractor's failure to submit a complete package initially.
- F. Time limitations in this Section must be complied with strictly and in no case will an extension of time for completion be granted because of Contractor's failure to request the substitution of an alternative item at the times and manner set forth herein in subdivision (D). Further, the Contractor shall bear the costs of all engineering work associated with the review of submittals for substitution of equals.
- G. In event Contractor furnishes material, product, thing, or service more expensive than that specified, the difference in cost of such material, product, thing, or service so furnished shall be borne by Contractor.
- H. Contractor hereby agrees to notify its subcontractors of the requirements set forth in this Section 10 and shall require any and all subcontractors to submit requests together with

substantiating data for substitution of any "or equal" material, product, thing or service no later 35 days after the award of the subcontract.

SECTION 11 **TIME OF COMPLETION**

- A. Once the District has issued a Notice to Proceed, Contractor shall proceed with the Construction of the Project with reasonable diligence. Contractor agrees that the Project will be substantially completed on within the number of calendar days specified in the District's Notice to Proceed issued pursuant to the provisions of Section 5, above, with an intended occupancy date of **[INSERT INTENDED OCCUPANCY DATE]** for the overall Project, as said time may be extended for such periods of time as Contractor is prevented from proceeding with or completing the Project for any cause described in this Section 11, or as otherwise agreed to in writing by the District and Contractor. If the work is not completed in accordance with the foregoing, it is understood that the District will suffer damage. It being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to the District as fixed and liquidated damages, and not as a penalty, the sum of \$ **[REDACTED]** per day for each calendar day of delay until work is substantially completed and accepted. Contractor and its surety shall be liable for the amount thereof. Any money due or to become due the Contractor may be retained by the District to cover said liquidated damages. Should such money not be sufficient to cover said liquidated damages, the District shall have the right to recover the balance from the Contractor or its sureties, who will pay said balance forthwith.
- B. In the event that the performance and/or completion of the Project is delayed at any time by any act or omission of the District or of any employee, agent or tenant of the District, by any separate contractor employed by the District, by changes or alterations in the Project not caused by any fault or omission by Contractor, by strikes, by lockouts, by fire, by embargoes, by windstorm, by flood, by earthquake, by acts of war or God, by changes in public laws, regulations or ordinances enacted after the date of execution of this Construction Services Agreement by acts of public officials not caused by any fault or omission of Contractor, by an inability to obtain materials or equipment not caused by any act or omission of Contractor, or by any other cause beyond the reasonable control of Contractor, the aforesaid date for substantial completion of the Project shall be extended for a period commensurate with the delay. Contractor shall not be charged liquidated damages because of such delays in completion of work or delays otherwise due to unforeseeable causes beyond the control and without the fault or negligence of Contractor.
- C. The term "substantially completed" or "substantial completion" as used herein shall mean completed in such fashion as to enable the District, upon performance of any separate work to be done by the District under separate contract or by day labor, beneficially to occupy the Project and to commence operation therein, provided such occupancy and use does not substantially interfere with Contractor's performance of the remainder of the work, as agreed upon between the Contractor and the District, which may be accomplished prior to the completion of the work.
- D. The term "Fully Completed and Accepted," as used herein, shall mean that all remaining work has been completed in accordance with the Construction Documents and that successful testing, startup and satisfactory operation of the Project as a total unit has been accomplished in substantial conformance with the Construction Documents.

- E. Within five (5) business days after the District's delivery of a Notice to Proceed for the Project, Contractor shall furnish the District with a reasonably detailed CPM (Critical Path) Schedule, setting forth the expected dates for commencement and completion of each of the various stages of construction to be performed by Contractor pursuant to this Construction Services Agreement (the "Time Schedule"). The Contractor shall submit the master schedule to the District for acceptance and update the master schedule as appropriate on at least a monthly basis. The Contractor shall incorporate the activities of Contractors on the Project and delivery of products requiring long lead time procurement. The Contractor shall also include the District's occupancy requirements showing portions of the Projects having occupancy priority. The Contractor shall be responsible for providing the District with a Schedule of Values within ten (10) working days of the District's issuance of a Notice to Proceed, which will be updated as needed. It is specifically understood that the District will utilize said Time Schedule as it is revised from time to time to determine completion dates of various aspects of the Project. Sublease Prepayments under the Sublease shall be conditioned upon completion of various aspects of the Project as determined by the District's Inspector pursuant to the Time Schedule and the Schedule of Values.
- F. The Contractor shall not be assessed liquidated damages for this Construction Services Agreement and shall not be subject to any damages for delay in completion of the Project, when such delay was caused by the failure of the District or the owner of the utility to provide for removal or relocation of the existing main or trunkline utility facilities; however, when the Contractor is aware that removal or relocation of an existing utility has not been provided for, Contractor shall promptly notify the District and the utility in writing, so that provision for such removal or relocation may be made to avoid and minimize any delay which might be caused by the failure to remove or relocate the main or trunkline utility facilities, or to provide for its removal or relocation. In accordance with Section 4215 of the Government Code, if the Contractor while performing the work on the project discovers any existing main or trunkline utility facilities not identified by the public agency (the District) in the contract plans or specifications, he shall immediately notify the public agency (the District) and utility in writing. The public utility, where they are the owner, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Such compensation shall be in accordance with the extra work provisions set out in Section 9 hereof.

SECTION 12 **TERMINATION OF AGREEMENT**

A. **Termination for Breach.**

- (1) If the Contractor refuses or fails to prosecute the construction of the Project or any separable part thereof with such diligence as will insure its completion within the time specified by this Construction Services Agreement or any extension thereof, or fails to complete the Project within such time, or if the Contractor should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or the Contractor or any of its subcontractors should violate any of

the provisions of this Construction Services Agreement, the District may serve written notice upon the Contractor and its Surety of the District's intention to terminate this Construction Services Agreement. This notice of intent to terminate shall contain the reasons for such intention to terminate this Construction Services Agreement and a statement to that effect that the Contractor's right to perform work on the Project shall cease and terminate upon the expiration of ten (10) calendar days unless such violations have ceased and arrangements satisfactory to the District have been made for correction of said violations.

- (2) In the event that the District serves such written notice of termination upon the Contractor and the Surety, the Surety shall have the right to take over and perform this Construction Services Agreement. If the Surety does not: (1) give the District written notice of Surety's intention to take over and commence performance of this Construction Services Agreement within fifteen (15) calendar days of the District's service of said notice of intent to terminate upon Surety; and (2) actually commence performance of this Construction Services Agreement within thirty (30) calendar days of the District's service of said notice upon Surety; then the District may take over the Project and prosecute the same to completion by separate contract or by any other method it may deem advisable for the account and at the expense of the Contractor.
- (3) In the event that the District elects to obtain an alternative performance of the Construction Services Agreement as specified above: (1) the District may, without liability for so doing, take possession of and utilize in completion of the Project such materials, appliances, plants and other property belonging to the Contractor that are on the site and reasonably necessary for such completion; and (2) Surety shall be liable to the District for any cost or other damage to the District necessitated by the District securing an alternate performance pursuant to this Section 12.

B. Termination for Convenience.

- (1) The District may terminate performance of the Project called for by the Contract Documents in whole or, from time to time, in part, if the District determines that a termination is in the District's interest.
- (2) The Contractor shall terminate all or any part of the Project upon delivery to the Contractor of a "Notice of Termination" specifying that the termination is for the convenience of the District, the extent of termination, and the effective date of such termination.
- (3) After receipt of Notice of Termination, and except as directed by the District's representative, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:
 - a. Stop work as specified in the Notice of Termination.

- b. Complete any work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
 - c. Leave the Property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
 - d. Terminate all subcontracts to the extent that they relate to the portions of the work terminated.
 - e. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Construction Services Agreement.
 - f. Submit to the District's Representative, within ten (10) calendar days from the effective date of the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the effective date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the District's exercise of its right to terminate this Construction Services Agreement pursuant to this clause, which costs the Contractor is authorized under the Construction Services Agreement to incur, shall: (i) be submitted to and received by the District no later than thirty (30) calendar days after the effective date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs occasioned by the District's Termination for Convenience."
- (4) Termination of the Construction Services Agreement shall not relieve the Surety of its obligation for any just claims arising out of or relating to the work performed on the Project.
- (5) In the event that the District exercises its right to terminate this Construction Services Agreement pursuant to this clause, the District shall pay the Contractor, upon the Contractor's submission of the documentation required by this provision, and other applicable provisions of the Construction Services Agreement the following amounts:
- a. All actual costs incurred according to the provisions of this Construction Services Agreement including but not limited to insurance costs incurred in connection with the Project.
 - b. A reasonable allowance for profit on the cost of the work on the Project performed prior to termination, provided Contractor establishes to the satisfaction of the District, that it is reasonably probable that the Contractor would have made a profit had the Construction Services Agreement been completed and provided further, that the profit allowed shall in no event exceed five percent (7%) costs incurred prior to the date of termination. In no event shall the total amount exceed GMP.

- c. A reasonable allowance for Contractor's administrative costs in determining the amount payable due to termination of the Construction Services Agreement under this Section 12.

C. **Termination of Agreement by Contractor.**

- (1) The Contractor may terminate the Construction Services Agreement upon ten (10) working days written notice to the District, whenever: (1) the entire Project has been suspended for ninety (90) consecutive calendar days through no fault or negligence of the Contractor and notice to resume the Construction Services Agreement or to terminate the Construction Services Agreement has not been received from the District within this time period; or (2) the District should fail to pay the Contractor any substantial sums due it in accordance with the terms of the Construction Services Agreement and within the time limits prescribed; or (3) the District shall elect not to appropriate funds and/or elect not to make two (2) successive Sublease Prepayments following the receipt by the District or a request from the Contractor in its capacity as Lessor for each such Sublease Prepayment submitted pursuant to Section 26 (A) of the Sublease. In the event of such termination, the Contractor shall have no claims against the District except for work performed on the Project as of the date of termination.

SECTION 13 **PERSONNEL ASSIGNMENT**

- A. Contractor shall assign [REDACTED] as Construction Manager and a Project Manager/Superintendent for the Project approved by the District. So long as the Construction Manager and/or the Project Manager/Superintendent remain in the employ of the Contractor, such persons shall not be changed or substituted from the Project, or cease to be fully committed to the Project except as provided in this Section. In the event Contractor deems it necessary, Contractor shall replace Construction Manager and/or Project Manager/Superintendent for the Project with a replacement with like qualifications and experience, subject to the prior written consent of the District, which consent shall not be unreasonably withheld. Any violation of the terms and provisions of this Section 13 (A) shall entitle the District to terminate this Construction Services Agreement for breach, pursuant to the provisions of Section 12.
- B. Notwithstanding the foregoing provisions of Section 13 (A), above, if any Construction Manager and/or Project Manager/Superintendent proves not to be satisfactory to the District, upon written notice from the District to the Contractor such person shall be promptly replaced by a person who is acceptable to the District in accordance with the following procedures:
 - (1) Within five (5) business days after receipt of a notice from the District requesting the replacement of any Construction Manager and/or Project Manager/Superintendent or promptly following the discovery by the Contractor that any Construction Manager and/or Project Manager/Superintendent is leaving the employ of the Contractor, as the case may be, the Contractor shall provide the District with the name of an acceptable replacement/substitution (together with such person's resume and other information regarding such person's experience and qualifications). The replacement/substitution shall commence work on the Project no later than five (5) business days following the District's approval of such replacement, which approval shall not be unreasonably withheld. In the

event that the District and Contractor cannot agree as to the substitution of replacement Construction Manager and/or Project Manager/Superintendent, the District shall be entitled to terminate this Construction Services Agreement for breach, pursuant to the provisions of Section 12.

SECTION 14 **MAINTENANCE OF RECORDS; AUDIT.**

- A. The Contractor, and any subcontractors, shall keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the course of its activities and operations related to the Project. These documents may include sales slips, invoices, payrolls, personnel records, requests for subcontractor payment, and other data relating to all matters covered by the Contract Documents. At all times during the construction of the Project, and for four (4) years following the termination of the term of the last Document, the Contractor, and any subcontractors, shall retain such data and records. During construction of the Project, the Contractor shall make available all requested data and records at reasonable locations within the County of San Diego, at any time during normal business hours, and as often as the District deems necessary. If records are not made available within the County of San Diego during the construction of the Project, the Contractor shall pay the District's travel costs to the location where the records are maintained. Upon completion of the construction of the Project, Contractor shall provide the District with one (1) complete copy of all books, records and accounts of all financial transactions in the course of its activities and operations related to the Project, including but not limited to sales slips, invoices, payrolls, personnel records, requests for subcontractor payment and other data relating to all matters covered by the Contract Documents. Failure to make requested records available for audit by the date requested will result in immediate termination of this Construction Services Agreement.
- B. At its own cost, the District shall have the right to review and audit, upon reasonably notice, the books and records of the Contractor concerning any monies associated with the Project. This right does not extend to books and records that do not, in any way, relate to or concern the accounting of monies associated with the Project. Any such audit shall be performed by an independent auditor, having no direct or indirect relationship with the functions or activities being audited or with the business conducted by the Contractor or the District. In the event the independent auditor determines that savings realized during the prosecution and progress of the Project were not added to the contingency portion of the GMP, as provided for in Section 6 of this Construction Services Agreement, the District shall be entitled deduct such the amount of such savings from the next Sublease Payment due or next requested Sublease Prepayments, as applicable, under the provisions of the Sublease between the District and Contractor. If the Contractor disputes the findings of the independent auditor, such dispute shall be handled in accordance with the provisions of Section 36 of this Construction Services Agreement.

SECTION 15 **LABOR COMPLIANCE/CMU**

- A. The Contractor acknowledges that pursuant to recently enacted Senate Bill 854, all labor compliance monitoring required for the Project by the Education Code or Labor Code, shall be provided by the Department of Industrial Relations (“DIR”). The Contractor shall, at no additional cost to the District, be required to comply with all the requirements of DIR for such compliance monitoring and all applicable provisions of the California Labor Code, including but not limited to the standard provisions requiring payment of

prevailing wages, more further explained below, maintenance and submission of certified weekly payrolls, and hiring of apprenticeship as appropriate for all workers for which a prevailing wage classification is listed by or may be obtained from the DIR. Consultant shall work with the District, and DIR to ensure the full compliance applicable labor law and all applicable labor compliance requirements of the DIR.

- B. The Contractor shall include the requirements of provision (A) in all subcontracts and require subcontractors to comply with these provisions at no additional cost to the District.

SECTION 16 **PREVAILING RATES OF WAGES**

- A. The Contractor is aware of the requirements of California Labor Code sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, section 16000 et seq. ("Prevailing Wage Laws") which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Construction Services Agreement involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages applicable to the work to be performed by subcontractors from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. In the alternative, the District shall provide Contractor with a copy of the prevailing rates of per diem wages applicable to the work to be performed by subcontractors. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the District, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. When determining GMP, Contractor shall include to the extent possible anticipated general prevailing wage rates for the time when work on the Project will actually be performed.
- B. The Contractor and each subcontractor shall forfeit as a penalty to the District not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing rate for any work done by him, or by any subcontract under him, in violation of the provisions of the California Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.
- C. As a further material part of this Construction Services Agreement, Contractor agrees to hold harmless and indemnify the District, its Board and each member of the Board, its officers, employees and agents from any and all claims, liability, loss, costs, damages, expenses, fines and penalties, of whatever kind or nature, including all costs of defense and attorneys' fees, arising from any alleged failure of Contractor or its subcontractors to comply with the Prevailing Wage Laws. If the District or any of the indemnified parties are named as a party in any dispute arising from the failure of Contractor or its subcontractors to pay prevailing wages, Contractor agrees that the District and the other indemnified parties may appoint their own independent counsel, and Contractor agrees to

pay all attorneys' fees and defense costs of the District and the other indemnified parties as billed, in addition to all other damages, fines, penalties and losses incurred by the District and the other indemnified parties as a result of the action.

SECTION 17 **DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS**

The Contractor, or any subcontractor working under the Contractor may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.7 of the California Labor Code. Any contract on a public works project entered into between the Contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by the Contractor on the Project shall be returned to the District. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

SECTION 18 **EMPLOYMENT OF APPRENTICES**

- A. The Contractor's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code concerning employment of apprentices by the Contractor or any subcontractor under it. In addition, Contractor shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code.
- B. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.
- C. Knowing violations of Section 1777.5 will result in forfeiture not to exceed \$100 for each calendar day of non-compliance pursuant to Section 1777.7.

SECTION 19 **HOURS OF WORK**

- A. Eight (8) hours of work shall constitute a legal day's work. The Contractor and each subcontractor shall forfeit, as penalty to the District, twenty five dollars (\$25) for each worker employed in the execution of work on the Project by the Contractor or any subcontractor under him for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any calendar week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of the Contractor and his subcontractors in excess of eight hours per day at not less than one and one half times the basic rate of pay, as provided in Labor Code section 1815.
- B. Generally, construction work on the Project shall be accomplished on a regularly scheduled eight (8) hour per day work shift basis, Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m., however nothing herein shall prevent Contractor from working weekends and after school hours in order to complete the Project so long as not otherwise prohibited by law or local ordinances or regulations.

- C. Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed and included within the GMP, unless otherwise agreed to in writing before the work in question is commenced pursuant to Section 9, Extra Work/Modifications.

SECTION 20 **PAYROLL RECORDS**

- A. Pursuant to Labor Code section 1776, as amended from time to time, the Contractor and each subcontractor shall keep records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the work.
- B. The payroll records enumerated above shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
 - (1) A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - (2) A certified copy of all payroll records enumerated above shall be made available for inspection or furnished upon request as required by Labor Code section 1771.7 to the District, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - (3) A certified copy of all payroll records enumerated above shall be made available upon request to the public for inspection or copies thereof made; provided, however, that if request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, if as requested, payroll records have been provided pursuant to Paragraph (2), the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, subcontractors and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.
- C. The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.
- D. Each Contractor shall file a certified copy of the records enumerated above with the entity that requested such records within ten (10) calendar days after receipt of a written request.
- E. Any copy of records made available for inspection as copies and furnished upon request to the public or the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, 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 or any subcontractor performing work on the Project shall not be marked or obliterated.

- F. The Contractor shall inform the District of the location of the records enumerated above, including the street address, city and county, and shall, within five (5) business days, provide a notice of a change of location and address.
- G. In the event of noncompliance with the requirements of this Section, the Contractor shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this Section. Should noncompliance still be evident after such ten (10) calendar day period, the Contractor shall, as a penalty to the District, forfeit Twenty five Dollars (\$25.00) for each calendar day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalties shall be withheld from Sublease Payments then due or from any Sublease Prepayment, as applicable.

SECTION 21 **BONDING REQUIREMENTS**

The Contractor shall provide the following bonds:

- A. A "Payment Bond" (material and labor bond) from a California admitted surety and in the form attached hereto, shall be provided by Contractor for the Project within five (5) working days after the District has issued a Notice to Proceed for the Project. The Payment Bond shall be for One Hundred Percent (100%) of the Final GMP of the Project, to satisfy claims of materials suppliers and of mechanics and laborers employed on the Project. The Payment Bond shall be maintained by the Contractor in full force and effect for the Project until the Project is fully completed and accepted and until all claims for materials and labor are paid, and shall otherwise comply with California law. The Payment Bond, once obtained, shall be attached to this Construction Services Agreement as Exhibit "C." In the event the Final GMP is increased in accordance with the provisions set forth in Section 9 above, the Contractor must increase the Payment Bond to equal the revised GMP. The Payment Bond must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to California Code of Civil Procedure section 995.120 and is theorized by the State of California.
- B. A "Faithful Performance Bond" from a California admitted surety and in the form attached hereto shall be provided by Contractor for the Project within five (5) working days after the District has issued a Notice to Proceed on the Project. The Faithful Performance Bond shall be for One Hundred Percent (100%) of the Final GMP for the Project to guarantee faithful performance of all work, within the time prescribed, in a manner satisfactory to the District, and that all materials and workmanship shall be free from original or developed defects. The Faithful Performance Bond shall be in the form attached hereto and shall be maintained by the Contractor in full force and effect until the Project is fully completed and accepted and until all claims for materials and labor are paid, and shall otherwise comply with California law. The Faithful Performance Bond shall name the District as the entity to which the Principal and Surety, as defined in the Faithful Performance Bond, are bound. The Faithful Performance Bond shall be attached to this Construction Services Agreement as Exhibit "D." In the event the GMP is increased in accordance with the provisions set forth in Section 9 above, Contractor must increase the Faithful Performance Bonds to equal the revised GMP. The Performance Bond must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to California Code of Civil Procedure section 995.120 and is authorized by the State of California.

- C. The bonds required by this Section shall meet the following criteria:
- (1) Each bond shall be signed by both the Contractor and a notary and the signature of the authorized agent of the surety shall be notarized.
 - (2) Should any bond become insufficient, the Contractor shall renew or amend the bond within ten (10) calendar days after receiving notice from the District.
 - (3) Should any surety at any time not be a California admitted surety, notice will be given to the District to that effect. No further payments shall be deemed due or shall be made under this Construction Services Agreement until a new surety shall qualify and be accepted by the District.
 - (4) Changes in the work, or extensions of time, made pursuant to the Construction Services Agreement shall in no way release the Contractor or the surety from its obligations. Notice of such changes or extensions shall be waived by the surety.
- D. Contractor is hereby authorized to obtain a Performance and Payment Bond from any subcontractors selected by Contractor at its discretion. Any bonds required by this subsection shall comply with the requirements set forth above in Section 21 (A)-(C).

SECTION 22 SUBLEASE PAYMENTS AND RETENTION

- A. Contractor shall finance the cost of construction of the Project which costs shall not exceed the GMP, except as otherwise provided in this Construction Services Agreement. The District shall pay the Contractor monthly Sublease Payments pursuant to the Sublease. The District may also pay Contractor Sublease Prepayments pursuant to the terms and conditions set forth in Section 26 of the Sublease and this Section 22, which terms and conditions include the five percent (5%) deduction for retention, described in Section 26 of the Sublease (the "Retention"). However, at any time after fifty percent of the work has been completed, if the governing board of the District finds that satisfactory progress is being made, it may make any of the remaining Sublease Prepayments in full, without withholding retention. The District shall retain and release such retention pursuant to Public Contract Code sections 7107 and 9203, as those sections may be amended from time to time. Provided, however, prior to, and as a condition precedent for the release of retention, the Contractor shall provide the District with written documentation identifying the amount paid to certified DVBE contractors and suppliers in performance of the Project and provide a copy of the DVBE Certification Letter issued by OSBCR for each DVBE. This documentation will be used by the District to evaluate its success in meeting its DVBE participation goal. In no event shall the sum of the Sublease Payments, Sublease Prepayments and retention exceed the Final GMP.

SECTION 23 CORRECTION OF WORK: WARRANTY

Neither final payment under the Sublease nor any provision in the Contract Documents shall relieve Contractor of responsibility for faulty materials or workmanship incorporated in the Project. Contractor warrants that all work under this Construction Services Agreement will be free of faulty materials or workmanship and hereby agrees, within ten (10) working days upon receiving notification from the District, to remedy, repair or replace, without cost to the District, all defects which may appear as a result of faulty materials or workmanship in the Project, at any time, or from time to time, during a

period beginning with commencement of the Project and ending one (1) year after the date of substantial completion of the Project, as defined in Section 11 herein. The foregoing warranty of Contractor also applies to the remedy, repair or replacement of defects which may appear as a result of faulty designs prepared by Contractor and/or any party retained by, through or under Contractor in connection with the Project, but the foregoing warranty of Contractor does not guarantee against damage to the Project sustained by use, wear, intentional acts, accidents, or lack of normal maintenance or as a result of changes or additions to the Project made or done by parties not directly responsible to Contractor, except where such changes or additions to the Project are made in accordance with Contractor's directions. No guarantee furnished by a party other than Contractor with respect to equipment manufactured or supplied by such party shall relieve Contractor from the foregoing warranty obligation of Contractor. The warranty period set forth herein above shall not apply to latent defects appearing in the Project, and with respect to such defects, the applicable statute of limitations shall apply. Contractor agrees to provide the District with all equipment and materials warranties provided by manufacturers to the District but has no obligation to assist in processing such warranty claims after said one (1) year warranty period.

SECTION 24 **ASSIGNMENT OF ANTI TRUST CLAIMS**

The Contractor offers and agrees to assign to the District all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchase of goods, services, or materials pursuant to the Construction Services Agreement. This assignment shall become effective at the time the District tenders the final Payment to Contractor under the Sublease, without further acknowledgment by the parties, or upon termination of the Contract Documents.

SECTION 25 **PROTECTION OF PERSONS AND PROPERTY**

- A.
1. By execution of this Construction Services Construction Services Agreement, Contractor acknowledges that Contractor, its employees and subcontractors are required to comply with the fingerprinting requirements set forth in Education Code section 45125.1. However, in lieu of complying with Section 45125.1, Contractor may comply with the provisions of Education Code section 45125.2 which requires that the Contractor, at its own expense (1) install a physical barrier to limit contact with students by Contractor, Contractor's employees and subcontractors, or (2) provide for the continuous supervision and monitoring of the Contractor, Contractor's employees and subcontractors by an employee of the Contractor who has received fingerprint clearance from the California Department of Justice, or (3) provide for the surveillance of the Contractor, Contractor's employees and subcontractors by a the District employee.
 2. In the event the District determines, based on the totality of the circumstances, that the Contractor, Contractor's employees and subcontractors will have only limited contact with pupils, Contractor shall, at its own expense be subject to the following preventative measures: (1) Contractor, Contractor's employees and subcontractors shall check in with the school office each day immediately upon arriving at the Project Site; (2) Contractor, Contractor's employees and subcontractors shall inform school office staff of their proposed activities and

location at the Project Site; (3) Once at such location Contractor and/or Contractor's employees and subcontractors shall not change locations without contacting the school office; (4) Contractor, Contractor's employees and subcontractors shall not use student restroom facilities; and (5) If Contractor, Contractor's employees and subcontractors find themselves alone with a student, Contractor, Contractor's employees and subcontractors shall immediately contact the school office and request that a member of the school staff be assigned to the work location.

- B. Prior to, and as a condition to commencement of Contractors performance under this Construction Services Agreement, Contractor shall complete the Fingerprint Certification attached to hereto as Exhibit "D," and by this reference incorporated herein.
- C. Contractor shall at all times enforce orderly and disciplined conduct among those performing work on the Project and shall not employ on the work any unfit person not skilled in the task assigned to him, except as provided in Section 18 hereof.
- D. Contractor, in performing the work, shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss. Contractor shall erect and maintain, as required by existing conditions and progress of the Project, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, and shall promulgate safety regulations and notify owners and users of adjacent utilities. Contractor shall designate a responsible member of Contractor's organization employed at the Site of the Project whose duty shall be the prevention of accidents. Such person shall be Contractor's Project Manager/ Superintendent unless otherwise designated in writing by Contractor to the District.
- E. In any emergency affecting the safety of persons or property, Contractor shall act at its discretion to prevent threatened damage, injury, or loss. Any additional compensation or extension of time claimed by Contractor on account of such emergency shall be determined by mutual agreement between the District and Contractor.

SECTION 26 **INSPECTION OF WORK**

- A. The District shall hire its own Division of State Architect Inspector as required by law. The District, the District's representatives, and the Division of the State Architect shall at all times have access to the work whether it is in preparation or progress, and Contractor shall provide proper facilities for such access and for inspection.
- B. If the specifications, the District's timely instructions, the Division of the State Architect, or any public authority shall require the Site or the Project to be specially tested or approved, Contractor shall give the District forty-eight (48) hour notice of its readiness for inspection and, if the inspection is to be performed by a party other than the District, of the date fixed for such inspection. Inspections by the District shall be promptly made, and, where practicable, shall be at the source of supply. If any work required to be inspected by the specifications, the District's timely instruction or by a public authority should be covered up without the approval or consent of the District, it must, if required by the District, be uncovered for examination at Contractor's expense.

- C. Re-examination of questioned work may be ordered by the District and if so ordered, such work shall be uncovered by Contractor. If such work is found to be in accordance with the Contract Documents, the District shall pay the cost of re-examination and replacement. If such work is not in accordance with the Contract Documents, Contractor shall pay such costs, unless Contractor can demonstrate to the reasonable satisfaction of the District that the defects in such work were caused by persons or entities other than Contractor or any of its subcontractors or employees.

SECTION 27 **SUPERVISION**

- A. Contractor shall maintain on site a competent Project Manager/Superintendent and necessary assistants during the work. The Project Manager/Superintendent shall represent Contractor and all directions given to the Project Manager/Superintendent shall be deemed to have been given to Contractor. Important directions shall be confirmed in writing to Contractor, and other direction shall be so confirmed to Contractor upon the written request of Contractor, in accordance with Section 45 hereof and the address listed therein. Replacement of the Project Manager/ Superintendent shall be subject to the provisions of Section 13 above.
- B. Contractor shall give efficient supervision to the work, using its skill and attention and shall cause working drawings and specifications to be prepared and submitted to the District. Following agreement by contractor and the District with respect to said working drawings and specifications, it shall be Contractor's responsibility to perform the work described in said working drawings and specifications in substantial compliance with the Construction Documents. Notwithstanding the foregoing, Contractor may from time to time make minor and insignificant changes in said working drawings and specifications and perform the construction in accordance with such changed drawings and specifications without the consent of the District, provided that any such work performed by Contractor in accordance with such changed drawings and specifications shall be consistent with that specifically required to be performed by Contractor under the Construction Documents. For purposes of this Section, the term "minor and insignificant" shall mean changes which result in no change in quality, aesthetics or integrity of the original specifications of the Project. All changes, including minor and insignificant changes to the extent possible, should be placed on the agenda for regularly scheduled construction meetings between Contractor and the District to ensure that the District is aware of such changes. The District agrees to promptly respond to Contractor's requests for information and approvals; and if it fails to do so, Construction Services Agreement completion dates will be extended.

SECTION 28 **SEPARATE CONTRACTS**

- A. The District reserves the right to let other contracts in connection with the construction of portions of the Project which are not being performed by Contractor hereunder. Any such contracts entered into by the District, and the work they provide for shall in no event interfere with the activities of the Contractor on the Project, but if they do, the District shall be liable to Contractor for its damages in connection with such interference. Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate the Project with the work of such contractors. Such contractors shall comply with all applicable State safety laws and regulations and shall provide a certificate of insurance naming Contractor as additional insured.

- B. If the proper execution of any part of the Contractor's work on the Project depends upon the work of any such contractors, Contractor shall inspect and promptly report to the District any patent defects or other problems it identifies in such work that render it unsuitable for such proper execution and results. Contractor is only required to inspect the work of such other contractors prior to commencing its own further work in connection with or in relation to that other work. Further, Contractor is only expected to identify patent defects or other problems, and is not required to do any destructive testing or to monitor the progress of such work by other contractors prior to its completion. In no event shall the work of such other contractors be covered by the warranty given by Contractor to the District, nor shall Contractor be required to provide insurance for such work.

SECTION 29 **USE OF PREMISES**

Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits and the Construction Documents and shall not unreasonably encumber the Site or existing facilities on the Site with any materials or equipment. Contractor shall not load or permit any part of the work to be loaded with a weight so as to endanger the safety of persons or property at the Site.

SECTION 30 **CLEANING UP**

Contractor shall at all times keep the Site of the Construction free from accumulations of waste material or rubbish caused by the performance of the Construction by Contractor, and at the completion of the Construction, Contractor shall remove from the Site of the Construction all such waste material and rubbish and all tools, scaffolding and surplus materials belonging to Contractor and/or Contractor's subcontractors, laborers or materialmen, it being specifically understood that at the close of construction and prior to turning over the premises to the District for beneficial use and occupancy, Contractor shall leave the Site "broom clean," or its equivalent, unless more exactly specified.

SECTION 31 **SITE REPRESENTATIONS**

The District warrants and represents that the District has, and will continue to retain at all times during the course of construction, legal title to the Site and that said land is properly subdivided and zoned so as to permit the construction and use of said Site. The District further warrants and represents that title to said land is free of any easements, conditions, limitation, special permits, variances, agreements or restrictions which would prevent, limit, or otherwise restrict the construction or use of said facility. Reference is made to the fact that the District has provided information on the Site to Contractor. Such information shall not relieve the Contractor of its responsibility; and the interpretation of such data regarding the Site, as disclosed by any borings or other preliminary investigations, is not warranted or guaranteed, either expressly or implicitly, by the District. The Contractor shall be responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the Site and for having satisfied himself as to the conditions under which the work is to be performed. No claim for any allowances because of Contractor's error or negligence in acquainting himself with the conditions at the Site will be recognized.

SECTION 32 **TRENCH SHORING**

- A. **Trenches Five Feet or More in Depth.** The Contractor shall submit to the District, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches five feet or more in depth. The Contractor shall also submit a copy of its annual trench/excavation permit approved by CAL-OSHA. The plan shall be prepared by a registered civil or structural engineer. As part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with CAL OSHA Construction Safety Orders, or stating that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the Safety Orders.
- (1) All shoring submittal shall include surcharge loads from adjacent embankments, construction loads and spoil bank. Submittal shall indicate minimum horizontal distance from top of trench to edge of all surcharge loads for all cases of shoring and side slopes.
 - (2) Nothing in this Section shall relieve Contractor of the full responsibility for providing shoring, bracing sloping, or other provisions adequate for worker protection. If such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer and shall be approved by CAL-OSHA. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the District or the person to whom authority to accept has been delegated by the District.

SECTION 33 **HAZARDOUS WASTE AND UNKNOWN PHYSICAL CONDITIONS**

- A. Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:
- (1) Material that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - (2) Subsurface or latent physical conditions at the Site differing from those indicated, including geological, soils, and or water table issues which impede construction or increase Construction Costs.
 - (3) Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Construction Services Agreement.
- B. The District shall promptly investigate the conditions, and if it finds that the conditions to materially so differ, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the Construction Services Agreement. If asbestos related work or hazardous substance removal is discovered which is not disclosed in the construction

documents, such work shall be performed pursuant to a contract separate from any other work to be performed as required by Section 25914.2 of the Health and Safety Code, as may from time to time be amended.

- C. In the event that a dispute arises between the District and Contractor whether the conditions set forth in Paragraph A above materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by this Construction Services Agreement but shall proceed with all work to be performed under the Construction Services Agreement. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.
- D. This Section 33 shall also apply to this Construction Services Agreement if this Construction Services Agreement involves digging trenches or other excavations that extend deeper than four feet below the surface.

SECTION 34 **INSURANCE**

A. **Contractor's Insurance Requirements**

- (1) The Contractor shall purchase and maintain, during the performance of all work under this Construction Services Agreement insurance in amounts as specified below.
 - a. Commercial General Liability
 - a. Coverage for Commercial General Liability insurance shall be at least as broad as the following:
 - (a) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001)
 - (b) Commercial General Liability Insurance must include coverage for the following:
 - (i) Bodily Injury and Property Damage
 - (ii) Personal Injury/Advertising Injury
 - (iii) Premises/Operations Liability
 - (iv) Products/Completed Operations Liability
 - (v) Aggregate Limits that Apply per Project
 - (vi) Explosion, Collapse and Underground (UCX) exclusion deleted
 - (vii) Contractual Liability with respect to this Construction Services Agreement

(viii) Broad Form Property Damage

(ix) Independent Contractors Coverage

- b. All such policies shall name the District, the board and each member of the board, its officers, employees, agents and volunteers as Additional Insureds under the policy.
- c. The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the District.

(2) Automobile Liability

- a. At all times during the performance of the work under this Construction Services Agreement the Contractor shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the District, in the amount specified below.
- b. Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 0001 (ed. 6/92) covering automobile liability, Code 1 (any auto).
- c. The automobile liability program may utilize deductibles, but not a self-insured retention, subject to written approval by the District.
- d. All such policies shall name the District, the board and each member of the board, its officers, employees, agents and volunteers as Additional Insureds under the policies.

(3) Workers' Compensation/Employer's Liability

- a. At all times during the performance of the work under this Construction Services Agreement the Contractor shall maintain Workers' Compensation in compliance with applicable statutory requirements and Employer's Liability Coverage in amounts not less than the limits specified below.
- b. Such insurance shall include an insurer's Waiver of Subrogation in favor of the District and will be in a form and with insurance companies acceptable to the District.
- c. If insurance is maintained, the workers' compensation and employer's liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the District.
- d. Before beginning work, the Contractor shall furnish to the District satisfactory proof that it has taken out for the period covered by the work under this Construction Services Agreement full compensation insurance

for all persons employed directly by it or through subcontractors in carrying out the work contemplated under this Construction Services Agreement all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof.

- e. Contractor shall sign a Certificate Regarding Workers' Compensation Insurance which is attached to this Construction Services Agreement as Exhibit "F" incorporated herein by this reference.

(4) Builder's Risk "All Risk" Insurance

- a. At all times during the performance of the work, Contractor shall maintain builder's risk insurance on an "all risk" completed value basis (including flood) upon the entire project which is the subject of the Construction Services Agreement. Coverage shall include completed work as well as work in progress. Such insurance shall include the District as Loss Payee.
- b. Such insurance may have a deductible clause but not to exceed the smaller of: five percent (5%) of the total amount of the Contract; or \$10,000.00 for all risks, except flood. The deductible for flood shall not exceed five percent (5%) of the total amount of the Construction Services Agreement.
- c. Such policies shall name the District as Loss Payee.
- d. The making of Sublease Payments or Sublease Prepayments to the Contractor shall not be construed as creating an insurable risk interest by or for the District or be construed as relieving the Contractor or his subcontractors of responsibility for loss from any direct physical loss, damage, or destruction occurring prior to final acceptance of the work by the District.
- e. The insurer shall waive all rights of subrogation against the District and shall provide the District with a Certificate of Insurance for Builder's Risk insurance coverage and evidence of waiver of rights of subrogation against the District.

B. Minimum Policy Limits Required

The following insurance limits are required for the Contract:

	Combined Single Limit
Commercial General Liability	\$2,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$1,000,000 per occurrence
Builder's Risk	Completed value or replacement cost

C. Evidence Required

- (1) Prior to proceeding with construction of the Project, the Contractor shall file with the District evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 2010 (ed. 11/85) (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (ACORD Form 25 S or equivalent). All evidence of insurance shall be certified by a properly authorized officer, agent or qualified representative of the insurer and shall certify the names of the insured, any additional primary insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

D. Policy Provisions Required

- (1) All policies shall contain a provision for 30 calendar days advance written notice by the insurer(s) to the District of any cancellation. Statements that the carrier "will endeavor" and "that failure to mail such notice shall impose no obligation and liability upon the company, its agents or representatives," will not be acceptable on certificates.
- (2) All policies shall contain a provision stating that the Contractor's policies are primary insurance and that the insurance of the District, or any named insureds, shall not be called upon to contribute to any loss.

E. Qualifying Insurers

- (1) All policies required shall be issued by acceptable insurance companies, as determined by the District, which satisfy the following minimum requirements:
 - a. Insurance carriers shall be qualified to do business in California and maintain an agent for process within the state. Such insurance carrier shall have not less than an "A" policyholder's rating and a financial

rating of not less than "VII" according to the latest Best Key Rating Guide.

F. **Additional Insurance Provisions**

- (1) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor and any approval of said insurance by the District, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Construction Services Agreement including but not limited to, the provisions concerning indemnification.
- (2) If at any time during the life of the Construction Services Agreement the Contractor fails to maintain in full force any insurance required by the Construction Services Agreement, including required limits, the District may acquire the necessary insurance for the Contractor and deduct the cost thereof from the appropriate Sublease Payments due the Contractor, or Sublease Prepayments made by the District.
- (3) Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this Construction Services Agreement. If any subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold the District harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by the District as a result thereof.
- (4) If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:
 - a. The policy retroactive date coincides with or precedes Contractor's commencement of work under this Construction Services Agreement (including subsequent policies purchased as renewals or replacements)
 - b. Contractor will make every effort to maintain similar insurance during the required extended period of coverage following expiration of this Construction Services Agreement, including the requirement of adding all additional insureds.
 - c. If insurance is terminated for any reason, Contractor shall purchase an extended reporting provision of at least two years to report claims arising in connection with the Construction Services Agreement.
 - d. The policy allows for reporting of circumstances or incidents that might give rise to future claims.
 - e. The District may require the Contractor to provide complete copies of all insurance policies in effect for the duration of the Project.
 - f. Neither the District nor the Board, nor any member of the Board, nor any of the directors, officers, employees, agents or volunteers shall be

personally responsible for any liability arising under or by virtue of the Construction Services Agreement.

SECTION 35 **HOLD HARMLESS**

The District, its Board and each member of the Board, its officers, employees and agents shall not be liable for, and Contractor shall defend, indemnify and hold harmless the District, its Board and each member of the Board, its officers, employees and agents from and against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, injuries to property or persons (including death), expenses, charges or costs of any kind or character, including attorneys' fees and court costs (herein collectively referred to as "Claims") which arise out of or are in any way connected to the work covered by this Construction Services Agreement arising either directly or indirectly from any act, error, omission or negligence of Contractor or its contractors, consultants, architects, engineers, licensees, agents, servants or employees, including, without limitation, Claims caused by the concurrent act, error, omission or negligence of the District or its agents or employees. However, Contractor shall have no obligation to defend or indemnify the District from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the active negligence, sole negligence, or willful misconduct of the District or its agents or employees.

SECTION 36 **RESOLUTION OF AGREEMENT CLAIMS**

- A. For purposes of this Section, the term "Claim" has the meaning as set forth in Public Contract Code section 20104(b)(2), as that section may be amended from time to time. Section 20104(b) (2) currently defines "claim" to mean a separate demand by the Contractor for (a) time extension, (b) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Construction Services Agreement and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (c) an amount the payment of which is disputed by the District.
- B. Notwithstanding any other provision herein, all claims that are equal to or less than **Three Hundred Seventy-five Thousand Dollars (\$375,000)** shall be resolved pursuant to Public Contract Code section 20104 et seq., as may be amended from time to time, and which provisions are incorporated herein by reference.
- C. For claims not addressed in Section 36 (A) and (B) above, the dispute review process set forth in this subsection (C) shall apply
 - (1) The dispute review process set forth in this Section 36 shall be administered by the American Arbitration Association (AAA) and governed by their rules in effect at the time of filing, or by any other neutral organization agreed to by the parties (hereinafter called "Administrator".)
 - (2) If a dispute arises out of, or relates to this Construction Services Agreement or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the parties agree to first endeavor to settle the dispute using mediation.

- (3) The costs for all mediation, including the Administrative fees and mediator compensation, will be shared equally by all parties. Fees shall be jointly negotiated by all parties directly with the Administrator. If all parties agree, then the mediation costs may increase as required for resolution of the dispute. The expenses of witnesses for any party shall be paid by the party producing such witnesses.
- (4) A single mediator, acceptable to all parties, shall be used to mediate the dispute. The mediator will be knowledgeable in construction aspects and will be selected from lists furnished by the Administrator. The initial mediation session shall commence within thirty (30) days of filing, unless otherwise agreed by the parties, or at the direction of the mediator.
- (5) Mediation hearings will be conducted in an informal manner and discovery will not be allowed unless agreed by all parties. All discussions, statements, or admissions will be confidential to the proceedings and will not be used for any other purpose as it relates to the party's legal position.
- (6) Spokespersons shall be limited to the District, Contractor, Subcontractor, and Supplier personnel and their consultants. Contractor, Subcontractor and Supplier may have an attorney present and shall advise the other parties no less than five (5) business days before the mediation so that the other parties may also have their attorneys present.
- (7) Any resultant agreements from mediation shall be documented in writing, and may be used as the basis for a change order or other directive as appropriate. All mediation results and documentation shall be non-binding and inadmissible for any purpose in any legal proceedings, in accordance with Evidence Code section 1152, unless such admission is otherwise agreed in writing by all parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.
- (8) If mediation is unsuccessful, the parties thereafter may, but are not required to, agree to submit the matter to the Administrator for binding arbitration. If the parties so agree to arbitrate, the following provision shall govern such arbitration, unless the parties otherwise agree in writing. The parties agree that the matter shall be submitted to one (1) arbitrator, unless they agree in writing to three (3) arbitrators. A judgment of a court having competent jurisdiction may be entered upon the award, and such judgment shall be enforceable as a final judgment to the fullest extent under the law. The parties agree to split evenly all arbitration and arbitrator(s)' fees and expenses, subject to readjustment by the arbitrator as part of any award. The arbitration shall be subject to, and proceed in accordance with California Code of Civil Procedure sections 1280 through 1294.2. If the parties do not agree to submit to binding arbitration, neither party is prevented from pursuing other legal remedies.

SECTION 37 **SUBSTITUTION OF SECURITY**

In accordance with Public Contract Code section 22300, the District will permit the substitution of securities for any Retention moneys withheld by the District, pursuant to the Construction Services Agreement and the Sublease, to ensure performance under the

Construction Services Agreement. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the District, or with a state or federally chartered bank as the escrow agent, who shall then pay such moneys to the Contractor. Upon satisfactory completion of the Construction Services Agreement the securities shall be returned to the Contractor.

SECTION 38 **TITLE TO WORK**

Title to all work completed and in the course of construction paid for by the District and title to all materials on account of which payment has been made by the District to Contractor shall vest in the District pursuant to the applicable provisions of the Lease and Sublease.

SECTION 39 **CONTRACT DOCUMENTS AND INTERPRETATIONS**

- A. The Contract Documents shall be executed, and/or initialed as appropriate, in duplicate by the District and Contractor. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, services and materials reasonably necessary for the proper execution of the work.
- B. It is not intended that work and/or services not covered under any heading, section, branch, class or trade of the specifications shall be supplied, unless it is required elsewhere in the Contract Documents or is reasonably inferable therefrom as being necessary to produce the intended results, in which case such work and/or services shall be supplied by Contractor. Words which have well known technical or trade meanings are used herein in accordance with such recognized meanings. Mutual agreement shall be reached with respect to words which do not have a well-known technical or trade meaning and the definition of which come into question.
- C. Drawings and specifications are intended to be fully cooperative and to agree. All drawing and specification changes shall be dated and sequentially recorded. All modifications to drawings and specifications shall be interpreted in conformity with the Contract Documents, which shall govern, unless otherwise specified.

SECTION 40 **COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION**

- A. The Contractor shall be required to comply with all conditions of the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (Permit) for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. The Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit. The Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) prior to initiating Work. It shall be the Contractor's responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revision to the SWPPP. The Contractor shall comply with all requirements of the State Water Resources Control Board. The Contractor shall include all costs of compliance with specified requirements in the contract amount.

- B. Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. Contractor shall provide copies of all reports and monitoring information to the District and the Architect.
- C. The Contractor shall comply with the lawful requirements of any applicable municipality, the County, drainage the District, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
- D. Failure to comply with the Permit is in violation of federal and state law. The Contractor hereby agrees to indemnify and hold harmless the District, its Board members, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the District, its Board members, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the District, its Board members, officers, agents, employees or authorized volunteers. the District may seek damages from the Contractor for delay in completing the Contract in accordance with Section 11 hereof, caused by the Contractor's failure to comply with the Permit.

SECTION 41 **EQUAL OPPORTUNITY CLAUSE**

- A. The Contractor herein agrees not to discriminate in its recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age or physical handicap in the performance of this Construction Services Agreement and to comply with the provisions of the following laws:
 - (1) California Fair Employment and Housing Act (Gov. Code 12900 et seq., prohibiting discrimination in employment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex, and prohibiting harassment of an employee or applicant because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age);
 - (2) Federal Civil Rights Act of 1964 (42 USC '2000e et seq., prohibiting discrimination in employment on the basis of race, color, national origin, religion, or sex); Title I of the Americans With Disabilities Act of 1990 (42 USC 12101 et seq., prohibiting discrimination against qualified individuals with a disability in hiring and employment practices);
 - (3) The Age Discrimination in Employment Act (29 USC 621 et seq., prohibiting age discrimination in employment against individuals who are at least forty years of age);
 - (4) California Labor Code section 1102.1 (prohibiting discrimination in any aspect of employment or opportunity for employment based on actual or perceived sexual orientation); and

- (5) Any other laws or regulations prohibiting discrimination as may be applicable to Contractor.

SECTION 42 **COMPLIANCE WITH DTSC GUIDELINES – IMPORTED SOIL**

If the Project requires the use of imported soils, the Contractor shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with California Law and the California Health and Safety Code. The District reserves the right to reject any imported material that has come from agricultural or commercial land uses. Contractor must notify the District of the source of material and comply with the Regional Water Quality Control Board rules, regulations and resolution, and when applicable, with the guidelines of the Department of Toxic Substances Control (DTSC).

SECTION 43 **NO ASBESTOS**

- A. Contractor shall execute and submit an "Asbestos Free Materials Certification." Contractor, further, is aware of the following:

- (1) Should asbestos containing materials be installed by the Contractor in violation of this certification, or if removal of asbestos containing materials is part of the Project, decontaminations and removals will be performed in accordance with the requirements of all applicable laws and will meet the following criteria:

- a. Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency (EPA).
- b. The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.
- c. The asbestos consultant shall be chosen and approved by the District which shall have sole discretion and final determination in this matter.
- d. The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

- B. If removal of asbestos containing materials is part of the Project, the cost of all asbestos removal, including, but not necessarily limited to the cost of the asbestos removal contractor, the cost of the asbestos consultant, analytical and laboratory fees, time delays and additional costs that may be incurred by the District shall be borne entirely by the Contractor.

- C. Hold Harmless: Interface of work for the Project with work containing asbestos shall be executed by the Contractor at its risk and at its discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of the Construction Services Agreement

the Contractor acknowledges the above and agrees to the fullest extent permitted by law to hold harmless the District, its Board and each member of the Board, its officers, employees, agents, representatives, including its architect and assigns, for all asbestos liability which may be associated with this work. The Contractor further agrees to instruct his/her employees with respect to the above mentioned standards, hazards, risk and liabilities.

SECTION 44 **AGREEMENT MODIFICATIONS**

No waiver, alteration or modification of any of the provisions of this Construction Services Agreement shall be binding upon either the District or Contractor unless the same shall be in writing and signed by both the District and Contractor.

SECTION 45 **NOTICES**

- A. All communications in writing between the District and Contractor, including without limitation, applications for payment, shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by telex, telegram, or fax followed by regular mail, addressed as follows:

If to Contractor:

Attn: _____

If to the District:

SAN MARCOS UNIFIED SCHOOL DISTRICT
255 Pico Avenue, Suite 250
San Marcos, CA 92069
Attn.: Tova K. Corman, Executive Director
Facilities, Planning and Development

- B. For the purpose of directions, representatives from Contractor shall be **[INSERT NAME]**, and the District's representative shall be Tova K. Corman **[INSERT NAME]** unless otherwise specified in writing.

SECTION 46 **THIRD-PARTY CLAIMS**

Pursuant to Public Contract Code section 9201, the District shall provide Contractor with timely notification of the receipt of any third-party claim, relating to the Construction Services Agreement. The District is entitled to recover its reasonable costs incurred in providing such notification.

SECTION 47 **ASSIGNMENT**

Neither party to this Construction Services Agreement shall assign this Construction Services Agreement or sublet it as a whole without the written consent of the other, nor

shall Contractor assign any monies due or to become due to it hereunder without the prior written consent of the District.

SECTION 48 **HEADINGS**

The headings herein contained are inserted only as a matter of convenience and reference and are not meant to define, limit or describe the scope or intent of the Contract Documents or in any way to affect the terms and provisions set forth herein.

SECTION 49 **INTEGRATION/MODIFICATION**

This Construction Services Agreement, including any documents incorporated by reference, represents the entire understanding of the District and Contractor as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered herein, and it shall not be amended, altered or changed except by a written agreement signed by the parties hereto.

SECTION 50 **APPLICABLE LAW**

The terms and provisions of this Construction Services Agreement shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Construction Services Agreement the action shall be brought in a state court situated in the County of San Diego, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this County. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorneys' fees, as determined by the courts or arbitrator(s).

SECTION 51 **SUCCESSION OF RIGHTS AND OBLIGATIONS**

All rights and obligations under this Construction Services Agreement shall inure to and be binding upon the successors and assigns of the parties hereto.

(The rest of this page was intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have, by their duly authorized representatives, executed this Construction Services Agreement, in duplicate, as of the day and year first above written.

CONTRACTOR

By: _____

Print Name: _____

Title: _____

Date: _____

SAN MARCOS UNIFIED SCHOOL DISTRICT

By: _____

Tova K. Corman, Executive Director,
Facilities Planning and Development

Date: _____

BY: _____

Mark A. Schiel, Assistant
Superintendent, Business Services

Date: _____

Board Approved Date: , 2018

EXHIBIT "A"
SCOPE OF WORK

The full scope of work of the Project, and any applicable component/phase thereof shall be as set forth in the final DSA approved plans and specifications for the Project, which shall be incorporated by this reference into the Contract Documents as if fully set forth herein.

A complete breakdown of the Estimated GMP for the Project based on the current plans is also attached hereto.

[Breakdown of Estimated GMP to be Attached]

**EXHIBIT “B”
“OR EQUAL” SUBSTITUTION**

The District has not made findings pursuant to Public Contract Code section 3400(c) regarding the use of specific materials, products, things, and/or services that must be utilized for the Project.

EXHIBIT "C"

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that

WHEREAS, the _____ District (hereinafter designated as the "District"), by action taken or a resolution passed _____, 20____ has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows: _____ (the "Project"); and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

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

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the District in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on

the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or District and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed unoriginal thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____ 20____ the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(Corporate Seal of Principal,
if corporation)

Principal (Property Name of Contractor)

By _____
(Signature of Contractor)

(Seal of Surety)

Surety

By _____
Attorney in Fact

(Attached Attorney-In-Fact
Certificate and Required
Acknowledgements)

*Note: Appropriate Notarial Acknowledgments of Execution by Contractor and surety and a power of Attorney MUST BE ATTACHED

NOTARY ACKNOWLEDGMENT

(California All-Purpose Acknowledgment)

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

On _____, 20__ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

(SEAL)

EXHIBIT "D"
PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, _____ (hereinafter referred to as "District") has awarded to _____, (hereinafter referred to as the "Contractor") _____ an agreement for _____ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the District in the sum of _____ DOLLARS, (\$_____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the District, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above performance obligation shall hold good for a period of one (1) year after the acceptance of the work by District, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship the above obligation in penal sum thereof shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligations of Surety hereunder shall continue so long as any obligation of Contractor remains under the Contract or at law. Nothing herein shall limit the District's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by District in enforcing such obligation.

Whenever Contractor shall be, and is declared by the District to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the District's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- (2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the District, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the District under the Contract and any modification thereto, less any amount previously paid by the District to the Contractor and any other set offs pursuant to the Contract Documents.
- (3) Permit the District to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the District under the Contract and any modification thereto, less any amount previously paid by the District to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the District may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the District, when declaring the Contractor in default, notifies Surety of the District's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

CONTRACTOR/PRINCIPAL

Name

By _____

SURETY:

By: _____
Attorney-In-Fact

The rate of premium on this bond is _____ per thousand. The total amount of premium charges,
\$ _____.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of Agent or
Representative for service of
process in California, if different
from above)

(Telephone number of Surety and
Agent or Representative for service
of process in California)

EXHIBIT "E"
CONTRACTOR FINGERPRINTING REQUIREMENTS

CONTRACTOR CERTIFICATION

With respect to the Contract dated _____ 20__ by and between the _____ School District ("the District") and _____ ("Contractor") Contractor hereby certifies to the District's governing board that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with the District 's pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

Contractor's Representative _____

Date: _____

CONTRACTOR EXEMPTION

Pursuant to Education Code sections 45125.1 and 45125.2, the _____ School District ("the District") has determined that _____ ("Contractor") is exempt from the criminal background check certification requirements for the contract dated _____ 20__ by and between the District and Contractor ("Contract") because:

- The Contractor's employees will have limited contact with the District students during the course of the Contract;
- Emergency or exceptional circumstances exist; or
- With respect to Contractors constructing, reconstructing, rehabilitating or repairing a school facility, as provided in Section 45125.2, the Contractor has agreed to ensure the safety of pupils at the school facility by the following method(s) specified in Section 45125.2:

School the District Official: _____

Date: _____

**EXHIBIT "E" (CONT.)
SUBCONTRACTOR FINGERPRINTING REQUIREMENTS**

SUBCONTRACTOR'S CERTIFICATION

The _____ School District ("the District") entered into a contract for services with _____ ("Contractor") on or about _____, 20____ ("Contract"). This certification is submitted by _____, a subcontractor to the Contractor for purposes of that Contract ("Subcontractor"). Subcontractor hereby certifies to the District's governing board that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with the District pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

Subcontractor's Representative: _____

Date: _____

SUBCONTRACTOR'S EXEMPTION

The _____ School District ("the District") entered into a contract for services with _____ ("Contractor") on or about _____, 20____ ("Contract"). Pursuant to Education Code sections 45125.1 and 45125.2, the District has determined that _____, a subcontractor to the Contractor for purposes of that Contract ("Subcontractor") is exempt from the criminal background check certification requirements for the Contract because:

- The Subcontractor's employees will have limited contact with the District students during the course of the Contract;
- Emergency or exceptional circumstances exist; or

With respect to Contractors constructing, reconstructing, rehabilitating or repairing a school facility, as provided in Section 45125.2, the Contractor and/or Subcontractor have agreed to ensure the safety of pupils at the school facility by the following method(s) specified in Section 45125.2: _____

School the District Official: _____

Date _____

EXHIBIT "F"
CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION

Labor Code section 3700 in relevant part provides:

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

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.

- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, either as an individual employer or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Construction Services Agreement.

Contractor: _____

Title: _____

Date: _____

(In accordance with article 5 (commencing at section 1860), chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this Construction Services Agreement.)