

FACILITIES SUBCOMMITTEE MEETING

Gilroy Unified School District – Board Room

9 a.m. Friday, Feb. 8, 2019



1.

ITEM	PAGE #
A. City of Gilroy (Time certain: 9-9:40 a.m.)	
B. Approval of minutes: Jan. 11, 2018	1-7

2. FACILITIES & NEW CONSTRUCTION (PAUL NADEAU)

ITEM	SITE	VENDOR	COST	FUNDING SOURCE	PAGE #
A. The flatwork project at the old portable site	GHS	EF&S Concrete	\$217,000	TBD	8
B. Flint Builders LLB contract	Brownell	Flint Builders	\$50M	Measure E	9-130
C. Pool starting blocks	GHS	TBD	\$TBD	TBD	131-133
D. Gilroy Garlic Festival Facilities Use Plan	GHS, Solarsano and "Olive Grove"	Gilroy Garlic Festival	\$0	N/A	134-143

3. MAINTENANCE (DAN MCAULIFFE)

ITEM	SITE	VENDOR	COST	FUNDING SOURCE	PAGE #
A. Underground Electrical Repair RATIFICATION	ASMS	MJR Electric	\$6,387	RRM	144
B. Diesel Generator Inspection & Service 2 Year	ADB, GHS & Rucker	Peterson Cat	\$12,130	RRM	145-151
C. Marquee Replacement INFORMATION	GHS	TBD	TBD	TBD	152-166
D. Portable Restroom Repair INFORMATION	GHS	TBD	TBD	TBD	167-168
E. Sidewalk repair replacement INFORMATION	Eliot	EF&S Concrete	\$20,790	* Possible City of Gilroy 80/20	169

4. CHERYL GALLOWAY'S ITEMS

ITEM	PAGE #
A. Request for Qualifications (RFQ) for Energy Conservation Design-Build Services	170-177

5. ALVARO MEZA'S ITEMS

ITEM	PAGE #
A. Armory Property on Wren Avenue (2 acres)	n/a
B. Recommended size of next Bond Series (final Measure P; and Series B out of Measure E)	178

6. OTHER PROJECTS/FACILITY ISSUES AT SITES

SCHOOL SITE		
ANTONIO DEL BUONO	BROWNELL	CHRISTOPHER
ELIOT	SOLORSANO	GECA
EL ROBLE	SOUTH VALLEY	GILROY
GLEN VIEW		MT. MADONNA
LAS ANIMAS		
LUIGI APREA		
ROD KELLEY		
RUCKER		
DISTRICT OFFICE		

Next meeting: 9 a.m. Friday, March 8

FACILITIES SUBCOMMITTEE MEETING

9 a.m. Friday, Jan. 11, 2019

PRESENT

BC Doyle
Debbie Flores
Cheryl Galloway
Dan McAuliffe
Natalie Martinez
Alvaro Meza
Paul Nadeau
Anna O'Connor
Linda Piceno
James Pace

Meeting called to order: 9 a.m.

APPROVAL OF MINUTES FROM DEC. 7, 2018

- BC Doyle made motion to approve the minutes; Linda Piceno seconded.
- All in favor

TIME CERTAINS

CLIMATEC ON INFRASTRUCTURE MODERNIATION AND SUSTAINIBILITY OPPORTUNITIES

- Tyler Gertmann of Climatec presented.
- Climatec helps districts to get to net-zero energy.
- Challenges: Not having enough capital, staff; utility rate changes; board and community expectations.
- Approaches in the past: piecemeal; wait and see (bonds and emergency repairs).
- Climatec provides comprehensive approach: funding solutions, technology options, ways to fulfill expectations.
- Technologies: lighting, building automation, heating and cooling, irrigation, roofs/building
- Combating utilities: pairing up solar and battery storage.
- Ultimate goal is to net-zero energy (Prop. 39) and implementing these comprehensive solutions to new projects.
- Typical funding sources: state programs, 0% interest financing programs/grants, Bosch funding, PG&E programs, power-purchase agreements, district routine maintenance, district capital/bond
- Sample comprehensive programs (see slides for examples) BAS = building automation system.
- What are next steps? Climatec feasibility assessment. This would provide a snapshot of what is needed and what are some info for whether to pursue further. RFQ or negotiated path. No cost to district for this assessment. (The process is feasibility assessment (FA), then procurement, then engineering/implementation).
- Climatec is a pre-approved vendor for GUSD.
- After the assessment, Climatec would be one of the competitors at the procurement level.
- Linda: If we don't pay for FA at this level but you do the assessment – is there any issue with the fairness at the RFQ stage with other competitors?
 - Dr. Flores: We will still check with legal to make sure GUSD is comfortable with it.
 - Linda: What other districts have used your services?
 - Tyler: Burlingame, Hayward, Santa Cruz, Cabrillo – in this area.

- Alvaro: The key driver for this proposal is savings to the general fund. If there's an opportunity to improve systems to lower the fees we pay, that's savings to the general fund.
- Alvaro: Cheryl, we should come back with numbers about how much CHS has saved with using water-use conservation, as good data point for discussion.
- Cheryl: This isn't the only company that does this kind of assessment. We've had similar assessments throughout the year, especially in preparation for Prop. 39. Syserco is doing an assessment to gauge where we are now in comparison to where we were before Prop. 39. The difference is Climatec says they'll recommend potential funding sources. In the end, it doesn't harm us to have more in the information.
- Next steps: Alvaro will check with legal. If it's OK with them, he'll pursue the assessment with Climatec with the knowledge that it will go into a competitive RFQ.

RAYMOND JAMES & ASSOCIATES ON MEASURE P & E UPDATES

- Randy Merritt, from Raymond James, presented about starting to look at the timing of Series B out of Measure P & E.
- We are looking at issuing Series B this year to fund Brownell modernization. This is not new, unfound money. This is bond money.
- Borrowing money through certificates of participation (developer's fees; doesn't require voter approval; this was used to finish CHS and other projects) and general obligation bonds (from property taxes through voter approval of bonds).
- James: What are callable?
 - Randy: Determines whether bond is in eligible for refinancing.
- Three bonds since 2002 – measures I, P and E. Last two bonds were at the maximum of \$60 per \$100,000 of assessed value tax rate limit.
- \$138.95M in authorized but unissued bonds. (See slides in presentation).
- Different factors can determine when to issue series.
- Page 5: Single most variable to sell bonds – district assessed valuation growth. In 2009,
- Page 6: Tax rate history.
- Alvaro: Timing is a component in these because the money has to be spent within a certain time after selling.
- It'll still be dated or back-loaded bonds.
- Alvaro: We asked Randy to run scenarios for how much can we issue and have money to finish up Brownell and complete South Valley?
- Measure E: Remaining authorization of \$110M may be sold in two series in 2019 and 2020 or 2021. Limited factor is explained on page 9.
 - Should the district is interested in selling more than \$64K, we can consider submitting a debt capacity waiver to ask for permission to sell more. (Eliminates the 2.5% debt limit factor)
 - Page 10: Future bonding capacity shown over time, which shows options if borrowing \$64K now, more later.
 - Before going to debt capacity waiver, district is required to have a public hearing and provide proof of consultation with bargaining units and advisory committee.
- James: It doesn't look like we need to do more than \$64K now because we can use that in addition to what we have in the back to fund, Brownell, correct?
 - Alvaro: It looks like we can.
- Dr. Flores: Alvaro, are you saying we shouldn't go for \$64K right now?
 - Alvaro: Yes, because if we pull out \$64K, we may not be able to spend it efficiently. The leftover after Brownell wouldn't be enough to start South Valley in the best way. It

would be better to pull out the full amount for South Valley when that project is ready to go. I recommend all of Measure P and \$40K from Measure E to give us some room.

- Paul: South Valley would start after 2020.
- James: I'd like to see a spreadsheet to see different calculations.
- Dr. Flores: I'd like to see charts. Paul, we also need estimates for South Valley – what money do we need for pre-construction to get that phase started while Brownell constructions starts?
- Dr. Flores: I don't want to do the waiver or increase the district's debt.
- Dr. Flores: Do we have any projects for state funding/eligibility? (It's a 60-40 match from the state, with the district providing the match.)
 - Alvaro: Mt. Madonna HS is eligible for \$2M, which is the eligibility limit.
- Some fees are per issuance: legal, financial advisors.
 - Dr. Flores, it would be good to see those numbers as well.
 - James: Are they per bond as well? Or those fees bundled if we issue from E and P at the same time.
 - Randy: Some savings can be made by bundling.
- Randy: You can do this. It's up to the district for decide how much to issue.
- Next steps: Alvaro requests additional research and preparation to provide requested scenarios from subcommittee. Randy will come back in a month or so to the subcommittee with requested data. After the subcommittee is comfortable with numbers, this can go to the board. (It'll go the board twice – for information and then for approval.)

FACILITIES & NEW CONSTRUCTION – PAUL NADEAU

ACCOUNTABILITY, QUALITY BIDDERS, COLBI DOCS

- \$95,000 initially, \$60,500 annually, from Measure P
- Account Ability: Software (accessed through web browser; “software as a service” or SaaS) to handle construction projects. Automates processes and documents (financials).
- Colbi Docs: Second element to software package: tracks and archives notifications between facilities and contractor (pay apps, etc.).
- Quality Bidders: Vets vendors. Streamlines a process that could be improved at GUSD. Keeps pre-qualifications updated.
- This will handle some of the tasks left by vacancies in the Facilities department.
- Alvaro: The subcommittee has seen a demo of Colbi. We saw Key Analytics but it doesn't do the facilities tasks needed. This software gives the Facilities department the tools needed to be more efficient, especially in the face of tighter staffing.
- Alvaro: We are paying for this with the money left from the staffing vacancies. It's important to communicate this to the board.
- James: If you decide to not continue with the service in future, can you retrieve the data?
 - Paul: Yes. A couple of options are available: You can retrieve your data or pay a fee for to maintain the database in their cloud.
- Next steps: This will go to the board for approval.

KEY ANALYTICS

- \$58,000 from Measure P
- A competitor to the Colbi products
- Group that saw demo thought it was redundant accounting software to QSS and wouldn't provide the tools needed for facilities.
- Next steps: Not recommended for Facilities' needs.

BROWNELL MODERNIZATION UPDATE – INFORMATION

- The interview committee has the intent to award to Flint Builders.
- The group interviewed three candidates for the contractor bid. It was the unanimous choice and also the lowest bid.
- Concern about on-site labor requirements for the project (internship requirements, etc.) was brought to district legal team. Legal determined that it's a compliance issue for the vendors, not the district. When we checked back with Flint, they said they are aware and compliant.
- Alvaro: It's important to point out that what is going to the board at the Jan. 17, 2019, meeting: the proposal to award Flint Builders as well as request to approval a \$700K pre-construction agreement.
 - Paul: This agreement will help start the surveys, etc., for pre-construction.
- Linda: Do we have solar incorporated in this project?
 - Alvaro: We expect to have room to incorporate.
- Next steps: This is going to the board for approval.

GARLIC FESTIVAL USE OF GUSD PROPERTIES

- Festival organizers approached the district to ask about using the property off Club Drive for parking.
- Consultant John Dominguez, of School Site Solutions, strongly recommends against it because of the potential pollutants.
- Dan: Some alternatives could be Gilroy HS student and staff parking lots. Playing fields could also be an option but we'd have to figure out how to address potential issues with turf damage.
- Paul: Full disclosure that he's the transportation chairman for the festival. The Gilroy HS options may not be as attractive to festival organizers because it would not be for attendees, but rather staff. What they need is more parking for attendees so that buses would be reduced. District options would not necessary solve the problems they have.
- James: The Solorsano field would be a better option to offer.
- James: We want to be good neighbors but Club Drive won't work. We want to figure out other options to offer.
 - Dan: As a side, the festival has asked about the old wooden tables. We want to get rid of them because the sites have new metal tables.
 - Dr. Flores: They have to be obsolete/surplus them.
- Next steps: Paul will reach out to see if the festival will be interested in the option of the Gilroy HS parking lots and Solorsano field. Dan will talk to festival organizers to see if they want the tables.

GILROY HS: PORTABLE REMOVAL

- It'll cost about \$10-\$12K per unit to move three portables from Gilroy HS to Glen View ES. The siding would have to be redone and possibly re-roof after they're moved, which would be in addition to moving costs.
- Paul reached out to Butte County and they don't need the the portables.
- It'll cost almost \$60K to demo all of them, including creating the asphalt after.
- For hardscape after demolition: LPA didn't have a plan for his area that was hardscape. Its plan was for a mirror of the math building. They're putting together a plan for outdoor area that includes dining areas. That would include a plan, not the materials and labor to implement.
- Gilroy HS has said they wanted two of them for storage. Paul recommends against this because they may not be useable and other potential areas are available.
- Dr. Flores: We need to look at overall storage needs at the school, including the Nob Hill truck and portables.

- Dr. Flores: Can we something simpler?
 - Linda: I'd like to see options for different ranges: a simple concrete pad, something with planters and something more elaborate.
- Next steps:
 - All of the portables will be demolished.
 - We need an estimate of how much it would cost to implement the hardscape LPA would propose.
 - Paul will get an estimate for some simpler and mid-range options from EFS concrete.
 - Paul will get an estimate from a roofing contractor to create a gateway.
 - Paul connects with Gilroy HS to determine storage needs and options.

MAINTENANCE – DAN MCAULIFFE

LAS ANIMAS ES: PROJECTION SCREEN

- \$6,635.66 from RRM
- Vendor: Appropriate Connections
- The screen has been broken since beginning of school year. It's an 11-year-old device.
- Can be repaired for \$5,300 but with only 90-day warranty.
- New would come with a five-year warranty.
- Next steps: This will go to the board for approval.

GILROY HS: SOFTBALL BATTING CAGE

- No cost to district
- Vendor: Home Depot grant
- Diagram in packet (page 56) illustrates where they'd like to install this.
- Can this project have a sign or plaque that acknowledges Home Depot's grant?
 - Dr. Flores: We are discouraging signage but smaller plaque would be OK, especially if it's for acknowledgement of this grant.
- Next steps: Dan will check with Jami Reynolds to whether Home Depot will want to have signage. Dan will give Jami the OK to proceed with project.

EL ROBLE ES: BIRD EXCLUSION

- \$10,790 from RRM
- Vendor: ADM
- The birds near the MPR at this site. They're near the HVAC and other important components so this should be taken care of quickly.
- Next steps: This will go to the board for approval.

RUCKER ES: CARPET REPLACEMENT

- \$13,447.15 from RRM
- Vendor: Cottage Floors
- Carpets are not that old but damaged during the renovation of this area. The carpet is cleaned several times but the stains reappear.
- Not urgent but Dan would like to get it done during next school break.
- Next steps: This will go to the board for approval.

CHRISTOPHER HS: GYM FLOOR REFINISH

- TBD from RRM
- Vendor: TDB

- Dan has been trying to get bids for this but has one so far.
- Would like to get this done in spring.
- Next steps: Dan will come back to subcommittee when he has more bids to compare.

RUCKER ES: MURAL

- No cost to district
- Mural will go on portables that face garden area.
- Next steps: Information only.

LUIGI ES: SITE IMPROVEMENTS

- No cost to district
- Parent club has \$18K to make improvements: installing water-filling stations, painting asphalt.
- They proposed shade structures for pick-up area but Dan talked to principal to recommend against it. Dan recommended benches in parking area instead.
- Next steps: Information only.

RUCKER ES: WATER AND WELL WORK

- Cost not determined at time of submittal. Cost will be about \$45K to \$50K.
- Vendor: Plumbing America, Inc.
- Water board is being updated with the work as we do it.
- Work was done during the winter break to fix cross connections.
- The well at this site is in terrible condition. The pressure tanks are leaking where we can't repair them.
- Progressive repairs. We won't shut water off during school is in session unless it is on the verge of complete shut-down.
- Dan has communicated to the school that the water is safe. Water is being tested weekly.
 - BC: Should water be tested daily?
 - Dan: Will check if this is a requirement.
- Next steps: Repairs will done in a few weeks.

ALVARO MEZA'S ITEMS

BOUNDARY CONSULTANT RFP

- Tom Williams does enrollment forecasts but we need more robust options to give us more complex forecasts.
- Recommendation for RFP will be for boundary consultant and new demographer.
- Next steps: This item will go the board for approval.

OTHER SITES

ANTONIO DEL BUONO ES

- SDC PRESCHOOL:
 - The four portables outside of the fencing area, near the parking lot. The preschool classrooms only have one door that faces the parking lot. Kids have to walk to playground as well as main school in this unfenced areas, which has been a safety concern. Head Start has said they want to a fence as well and indicated they could pay for their part.
 - A proposed solution: Mrs. Codiga and preschool program have found two empty classrooms in the main campus that they'd like to move into ASAP.

- Next steps: They have the subcommittee permission to move. Cheryl will let school know and loop Paul Winslow into conversation.

GPS

- City would like to change striping and signage near GPS. They'll re-stripe closer to South Valley soon after. They'd like to get rid of left-hand turns.
- What the city is asking the district is to help with educating parents about the changes. The police department will do three phases of enforcement.

DISTRICT-WIDE

- Linda: With the upcoming rains, how are we prepared?
 - Dan: We are as prepared as we can be. Crew is on a circuit to check sites every morning after rain to check draining and gutters, especially in our usual problem areas.

FACILITIES SUBCOMMITTEE

- Paul: Welcome to Trustee BC Doyle, who has been appointed to the subcommittee, and Edgar Esquivel, new facilities project manager.

Next meeting: Feb. 8, 2019

Meeting adjourned: 12:15 p.m.



Phone: (408) 710-7420

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License #917713 | DIR #1000021413

No. 1 of 1

Date: February 4, 2019

PROPOSAL

PROPOSAL SUBMITTED TO Gilroy Unified School District – Paul Nadean		EMAIL Paul.nadean@gilroyunified.org	DATE OF PLANS/PAGE #'S
PHONE NUMBER 669-261-5901	FAX NUMBER	JOB NAME	
ADDRESS, CITY, STATE, ZIP 7810 Arroyo CIR, Gilroy CA.95020		JOB LOCATION Gilroy High School	

We propose hereby to furnish material and labor necessary for the completion of:

GILROY HIGH SCHOOL CONCRETE SLAB AT MODULAR TEAR DOWN:

Concrete 110' x 165' (18,150 sf)

- Equipment and trucking
- Grading sub-base and compaction of sub-base
- Install 8" base rock and compact
- Install 3/8" rebar – 18" on center both ways
- Set forms and raise utility boxes to new concrete slab elevation
- Pour concrete (2 pours) using a boom pump

\$217,800.00

Seatwalls (2 levels)

- Equipment and trucking
- Excavation for footings and haul off
- Install rebar for footings
- Pour concrete footings
- Form seat walls and pour (2 pours) using concrete boom pump (2x)

\$81,390.00

Handicap Ramps

- HCR leading to baseball field - Approx. 120' x 6'

\$12,000.00

Note: AC demo done by others / EF&S to demo at \$1.50 sf \$27,225.00 (Not added to proposal yet)

We propose hereby to furnish material and labor – complete in accordance with above specifications for the sum of:

_____ dollars \$ _____

Payment as follows: Payment in full is expected upon completion

All material is guaranteed to be as specified. All work to be completed in a substantial workmanlike manner according to specifications submitted, per standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance. If either party commences legal action to enforce its rights pursuant to this agreement, the prevailing party in said legal action shall be entitled to recover its reasonable attorney's fees and costs of litigation relating to said legal action, as determined by a court of competent jurisdiction.

Authorized
Signature

Note: this proposal may be withdrawn by us

if not accepted within 10 Days.

ACCEPTANCE OF PROPOSAL The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

Signature _____

Date of Acceptance _____



BROWNELL MIDDLE SCHOOL MODERNIZATION

FINISH DEVELOPMENT - CAMPUS ENTRY - 01

2019-01-25





BROWNELL MIDDLE SCHOOL MODERNIZATION
FINISH DEVELOPMENT - CAMPUS QUAD - 01

2019-01-25



BROWNELL MIDDLE SCHOOL MODERNIZATION
FINISH DEVELOPMENT - CLASSROOM POD - 01

2019-01-25





BROWNELL MIDDLE SCHOOL MODERNIZATION
FINISH DEVELOPMENT - CAMPUS ENTRY - 02

2019-01-25





BROWNELL MIDDLE SCHOOL MODERNIZATION
FINISH DEVELOPMENT - CAMPUS QUAD - 02

2019-01-25





BROWNELL MIDDLE SCHOOL MODERNIZATION
FINISH DEVELOPMENT - CLASSROOM POD - 02

2019-01-25



BROWNELL MIDDLE SCHOOL MODERNIZATION
FINISH DEVELOPMENT - CAMPUS ENTRY - 03

2019-01-25





BROWNELL MIDDLE SCHOOL MODERNIZATION
FINISH DEVELOPMENT - CAMPUS QUAD - 03

2019-01-25



BROWNELL MIDDLE SCHOOL MODERNIZATION
FINISH DEVELOPMENT - CLASSROOM POD - 03

2019-01-25



CONSTRUCTION SERVICES AGREEMENT

This Construction Services Agreement (hereinafter referred to as the "Agreement") is entered into this ____ day of _____, 2019, by and between the Gilroy Unified School District, a California school district organized and existing under the laws of the State of California (hereinafter referred to as the "District") and Flint Builders, Inc. which is a contractor licensed by the State of California, with its principal place of business at 401 Derek Place, Roseville, California 95678 (hereinafter referred to as "Contractor").

WHEREAS, the District operates Brownell Middle School, located at 7800 Carmel Street, Gilroy, California 95020 (hereinafter referred to as the "School Facility"); and

WHEREAS, the District desires to construct new facilities and improvements (as more fully described below) at those portions of the School Facility identified in the Site Lease, as defined in Section 1G below (the "Site"); and

WHEREAS, the District has determined that it will provide the best value to the District and it is in its best interests to pursue the improvements to the School Facility through the lease-leaseback method of project delivery pursuant to California Education Code §17406 which permits the governing board of the District, without advertising for bids, to lease to Contractor property owned by the District if the instrument by which property is leased requires the lessee to construct, or provide for the construction, on the leased property, of a facility for the use of the District during the term of the lease, and provides that title to that facility shall vest in the District at the expiration of the lease; and

WHEREAS, the District desires to finance a portion of the improvements utilizing the lease/leaseback methodology; and

WHEREAS, the District has conducted an RFQ/P process by which it selected Contractor; and

WHEREAS, the District intends to undertake work to improve the School Facility, the scope of which is generally described in Exhibit A attached hereto and incorporated by reference herein; and

WHEREAS, in connection with the approval of this Agreement, the District will enter into a site lease with Contractor, under which it will lease to Contractor the Site in order for Contractor to construct the Project as described in the Scope of Work set forth generally in Exhibit A (hereinafter referred to as the "Scope of Work"); and

WHEREAS, assuming that the District and Contractor can agree on the terms, including the price, for the additional scope of work, the District and Contractor anticipate that the scope of the Project may be amended to include additional work; and

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GILROY UNIFIED SCHOOL DISTRICT

CONSTRUCTION SERVICES AGREEMENT

Brownell Middle School Project

_____, 20__

WHEREAS, Contractor will lease the Site back to the District pursuant to a sublease agreement, under which the District will be required to make payments to Contractor for the use and occupancy of the Site, including the Project (hereinafter the "Financing"); and

WHEREAS, Contractor represents that it is sufficiently experienced in the construction of the type of facility and type of work sought by the District and is willing to perform said work for lease and the Financing to the District, all as more fully set forth herein; and

WHEREAS, at the expiration of the Site Lease, title to the Site and the improvements thereon will vest with the District;

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

SECTION 1. DEFINITIONS

- A. **Construction.** The term "Construction" as used in this Agreement includes 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 Scope of Work set forth in Exhibit A attached hereto. Unless otherwise expressly stipulated, Contractor shall perform all work and provide and pay for all materials, labor tools and equipment, including, but not limited to, light, water, and power, necessary for the proper execution and completion of the Project shown on the drawings and described in the specifications developed pursuant to this Agreement.
- B. **Construction Documents.** The term "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 pursuant to the Scope of Work set forth in Exhibit A attached hereto, including any reference specifications or reproductions prepared by the architect of record hired by the District for the Project (the "Architect") and specifications approved by the District, the Division of the State Architect ("DSA"), and the local agencies having jurisdiction or other regulatory agencies whose approval may be required, which show or describe the location, character, dimensions or details for the Project and specifications for construction thereof.
- C. **Contract Documents.** The term "Contract Documents" as used in this Agreement refers to those documents which form the entire agreement by and between the District and Contractor. The Contract Documents consist of this Agreement, including the exhibits and attachments hereto, the Site Lease, including the exhibits and attachments thereto, the Sublease, including the exhibits and attachments thereto, the Project Manual including the General Conditions thereto, as amended, which is

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GILROY UNIFIED SCHOOL DISTRICT

CONSTRUCTION SERVICES AGREEMENT

Brownell Middle School Project

_____, 20__

incorporated herein (the “General Conditions”), and the Construction Documents. The term “Contract Documents” shall include all modifications and addenda thereto.

- D. **Guaranteed Maximum Price.** The term “Guaranteed Maximum Price” or “GMP” as used in this Agreement means the Guaranteed Maximum Price established pursuant to Section 5 of this Agreement to be used to calculate the Tenant Improvement Payments and the Sublease Payments to be paid by the District to Contractor pursuant to the Sublease, subject only to any adjustments for Extra Work/Modifications as provided in Section 10 of this Agreement.
- E. **Preconstruction Services.** The term “Preconstruction Services” as used in this agreement means to retain a professional construction firm (hereafter “CONTRACTOR”) to provide certain professional pre-construction services, as described in **Exhibit B** related to the Project plans and specifications for the purpose of designing the project within budget and eliminating unforeseen circumstances, errors, omissions and ambiguities in the construction documents prepared by the Architect.
- F. **Project.** The term “Project” shall mean the improvements and facilities to be constructed and installed by Contractor at the School Facility which will result in complete and fully operational facilities as more fully set forth on **Exhibit A** attached hereto.
- G. **Project Manual.** The term “Project Manual” shall mean the compilation of the Specification sections including Division 0, Procurement and Contracting Requirements, Division 1 General Requirements, and technical specifications Division 2 through 33 prepared by the Architect and approved by the District, the DSA, or other regulatory agencies which show or describe the location, character, dimensions or details for the Project, which shall be delivered to Contractor upon execution of this Agreement.
- H. **Site.** The term “Site” as used in this Agreement shall mean those certain parcels of real property and improvements thereon (if any) more particularly described in Exhibit A to the Site Lease.
- I. **Site Lease.** The term “Site Lease” as used in this Agreement shall mean the certain Site Lease dated of even date herein between the District and Contractor, together with any duly authorized and executed amendment(s) thereto, pursuant to which the District leases the Site to Contractor.

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GILROY UNIFIED SCHOOL DISTRICT

CONSTRUCTION SERVICES AGREEMENT

Brownell Middle School Project

_____, 20__

- J. **Specifications.** The term “Specifications” shall mean those numbered specifications set forth in the Project Manual which shall accompany this Agreement and which are incorporated by reference herein. Individual Specifications may be referred to by their specification number as set forth in the Project Manual.
- K. **Subcontractor.** As used in this Agreement, the term “Subcontractor” means any person or entity, including trade contractors, who have a contract with Contractor to perform any of the Construction.
- L. **Sublease.** The term “Sublease” as used in this Agreement shall mean the certain Sublease dated of even date herein between the District and Contractor, together with any duly authorized and executed amendment(s) thereto, pursuant to which the District subleases the Site from Contractor.
- M. **Sublease Payments.** The term “Sublease Payments” as used in this Agreement shall mean the payments made by the District to Contractor pursuant to Section 6 of the Sublease.
- N. **Tenant Improvement Payments.** The term “Tenant Improvement Payments” as used in this Agreement shall mean the payments made by the District to Contractor pursuant to Section 6 of the Sublease.

SECTION 2. CONTRACTOR’S DUTIES AND STATUS

Contractor covenants with the District to furnish reasonable skill and judgment in constructing the Project. Contractor agrees to furnish efficient business administration and superintendence and 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 Contract Documents.

SECTION 3. ADDITIONAL SERVICES

If the District requests Contractor to perform additional services not described in this Agreement, Contractor shall provide a cost estimate and a written description of the additional work necessary to complete such additional services. The cost for such additional services shall be negotiated and agreed upon in writing in advance of Contractor performing or contracting for such additional services, and such cost shall be used to adjust the GMP established pursuant to Section 5 hereof. In the absence of a written agreement, the District will not compensate Contractor for additional services, will not adjust the GMP for such additional services, and Contractor will not be required to perform them. It is understood and agreed that if Contractor performs any services that it claims are additional services without receiving prior written approval from the District Board of Education, Contractor shall not be paid for such claimed additional services and the GMP will not be adjusted. Nothing in this Agreement shall be construed as

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limiting the valuation of such additional services and amount that the GMP will be adjusted for such additional services, should a written agreement for such services be executed by the parties. Notwithstanding the foregoing, Contractor shall not be entitled to compensation, nor will the GMP be adjusted, for additional services required as a result of Contractor's acts, errors or omissions.

SECTION 4. OWNERSHIP OF PLANS AND DOCUMENTS

All original field notes, written reports, drawings, specifications, Construction Documents, and other documents, produced or developed for the Project are the property of the District, regardless of whether the Project is constructed, and shall be furnished to the District. Such documents are not to be used by Contractor or by the Subcontractors on other work nor shall Contractor nor the Subcontractors claim any right to such documents. This shall not deprive Contractor from retaining electronic data or other reproducible copies of the Construction Documents or the right to reuse information contained in them in the normal course of Contractor's professional activities.

SECTION 5. ESTABLISHMENT OF GUARANTEED MAXIMUM PRICE

The "GMP" for the Project shall be _____. The GMP consists of (1) Sublease Tenant Improvement Payments in the amount of _____ and, (2) a Contractor Contingency in the amount of _____, and, (3) Sublease Payments in the amount of _____ per month not to exceed a total lease value of _____ pursuant to terms and payment schedule as set forth in the Sublease.

The GMP is based upon the plans and specifications existing at the time this Agreement is entered into between Contractor and the District, and more fully described and referenced in the Scope of Work set forth in Exhibit A attached hereto. Contractor shall assume the risk of cost overruns which were not foreseeable at the time this Agreement is entered into and the GMP determined, except for undocumented events of the type set forth in Section 18 hereof, work mandated by an outside agency after issuance of Construction Documents that could not have been reasonably foreseen from review of the Contract Documents, or costs arising from undocumented geotechnical issues. Contractor acknowledges that (i) Contractor has conducted a site inspection and is familiar with the site conditions based on records, studies and visible conditions relating to construction and labor and (ii) Contractor has reviewed the Contract Documents and is familiar with the contents thereof. District directed changes to the scope of the Project not contemplated in the Scope of Work shall be deemed Extra Work/Modifications pursuant to the procedures set forth in Section 10 of this Agreement. The GMP shall include, but not be limited to, increases in labor and materials. The GMP has been used to calculate the Tenant Improvement Payments and the Sublease Payments to be paid by the District to Contractor pursuant to the Sublease. The GMP includes the cost of all labor, materials, equipment, general conditions, overhead, profit and a Contractor Contingency as indicated above.

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The Contractor Contingency is for the purpose of covering the cost of very specific issues that may arise during construction and it may be used only upon the written agreement of the Contractor, the architect of record, and the District. The Contractor Contingency is to be used only to pay Contractor for the following enumerated reasons: (1) additional costs resulting from discrepancies in the bid buy-out process; (2) conflicts, discrepancies or errors in the Construction Documents; (3) work required by the Inspector of Record or any governmental agency involved in the permitting or approval/certification process that is not otherwise shown in the Construction Documents; and (4) any other items of cost agreed to in writing by the Contractor and District to be included in the Contractor Contingency. The Contractor Contingency shall not be used for costs incurred as a result of Contractor's acts, errors or omissions.

Contractor shall be responsible for tracking expenditures of the Contractor Contingency and shall provide periodic written updates to the District as directed. Unused Contractor Contingency and unused Allowances at Project completion shall reduce the GMP and will result in an adjustment of the Tenant Improvement Payments and possibly the Sublease Payments.

The District shall at all times have the right to reduce the scope of the Project. If the District reduces the scope of the Project, the GMP shall be reduced commensurate with the reduced Scope of Work pursuant to the provisions of Section 10, below, and will result in an adjustment of the Tenant Improvement Payments and, if applicable, the Sublease Payments.

SECTION 6. NOTICE TO PROCEED WITH PRECONSTRUCTION AND CONSTRUCTION

Upon receipt of an approved GMP, the District shall issue a notice to Contractor to proceed with the Construction of the Project. In the event that a Notice to Proceed with Construction is not issued for the Project, the Site Lease and the Sublease shall terminate upon written notice from the District to Contractor that a Notice to Proceed will not be issued.

SECTION 7. SAVINGS

If Contractor realizes a savings on one aspect of the Project, such savings shall be tracked and Contractor shall provide periodic written updates of such savings. Such savings shall be added to the Contractor Contingency and the use of such savings shall be as set forth in Section 5. However, if such savings are not so utilized, the amount of such savings shall reduce the GMP and will result in an adjustment of the Tenant Improvement Payments and, if applicable, the Sublease Payments.

SECTION 8. SELECTION OF SUBCONTRACTORS

In the interest of minimizing the expenditure of funds for the construction of the Project, Contractor agrees to select Subcontractors who are appropriately licensed by the State of California for each trade component of the Project in a manner that fosters competition. In connection with the selection of Subcontractors, Contractor agrees that it will comply with the

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GILROY UNIFIED SCHOOL DISTRICT

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requirements of California Education Code § 17406(a)(4). With respect to awarding Subcontracts with a value not exceeding one-half of 1 percent of the GMP, Contractor agrees that it will either solicit bids from potential subcontractors pursuant to the competitive bid procedures set forth in the California Public Contract Code, including specifically Public Contract Code section 20110, et seq., or that it will utilize an informal bidding process established by Contractor which also incorporates competitive bid procedures. Regardless of the method Contractor employs, Contractor will verify all subcontractors meet the current DIR registration requirements, District prequalification requirements and make a good faith effort to contact and utilize Local and DVBE contractors and suppliers in securing bids for performance of the Project in accordance with the procedures set forth in Section 1.77 of the General Conditions. In the event that Contractor chooses to select Subcontractors pursuant to an informal bidding process, Contractor shall ensure that it receives at least three competitive quotes from potential subcontractors for each trade component of the Project, unless the parties agree otherwise 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 Contractor and selected bidders. Contractor shall submit a listing of proposed subcontractors to the District for the District's review. In no case, will Contractor award any sub-contracts until the District has concurred in the scope and price of the sub-contracted 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 Contractor does not comply with this provision, the District may terminate this Agreement in accordance with the provisions of the General Conditions. Subcontractors awarded contracts by Contractor shall be afforded all the rights and protections of listed subcontractors under the provisions of the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100, et seq.).

SECTION 9. CONSTRUCTION SCOPE OF WORK

- A. Prior to commencing Construction, Contractor shall comply with the initial schedule requirements set forth in the General Conditions.
- B. Contractor shall complete the Construction pursuant to the Construction Documents as amended subject to any additional DSA or other regulatory approvals as may be required, performing all work set forth in the Scope of Work, and shall make reasonable efforts in scheduling to prevent disruption to classes and surrounding neighborhoods.
- C. Contractor shall be responsible for complying with all applicable building codes, including without limitation mechanical codes, electrical codes, plumbing codes and fire codes, each of the latest edition, required by the regulatory agencies and for arranging and overseeing all necessary inspections and tests including inspections by the DSA or regulatory agencies, permits and occupancy permits, and ensuring compliance with any Federal and State laws, including, but not limited to, safety

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procedures and requirements, and construction employee training programs which cover among other items, hazardous chemicals and materials.

- D. Contractor shall establish procedures for the protection of all surrounding structures, equipment, utilities, and other existing improvements, both on-site and off-site. Contractor assumes all risk of loss, of vandalism, theft of property or other property damage ("Vandalism") which occurs at a site at which Contractor is undertaking construction of the Project. Contractor assumes all risk of loss which occurs where Contractor is undertaking construction of the Project from causes due to negligence or misconduct by Contractor, its officers, employees, subcontractors, licensees and invitees. Contractor shall replace District property damaged by such Vandalism or theft or compensate the District for such loss, including payment of out of pocket expenses such as insurance deductibles the District might incur under such circumstances.
- E. 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 School Facility and surrounding neighborhoods, including procedures to control on-site noise, dust, and pollution during construction.
- F. The District shall cause the appropriate professionals to stamp and sign, as required, the original Construction Documents or parts thereof and coordinate the Project's design with all utilities.
- G. Contractor shall, for the benefit of the Subcontractors, attend pre-construction orientation conferences in conjunction with the Architect, IOR and District representatives, to set forth the various reporting procedures and site rules prior to the commencement of actual construction. Contractor shall also attend construction and progress meetings with District representatives and other interested parties, as requested by the District, to discuss such matters as procedures, progress problems and scheduling. Contractor shall prepare and promptly distribute official minutes of such meetings to all parties in attendance, including without limitation the District, the Architect and the District Inspector of Record.
- H. Contractor shall incorporate approved changes as they occur, and develop cash flow reports and forecasts for submittal to the District as requested. Contractor shall provide regular monitoring of the approved estimates for Construction costs, showing actual costs for activities in progress, and estimates for uncompleted tasks. 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, and for other work requiring accounting records.

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- I. 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 each respective report.
- J. Contractor shall keep daily reports containing a record of weather, Subcontractors, work on the site, number of workers, work accomplished, problems encountered, and other similar relevant data as the District may require. Contractor shall make the reports available to the District, the Architect, and the District's project manager. The District shall be promptly advised on all anticipated delays in the Project.
- K. The District shall bear the cost for the DSA Inspector, soils testing, DSA or other regulatory agency fees, and special testing required in the construction of the Project. If additional review or permits become necessary for reasons not due to Contractor's fault or because of DSA or regulatory agency 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.

SECTION 10. EXTRA WORK/MODIFICATIONS

- A. The District may prescribe or approve additional work or a modification 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 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 in this Agreement 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, in the opinion of Contractor, make strict compliance with the specifications impractical, Contractor shall notify the District of the need for Extra Work/Modifications 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 the Extra Work/Modifications 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 the request in writing, the costs of the Extra Work/Modification shall be added to or deducted from the GMP or the Scope of Work shall be modified to complete the Project within the GMP, as applicable. Any adjustments to the GMP will result in an adjustment of the Tenant Improvement Payment and, if applicable, the Sublease Payments.

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- B. Extra Work/Modifications include work related to unforeseen underground conditions if, and only if, such conditions are not visible or identified on plans, reports or other documents available to Contractor. Extra Work/Modifications do not include underground conditions that are identified on plans, reports or other documents as described in Exhibit A but are in a location different than is set forth on such plans, reports or other documents available to Contractor.
- C. Should Contractor claim that any instruction, request, drawing, specification, action, condition, omission, default or other situation (i) obligates the District to increase the GMP; or (ii) obligates the District to grant an extension of time for the completion of this Agreement; or (iii) constitutes a waiver of any provision in this Agreement, CONTRACTOR SHALL NOTIFY THE DISTRICT, IN WRITING, OF SUCH CLAIM AS SOON AS POSSIBLE, BUT IN NO EVENT WITHIN MORE THAN TEN (10) 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 items used in valuing said claim. Contractor shall be required to certify under penalty of perjury the validity and accuracy of any claims submitted. Contractor's failure to notify the District within such ten (10) day period shall be deemed a waiver and relinquishment of the claim against the District.
- D. 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, shall be included in an increase to the GMP if said expenses are the result of the negligent acts or omissions of the District, or its principals, agents, servants, or employees.

SECTION 11. PERSONNEL ASSIGNMENT

- A. Contractor shall assign _____ as Project Manager/Superintendent for the Project. So long as _____ remains in the employ of Contractor, such person 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 the manager and/or the 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 of paragraph A of this Section 11 shall entitle the District to terminate this Agreement for breach, pursuant to the provisions of the General Conditions.

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- B. Notwithstanding the foregoing provisions of paragraph A of Section 11, above, if any manager and/or superintendent proves not to be satisfactory to the District, upon written notice from the District to Contractor, such person(s) shall be promptly replaced by a person who is acceptable to the District in accordance with the following procedures: Within five (5) business days after receipt of a notice from the District requesting replacement of any manager and/or superintendent or discovery by Contractor that any manager and/or superintendent is leaving their employ, as the case may be, Contractor shall provide the District with the name of an acceptable replacement/substitution together with such information as the District may reasonably request about such replacement/substitution. 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. If the District and Contractor cannot agree as to the replacement/substitution, the District shall be entitled to terminate this Agreement for breach pursuant to the provisions of the General Conditions.

SECTION 12. BONDING REQUIREMENTS

Contractor shall fully comply with the requirements set forth in Section 6.9 of the General Conditions.

SECTION 13. PAYMENTS TO CONTRACTOR

- A. Contractor shall finance the cost of construction of the Project which costs shall not exceed the GMP, which shall not be adjusted except as otherwise provided in this Agreement. The District shall pay Contractor Tenant Improvement Payments and Sublease Payments pursuant to the terms and conditions of Section 6 of the Sublease. In the event of a dispute between the District and Contractor, the District may withhold from the Tenant Improvement Payments and the Sublease Payments an amount not to exceed one hundred fifty percent (150%) of the disputed amount.
- B. This Agreement is subject to the provisions of California Public Contract Code Sections 7107, 7201 and 20104.50 as they may from time to time be amended.
- C. For purposes of this Agreement, the acceptance by the District means acceptance made only by an action of the governing body of the District in open session. Acceptance by Contractor of the final Tenant Improvement Payment or the Sublease Payment, as the case may be, shall constitute a waiver of all claims against the District related to those amounts.

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SECTION 14. CONTRACTOR'S CONTINUING RESPONSIBILITY

Neither the final payment nor any provision in the Contract Documents shall relieve Contractor of responsibility for faulty materials or workmanship incorporated in the Project or for any failure to comply with the requirements of the Contract Documents.

SECTION 15. INSURANCE

Contractor shall provide, during the life of this Agreement, the types and amounts of insurance set forth in Article 6 of the General Conditions, which are incorporated by reference herein.

SECTION 16. 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 School Facilities at 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 17. 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 with respect to the Project. 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 Site pursuant to this Agreement. Reference is made to the fact that the District has provided information on the Site to Contractor. Such information shall not relieve 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. Contractor shall be responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the Site and for having satisfied itself 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 itself with the conditions at the Site will be recognized.

SECTION 18. HAZARDOUS WASTE AND UNKNOWN PHYSICAL CONDITIONS

Contractor shall comply with the District's Hazardous Materials Procedures and Requirements as set forth herein.

- A. If the District has identified the presence of hazardous materials on or in proximity to the Site (the "Pre-existing Hazardous Materials"), Contractor shall review all

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information provided by the District that characterizes the Pre-existing Hazardous Materials and shall take the actions approved by DTSC and issued by the District necessary to address the Pre-existing Hazardous Materials in the performance of the work. Contractor shall conduct the work based on this information issued at the time contract documents are executed. Contractor shall immediately communicate, in writing, any variances from available information to the District.

- B. The District will retain an additional independent environmental consultant to perform the investigation, inspection, testing, assessment, sampling and analysis necessary to prepare and recommend a remediation plan for the Pre-existing Hazardous Materials for the District's approval (the "Remediation Plan").
- C. The District will retain title to all Pre-existing Hazardous Materials encountered during the work. This does not include hazardous material generated by Contractor, including but not limited to used motor oils, lubricants, cleaners, etc. Contractor shall dispose of such hazardous waste in accordance with the provisions of the Contract Documents, as well as local, State and Federal laws and regulations. The District will be shown as the hazardous waste generator and will sign all hazardous waste shipment manifests for non-Contractor generated hazardous waste. Nothing contained within these Contract Documents shall be construed or interpreted as requiring Contractor to assume the status of owner or generator of hazardous waste substances for non-Contractor generated hazardous wastes.
- D. Except as otherwise provided herein, it is the responsibility of Contractor to obtain governmental approvals relating to Hazardous Materials Management, including Federal and State surface water and groundwater discharge permits and permits for recycling and reuse of hazardous materials for all work noted in the contract documents. Contractor shall be responsible for coordinating compliance with such governmental approvals and applicable governmental rules with the District's hazardous materials consultant, including those governing the preparation of waste profiles, waste manifests, and bills of lading. If Contractor encounters hazardous materials, it shall immediately notify the District in writing. The District, Consultant and Contractor shall jointly establish the plan for disposition and actions to be taken with respect to the hazardous materials, subject to final written approval by the District.
- E. If, during construction, Contractor encounters materials, conditions, waste, contaminated groundwater or substances, not identified in the District's assessment report, that Contractor reasonably suspects are hazardous materials, Contractor shall stop the affected portion of the work, secure the area, promptly notify the District, and take reasonable measures to mitigate the impact of such work stoppage. The District shall retain the services of an environmental consultant to perform investigation,

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inspection, testing, assessment, sampling and analysis of the suspect materials, conditions, waste, groundwater or substances.

- (1) Found Not to be Hazardous Materials. If the environmental consultant determines that the materials, conditions, waste, contaminated groundwater or substances do not constitute hazardous materials, Contractor shall recommence the suspended work.
- (2) Found to be Hazardous Materials. If the environmental consultant determines that the materials, conditions, waste, contaminated groundwater or substances constitute hazardous materials and such hazardous materials require remediation and disposal, then the District, Consultant and Contractor shall jointly establish the plan for disposition and actions to be taken with respect to the hazardous materials, subject to final written approval by the District. All such costs shall be the responsibility of the District.

F. Exacerbation of Pre-Existing Hazardous Materials.

If during construction Contractor encounters pre-existing environmental conditions that it knew or should have known involve hazardous materials (the "Point of Discovery") (which encounters may include an unavoidable release or releases of hazardous materials) then Contractor must immediately stop the affected portion of the work. If Contractor fails to immediately stop the affected portion of the work after the Point of Discovery, then Contractor is solely responsible for any resultant Exacerbation Cost. "Exacerbate," in all its forms, means the worsening effects of Contractor's failure to stop the affected portion of work after the Point of Discovery. "Exacerbation Cost" means the differential between (i) the actual increase in the cost of remediation and delays to the Project attributable to pre-existing environmental conditions involving hazardous substances, and (ii) the cost thereof or delays thereto had Contractor immediately stopped the affected portion of the work after the Point of Discovery. The standard of "should have known" applies to Contractor's supervisory personnel, whether or not on the Site. Contractor's supervisory personnel must have had the hazardous material training required by applicable OSHA and Cal OSHA rules or regulations.

SECTION 19. INDEPENDENT CONTRACTOR

- A. Contractor is retained as an independent contractor and is not employed by the District. No employee or agent of Contractor shall become, or be considered to be, an employee of the District for any purpose. It is agreed that the District is interested only in the results obtained from service under this Agreement and that Contractor shall perform as an independent contractor with sole control of the manner and means of performing the services required under this Agreement. Contractor shall complete this

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Brownell Middle School Project

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Agreement according to its own methods of work which shall be in the exclusive charge and control of Contractor and which shall not be subject to control or supervision by the District except as to results of the work. It is expressly understood and agreed that Contractor and its employees shall in no event be entitled to any benefits to which the District employees are entitled, including, but not limited to, overtime, retirement benefits, insurance, vacation, worker's compensation benefits, sick or injury leave or other benefits.

- B. Contractor shall be responsible for all salaries, payments, and benefits for all of its officers, agents, and employees in performing services pursuant to this Agreement.

SECTION 20. ACCOUNTING RECORDS

Contractor, and all Subcontractors, shall check all materials, equipment and labor entering into the work and shall keep or cause to be kept such full and detailed accounts as may be necessary for proper financial management under this Agreement, including true and complete books, records and accounts of all financial transactions in the course of their activities and operations related to the Project. These documents include sales slips, invoices, payrolls, personnel records, requests for Subcontractor payment, and other data relating to all matters covered by the Contract Documents (the "Data"). The Data shall be maintained for ten (10) years from the latest expiration of the term (as such may be extended) of any of the Contract Documents. Contractor shall use its best efforts to cause its Subcontractors to 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. Upon completion of the Project, Contractor shall provide the District with one (1) complete copy of the Data.

The District, at its own costs, shall have the right to review and audit, upon reasonable notice, the books and records of Contractor and any Subcontractors concerning any monies associated with the Project.

SECTION 21. PERSONAL LIABILITY

Neither the trustees, officers, employees, or agents of District, the District's representative, or Architect shall be personally responsible for any liability arising under the Contract Documents.

SECTION 22. AGREEMENT MODIFICATIONS

No waiver, alteration or modification of any of the provisions of this 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 23. NOTICES

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Any notices or filings required to be given or made under this Agreement shall be served, given or made in writing upon the District or Contractor, as the case may be, by personal delivery or registered mail (with a copy sent via fax or regular mail) to the respective addresses given below or at such other address as such party may provide in accordance with the provisions herein. Any change in the addresses noted herein shall not be binding upon the other party unless preceded by no less than thirty (30) days prior written notice.

If to Contractor:

Flint Builders, Inc.
401 Derek Place
Roseville, California 95678
Attn: _____

If to the District:

Gilroy Unified School District
7810 Arroyo Circle
Gilroy, California 95020
Attn: Dr. Deborah A. Flores, Superintendent

With a copy to Mary Hernandez,

Garcia, Hernandez, Sawhney LLP
2490 Mariner Square Loop, Suite 140
Alameda, CA 94501

Notices under this Agreement shall be deemed to have been given, and shall be effective upon actual receipt by the other parties, or, if mailed, upon the earlier of the fifth (5th) day after mailing or actual receipt by the other party.

SECTION 24. ASSIGNMENT

Neither party to this Agreement shall assign this 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 25. PROVISIONS REQUIRED BY LAW

Each and every provision of law and clause required to be inserted in these Contract Documents shall be deemed to be inserted herein and the Contract Documents shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or is not inserted correctly, then upon application of either party the Contract Documents shall forthwith be physically amended to make such insertion or correction.

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SECTION 26. HEADINGS

The headings in this Agreement 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 27. APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of California. The parties irrevocably agree that any action, suit or proceeding by or among the District and Contractor shall be brought in whichever of the Superior Courts of the State of California, Santa Clara County, or the Federal Court for the Northern District of California in San Jose, California, has subject matter jurisdiction over the dispute and waive any objection that they may now or hereafter have regarding the choice of forum whether on personal jurisdiction, venue, forum non conveniens or on any other ground.

SECTION 28. SUCCESSION OF RIGHTS AND OBLIGATIONS

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

SECTION 29. NOTIFICATION OF THIRD PARTY CLAIMS

The District shall provide Contractor with timely notification of the receipt by the District of any third-party claim relating to this Agreement, and the District may charge back to Contractor the cost of any such notification.

SECTION 30. SEVERABILITY

If any one or more of the terms, covenants or conditions of this Agreement shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of the Contract Documents shall be affected thereby, and each provision of the Contract Documents shall be valid and enforceable to the fullest extent permitted by law.

SECTION 31. ENTIRE AGREEMENT

This Construction Services Agreement and the additional Contract Documents as defined in paragraph C of Section 1 herein, including the Site Lease, the Sublease, and the Specifications, drawings, and plans constitute the entire agreement between Contractor and the District. The Contract Documents shall not be amended, altered, changed, modified or terminated without the written consent of both parties hereto, except as otherwise provided in Section 10 hereof.

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SECTION 32. EXECUTION IN COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

IN WITNESS, WHEREOF the parties hereto, intending to be legally bound thereby, have executed this Agreement effective as of the date first above written.

CONTRACTOR

Flint Builders, Inc.
401 Derek Place
Roseville, CA 95678

THE DISTRICT

Gilroy Unified School District,
a California school district
7810 Arroyo Circle
Gilroy, CA 95020

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

Date: _____

Date: _____

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EXHIBIT A

Scope of Work (Plans & Specifications)

To be Approved by the Division of State Architect of the State of
California

- 19 -

GILROY UNIFIED SCHOOL DISTRICT

CONSTRUCTION SERVICES AGREEMENT

Brownell Middle School Project

_____, 20__

SECTION 00700

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GENERAL CONDITIONS

ARTICLE 1: DEFINITIONS

1.1 Agreement. The Agreement is the Construction Services Agreement entered into between the District and Contractor.

1.2 Architect. The Architect is the person or entity identified as such in the Agreement; references to the "Architect" includes the Architect's authorized representative and his, her or its successor(s).

1.3 Construction Equipment. "Construction Equipment" is equipment utilized for the performance of any portion of the Work, but which is not incorporated into the Work.

1.4 Contract Documents. The Contract Documents consist of the Agreement between the District and the Contractor, Conditions of the Agreement (whether general, special or otherwise), drawings, specifications, including addenda thereto issued prior to execution of the Agreement and any other documents listed in the Agreement. The Contract Documents shall include modifications issued after execution of the Agreement.

1.5 Contract Document Terms. The term "provide" means "provide complete in place" or to "furnish and install" such item. Unless otherwise provided in the Contract Documents, the terms "approved;" "directed;" "satisfactory;" "accepted;" "acceptable;" "proper;" "required;" "necessary" and "equal" shall mean as approved, directed, satisfactory, accepted, acceptable, proper, required, necessary and equal, in the opinion of the District, its agents or representatives. The term "typical" as used in the drawings shall require the installation or furnishing of such item(s) of the Work designated as "typical" in all other similar areas; Work in such other areas shall conform to that shown as "typical" or as reasonably inferable therefrom.

1.6 Contractor. The Contractor is the person or entity identified as such in the Agreement; references to "Contractor" include the Contractor's authorized representative.

1.7 Contractor's Superintendent. The Contractor's Superintendent is the individual employed by the Contractor whose principal responsibility shall be the supervision and coordination of the Work; the Contractor's Superintendent shall not perform routine construction labor.

1.8 Days. Unless otherwise expressly stated, references to "days" in the Contract Documents shall be deemed to be calendar days.

1.9 Deferred Approval Items. Deferred approval items are those items that shall not be started until detailed plans, specifications, and engineering calculations have been accepted and signed by the Architect or Engineer.

1.10 District. The "District" refers to **Gilroy Unified School District** and its authorized representatives, including the Project Manager, the District's Board of Trustees and the District's officers, employees, agents and representatives.

1.11 District's Inspector. The District's Inspector is the individual designated and employed by the District in accordance with the requirements of Title 24 of the California Code of Regulations.

The District's Inspector shall be authorized to act on behalf of the District as provided for in the Contract Documents and in Title 24 of the California Code of Regulations, as the same may be amended from time to time.

1.12 Division of State Architect ("DSA"). The DSA is the California Division of the State Architect including without limitation the DSA's Office of Construction Services, Office of Design Services and the Office of Regulation Services; references to the DSA in the Contract Documents shall mean the DSA, its offices and its authorized employees and agents. The authority of the DSA over the Work and the performance thereof shall be as set forth in the Contract Documents and Title 24 of the California Code of Regulations.

1.13 Drawings and Specifications. The drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing generally, the design, location and dimensions of the Work and may include without limitation, plans, elevations, sections, details, schedules, notes or diagrams. The specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, criteria and workmanship for the Work and related services. The drawings and specifications are intended to delineate and describe the Work and its component parts so as to permit skilled and competent contractors to bid upon the Work and prosecute the same to completion.

1.14 Intent and Correlation of Contract Documents.

1.14.1 Work of the Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary and what is required by one shall be as binding as if required by all. Performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable therefrom as being necessary to produce the intended results. Organization of the Specifications into divisions, sections or articles, and the arrangement of drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Where any portion of the Contract Documents is silent and information appears elsewhere in the Contract Documents, such other portions of the Contract Documents shall control. Work not particularly detailed, marked or specified shall be the same as similar parts that are detailed, marked or specified.

1.14.2 Technical Terms. Unless otherwise stated in the Contract Documents, words or terms, which have, well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.14.3 Conflict in Contract Documents. The Contract Documents are intended to be fully cooperative and to agree. If Contractor observes any conflict, inconsistency or ambiguity, Contractor shall promptly notify the District and the Architect in writing of such conflict, inconsistency or ambiguity prior to commencement of affected Work. If a conflict, inconsistency or ambiguity arises, the following order or precedence shall generally apply, provided, however, that the order of precedence shall not be so rigidly interpreted as to create an absurd or costly result: special conditions shall take precedence over general conditions,

specifications shall take precedence over drawings and shall govern as to materials, workmanship and installation procedures. Plans identify the scope and location of the Work. With regard to drawings, larger details govern over smaller scale drawings, addenda and change order drawings govern over contract drawings, contract drawings govern over standard drawings.

1.15 Material Supplier. A Material Supplier is any person or entity who only furnishes materials, equipment or supplies for the Work without fabricating, installing or consuming them in the Work.

1.16 Project. The Project is the total construction of which the Work performed by the Contractor under the Contract Documents may be the whole or a part of the Project and which may include construction by the District or by separate contractors.

1.17 Project Manager. The Project Manager, if any, is the individual or entity designated as such in the Special Conditions. The Project Manager is an independent contractor retained by the District and shall be authorized and empowered to act on behalf of the District. The removal or replacement of the designated Project Manager shall not result in adjustment of the Contract Price or the Contract Time or otherwise affect, limit or restrict Contractor's obligations hereunder.

1.18 Record Documents. The Record Documents are a set of the drawings and specifications marked by the Contractor during the performance of the Work to indicate completely and accurately the actual as-built condition of the Work. The Record Documents shall be sufficient for a capable and qualified draftsman to modify the drawings to reflect and indicate the Work actually in place at Final Completion of the Work.

1.19 Shop Drawings; Samples; Product Data ("Submittals"). Shop Drawings are diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor of any tier, manufacturer, Material Supplier, or distributor to illustrate some portion of the Work. Samples are physical examples of materials, equipment or workmanship forming a part of, or to be incorporated into the Work. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work. Shop Drawings, Samples and Product Data prepared or furnished by the Contractor or any of its Subcontractors or Material Suppliers are collectively referred to as "Submittals".

1.20 Site. The Site is the physical area designated in the Contract Documents for Contractor's performance, construction and installation of the Work.

1.21 Subcontractors; Sub-Subcontractors. A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work. "Subcontractor" does not include a separate contractor to the District or subcontractors of any separate contractor. A Sub-Subcontractor is a person or entity of any tier, who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site.

1.22 Special Conditions. If made a part of the Contract Documents, Special Conditions are special or supplemental provisions, not otherwise provided for in the Agreement or the General Conditions.

1.23 Surety. The Surety is the person or entity that executes, as surety, the Contractor's Labor and Material Payment Bond and/or Performance Bond or other bonds provided by the Contractor.

1.24 Work. The "Work" is the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment or services provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract Documents. The Work may constitute the whole or a part of the Project.

ARTICLE 2: DISTRICT

2.1 Information Required of District.

2.1.1 Surveys; Site Information. District may provide information concerning physical characteristics of the Site. Information not provided by the District concerning physical characteristics of the Site, which is required, shall be obtained by Contractor without adjustment to the Contract Price or the Contract Time.

2.1.2 Drawings and Specifications. All of the drawings and the specifications shall remain the property of the District; the Contractor shall not use the drawings or the specifications in connection with any other work of improvement other than the Work of the Project.

2.1.3 Furnishing of Information. Information or services to be provided by the District under the Contract Documents shall be furnished by the District with reasonable promptness to avoid delay in the orderly progress of the Work. Information about existing conditions furnished by the District under the Contract Documents is obtained from sources believed to be reliable, but the District neither guarantees nor warrants that such information is complete and accurate. The Contractor shall verify all information provided by the District. To the extent that the Contract Documents depict existing conditions on or about the Site, or the Work involves the renovation, removal or remodeling of existing improvements or the Work involves any tie-in or other connection with any existing improvements, the conditions and/or existing improvements depicted in the Contract Documents are as they are believed to exist.

2.2 District's Right to Stop the Work. In addition to the District's right to suspend the Work or terminate the Contract pursuant to the Contract Documents, the District may, by written order, direct the Contractor to stop the Work, or any portion thereof, until the cause for such stop work order has been eliminated, if the Contractor: (i) fails to correct Work which is not in conformity and in accordance with the requirements of the Contract Documents, or (ii) otherwise fails to carry out the Work in conformity and accordance with the Contract Documents. The right of the District to stop the Work hereunder shall not be deemed a duty on the part of the District to exercise such right for the benefit of the Contractor or any other person or entity, nor shall the District's exercise of such right waive or limit the exercise of any other right or remedy of the District under the Contract Document or at law.

2.3 Partial Occupancy or Use.

2.3.1 District's Right to Partial Occupancy. The District may occupy or use any

completed or partially completed portion of the Work, provided that the District and the Contractor have accepted, in writing, the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, utilities, damage to the Work, insurance and the period for correction of the Work and commencement of warranties required by the Contract Documents for such portion of the Work partially used or occupied by the District. If the Contractor and the District are unable to agree upon the matters set forth above, the District may nevertheless use or occupy any portion of the Work, with the responsibility for such matters subject to resolution in accordance with the Contract Documents. Immediately prior to such partial occupancy or use of the Work, or portions thereof, the District, the District's Inspector, the Contractor and the Architect shall jointly inspect the portions of the Work to be occupied or to be used to determine and record the condition of the Work. The District's use or occupancy of the Work or portions thereof pursuant to the preceding shall not be deemed "completion" of the Work as that term is used in Public Contract Code §7107.

2.3.2 No Acceptance of Defective or Nonconforming Work. Unless otherwise expressly agreed upon by the District and the Contractor, the District's partial occupancy or use of the Work or any portion thereof, shall not constitute the District's acceptance of the Work not complying with the requirements of the Contract Documents or which is otherwise defective.

2.4 The District's Inspector. In addition to the authority and rights of the District's Inspector as provided for elsewhere in the Contract Documents, all of the Work shall be performed under the observation of the District's Inspector in accordance with the provisions of Title 24 of the California Code of Regulations. The District's Inspector shall have access to all parts of the Work at any time, wherever located, including shop inspections, and whether partially or completely fabricated, manufactured, furnished or installed. The performance of the duties of the District's Inspector under the Contract Documents shall not relieve or limit the Contractor's performance of its obligations under the Contract Documents.

ARTICLE 3: ARCHITECT

3.1 Architect's Administration of the Agreement.

3.1.1 Administration of Contract. The Architect will provide administration of the Agreement as described in the Contract Documents, and will be one of the District's representatives during construction until the time that Final Payment is due the Contractor. The Architect will advise and consult with the District, the Project Manager and the District's Inspector with respect to the administration of the Agreement and the Work. The Architect shall have the responsibilities and powers established by law, including Title 24 of the California Code of Regulations.

3.1.2 Periodic Site Observations. The Architect will visit the Site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine, in general, if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. The Architect will not be required to make exhaustive or continuous Site observations to check quality or quantity of the Work. On the basis of Site observations as

an architect, the Architect will keep the District informed of the progress of the Work, and will endeavor to guard the District against defects and deficiencies in the Work.

3.1.3 Contractor Responsibility for Construction Means, Methods and Sequences.

The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, these being solely the Contractor's responsibility.

The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

3.1.4 Verification of Applications for Payment. In accordance with Article 8 hereof, the Architect will review the Contractor's Applications for Progress Payments and for Final Payment, verify the extent of Work performed and the amount properly due the Contractor on such Application for Payment.

3.1.5 Rejection of Work. The Architect is authorized to reject Work which is defective or does not conform to the requirements of the Contract Documents. Whenever the Architect considers it necessary or advisable, additional inspections or testing of the Work may be conducted, whether or not such Work is fabricated, installed or completed. Neither this authority of the Architect nor a decision made in good faith by the Architect to exercise or not to exercise such authority shall give rise to a duty or responsibility to the Contractor, Subcontractors, Material Suppliers, their agents or employees, or other persons performing portions of the Work.

3.1.6 Architect's Review of Submittals. The Architect will review and approve or take other appropriate action upon the Contractor's Submittals, but only for the limited purpose of checking for conformance with the design concept expressed in the Contract Documents. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's Submittals shall not relieve the Contractor of its obligations under the Contract Documents. The Architect's review of Submittals shall not constitute approval of safety measures, programs or precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item in a Submittal shall not indicate approval of an assembly of which the item is a component. The Architect's review and return of Submittals will normally require a minimum of fourteen (14) days from date of receipt of complete submittal. Deferred approval submittals indicated in the Contract Documents require additional time for processing and review of all submittals.

3.1.7 Changes to the Work; Change Orders. The Architect will prepare Change Orders and may authorize minor changes in the Work in accordance with Article 9.9 hereof.

3.1.8 Completion. The Architect will conduct observations to determine the date(s) of

interim milestones, if any, and the dates of Substantial and Final Completion. The Architect will verify that the Contractor has complied with all requirements of the Contract Documents and is entitled to receipt of Final Payment.

3.1.9 Interpretation of Contract Documents. The Architect will interpret and decide matters concerning the requirements of the Contract Documents on written request of either the District or the Contractor, or as deemed necessary. The Architect's response to such requests will be made in writing with reasonable promptness and within the time limits specified in the Contract Documents. Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings with transmittal letter. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both the District and the Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith. The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

ARTICLE 4: THE CONTRACTOR

4.1 Communications. All communications regarding the Work, the performance thereof or the Contract Documents shall be in writing; oral communications, unless reduced to writing, are not binding on the parties. Communications between the Contractor and the District shall be through the Project Manager. Communications between separate contractors, if any, shall be through the Project Manager. Contractor shall make all written communications concerning the Project available to the District upon request.

4.2 Contractor Review of Contract Documents.

4.2.1 Examination of Contract Documents. The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the District pursuant to the Contract Documents and shall at once report to the District any errors, inconsistencies or omissions discovered. If the Contractor performs any Work knowing, or with reasonable diligence should have known that, it involves an error, inconsistency or omission in the Contract Documents without prior written notice to the District of the same, the Contractor shall assume full responsibility for such performance and shall bear all attributable costs for correction of the same.

4.2.2 Field Measurements. Prior to commencement of the Work, or portions thereof, the Contractor shall take field measurements and verify field conditions at the Site and shall carefully compare such field measurements and conditions and other information known to the Contractor with information provided in the Contract Documents. Errors, inconsistencies or omissions discovered shall be reported to the District at once.

4.2.3 Dimensions; Layouts and Field Engineering. Dimensions indicated in the drawings are intended for reference only. The Contractor shall be solely responsible for dimensioning and coordinating the Work of the Contract Documents. All field engineering required for laying out the Work and/or establishing grades for earthwork operations shall be

by the Contractor at its expense. Any field engineering or other engineering to be provided or performed by the Contractor under the Contract Documents and required or necessary for the proper execution or installation of the Work shall be provided and performed by an engineer duly registered under the laws of the State of California in the engineering discipline for such portion of the Work.

4.2.4 Request for Information. If the Contractor encounters any condition which the Contractor believes, in good faith and with reasonable basis, is the result of an ambiguity, conflict, error or omission in the Contract Documents (collectively “the Conditions”), it shall be the affirmative obligation of the Contractor to timely notify the District, in writing, of the Conditions encountered and to request information from the District necessary to address and resolve any such Conditions before proceeding with any portion of the Work affected or which may be affected by such Conditions. If the Contractor fails to timely notify the District in writing of any Conditions encountered and the Contractor proceeds to perform any portion of the Work containing or affected by such Conditions, the Contractor shall bear all costs associated with or required to correct, remove, or otherwise remedy any portion of the Work affected thereby without adjustment of the Contract Time or the Contract Price. In requesting information of the Architect to address and resolve any Conditions, the Contractor shall act with promptness in submitting any such written request so as to allow the Architect a reasonable period of time to review, evaluate and respond to any such request, taking into account the then current status of the progress and completion of the Work and the actual or potential impact of any such Conditions upon the completion of the Work within the Contract Time. The Contract Time shall not be subject to adjustment in the event that the Contractor shall fail to timely request information from the Architect. The Architect's responses to any such Contractor request for information shall conform to the standards and time frame set forth in Article 3.1.9 of these General Conditions. The foregoing provisions notwithstanding, in the event that the Architect reasonably determines that any of Contractor's request(s) for information: (i) does not reflect adequate or competent supervision or coordination by the Contractor or any Subcontractor; or (ii) does not reflect the Contractor's adequate or competent knowledge of the requirements of the Work or the Contract Documents; or (iii) is not justified for any other reason, Contractor shall be liable to the District for all costs incurred by the District associated with the processing, reviewing, evaluating and responding to any such request for information, including without limitation, fees of the Architect and any other design consultant to the Architect or the District. In the event that the Architect makes such a determination, the District may deduct such costs from any portion of the Contract Price then or thereafter due the Contractor.

4.2.5 Work in Accordance With Contract Documents. The Contractor shall perform all of the Work in strict conformity with the Contract Documents and approved Submittals.

4.3 Site Investigation; Subsurface Conditions.

4.3.1 Contractor Investigation. The Contractor shall be responsible for, and by executing the Agreement acknowledges, that it has carefully examined the Site and has taken all steps it deems reasonably necessary to ascertain all conditions which may affect the Work, or the

cost thereof, including, without limitation, conditions bearing upon transportation, disposal, handling or storage of materials; availability of labor or utilities; access to the Site; and the physical conditions and the character of equipment, materials, labor and services necessary to perform the Work. Any failure of the Contractor to do so will not relieve it from the responsibility for fully and completely performing all Work without adjustment to the Contract Price or the Contract Time. The District assumes no responsibility to the Contractor for any understandings or representations concerning conditions or characteristics of the Site, or the Work, made by any of its officers, employees or agents prior to the execution of the Agreement, unless such understandings or representations are expressly set forth in the Agreement.

4.3.2 Subsurface Data. By executing the Agreement, the Contractor acknowledges that it has examined the subsurface data available and satisfied itself as to the character, quality and quantity of surface and subsurface materials, including without limitation, obstacles which may be encountered in performance of the Work, insofar as this information is reasonably ascertainable from an inspection of the Site, review of available subsurface data and analysis of information furnished by the District under the Contract Documents. Information contained in such data or report regarding subsurface conditions, elevations of existing grades or below grade elevations are approximate only and is neither guaranteed nor warranted by the District to be complete and accurate. The Contractor shall examine all subsurface data and acknowledges that its bid is based upon the information provided by the Preliminary Geotechnical and Geological Investigation, prepared by CTE, CAL, Inc., dated January 31, 2013, the Topographic Survey, prepared by Jensen Design & Survey, dated January 6, 2014, and Contractor's own visual inspection of the site and the conditions observed and its own independent interpretation of such inspection and observation. The District assumes no responsibility for any conclusions or interpretations made by Contractor on the basis of available subsurface data or other information furnished by District under the Contract Documents.

4.3.3 Subsurface Conditions.

4.3.3.1 Procedures. If the Work under the Contract Documents involves digging trenches or other excavations that extend deeper than four feet below the surface, the Contractor shall promptly and before the following conditions are disturbed, notify the District's Inspector, in writing, of any: (i) material that the Contractor believes may be material that is hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I or Class II or Class III disposal site in accordance with provisions of existing law; (ii) subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to Contractor prior to entering into the Agreement; or (iii) unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Work or the character provided for in the Contract Documents. If upon notice to the District of the conditions described above and upon the District's investigation thereof, the District determines that the conditions so materially

differ or involve such hazardous materials which require an adjustment to the Contract Price or the Contract Time, the District shall issue a Change Order in accordance with Article 9 hereof. In accordance with California Public Contract Code §7104, any dispute arising between the Contractor and the District as to any of the conditions listed in (i), (ii) or (iii) above, shall not excuse the Contractor from the completion of the Work within the Contract Time and the Contractor shall proceed with all Work to be performed under the Contract Documents. The District reserves the right to terminate the Contract pursuant to Article 15.2 hereof should the District determine not to proceed because of any condition described in (i), (ii) or (iii) above.

4.3.3.2 Trenching. For all excavations in excess of five (5) feet involving an estimated expenditure in excess of \$25,000, Contractor shall submit to the District for acceptance a detailed Drawing showing the design of shoring, bracing, sloping or other provisions to be made for the protection of workmen from the hazard of caving ground. If such design varies from the standards established by the Construction Safety Orders of the California Division of Industrial Safety, the Drawing shall be prepared by a registered civil or structural engineer. None of the aforementioned trenching shall be started before Contractor receives notification of acceptance from the District. Contractor shall comply with all other applicable requirements of California Labor Code §6705, and, as therein provided, no provisions of that Section or this Section shall be construed to impose tort liability upon the District. In any event, Contractor shall not commence any excavation work until it has secured all necessary permits including the required CAL OSHA excavation/shoring permit. Any permits shall be prominently displayed on the Project premises prior to commencement of any excavation.

4.4 Supervision and Construction Procedures.

4.4.1 Supervision of the Work. The Contractor shall supervise and direct performance of the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract Documents, unless Contract Documents give other specific instructions concerning these matters. The Contractor shall be responsible for inspection of completed or partially completed portions of Work to determine that such portions are in proper condition to receive subsequent Work.

4.4.2 Responsibility for the Work; Coordination of the Work. The Contractor shall be responsible to the District for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and all other persons performing any portion of the Work under a contract with the Contractor. The Contractor shall not be relieved of the obligation to perform the Work in accordance with the Contract Documents either by activities or duties of the Project Manager, District's Inspector or the Architect in the Architect's administration of the Agreement, or by tests, inspections or approvals required or performed by persons other than the Contractor. The Contractor shall be responsible for all necessary or appropriate coordination of the Work and component parts thereof so that Final Completion of the Work will be achieved within the Contract Time and the Work will be

completed for the Contract Price. The coordination of the Work is a material obligation of the Contractor hereunder and shall include without limitation, conducting regular coordination meetings with its Subcontractors and Material Suppliers, sequencing the operations of Subcontractors and Material Suppliers, and adapting its planned means, methods and sequences of construction operations as necessary to accommodate field or changed conditions at the Site.

4.4.3 Surveys. The Contractor shall prepare or cause to be prepared all detailed surveys necessary for performance of the Work. The Contractor shall be responsible for the establishment, location, maintenance and preservation of benchmarks, reference points and stakes for the Work, the cost of which shall be included within the Contract Price. The Contractor shall be solely responsible for all loss or costs resulting from the loss, destruction, disturbance or damage of benchmarks, reference points or stakes.

4.4.4 Construction Utilities. The Contractor shall arrange for the furnishing of and shall pay the costs of all utility services, including, without limitation, electricity, water, gas and telephone necessary for performance of the Work and the Contractor's obligations under the Contract Documents. The Contractor shall furnish and install necessary or appropriate temporary distributions of utilities, including meters, to the Site. Any such temporary distributions shall be removed by the Contractor upon completion of the Work. The costs of all such utility services, including the installation and removal of temporary distributions thereof, shall be borne by the Contractor and included in the Contract Price.

4.4.5 Existing Utilities; Removal, Relocation and Protection. In accordance with California Government Code §4215, the District shall assume the responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Site which are not identified in the drawings, specifications or other Contract Documents. Contractor shall be compensated for the costs of locating, repairing damage not due to the Contractor's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the drawings, specifications and other Contract Documents with reasonable accuracy, and for equipment on the Site necessarily idled during such work. Contractor shall not be assessed Liquidated Damages for delay in completion of the Work when such delay is caused by the failure of the District or the utility district to provide for removal or relocation of such utility facilities. Nothing in this Article 4.4.5 shall be deemed to require the District to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site can be inferred from the presence of other visible facilities, such as buildings, meters and junction boxes, on or adjacent to the Site. If the Contractor encounters utility facilities not identified by the District in the drawings, specifications, or other Contract Documents, the Contractor shall immediately notify, in writing, the District and the utility owner. In the event that such utility facilities are owned by a public utility, the public utility shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a price determined in accordance with Article 9 of these General Conditions.

4.5 Labor and Materials.

4.5.1 Payment for Labor, Materials and Services. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, applicable taxes, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated in the Work. The Contractor, and each of its Subcontractors at every tier, shall comply with the requirements of California Education Code § 17407.5.

4.5.2 Employee Discipline and Skills. The Contractor shall enforce strict discipline and good order among the Contractor's employees, the employees of any Subcontractor of any tier, and all other persons performing any part of the Work at the Site. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall dismiss from its project employees and direct any Subcontractor of any tier to dismiss from their employment on the project any person deemed by the District to be unfit or incompetent to perform Work and thereafter, the Contractor shall not employ nor permit the employment of such person for performance of any part of the Work without the prior written consent of the District, which consent may be withheld in the reasonable discretion of the District.

4.5.3 Contractor's Superintendent and Project Manager. The Contractor shall employ a competent superintendent, project manager and all necessary assistants who shall be in attendance at the Site at all times during performance of the Work. The Contractor's communications relating to the Work or the Contract Documents shall be through the Contractor's superintendent and/or project manager. The superintendent shall represent the Contractor at the Site and communications given to the superintendent shall be binding as if given to the Contractor. The Contractor shall dismiss from the project the superintendent, project manager or any of his/her assistants if they are deemed, in the sole reasonable judgment of the District, to be unfit, incompetent or incapable of performing the functions assigned to them. In such event, the District shall have the right to approve of the replacement superintendent, project manager or assistant.

4.5.4 Prohibition on Harassment.

4.5.4.1 District's Policy Prohibiting Harassment. The District is committed to providing a campus and workplace free of sexual harassment and harassment based on factors such as race, color religion, national origin, ancestry, age, medical condition, marital status, disability or veteran status. Harassment includes without limitation, verbal, physical or visual conduct which creates an intimidating, offensive or hostile environment such as racial slurs; ethnic jokes; posting of offensive statements, posters or cartoons or similar conduct. Sexual harassment includes without limitation the solicitation of sexual favors, unwelcome sexual advances, or other verbal, visual or physical conduct of a sexual nature.

4.5.4.2 Contractor's Adoption of Anti-Harassment Policy. Contractor shall adopt and implement all appropriate and necessary policies prohibiting any form of discrimination in the workplace, including without limitation harassment on the basis of any classification protected under local, state or federal law, regulation or policy.

Contractor shall take all reasonable steps to prevent harassment from occurring, including without limitation affirmatively raising the subject of harassment among its employees, expressing strong disapproval of any form of harassment, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment and informing complainants of the outcome of an investigation into a harassment claim. Contractor shall require that any Subcontractor or Sub-subcontractor performing any portion of the Work to adopt and implement policies in conformity with this Article 4.5.4.

4.5.4.3 Prohibition on Harassment at the Site. Contractor shall not permit any person, whether employed by Contractor, a Subcontractor, Sub-subcontractor, or any other person or entity, performing any Work at or about the Site to engage in any prohibited form of harassment. Any such person engaging in a prohibited form of harassment directed to any individual performing or providing any portion of the Work at or about the Site shall be subject to appropriate sanctions in accordance with the anti-harassment policy adopted and implemented pursuant to Article 4.5.4.2 above. Any person performing or providing Work on or about the Site who engages in a prohibited form of harassment directed to any student, faculty member or staff of the District or directed to any other person on or about the Site shall be subject to immediate removal and shall be prohibited thereafter from providing or performing any portion of the Work.

Upon the District's receipt of any notice or complaint that any person employed directly or indirectly by Contractor in performing or providing the Work has engaged in a prohibited form of harassment, the District will promptly undertake an investigation of such notice or complaint. In the event that the District, after such investigation, reasonably determines that a prohibited form of harassment has occurred, the District shall promptly notify the Contractor of the same and direct that the person engaging in such conduct be immediately removed from the Site. Unless the District's determination that a prohibited form of harassment has occurred is grossly negligent or without reasonable cause, the District shall have no liability for directing the removal of any person determined to have engaged in a prohibited form of harassment nor shall the Contract Price or the Contract Time be adjusted on account thereof. Contractor and the Surety shall defend, indemnify and hold harmless the District and its employees, officers, Board of Trustees, agents, and representatives from any and all claims, liabilities, judgments, awards, actions or causes of actions, including without limitation, attorneys' fees, which arise out of, or pertain in any manner to: (i) the assertion by any person dismissed from performing or providing work at the direction of the District pursuant to this Article 4.5.4.3; or (ii) the assertion by any person that any person directly or indirectly under the employment or direction of the Contractor has engaged in a prohibited form of harassment directed to or affecting such person. The obligations of the Contractor and the Surety under the preceding sentence are in addition to, and not in lieu of, any other obligation of defense, indemnity and hold harmless whether arising under the Contract Documents, at law or otherwise; these obligations survive completion of the Work or the termination of the Agreement.

4.6 Taxes. The Contractor shall pay, without adjustment of the Contract Price, all sales, consumer, use and other taxes for the Work or portions thereof provided by the Contractor under the Contract Documents.

4.7 Permits, Fees and Notices; Compliance with Laws.

4.7.1 Payment of Permits, Fees. The District shall secure and pay for Division of the State Architect Fees, Inspector of Record costs, Materials Testing and Inspections costs mandated by D.S.A., Special Inspection costs mandated by DSA, EPA General Permit Notice of Intent to Comply fee, and California State Water Resources Control Board Annual Permit fees. All other fee and permit costs will be carried under an allowance established in the Guaranteed Maximum Price proposal. In the event that actual fee and permit costs exceed the value of the allowance established in the Guaranteed Maximum Price proposal, through no negligence of Contractor, Contractor shall be reimbursed from the GMP Allowance.

4.7.2 Compliance with Laws. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and other orders of public authorities bearing on performance of the Work.

The Work may only be awarded to contractors and subcontractors that are registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

4.7.3 Notice of Variation from Laws. If the Contractor knows, or has reason to believe, that any portion of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, regulations or rules, the Contractor shall promptly notify the District, in writing, of the same. If the Contractor performs Work knowing, or with reasonable diligence should have known, it to be contrary to laws, statutes, ordinances, building codes, rules or regulations applicable to the Work without such notice to the District, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs arising or associated therefrom, including without limitation, the removal, replacement or correction of the same.

4.8 Submittals.

4.8.1 Purpose of Submittals. Shop Drawings, Product Data, Samples and similar submittals (collectively "Submittals") are not Contract Documents. The purpose for submission of Submittals is to demonstrate, for those portions of the Work for which Submittals are required, the manner in which the Contractor proposes to provide or incorporate such item of the Work in conformity with the information given and the design concept expressed in the Contract Documents.

4.8.2 Contractor's Submittals.

4.8.2.1 Prompt Submittals. The Contractor shall review, confirm and submit to the Architect with the number of copies of Submittals within the timeframes required by the Contract Documents. Contractor's submission of Submittals in conformity with the Submittal Schedule is a material consideration of the Agreement. In the event that the

District reasonably determines that all or any portion of any Submittal fails to comply with the requirements of the Contract Documents and/or such Submittals are not otherwise complete and accurate so as to require re-submission more than one (1) time, Contractor shall bear all costs associated with the review and approval of such resubmitted Submittals; provided that such costs are in addition to, and not in lieu of, any liquidated damages imposed under the Contract Documents for Contractor's delayed submission of Submittals. Submittals not required by the Contract Documents may be returned without action. No adjustment to the Contract Time or the Contract Price shall be granted to the Contractor on account of its failure to make timely submission of any Submittals.

4.8.2.2 Approval of Contractor's Confirmation of Submittals. All Submittals prepared by Subcontractors, of any tier, Material Suppliers, manufacturers or distributors shall bear the written approval of the Contractor thereto prior to submission to the Architect for review. Any Submittal not bearing the Contractor's written approval shall be subject to return to the Contractor for re-submittal in conformity herewith, with the same being deemed to not have been submitted. Any delay, impact or cost associated therewith shall be the sole and exclusive responsibility of the Contractor without adjustment of the Contract Time or the Contract Price.

4.8.2.3 Verification of Submittal Information. By approving and submitting Submittals, the Contractor represents to the District and Architect that the Contractor has determined and verified materials, field measurements, field construction criteria, catalog numbers and similar data related thereto and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents.

4.8.2.4 Information Included in Submittals. All Submittals shall be accompanied by a written transmittal or other writing by the Contractor providing an identification of the portion of the drawings or the specifications pertaining to the Submittal, with each Submittal numbered consecutively for ease of reference along with the following information: (i) date of submission; (ii) project name; (iii) name of submitting Subcontractor; and (iv) if applicable, the revision number. The foregoing information is in addition to, and not in lieu of, any other information required for the Architect's review, evaluation and approval of the Contractor's Submittals.

4.8.2.5 Contractor Responsibility for Deviations. The Contractor shall not be relieved of responsibility for correcting deviations from the requirements of the Contract Documents by the Architect's approval of Submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submission of the Submittal and the District has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Submittals by the Architect's approval thereof.

4.8.2.6 No Performance of Work without Approval. The Contractor shall perform no portion of the Work requiring the Architect's review and approval of Submittals until

the Architect has completed its review and granted its approval of such Submittal. The Contractor shall not perform any portion of the Work forming a part of a Submittal or which is affected by a related Submittal until the entirety of the Submittal or other related Submittal has been fully approved.

4.8.3 Architect Review of Submittals. The purpose of the Architect's review of Submittals and the time for the Architect's return of Submittals to the Contractor shall be as set forth elsewhere in the Contract Documents, including without limitation, Article 3.1.6 of the General Conditions. If the Architect returns a Submittal as rejected or requiring correction(s) and re-submission, the Contractor, so as not to delay the progress of the Work, shall promptly thereafter resubmit a Submittal conforming to the requirements of the Contract Documents; the resubmitted Submittal shall indicate the portions thereof modified in order to obtain the Architect's approval. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications accompanying Submittals. The Architect's review of the Submittals is for the limited purposes described in the Contract Documents.

4.8.4 Deferred Approval Items. In the event that any portion of the Work is designated in the Contract Documents as a "Deferred Approval" item, Contractor shall be solely and exclusively responsible for the preparation of Submittals for such item(s) in a timely manner so as not to delay or hinder the completion of the Work within the Contract Time.

4.9 Materials and Equipment.

4.9.1 Specified Materials, Equipment. Except as otherwise provided, references in the Contract Documents to any specific article, device, equipment, product, material, fixture, patented process, form, method or type of construction, by name, make, trade name, or catalog number, with or without the words "or equal" shall be deemed to establish a minimum standard of quality or performance, and shall not be construed as limiting competition.

4.9.2 Approval of Or Equal, Substitutions or Alternatives. The Contractor may propose to furnish alternatives or substitutes for a particular item specified in the Contract Documents, provided that the Contractor provides advance written notice to the District of such proposed or equal, substitution or alternative and certifies to the District that the quality, performance capability, functionality and appearance of the proposed alternative or substitute will meet or exceed the quality, performance capability, functionality, and appearance of the item or process specified, and must demonstrate to the District that the use of the substitution or alternative is appropriate and will not delay completion of the Work or result in an increase to the Contract Price. The Contractor shall submit all data to the District to permit the Architect's proper evaluation of the proposed substitution or alternative. The Contractor shall not provide, furnish or install any substitution or alternative without the District's prior approval of the same; any alternative or substitution installed or incorporated into the Work without first obtaining the District's approval of the same shall be subject to removal pursuant to Article 12 hereof. The District's decision shall be final regarding the approval or

disapproval of the Contractor's proposed substitutions or alternatives. The District's approval of any Contractor-proposed substitution shall be in accordance with Change Order procedures set forth in Article 9 and as otherwise specified in the Contract Documents.

4.9.3 Placement of Material and Equipment Orders. Contractor shall, after entering into the Agreement, promptly and timely place all orders for materials and/or equipment necessary for completion of the Work so that delivery of the same shall be made without delay or interruption to the timely completion of the Work. Contractor shall require that any Subcontractor of any tier performing any portion of the Work similarly place orders for all materials and/or equipment to be furnished by any such Subcontractor. Upon request of the District, the Contractor shall furnish reasonably satisfactory written evidence of the placement of orders for materials and/or equipment necessary for completion of the Work, including without limitation, orders for materials and/or equipment to be provided, furnished or installed by any Subcontractor of any tier.

4.9.4 District's Right to Place Orders for Materials and/or Equipment. If the Contractor fails or refuses to provide reasonably satisfactory written evidence of the placement of orders for materials and/or equipment necessary for completion of the Work, or should the District determine, in its sole and reasonable discretion, that such orders have not been placed in a manner that assures timely delivery of such materials and/or equipment to the Site so the Work can be completed without delay or interruption, the District shall have the right, but not the obligation, to place such orders on behalf of the Contractor. If the District exercises such right, the District's conduct in that regard does not assume control of the work. Rather, Contractor remains responsible for the means, methods, techniques, sequences or procedures for completion of the Work and is not relieved from any of Contractor's obligations under the Contract Documents, including without limitation, completion of the Work within the Contract Time and for the Contract Price. If the District exercises the right hereunder to place orders for materials and/or equipment on behalf of Contractor pursuant to the foregoing, Contractor shall reimburse the District for all costs and fees incurred by the District in placing such orders; such costs and fees may be deducted by the District from the Contract Price then or thereafter due the Contractor.

4.10 Safety.

4.10.1 Safety Programs. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety programs required by applicable law, ordinance, regulation or governmental orders in connection with the performance of the Agreement, or otherwise required by the type or nature of the Work. The Contractor shall require that its Subcontractors similarly initiate and maintain all appropriate or required safety programs.

4.10.2 Safety Precautions. The Contractor shall be solely responsible for initiating and maintaining reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (i) employees on the Work and other persons who may be affected thereby; (ii) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors of any tier; and (iii) other property or items at the site of the

Work, or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities whether or not designated for removal, relocation or replacement in the course of construction. The Contractor shall erect and maintain, as required by existing conditions and conditions resulting from performance of the Agreement, reasonable safeguards for safety and protection of property and persons, including, without limitation, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Districts and users of adjacent sites and utilities. The Contractor shall give or post all notices required by applicable law and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

4.10.3 Safety Coordinator. The Contractor shall designate a responsible member of the Contractor's organization at the Site whose duty shall be the prevention of accidents and the implementation and maintenance safety precautions and programs. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the District.

4.10.4 Emergencies. In an emergency affecting safety of persons or property, the Contractor shall act, to prevent threatened damage, injury or loss.

4.11 Hazardous Materials.

4.11.1 Use of Hazardous Materials. In the event that the Contractor, any Subcontractor or anyone employed directly or indirectly by them shall use, at the Site, or incorporate into the Work, any material or substance deemed to be hazardous or toxic under any law, rule, ordinance, regulation or interpretation thereof (collectively "Hazardous Materials"), the Contractor shall comply with all laws, rules, ordinances or regulations applicable thereto and shall exercise all necessary safety precautions relating to the use, storage or disposal thereof. Unless otherwise provided, Contractor shall be solely responsible for the transportation and disposal of any Hazardous Materials on or about the Site.

4.11.2 Prohibition on Use of Asbestos Containing Building Materials ("ACBMs"). Notwithstanding any provision of the drawings or the specifications to the contrary, it is the intent of the District that ACBMs not be used or incorporated into any portion of the Work. If any portion of the Work depicted in the drawings or the specifications shall require materials or products which the Contractor knows, or should have known with reasonably diligent investigation, to contain ACBMs, Contractor shall promptly notify the District of the same so that an appropriate alternative can be made in a timely manner so as not to delay the progress of the Work. Contractor warrants to the District that there are no materials or products used or incorporated into the Work which contain ACBMs. Whether before or after completion of the Work, if it is discovered that any product or material forming a part of the Work or incorporated into the Work contains ACBMs, the Contractor shall at its sole cost and expense remove such product or material in accordance with any laws, rules, procedures and regulations applicable to the handling, removal and disposal of ACBMs and to replace

such product or material with non-ACBM products or materials and to return the affected portion(s) of the Work to the finish condition depicted in the drawings and specifications relating to such portion(s) of the Work. Contractor's obligations under the preceding sentence shall survive the termination of the Agreement, the warranty period provided under the Contract Documents, the Contractor's completion of the Work or the District's acceptance of the Work. In the event that the Contractor shall fail or refuse, for any reason, to commence the removal and replacement of any material or product containing ACBMs forming a part of, or incorporated into the Work, within ten (10) days of the date of the District's written notice to the Contractor of the existence of ACBM materials or products in the Work, the District may thereafter proceed to cause the removal and replacement of such materials or products in any manner which the District determines to be reasonably necessary and appropriate; all costs, expenses and fees, incurred by the District in connection with such removal and replacement shall be the responsibility of the Contractor and the Contractor's Performance Bond Surety.

4.11.3 Encountering of Hazardous Materials. If the Contractor encounters Hazardous Materials at the Site which have not been rendered harmless or for which there is no provision in the Contract Documents for their containment, removal, abatement or handling, the Contractor shall immediately stop the Work in the affected area and shall immediately notify the District, in writing, of such condition. If Contractor fails to immediately stop the affected portion of the Work after discovery, then Contractor is solely responsible for any resultant Exacerbation Costs. "Exacerbate," in all its forms, means the worsening effects of Contractor's failure to stop the affected portion of work after the discovery. "Exacerbation Cost" means the differential between (i) the actual increase in the cost of remediation and delays to the Project attributable to pre-existing environmental conditions involving hazardous substances, and (ii) the cost thereof or delays thereto had Contractor immediately stopped the affected portion of the work after the discovery. The standard of "should have known" applies to Contractor's supervisory personnel, whether or not on the Site. Contractor's supervisory personnel must have had the hazardous material training required by applicable OSHA and Cal OSHA rules or regulations.

The Contractor shall diligently proceed with the Work in all other unaffected areas. The Contractor shall proceed with the Work in the affected area only after the Hazardous Materials have been rendered harmless, contained, removed or abated. Adjustments, if any, to the Contract Time or Price shall be made in accordance with Articles 7 and 9.

4.11.4 Material Safety Data Sheets. Contractor is required to insure that Material Safety Data Sheets (MSDS) for any material requiring a MSDS pursuant to the federal "hazard communication" standard or employee's right-to-know law are available in a readily accessible place on the Work premises. The Contractor is also required to insure (i) the proper labeling of any substance brought onto the Work premises, and (ii) that the persons working with the material, or within the general area of the material, are informed about the hazards of the substance and follow proper handling and protection procedures.

4.11.5 Compliance with Proposition 65. Contractor is required to comply with the

provisions of California Health and Safety Code § 25249.5, et seq., which requires the posting and giving of notice to persons who may be exposed to any chemical known to the State of California to cause cancer. The Contractor agrees to familiarize itself with such statutory provisions and to fully comply with the requirements set forth therein.

4.12 Maintenance of Documents.

4.12.1 Documents at Site. The Contractor shall maintain at the Site: (i) one record copy of the drawings, specifications and all addenda thereto; (ii) Change Orders approved by the District and all other modifications to the Contract Documents; (iii) Submittals reviewed by the Architect; (iv) Requests for Information and responses thereto; (v) Record Documents; (vi) Material Safety Data Sheets (“MSDS”) accompanying any materials, equipment or products delivered or stored at the Site or incorporated into the Work; and (vii) all building and other codes or regulations applicable to the Work, including without limitation, Title 24, Part 2 of the California Code of Regulations. During performance of the Work, all documents maintained by Contractor at the Site shall be available to the District, the Project Manager, the Architect, the District’s Inspector and DSA for review, inspection or reproduction. Upon completion of the Work, all documents maintained at the Site by the Contractor pursuant to the foregoing, except for (vii), shall be assembled and transmitted to the District.

4.12.2 Maintenance of Record Documents. During its performance of the Work, the Contractor shall continuously maintain Record Documents which are marked to indicate all field changes made to adapt the Work depicted in the Documents to field conditions, changes resulting from Change Orders and all concealed or buried installations, including without limitation, piping, conduit and utility services. The Record Documents shall be clean and all changes, corrections and dimensions shall be marked in a neat and legible manner in a contrasting color. The District’s inspection or review shall not be deemed to be the District’s approval or verification of the completeness or accuracy of the Record Documents. The failure or refusal of the Contractor to continuously maintain complete and accurate Record Documents or to make available the Record Documents for inspection and review by the District may be deemed by the District to be Contractor’s default of a material obligation hereunder. Payments to the Contractor are conditioned upon continuous maintenance and completion of the Record Documents pursuant to Articles 8.3.2 and 8.3.3. If the Contractor fails or refuses to continuously maintain the Record Documents in a complete and accurate manner, the District may take appropriate action to cause such maintenance, and all costs incurred in connection therewith shall be charged to the Contractor; the District may deduct such costs from any portion of the Contract Price then or thereafter due the Contractor.

4.13 Use of Site. The Contractor shall confine operations at the Site to areas permitted by law, ordinances or permits, subject to any restrictions or limitations set forth in the Contract Documents. The Contractor shall not unreasonably encumber the Site or adjoining areas with materials or equipment. The Contractor shall be solely responsible for providing security at the Site with all such costs included in the Contract Price. The District shall at all times have access to the Site.

4.14 Noise and Dust Control. The Contractor shall be responsible for complying with the

requirements of the city and county having jurisdiction with regard to noise ordinances governing construction sites and activities. Construction equipment noise is subject to the control of the Environmental Protection Agency's Noise Control Program (Code of Federal Regulations, Title 40, Part 204). The Contractor shall be solely responsible for maintaining all areas of the Work free from all materials and products that by becoming airborne may cause respiratory inconveniences to District students and personnel. Damages and/or any liability derived from the Contractor's failure to comply with these requirements shall be the sole cost of the Contractor, including all penalties incurred for violations of local, state and/or federal regulations.

4.15 Cutting and Patching. The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make the component parts thereof fit together properly in accordance with the Contract Documents. Only tradespersons skilled and experienced in cutting and patching shall perform such work. The Contractor shall not damage or endanger any portion of the Work, or the fully or partially completed construction of the District or separate contractors by cutting, patching, excavation or other alteration. The Contractor shall not cut, patch or otherwise alter the construction by the District or separate contractor without the prior written consent of the District or separate contractor thereto, which consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold consent to the request of the District or separate contractor to cut, patch or otherwise alter the Work.

4.16 Clean-Up. The Contractor shall at all times keep the Site and all adjoining areas free from the accumulation of any waste material, rubbish or excess materials and equipment, placed, caused by performance of the Work. The Contractor shall maintain the Site in a "rake-clean" standard on a daily basis. Prior to completion of the Work, Contractor shall remove from the Site all rubbish, waste and excess material, tools, Construction Equipment, machinery, temporary facilities and barricades, and any other items which are not the property of the District under the Contract Documents. Upon completion of the Work, the Site and all adjoining areas shall be left in a neat and broom clean condition satisfactory to District. The Project Manager is authorized to direct the Contractor's clean-up obligations hereunder. If the Contractor fails to clean up as provided for in the Contract Documents, the District may do so, and all costs incurred in connection therewith shall be charged to the Contractor; the District may deduct such costs from any portion of the Contract Price then or thereafter due the Contractor.

4.17 Access to the Work. The Contractor shall provide the DSA, the District, the Project Manager, the District's Inspector, the Architect and the Architect's consultant(s) with access to the Work, whether in place, preparation and progress and wherever located.

4.18 Information for the District's Inspector. The Contractor shall furnish the District's Inspector access to the Work for obtaining such information as may be necessary to keep the District's Inspector fully informed respecting the progress, quality and character of the Work and materials, equipment or other items incorporated therein.

4.19 Inspector's Field Office. The Contractor shall provide and include in the Contract Price a temporary furnished office at the Site, if specified in the Contract Documents, for use by the District, the Project Manager and the District's Inspector, until removal of the same is authorized by the District.

4.20 Patents and Royalties. The Contractor and the Surety shall defend, indemnify and hold harmless the District and its agents, employees and officers from any claim, demand or legal proceeding arising out of or pertaining, in any manner, to any actual or claimed infringement of patent rights in connection with performance of the Work under the Contract Documents.

4.21 Prevailing Wage Rates; Employment of Labor.

4.21.1 Determination of Prevailing Rates. Pursuant to the provisions of Division 2, Part 7, Chapter 1, Article 2 of the California Labor Code at §§1770 et seq., the District has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the prevailing rate for holiday and overtime work in the locality in which the Work is to be performed. These rates are on file at the District's principal office. The Contractor shall post, at appropriate and conspicuous locations on the Site, a schedule showing all determined general prevailing wage rates.

4.21.2 Payment of Prevailing Rates. This Project is a public works project as defined in Labor Code §1720, and must be performed in accordance with the requirements of Labor Code §§1720 to 1815 and Title 8 California Code of Regulations §§16000 to 17270, which govern the payment of prevailing wage rates on public works projects. The Contractor, and any Subcontractor, of any tier, shall pay their workers engaged in the Work not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor, of any tier, and such worker. Contractor, consistent with California Public Contract Code §6109, is prohibited from performing a portion of work with a Subcontractor who is debarred pursuant to Labor Code §§1777.1 or 1777.7.

This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

To the extent applicable, the Contractor shall furnish the records specified in Labor Code §1776 directly to the Labor Commissioner at least every thirty (30) days, in a format prescribed by the Labor Commissioner.

4.21.3 Prevailing Wage Penalty. The Contractor shall, as a penalty, forfeit up to Fifty Dollars (\$50.00) to the District for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed for the Work by the Contractor or by any Subcontractor, of any tier. Pursuant to California Labor Code §1775, the difference between prevailing wage rates and the amount paid to each worker each calendar day, or portion thereof, for which each worker paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

4.21.4 Sufficient Contract Price. Contractor represents and warrants that the Contract Price includes sufficient funds to allow Contractor and all Subcontractors to comply with all applicable laws and contractual agreements. Contractor shall defend, indemnify and hold the District harmless from and against any and all claims, demands, losses, liabilities and damages arising out of or relating to the failure of Contractor or any Subcontractor to comply

with any applicable law in this regard, including, but not limited to Labor Code §2810. Contractor agrees to pay any and all assessments, including wages, penalties, forfeitures and liquidated damages, made or asserted against the District in relation to any such failure.

4.21.5 Payroll Records.

4.21.5.1 Submission of Certified Payroll Records to District. Pursuant to California Labor Code §1776, the Contractor and each Subcontractor, of any tier, shall keep an accurate certified payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each person employed for the Work. If there is no work in a given week or on a given day, Contractor and each Subcontractor must keep a certified Non-Performance payroll record, indicating “no work” for that week or day(s). Contractor shall submit all certified payroll records to the Program Manager in complete, unredacted form with an original signature on the Statement of Compliance along with, and as a condition to, its Application for Payment.

4.21.5.2 Inspection of Certified Payroll Records. Additionally, the certified payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis: (i) a certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request; (ii) a certified copy of all payroll records shall be made available for inspection or furnished upon request to the District, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations; (iii) a certified copy of all payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided, 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; (iv) the Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; (v) any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by 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, of any tier, performing a part of the Work shall not be marked or obliterated. The Contractor shall inform the District of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change or location and address.

4.21.5.3 Submission of Payroll Records. Contractor shall provide, and shall cause all

Subcontractors to provide, payroll records as defined in Title 8 California Code of Regulations §16000 to the District, within ten (10) days of written request, at no cost to the District. The District will not return documents to Contractor.

4.21.5.4 Penalty For Noncompliance. In the event of noncompliance with the requirements of this Article 4.21.5, the Contractor shall have ten (10) days in which to comply, subsequent to receipt of written notice specifying in what respects the Contractor must comply herewith. Should noncompliance still be evident after such 10-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 Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from any portion of the Contract Price then or thereafter due the Contractor. The responsibility for compliance with the foregoing provisions shall rest upon the Contractor.

4.21.5.5 Liquidated Damages. Should Contractor neglect, fail or refuse to submit any documents pursuant to this Article 4.21.5, Contractor agrees to pay to the District the sum of twenty-five (\$25) dollars per worker per day in liquidated damages, not as a penalty but as liquidated damages, for every day beyond ten (10) days after such documents are due. The liquidated damages amounts are agreed upon by and between the Contractor and the District because of the difficulty of fixing the District's actual damages in the event of failure to submit such documents. The Contractor and District specifically agree that said amounts are reasonable estimates of the District's damages in such event, and that such amounts do not constitute a penalty. The Contractor and District acknowledge and agree that the liquidated damages contained in this provision are reasonable under the circumstances existing at the time of the Contractor's execution of the Agreement.

4.21.6 Hours of Work.

4.21.6.1 Limits on Hours of Work. Pursuant to California Labor Code §1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code §1811, the time of service of any worker employed at any time by the Contractor or by a Subcontractor, of any tier, upon the Work or upon any part of the Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereafter provided. Notwithstanding the foregoing provisions, Work performed by employees of Contractor or any Subcontractor, of any tier, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

4.21.6.2 Penalty for Excess Hours. The Contractor shall pay to the District a penalty of Twenty-five Dollars (\$25.00) for each worker employed on the Work by the Contractor or any Subcontractor, of any tier, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of Labor Code

§1810 et seq.

4.21.6.3 Contractor Responsibility. Any Work performed by workers necessary to be performed after regular working hours or on Sundays or other holidays shall be performed without adjustment to the Contract Price or any other additional expense to the District.

4.21.7 Apprentices.

4.21.7.1 Employment of Apprentices. Labor Code §1777.5 and Title 8 California Code of Regulations §200 et seq. provide detailed requirements for employing apprentices on public works projects. Contractor is responsible for compliance with Labor Code §1777.5 and applicable regulations on the Project. This responsibility includes, but is not limited to, the obligation to employ properly registered apprentices and pay such apprentices at least the prevailing wage rate for their appropriate apprentice classification. Only apprentices, as defined in California Labor Code §3077 who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code §§3070 et seq. are eligible to be employed for the Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training. Any apprentices employed to perform any of the Work shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. This Article 4.21.7 shall not apply to contracts of general contractors, or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contract involves less than Thirty Thousand Dollars (\$30,000.00). The term "Apprenticeable Craft or Trade," as used herein shall mean a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

4.21.7.2 Apprenticeship Certificate. When the Contractor or any Subcontractor, of any tier, in performing any of the Work employs workers in any Apprenticeable Craft or Trade, the Contractor and such Subcontractor shall apply to the Joint Apprenticeship Committee administering the apprenticeship standards of the craft or trade in the area of the site of the Work for and obtain a certificate approving the Contractor or such Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected, provided, however, that the approval as established by the Joint Apprenticeship Committee or Committees shall be subject to the approval of the Administrator of Apprenticeship. Contractors or Subcontractors shall not be required to submit individual applications for approval to local Joint Apprenticeship Committees provided they are already covered by the local apprenticeship standards for that craft or trade.

4.21.7.3 Contract Award Information. Contractor shall submit contract award information using the Division of Apprenticeship Standards (DAS 140) Form to the applicable apprenticeship committee within ten (10) days of the date of execution of the

Agreement and no later than the first day of work as per Title 8 California Code of Regulations §230. Contractor shall submit a copy of the completed DAS 140 Form to the District's Labor Compliance Program at the same time.

4.21.7.4 Ratio of Apprentices to Journeymen. The ratio of Work performed by apprentices to journeymen, who shall be employed in the Work, may be no higher than the ratio stipulated in the apprenticeship standards under which the Joint Apprenticeship Committee operates, but in no case shall the ratio be less than one hour of apprentice work for each five hours of labor performed by a journeyman, except as otherwise provided in California Labor Code §1777.5. Any ratio shall apply during any day or portion of a day when any journeyman is employed at the site of the Work and shall be computed on the basis of the hours worked during the day by journeymen so employed. The Contractor shall employ apprentices for the number of hours computed as above before the end of the Agreement, and Subcontractors before the end of the subcontract. The Contractor shall, however, endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the site of the Work. Any Work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the hourly ratio required by this Article. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of an apprenticeship committee, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification. Upon proper showing by the Contractor or Subcontractor that it employs apprentices in such craft or trade in the State of California on all of its contracts on an annual average of not less than one apprentice to each five journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the Contractor from the 1-to-5 ratio as set forth in this Article and California Labor Code §1777.5.

4.21.7.5 Exemption from Ratios. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions are met: (i) unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%) or; (ii) the number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen, or; (iii) the Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis, or; (iv) if assignment of an apprentice to any Work performed under a public works contract would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman. When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual

applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

4.21.7.6 Contractor's Compliance. The responsibility of compliance with this Article for all Apprenticeable Trades or Crafts is that of the Contractor. In the event the Contractor knowingly fails to comply with the provisions of this Article and California Labor Code §1777.5, pursuant to California Labor Code §1777.7, the Contractor shall forfeit, as a civil penalty, not more than One Hundred Dollars (\$100.00) for each calendar day of noncompliance. A contractor or subcontractor that knowingly commits a second or subsequent violation of this Article and California Labor Code §1777.5 shall forfeit as a civil penalty not more than Three Hundred Dollars (\$300.00) for each calendar day of noncompliance. Notwithstanding the provisions of California Labor Code §1727, upon receipt of a determination that a civil penalty has been assessed by the Chief of the Division of Apprenticeship Standards, the District shall withhold such amount from the Contract Price then due or to become due. In the event a Contractor or Subcontractor is determined by the Chief to have knowingly committed a serious violation of Labor Code §1777.5, the Chief may also deny the Contractor or Subcontractor and its responsible officers the right to be on or be awarded or perform work as a subcontractor on any public works contract for a period of up to one (1) year for a first violation and up to three (3) years for a second or subsequent violation.

4.21.8 Employment of Independent Contractors. Pursuant to California Labor Code §1021.5, Contractor shall not willingly and knowingly enter into any agreement with any person, as an independent contractor, to provide any services in connection with the Work where the services provided or to be provided requires that such person hold a valid contractors license issued pursuant to California Business and Professions Code §§7000 et seq. and such person does not meet the burden of proof of his/her independent contractor status pursuant to California Labor Code §2750.5. In the event that Contractor shall employ any person in violation of the foregoing, Contractor shall be subject to the civil penalties under California Labor Code §1021.5 and any other penalty provided by law. In addition to the penalties provided under California Labor Code §1021.5, Contractor's violation of this Article 4.21.8 or the provisions of California Labor Code §1021.5 shall be deemed an event of Contractor's default under Article 15.1 of these General Conditions. The Contractor shall require any Subcontractor of any tier performing or providing any portion of the Work to adhere to and comply with the foregoing provisions.

4.22 Labor Compliance Program. Pursuant to California Labor Code §1771.7, District has implemented a Labor Compliance Program. (See Section 00900). Contractor shall post "Notice of Initial Approval" of the District's Labor Compliance Program at the Site in accordance with 8 California Code of Regulations §16429. The Labor Compliance Program includes, without limitation, provisions requiring Contractor to comply with the prevailing rates of wages, maintenance and submission of weekly certified payroll records, employment of apprentices and, compliance with legal hours of work, and debarment. Contractor, and any Subcontractors, are required to comply with the requirements of the Labor Compliance Program, at no additional cost to District. Contractor

shall include, and shall require the Subcontractors to include, contractual provisions in all contracts they enter into for the performance of the Work, requiring each Subcontractor, of every tier, who furnishes any labor for the performance of Work, to comply with these provisions at no additional cost. Contractor and all Subcontractors shall comply with California Labor Code §§1720-1781, applicable regulations and the Labor Compliance Program, and shall pay appropriate penalties for failure to comply pursuant to the California Labor Code, including, but not limited to, Sections 1775, 1776, 1777.7 and 1813, and the Labor Compliance Program. Contractor will be responsible for all failures by all Subcontractors, to comply with the District's LCP requirements. Contractor shall attend any pre-construction meetings held by the District and/or its Labor Compliance Program representatives to discuss labor requirements. Contractor and the Subcontractors shall allow the District, its Labor Compliance Program, the Department of Industrial Relations and designated representatives of each to conduct worker interviews at the Site during working hours. Compliance by Contractor with the requirements of this Article shall be a condition to Contractor's right to payment under its Applications for Payment. For questions or assistance concerning the Labor Compliance Program, please contact _____.

4.23 Assignment of Antitrust Claims. Pursuant to California Public Contract Code §7103.5, the Contractor and its Subcontractor(s), of any tier, hereby offers and agrees to assign to the District all rights, title and interest in and to all causes of action they may have under Section 4 of the Clayton Act, (15 U.S.C. §15) or under the Cartwright Act (California Business and Professions Code §§16700 et seq.), arising from purchases of goods, services or materials hereunder or any Subcontract. This assignment shall be made and become effective at the time the District tenders Final Payment to the Contractor, without further acknowledgment by the parties. If the District receives, either through judgment or settlement, a monetary recovery in connection with a cause of action assigned under California Public Contract Code §7103.5, the assignor thereof shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the District any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the District as part of the Contract Price, less the expenses incurred by the District in obtaining that portion of the recovery. Upon demand in writing by the assignor, the District shall, within one year from such demand, reassign the cause of action assigned pursuant to this Article if the assignor has been or may have been injured by the violation of law for which the cause of action arose: and (i) the District has not been injured thereby; or (ii) the District declines to file a court action for the cause of action.

4.24 Fingerprinting. Unless exempted, Contractor shall comply with the requirements of Education Code Section 45125.1 with respect to fingerprinting of employees who may have contact with the District's pupils. Contractor shall also ensure that its Subcontractors, Sub-Subcontractors, and consultants on the Project also comply with the requirements of Section 45125.1. Contractor must complete the District's certification form prior to any of Contractor's, Subcontractors', Sub-Subcontractors', and/or consultants' employees coming into contact with any of the District's pupils. Contractor also agrees to comply, and ensure that all Contractor's, Subcontractors', Sub-Subcontractors', and/or consultants' employees comply, with all other operational requirements of the District, as may be revised from time to time, including, but not limited to, any obligations relating to vaccination or testing for infectious diseases.

4.25 Drugs, Tobacco, and Alcohol. Contractor shall take all steps necessary to insure that employees of Contractor or any of Subcontractors', Sub-Subcontractors', and/or consultants' employees do not use, consume, or work under the influence of any alcohol, tobacco or illegal drugs while on the Project. Contractor shall further prevent any of its employees or its Subcontractors', Sub-Subcontractors', and/or consultants' employees from playing any recorded music devices or radios or wearing any radio headphone devices for entertainment while working on the Project. Likewise, Contractor shall prevent its employees or Subcontractors', Sub-Subcontractors', and/or consultants' employees from bringing any animal onto the Project. Contractors shall not violate any written school policies.

ARTICLE 5: SUBCONTRACTORS

5.1 Subcontracts. Any Work performed for the Contractor by a Subcontractor shall be pursuant to a written agreement between the Contractor and such Subcontractor which specifically incorporates by reference the Contract Documents and which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents. If the Contractor subcontracts any part of its obligations under the Contract Documents, the Contractor shall be as fully responsible to the District for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by its Subcontractor, as it is for acts and omissions of persons it directly employs. The District's consent to or approval of any Subcontractor under the Contract Documents shall not in any way relieve the Contractor of its obligations under the Contract Documents and no such consent or approval shall be deemed to waive any provision of the Contract Documents. The foregoing notwithstanding, no contractual relationship shall exist, or be deemed to exist, between any Subcontractor and the District, unless the Agreement is terminated and District, in writing, elects to assume the Subcontract. Each Subcontract for a portion of the Work shall provide that such Subcontract may be assigned to the District if the Agreement is terminated by the District pursuant to Article 15.1 hereof, subject to the prior rights of the Surety obligated under a bond relating to the Agreement. Upon request, the Contractor shall provide to the District copies of executed Subcontracts and Purchase Orders, including amendment thereto, to which Contractor is a party within seven (7) days of District's request for same. The Contractor's failure or refusal, for any reason, to provide copies of such Subcontracts or Purchase Orders shall be deemed the Contractor's default of a material term of the Contract Documents.

5.2 Substitution of Listed Subcontractor.

5.2.1 Substitution Process. Any request of the Contractor to substitute a listed Subcontractor will be considered only if such request is in strict conformity with this Article 5.2 and California Public Contract Code §4107. All costs and fees incurred by the District in the review and evaluation of a request to substitute a listed Subcontractor shall be borne by the Contractor; such costs and fees may be deducted by the District from the Contract Price then or thereafter due the Contractor.

5.2.2 Responsibilities of Contractor Upon Substitution of Subcontractor. Neither the substitution nor the District's consent to Contractor's substitution of a listed Subcontractor

shall relieve Contractor from its obligation to complete the Work within the Contract Time and for the Contract Price. In the event that the District determines that revised or additional Submittals are required of the newly substituted Subcontractor, the District shall promptly notify the Contractor, in writing, of such requirement and the time for submittal. In the event that the revised or additional Submittals are not submitted by Contractor within the time specified, Contractor shall be subject to the per diem assessments for late Submittals as set forth in Article 4.8 of these General Conditions. Any revised or additional Submittals required pursuant to this Article 5.2.2 shall conform to the requirements of Article 4.8 of these General Conditions. Contractor shall reimburse the District for all fees and costs incurred or associated with the processing, review and evaluation of any revised or additional Submittals required pursuant to this Article 5.2.2; the District may deduct such fees and costs from any portion of the Contract Price then or thereafter due the Contractor. In the event that additional or revised Submittals are required pursuant to this Article 5.2.2, such requirement shall not result in an increase to the Contract Time or the Contract Price.

ARTICLE 6: INSURANCE; INDEMNITY; BONDS

6.1 Workers' Compensation Insurance; Employer's Liability Insurance. The Contractor shall purchase and maintain Workers' Compensation Insurance as will protect the Contractor from claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Contractor shall purchase and maintain Employer's Liability Insurance covering bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment by Contractor. The Employer's Liability Insurance required of Contractor hereunder may be obtained by Contractor as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance required to be obtained and maintained by Contractor hereunder. Workers' compensation limits as required by the Labor Code, but not less than \$1,000,000 and employers' liability limits of \$1,000,000 per accident for bodily injury or disease.

6.2 Commercial General Liability and Property Insurance. The Contractor shall purchase and maintain Commercial General Liability and Property Insurance covering the types of claims set forth below which may arise out of or result from Contractor's operations under the Contract Documents and for which the Contractor may be legally responsible: (i) claims for damages because of bodily injury, occupational sickness or disease or death of the Contractor's employees; (ii) claims for damages because of bodily injury, sickness or disease or death of any person other than the Contractor's employees; (iii) claims for damages insured by usual personal injury liability coverage which are sustained (a) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (b) by another person; (iv) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (v) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; and (vi) contractual liability insurance applicable to the Contractor's obligations under the Contract

Documents. Contractor shall also provide excess or umbrella liability limits for Products and Completed Operations Aggregate for this Project as a Designated Project as set forth in the Special Conditions.

6.3 Builder's Risk "All-Risk" Insurance. It is Contractor's responsibility to maintain or cause to be maintained Builder's Risk [Fire; "All Risk"] extended coverage insurance on all work, material, equipment, appliances, tools, and structures which are a part of the Agreement and subject to loss or damage by fire, and vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, theft, sonic disturbance, earthquake, flood, collapse, wind, terrorism, lighting, smoke and rioting, in an amount to cover 100% of the replacement cost of the Project. Contractor is to provide insurance coverage on completed value form, all-risk or special causes of loss coverage. In addition, such insurance shall comply with the following:

1. Such insurance policy shall be so conditioned as to cover the performance of any extra work performed under the Agreement.
2. Coverage shall include all materials stored on site and in transit.
3. Coverage shall include Contractor's tools and equipment.
4. Insurance shall include machinery coverage.

6.4 Automobile Liability Insurance. Contractor shall take out and maintain at all times during the term of this Agreement Automobile Liability Insurance in the amount set forth in Article 6.5 below. Such insurance shall provide coverage for bodily injury and property damage including coverage for non-owned and hired vehicles, in a form and with insurance companies acceptable to the District.

6.5 Coverage Amounts. Contractor shall take out and maintain and shall require all Subcontractors, if any, whether primary or secondary, to take out and maintain:

Comprehensive General Liability Insurance with a combined single limit per occurrence of not less than \$2,000,000.00 or Commercial General Liability Insurance which provides limits of not less than:

- | | |
|--|----------------|
| (a) Per occurrence (combined single limit) | \$2,000,000.00 |
| (b) Project Specific Aggregate (for this Project only) | \$2,000,000.00 |
| (c) Products and Completed Operations (aggregate) | \$2,000,000.00 |
| (d) Personal and Advertising Injury Limit | \$1,000,000.00 |

Insurance Covering Special Hazards

The following Special hazards shall be covered by riders or riders to above mentioned public liability insurance or property damage insurance policy or policies of insurance, in amounts as follows:

- (a) Automotive and truck where operated in amounts..... \$1,000,000.00
- (b) Material Hoist where used in amounts..... \$1,000,000.00
- (c) Explosion, Collapse and Underground
(XCU coverage) \$1,000,000.00
- (d) Hazardous Materials..... \$1,000,000.00

In addition, provide Excess Liability Insurance coverage in the amount of Four Million Dollars (\$4,000,000.00).

6.6 Evidence of Insurance; Subcontractor's Insurance.

6.6.1 Certificates of Insurance. With the execution of the Agreement, Contractor shall deliver to the District Certificates of Insurance evidencing the insurance coverages required by the Contract Documents. Failure or refusal of the Contractor to so deliver Certificates of Insurance may be deemed by the District to be a default of a material obligation of the Contractor under the Contract Documents. The Certificates of Insurance and the insurance policies required by the Contract Documents shall contain a provision that coverages afforded under such policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the District.

The insurance policies required of Contractor and Subcontractors hereunder shall also name the District and its Board of Trustees, officers employees and agents as additional insured as their interests may appear. The Additional Insured Endorsement included on all such insurance policies shall be an ISO CG 20 10 (04/13), or an ISO CG 20 38 (04/13), or their equivalent as determined by the District in its sole discretion, and must state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis.

Should any policy of insurance be canceled before Final Acceptance of the Work by the District and the Contractor fails to immediately procure replacement insurance as required, the District reserves the right to procure such insurance and to deduct the premium cost thereof and other costs incurred by the District in connection therewith from any sum then or thereafter due the Contractor under the Contract Documents. The Contractor shall, from time to time, furnish the District, when requested, with satisfactory proof of coverage of each type of insurance required by the Contract Documents; failure of the Contractor to comply with the District's request may be deemed by the District to be a default of a material obligation of the Contractor under the Contract Documents.

6.6.2 Subcontractors' Insurance. Contractor shall require that every Subcontractor, of any tier, performing or providing any portion of the Work obtain and maintain the policies of insurance set forth in Articles 6.1 and 6.2 of these General Conditions; the coverages and limits of liability of such policies of insurance to be obtained and maintained by Subcontractors shall be as set forth in the Special Conditions. The policies of insurance to be

obtained and maintained by Subcontractors hereunder are in addition to, and not in lieu of, Contractor obtaining and maintaining such policies of insurance. Each of the policies of insurance obtained and maintained by a Subcontractor hereunder shall conform to the requirements of this Article 6. Upon request of the District, Contractor shall promptly deliver to the District Certificates of Insurance evidencing that the Subcontractors have obtained and maintained policies of insurance in conformity with the requirements of this Article 6. Failure or refusal of the Contractor to provide the District with Subcontractors' Certificates of Insurance evidencing the insurance coverages required hereunder is a material default of Contractor hereunder.

6.7 Maintenance of Insurance. Any insurance bearing on the adequacy of performance of Work shall be maintained after the District's Final Acceptance of all of the Work for the full one year correction of Work period and any longer specific guarantee or warranty periods set forth in the Contract Documents. Should such insurance be canceled before the end of any such periods and the Contractor fails to immediately procure replacement insurance as specified, the District reserves the right to procure such insurance and to charge the cost thereof to the Contractor. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from its operations or performance of the Work under the Contract Documents, including without limitation the Contractor's obligation to pay Liquidated Damages. Contractor will not be relieved of its obligation to maintain insurance required under this Article until the date of Final Acceptance of the Work by the District, or such time thereafter as required by the Contract Documents. The insurer providing any insurance coverage required hereunder shall be to the reasonable satisfaction of the District.

6.8 Contractor's Insurance Primary. All insurance and the coverages thereunder required to be obtained and maintained by Contractor hereunder, if overlapping with any policy of insurance maintained by the District, shall be deemed to be primary and non-contributing with any policy maintained by the District and any policy or coverage thereunder maintained by District shall be deemed excess insurance. To the extent that the District maintains a policy of insurance covering property damage arising out of the perils of fire or other casualty covered by the Contractor's Builder's Risk Insurance or the Commercial General Liability Insurance of the Contractor or any Subcontractor, the District, Contractor and all Subcontractors waive rights of subrogation against the others. The costs for obtaining and maintaining the insurance coverages required herein shall be included in the Contract Price.

6.9 Indemnity. Unless arising solely out of the active negligence, gross negligence or willful misconduct of the District, the Architect or the Project Manager, the Contractor shall indemnify, defend and hold harmless: (i) the District and its Board of Trustees, officers, employees, agents and representatives (including the District's Inspector); (ii) the Architect and its consultants for the Work and their respective agents and employees; and (iii) the Project Manager and its agents and employees from and against any and all damages, losses, claims, demands or liabilities whether for damages, losses or other relief, including, without limitation attorneys fees and costs which arise, in whole or in part, from the Work, the Contract Documents or the acts, omissions or other conduct of the Contractor or any Subcontractor or any person or entity engaged by them for the Work. The

Contractor's obligations under the foregoing include without limitation: (i) injuries to or death of persons; (ii) damage to property; or (iii) theft or loss of property; and (iv) other losses, liabilities, damages or costs resulting from, in whole or part, any acts, omissions or other conduct of Contractor, any of Contractor's Subcontractors, of any tier, or any other person or entity employed directly or indirectly by Contractor in connection with the Work and their respective agents, officers or employees. If any action or proceeding, whether judicial, administrative, arbitration or otherwise, shall be commenced on account of any claim, demand or liability subject to Contractor's obligations hereunder, and such action or proceeding names the District as a party thereto, the Contractor shall, at its sole cost and expense, defend the District in such action or proceeding with counsel reasonably satisfactory to District. In the event that there shall be any judgment, award, ruling, settlement, or other relief arising out of any such action or proceeding to which the District is bound by, Contractor shall pay, satisfy or otherwise discharge any such judgment, award, ruling, settlement or relief; Contractor shall indemnify and hold harmless the District from any and all liability or responsibility arising out of any such judgment, award, ruling, settlement or relief. The Contractor's obligations hereunder are binding upon Contractor's Performance Bond Surety and these obligations shall survive notwithstanding Contractor's completion of the Work or the termination of the Agreement.

6.10 Payment Bond; Performance Bond. Prior to commencement of the Work, the Contractor shall furnish a Performance Bond as security for Contractor's faithful performance of the Agreement and a Labor and Material Payment Bond as security for payment of persons or entities performing work, labor or furnishing materials in connection with Contractor's performance of the Work under the Contract Documents. The amounts of the Performance Bond and the Payment Bond required hereunder shall be one hundred percent (100%) of the Contract Price. Said Labor and Material Payment Bond and Performance Bond shall be in the form and content set forth in the Contract Documents. The failure or refusal of the Contractor to furnish either the Performance Bond or the Labor and Material Payment Bond in strict conformity with this Article 6.9 may be deemed by the District as a default by the Contractor of a material obligation hereunder. Upon request of the Contractor, the District may consider and accept, but is not obligated to do so, multiple sureties on such bonds. The Surety on any bond required under the Contract Documents shall be an Admitted Surety Insurer as that term is defined in California Code of Civil Procedure §995.120.

ARTICLE 7: CONTRACT TIME

7.1 Final Completion of the Work Within Contract Time. Unless otherwise expressly provided in the Contract Documents, the Contract Time is the period of time, including authorized adjustments thereto, allotted in the Contract Documents for achieving Final Completion of the Work. The date for commencement of the Work is the date established by the Notice to Proceed issued by the District, which shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible. The date of Final Completion is the date certified by the Architect, the Project Manager and the District's Inspector as such in accordance with the Contract Documents. The Contract Time is as indicated in the Special Conditions.

7.2 Progress and Completion of the Work.

7.2.1 Time of Essence. Time limits stated in the Contract Documents are of the essence. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable

period for performing and achieving Final Completion of the Work. The Contractor shall employ and supply a sufficient force of workers, material and equipment, and prosecute the Work with diligence so as to maintain progress, to prevent Work stoppage and to achieve Final Completion of the Work within the Contract Time.

7.2.2 Substantial Completion. Substantial Completion is that stage in the progress of the Work when the Work is complete in accordance with the Contract Documents, including but not limited to start-up and testing, so the District can occupy or use the Work and Project for its intended purpose; provided that, as a condition precedent to Substantial Completion, the Architect and District's Inspector shall have each agreed that the Work and Project have reached a stage of substantial completion. Substantial Completion shall be determined by the Architect and the District's Inspector upon request by the Contractor in accordance with the Contract Documents. The good faith and reasonable determination of Substantial Completion by the District's Inspector and the Architect shall be controlling and final.

7.2.3 Correction or Completion of the Work After Substantial Completion. Upon achieving Substantial Completion of the Work, the District, the District's Inspector, the Project Manager, the Architect and the Contractor shall jointly inspect the Work and prepare a comprehensive list of items of the Work (punch list) to be corrected or completed by the Contractor. The exclusion of, or failure to include, any item on such list shall not alter or limit the obligation of the Contractor to complete or correct any portion of the Work in accordance with the Contract Documents. In the event that the Contractor shall fail or refuse, for any reason, to complete all punch list items within the Contract Time, Contractor shall be subject to assessment of Liquidated Damages in accordance with Article 7.4 hereof. If the Contractor fails or refuses to complete all items of the Work within the Contract Time, the District may, in its sole and exclusive discretion and without further notice to Contractor, elect to cause the completion of such items of the Work, provided, however, that such election by the District is in addition to, and not in lieu of, any other right or remedy of the District under the Contract Documents or at law. If the District elects to complete items of the Work, Contractor shall be responsible for all costs incurred by the District in connection therewith and the District may deduct such costs from the Contract Price then or thereafter due the Contractor; if these costs exceed the remaining Contract Price due to the Contractor, the Contractor and the Performance Bond Surety are liable to District for any such excess costs.

7.2.4 Final Completion. Final Completion is that stage of the Work when all Work has been completed in accordance with the Contract Documents, including without limitation, the performance of all punch list items noted upon Substantial Completion, the Agreement has been otherwise fully performed by the Contractor and contractor has submitted all documents required of Contractor by DSA. Final Completion shall be determined by the Architect and the District's Inspector upon request of the Contractor. The good faith and reasonable determination of Final Completion by the District's Inspector and the Architect shall be controlling and final.

7.2.5 Contractor Responsibility for Multiple Inspections. In the event the Contractor

shall request determination of Substantial or Final Completion and it is determined by the District that the Work does not then justify certification of Substantial or Final Completion, as applicable, and re-inspection is required at a subsequent time to make such determination, the Contractor shall be responsible for all costs of such re-inspection, including without limitation, the fees of the Architect and the salary of the District's Inspector. The District may deduct such costs from the Contract Price then due or thereafter due to the Contractor.

7.2.6 Final Acceptance. Final Acceptance of the Work shall occur upon approval of the Work by the District's Board of Trustees. Such approval shall be submitted for adoption at the next regularly scheduled meeting of the District's Board of Trustees after the determination of Final Completion. The commencement of any warranty or guarantee period under the Contract Documents shall be deemed to be the date upon the District's Board of Trustees approves of the Final Acceptance of the Work.

7.3 Progress Schedule.

7.3.1 Submittal of Preliminary Construction Schedule. Within ten (10) days following execution of the Agreement, the Contractor shall prepare and submit to the District, the Project Manager and the Architect a Preliminary Construction Schedule, in both written and electronic format, indicating, in graphic and tabular form, the estimated rate of progress and sequence of all Work required under the Contract Documents. The purpose of the Preliminary Construction Schedule is to assure adequate planning and execution of the Work so that it is completed within the Contract Time and to permit evaluation of the progress of the Work. The Preliminary Construction Schedule shall indicate the dates for commencement and completion of various portions of the Work, including, without limitation, the procurement and fabrication of major items, material and equipment forming a part of, or to be incorporated into, the Work as well as Site construction activities and the date Contractor will achieve Substantial Completion and Final Completion of the Project. The Preliminary Construction Schedule shall identify all major (critical) Submittals required, the portion(s) of the Work for which the identified Submittals relate to and the date upon which each Submittal required will be transmitted to the Architect for review (the "Submittal Schedule"). The Contractor shall prepare the Preliminary Construction Schedule using Primavera or comparable software in Critical Path Method format. If Contractor elects to use software other than Primavera, Contractor shall provide such software to the District at Contractor's expense. These requirements shall not be deemed control over or assumption of construction means, methods or sequences, all of which remain the Contractor's responsibility. Further, these requirements shall not give rise to an increase in the Contract Time or the Contract Price. The Contractor may submit a Preliminary Construction Schedule depicting completion of the Work in a duration shorter than the Contract Time; provided that such Preliminary Construction Schedule shall not be a basis for adjustment to the Contract Price in the event that completion of the Work shall occur after the time depicted therein, nor shall such Preliminary Construction Schedule be the basis for any extension of the Contract Time, the Contractor's entitlement to any extension of the Contract Time shall be based upon the Contract Time and not on any shorter duration which may be depicted in the Contractor's

Preliminary Construction Schedule. In the event any of the Construction Schedules required under this Article 7.3 incorporate therein "float" time, such float shall be deemed to mutually belong to and owned by the District and Contractor. As used herein, "float time" shall be deemed to refer to the time between the earliest start date and the latest start date, or between the earliest finish date and the latest finish date of each activity shown on the Construction Schedule.

7.3.2 Review of Preliminary Construction Schedule. The District, the Project Manager and the Architect shall review the Preliminary Construction Schedule submitted by the Contractor pursuant to Article 7.3.1 above for conformity with the requirements of the Contract Documents. Within fifteen (15) days of the date of receipt of the Preliminary Construction Schedule, such Schedule will be returned to the Contractor with comments to the form or content thereof. Review of the Preliminary Progress Schedule and any comments thereto by the District, the Project Manager and/or the Architect shall not be deemed to be the assumption of construction means, methods or sequences by the District, the Project Manager or the Architect, all of which remain the Contractor's obligations under the Contract Documents.

7.3.3 Preparation and Submittal of Contract Construction Schedule. Within ten (10) days of the District's return of the Preliminary Construction Schedule to the Contractor pursuant to Article 7.3.2 above, the Contractor shall prepare and submit the Construction Schedule which incorporates therein the comments to the Preliminary Construction Schedule. Upon the Contractor's submittal of such Construction Schedule, the District shall review the same for purposes of determining conformity with the requirements of the Contract Documents. Within fifteen (15) days of the receipt of the Construction Schedule, the District will approve such Construction Schedule or will return the same to the Contractor with comments to the form or content. In the event there are comments to the form or content thereof, the Contractor, shall within seven (7) days of receipt of such comments, revise and resubmit the Construction Schedule incorporating therein such comments. Upon the District's approval of the form and content of a Construction Schedule, the same shall be deemed the "Approved Construction Schedule." The District's approval of a Construction Schedule shall be for the sole and limited purpose of determining conformity with the requirements of the Contract Documents. By the Approved Construction Schedule, the District shall not be deemed to have exercised control over, or approval of, construction means, methods or sequences, all of which remain the responsibility and obligation of the Contractor in accordance with the terms of the Contract Documents. Further, the Approved Construction Schedule shall not operate to limit or restrict any of Contractor's obligations under the Contract Documents nor relieve the Contractor from the full, faithful and timely performance of such obligations in accordance with the terms of the Contract Documents. The activities, commencement and completion dates of activities, and the sequencing of activities depicted on the Approved Construction Schedule shall not be modified or revised by the Contractor without the prior consent, or direction, of the District. Updates to the Approved Construction Schedule pursuant to Article 7.3.5 below shall not be deemed revisions to the Approved Construction Schedule. In the event that the Approved

Construction Schedule shall depict completion of the Work in a duration shorter than the Contract Time, the same shall not be a basis for an adjustment of the Contract Time or the Contract Price in the event that actual completion of the Work shall occur after such the time depicted in such Approved Construction Schedule. In such event, the Contract Price shall not be subject to adjustment on account of any additional costs incurred by the Contractor to complete the Work prior to the Contract Time, as adjusted in accordance with the terms of the Contract Documents. Any adjustment of the Contract Time or the Contract Price shall be based upon the Contract Time set forth in the Contract Documents and not any shorter duration which may depicted in the Approved Construction Schedule.

7.3.4 Revisions to Approved Construction Schedule. In the event that the progress of the Work or the sequencing of the activities of the Work shall materially differ from that indicated in the Approved Construction Schedule, as determined by the District in its reasonable discretion and judgment, the District may direct the Contractor to revise the Approved Construction Schedule; within fifteen (15) days of the District's direction, the Contractor shall prepare and submit a revised Approved Construction Schedule, for review and approval by the District. The Contractor may request consent of the District to revise the Approved Construction Schedule. Any such request shall be considered by the District only if in writing setting forth the Contractor's proposed revision(s) to the Approved Construction Schedule and the reason(s) therefor. The District may consent to, or deny, any such request of the Contractor to revise the Approved Construction Schedule in its reasonable discretion.

7.3.5 Updates to Approved Construction Schedule. The Contractor shall monitor and update the Approved Construction Schedule on a monthly basis, or more frequently as required by the conditions or progress of the Work, or as may be requested by the District. Proper and complete updating of the Approved Construction Schedule shall be a condition precedent to the issuance of Progress Payments described in Article 8 of these General Conditions. The Contractor shall provide the District with updated Approved Construction Schedules indicating progress achieved and activities commenced or completed within the prior updated Approved Construction Schedule. Updates to the Approved Construction Schedule shall not include any revisions to the activities, commencement and completion dates of activities or the sequencing of activities depicted on the Approved Construction Schedule without the District's consent. Any revisions to the Approved Construction Schedule made without the District's consent shall result in the District's rejection of such update and Contractor shall, within seven (7) days of the District's rejection of such update, submit to the Architect and the Project Manager an Updated Approved Construction Schedule which does not incorporate any such revisions. The Contractor shall also submit, with its updates to the Approved Construction Schedule, a narrative statement including a description of current and anticipated problem areas of the Work, logic and resource changes, delaying factors and their impact, and an explanation of corrective action taken or proposed by the Contractor. If the progress of the Work is behind the Approved Construction Schedule, the Contractor shall indicate what measures will be taken to place the Work back on schedule. The District may, from time to time, and in the District's sole and exclusive discretion, transmit to the Contractor's Performance Bond Surety the Approved Construction

Schedule, any updates thereof and the narrative statement described hereinabove. The District's election to transmit, or not to transmit such information, to the Contractor's Performance Bond Surety shall not limit the Contractor's obligations under the Contract Documents.

7.3.6 Contractor Responsibility for Construction Schedule. The Contractor shall be responsible for the preparation, submittal and maintenance of the Construction Schedules required by the Contract Documents, and any failure of the Contractor to do so may be deemed by the District as the Contractor's default in the performance of a material obligation under Contract Documents. Any and all costs or expenses required or incurred to prepare, submit, maintain, and update the Construction Schedules shall be solely that of the Contractor and no such cost or expense shall be charged to the District. The Contract Price shall not be subject to adjustment on account of costs, fees or expenses incurred or associated with the Contractor's preparation, submittal, maintenance or updating of the Construction Schedules. All schedule submittals shall include electronic diskettes for use by the District in its analysis and approval of the schedule submittal.

7.4 Adjustment of Contract Time. If Final Completion or completion of an Interim Milestone is delayed, adjustment, if any, to the Contract Time on account of such delay shall be in accordance with this Article 7.4 and will be made, if at all, by written Change Order made in accordance with Article 9.

7.4.1 Excusable Delays. If Final Completion of the Work is delayed by Excusable Delays, the Contract Time shall be subject to adjustment for such reasonable period of time as determined by the District. Excusable Delays shall not result in any increase in the Contract Price. Excusable Delays refer to unforeseeable and unavoidable casualties or other unforeseen causes beyond the control, and without fault or neglect, of the Contractor, any Subcontractor, Material Supplier or other person directly or indirectly engaged by the Contractor in performance of any portion of the Work. Excusable Delays include unanticipated and unavoidable labor disputes, unusual and unanticipated delays in transportation of equipment, materials or Construction Equipment reasonably necessary for completion and proper execution of the Work, and unanticipated unusually severe weather conditions. Neither the financial resources of the Contractor or any person or entity directly or indirectly engaged by the Contractor in performance of any portion of the Work shall be deemed conditions beyond the control of the Contractor. If an event of Excusable Delay occurs, the Contract Time shall be subject to adjustment hereunder only if the Contractor establishes: (i) full compliance with all applicable provisions of the Contract Documents relative to the method, manner and time for Contractor's notice and request for adjustment of the Contract Time; (ii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time are outside the reasonable control and without any fault or neglect of the Contractor or any person or entity directly or indirectly engaged by Contractor in performance of any portion of the Work; and (iii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time directly and adversely impacted the progress

of the Work as indicated in the most recent updated Approved Construction Schedule relative to the date(s) of the claimed event(s) of Excusable Delay. The foregoing provisions notwithstanding, if the Special Conditions set forth a number of "Rain Days" to be anticipated during performance of the Work, the Contract Time shall not be adjusted for rain related unusually severe weather conditions until and unless the actual number of Rain Days during performance of the Work shall exceed those noted in the Special Conditions and such additional Rain Days shall have directly and adversely impacted the progress of the Work as depicted in the Approved Construction Schedule or the most recent updated Approved Construction Schedule relative to the date(s) of such additional Rain Days.

7.4.2 Compensable Delays. If Final Completion of the Work is delayed and such delay is caused by the acts or omissions of the District, the Architect, the Project Manager or separate contractor employed by the District (collectively "Compensable Delays"), upon Contractor's request and notice, in strict conformity with Articles 7 and 9 of these General Conditions, the Contract Time will be adjusted by Change Order for such reasonable period of time as determined by the Architect, Project Manager and the District. In accordance with California Public Contract Code § 7102, if the Contractor's progress is delayed by any of the events described in the preceding sentence, Contractor shall not be precluded from the recovery of damages directly and proximately resulting therefrom, provided that the District is liable for the delay, the delay is unreasonable under the circumstances involved and the delay was not within the reasonable contemplation of the District and the Contractor at the time of execution of the Agreement. In such event, Contractor's damages, if any, shall be limited to direct, actual and unavoidable additional costs of labor, materials or Construction Equipment directly resulting from such delay, and shall exclude indirect or other consequential damages. In no event shall Contractor's damages exceed the mark-up amount(s) set forth in the Special Conditions and in accordance with Article 9.4.1.3.4. Except as expressly provided for herein, Contractor shall not have any other claim, demand or right to adjustment of the Contract Price arising out of delay, interruption, hindrance or disruption to the progress of the Work. Adjustments to the Contract Price and the Contract Time, if any, on account of Changes to the Work or Suspension of the Work shall be governed by the applicable provisions of the Contract Documents, including without limitation, Articles 9 and 14 of these General Conditions.

7.4.3 Unexcusable Delays. Unexcusable Delays refer to any delay to the progress of the Work caused by events or factors other than those specifically identified in Articles 7.4.1 and 7.4.2 above. Neither the Contract Price nor the Contract Time shall be adjusted on account of Unexcusable Delays.

7.4.4 Adjustment of Contract Time.

7.4.4.1 Procedure for Adjustment of Contract Time. The Contract Time shall be subject to adjustment only in strict conformity with applicable provisions of the Contract Documents. Failure of Contractor to request adjustment(s) of the Contract Time in strict conformity with applicable provisions of the Contract Documents shall be deemed Contractor's waiver of the same.

7.4.4.2 Limitations Upon Adjustment of Contract Time on Account of Delays.

Any adjustment of the Contract Time on account of an Excusable Delay or a Compensable Delay shall be limited as set forth herein. No adjustment of the Contract Time shall be made on account of any Excusable Delays or Compensable Delays unless such delay(s) actually and directly impact Work or Work activities on the critical path of the then current and updated Approved Construction Schedule as of the date on which such delay first occurs. The District shall not be deemed in breach of, or otherwise in default of any obligation hereunder, if the District shall deny a request by the Contractor for an adjustment of the Contract Time for any delay which does not actually and directly impact Work on the then current and updated Approved Construction Schedule. In submitting a request for an adjustment of Contract Time, and as a condition precedent to the District's review of such request, Contractor shall insert into the then current and updated Approved Construction Schedule a "fragnet" analysis representing the event which Contractor claims to result in delay to the critical path as depicted in such updated Approved Construction Schedule. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first delay to the cessation of the delay which ends last. If an Unexcusable Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, which the Excusable Delay or the Compensable Delay exceeds the period of time of the Unexcusable Delay.

7.5 Liquidated Damages; Contractor Delays. Pursuant to Government Code §53069.85, should the Contractor not achieve Final Completion of the Work within the Contract Time, as adjusted, or to complete an Interim Milestone in accordance with the times specified or provided for in the Contract Documents, the Contractor shall forfeit and pay to the District the amount of per diem Liquidated Damages set forth in the Special Conditions, for every day beyond the Contract Time, as adjusted, or Interim Milestone, the Work is achieved. Any such Liquidated Damages are automatically and without notice of any kind forfeited by Contractor upon the accrual of each day of delay. The District may at any time deduct Liquidated Damages from any payments due or to become due to the Contractor. Neither the District's failure or delay in deducting Liquidated Damages from payments otherwise due the Contractor, nor the District's failure or delay in notifying Contractor of the forfeiture of Liquidated Damages, shall be deemed a waiver of the District's right to Liquidated Damages. The Contractor and the Surety shall be liable for and pay to the District the entire amount of Liquidated Damages including any portion that exceeds the amount of the Contract Price then held, retained or controlled by the District. The Contractor and District acknowledge and agree that the Liquidated Damages and the provisions of this Article 7.5 are reasonable and necessary under the circumstances existing at the time this Agreement is made because of the difficulty of fixing the District's actual damages in the event of delayed completion of the Work. The Contractor and the District agree that the Liquidated Damages do not constitute a penalty.

7.6 District Right to Take-Over Work. Unless caused by the District, Architect, Project Manager or the Inspector, if the Contractor fails or refuses, for any reason and at any time, to furnish adequate materials, labor, equipment or services to maintain progress of the Work in accordance with

the then current Construction Schedule after twenty-four (24) hour advance written notice from the District to the Contractor of its failure or refusal, the District may thereafter furnish or cause to be furnish such materials, labor, equipment or services necessary to maintain progress of the Work in accordance with the then current Construction Schedule. All costs, expenses or other charges (whether direct, indirect or administrative) incurred by the District in furnishing such materials, labor, equipment or services shall be at the sole cost of the Contractor and the District may deduct the same from the Contract Price then or thereafter due the Contractor. The District's exercise of rights pursuant to the foregoing shall not be deemed a waiver or limitation of any other right or remedy of the District under the Contract Documents.

ARTICLE 8: CONTRACT PRICE

8.1 Contract Price. The Contract Price is the amount stated in the Agreement as the Sublease Tenant Improvement Payments Amount, and subject to any authorized adjustments thereto in accordance with the Contract Documents, is the total amount payable by the District to the Contractor for performance of the Work under the Contract Documents. The District's payment of the Contract Price to the Contractor shall be in accordance with the Contract Documents.

8.2 Cost Breakdown (Schedule of Values). Within ten (10) days of the Construction Schedule (Article 7.3.3), the Contractor shall furnish a detailed tabular Cost Breakdown (Schedule of Values) of the Contract Price. In preparing the Cost Breakdown, Contractor shall carefully list the cost of each activity or item for which payment will be requested. The Contractor shall not "front-load" the Cost Breakdown with false dollar amounts for activities to be performed in the early stages of the Project. The District may, in its sole discretion, utilize the costs listed in the Cost Breakdown (Schedule of Values) as the true cost of items to be deducted from the Contract Price through credit or deductive Change Order. The values for each line item shall include the amount of overhead and profit applicable to each item of work and shall include, at a minimum, a breakdown between rough and finish Work for the basic trades as well as individual dollars figures for large dollar equipment and materials to be installed or furnished for the Project. No individual line item or scope of work in the Cost Breakdown shall exceed \$50,000, except with the express, written consent of the District. Exceptions will be given by the District for a single item of Equipment for which the true cost exceeds \$50,000. The Cost Breakdown shall be subject to the District's review and approval of the form and content thereof. Upon request, Contractor shall provide District with data and documentation substantiating the accuracy of the proposed line items. In the event that the District shall reasonably object to any portion of the Cost Breakdown, within ten (10) days of the District's receipt of the Cost Breakdown, the District shall notify the Contractor, in writing of the District's objection(s) to the Cost Breakdown together with any request for substantiating data or documentation. Within five (5) days of the date of the District's written objection(s) and request for substantiating data and documentation, Contractor shall submit a revised Cost Breakdown to the District for review and approval together with the requested data and documentation. The foregoing procedure for the preparation, review and approval of the Cost Breakdown shall continue until the District has approved of the entirety of the Cost Breakdown. Once the Cost Breakdown is approved by the District, the Cost Breakdown shall not be thereafter modified or amended by the Contractor without the prior consent and approval of the District, which may be granted or withheld in the sole

reasonable discretion of the District. Notwithstanding any provision of the Contract Documents to the contrary, payment of the Contractor's overhead, supervision and general conditions costs and profit, as such items are reflected in the Cost Breakdown, shall be made incrementally as included in the activities included in the Approved Construction Schedule.

8.3 Progress Payments.

8.3.1 Applications for Progress Payments. During the Contractor's performance of the Work, the Contractor shall submit monthly, on the first working day of each month, to the Project Manager, Applications for Progress Payments, on forms approved by the District, setting forth an itemized estimate of Work completed in the preceding month. Values utilized in the Applications for Progress Payments shall be based upon the Cost Breakdown, (Schedule of Values) pursuant to Article 8.2 above, and such values shall be only for determining the basis of Progress payments to the Contractor, and shall not be considered as fixing a basis for adjustments, whether additive or deductive, to the Contract Price.

8.3.2 District's Review of Applications for Progress Payments. In accordance with Public Contract Code §20104.50, upon receipt of an Application for Progress Payment, the Project Manager, the District's Inspector, and the Architect shall review the Application. Such review shall be for the purpose of determining that the Application for Progress Payment is a proper Progress Payment request. For purposes of this Article 8.3.2, an Application for Progress Payment shall be deemed "proper" only if it is submitted on the properly completed form approved by the District, and accompanied by:

- (i) the Application submitted by the Contractor shall be consistent with and accompanied by the updated Approved Construction Schedule;
- (ii) weekly Certified Payroll Records ("CPRs") of the Contractor and all Subcontractors, of any tier, for laborers performing any portion of the Work for which a Progress Payment is included. The District shall not make any payment to Contractor until (a) Contractor and/or its Subcontractor(s) provide CPRs acceptable to the District, and (b) the District is given sufficient time to review and/or audit the CPRs to determine their acceptability. Any delay in Contractor and/or its Subcontractor(s) providing CPRs to the District in a timely manner will delay the District's review and/or audit of the CPRs and Contractor's payment;
- (iii) duly completed and executed forms of Conditional Waiver and Release of Rights Upon Progress Payment in accordance with California Civil Code §3262 of the Contractor, all Subcontractors of any tier, and Material Suppliers covering the Progress Payment requested;
- (iv) duly completed and executed forms of Unconditional Waiver and Release of Rights upon Progress Payment in accordance with California Civil Code §3262 of the Contractor, all Subcontractors of any tier, and Material Suppliers covering the Progress Payment received by the Contractor under the prior Application for Progress Payment;
- (v) all documents required pursuant to the District's Labor Compliance Program; and
- (vi) updated Record Documents reflecting the actual as-built conditions of the Work

performed, as reviewed by the Architect.

In accordance with Public Contract Code §20104.50, an Application for Progress Payment determined by the District not to be a proper Application for Progress Payment shall be returned by the District to the Contractor as soon as is practicable after receipt of the same from the Contractor, but in no event not more than seven (7) days after the District's receipt thereof. The District's return of any Application for Progress Payment pursuant to the preceding sentence shall be accompanied by a written document setting forth the reason(s) why the Application for Progress Payment is not proper.

8.3.3 Architect and District's Inspector Review of Applications for Progress Payments. Upon receipt of an Application for Progress Payment, the Architect and the District's Inspector shall meet with the Contractor to inspect the completed work and verify the portion of the work completed during the month using the approved Construction Schedule update and the Cost Breakdown (Schedule of Values). The Application for Progress Payment shall reflect the agreed percentages of work complete that is properly due to the Contractor under the terms of the Contract Documents. The Application submitted by the Contractor shall be consistent with and accompanied by the updated Approved Construction Schedule.

8.3.4 District's Disbursement of Progress Payments.

8.3.4.1 Timely Disbursement of Progress Payments. In accordance with Public Contract Code § 20104.50, within thirty (30) days after the District's receipt of a proper Application for Progress Payment, there shall be paid, by District, to Contractor a sum equal to ninety-five percent (95%) of the value of the Work indicated in the Application for Progress Payment as verified and approved by the District's Inspector and the Architect. If an Application for Progress Payment is determined not to be proper due to the failure or refusal of the contractor to submit the required documents with the Application for Progress Payment, or if it is reasonably determined that the Record Documents have not been continuously maintained to reflect the actual as-built conditions of the Work completed in the period for which the Progress Payment is requested, the thirty (30) day period hereunder for the District's timely disbursement of a Progress Payment shall be deemed to commence on the date that the District is actually in receipt of a complete and proper Application for Progress Payment or verifies the proper updating of the as-built conditions.

8.3.4.2 Untimely Disbursement of Progress Payments. In accordance with Public Contract Code §20104.50, in the event that the District shall fail to make any Progress Payment within thirty (30) days after receipt of an undisputed and properly submitted Application for Progress Payment, the District shall pay the Contractor interest on the undisputed amount of such Application for Progress Payment equal to the legal rate of interest set forth in California Code of Civil Procedure § 685.010(a).

8.3.4.3 District's Right to Disburse Progress or Final Payments by Joint Checks. The District may, in its sole discretion, issue joint checks to the Contractor and any

Subcontractor or Material Supplier providing work, labor, materials, equipment or services for the Project in satisfaction of its obligation to make Progress Payments or the Final Payment due hereunder. District may require Contractor to provide copies of applicable Subcontracts, purchase orders, rental invoices or materials invoices.

8.3.4.4 No Waiver of Defective or Non-Conforming Work. The approval of any Application for Progress Payment or the disbursement of any Progress Payment to the Contractor shall not be deemed nor constitute acceptance of defective Work or Work not in conformity with the Contract Documents.

8.3.5 Progress Payments for Changed Work. The Contractor's Applications for Progress Payment may include requests for payment on account of Changes in the Work which have been properly authorized and approved by the District's Inspector, the Architect and the Board. Except as provided for herein, no other payment shall be made by the District for Changes in the Work.

8.3.6 Materials or Equipment Not Incorporated Into the Work.

8.3.6.1 Limitations Upon Payment. Except as expressly provided for herein, no payments shall be made by the District on account of any item of the Work, including without limitation, materials or equipment which has/have not been incorporated into and made a part of the Work.

8.3.6.2 Materials or Equipment Delivered and Stored at the Site. The District may, in its sole and exclusive discretion, make payment for materials or equipment not yet incorporated into the Work if, a request for payment of such materials or equipment is made and if all of the following are complied with: (a) the materials or equipment have been delivered to the Site; (b) adequate arrangements, reasonably satisfactory to the District, have been made by the Contractor to store and protect such materials or equipment at the Site including without limitation, insurance reasonably satisfactory to the District, covering and protecting against the risk of loss, destruction, theft or other damage to such materials or equipment while in storage; and (c) the establishment of procedures reasonably satisfactory to the District by which title to such materials or equipment will be vested in the District upon the District's payment therefor. The Contractor acknowledges that the discretion to make, or not to make, payment for materials or equipment delivered or stored at the site of the Work pursuant to the preceding sentence shall be exercised exclusively by the District; the District's exercise of discretion not to make payment for materials or equipment delivered or stored at the Site, but not yet incorporated into the Work shall not be deemed the District's default hereunder. In the event that the District shall elect to make payment for materials or equipment delivered and stored at the Site, the costs and expenses incurred to comply with the requirements of (b) and (c) of this Article 8.3.6.2 shall be borne solely and exclusively by the Contractor and no payment shall be made by the District on account of such costs and expenses.

8.3.7 Exclusions From Progress Payments. No payments shall be made by the District for

materials or equipment to be incorporated into the Work where such materials or equipment have not been delivered or stored at the Site. The District shall not make any payment on account of any materials or equipment which are in the process of being fabricated or which are in transit to the Site or other storage location. In addition to the District's right to withhold disbursement of any Progress Payment provided for in the Contract Documents, neither the Contractor's Application for Progress Payment shall include, nor shall the District be obligated to disburse any portion of the Contract Price for amounts which the Contractor does not intend to pay any Subcontractor, of any tier, or Material Supplier because of a dispute or any other reason.

8.3.8 Title to Work. The Contractor warrants that title to all Work covered by an Application for Progress Payment will pass to the District no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Progress Payment, all Work for which a Progress Payment has been previously issued and the Contractor has received payment from the District therefor shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, stop notices, security interests or encumbrances in favor of the Contractor, Subcontractors, Material Suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

8.4 Final Payment.

8.4.1 Application for Final Payment. When the Contractor has achieved Final Completion of the Work and has otherwise fully performed its obligations under the Contract Documents, the Contractor shall submit an Application for Final Payment on such form as approved by the District. Thereupon, the Architect and the District's Inspector will promptly make a final inspection of the Work and when the Architect and the District's Inspector find the Work acceptable under the Contract Documents and that the Agreement has been fully performed by the Contractor, the Architect and the District's Inspector will thereupon promptly approve the Application for Final Payment, stating that to the best their knowledge, information and belief, the Work has been completed in accordance with the terms of the Contract Documents. The Final Payment shall include the remaining balance of the Contract Price and any retention from Progress Payments previously withheld by the District.

8.4.2 Conditions Precedent to Disbursement of Final Payment. Neither Final Payment nor any remaining Contract Price shall become due until the Contractor submits to the District each and all of the following, the submittal of which are conditions precedent to the District's obligation to disburse the Final Payment: (i) an affidavit or certification by the Contractor that payrolls, bills for materials and other indebtedness incurred in connection with the Work for which the District or the District's property may or might be responsible or encumbered have been paid or otherwise satisfied; (ii) a certificate evidencing that insurance required by the Contract Documents to remain in force after the Contractor's receipt of Final Payment is currently in effect; (iii) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover any period following Final Payment as required by the Contract Documents; if required (iv) consent of the Surety

on the Labor and Material Payment Bond and Performance Bond, to Final Payments if required; (v) duly completed and executed forms of Conditional or Unconditional Waivers and Releases of rights upon Final Payment of the Contractor, Subcontractors of any tier and Material Suppliers in accordance with California Civil Code §3262, with each of the same stating that there are, or will be, no claims for additional compensation after disbursement of the Final Payment; (vi) Operations and Maintenance manuals and separate warranties provided by any manufacturer or distributor of any materials or equipment incorporated into the Work; (vii) the Record Documents; (viii) the form of Guarantee included in the Contract Documents duly executed by an authorized representative of the Contractor; (ix) any and all other items or documents required by the Contract Documents to be delivered to the District upon completion of the Work; and (x) if required by the District, such other data establishing payment or satisfaction of obligations such as receipts, releases and waivers of liens, stop notices, claims, security interest or encumbrances arising out of the Agreement to the extent and in such form as may be required by the District.

8.4.3 Disbursement of Final Payment. Provided that the District is then in receipt of all documents and other items in Article 8.4.2 above as conditions precedent to the District's obligation to disburse Final Payment, not later than sixty (60) days following Final Acceptance the District shall disburse the Final Payment to the Contractor. Pursuant to California Public Contract Code §7107, if there is any dispute between the District and the Contractor at the time that disbursement of the Final Payment is due, the District may withhold from disbursement of the Final Payment an amount not to exceed one hundred fifty percent (150%) of the amount in dispute.

8.4.4 Waiver of Claims. The Contractor's acceptance of the Final Payment is a waiver and release by the Contractor of any and all claims against the District for compensation or otherwise in connection with the Contractor's performance of the Agreement.

8.4.5 Claims Asserted After Final Payment. Any lien, stop notice or other claim filed or asserted after the Contractor's acceptance of the Final Payment by any Subcontractor, of any tier, laborer, Material Supplier or others in connection with or for Work performed under the Contract Documents shall be the sole and exclusive responsibility of the Contractor who further agrees to indemnify, defend and hold harmless the District and its officers, agents, representatives and employees from and against any claims, demands or judgments arising or associated therewith, including without limitation attorneys fees incurred by the District in connection therewith. In the event any lien, stop notice or other claim of any Subcontractor, Laborer, Material Supplier or others performing Work under the Contract Documents remain unsatisfied after Final Payment is made, Contractor shall refund to District all monies that the District may pay or be compelled to pay in discharging any lien, stop notice or other claim, including, without limitation all costs and reasonable attorneys fees incurred by District in connection therewith.

8.5 Withholding of Payments. The District may decline to pay the Contractor, or reduce or withhold any portion of a payment otherwise due the Contractor for any Progress Payment or the

Final Payment on account of:

- (i) In the District's opinion, the Work cannot be completed for the unpaid balance of the Contract Price;
- (ii) In the District's opinion, the Work will not be completed within the Contract Time and the unpaid balance of the Contract Price would not be adequate to cover liquidated damages resulting from the anticipated delay;
- (iii) Any damage has occurred to the District or any Subcontractor, Material Supplier or another contractor, and the Contractor may be liable for such damage;
- (iv) The Contractor fails to perform any portion of the Work in accordance with the Contract Documents or otherwise violates any provision of the Contract Documents or fails to discharge any Contractor obligation thereunder;
- (v) Any claims, liens, labor compliance withholds, or stop notices are filed in connection with the Work or asserted against the District, the Project or the Site;
- (vi) The Contractor fails to reimburse the District for any costs or expenses incurred by the District, or amounts advanced by the District, on behalf of the Contractor as may be provided or permitted in this Agreement;
- (vii) Notification has been given that a penalty will be assessed by any State, local or municipal agency or by the District for violations of any applicable laws, including, without limitation, tax laws, labor laws and/or fair employment laws;
- (viii) Any current and non-resolved non-compliance notices issued by any public agency;
- (ix) Failure to satisfy any of the requirements of the Labor Compliance Program;
- (x) Defective Work or Work not in conformity with the Contract Documents which is not remedied as required in Article 12 herein;
- (xi) Stop Notices or other liens or third party claims served upon the District as a result of the Agreement;
- (xii) Liquidated damages incurred by the District for delays to the Project;
- (xiii) Unsatisfactory prosecution of the Work by the Contractor;
- (xiv) Failure to store and properly secure materials;
- (xv) Failure of the Contractor to submit, on a timely basis, proper, sufficient, and acceptable documentation required by the Contract Documents, including, without limitation, a

Construction Schedule, Schedule of Submittals, Schedule of Values, monthly progress schedules, Shop Drawings, Product Data and samples, proposed product lists, executed Change Orders, and/or verified reports;

- (xvi) Failure of the Contractor to maintain Record Documents;
- (xvii) Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;
- (xviii) Unauthorized deviations from the Contract Documents;
- (xix) Failure of the Contractor to prosecute the Work in a timely manner in compliance with the Construction Schedule, established progress schedules, and/or completion dates;
- (xx) If the District has an LCP in force on this Project, the failure to provide certified payroll records acceptable to the District for each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work for the period of the Application for Payment;
- (xxi) Failure to properly pay prevailing wages as defined in Labor Code §§1720 et seq., failure to comply with any other Labor Code requirements, and/or failure to comply with the District's LCP, if one is in force on this Project;
- (xxii) Failure to properly maintain or clean up the Site;
- (xxiii) Failure to indemnify, defend, or hold harmless the District;
- (xxiv) Failure to make payments due to the District, including but not limited to payments for failed tests, utilities changes, or permits;
- (xxv) Failure of the Contractor to make payments when due Subcontractors or Material Suppliers for materials or labor;
- (xxvi) Contractor is otherwise in breach, default, or in substantial violation of any provision of this Agreement.

In addition to the foregoing, the District shall not be obligated to process any Application for Progress Payment or Final Payment, nor shall Contractor be entitled to any Progress Payment or Final Payment so long as any lawful or proper direction concerning the Work or the performance thereof or any portion thereof, given by the District, the District's Inspector, the Architect or any public authority having jurisdiction over the Work, or any portion thereof, shall not be fully and completely complied with by the Contractor. When the District is reasonably satisfied that the Contractor has remedied any such deficiency, payment shall be made of the amount withheld. If the

District elects to withhold payment from the Contractor pursuant to this Article 8.5, then the District will be permitted to withhold such amounts as the District may, in its reasonable discretion, deem necessary to (A) protect the District against any and all liabilities to Subcontractors, Material Suppliers or any other persons as a result of the Work or any of the Contractor's acts or omissions, (B) correct any defective Work or remedy any breach of the Contract Documents, (C) recover and collect liquidated damages in the event completion of the Project is delayed, (D) recover and collect any costs or expenses paid by, or amounts advanced by, the District on behalf of Contractor, (E) collect any penalty that may be assessed against the Contractor for violations of any applicable laws, including, without limitation, labor laws and/or fair employment laws, and/or (F) recover any testing/inspections costs incurred by the District in connection with failed tests or inspections. The District may apply any such withheld amount or amounts to the payment and satisfaction of such claims or obligations at its discretion. In so doing, the District shall be deemed the agent of Contractor and any payment so made by the District shall be considered as a payment made under the Agreement by the District to the Contractor and shall be so deducted from the Contract Price otherwise due the Contractor. The District shall not be liable to Contractor for any such payments made in good faith. Such payments may be made without prior judicial determination of the claim or the obligation to make such payment. The District will render the Contractor a proper accounting of any such amounts retained or disbursed by the District on behalf of the Contractor.

8.6 Payments to Subcontractors. The Contractor shall pay all Subcontractors for and on account of Work of the Agreement performed by such Subcontractors in accordance with the terms of their respective subcontracts and as provided for pursuant to California Public Contract Code §10262, the provisions of which are deemed incorporated herein by this reference. In the event of the Contractor's failure to make payment to Subcontractors in conformity with California Public Contract Code §10262, the provisions of California Public Contract Code §10253 shall apply; by this reference, the provisions of California Public Contract Code §10253 are incorporated herein in its entirety, except that the references in said Section 10253 to "the director" shall be deemed to refer to the District.

ARTICLE 9: CHANGES

9.1 Changes in the Work. The District, at any time, by written order, may make Changes within the general scope of the Work under the Contract Documents or issue additional instructions; require additional Work or direct deletion of Work. The Contractor shall not proceed with any Change involving an increase or decrease in the Contract Price or the Contract Time without prior written authorization from the District. The foregoing notwithstanding, the Contractor shall promptly commence and diligently complete any Change to the Work subject to the District's written authorized issued pursuant to the preceding sentence; the Contractor shall not be relieved or excused from its prompt commencement and diligent completion of any Change subject to the District's written authorization by virtue of the absence or inability of the Contractor and the District to agree upon the extent of any adjustment to the Contract Time or the Contract Price on account of such Change. The issuance of a Change Order pursuant to this Article 9 in connection with any Change authorized by the District under this Article 9.1 shall not be deemed a condition precedent to Contractor's obligation to promptly commence and diligently complete any such Change authorized

by the District hereunder. The District's right to make Changes shall not invalidate the Agreement nor relieve the Contractor of any liability or other obligations under the Contract Documents. Any requirement of notice of Changes in the scope of Work to the Surety shall be the responsibility of the Contractor. Changes to the Work depicted or described in the drawings or the specifications shall be subject to approval by the DSA. The District may make Changes to bring the Work or the Project into compliance with environmental requirements or standards established by state or federal statutes and regulations enacted after the parties have entered into the Agreement.

9.2 Oral Order of Change in the Work. Any oral order, direction, instruction, interpretation, or determination from the District, the District's Inspector or the Architect which in the opinion of the Contractor causes any change to the scope of the Work, or otherwise requires an adjustment to the Contract Price or the Contract Time, shall be treated as a Change only if the Contractor gives the Architect and the District's Inspector written notice within ten (10) days of the order, directions, instructions, interpretation or determination and prior to acting in accordance therewith. Time is of the essence in Contractor's written notice pursuant to the preceding sentence so that the District can promptly investigate and consider alternative measures to address the order, direction, instruction, interpretation or determination giving rise to Contractor's notice. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice within ten (10) days of such order, direction, instruction, interpretation or determination shall be deemed Contractor's waiver of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of such order, direction, instruction, interpretation or determination. The written notice shall state the date, circumstances, extent of adjustment to the Contract Price or the Contract Time, if any, requested, and the source of the order, directions, instructions, interpretation or determination that the Contractor regards as a Change. Unless the Contractor acts in strict accordance with this procedure, any such order, direction, instruction, interpretation or determination shall not be treated as a Change and the Contractor hereby waives any claim for any adjustment to the Contract Price or the Contract Time on account thereof.

9.3 Contractor Submittal of Data. Within five (5) days after receipt of a written order directing a Change in the Work or furnishing the written notice regarding any oral order directing a Change in the Work, the Contractor shall submit to the District a detailed written statement setting forth the amount of any adjustment to the Contract Price on account thereof, properly itemized and supported by sufficient substantiating data to permit evaluation of the same, and the extent of adjustment of the Contract Time, if any, required by such Change. No claim or adjustment to the Contract Price or the Contract Time shall be allowed if not asserted by the Contractor in strict conformity herewith or if asserted after Final Payment is made under the Contract Documents.

9.4 Adjustment to Contract Price and Contract Time on Account of Changes to the Work.

9.4.1 Adjustment to Contract Price. Adjustments to the Contract Price due to Changes in the Work shall be determined by application of one of the following methods, in the following order of priority:

9.4.1.1 Mutual Agreement. By negotiation and mutual agreement, on a lump sum basis, between the District and the Contractor on the basis of the estimate of the actual and direct increase or decrease in costs on account of the Change. Upon request of the

District, the Contractor shall provide a detailed estimate of increase or decrease in costs directly associated with performance of the Change along with cost breakdowns of the components of the Change and supporting data and documentation. The Contractor shall be solely responsible for any additional costs or additional time arising out of, or related in any manner to, its failure to provide the estimate of costs within five (5) days after the receipt of the written request of the District for such estimate.

9.4.1.2 Determination by the District. By the District, whether or not negotiations are initiated pursuant to Article 9.4.1.1 above, based upon actual and necessary costs incurred by the Contractor as determined by the District on the basis of the Contractor's records. In the event that the procedure set forth in this Article 9.4.1.2 is utilized to determine the extent of adjustment to the Contract Price on account of Changes to the Work, promptly upon determining the extent of adjustment to the Contract Price, the District shall notify the Contractor in writing of the same; the Contractor shall be deemed to have accepted the District's determination of the amount of adjustment to the Contract Price on account of a Change to the Work unless Contractor shall notify the District, the Architect and the District's Inspector, in writing, not more than five (5) days from the date of the District's written notice, of any objection to the District's determination. Failure of the Contractor to timely notify the District, the Architect and the District's Inspector of Contractor's objections to the District's determination of the extent of adjustment to the Contract Price shall be deemed Contractor's acceptance of the District's determination and a waiver of any right or basis of the Contractor to thereafter protest or otherwise object to the District's determination. Notwithstanding any objection of the Contractor to the District's determination of the extent of any adjustment to the Contract Price pursuant to this Article 9.4.1.2, Contractor shall, pursuant to Article 9.7 below, diligently proceed to perform and complete any such Change.

9.4.1.3 Basis for Adjustment of Contract Price. If Changes in the Work require an adjustment of the Contract Price pursuant to Articles 9.4.1.1 or 9.4.1.2 above, the basis for adjustment of the Contract Price shall be as follows:

9.4.1.3.1 Labor. Contractor shall be compensated for the costs of labor actually and directly utilized in the performance of the Change. Wage rates for labor shall not be less than the prevailing wage rates in the locality of the Site and shall be commensurate with the labor classification(s) necessary for the performance of the Change. Use of a labor classification which would increase labor costs associated with any Change shall not be permitted. Labor costs shall exclude costs incurred by the Contractor in preparing estimate(s) of the costs of the Change, in the maintenance of records relating to the costs of the Change, coordination and assembly of materials and information relating to the Change or performance thereof, or the supervision and other overhead and general conditions costs associated with the Change or performance thereof.

9.4.1.3.2 Materials and Equipment. Contractor shall be compensated for the costs of materials and equipment necessarily and actually used or consumed in

connection with the performance of Changes. Costs of materials and equipment may include reasonable costs of transportation from a source closest to the site of the Work and delivery to the Site. If discounts by Material Suppliers are available for materials necessarily used in the performance of Changes, they shall be credited to the District. If materials and/or equipment necessarily used in the performance of Changes are obtained from a supplier or source owned in whole or in part by the Contractor, compensation therefor shall not exceed the current wholesale price for such materials or equipment. If, in the reasonable opinion of the District, the costs asserted by the Contractor for materials and/or equipment in connection with any Change is excessive, or if the Contractor fails to provide satisfactory evidence of the actual costs of such materials and/or equipment from its supplier or vendor of the same, the costs of such materials and/or equipment and the District's obligation for payment of the same shall be limited to the then lowest wholesale price at which similar materials and/or equipment are available in the quantities required to perform the Change. The District may elect to furnish materials and/or equipment for Changes to the Work, in which event the Contractor shall not be compensated for the costs of furnishing such materials and/or equipment or any mark-up thereon.

9.4.1.3.3 Construction Equipment. Contractor shall be compensated for the actual cost of the necessary and direct use of Construction Equipment in the performance of Changes to the Work. Use of such Construction Equipment in the performance of Changes to the Work shall be compensated in increments of hourly, weekly or monthly rates, whichever shall be the most economical to the District when applied to the scope of the specific change. Rental time for Construction Equipment moved by its own power shall include time required to move such Construction Equipment to the site of the Work from the nearest available rental source of the same. If Construction Equipment is not moved to the Site by its own power, Contractor will be compensated for the loading and transportation costs in lieu of rental time. The foregoing notwithstanding, neither moving time or loading and transportation time shall be allowed if the Construction Equipment is used for performance of any portion of the Work other than Changes to the Work. Unless prior approval in writing is obtained by the Contractor from the Architect, the District's Inspector and the District, no costs or compensation shall be allowed for time while Construction Equipment is inoperative, idle or on standby, for any reason. The Contractor shall not be entitled to an allowance or any other compensation for Construction Equipment or tools used in the performance of Changes to the Work where such Construction Equipment or tools have a replacement value of \$1,000.00 or less. Construction Equipment costs claimed by the Contractor in connection with the performance of any Change to the Work shall not exceed rental rates (Blue Book) established by distributors or construction equipment rental agencies in the locality of the Site; any costs asserted which exceed such rental rates shall not be allowed or paid. Unless otherwise specifically approved in writing by the Architect, the District's Inspector and the District, the allowable rate for the use of Construction Equipment

in connection with Changes to the Work shall constitute full compensation to the Contractor for the cost of rental, fuel, power, oil, lubrication, supplies, necessary attachments, repairs or maintenance of any kind, depreciation, storage, insurance, labor (exclusive of labor costs of the Construction Equipment operator), and any all other costs incurred by the Contractor incidental to the use of such Construction Equipment.

9.4.1.3.4 Mark-up on Costs of Changes to the Work. In the event a Change adding to the Work is authorized by the District, Contractor shall be paid a mark-up on the direct costs of the Change for general conditions and administration costs, all overhead (including home office and field overhead) and profit, which mark-up shall not exceed 15%. If a Change to the Work reduces the Contract Price, the maximum adjustment to the Contract Price shall be the actual cost reduction realized by the reduced or deleted Work multiplied by the percentage set forth for additions in scope above.

9.4.1.4 Contractor Maintenance of Records. In the event that Contractor shall be directed to perform any Changes to the Work pursuant to Article 9.1 or 9.2, or should the Contractor encounter conditions which the Contractor, pursuant to Article 9.6, believes would obligate the District to adjust the Contract Price and/or the Contract Time, Contractor shall maintain detailed records on a daily basis. Such records shall include without limitation hourly records for labor and Construction Equipment and itemized records of materials and equipment used that day in connection with the performance of any Change to the Work. In the event that more than one Change to the Work is performed by the Contractor in a calendar day, Contractor shall maintain separate records of labor, Construction Equipment, materials and equipment for each such Change. In the event that any Subcontractor, of any tier, shall provide or perform any portion of any Change to the Work, Contractor shall require that each such Subcontractor maintain records in accordance with this Article. Each daily record maintained hereunder shall be signed by Contractor's Superintendent or Contractor's authorized representative; such signature shall be deemed Contractor's representation and warranty that all information contained therein is true, accurate, and complete and relate only to the Change referenced therein. All records maintained by a Subcontractor, of any tier, relating to the costs of a Change to the Work shall be signed by such Subcontractor's authorized representative or Superintendent. All records maintained hereunder shall be subject to inspection, review and/or reproduction by the District, the Architect or the District's Inspector upon request. In the event that Contractor shall fail or refuse, for any reason, to maintain or make available for inspection, review and/or reproduction such records and the adjustment to the Contract Price on account of any Change to the Work is determined pursuant to this Article, the District's reasonable good faith determination of the extent of adjustment to the Contract Price on account of such Change shall be final, conclusive, dispositive and binding upon Contractor. Contractor's obligation to maintain records hereunder is in addition to, and not in lieu of, any other Contractor obligation under the Contract Documents with respect to Changes to the Work.

9.4.2 Adjustment to Contract Time. In the event of any Change(s) to the Work pursuant to this Article 9, the Contract Time shall be extended or reduced by Change Order for a period of time commensurate with the time reasonably necessary to perform such Change. Such time shall be requested in writing by the Contractor with the Contract Price Adjustment Proposal. The time extension request shall be justified by the Contractor by submittal of a CPM analysis accurately portraying the impact of the change on the critical path of the project schedule. Changes performed within available float as indicated in the updated Approved Construction Schedule shall not justify a time extension to the Contract Time. When agreement is reached between the District and Contractor that a Change shall require an extension of the Contract Time, the Contractor shall not be subject to Liquidated Damages for such period of time. If completion of the Work is delayed by causes for which the District is responsible and the delay is unreasonable under the circumstances involved, and not within the contemplation of the Contractor and the District at the time of execution of the Agreement, the Contractor shall not be precluded from the recovery of damages arising therefrom.

9.4.3 Addition or Deletion of Alternate Bid Item(s). If the Bid for the Work includes proposal(s) for Alternate Bid Item(s), during Contractor's performance of the Work, the District may elect, pursuant to this Article to add any such Alternate Bid Item(s) if the same did not form a basis for award of the Agreement or delete any such Alternate Bid Item(s) if the same formed a basis for award of the Agreement. If the District elects to add or delete any such Alternate Bid Item(s) pursuant to the foregoing, the cost or credit for such Alternate Bid Item(s) shall be as set forth in the Contractor's Bid.

9.5 Change Orders. If the District approves of a Change, a written Change Order prepared on behalf of the District shall be forwarded to the Contractor describing the Change and setting forth the adjustment to the Contract Time and the Contract Price, if any, on account of such Change. All Change Orders shall be in full payment and final settlement of all claims for direct, indirect and consequential costs, including without limitation, costs of delays or impacts related to, or arising out of, items covered and affected by the Change Order, as well as any adjustments to the Contract Time. Any claim or item relating to any Change incorporated into a Change Order not presented by the Contractor for inclusion in the Change Order shall be deemed waived. The Contractor shall execute the Change Order prepared pursuant to the foregoing; once the Change Order has been prepared and forwarded to the Contractor for execution, without the prior approval of the District which may be granted or withheld in the sole and exclusive discretion of the District, the Contractor shall not modify or amend the form or content of such Change Order, or any portion thereof. The Contractor's attempted or purported modification or amendment of any such Change Order, without the prior approval of the District, shall not be binding upon the District; any such unapproved modification or amendment to such Change Order shall be null, void and unenforceable. Unless otherwise expressly provided for in the Contract Documents or in the Change Order, any Change Order issued hereunder shall be binding upon the District only upon action of the District's Board of Trustees approving and ratifying such Change Order. In the event of any amendment or modification made by the Contractor to a Change Order for which there is no prior approval by the District, in accordance with the provisions of this Article 9.5, unless otherwise expressly stated in its approval and ratification of

such Change Order, any action of the Board of Trustees to approve and ratify such Change Order shall be deemed to be limited to the Change Order as prepared by the Architect; such approval and ratification of such Change Order shall not be deemed the District's approval and ratification of any unapproved amendment or modification by the Contractor to such Change Order.

9.6 Contractor Notice of Changes. If the Contractor should claim that any instruction, request, the drawings, the specifications, action, condition, omission, default, or other situation obligates the District to increase the Contract Price or to extend the Contract Time, the Contractor shall notify the District's Project Manager and the Architect, in writing, of such claim within ten (10) days from the date of its actual or constructive notice of the factual basis supporting the same. The District shall consider any such claim of the Contractor only if sufficient supporting documentation is submitted with the Contractor's notice to the District's Project Manager and the Architect. Time is of the essence in Contractor's written notice pursuant to the preceding sentence so that the District can promptly investigate and consider alternative measures to the address such instruction, request, drawings, specifications, action, condition, omission, default or other situation. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice (with sufficient supporting documentation to permit the District's review and evaluation) within ten (10) days of its actual or constructive knowledge of any instruction, request, drawings, specifications, action, condition, omission, default or other situation for which the Contractor believes there should an adjustment of the Contract Time or the Contract Price shall be deemed Contractor's waiver, release, discharge and relinquishment of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of any such instruction, request, drawings, specifications, action, condition, omission, default or other situation. The District shall consider any such claim of the Contractor only if sufficient supporting documentation is submitted with the Contractor's notice to the District's Project Manager and the Architect. In the event that the District determines that the Contract Price or the Contract Time are subject to adjustment based upon the events, circumstances and supporting documentation submitted with the Contractor's written notice under this Article 9.6, any such adjustment shall be determined in accordance with the provisions of Articles 9.4.1 and 9.4.2.

9.7 Disputed Changes. In the event of any dispute or disagreement between the Contractor and the District or the Architect regarding the characterization of any item as a Change to the Work or as to the appropriate adjustment of the Contract Price or the Contract Time on account thereof, the Contractor shall promptly proceed with the performance of such item of the Work, subject to a subsequent resolution of such dispute or disagreement in accordance with the terms of the Contract Documents. The Contractor's failure or refusal to so proceed with such Work may be deemed to be Contractor's default of a material obligation of the Contractor under the Contract Documents.

9.8 Emergencies. In an emergency affecting the safety of life, or of the Work, or of property, the Contractor, without special instruction or prior authorization from the District or the Architect, is permitted to act at its discretion to prevent such threatened loss or injury. Any compensation claimed by the Contractor on account of such emergency work shall be submitted and determined in accordance with this Article 9.

9.9 Minor Changes in the Work. The Architect may order minor Changes in the Work not

involving an adjustment in the Contract Price or the Contract Time and not inconsistent with the intent of the Contract Documents. Such Changes shall be effected by written order and shall be binding on the District and the Contractor. The Project Manager or the District's Inspector may direct the Contractor to perform Changes provided that each such Change does not result in an increase of more than \$500.00 to the Contract Price and no adjustment of the Contract Time. The Contractor shall carry out such orders promptly.

9.10 Unauthorized Changes. Any Work beyond the lines and grades shown on the Contract Documents, or any extra Work performed or provided by the Contractor without notice to the Architect and the District's Inspector in the manner and within the time set forth in Articles 9.2 or 9.6 shall be considered unauthorized and at the sole expense of the Contractor. Work so done will not be measured or paid for, no extension to the Contract Time will be granted on account thereof and any such Work may be ordered removed at the Contractor's sole cost and expense. The failure of the District to direct or order removal of such Work shall not constitute acceptance or approval of such Work nor relieve the Contractor from any liability on account thereof.

ARTICLE 10: SEPARATE CONTRACTORS

10.1 District's Right to Award Separate Contracts. The District reserves the right to perform construction or operations related to the Project with the District's own forces or to award separate contracts in connection with other portions of the Project or other construction or operations at or about the Site. If the Contractor claims that delay or additional cost is involved because of such action by the District, the Contractor shall seek an adjustment to the Contract Price or the Contract Time as provided for in the Contract Documents. Failure of the Contractor to request such an adjustment of the Contract Time or the Contract Price in strict conformity with the provisions of the Contract Documents applicable thereto shall be deemed a waiver of the same.

10.2 District's Coordination of Separate Contractors. The District shall provide for coordination of the activities of the District's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the District in reviewing their respective Construction Schedules when directed to do so. The Contractor shall make any revisions to the Approved Construction Schedule for the Work hereunder deemed necessary after a joint review and mutual agreement. The Construction Schedules shall then constitute the Construction Schedules to be used by the Contractor, separate contractors and the District until subsequently revised.

10.3 Mutual Responsibility. The Contractor shall afford the District and separate contractor's reasonable opportunity for storage of their materials and equipment and performance of their activities at the Site and shall connect and coordinate the Contractor's Work, construction and operations with theirs as required by the Contract Documents.

10.4 Discrepancies or Defects. If part of the Contractor's Work depends for proper execution or results upon construction or operations by the District or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Project Manager any apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an

acknowledgment that the District's or separate contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then discoverable by the Contractor's reasonable diligence.

ARTICLE 11: TESTS AND INSPECTIONS

11.1 Tests; Inspections; Observations.

11.1.1 Contractor's Notice. If the Contract Documents, laws, ordinances or any public authority with jurisdiction over the Work requires the Work, or any portion thereof, to be specially tested, inspected or approved, the Contractor shall give the Project Manager written notice of the readiness of such Work for observation, testing or inspection at least two (2) working days prior to the time for the conducting of such test, inspection or observation. If inspection, testing or observation is by authority other than the District, the Contractor shall inform the District's Inspector and the Project Manager not less than two (2) working days prior to the date fixed for such inspection, test or observation. The Contractor shall not cover up any portion of the Work subject to tests, inspections or observations prior to the completion and satisfaction of the requirements of such test, inspection or observation. In the event that any portion of the Work subject to tests, inspection or approval shall be covered up by Contractor prior to completion and satisfaction of the requirements of such tests, inspection or approval, Contractor shall be responsible for the uncovering of such portion of the Work as is necessary for performing such tests, inspection or approval without adjustment of the Contract Price or the Contract Time on account thereof.

11.1.2 Cost of Tests and Inspections. Costs for tests and inspection of materials shall be paid by the District as provided for herein. Within twenty (20) days after the establishment of the Approved Construction Schedule pursuant to Article 7.3 hereof, the District shall submit to the Contractor a written list of the portions of the Work subject to special tests or inspections to be paid for by the District along with the number of hours or costs of testing or inspection allocated for each such portion of the Work. Should any act, omission or other conduct of the Contractor, any of its Subcontractors, of any tier, or Material Suppliers cause the number of hours or the costs of such tests or inspections to exceed that set forth in the District's list submitted pursuant to the foregoing, the Contractor shall be solely responsible for all such excess costs and the District may deduct such amount from any portion of the Contract Price then or thereafter due the Contractor. The District will pay for all tests and inspections provided that, in addition to the cost to be paid by the Contractor previously set forth in this Article, the Contractor shall pay for all tests and inspections under any of the following conditions: (i) when such costs are stipulated in the provisions of the Contract Documents to be borne by the Contractor; (ii) when a material is tested or inspected and fails to meet the requirements of the specifications and/or drawings; or (iii) when the source of the material is changed after the original test or inspection has been made or approved.

11.1.3 Testing/Inspection Laboratory. The District shall select duly qualified person(s) or testing laboratory(ies) to conduct the tests and inspections to be paid for by the District and required by the Contract Documents. All such tests and inspections shall be in conformity with the latest adopted Title 24 of the California Code of Regulations. Where inspection or

testing is to be conducted by an independent laboratory or testing agency, materials or samples thereof shall be selected by the laboratory, testing agency, the District's Inspector, the Project Manager or the Architect and not by the Contractor.

11.1.4 Additional Tests, Inspections and Approvals. If the Architect, the Project Manager, the District's Inspector or public authorities having jurisdiction over the Work determine that portions of the Work require additional testing, inspection or approval, the Project Manager shall instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the District, and the Contractor shall give timely notice to the Project Manager of when and where tests and inspections are to be made so the District's Inspector and the Architect may observe such procedures. The District shall bear the costs of such additional tests, inspections or approvals, except to the extent that such additional tests, inspections or approvals reveal any failure of the Work to comply with the requirements of the Contract Documents, in which case the Contractor shall bear all costs made necessary by such failures, including without limitation, the costs of corrections, repeat tests, inspections or approvals and the costs of the Architect's services or its consultants in connection therewith. Where required DSA testing of the work identifies a failure rate of ten percent (10%) or greater for any system, scope of work, installation or subtrade that has been specifically targeted, District may, at its sole discretion, order that all such similar systems, installations, scopes of work or subtrade work used in connection with the Project be tested, and the cost to test all such work shall be paid by the Contractor.

11.2 Delivery of Certificates. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect. If a material is not required to be tested, the Architect, Inspector or the District may require Contractor to furnish a certificate bearing the official and legal signature of the supplier with each delivery of such material, which certificate shall state that the material complies with the Specifications.

11.3 Timeliness of Tests, Inspections and Approvals. Tests or inspections required and conducted pursuant to the Contract Documents shall be made or arranged by Contractor to avoid delay in the progress of the Work.

ARTICLE 12: UNCOVERING AND CORRECTION OF WORK

12.1 Inspection of the Work.

12.1.1 Access to the Work. All Work and all materials and equipment forming a part of the Work or incorporated into the Work are subject to inspection by the District, the Project Manager, the Architect and the District's Inspector for conformity with the Contract Documents. The Contractor shall, at its cost and without adjustment to the Contract Price or the Contract Time, furnish any facilities necessary for sufficient and safe access to the Work for purposes of inspection by the District, the Project Manager, the Architect, the District's Inspector, DSA or any other public or quasi-public authority with jurisdiction over the Work or any portion thereof.

12.1.2 Limitations Upon Inspections. Inspections, tests, measurements, or other acts of the

Architect and the District's Inspector hereunder are for the sole purpose of assisting them in determining that the Work, materials, equipment, progress of the Work, and quantities generally comply and conform to the requirements of the Contract Documents. These acts or functions shall not relieve the Contractor from performing the Work in full compliance with the Contract Documents. No inspection by the Architect or the District's Inspector shall constitute or imply acceptance of Work inspected. Inspection of the Work hereunder is in addition to, and not in lieu of, any other testing, inspections or approvals of the Work required under the Contract Documents.

12.2 Uncovering of Work. If any portion of the Work is covered contrary to the request of the Architect, the District's Inspector, the Project Manager or the requirements of the Contract Documents, it must be uncovered by the Contractor for observation by such District representative and be replaced by the Contractor without adjustment of the Contract Time or the Contract Price.

12.3 Rejection of Work. Prior to the District's Final Acceptance of the Work, any Work or materials or equipment forming a part of the Work or incorporated into the Work which is defective or not in conformity with the Contract Documents may be rejected by the District, the Project Manager, the Architect or the District's Inspector and the Contractor shall correct such rejected Work without any adjustment to the Contract Price or the Contract Time, even if the Work, materials or equipment have been previously inspected by the Architect or the District's Inspector or even if they failed to observe the defective or non-conforming Work, materials or equipment.

12.4 Correction of Work. The Contractor shall promptly correct any portion of the Work rejected by the District, the Project Manager, the Architect or the District's Inspector for failing to conform to the requirements of the Contract Documents, or which is determined by them to be defective, whether observed before or after Final Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's or Inspector's services and expenses made necessary thereby. The Contractor shall bear all costs of correcting destroyed or damaged construction, whether completed or partially completed, of the District or separate contractors, caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents, or which is defective.

12.5 Removal of Non-Conforming or Defective Work. The Contractor shall, at its sole cost and expense, remove from the Site all portions of the Work which are defective or are not in accordance with the requirements of the Contract Documents which are neither corrected by the Contractor nor accepted by the District.

12.6 Failure of Contractor to Correct Work. If the Contractor fails to commence to correct defective or non-conforming Work within three (3) days of notice of such condition and promptly thereafter complete the same within a reasonable time, the District may correct it in accordance with the Contract Documents. If the Contractor does not so proceed, the District may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage after written notice, the District may sell such materials or equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including without limitation compensation

for the Architect's and Inspector's services, attorneys fees and other expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Price shall be reduced by the deficiency. If payments of the Contract Price then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor and the Surety shall promptly pay the difference to the District.

12.7 Acceptance of Defective or Non-Conforming Work. The District may, in its sole and exclusive discretion, elect to accept Work which is defective or which is not in accordance with the requirements of the Contract Documents, instead of requiring its removal and correction, in which case the Contract Price shall be reduced as appropriate and equitable.

ARTICLE 13: WARRANTIES

13.1 Workmanship and Materials. The Contractor warrants to the District that all materials and equipment furnished under the Contract Documents shall be new, of good quality and of the most suitable grade and quality for the purpose intended, unless otherwise specified in the Contract Documents. All Work shall be of good quality, free from faults and defects and in conformity with the requirements of the Contract Documents. If required by the District, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment incorporated into the Work. Any work or portion thereof not conforming to these requirements, including substitutions or alternatives not properly approved in accordance with the Contract Documents may be deemed defective. Where there is an approved substitution of, or alternative to, material or equipment specified in the Contract Documents, the Contractor warrants to the District that such installation, construction, material, or equipment will equally perform the function and have the quality of the originally specified material or equipment. The Contractor expressly warrants the merchantability, the fitness for use, and quality of all substitute or alternative items in addition to any warranty given by the manufacturer or supplier of such item.

13.2 Warranty Work. If, within one year after the date of DSA Approval, or such other time frame set forth elsewhere in the Contract Documents, any of the Work is found to be defective or not in accordance with the requirements of the Contract Documents, or otherwise contrary to the warranties contained in the Contract Documents, the Contractor shall commence all necessary corrective action not more than seven (7) days after receipt of a written notice from the District to do so, and to thereafter diligently complete the same. In the event that Contractor shall fail or refuse to commence correction of any such item within said seven (7) day period or to diligently prosecute such corrective actions to completion, the District may, without further notice to Contractor, cause such corrective Work to be performed and completed. In such event, Contractor and Contractor's Performance Bond Surety shall be responsible for all costs in connection with such corrective Work, including without limitation, general administrative overhead costs of the District in securing and overseeing such corrective Work. Nothing contained herein shall be construed to establish a period of limitation with respect to any obligation of the Contractor under the Contract Documents. The obligations of the Contractor hereunder shall be in addition to, and not in lieu of, any other obligations imposed by any special guarantee or warranty required by the Contract Documents, guarantees or warranties provided by any manufacturer of any item or equipment forming a part of, or incorporated into the Work, or otherwise recognized, prescribed or imposed by law. Neither the

District's Final Acceptance, the making of Final Payment, any provision in Contract Documents, nor the use or occupancy of the Work, in whole or in part, by District shall constitute acceptance of Work not in accordance with the Contract Documents nor relieve the Contractor or the Contractor's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein.

13.3 Guarantee. Upon completion of the Work, Contractor shall execute and deliver to the District the form of Guarantee included within the Contract Documents. The Contractor's execution and delivery of the form of Guarantee is an express condition precedent to any obligation of the District to disburse the Final Payment to the Contractor.

13.4 Survival of Warranties. The provisions of this Article 13 shall survive the Contractor's completion of Work under the Contract Documents, the District's Final Acceptance or the termination of the Agreement.

ARTICLE 14: SUSPENSION OF WORK

14.1 District's Right to Suspend Work. The District may, without cause and without invalidating or terminating the Agreement, order the Contractor, in writing, to suspend, delay or interrupt the Work in whole or in part for such period of time as the District may determine. The Contractor shall resume and complete the Work suspended by the District in accordance with the District's directive, whether issued at the time of the directive suspending the Work or subsequent thereto.

14.2 Adjustments to Contract Price and Contract Time. If the District orders a suspension of the Work, an adjustment shall be made to the Contract Price for increases in the direct cost of performance of the Work of the Contract Documents actually caused by suspension, delay or interruption ordered by the District; provided however that no adjustment of the Contract Price shall be made to the extent: (i) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible under the Contract Documents; or (ii) that an equitable adjustment is made or denied under another provision of the Contract Documents. Any such adjustment of the Contract Price shall not include any adjustment to increase the Contractor's overhead, general administrative costs or profit, all of which will remain as reflected in the Cost Breakdown submitted by the Contractor pursuant to the Contract Documents. In the event of the District's suspension of the Work, the Contract Time shall be equitably adjusted.

ARTICLE 15: TERMINATION

15.1 Termination for Cause.

15.1.1 District's Right to Terminate. The District may terminate the Agreement and/or the Contractor's performance of the Agreement, in whole or in part, upon the occurrence of any one or more of the following events of the Contractor's default: (i) if the Contractor refuses or fails to prosecute the Work with diligence as will ensure Final Completion of the Work within the Contract Time, or if the Contractor fails to substantially Complete the Work within the Contract Time; (ii) if the Contractor becomes bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or if the Contractor or a third party files a petition to reorganize or for protection under any bankruptcy or similar laws, or if a trustee or

receiver is appointed for the Contractor or for any of the Contractor's property on account of the Contractor's insolvency, and the Contractor or its successor in interest does not provide adequate assurance of future performance in accordance with the Contract Documents within 10 days of receipt of a request for such assurance from the District; (iii) if the Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment; (iv) if the Contractor repeatedly fails to make prompt payments to any Subcontractor, of any tier, or Material Suppliers or others for labor, materials or equipment; (v) if the Contractor disregards laws, ordinances, rules, codes, regulations, orders applicable to the Work or similar requirements of any public entity having jurisdiction over the Work; (iv) if the Contractor disregards proper directives of the Architect, the District's Inspector or District under the Contract Documents; (vii) if the Contractor performs Work which deviates from the Contract Documents and neglects or refuses to correct such Work; or (viii) if the Contractor otherwise violates in any material way any provisions or requirements of the Contract Documents. Once the District determines that sufficient cause exists to justify the action, the District may terminate the Agreement without prejudice to any other right or remedy the District may have, after giving the Contractor and the Surety at least seven (7) days advance written notice of the effective date of termination. The District shall have the sole discretion to permit the Contractor to remedy each cause for the termination without waiving the District's right to terminate the Agreement, or otherwise waiving, restricting or limiting any other right or remedy of the District under the Contract Documents or at law.

15.1.2 District's Rights Upon Termination. In the event that the Agreement or the Contractor's performance of the Agreement is terminated pursuant to this Article 15.1, the District may take over the Work and prosecute it to completion, pursuant to the Agreement or otherwise, and may exclude the Contractor from the site. The District may take possession of the Work and of all of the Contractor's tools, appliances, construction equipment, machinery, materials, and plant which may be on the site of the Work, and use the same to the full extent they could be used by the Contractor without liability to the Contractor. In exercising the District's right to prosecute the completion of the Work, the District may also take possession of all materials and equipment stored at the site of the Work or for which the District has paid the Contractor but which are stored elsewhere, and finish the Work as the District deems expedient. In exercising the District's right to prosecute the completion of the Work, the District shall have the right to exercise its sole discretion as to the manner, methods, and reasonableness of the costs of completing the Work and the District shall not be required to obtain the lowest figure for completion of the Work. In the event that the District takes bids for remedial Work or completion of the Work, the Contractor shall not be eligible for the award of such contract(s).

15.1.3 Completion by the Surety. In the event that the Agreement or the Contractor's performance of the Agreement is terminated pursuant to this Article 15.1, the District may demand that the Surety take over and complete the Work. The District may require that in so doing, the Surety not utilize the Contractor in performing and completing the Work. In the event that the District makes a demand that the Surety take over and complete the Work, upon the failure or refusal of the Surety to take over and begin completion of the Work

within fifteen (15) days after demand therefor, the District may take over the Work and prosecute it to completion as provided for above. Such remedy is in addition to, and not lieu of, other remedies available to District as provided by law or in equity.

15.1.4 Assignment and Assumption of Subcontracts. The District shall, in its sole and exclusive discretion, have the option of requiring any Subcontractor or Material Supplier to perform in accordance with its Subcontract or Purchase Order with the Contractor and assign the Subcontract or Purchase Order to the District or such other person or entity selected by the District to complete the Work.

15.1.5 Costs of Completion. In the event of termination under this Article 15.1, the Contractor shall not be entitled to receive any further payment of the Contract Price until the Work is completed. If the unpaid balance of the Contract Price as of the date of termination exceeds the District's direct and indirect costs and expenses for completing the Work, including without limitation, attorneys' fees and compensation for additional professional and consultant services, such excess shall be used to pay the Contractor for the cost of the Work performed prior to the effective date of termination with a reasonable allowance for overhead and profit. If the District's costs and expenses to complete the Work exceed the unpaid Contract Price, the Contractor and/or the Surety shall pay the difference to the District.

15.1.6 Contractor Responsibility for Damages. The Contractor and the Surety shall be liable for all damages sustained by the District resulting from, in any manner, the termination of Agreement under this Article 15.1, including without limitation, attorneys' fees, and for all costs necessary for repair and completion of the Work over and beyond the Contract Price.

15.1.7 Conversion to Termination for Convenience. In the event the Agreement is terminated under this Article 15.1, and it is finally determined by an arbitrator, court, jury or other tribunal having jurisdiction, for any reason, that the Contractor was not in default under the provisions hereof or that the District's exercise of its rights under Article 15.1 was defective, deficient, ineffective, invalid or improper for any reason, , the termination shall be deemed a Termination for Convenience of the District and thereupon, the rights and obligations of the District and the Contractor shall be determined in accordance with Article 15.2 hereof.

15.1.8 District's Rights Cumulative. In the event the Agreement is terminated pursuant to this Article 15.1, the termination shall not affect or limit any rights or remedies of the District against the Contractor or the Surety. The rights and remedies of the District under this Article 15.1 are in addition to, and not in lieu of, any other rights and remedies provided by law or otherwise under the Contract Documents. Any retention or payment of monies to the Contractor by the District shall not be deemed to release the Contractor or the Surety from any liability hereunder.

15.2 Termination for Convenience of the District. The District may at any time, in its sole and exclusive discretion, by written notice to the Contractor, terminate the Agreement or the Contractor's performance of the Agreement, in whole or in part, when it is in the interest of, or for the convenience of, the District. In such case, the Contractor shall be entitled to payment for: (i) Work

actually performed and in place as of the effective date of such termination for convenience of the District, with a reasonable allowance for profit and overhead on such Work, and (ii) reasonable termination expenses for reasonable protection of Work in place and suitable storage and protection of materials and equipment delivered to the site of the Work but not yet incorporated into the Work, provided that such payments exclusive of termination expenses shall not exceed the total Contract Price as reduced by payments previously made to the Contractor and as further reduced by the value of the Work as not yet completed. The Contractor shall not be entitled to profit and overhead on Work which was not performed as of the effective date of the termination for convenience of the District or for any other damages, direct or indirect, which Contractor or anyone claiming through Contractor alleges resulted from the District's election to terminate under Article 15.2 or where a termination under Article 15.1 has been converted to a termination for convenience under Article 15.1.7. The District may, in its sole discretion, elect to have subcontracts assigned pursuant to Article 15.1.4 above after exercising the right hereunder to terminate for the District's convenience.

15.3 Termination by the Contractor. The Contractor may terminate this Agreement upon thirty (30) days written notice to the District, whenever: (1) the entire Project has been suspended for one hundred twenty (120) consecutive days through no fault or negligence of the Contractor, and neither a notice to resume nor a notice to terminate this Agreement has been received from the District within this time period; or (2) the District shall elect not to appropriate funds and/or elect not to make two (2) successive Tenant Improvement Payments and/or Sublease Payments, as defined in Section 6 of the Sublease, following the receipt by the District of a request from the Contractor in its capacity as lessor in the Sublease for each such Tenant Improvement Payments and/or Sublease Payment submitted pursuant to Section 6 of the Sublease. In the event of such termination, Contractor shall have no claims against the District except for work performed and reasonable demobilization costs of the Project as of the date of termination.

ARTICLE 16: DISPUTE RESOLUTION

16.1 RESOLUTION OF CLAIMS. Claims shall be resolved by the Parties in accordance with the provisions of this Section 16. All Claims shall be subject to the "Claims Resolution Process" set forth in this Section 16, which shall be the exclusive recourse of Pre-Construction Contractor and the District for determination and resolution of Claims.

For purpose of this Section 16, a "Claim" shall mean, a written demand or assertion by the District or Pre-Construction Contractor seeking, as a matter of right, an interpretation of contract, disputed payment of money, recovery of damages or other relief. A Claim does not include the following: (i) penalties or forfeitures prescribed by statute or regulation imposed by a governmental agency; (ii) tort claims for personal injury or death; (iii) false claims liability under California Government Code Section 12650, et seq.; (iv) physical defects in the construction first discovered by the District after final payment by the District to a contractor; (v) stop notices; or (vi) the right of the District to specific performance or injunctive relief to compel performance.

16.2 RESOLUTION OF OTHER DISPUTES. Disputes between the District and Pre-Construction Contractor that do not constitute Claims shall be resolved by way of an action filed in the Superior Court of the State of California, County of Santa Clara, and shall not be subject to the Claims Resolution Process.

16.3 SUBMISSION OF A CLAIM

16.3.1 By Pre-Construction Contractor. Pre-Construction Contractor's right to commence the Claims Resolution Process shall arise upon the District's written response denying all or part of a Claim or the passage of thirty (30) calendar days after submission of the claim should no denial be issued by the District. Pre-Construction Contractor shall submit a written statement of dispute to the District within fourteen (14) calendar days after the District rejects all or a portion of Pre-Construction Contractor's Claim. Failure by Pre-Construction Contractor to timely submit its statement of dispute shall result in the decision by the District on the Claim becoming final and binding. Pre-Construction Contractor's statement of dispute shall be signed by a principal of Pre-Construction Contractor and shall state with specificity the events or circumstances giving rise to the Claim, the dates of their occurrence and the asserted effect, if any, on the compensation due or time of performance obligations of Pre-Construction Contractor under this Agreement (the "Statement of Dispute"). Such Statement of Dispute shall include adequate supporting data to substantiate the disputed Claim. Adequate supporting data for a Claim relating to an adjustment of Pre-Construction Contractor's obligations relative to time of performance shall include a detailed, event-by-event description of the impact of each delay on Pre-Construction Contractor's time for performance. Adequate supporting data for a Statement of Dispute involving Pre-Construction Contractor's compensation shall include a detailed cost breakdown and supporting cost data in such form and including such detailed information and other supporting data as required to demonstrate the grounds for, and precise amount of, the Claim.

16.3.2 By the District. The District's right to commence the Claims Resolution Process shall arise at any time following the District's actual discovery of the circumstances giving rise to the Claim. Nothing contained herein shall preclude the District from asserting Claims in response to a Claim asserted by Pre-Construction Contractor. A Statement of Claim submitted by the District shall state the events or circumstances giving rise to the Claim, the dates of their occurrence and the damages or other relief claimed by the District as a result of such events.

16.4 CLAIMS RESOLUTION PROCESS. The Parties shall utilize each of the following steps in the Claims Resolution Process in the sequence they appear below. Each Party shall participate fully and in good faith in each step in the Claims Resolution Process, which good faith effort shall be a condition precedent to the right of each Party to proceed to the next step in the Claims Resolution Process.

16.4.1 Direct Negotiations. Designated representatives of the District and Pre-Construction Contractor shall meet as soon as possible (but not later than forty-five (45) calendar days after the Statement of Dispute is given) in a good faith effort to negotiate a resolution to the Claim. Each Party shall be represented in such negotiations by an authorized representative with full knowledge of the details of the Claim or defenses being asserted by such Party, and with full authority to resolve such Claim then and there, subject only to the District's right and obligation to obtain Board of Trustees' approval of any agreed settlement or resolution. If the Claim involves the assertion of a right or claim by a Contractor, the Architect or Architect Consultant against the Pre-Construction Contractor that is in turn being asserted by the Pre-Construction Contractor against the District, then such Contractor, the Architect or Architect Consultant shall also have a representative attend such negotiations, with the same authority and knowledge as just described. Upon completion of the meeting, if the Claim is not resolved, the Parties may either continue the negotiations or either Party may declare negotiations ended. All discussions that occur during such negotiations and all documents prepared solely for the purpose of such negotiations shall be confidential and privileged pursuant to California Evidence Code Sections 1119 and 1152.

16.4.2 Deferral of Agreement Disputes. Following the completion of the negotiations required by the preceding paragraph, all unresolved Claims shall proceed to Mediation as set forth in the succeeding paragraph entitled “Mediation.” The Parties hereto may mutually agree to postpone continuing the Claims Dispute Resolution until the earlier of: (i) the completion of the Services hereunder or; (ii) the termination of the Services. In the event Claims are deferred, the Claims shall be consolidated within a reasonable period of time after completion of the Services herein and pursued to resolution through the Claims Dispute Resolution Process. Pending final resolution of any Claim, Pre-Construction Contractor shall proceed diligently with the performance of its Services and the District shall continue to make payments for those Services that are not part of the Claim set forth herein in accordance with the terms of this Agreement.

16.4.3 Mediation. If the Claim remains unresolved after direct negotiations pursuant to Paragraph 12.4, the Parties agree to submit the Claim to non-binding mediation before a mutually acceptable third party mediator prior to commencement of any lawsuit or court action.

16.4.3.1 Qualifications of Mediator. The Parties shall endeavor to select a mediator who is a retired judge or an attorney with at least five (5) years of experience in public works construction contract law and in mediating public works construction disputes.

16.4.3.2 Submission to Mediation and Selection of Mediator. The Party initiating mediation of a Claim shall provide written notice to the other Party of its decision to mediate. In the event the Parties are unable to agree upon a mediator within ninety (90) calendar days after such written notice is given, then the Parties shall submit the matter to the Superior Court of the County of Los Angeles to select a mediator in accordance with the qualifications herein and the applicable law.

16.4.3.3 Mediation Process. The location of the mediation shall be at the offices of the District, or otherwise mutually agreed. The costs of mediation shall be shared equally among all parties participating. All discussions that occur during the mediation and all document presentations prepared solely for the purpose of the mediation shall be confidential and privileged pursuant to California Evidence Code Sections 1119 and 1152.

16.4.3.4 Litigation. If the Claim remains unresolved after direct negotiations and mediation, either Party may commence an action in the Superior Court of the County of Santa Clara. Pre-Construction Contractor hereby submits to the jurisdiction of said court.

16.5 NON-WAIVER OR RELEASE. Participation in the Claims Resolution Process shall not constitute a waiver, release or compromise of any defense of either Party.

ARTICLE 17: MISCELLANEOUS

17.1 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

17.2 Successors and Assigns. Except as otherwise expressly provided in the Contract Documents, all terms, conditions and covenants of the Contract Documents shall be binding upon, and shall inure to the benefit of the District and the Contractor and their respective heirs, representatives, successors-in-interest and assigns.

17.3 Cumulative Rights and Remedies; No Waiver. Duties and obligations imposed by the

Contract Documents and rights and remedies available thereunder shall be in addition to and not in lieu of or otherwise a limitation or restriction of duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the District shall constitute a waiver of a right or remedy afforded it under the Contract Documents or at law nor shall such an action or failure to act constitute approval of or acquiescence in a breach hereunder, except as may be specifically agreed in writing.

17.4 Severability. In the event any provision of the Contract Documents shall be deemed illegal, invalid, unenforceable and/or void, by a court or any other governmental agency of competent jurisdiction, such provision shall be deemed to be severed and deleted from the Contract Documents, but all remaining provisions hereof, shall in all other respects, continue in full force and effect.

17.5 No Assignment by Contractor. The Contractor shall not sublet or assign the Agreement, or any portion thereof, or any monies due thereunder, without the express prior written consent and approval of the District, which approval may be withheld in the sole and exclusive discretion of the District. The District's approval to such assignment shall be upon such terms and conditions as determined by the District in its sole and exclusive discretion.

17.6 Independent Contractor Status. In performing its obligations under the Contract Documents, the Contractor is an independent contractor to the District and not an agent or employee of the District.

17.7 Notices. Except as otherwise expressly provided for in the Contract Documents, all notices which the District or the Contractor may be required, or may desire, to serve on the other, shall be effective only if delivered by personal delivery or by postage prepaid, First Class Certified Return Receipt Requested United States Mail, addressed to the District or the Contractor at their respective address set forth in the Contract Documents, or such other address(es) as either the District or the Contractor may designate from time to time by written notice to the other in conformity with the provisions hereof. In the event of personal delivery, such notices shall be deemed effective upon delivery, provided that such personal delivery requires a signed receipt by the recipient acknowledging delivery of the same. In the event of mailed notices, such notice shall be deemed effective on the third working day after deposit in the mail.

17.8 Disputes; Continuation of Work. Notwithstanding any claim, dispute or other disagreement between the District and the Contractor regarding performance under the Contract Documents, the scope of Work thereunder, or any other matter arising out of or related to, in any manner, the Contract Documents, the Contractor shall proceed diligently with performance of the Work in accordance with the District's written direction, pending any final determination or decision regarding any such claim, dispute or disagreement.

17.9 Attorneys Fees. Except as expressly provided for in the Contract Documents, or authorized by law, neither the District nor the Contractor shall recover from the other any attorneys fees or other costs associated with or arising out of any legal, administrative or other proceedings filed or instituted in connection with or arising out of the Contract Documents or the performance of either the District or the Contractor thereunder.

17.19 Marginal Headings; Interpretation. The titles of the various Articles of these General

Conditions and elsewhere in the Contract Documents are used for convenience of reference only and are not intended to, and shall in no way, enlarge or diminish the rights or obligations of the District or the Contractor and shall have no effect upon the construction or interpretation of the Contract Documents. The Contract Documents shall be construed as a whole in accordance with their fair meaning and not strictly for or against the District or the Contractor.

17.11 Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in the Contract Documents is deemed to be inserted herein and the Contract Documents shall be read and enforced as though such provision or clause are included herein, and if through mistake, or otherwise, any such provision or clause is not inserted or if not correctly inserted, then upon application of either party, the Contract Documents shall forthwith be physically amended to make such insertion or correction.

17.12 Entire Agreement. The Contract Documents contain the entire agreement and understanding between the District and the Contractor concerning the subject matter hereof, and supersedes and replaces all prior negotiations, proposed agreements or amendments, whether written or oral. No amendment or modification to any provision of the Contract Documents shall be effective or enforceable except by an agreement in writing executed by the District and the Contractor.

END OF SECTION

SITE LEASE

This Site Lease (hereinafter referred to as the "Site Lease") will be entered into on the day of GMP Approval by the Board of Trustees of Gilroy Unified School District, this site lease will then be amended by and between the Gilroy Unified School District, a California school district organized and existing under the laws of the State of California (hereinafter referred to as the "District") as lessor, and Flint Builders, Inc. which is a contractor licensed by the State of California, with its principal place of business at 401 Derek Place, Roseville, California 95678 (hereinafter referred to as "Contractor") as lessee.

RECITALS

WHEREAS pursuant to Education Code section 17406, the District desires to provide for the financing and construction of certain public improvements more fully described in a Construction Services Agreement between the District and Contractor, dated as of the date hereof (the "Project") situated at Brownell Middle School, 7800 Carmel Street, Gilroy, California 95020, within the District, as more fully set forth in Exhibit A attached hereto (the "Site"); and

WHEREAS, assuming that the District and Contractor can agree on the terms, including the price, for an additional scope of work, the District and Contractor anticipate that the scope of the Project may be amended to include additional work; and

WHEREAS, the District's governing body has determined that it will provide the best value to the District and it is in the best interests of the District and for the common benefit of the citizens it serves to finance the Project by leasing to Contractor the land and the existing building(s) on the Site on which the public improvements are to be constructed and subleasing from Contractor the Site, including the Project, under a Sublease Agreement effective as of the date hereof (the "Sublease"); and

NOW, THEREFORE, in consideration of the promises and covenants and conditions contained herein, the parties agree as follows:

SECTION 1. Site Lease

The District leases to Contractor, and Contractor leases from the District, on the terms and conditions set forth herein, the Site situated in the County of Los Angeles, State of California, more specifically described in Exhibit A attached hereto and incorporated by reference herein, including any real property improvements now or hereafter affixed thereto.

SECTION 2. Term

The term of this Site Lease shall commence as of the effective date and shall terminate on the last day of the term of the Sublease.

SECTION 3. Representations and Warranties of the District

The District represents and warrants to Contractor that:

SITE LEASE AGREEMENT

- (a) The District has good title to the Site.
- (b) There are no liens on the Site other than permitted encumbrances (the term "permitted encumbrances" as used herein shall mean, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent; (ii) this Site Lease, the Sublease, any right or claim of any mechanic, laborer, materialman, supplier, or vendor, if applicable, not filed or perfected in the manner prescribed by law, easements, rights of way, mineral rights, drilling rights, and other rights, reservations, covenants, conditions, or restrictions which exist of record as of the date of this Site Lease and which will not materially impair the use of the Site; (iii) easements, rights of way, mineral rights, drilling rights, and other rights, reservations, covenants, conditions, or restrictions established following the date of recordation of this Site Lease and to which Contractor and the District consent in writing which will not impair or impede the operation of the Site.).
- (c) All taxes, assessments or impositions of any kind with respect to the Site, if applicable, except current taxes not yet due and payable, have been paid in full.
- (d) The Site is properly zoned for the intended purpose or the District intends to render zoning inapplicable pursuant to Government Code Section 53094.
- (e) To the best of the District's knowledge, the District is in compliance in all material respects with all laws, regulations, ordinances and orders of public authorities applicable to the Site.
- (f) To the best of the District's knowledge, there is no litigation of any kind currently pending or threatened regarding the District's use of the Site for the purposes contemplated by this Site Lease, the Sublease and the Construction Services Agreement.
- (g) To the best of the District's knowledge, upon reasonable investigation and in reliance on the District's phase one Preliminary Environmental Assessment, and except as otherwise delineated in the Contract Documents: (i) no dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by the provisions of any State or Federal Law relating thereto (hereinafter collectively called "Environmental Regulations"), and also including, but not limited to, urea-formaldehyde, polychlorinated biphenyls, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the District or Contractor or Contractor's subcontractors to any damages, penalties or liabilities under any applicable Environmental Regulation (hereinafter collectively "Hazardous Substances"), are now or have been stored, located, generated, produced, processed, treated, transported, incorporated,

SITE LEASE AGREEMENT

discharged, emitted, released, deposited or disposed of in, upon, under, over or from the Site; (ii) no threat exists of a discharge, release or emission of a Hazardous Substance upon or from the Site into the environment; (iii) the Site has not been used as or for a mine, a landfill, a dump or other disposal facility, industrial or manufacturing facility, or a gasoline service station; (iv) no violation of any Environmental Regulation now exists relating to the Site, no notice of any such violation or any alleged violation thereof has been issued or given by any governmental entity or agency, and there is not now any investigation or report involving the Site by any governmental entity or agency which in any way relates to Hazardous Substances; (v) no person, party, or private or governmental agency or entity has given any notice of or asserted any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment or natural resources, resulting or allegedly resulting from any activity or event described in (i) above; (vi) there are not now any actions, suits, proceedings or damage settlements relating in any way to Hazardous Substances, in, upon, under, over or from the Site; (vii) the Site is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of Hazardous Substance sites maintained by any federal, state or local governmental agency; and (viii) the Site is not subject to any lien or claim for lien or threat of a lien in favor of any governmental entity or agency as a result of any release or threatened release of any Hazardous Substance.

(h) To the extent permitted by law, the District shall not abandon the Site for the use of which it is currently required by the District and further shall not seek to substitute or acquire property to be used as a substitute for the uses for which the Site and the Project are to be maintained under the Sublease.

SECTION 4. Representations and Warranties of Contractor

Contractor represents and warrants to the District that:

(a) Contractor is duly organized, validly existing and in good standing under the laws of the State of California, with full corporate power and authority to lease and own real and personal property.

(b) Contractor has full power, authority and legal right to enter into and perform its obligations under this Site Lease, and the execution, delivery and performance of this Site Lease have been authorized by all necessary corporate or partnership actions on the part of Contractor and do not require any further approvals or consents.

(c) Execution, delivery and performance of this Site Lease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which Contractor is a party or by which it or its property is bound.

SITE LEASE AGREEMENT

(d) There is no pending or, to the best knowledge of the Contractor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Contractor to perform its obligations under this Site Lease.

(e) Contractor has conducted a visual inspection of the Site and represents that it is familiar with the site conditions relating to construction and labor thereon and hereby indemnifies the District for any damage or omissions related to the site conditions that could have been visually identified during the site-visit in accordance with the indemnification contained in the General Conditions incorporated into the Construction Services Agreement.

(f) Contractor has reviewed the Contract Documents (as that term is defined in the Construction Services Agreement) and is familiar with the contents thereof.

SECTION 5. Payment

In consideration for the lease of the Project Site by the District to the Contractor and for other good and valuable consideration, the Contractor shall pay to the District One Dollar (\$1.00) per year upon execution of this Site Lease.

SECTION 6. Purpose

Contractor shall use the Site solely for the purpose of constructing the Project thereon and for subleasing the Site and leasing the Project to the District; provided, however, that in the event of an occurrence of an Event of Default by the District, under the Sublease, Contractor may exercise the remedies provided for in the Sublease.

SECTION 7. Termination

Contractor agrees, upon termination of this Site Lease: (i) to quit and surrender the Site in the same good order and condition as it was in at the time of commencement of the term hereunder, reasonable wear and tear excepted; (ii) to release and reconvey to the District any liens and encumbrances created or caused by Contractor; and (iii) that any permanent improvements and structures existing upon the Site at the time of the termination of this Site Lease, including the Project, shall remain thereon and title shall vest in the District. Notwithstanding the District's foregoing rights in the event of termination, Contractor shall retain the right to compensation pursuant to the Construction Services Agreement and the Sublease.

SECTION 8. Quiet Enjoyment

The District covenants and agrees that it will not take any action to prevent Contractor's quiet enjoyment of the Site during the term of this Site Lease; and that in the event that the District's fee title to the Site is ever challenged so as to interfere with

SITE LEASE AGREEMENT

Contractor's right to occupy, use and enjoy the Site, the District will use all governmental powers at its disposal, including the power of eminent domain, to obtain unencumbered fee title to the Site and to defend Contractor's right to occupy, use, and enjoy that portion of the Site.

SECTION 9. No Liens

The District shall not mortgage, sell, assign, transfer or convey the Site or any part thereof to any person during the term of this Site Lease, without the written consent of Contractor. Nothing herein shall preclude the District from granting utility easements across the Site to facilitate the use and operation of the Project for which it is intended.

During the term of this Site Lease, Contractor shall not permit any lien or encumbrance to attach to the Site or any part thereof.

SECTION 10. Right of Entry

The District reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof, but in so doing shall not interfere with Contractor's operations on the Project.

SECTION 11. Assignment and Subleasing

Other than the Sublease, as defined herein, Contractor will not assign or otherwise dispose of or encumber the Site or this Site Lease without the written consent of the District.

SECTION 12. No Waste

Contractor agrees that at all times that it is in possession of the Site it will not commit, suffer or permit any waste on the Site, and it will not willfully or knowingly use or permit the use of the Site for any illegal act or purpose.

SECTION 13. Default

In the event that Contractor shall be in default in the performance of any obligation on its part to be performed under the terms of this Site Lease, which default continues for thirty (30) days following notice and demand for correction thereof to Contractor, the District may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Sublease shall be deemed to occur as a result thereof. Termination of this Site Lease shall be in accordance with the provisions of the General Conditions incorporated into the Construction Services Agreement or such other provisions as may be applicable.

SECTION 14. Eminent Domain

In the event that the whole or any part of the Site or the improvements thereon is taken by eminent domain, the financial interest of Contractor shall be recognized and is

SITE LEASE AGREEMENT

hereby determined to be the amount of all Tenant Improvement Payments and Sublease Payments then due or past due, and the purchase option price stated in Section 20 of the Sublease less any unearned interest as of the date Contractor receives payment in full. The balance of the award, if any, shall be paid to the District.

SECTION 15. Taxes

The District covenants and agrees to pay any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Site of the improvements thereon.

SECTION 16. Severability

If any one or more of the terms, covenants or conditions of this Site Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site Lease shall be affected thereby, and each remaining provision of this Site Lease shall be valid and enforceable to the fullest extent permitted by law.

SECTION 17. Notices

Any notices or filings required to be given or made under this Site Lease shall be served, given or made in writing upon the District or Contractor, as the case may be, by personal delivery or registered mail (with a copy sent via fax or regular mail) to the respective addresses given below or at such other address as such party may provide in accordance with the provisions herein. Any change in the addresses noted herein shall not be binding upon the other party unless preceded by no less than thirty (30) days prior written notice.

If to Contractor:

Flint Builders, Inc.
401 Derek Place
Roseville, California 95678
Attn: _____

If to the District:

Gilroy Unified School District
7810 Arroyo Circle
Gilroy, California 95020
Attn: Dr. Deborah A. Flores, Superintendent

With a copy to Mary Hernandez,

Garcia, Hernandez, Sawhney LLP
2490 Mariner Square Loop, Suite 140

SITE LEASE AGREEMENT

Alameda, CA 94501

9333 Loch Lomond Drive
Pico Rivera, California

Notices under this Agreement shall be deemed to have been given, and shall be effective, upon actual receipt by the other party, or, if mailed, upon the earlier of the fifth (5th) day after mailing or actual receipt by the other party.

SECTION 18. Construction Services Agreement and Sublease

The Construction Services Agreement and the Contract Documents as defined therein, including the Sublease, are incorporated by reference herein in their entirety as if fully set forth herein.

SECTION 19. Binding Effect

This Site Lease shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

SECTION 20. Entire Agreement

This Site Lease, the Sublease, the Construction Services Agreement and the additional Contract Documents as defined in the Construction Services Agreement constitute the entire agreement between Contractor and the District, and the Contract Documents shall not be amended, altered, changed, modified or terminated without the written consent of both parties hereto, except as otherwise provided herein or in Section 10 of the Construction Services Agreement.

SECTION 21. Execution in Counterparts

This Site Lease may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

SECTION 22. Indemnification

Contractor shall indemnify the District in accordance with the provisions set forth in the General Conditions incorporated into the Construction Services Agreement.

SECTION 23. Applicable Law

This Site Lease shall be governed by and construed in accordance with the laws of the State of California. The parties irrevocably agree that any action, suit or proceeding by or among the District and Contractor shall be brought in whichever of the Superior Courts of the State of California, Santa Clara County, or the Federal Court for the Northern District of California in San Jose, California, has subject matter jurisdiction over the dispute and waive any objection that they may now or hereafter have regarding the choice of forum whether on personal jurisdiction, venue, forum non conveniens or on any other ground.

SITE LEASE AGREEMENT

SECTION 24. Headings

The captions or headings in this Site Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Site Lease.

SECTION 25. Time

Time is of the essence with respect to each of the terms, covenants, and conditions of this Site Lease.

IN WITNESS WHEREOF the parties hereto, intending to be legally bound thereby, have executed by their respective officers who are duly authorized, this Site Lease effective as of the date first above written.

CONTRACTOR

Flint Builders, Inc.
401 Derek Place
Roseville, CA 95678

THE DISTRICT

Gilroy Unified School District,
a California school district
7810 Arroyo Circle
Gilroy, CA 95020

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

SITE LEASE AGREEMENT

EXHIBIT A

Legal Description of Site

Will be Supplied and this Exhibit amended upon the Approval by
the Division of State Architect of the State of California of the final
Plans and Specifications

SUBLEASE

This Sublease (hereinafter referred to as the "Sublease") will be entered into on the day of GMP Approval by the Board of Trustees of Gilroy Unified School District, this site sublease will then be amended by and between the Gilroy Unified School District, a California school district organized and existing under the laws of the State of California (hereinafter referred to as the "District") as sub-lessee, Flint Builders, Inc. which is a contractor licensed by the State of California, with its principal place of business at 401 Derek Place, Roseville, California 95678 (hereinafter referred to as "Contractor") as sub-lessor.

RECITALS

WHEREAS the District deems it essential for its own governmental purpose to finance the installation and construction of certain public improvements more fully described in Exhibit A to that certain Construction Services Agreement between the District and Contractor dated the date hereof (the "Project") situated at Brownell Middle School, 7800 Carmel Street, Gilroy, California 95020 within the District as more fully set forth in Exhibit A of the site lease between the District and Contractor dated the date hereof (the "Site Lease") (The land and the real property improvements described in the Site Lease and the Construction Services Agreement are herein collectively referred to as the "Site"); and

WHEREAS, assuming that the District and Contractor have executed a Site Lease and can agree on the terms, including the price, for an additional scope of work, the District and Contractor anticipate that the scope of the Project may be amended to include additional work; and

WHEREAS, pursuant to Section 17406 of the California Education Code, the District is leasing the Site to Contractor pursuant to the Site Lease in consideration of Contractor subleasing the Site, including the Project, to the District pursuant to the terms of this Sublease; and

WHEREAS, the District and Contractor agree to mutually cooperate now and hereafter, to the extent possible, in order to sustain the intent of this Sublease and the bargain of both parties hereto, and to provide payments pursuant to this Sublease on the dates and in the amounts set forth in Exhibit A of this Sublease which is incorporated by this reference.

NOW, THEREFORE, in consideration of the promises and covenants and conditions contained herein, the parties agree as follows:

SECTION 1. Sublease

Contractor hereby leases from and subleases to the District, and the District hereby leases to and subleases from Contractor, the Site including any real property improvements now or hereafter affixed thereto in accordance with the provisions herein for the term of this Sublease.

SECTION 2. Term

(a) The term of the Sublease (the "Term") shall become effective upon the authorized execution of this Sublease and shall terminate twelve months after the earlier of the following two events:

- (1) The date the District takes beneficial occupancy of the final phase of the Project; or
- (2) The date of substantial completion, as defined in Article 7.2.2 of the General Conditions.

(b) The Term may be extended or shortened upon the occurrence of the earliest of any of the following events, which shall constitute the end of the Term:

- (1) An Event of Default by the District as defined herein and Contractor's election to terminate this Sublease as permitted herein; or
- (2) An Event of Default by Contractor as defined herein and the District's election to terminate this Sublease as permitted herein; or
- (3) Consummation of the District's purchase option pursuant to Section 20 of this Sublease.

SECTION 3. Representations and Warranties of the District

The District represents and warrants to Contractor that:

(a) The execution, delivery and performance of this Sublease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which the District is a party by which it or its property is bound.

(b) The Project and the Site are essential to the District in the performance of its governmental functions and their estimated useful life to the District exceeds the term of this Sublease.

(c) The District will take such action as may be necessary to include all Tenant Improvement Payments and Sublease Payments in its annual budget and annually to appropriate an amount necessary to make such Tenant Improvement Payments and Sublease Payments.

(d) To the best of the District's knowledge, there is no litigation of any kind currently pending or threatened regarding the District's use of the Site for the purposes contemplated by this Site Lease, the Sublease and the Construction Services Agreement.

(e) To the extent permitted by law, the District shall not abandon the Site for the use of which it is currently required by the District and, further, shall not seek to substitute or acquire property to be used as a substitute for the uses for which the Site is maintained under the Sublease.

SECTION 4. Representations and Warranties of Contractor

Contractor represents and warrants to the District that:

- (a) Contractor is duly organized, validly existing and in good standing as a corporation and licensed contractor under the laws of the State of California, with full corporate power and authority to lease and own real and personal property.
- (b) Contractor has full power, authority and legal right to enter into and perform its obligations under this Sublease, and the execution, delivery and performance of this Sublease have been duly authorized by all necessary corporate actions on the part of Contractor and do not require any further approvals or consents.
- (c) The execution, delivery and performance of this Sublease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which Contractor is a party by which it or its property is bound.
- (d) There is no pending or, to the best knowledge of Contractor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Contractor to perform its obligations under this Sublease.
- (e) Contractor will not mortgage or encumber the Site or the Sublease or assign this Sublease or its rights to receive Tenant Improvement Payments or Sublease Payments hereunder, except as permitted herein.
- (f) Contractor has conducted a visual inspection of the Site and represents that it is familiar with the site conditions relating to construction and labor thereon and hereby indemnifies the District for any damage or omissions related to the site conditions that could have been identified during the site-visit in accordance with the indemnification contained in the General Conditions.
- (g) Contractor has reviewed the Contract Documents (as that term is defined in the Construction Services Agreement) and is familiar with the contents thereof.

SECTION 5. Construction/Acquisition

- (a) The District has entered into a Construction Services Agreement and the Site Lease with Contractor in order to acquire and construct the Project. The cost of the acquisition, construction and installation of the Project as well as the obligations under this Sublease are determined by the Guaranteed Maximum Price as determined in Section 5 of the Construction Services Agreement.
- (b) In order to ensure that moneys sufficient to pay all costs will be available for this purpose when required, the District shall maintain on deposit, and shall annually appropriate funds sufficient to make all Tenant Improvement Payments and Sublease Payments which become due to Contractor under this Sublease, provided however that the District shall not be required to appropriate said funds in the event that the District

determines in good faith that exigent circumstances have arisen that require District to reduce its budget and not appropriate funds for the payments required hereunder. Any such failure to appropriate funds in any year subsequent to the initial year of this Sublease shall be deemed a termination for convenience and shall be subject to the provisions of the General Conditions.

SECTION 6. Payments

(a) The District shall pay Contractor the Tenant Improvement Payments and the Sublease Payments as set forth in Exhibit A hereof, at the office of Contractor or to such other person or at such other place as Contractor may from time to time designate in writing.

(b) If the District determines that the work is delayed so that Contractor shall not be able to deliver the work pursuant to the construction schedule required by the Construction Services Agreement (the "Construction Schedule"), the District shall be entitled to withhold a reasonable amount from the Tenant Improvement Payments and/or the Sublease Payments then due to cover the damages for delay. Once the District has determined that the work has been performed pursuant to the approved construction schedule, the District shall be obligated to release any funds withheld pursuant to this Paragraph.

(c) The obligation of the District to pay Tenant Improvement Payments and the Sublease Payments hereunder shall constitute a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds, or moneys of the District.

SECTION 7. Fair Rental Value

The Tenant Improvement Payments and the Sublease Payments shall be paid by the District in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Project and the Site during the Term of this Sublease. The parties hereto have agreed and determined that such total Tenant Improvement Payments and Sublease Payments are not in excess of the fair rental value of the Project and the Site. In making such determination, consideration has been given to the fair market value of the Project and the Site, other obligations of the parties under this Sublease (including, but not limited to, costs of maintenance, taxes and insurance), the obligations under the Construction Services Agreement, the uses and purposes which may be served by the Project and the Site and the benefits therefrom which will accrue to the District and the general public, the ability of the District to make additions, modifications and improvements to the Project and the Site which are not inconsistent with the Construction Services Agreement and which do not interfere with Contractor's work on the Project and the Site.

SECTION 8. Sublease Abatement

In addition to delay of payments provided in Section 6, above, Tenant Improvement Payments and Sublease Payments due hereunder with respect to the

Project shall be subject to abatement prior to the commencement of the use of the Project or during any period in which, by reason of material damage to or destruction of the Project or the Site, there is substantial interference with the use and right of possession by the District of the Project and the Site or any substantial portion thereof. For each potential incident of substantial interference, decisions to be made on: i) whether or not abatement shall apply; ii) the date upon which abatement shall commence; iii) the applicable portion of the Tenant Improvement Payments and the Sublease Payments to be abated and; iv) the concluding date of the particular abatement shall all be subject to determinations by the District in concert with its insurance provider. Contractor's right to dispute these decisions is not impaired. The amount of abatement shall be such that the Tenant Improvement Payments and the Sublease Payments paid by the District during the period of Project restoration do not exceed the fair rental value of the usable portions of the Site. In the event of any damage or destruction to the Project or the Site, this Sublease shall continue in full force and effect.

SECTION 9. Use of Site and Project

During the Term of this Sublease, Contractor shall provide the District with quiet use and enjoyment of the Site without suit, or hindrance from Contractor or its assigns. The District will not use, operate, or maintain the Site or Project improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Sublease. The Contractor shall provide all permits and licenses, if any, necessary for the operation of the Project. In addition, the District agrees to comply in all respects (including, without limitation, with respect to the time, maintenance and operation of the Project) with laws of all jurisdictions in which its operations involving the Project may extend and any legislative, executive, administrative, or judicial body exercising any power or jurisdiction over the Site or the Project; provided, however, that the District may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not adversely affect the estate of Contractor in and to the Site or the Project or its interest or rights under this Sublease. Upon completion of the Project or severable portions thereof, as defined in the General Conditions, Contractor shall provide the District with quiet use and enjoyment of the Site without suit or hindrance from Contractor or its assigns, subject to reasonable interference from ongoing construction operations on any remaining portion of the Site under construction by Contractor.

SECTION 10. Contractor's Inspection/Access to Site

The District agrees that Contractor and any Contractor representative shall have the right at all reasonable times to enter upon the Site or any portion thereof to construct and improve the Project, to examine and inspect the Site and the Project and to exercise its remedies pursuant to Section 16 of this Sublease. The District further agrees that Contractor and any Contractor representative shall have such rights of access to the Site as may be reasonably necessary to cause the proper maintenance of the Site and the Project in the event of failure by the District to perform its obligations hereunder.

SECTION 11. Project Acceptance

The District shall acknowledge final inspection and completion of the Project by executing a Certificate of Acceptance and recording a Notice of Completion in accordance with the General Conditions. The validity of this Sublease will not be affected by any delay in or failure of completion of the Project.

SECTION 12. Alterations and Attachments

All permanent additions and improvements that are made to the Project shall belong to and become the property of Contractor, subject to the provisions of Section 20 hereof. Separately identifiable additions and improvements added to the Project by the District shall remain the property of the District. At Contractor's request, the District agrees to remove the additions and improvements and restore the Project to substantially as good condition as when acquired and constructed, normal wear and tear excepted, in the event of failure by the District to perform its obligations hereunder.

SECTION 13. Physical Damage; Public Liability Insurance

Contractor and the District shall maintain such damage and public liability insurance policies with respect to the Project and the Site as are required of them herein and by the Construction Services Agreement

SECTION 14. Taxes

The District shall keep the Project and the Site free and clear of all levies, liens, and encumbrances and shall pay all license fees, registration fees, assessments, charges, and taxes (municipal, state, and federal) if applicable, which may now or hereafter be imposed upon the ownership, leasing, renting, sale, possession, or use of the Project and the Site, excluding, however, all taxes on or measured by Contractor's income.

SECTION 15. Events of Default

The term "Event of Default," as used in this Sublease means the occurrence of any one or more of the following events: (a) the District fails to make any unexcused Tenant Improvement Payment or Sublease Payment (or any other payment) within 30 days after the due date thereof; (b) the District or Contractor fails to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder or under any of the Contract Documents (as that term is defined in the Construction Services Agreement), and such failure to either make the payment or perform the covenant, condition or agreement is not cured within 10 days after written notice thereof by the other party; (c) the discovery by a party that any statement, representation or warranty made by the other party in this Sublease, or in the Contract Documents (as that term is defined in the Construction Services Agreement), or in any document ever delivered by that other party pursuant hereto or in connection herewith is misleading or erroneous in any material respect; or (d) a party becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the benefit of creditors, applies or consents to the appointment of a receiver, trustee, conservator or

liquidator of the party or of all or a substantial part of its assets, or a petition for relief is filed by the party under federal bankruptcy, insolvency or similar laws.

SECTION 16. Remedies on Default

Upon the happening of any Event of Default, the non-defaulting party may exercise any and all remedies available pursuant to law or in equity or granted pursuant to this Sublease. Notwithstanding any provisions to the contrary herein, Contractor shall not under any circumstances have the right to accelerate the Tenant Improvement Payments or the Sublease Payments that fall due in future Sublease periods or otherwise declare any Tenant Improvement Payment or Sublease Payments not then in default to be immediately due and payable. Upon the occurrence of an Event of Default, the non-breaching party may elect to terminate this Sublease in accordance with the provisions contained in the General Conditions. Termination of the Construction Services Agreement shall trigger the termination of the Site Lease and this Sublease.

SECTION 17. Non-Waiver

No covenant or condition to be performed by the District or Contractor under this Sublease can be waived except by the written consent of the other party. Forbearance or indulgence by the District or Contractor in any regard whatsoever shall not constitute a waiver of the covenant or condition in question. Until complete performance by the District or Contractor of said covenant or condition, the other party shall be entitled to invoke any remedy available to it under this Sublease or by law or in equity despite said forbearance or indulgence.

SECTION 18. Assignment

Without the prior written consent of Contractor, the District shall not (a) assign, transfer, pledge, or hypothecate this Sublease, the Project and the Site, or any part thereof, or any interest therein, or (b) sublet or lend the use of the Project or any part thereof, except as authorized by the provisions of the California Civic Center Act, Education Code Section 38130 *et seq.* Consent to any of the foregoing prohibited acts applies only in the given instance and is not a consent to any subsequent like act by the District or any other person. Contractor shall not assign its obligations under this Sublease with the exception of its obligation to issue default notices and to convey or reconvey its interest in the Project and Site to the District upon full satisfaction of the District's obligations hereunder; however, the District shall pay all Tenant Improvement Payments and Sublease Payments due hereunder pursuant to the direction of Contractor or the assignee named in the most recent assignment or notice of assignment. Subject always to the foregoing, this Sublease inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors, and assigns of the parties hereto.

SECTION 19. Ownership

The Project is and shall at all times be and remain the sole and exclusive property of Contractor, and the District shall have no right, title, or interest therein or thereto except as expressly set forth herein.

SECTION 20. Sublease Prepayments/Purchase Option

(a) Sublease Prepayments. At any time during the Term of this Sublease, the District may make Sublease Prepayments to the Contractor of the Tenant Improvement Payments and/or Sublease Payments ("Sublease Prepayments"). No Sublease Prepayments requested by Contractor may be made by the District in an amount which exceeds the aggregate true cost to Contractor of the work on the Project completed up to the date Contractor submits the request for a Sublease Prepayment less the aggregate amount of: (1) all Tenant Improvement Prepayments and Sublease Payments previously made by the District to Contractor; (2) all Sublease Prepayments previously made by the District to the Contractor; (3) all amounts previously retained pursuant to Section 20(a)(3), below, from Sublease Prepayments previously made by the District to Contractor (unless Contractor shall have previously substituted securities for such retained amounts pursuant to Section 20(a)(3)); and (4) the retention for such Sublease Prepayment pursuant to Section 20(a)(3) hereof. Contractor must submit evidence that the conditions precedent set forth in Section 20(a)(1), below, have been met. In the event District elects to make Sublease Prepayments, the Prepayment Price, contemplated in Section 20(b), below, shall be adjusted accordingly.

(1) In the event that the District elects to make a Sublease Prepayment, the following are conditions precedent to the District's delivery of such Sublease Prepayments to Contractor pursuant to a request of Contractor:

(A) Satisfactory progress of the construction of the Project pursuant to the Time Schedule shall have been made as determined in accordance therewith.

(B) Contractor shall also submit to the District (i) duly executed conditional lien releases and waivers (in the form provided in California Civil Code Sections 8132 through 8138) from Contractor and all sub-contractors, consultants and other persons retained by Contractor in connection with the Project, whereby such persons conditionally waive all lien and stop notice rights against the District, the Project and the Project Site with respect to the pending Sublease Prepayment to be made by the District, (ii) duly executed unconditional lien releases and waivers (in the form provided in California Civil Code Sections 8132 through 8138) from Contractor and all subcontractors, consultants and other persons retained by Contractor in connection with the Project, whereby such persons unconditionally and irrevocably waive all lien and stop notice rights against the District, the Project and the Project Site with respect to all previous Sublease Prepayments made by the District, and (iii) any other items that Contractor may be required to collect and distribute to the District pursuant to the terms and provisions of the Construction Services Agreement. Contractor shall promptly pay all amounts due to each subcontractor, consultant and other person retained by Contractor in connection with the Project no later than 10 days after Contractor's receipt of a Sublease Prepayment from the District.

(2) The determination of whether satisfactory progress of the construction pursuant to the Time Schedule has occurred shall be made by the District in accordance with the General Conditions. If the District determines that pursuant to the Time Schedule the work required to be performed, as stated in Contractor's

Sublease Prepayment request, has not been substantially completed, then Contractor shall not be eligible to receive the requested Sublease Prepayment.

(3) The District shall retain an amount equal to 5% of each Tenant Improvement Payments (“retention”) made at Contractor’s request. Contractor shall have the right, as delineated in the General Conditions, to substitute securities for any retention withheld by the District, pursuant to the provisions of Public Contract Code Section 22300.

(b) If the District is not in default hereunder, the District shall have the option to purchase not less than all of the Project in as-is condition upon delivery of the Prepayment Price as defined herein. The Prepayment Price at any given time shall be an amount equal to the final GMP, as it may be revised from time to time, less the sum of any Tenant Improvement Payments, Sublease Payments and/or Sublease Prepayments made by the District prior to the date on which the District elects to exercise its option under this Section. The District may thereupon terminate this Sublease and Contractor shall deliver such deeds, bills of sale, assignments, releases or other instruments as District may reasonably require to reflect the transfer of all of Contractor’s interest in the Project. Following the closing of the District’s purchase option, the District shall retain all rights to any claim or warranty arising under the Construction Services Agreement.

SECTION 21. Indemnification

Contractor shall indemnify the District in accordance with the provisions set forth in the General Conditions during the course of construction.

SECTION 22. Construction Services Agreement and Site Lease

The Construction Services Agreement and the Contract Documents as defined therein, including the Site Lease, are incorporated by reference herein in their entirety as if fully set forth herein.

SECTION 23. Severability

If any one or more of the terms, covenants or conditions of this Sublease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Sublease shall be affected thereby, and each provision of this Sublease shall be valid and enforceable to the fullest extent permitted by law.

SECTION 24. Entire Agreement

The Contract Documents enumerated in paragraph C of Section 1 of the Construction Services Agreement, which include this Sublease, constitute the entire agreement between Contractor and the District, and the Contract Documents shall not be amended, altered, or changed except by a written agreement signed by the parties hereto.

SECTION 25. Notices

Any notices or filings required to be given or made under this Sublease shall be served, given or made in writing upon the District or Contractor, as the case may be, by personal delivery or registered mail (with a copy sent via fax or regular mail) to the respective addresses given below or at such other address as such party may provide in accordance with the provisions herein. Any change in the addresses noted herein shall not be binding upon the other party unless preceded by no less than thirty (30) days prior written notice.

If to Contractor:

Flint Builders, Inc.
401 Derek Place
Roseville, California 95678
Attn: _____

If to the District:

Gilroy Unified School District
7810 Arroyo Circle
Gilroy, California 95020
Attn: Dr. Deborah A. Flores, Superintendent

With a copy to Mary Hernandez,

Garcia, Hernandez, Sawhney LLP
2490 Mariner Square Loop, Suite 140
Alameda, CA 94501

Notices under this Agreement shall be deemed to have been given, and shall be effective, upon actual receipt by the other party, or, if mailed, upon the earlier of the fifth (5th) day after mailing or actual receipt by the other party.

SECTION 26. Titles

The captions or headings in this Sublease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Sublease.

SECTION 27. Time

Time is of the essence with respect to each of the terms, covenants, and conditions of this Sublease and each and all of its provisions.

SECTION 28. Applicable Law

This Sublease shall be governed by and construed in accordance with the laws of the State of California. The parties irrevocably agree that any action, suit or proceeding by or among the District and Contractor shall be brought in whichever of the Superior Courts of the State of California, Santa Clara County, or the Federal Court for

the Northern District of California in San Jose, California, has subject matter jurisdiction over the dispute and waive any objection that they may now or hereafter have regarding the choice of forum whether on personal jurisdiction, venue, forum non conveniens or on any other ground.

SECTION 29. Execution in Counterparts

This Sublease may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

SECTION 30. District Insurance

During the period after tenant improvement completion and beneficial occupancy of the Project and before the end of the Term, the District shall purchase and maintain Commercial General Liability and Property Insurance covering the types of claims set forth below which may arise out of or result from the District's operations of the Site and for which the District may be legally responsible: (i) claims for damages because of bodily injury, occupational sickness or disease or death of the District's employees; (ii) claims for damages because of bodily injury, sickness or disease or death of any person other than the District's employees; (iii) claims for damages insured by usual personal injury liability coverage which are sustained (a) by a person as a result of an offense directly or indirectly related to employment of such person by the District, or (b) by another person; and (iv) claims for damages, other than to the Project itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom. Such insurance shall be in the coverage amount of \$1,000,000 per occurrence and \$2,000,000 aggregate. The insurance policy required of the District hereunder shall also name Contractor as an additional insured as its interests may appear. Such insurance shall be deemed to be primary and non-contributory with any policy maintained by Contractor and any policy or coverage maintained by Contractor shall be deemed to be excess over such insurance maintained by District.

IN WITNESS WHEREOF the parties hereto, intending to be legally bound thereby, have executed this Sublease effective as of the date first above written.

CONTRACTOR

THE DISTRICT

Flint Builders, Inc.
401 Derek Place
Roseville, CA 95678

Gilroy Unified School District,
a California school district
7810 Arroyo Circle
Gilroy, CA 95020

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

**EXHIBIT A
TO SUBLEASE
PAYMENT PROVISIONS**



2c





EQUIPMENT QUOTATION

Date: January 14, 2019

To: Paul Nadeau
GILROY USD

From:

Project: Gilroy High School Replacement Starting Platform Tops

SECTION	QTY	DESCRIPTION	PRICE EACH	EXTENDED TOTAL
Item # 1	6	Paragon standard top and step kits, with top step and tapered wedge plates	1,832.00	10,992.00
			Subtotal	\$10,992.00
			Sales Tax (9.0%)	\$989.28
			Estimated Freight	\$698.42
			Total	\$12,679.70

Terms and Conditions

Payment: Terms subject to credit worthiness, established accounts are typically net 30 days from date of invoice
Quoted equipment will not be subject to project retention and invoices must be paid in full

Interest: 18% APR is charged on all past due invoices

Returns: Returns MUST be pre-approved, shipped prepaid and accompany written return authorization
Project is not eligible for payment by credit card

Restock: A MINIMUM 20% restock fee applies to all returns; % is based on actual manufacturer restock fee

Freight: F.O.B. individual ship points; refer to estimated freight costs above

Sales Tax: Subject to sales tax rate as noted above

Notes: Pricing valid through March 31, 2019
Verification of equipment items & quantities is the sole responsibility of the customer
A deposit may be required by some manufacturers for custom orders

Permits: Pricing excludes Health Department plan check fees, Payment / Performance / Bid Bond fees and Insurance Certificates.

**RECREONICS, INC.**

4200 SCHMITT AVENUE
LOUISVILLE, KY 40213
(800) 428-3254
FAX (800) 428-0133
INTERNATIONAL (502) 458-5731
FAX (502) 458-9777
FED. I.D. # 61-1228501
<http://www.recreonics.com>

120-1/SCHOO 2c LNL

Quote Reprint

Quote #	685130
Customer #	66329
Date	12/11/18
Page	1

Quoted To:	*GILROY HIGH SCHOOL 750 W. TENTH STREET GILROY, CA 95020	Ship To:	*GILROY HIGH SCHOOL 750 W. TENTH STREET GILROY, CA 95020
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PO/REF #	EXPIRES	SLP	SHIP VIA	FREIGHT	QUOTED BY
	11/28/18	045	YRC	PPD&BILL	LANCE LIVESAY EXT 430

QUOTED TO:	DOUG PICKFORD	CT=408*427-2680	X=EMAIL INVOICE	E-Mail: gilroyhs.swimming@gmail.com
		KT=408-427-2680	X=	E-Mail: gilroyhs.swimming@gmail.com

LINE	ITEM DESCRIPTION	S/D	QUANTITY	UM	PRICE	UM	EXTENSION
001	46145 SAND GROOVED POLY TOP/NUMBER PLATE FOR Q/S (20"X24") -s-	S	5	EA	996.94	EA	4984.70
002	7101H PARAGON #22604 10-DEGREE WEDGE PLATE FOR PARAFLYTE S/P	D	5	EA	131.02	EA	655.10
003	8002B FREIGHT & HDLG. TO BE PREPAID AND ADDED TO INVOICE	S	1	EA	333.94	EA	333.94
004							
005	PLEASE NUMBER 1 THRU 5						
006							
007	TAILGATE DELIVERY						
008	CUSTOMER TO UNLOAD TRUCK						

STATE	CERTIFICATE #	TAXABLE AMT	TAX	TOTAL
		5973.74	(1) 358.42	6332.16

TO ACCEPT THIS QUOTE PLEASE SIGN AND DATE BELOW & FAX WITH COVER SHEET
ATTN: LANCE LIVESAY AT 1-800-428-0133 OR E-MAIL TO lancel@recreonics.com

By: _____

Date: _____

CALIFORNIA PROPOSITION 65 WARNING

WARNING:
Cancer and Reproductive Harm.



AVERTENCIA:
Cáncer y Daño Reproductivo.
www.p65warnings.ca.gov

P/N 1001743

F.O.B.-ORIGIN(TAILGATE)FRGT, HDLG, SALES
TAX, ETC.,(IF APPLICABLE) ARE ADD'L.
QUOTE SUBJECT TO CO. TERMS & CONDITIONS
DEPOSIT & MGT. APPROVAL MAY BE REQ'D.

**MEMORANDUM OF UNDERSTANDING REGARDING
FACILITIES USE BY AND BETWEEN GILROY GARLIC
FESTIVAL AND THE GILROY UNIFIED SCHOOL DISTRICT**

This Memorandum of Understanding Regarding Facilities Use (“MOU”) is made between the Gilroy Garlic Festival (“GGF”) and the Gilroy Unified School District (the “District”). GGF and the District shall sometimes be referred to herein as the “Parties” or individually a “Party.”

WHEREAS, GGF will hold its annual garlic festival on July 26, 27 and 28, 2019;

WHEREAS, GGC desires to use certain areas of Gilroy High School (750 West Tenth Street, Gilroy, California), Ascencion Solorsano Middle School (7121 Grenache Way, Gilroy, California), and the Club Drive property known as "Olive Grove" for parking in connection with the festival;

WHEREAS, pursuant to the terms hereof, the District is willing to allow GGF to use certain areas of Gilroy High School, Ascencion Solorsano Middle School, and the Club Drive property known as "Olive Grove" for parking in connection with the festival;

WHEREAS, it is the desire of the Parties to enter into a this MOU pursuant to which GGF will utilize certain areas of Gilroy High School, Ascencion Solorsano Middle School, and the Club Drive property known as "Olive Grove" for parking in connection with the festival – the specific areas that will be used are designated on the maps which are attached hereto as Exhibit 1 (the “Space”);

WHEREAS, the District believes that it is in the best interest of the District, GGF, the students and teachers of the District, the parents of the students of the District, and the public to allow GGF to utilize the Space for parking pursuant to the terms of this MOU; and

WHEREAS, the parties do not intend this MOU to constitute a lease of real property pursuant to Education Code section 17455, *et seq.*

NOW, THEREFORE, the Parties, in consideration of the mutual covenants, representations, and agreements contained herein, hereby agree as follows:

Article 1. Term

The term of this MOU shall be for seven days – July 24, 25, 26, 27, 28, 29 and 30, 2019.

Article 2. Use of the Space.

2.1 GGF shall use the Space solely for set-up (July 24 and 25, 2019), parking (July 26, 27 and 28, 2019), and breakdown/cleanup (July 29 and 30, 2019).

2.2 Prior to commencement of the Term, a representative of GGF shall walk the Space with the Manager of Maintenance of the District (or a designee) to determine the condition of the Space.

2.3 GGF acknowledges and agrees that: (i) except as otherwise specifically set forth in this MOU, GGF has not relied on any representation, statement, or warranty of the District or anyone acting for or on behalf of the District; (ii) GGF will utilize the Space based on its own inspection and examination thereof and on an "AS IS" basis; and (iii) the District makes no warranty or representation, express or implied, or arising by operation of law, with respect to the Space, including, but not limited to, any warranty of its suitability, condition, habitability, merchantability, fitness for a particular purpose or use with respect to the Space.

2.4 GGF may not perform any work, alterations or improvements on any portion of the Space without the prior written consent of the District.

2.5 The District shall provide not provide any custodial services for the Space.

2.6 NUISANCE, MISCELLANEOUS.

GGF shall not do or permit anything to be done, without the prior written consent of the District, in or about the Space nor bring or keep anything therein, that will in any way increase the existing rate of or affect any fire or other insurance upon the Space or its contents, or cause cancellation of any insurance policy covering the Space or any part thereof or any of its contents, nor shall GGF sell or permit to be kept, used, or sold in or about the Space any articles which may be prohibited by a standard form policy of fire insurance. GGF shall not use or allow the Space to be used for any improper or objectionable purpose, nor shall GGF cause, maintain, or permit any nuisance in, on, or about the Space. GGF shall not commit or suffer to be committed any waste in or upon the Space. GGF shall be responsible for the repair or replacement of any property of the District that may be lost, damaged, or stolen.

2.7 COMPLIANCE WITH LAWS, RULES AND REGULATIONS.

GGF shall not use the Space or permit anything to be done in or about the Space that will in any way conflict with any applicable law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. GGF shall promptly comply with all applicable laws, ordinances, regulations and governmental rules now in force or which may hereafter be in force relating to or affecting the use or occupancy of the Space. GGF shall not be responsible for any and all legal compliance or environmental conditions that existed prior to GGF's occupancy of the Space. GGF shall assume responsibility for legal compliance to the extent that they are triggered by any modifications or improvements made by GGF.

2.8 FINGERPRINTING.

GGF shall ensure that any persons admitted by GGF to the Space, who are likely to have significant contact with pupils, will be cleared by a background check pursuant to Section 45125.1 of the California Education Code, at GGF's expense.

2.9 VACATING.

(a) Upon the termination of this MOU, GGF shall fully vacate the Space in a reasonably similar condition to that which existed at the commencement of the term of this MOU.

(b) Upon the termination of this MOU, a representative of GGF shall walk the Space with the Manager of Maintenance of the District (or a designee) to determine the condition of the Space. GGF shall clean the Space and bring the Space back to operational standards as determined by the Manager of Maintenance.

2.10 REQUIRED NOTICE – EMERGENCY.

GGF shall immediately inform the District or its designees of any health and/or safety emergency that may affect the safety of the Space, other schools within the District or any of the District's students, volunteers, employees or teachers. GGF shall cooperate with, and participate in, any lockdowns or exigent security procedures required by the District.

Article 3. Representations and Warranties of GGF

3.1 GGF represents and warrants to the District that:

(a) GGF is duly organized, validly existing and in good standing under the laws of the State of California, with full power and authority to enter into this MOU. GGF will maintain good standing and full power and authority at all times during the term of this MOU.

(b) GGF has full power, authority, and legal right to enter into and perform its obligations under this MOU, and the execution, delivery and performance of this MOU have been duly authorized by all necessary actions on the part of GGF and do not require any further approvals or consents.

(c) There is no pending or, to the best knowledge of GGF, threatened action, or proceeding before any court or administrative agency that will materially adversely affect the ability of GGF to perform its obligations under this MOU.

Article 4. Fees

4.1 GGF will pay to the District the sum of \$_____ for use of the Space during the term of this MOU.

4.2 The District shall have no obligation whatsoever for costs incurred in the operation, maintenance and repair of the Space during the term of this MOU.

Article 5. Compliance with Laws

5.1 GGF shall not cause to occur, and shall take reasonable measures to prevent, any activity on the Space that might threaten the exterior or structural elements of the District's property.

5.2 GGF shall neither take, nor suffer to be taken, any action that would result in the violation of (or failure to remain in compliance with) any applicable codes, regulations, and/or laws, including, but not limited to, the Field Act, the Americans with Disabilities Act, and any applicable local fire marshal and zoning requirements and ordinances.

Article 6. Indemnification

6.1 GGF shall indemnify, hold harmless, and defend the District, its trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Space arising from GGF's use of the Space or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by GGF in or about the Space, excepting those claims, demands, actions, suits, losses, liability, expenses and costs arising out of the negligent or intentional acts of the District, its officers, employees, agents and invitees.

6.2 GGF shall further indemnify, hold harmless, and defend the District, its trustees, officers, employees and agents against and from any and all claims arising from any breach or default in the performance of any obligation on GGF's part to be performed under the terms of this MOU (including, without limitation, any claim against the District by a lender or provider of funds to GGF), or arising from any act, omission or negligence of GGF, or any officer, agent, employee, volunteer, guest, or invitee of GGF, and from all costs, attorneys' fees, and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon excepting those claims, demands, actions, suits, losses, liability, expenses and costs arising out of the negligent or intentional acts of the District, its officers, employees, agents and invitees. If any action or proceeding is brought against the District by reason of such claim (regardless of whether a claim is filed), GGF upon notice from the District shall defend the same at GGF's expense by counsel reasonably satisfactory to the District. GGF shall give prompt written notice to the District's Risk Manager in case of casualty or accidents in, on or about the Space.

Article 7. Insurance

7.1 REQUIRED GGF INSURANCE.

GGF, at its sole cost and expense, shall obtain and maintain in full force, during the term of this MOU, the following insurance:

(a) Commercial General Liability “occurrence” coverage in the minimum amount of \$2,000,000 for bodily injury and property damage each occurrence and \$4,000,000 annual aggregate, including personal injury and advertising injury liability, \$1,000,000 aggregate, products/completed operations, and \$100,000 fire legal liability. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall apply separately to this project/location.

(b) Commercial Automobile Liability coverage in the minimum amount of \$1,000,000 combined single limit (CSL) bodily injury and property damage, including owned (if any, which required symbol 1 coverage), non-owned and hired automobiles.

(c) Workers’ Compensation coverage, in full compliance with California statutory requirements, for all employees of GGF and Employer’s Liability in the minimum amount of \$1,000,000, and a waiver of subrogation in favor of the District.

(d) Professional Liability coverage in the minimum amount of \$1,000,000 for each claim and \$2,000,000 annual aggregate with a maximum deductible of \$2,500 per claim. Policy shall be maintained for two years after the end of this MOU, including any extensions.

(e) Abuse and Molestation coverage of not less than \$1,000,000 per occurrence and \$3,000,000 aggregate.

7.2 INSURANCE REQUIREMENTS

(a) All the insurance companies providing coverage under this MOU must be A.M. Best rated A, with the exception of the workers compensation insurance if provided by the State Compensation Insurance Fund. Insurance coverage must be provided by California licensed and admitted carriers, with the exception of Professional Liability.

(b) The District is to be named as an additional on all insurance required by this MOU (other than professional liability coverage and workers’ compensation coverage).

(c) All insurance required under this MOU shall be primary coverage as respect the District, and any insurance or self-insurance maintained by the District shall be in excess of GGF’s insurance coverage and shall not contribute to GGF’s coverage. The District is to be notified immediately if any aggregate insurance limit is exceeded. Additional coverage must be purchased by GGF to meet the requirements.

(d) Policies shall not be canceled, non-renewed or reduced in scope of coverage until after sixty (60) days written notice has been given to the District.

7.3 COPIES.

GGF shall provide to the District a copy of all Certificates of Insurance and additional insured endorsements, and 30 days Notice of Cancellation Clause endorsements belonging to GGF and that apply to GGF and its use of the Space.

Article 8. Access by the District

The District or its agent(s) shall have the right to enter and/or pass through the Space or any part thereof at any time for any purpose including, without limitation, (a) for the purpose of making repairs in or to the Space; (b) as required by law or emergency; and (c) to examine the Space.

Article 9. Miscellaneous

9.1 ENTIRE AGREEMENT.

This MOU reflects the sole and entire agreement between the Parties. Any and all prior writings, agreements, including, without limitation, oral communications, discussions, negotiations, commitments and understandings relating thereto, are hereby merged herein and superseded hereby.

9.2 MODIFICATION.

This MOU may only be changed, amended or modified by written agreement of the Parties expressing an intent to change, amend and/or modify this MOU.

9.3 GOVERNING LAW & VENUE.

This MOU shall be governed by and construed according to the laws of the State of California. Any action, suit or proceeding by or between GGF and the District shall be brought in the Superior Courts of the State of California, Santa Clara County.

9.4 FORCE MAJEURE

Neither party will be liable to the other for unanticipated delays or failures in performance resulting from causes beyond the reasonable control of that party, including, but not limited to, acts of God, labor disputes or disturbances, material shortages or rationing, riots, acts of war, governmental regulations, communications or utility failures, or casualties; provided that the party: (i) gives the other party prompt written notice of such cause and (ii) uses its reasonable efforts to correct such failure or delay in its performance. The delayed party's time for performance or cure under this section will be extended for a period equal to the duration of the cause.

9.5 SEVERABILITY

If any term, covenant, condition or provision of this MOU is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

9.6 COUNTERPARTS

This MOU may be signed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and same MOU.

9.7 SUCCESSORS AND ASSIGNS

This MOU shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors and assigns.

9.8 ATTORNEYS' FEES

In the event that suit is brought for recovery of the Space or because of any act which may arise out of the possession of the Space, by either Party, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorneys' fees and fees for consultants and experts.

9.9 NOTICES.

All notices required to be given hereunder shall be in writing and served by government or commercial mail service or by facsimile. Either Party may provide updated contact information under this Section by mailing a copy of said change of address/contact information to the addresses noted below.

Notice to the District shall be addressed to:

Gilroy Unified School District
7810 Arroyo Circle
Gilroy, California 95020
Attn: Dr. Deborah A. Flores, Superintendent

With a copy to Mary Hernandez, Esq.

Garcia, Hernandez, Sawhney LLP
2490 Mariner Square Loop, Suite 140
Alameda, CA 94501

Notice shall be given to GGF at the following address:

Attn:

Article 10. Assignment and Subletting

GGF shall not assign its rights or delegate its duties under this MOU. GGF shall not sublet or permit the subletting of the Space, or any part thereof, without the prior written

consent from the District. In addition, GGF shall not allow any other person and/or entity to use the Space without the prior written consent from the District.

Article 11. Dispute Resolution

11.1 Disputes between GGF and the District regarding this MOU shall be resolved using the dispute resolution process described herein.

11.2 The Party initiating the dispute resolution process shall prepare and send to the other Party a notice of dispute that shall include the following information: (1) the name, addresses and phone numbers of designated representatives of the Party; (2) a statement of the facts of the dispute, including information regarding the attempts to resolve the dispute; (3) the specific sections of the MOU that are in dispute; and (4) the specific resolution sought by the Party. Within five business days from receipt of the notice of dispute, the representatives from GGF shall meet with representatives from the District in an informal setting to try to resolve the dispute.

11.3 If the informal meeting fails to resolve the dispute, the Party initiating the dispute resolution process shall notify the other Party (the responding party) in writing and the Parties shall agree on a mediator within seven business days. The nonbinding mediation procedure shall be entirely informal in nature; however, the Parties may submit mediation briefs regarding the dispute at the request of the mediator. The rules of evidence will not apply and no record of the proceedings will be made. If an agreement is reached, the agreement shall be reduced to writing and shall be signed by GGF and the District. The Parties shall share equally the cost of the mediation.

12.4 Either party may seek equitable or injunctive relief prior to the mediation to preserve the status quo or prevent irreparable injury pending the completion of that process.

Article 12. Default

12.1 DEFAULT BY GGF.

The occurrence of any of the following shall constitute a material default and breach of this MOU by GGF:

(a) Any failure by GGF to make payments required to be paid hereunder where such failure continues for thirty (30) days after receipt of written notice of such failure to make payments.

(b) Any failure by GGF to utilize the Space for purposes consistent with this MOU where such failure continues for two (2) days after receipt of written notice thereof.

(c) A failure by GGF to observe and perform any of its obligations under this MOU or comply with any applicable law, rule, regulation, ordinances, or requirement, where such failure continues for two (2) days after receipt of written notice thereof, unless, however, the nature of the default is such that the same cannot reasonably be cured within said two (2) day period. GGF shall not be deemed to be in default if GGF shall within such two (2)

day period commence such cure and thereafter diligently prosecutes the same to completion.

(d) At any time prior to the expiration or termination of this MOU, GGF is unable to pay its debts in the ordinary course of business as they come due.

(f) An assignment for the benefit of creditors is made by, or any bankruptcy, reorganization (in connection with a debtor relief proceeding), receivership, moratorium or other debtor relief proceedings are commenced by or against GGF, and the same is not discharged within ninety (90) days of commencement.

(g) If GGF has made any material misrepresentation of any nature in or with respect to any information or data furnished to the District in connection with the Space.

12.2 WAIVER.

The waiver by the District of any breach of any term, covenant, or condition or any breach of the same shall not deem to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition herein contained.

Article 13. Remedies for Default and Termination for Cause

13.1 THE DISTRICT REMEDIES.

If GGF commits any such material default and/or breach as defined in Article 12, then the District may, at any time thereafter without limiting the District in the exercise of any right or remedy at law or in equity which the District may have by reason or such default and/or breach:

Terminate GGF's right to possession by any lawful means, in which case this MOU shall terminate and GGF shall immediately surrender possession of the Space to the District. In such event the District shall be entitled to recover from GGF any unpaid invoices for all costs and expenses incurred by the District in connection with the termination of GGF's possession, including, without limitation, any and all consultant and attorney costs and fees.

GILROY GARLIC FESTIVAL

By: _____

Name: _____

Title: _____

Date: _____

GILROY UNIFIED SCHOOL DISTRICT

By: _____

Name: _____

Title: _____

Date: _____

ELECTRICAL CONTRACTORS
 State License #439357
 (408) 846-6300
 Fax (408) 846-6500



P.O. BOX 666, MORGAN HILL, CA 95038

Invoice: 16367

Invoice Date: 1/28/2019

Gilroy Unified School District
 7810 Arroyo Circle
 Gilroy, CA 95020

P.O. Number: **Verbal**

Terms: **Due on receipt**

Job#: **T19-030**

Description

Electrical service work ordered by: Dan

Solorzano Trouble Call

7121 Grenache Way, Gilroy

MJR performed the following scope of work:

- Trouble Shoot short in underground wire going to computer lab.
- Replaced damaged wires with waterproof splices

Materials

2,292.00

Regular Labor

4,095.00

All work is complete!

\$6,387.00



Date: 10/17/2018
 Proposal #: SWM180092R

☐ Prevailing Wage

Service Agreement

Prepared for GILROY UNIFIED SCHOOL DISTRICT

Acct #: 2655900
 Contact: DAN MCAULLIFFE
 Email: dan.mcauliffe@gusd.k12.ca.us
 Phone: 408-842-8297
 Fax: 408-848-6424
 Billing Address: Gilroy 7810 Arroyo Circle
 Gilroy Ca. 95020

Prepared by: Scott W Miller
 Email: swmiller@petersonpower.com
 Phone:
 Cell Phone: (510) 220-1777
 Fax:

Peterson Power Systems, Inc. agrees to perform the services listed below for GILROY UNIFIED SCHOOL DISTRICT. The agreement will be for a period two years, commencing on acceptance date. These services will be performed on the units listed below at the stated price.

The units are located at: see list. The services have been designed around the Manufacturer's Recommended Standards, will be performed on a flat fee basis and include labor, travel and service parts as indicated below. Taxes, if applicable, are not reflected. Following is a summary of charges for the agreement.

Unit	Loc	Mk	Model	Serial	Inspection \$ Freq	Annual	Load Test	3 Yr Service	Battery Replace	Megger	Other	Total
1				YEAR 2019	x							\$0
2	750 W 10th st	PK	2048/18 00	GABL000744 50KW	400 x 1	850	775	06/20	07/21			\$2,025
3	9300 Wren Ave	CU	4B3.9-G 2	4594107 35 KW	400 x 1	835	745	06/21	07/21			\$1,980
4	325 Santa Clara Ave	JD	4045DF 120	PE4045D387418 FIRE PUMP	400 x 1	920		07/21	07/21			\$1,320
5				YEAR 2020	x							\$0
6	750 W 10th st	PK	2048/18 00	GABL000744 50KW	400 x 1	850	775	1480	07/21			\$3,505
7	9300 Wren Ave	CU	4B3.9G 2	4594107 35 KW	400 x 1	835	745	06/21	07/21			\$1,980
8	325 Santa Clara Ave	JD	4045DF 120	PE4045D387418 FIRE PUMP	400 x 1	920		07/21	07/21			\$1,320
9					x							\$0
Total					2,400	5,210	3,040	1,480	0	0	0	\$12,130

The services listed above include, but are not limited to, the following. For a complete listing of service parameters please see Attachment B.

An inspection includes an individual inspection of each unit. The technician will verify the fluid levels (oil, coolant and fuel), service the batteries, ensure proper operation of battery charging system, perform an operational check of the engine and generator (as applicable), and provide a completed service report detailing the service and any potential problems that should be addressed.

An annual service includes a full inspection (see description above) of each unit and a full service which includes; the replacement of engine oil, oil filters and fuel filters. Air filters are replaced on an as needed basis for an additional charge. Please contact your PSSR if you would like your air filters replaced.

Load testing is recommended annually for any generator that is not run "under load" (maintaining a load of

at least 30% of its kilowatt (kW) rating) regularly, to ensure the proper operation of your generator. A load test will include the connection of a portable resistive load bank. The load will be varied in steps for a two hour duration.

Every three years, engine manufacturers recommend replacement of cooling system belts, coolant and hoses. In addition, the three year services (PM-3) include upgrading block heater hoses to high temperature silicon hoses. Block heater isolation ball valves will be installed on any engine not already equipped.

Batteries are recommended for replacement on a three year cycle, and will be replaced with Maintenance Free batteries unless otherwise specified by the customer.

Notes and/or Exclusions:

we will notify EZ Fuel for fuel delivery and top-off per the technicians recommendation when performing our inspections. We will have this service performed thru Peterson.

Customer Signature

Date

Purchase Order

THANK YOU FOR THE OPPORTUNITY TO SERVE ALL OF YOUR POWER NEEDS .

The pricing in this proposal is valid for 90 days from the date above. The Purchaser identified above accepts and agrees, upon the signing of this proposal, to purchase and pay for the products and labor furnished by Peterson Power Systems, Inc., specifically for the above-identified equipment in this proposal. Services are quoted to be performed during normal working hours. Peterson Power Systems, Inc. will bill upon completion of the service. Any repair work required over and above the quoted service will be performed on a time-and-material basis, subject to the customer's written authorization. Warranty and Customer Registry coverage on Caterpillar parts, where applicable, will apply as a credit to the customer. The Purchaser will be charged for travel time and mileage associated with any service cancelled on the same date it was scheduled. For further terms and conditions please see Attachment A.

**PETERSON POWER SYSTEMS
TERMS AND CONDITIONS**

Attachment A

1. Terms and Conditions. These Terms and Conditions ("Terms") govern the purchase of the goods (including, but not limited to, new and used equipment, trucks, attachments, components, technology and parts (collectively, "Goods") and services ("Services") from Peterson Power Systems, Inc., a California corporation ("Company") by the individual or entity identified on the Customer Service Agreement on the reverse side hereof as Customer (the "Customer"), together with any Change Orders, exhibits, schedules, attachments and appendices making up a part of such Customer Service Agreement (collectively, the "CSA"). Company and Customer are sometimes referred to herein individually as a "Party" and collectively as the "Parties". Unless otherwise agreed to in a writing signed by an authorized signatory of Company, Company hereby expressly rejects the terms of any purchase order or any other document submitted by Customer to Company, unless such purchase order or document is signed by Company's authorized representative. The placing of an order with Company or the receipt or acceptance of Services by Customer constitutes Customer's acceptance of these Terms as set forth herein. For purposes of the CSA, the term "authorized signatory of Company" means any one of the corporate or executive officers of the Company (i.e., CEO, President, Vice President, Secretary, CFO, or Treasurer) or Branch Manager.

2. Term and Termination. The CSA shall commence as of the date of the last signature on the reverse side hereof and shall continue until the delivery of the Goods and/or completion of the Services, as applicable, unless sooner terminated in accordance with these Terms. Company may terminate this CSA upon written notice if Customer (a) fails to pay any amount due under this CSA when due, in which event this CSA will terminate upon the termination date set forth in such letter or if no such date is included, then three (3) business days of delivery by Company of such notice; (b) becomes insolvent, enters into voluntary or involuntary bankruptcy, commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors (or assigns its interest to a third party creditor), or ceases to conduct business, in which event this CSA will terminate immediately; or (c) otherwise breaches this CSA and such breach remains uncured (either as a result of the failure or refusal of Customer to cure such breach or because such breach is incapable of cure) for thirty (30) days of delivery of such notice. Additionally, Company may terminate this CSA at any time upon sixty (60) days written notice to Customer. Customer may terminate this CSA upon written notice if Company materially breaches any provision of the CSA and such breach remains uncured through no fault of Customer, within sixty (60) days of written notice by Customer to Company. In the event of termination of this CSA, Customer will remain obligated for payment for any Goods delivered and any Services performed by Company prior to the effective date of termination and for any cancellations charges for work in progress as of and prior to such effective date of termination.

3. Order and Delivery of Goods or Performance of Services. All orders for Goods and Services are subject to credit approval, which is subject to final acceptance by Company in its sole discretion. Customer shall have no right to cancel orders for Goods once a purchase order is issued to Company; provided, however, some parts may be returnable to Company in accordance with Company's then current parts return policy. Company will exercise commercially reasonable efforts to meet any performance dates set forth in the CSA, which such dates are estimates only. Company will have no liability for any loss associated with the delay in the delivery of Goods or performance of Services under the CSA. Additionally, Company will not be deemed in breach of its obligations under this CSA or otherwise liable for any costs, charges, losses sustained or incurred by Customer for any delay in the delivery of Goods or performance of Services arising out of, caused by or in any way related or connected with any circumstances beyond its reasonable control, including, but not limited to delays caused by acts or omissions to acts by Customer or its Agents, acts of God, acts of war or terrorism, fire or other casualty, storms or adverse weather, strikes, labor shortages or disturbances, shortages of materials, manufacturer delays, theft or vandalism, transport and handling accidents, or revisions to laws, regulations or governmental requirements. As used herein, the term "Agents" means principals, employees, contractors, subcontractors, consultants, agents, representatives and any persons within the direction or control of Customer or acting on behalf of or for the benefit of Customer in connection with the Goods and Services hereunder.

Customer understands and acknowledges that the CSA or Proposal made by Company to Customer has been made by Company in reliance on representations made by Customer regarding, among other things, the cleanliness, functionality, operational status, condition, prior use, contents and nature of the equipment or machinery that will be subject to the Services. Should any of the representations on which Company relied in preparing the Services be for any reason false or incomplete, or if Company shall reasonably determine in the course of performing the Services that additional repair, maintenance or improvement services are necessary to satisfy its obligations hereunder, Company will promptly provide to Customer an estimated cost of the additional work necessary to satisfy its obligations hereunder ("Additional Work"). If Customer either declines or fails to agree to modify the Proposal and scope of Services to include the Additional Work within thirty (30) days, Company will be entitled to terminate without penalty this CSA in accordance with these Terms. Additional Work approved or accepted by Customer shall be deemed part of the Services hereunder and subject to these Terms (except as otherwise provided in such Additional Work – i.e., estimated costs). Company reserves the right to charge for any cancellation by Customer of any scheduled Services. Customer will pay for any partially completed work based on time and materials at Company's prevailing rates. Additional handling and storage fees may apply to partially completed work.

4. Customer's Obligations. Customer shall comply with Applicable Law in connection with its use, handling, maintenance, storage and operation of the machinery and equipment and shall cause its Agents (defined below) to comply with all such Applicable Law. As used herein "Applicable Law" means all applicable federal, state and local laws pertaining to its covenants and obligations under the CSA and its performance of the same, together with these Terms and all rules, regulations, standards, procedures and protocols pertaining or related to the machinery or equipment subject to the CSA, as stated or endorsed by Company or the manufacturer of such machinery or equipment. Customer shall cooperate with Company in all matters relating to the Goods and Services described subject to the CSA and to the extent Services are required, will make available to Company the machinery or equipment on which the Services are to be performed or provide such access to Customer's premises and facilities as may reasonably be requested by Company for the purposes of performing such Services. Customer shall provide directions, information, approvals, authorizations, decisions or materials that are reasonably necessary for Company to perform the Services. Customer shall maintain the premises on and around which the Services will be performed in a reasonably safe condition and shall

notify Company in advance of any hazards, dangerous conditions and defects that cannot be abated. Customer warrants that the invoiced Goods or Services will be used for business or agricultural purposes and not for personal, family or household purposes. The representations and warranties of Customer under this CSA shall survive any expiration or termination of this CSA.

5. Pricing. Unless otherwise set forth in the CSA or a written proposal issued by Company ("Proposal"), the price for Goods shall be Company's list price for such Goods on the date such Goods are delivered to Customer. Unless otherwise set forth on a Proposal, the labor rates for Services shall be Company's standard labor rates for the applicable type of Service (including, but not limited to, field rates, shop rates, specialty rates or other rates, as applicable) in effect at the time the Services are performed. Unless expressly provided for on a Proposal, pricing and labor rates for future orders is subject to change without notice. Pricing and risk of loss for purchased Goods is FOB Company's site, unless purchased Goods are shipped to Customer directly from the manufacturer, in which case pricing and risk of loss is FOB factory. Any claims for shortages, damages, or delays must be made by Customer direct to the carrier.

6. Taxes. Customer will promptly pay to Company any taxes that Company is required to collect with respect to the purchase of Goods and Services or any amounts payable by Customer under the CSA, including, but not limited to, value added, personal property, sales, use, excise and similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity (collectively, "Taxes"). For any Taxes from which Customer claims exemption, Customer shall provide Company with properly completed exemption certificates and any documentation needed to validate the exemption. If Customer fails to provide an appropriate exemption certificate and supporting documentation, as determined by Company, Customer will remain liable for all such Taxes and will indemnify Company for any liability related to the same.

7. Change Orders. Subject to Section 3, above, if either Party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other Party in writing. Company shall, within a reasonable time after such request, provide a written proposal to Customer of (i) the likely time required to implement the change and (ii) any necessary variations to the fees and other charges for the Services arising from the change. Within thirty (30) days after receipt of the written estimate, the Parties shall negotiate and agree in writing on the terms of such change (a "Change Order"). Neither Party shall be bound by any Change Order unless mutually agreed upon in writing. Notwithstanding the above, Company may from time to time change the Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the CSA or relevant Proposal or Change Order.

8. Payment. For Customers with an open credit account with Company, machine sales payments are due Net 10, and all other payments are due Net 30. For Customers who do not have an open credit account with Company, payment is due upon delivery of Goods or completion of Services. Company may, in its sole discretion, at any time: (a) revoke credit; (b) modify terms and conditions of credit; (c) require payment in advance; and/or (d) withhold Goods, completed Services or scheduled Services until receipt of full payment then owing by Customer to Company. If Customer fails to pay for Goods and Services as and when due, Customer shall pay a late charge of 1.5% of the invoice balance each month until charges are paid in full, and Customer shall pay Company all reasonable attorneys' fees and collection costs incurred by Company.

In addition to any other right of set-off or recoupment Company has under applicable law, Customer agrees that, with respect to any amounts due from Customer or Customer's affiliates to Company or Company's affiliates, Company and its affiliates may set-off such amounts against any amounts owing to Customer or Customer's affiliates. If Customer requests customization of machinery or equipment, Customer agrees to pay all parts and labor costs Company incurs in customizing the machinery or equipment, regardless of whether or not Customer completes the purchase of the customized machinery or equipment. Customer, at its sole expense, must pick up its machinery or equipment from Company's facility within two (2) business days after notification from Company of completion of Services. If Customer's equipment is not picked up within two (2) business days after such notification, Customer will be liable for storage charges of \$50.00 per day from the date of completion of Services until Customer's equipment is picked up.

9. Late Payments. Any amounts not paid by Customer when and as due will bear interest at the lesser of the rate of 1.5% per month (18% per annum) and the highest rate permitted under applicable law, calculated daily and compounded monthly, from the date such payment was due until the date paid in full. In addition to all other remedies available under this CSA or at law (which Company does not waive by the exercise of any rights hereunder), Company will be entitled to suspend the provision of any Services if the Customer fails to pay any amounts when due hereunder.

10. Invoice: Fees and Expenses. Customer will (i) reimburse Company for all reasonable costs and expenses (including, but not limited to, Company's collection costs and reasonable attorneys' fees) incurred in connection with the Services or in collecting any late payments and (ii) pay all other amounts due under this CSA, in each case within thirty (30) days of receipt by the Customer of an invoice from Company. Failure to notify Company in writing of any dispute regarding an invoice within sixty (60) days of receipt thereof waives Customer's right to dispute such invoice. Customer's obligation to pay amounts invoiced is and will be absolute and unconditional and shall not be subject to any delay, reduction, set-off, defense or counter-claim.

11. Warranties. All warranties described herein, including any Extended Protection Plan that may be purchased by Customer are subject to the provisions of Section 11(d) and Section 12.

(a) Goods. For new Goods purchased by Customer from Company, Customer acknowledges that (i) Company is not the manufacturer of the Goods; (ii) Company will pass through to Customer the manufacturer's warranty to the extent permitted by the terms of such warranty; and (iii) any manufacturer's warranty is and will be subject to all terms, conditions and exclusions contained in these Terms. Notwithstanding anything contained to the contrary in this CSA, including this Section 11(a), Company makes no representation or warranty as to the Goods or any manufacturer's warranty of or for such Goods.

(b) Services. For Services purchased by Customer from Company, Company warrants that its Services will be performed and completed in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services, with such service warranty extending for a period of time expressly set forth in the service warranty (as the same may be extended by an applicable Extended Protection Plan), commencing from completion of the original Services. For example, if the service warranty is for a period of six months from completion of the original services, then if Company performs a repair pursuant to its service warranty, the warranty period remains six months from completion of the original Services; the six month service warranty period does not start over with the repair. If replacement parts used by Company in connection with the provision of Services include a manufacturer's warranty, Company will pass such warranty through to Customer to the extent permitted by the terms of the manufacturer's warranty. Company's service warranty will be voided in the event of any of the following: misuse or abuse of Goods by Customer, subsequent repairs performed by Customer or vendors other than Company, use beyond ordinary

wear and tear, failure to maintain and operate Goods in accordance with the maintenance and operations manual of the manufacturer (including, but not limited to, use of fluids that do not meet the manufacturer's standards or failure to maintain fluid levels recommended by the manufacturer) or damage due to theft, vandalism or casualty. In the event of a conflict between the terms and conditions set forth in any applicable service warranty and these Terms, the provisions of the applicable service warranty shall control.

(c) Extended Protection or Coverage. Customer acknowledges that Customer may have the option of purchasing an equipment protection plan or extended services coverage (each, an "Extended Protection Plan") and Customer agrees that if an Extended Protection Plan is available and purchased by Customer at the time of sale, the Extended Protection Plan will be subject to the terms, conditions and exclusions contained in such applicable Extended Protection Plan.

Disclaimer of Warranties. EXCEPT AS MAY BE EXPRESSLY DESCRIBED ABOVE, COMPANY MAKES NO WARRANTY WHATSOEVER HEREUNDER. COMPANY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. COMPANY IS NEITHER A MANUFACTURER OF ANY PARTS USED IN THE SERVICES NOR AN AGENT THEREOF. ALTHOUGH COMPANY MAY ADMINISTER WARRANTIES ISSUED BY A MANUFACTURER, CUSTOMER ACKNOWLEDGES AND AGREES THAT: (1) ANY EXPRESS WARRANTIES BY SUCH MANUFACTURER ARE NOT THE RESPONSIBILITY OF COMPANY; (2) SUCH MANUFACTURER'S WARRANTY MAY CONTAIN LIMITATIONS; AND (3) CUSTOMER MAY INCUR CERTAIN REPAIR, TRANSPORTATION OR OTHER CHARGES BY COMPANY WHICH ARE NOT COVERED BY SUCH MANUFACTURER'S WARRANTY. Any warranty by Company shall be null and void and have no legal effect if Customer has failed to pay for the Services at issue. Except for any express warranties contained hereunder, no other representation or warranty of any kind or nature will be binding on or obligate Company.

12. Limitation of Liability.

(a) IN NO EVENT SHALL COMPANY, ANY COMPANY ENTITIES OR ITS PRINCIPALS, OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, REPRESENTATIVES OR AGENTS BE LIABLE TO CUSTOMER, ITS AGENTS OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOST REVENUE, LOST BUSINESS, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER ARISING WHETHER OR NOT THAT PARTY WAS AWARE OF THE POSSIBILITY OF THOSE DAMAGES AND DESPITE THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED IN THIS CSA.

(b) EXCEPT FOR DAMAGES FOR PERSONAL INJURY, INCLUDING DEATH AND PROPERTY DAMAGE RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY EMPLOYEES, CONTRACTORS, REPRESENTATIVES OR AGENTS OF COMPANY OR ANY COMPANY ENTITY OR THE PRINCIPALS, OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, REPRESENTATIVES OR AGENTS OF COMPANY OR ANY COMPANY ENTITIES, IN NO EVENT WILL THE AGGREGATE LIABILITY OF COMPANY OR ANY COMPANY ENTITIES ARISING OUT OF THIS CSA EXCEED THE LESSER OF THE AMOUNT CUSTOMER HAS ACTUALLY PAID TO COMPANY UNDER THIS AGREEMENT FOR THE PREVIOUS TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE SUBJECT CLAIM OR ONE MILLION DOLLARS \$1,000,000.

(c) EXCEPT FOR THE BREACH OF OBLIGATIONS OF CUSTOMER OR ITS AGENTS UNDER SECTION 8 (PAYMENT), CUSTOMER'S INDEMNIFICATION OBLIGATIONS UNDER THIS CSA AND DAMAGES FOR PERSONAL INJURY, INCLUDING DEATH AND PROPERTY DAMAGE RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY EMPLOYEES, CONTRACTORS, REPRESENTATIVES OR AGENTS OF CUSTOMER OR ANY OF ITS AGENTS, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF CUSTOMER OR CUSTOMER'S AGENTS ARISING OUT OF THIS CSA EXCEED THE GREATER OF THE AMOUNT CUSTOMER HAS ACTUALLY PAID TO COMPANY UNDER THIS AGREEMENT FOR THE PREVIOUS TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE SUBJECT CLAIM.

(d) THE PARTIES AGREE THAT THIS SECTION 12 REPRESENTS A REASONABLE ALLOCATION OF RISK.

(e) THE PROVISIONS OF THIS SECTION 12 SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS CSA.

13. Indemnification. Each Party agrees to indemnify, defend and hold harmless the other Party for, from and against any third party claims related to the Goods or Services to the extent and only to the extent such third party claims (including, but not limited to, claims related to the death or injury of any person(s) or damage to property) are caused by the indemnifying party's negligent acts or omissions, subject to the limitations set forth in Section 14 below. The foregoing indemnity shall not apply to claims asserted by employees of either party. To the fullest extent permitted by Applicable Law, except to the extent of the gross negligence or willful misconduct of Company, Customer agrees to indemnify, defend and hold harmless Company, its affiliates, parent company and subsidiaries, and all of their respective owners, directors, officers, managers, employees, agents or representatives for, from and against any and claims, losses, deficiencies, judgments, settlements, interest, awards, fines, causes of action, damages (including, but not limited to, damages for personal injury, including death, and real and personal property damage), liabilities, costs, penalties, taxes, assessments, charges, punitive damages and expenses (including, but not limited to, reasonable attorneys' fees, expert witness fees, costs and expenses) of whatever kind (collectively, the "Claims") that are caused by, arising from or related in any way to (a) any breach or failure to comply with any representation, warranty, covenant or obligation hereunder by Customer or its Agents; (b) any act or omission to act of Customer or its Agents with respect to the Goods or Services purchased by Customer, including, but not limited to, the acts or omissions of Customer or its Agents with respect to such person's use, handling or maintenance of the any machinery or equipment purchased by Customer or serviced at the request of or for the benefit of Customer hereunder that conflicts with or does not conform to the usage for such machinery or equipment as specified by Company, the manufacturer of such machinery or equipment.

14. Insurance. During the term of this CSA, each Party shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, (a) commercial general liability in occurrence form with a minimum limit of \$1,000,000 per occurrence, plus a minimum \$2,000,000 general aggregate limit; (b) workers' compensation in an amount no less than the minimum required by law and employers' liability in a sum no less than \$1,000,000; and (c) any additional insurance Company may reasonably require, in each case with financially sound and reputable insurers. Upon either Party's request, the other Party shall provide the requesting Party with a certificate of insurance from such Party's insurer evidencing the insurance coverage required under these Terms. The certificate of insurance shall name the requesting party as an additional insured. The insured Party shall provide the requesting Party with thirty (30) days' advance written notice in the event of a cancellation or material change in the

insured Party's insurance policy. Customer acknowledges that additional insurance required by Company under subsection (c) shall be deemed reasonable where the Goods or Services under the CSA are, or have or may become, in the commercially reasonable discretion of Company of such nature, scope, or volume to warrant such additional insurance. A certificate of insurance from Customer's insurer evidencing such additional insurance shall be delivered to Company upon Company's request.

15. Force Majeure. Company shall not be liable, nor be deemed to have defaulted or breached this CSA, for any failure or delay in fulfilling or performing any term of this CSA to the extent such failure or delay is caused by or results from acts or circumstances beyond Company's reasonable control including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either Party's workforce), restraints or delays affecting carriers, and inability or delay in obtaining supplies of adequate or suitable materials, telecommunication breakdown or power outage.

46. Privacy Statement. Customer consents to the collection, use, retention and disclosure of information by Company and/or the Company Entities in accordance with Company's Privacy Statement, which is posted on Company's website (as such statement may be revised from time to time), and agrees that such information may be accessed by the Company Entities and their partners and manufacturers with a legitimate business reason to access it, as well as third parties who may process such information on their behalf.

17. Entire Agreement. This CSA and the exhibits and attachments hereto, represent and constitute the entire agreement between the parties, may only be amended in writing signed by both parties, and supersede all prior agreements and understandings with respect to the matters covered by this CSA.

18. Binding Effect. This CSA shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties hereto.

19. Severability. If any provision of this CSA is found unenforceable or invalid, the remainder of the CSA will remain in full force and effect and it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.

20. Counterparts. This CSA may be executed in any number of counterparts, including facsimile, PDF and other electronic copy, each of which when taken together shall constitute one instrument. No counterpart shall be effective until each Party has executed at least one counterpart.

21. Assignment. Neither Party may assign, convey or transfer this CSA, or any portion thereof, without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed, except that Company may assign this CSA or any portion thereof without the prior consent of Purchaser to a person or entity controlling, controlled by or affiliated with Company or its parent company.

22. No Waiver. A waiver of any term, right or condition of this CSA by a party must be in writing to be effective and will in no way be construed as a waiver of any later breach of that provision. No express waiver of any term, right or condition of this CSA shall operate as a waiver of any other term, right or condition.

23. Relationship of the Parties. No employment, agency, joint venture, or similar arrangement is created or intended between Customer and Company.

24. Construction. Words used herein, regardless of the number or gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context requires. The provisions of this CSA and the documents and instruments referred to herein, have been examined by the parties and no implication shall be drawn nor made against any party hereto by virtue of drafting this CSA. The term "including" used herein shall mean "including, but not limited to". The subject headings of the sections and subsections of this CSA are included for purposes of convenience only and shall not affect the construction or interpretation of any of the provisions herein. Each Party acknowledges that they have read this CSA, have had an opportunity to review with an attorney of their respective choice, and have agreed to all of its terms, including these Terms. Each Party agrees that the rule of construction that a contract be construed against the drafter shall not be applied in interpreting this CSA and that in the event of any ambiguity in any provisions of this CSA, including any Exhibits or attachments or agreed upon Change Orders hereto and whether or not placed of record, such ambiguity shall not be construed for or against any Party hereto on the basis of such Party did or did not author the same.

25. No Third Party Beneficiaries. Unless otherwise expressly provided, no provisions of this CSA are intended or will be construed to confer upon or give to any person or entity other than Customer and Company any rights, remedies or other benefits under or by reason of this CSA.

26. Attorneys' Fees: Enforcement Costs and Expenses. If any claim or action is brought by either party hereunder against the other party regarding the subject matter hereof, the prevailing party shall be entitled to recover from the non-prevailing party, in addition to any other relief granted, reasonable attorneys' fees and the expense of litigation.

27. Governing Law: Venue. (a) This CSA and any attachments or documents related thereto shall be governed, construed and enforced in accordance with (i) the laws of the State of California, excluding conflict of law rules, for all sales made or accepted by Company at its offices within such state, (ii) with the laws of the State of Oregon, excluding conflict of law rules, for all sales made or accepted by Company at its office within such state, and (iii) with the laws of the State of Washington, excluding conflict of law rules, for all sales made or accepted by Company at its office within such state. For agreements made or accepted by Company in the State of California, each party hereby irrevocably submits to the personal and exclusive jurisdiction of the state courts of Alameda County, California and the United States District Court for the Northern District of California, for the purposes of any action, proceeding, suit or claim arising out of this CSA. For agreements made or accepted by Company in the State of Oregon, each party hereby irrevocably submits to the personal and exclusive jurisdiction of the state courts of Multnomah County, Oregon and the United States District Court for the District of Portland in Portland, Oregon. For agreements made or accepted by Company in the State of Washington, each party hereby irrevocably submits to the personal and exclusive jurisdiction of the state courts of Cowlitz County, Oregon and the United States District Court for the Western District of Washington in Seattle, Washington. (b) Each party irrevocably and unconditionally waives any objection to the laying of venue as described herein.

28. Survival. Notwithstanding anything contained herein to the contrary, Sections 6, 11(d), 12, 13, 14, 15, 16, 24, 26, 27, and 28 will survive any termination or expiration of this CSA.

**Peterson Power Systems
Detail of Services Offered
Attachment B**

Inspection Service

Before Starting Engine:

- Check engine oil and coolant levels
- Check block heater (should maintain a coolant temperature of 90° F in the block)
- Check fuel level in storage tank
- Check battery water level and top as necessary
- Check battery terminals for corrosion and connections for tightness (lead acid)

With Engine Running:

- Check oil pressure
- Check fuel pressure
- Check oil level and add oil as required
- Check RPM (frequency)
- Check generated voltage
- Check for leaks or unusual noises

After Stopping Engine:

- Check/verify all switches are in proper positions for automatic start.
- Check fuel level in tank
- Record battery charger volts, check for proper operation
- Remove, clean and reinstall all battery connections (lead acid)
- Inspect generator for cleanliness

Reporting:

- Provide written service report for each visit
- Advise customer of any/all unusual situations or potential problems which will require further attention
- Advise when main fuel tank is below ¾ full

Annual Service

Includes all Inspection Services and the following:

- Drain crankcase oil and replace with new oil
- Remove and replace oil and fuel filters
- Inspect air filter(s)
- Check generator output
- Take oil sample for analysis

Load Test

Start engine and load with contractor supplied resistive load bank. Run

Under load for at least two hours.

- ½ hour at 25% load.
- ½ hour at 50% load
- ½ hour at 75% load
- ½ hour at 100% load

Three Year Service (PM-3)

Replace belts

Replace hoses

- Block heater hoses will be replaced with high temperature silicon hose
- Block heater isolation ball valves will be added when needed

Replace coolant

- Standard antifreeze will be replaced every three years
- Extended life coolants will be upgraded after the first three years and replaced after six years

Emergency Servicing: Provide 24-hour emergency repair coverage

Sales Quote Form
SQ #8651

Project Name: Gilroy Hgh Schl-Ext Disp 13 mm LMP 4.2Hx11.55W x D3 LED, LLC 11370 Sunrise Park Drive, Rancho Cordova, CA 95742 Contact: Don Woodlief Telephone: 916.669.7408 ext 238 Email: dwoodlief@d3led.com ("D3")	Effective Date: 01/11/2019 Company Name: Gilroy High School Address: 750 W 10th St, Gilroy, CA 95020, Gilroy, CA 95020 - United St Contact: Gilroy High School Telephone: 408-710-8480 Email: Dan.McAuliffe@gilroyunified.org ("Client")
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GENERAL SCOPE OF WORK:

XC13mm Lamp Display 1-sided
Dimensions: 4.2f x 11.55f
Resolution: 96 x 264

Quoted for direct CAT 6 cable to control location. All data / power cables, and conduit by others. Power to be supplied to required termination points inside of display by others. Taxes, Permitting, Shipping and Installation not included unless specifically noted.

Shipping, if included, is estimate, and subject to change based on current rates at time of shipment.

WARRANTY: Includes 2-yr parts warranty. Includes 1-day on-site Tech and Training. Travel expenses to be billed with final invoice.

INSTALL AND PERMITTING BY OTHERS. Any rendering provided is for conceptual purposes only, may not be to exact scale or specifications, and final build and design subject to change.

Includes 1 day onsite technical resource and training.

PROJECT SCHEDULE:

Standard lead time is 90 days from receipt of deposit to ship date.

DISPLAYS:

Display Description	XC-13mm-Lamp
Module Name	XC13-LMP-TD-320X320
Pixel Pitch	13mm
Display Size (ft)	4.20 x 11.55
Total Square Feet	48.51
Display Size (m)	1.280 x 3.520
Total Square Meters	4.505
Module Matrix	24 x 24
Module Size (in)	12.6 x 12.6
Module Size (mm)	320 x 320
Modules High x Wide	4 x 11
Total # of Modules	44
Display Matrix	96 x 264
Total Pixels	25,344
Estimated Weight (lb)	162.80
Estimated Weight (kg)	73.844
Display Price	\$10,330.21
Display Qty	1
Total Price	\$10,330.21

CABINETS:

Cabinet Description	Aluminum Cabinet
Cabinet Type	Exterior Aluminum Modular Cabinet
Height (ft)	4.20
Width (ft)	11.55
Depth (ft)	1.00
Total Square Feet	48.51
Height (m)	1.280
Width (m)	3.520
Depth (m)	0.304
Total Square Meters	4.506
Cabinet Price	\$4,074.84
Cabinet Qty	1
Total Price	\$4,074.84

FRONT END SYSTEMS:

FES Description	AEP	Client Access System
FES Type	CONTROL PROCESSOR	ACCESSORY
FES Name	AEP	CLIENT ACCESS SYSTEM
Max Pixels	2,200,000	0
FES Price	\$3,850.00	\$980.00
FES Qty	1	1
Total Price	\$3,850.00	\$980.00

Services & Addons

Type	Description	Qty	Unit Price	Extended Price
Other - Production - Hardware, Other	Spare parts kit.	1	\$799.00	\$799.00
Other - Commissioning/Site Support - Tech Support, On-Site	Onsite Tech and Training. 2 Days.	1	\$1,100.00	\$1,100.00
Total Services & Addons:				\$1,899.00

Product and Services Summary

Production	
Cabinet(s)	\$4,074.84
Display(s)	\$10,330.21
FES(s)	\$4,830.00
Other - Production	\$799.00
Total Production:	\$20,034.05
Commissioning/Site Support	
Other - Commissioning/Site Support	\$1,100.00
Total Commissioning/Site Support:	\$1,100.00
Grand Total:	\$21,134.05

UNLESS OTHERWISE INDICATED, ALL TAXES, INCLUDING SALES AND USE TAXES ARE NOT INCLUDED;
AND/OR ANY TARIFFS, DUTIES AND VAT FOR NON US INSTALLATIONS ARE NOT INCLUDED.

The prices set forth in this Quote are subject to change if an Agreement is not executed by both parties on or prior to 03/12/2019.

DAKTRONICS QUOTE # 677833-1-0

Gilroy Unified School District
 Dan McAuliffe
 7810 Arroyo Cir Ofc DISTRICT
 Gilroy, CA USA 95020
 Phone: (408)710-8480
 Fax:
 Email: dan.mcauliffe@gilroyunified.org

7/Jan/2019
 Quote valid for: 90 days
 Terms: Net 30 days from shipment with
 Purchase Order
 Subject to Credit Review
 FCA: DESTINATION
 Delivery: Call for Production Time

Reference: Gilroy High School - Marquee

Item No.	Model	Description	Qty	Price
1	GS6-48X160-19.8-RGB-SF	Galaxy® Outdoor Electronic Message Center - GS6 Series - 19.8mm RGB Matrix: 48 lines by 160 columns Line Spacing: 19.8mm LED Color: RGB- 281 Trillion Colors Face Configuration: SF - single one sided display View Angle: 140 degrees Horizontal x 70 degrees Vertical Cabinet Dimensions: 3' 8" H X 10' 8" W X 0' 5" D (Approx. Dimensions) Max Power: 1195 watts/display Weight: Unpackaged 280 lbs per display; Packaged 535 lbs per display	1	\$16,546.00
	Galaxy® Fiber Ethernet Outdoor Display Communication Kit	Communication Method: Communication Method: ST Style Multi-Mode Fiber Ethernet. Cable and Connectors not included.	1	
	System Startup	Final Commissioning of Equipment	1	
2	Taxes	9.0% - Subject to change	1	\$1,489.14
3	FREIGHT	Shipping to site	1	\$515.00
Services				
4	G5C5-W	Five Year Warranty - Parts Coverage - G5G5	1	
	Venus® Control Suite - Prime Playlist Package, Cloud Based	Secure, web-based software that enables display management anytime, anywhere via internet connection. ADMINISTRATORS OF ACCOUNT REQUIRED AT TIME OF ORDER. Terms of Use: http://www.daktronics.com/TermsConditions/DD2688225	1	
	Venus® Control Suite -Prime Playlist Web Seminar - Single User	Customized Venus® training in a live, web-based, conference call format using the customer's phone & computer. (English only.)	1	

Total Price Including Sales Tax: \$18,550.14

Please reference listed sales literature: DD1628383 for G5C5-W, DD2688225 for Venus® Control Suite - Prime Playlist Package, Cloud Based, DD3148720 for GS6-48X160-19.8-RGB-SF, DD3610688 for Galaxy® Fiber Ethernet Outdoor Display Communication Kit

Please reference listed shop drawings: DWG-03111362 for GS6-48X160-19.8-RGB-SF

Options

Please contact your sales representative for additional information

Galaxy® External Temperature Sensor	External Temperature Sensor with 25 ft. Quick Connect Cable	1	\$256.00
GS6 RGB Spare Parts - One Module Package	Includes One (1) Module, Sata Cable, and Power Supply	1	\$721.00

DAKTRONICS QUOTE # 677833-1-0**Leasing Program**

If your purchase exceeds \$25,000, you may qualify for our leasing program allowing you more flexibility to spread out the cost of your Daktronics display over a period up to five (5) years. Benefits of our leasing program include fixed rate financing, non-appropriation clause, no prepayment penalty, and customizable payment schedules. Plus, at the end of the lease, the equipment is yours to keep with no additional balloon payments.

Sample payment options as follows:

\$50,000 in total equipment cost = \$10,700 per year

\$100,000 in total equipment cost = \$21,199 per year

\$250,000 in total equipment cost = \$52,899 per year

Payments based on 5 year/annual payment in advance structure. **Leasing is subject to credit approval and agreed upon documentation with Daktronics lending partner. Contact your Daktronics representative for additional options and details.

Exclusions:

- | | |
|--|--|
| <ul style="list-style-type: none"> - Electrical Installation - Structure - Power - Engineering Certification - Labor to Pull Signal Cable - Electrical Switch Gear or Distribution Equipment | <ul style="list-style-type: none"> - Physical/Mechanical Installation - Foundation - Hoist - Signal Conduit - Applicable Permits - Front End Equipment |
|--|--|

Unless expressly stated otherwise in this Quote # 677833-1 Rev 0 or the attachments, if Daktronics performs installation of the Equipment, the price quoted does not include the following services pertaining to physical installations: digging of footings (including dirt removal), any materials fabrication, installation of steel cages, rebar, or bolt attachments, or pouring and finishing of concrete footings. Those service may be provided for an additional cost beyond the quoted price. Purchaser shall be fully responsible for any and all additional costs plus overhead in the event anything unexpected of any nature whatsoever is found while digging the footings including but are not limited to rock, water, utility lines, pipes or any other unforeseen circumstance. The Purchaser acknowledges and agrees that it is fully responsible for all site conditions.

Installation Responsibilities:

If applicable please reference Attachment A for Installation Responsibilities.

Ad/ID Copy Approval Process

Daktronics will process your proofs on orders that include advertising and identification panels. Your digital files and copy layouts should conform to graphic file standards document, SL-04116. The digital data files and copy layouts must be submitted at the time of your order and our proofs need to be approved two weeks prior to your initial anticipated ship date. Advertising and identification panels not receiving proof approvals in time will be shipped without copy in our standard finish.



Chris Wagoner
PHONE: 510-579-4431
FAX: 605-697-4746
EMAIL: Chris.Wagoner@daktronics.com



Brett Robinson
PHONE: 605-692-0200
FAX:
EMAIL: Brett.Robinson@daktronics.com

Terms And Conditions:

The Terms and Conditions which apply to this order available on request.

SL-02375 Standard Terms and Conditions of Sale	www.daktronics.com/terms_conditions/SL-02375.pdf
SL-02374 Standard Warranty and Limitation of Seller's Liability	www.daktronics.com/terms_conditions/SL-02374.pdf
SL-07862 Software License Agreement	www.daktronics.com/terms_conditions/SL-07862.pdf
SL-04116 Graphic File Standards	www.daktronics.com/terms_conditions/SL-04116.pdf

Acceptance:

The Undersigned has actual authority to execute this document and Daktronics, Inc is relying upon such authority.

The parties hereby acknowledge and agree that the terms and conditions contained within this Quote along with the terms and conditions of the Daktronics Standard Terms and Conditions, the Standard Warranty and Limitations of Liability, and/or the Software License Agreement (together, the "Terms and Conditions") constitute the full and final understanding of the parties regarding the sale of equipment and/or the provision of services and entirely replace and supersede any previous understanding or agreement between the parties. By executing this agreement, Purchaser acknowledges that it has had opportunity and means to review the Terms and Conditions as provided in the website addresses above. In the alternative, hardcopy of these Terms and Conditions will be provided upon request. Further it is acknowledged and agreed that the price of the equipment and/or the provision of services contained within this agreement are expressly conditioned upon Purchaser's acceptance of the Terms and Conditions without change. Any modification of the Terms and Conditions may require a corresponding change in price. Accordingly, the Purchaser acknowledges and agrees to these Terms and Conditions as evidenced by its attestation below.

Customer Signature

Date

Print Name

Title

DAKTRONICS QUOTE # 677833-1-0

Purchase Order Information:

Gilroy Unified School District

PO# _____

PO Date _____

Purchaser hereby confirms that the equipment is to be delivered to, and may be installed by Purchaser or Daktronics (as indicated elsewhere herein) at the address indicated on page one (1) of the agreement unless otherwise specified below:

<input type="checkbox"/> Same as Bill to	
Ship To:	
_____ Company	
_____ Contact Person	
_____ Address	
_____ City	
_____ State	_____ Zip
_____ Telephone	
_____ Fax	
_____ Email	

<input type="checkbox"/> Same as Ship to	
End User:	
_____ *Company	
_____ Contact Person	
_____ Address	
_____ *City	
_____ *State	_____ *Zip
_____ Telephone	
_____ Fax	
_____ Email	
*Required Information	

BILL TO (if different from quoted address):

_____ Company	
_____ Contact Person	
_____ Address	
_____ City	
_____ State	_____ Zip
_____ Telephone	
_____ Fax	
_____ Email	

DAKTRONICS QUOTE # 677833-1-0

ATTACHMENT A Installation Responsibilities Checklist: Outdoor

Responsible Party		Description
Daktronics	Customer	
	✓	1. Provide payment and performance Bond.
	✓	2. Secure necessary construction permits.
	✓	3. Removal of existing equipment.
	✓	4. Removal of existing structure (excluding footings).
	✓	5. Disposal of existing equipment.
	✓	6. Disposal of existing structure (excluding footings).
✓		7. Generate and issue standard product attachment drawings.
✓		8. Generate and issue standard product electrical and signal drawings.
	✓	9. Provide approval of all engineering drawings, electrical drawings, shop drawings, equipment locations, color renderings, and ad copy layouts.
	✓	10. Customer is responsible to ensure the existing structure/building is adequate, including any necessary modifications, for the installation of the Equipment, including but not limited to (i) obtaining certified engineer drawings to the extent required by law and (ii) providing Daktronics, upon reasonable request, documentation relating to the existing structure and modifications necessary for Daktronics perform its work.
	✓	11. Engineering design and certification for structure and footing design.
	✓	12. Engineering design and certification for Equipment attachment design.
	✓	13. Unobstructed access to equipment and control room installation site until display is 100%.
	✓	14. Mark location of the new Equipment as delineated in the quote.
	✓	15. Locate public underground utilities.
	✓	16. Locate private underground utilities.
	✓	17. Landscaping to include all.
	✓	18. Provide camera-ready artwork for ad panels, and logos at time of order.
	✓	19. Provide all landscape protection, track, sidewalk, path, site restoration, and/or sprinkler system repair work.
	✓	20. Site clean-up after Daktronics work.
✓		21. Crating and shipping of all equipment to facility via common or independent carrier.
	✓	22. Accept, lift, unload, and inspect all message center equipment and control equipment from carrier.
	✓	23. Provide storage of message center equipment and control equipment in a safe, dry, and secure location until installation.
✓		24. Provide Equipment attachment hardware.
	✓	25. Install Equipment attachment hardware.

DAKTRONICS QUOTE # 677833-1-0

	✓	26. Excavation of direct imbed drilled pier foundation(s) including spoils removal. Pouring and finishing of concrete for footings. (Note: Daktronics assumes class 3 soil per the International Building Code to determine footing / structure estimates included in this quotation. In the event rock, water, or if soil conditions other than class 3 soil are encountered (including soft soils, unstable or collapsing soils, expansive soils, organic materials, or anything unexpected condition is encountered, the Customer will be responsible for any additional costs, plus overhead and profit of 20%).
	✓	27. Steel fabrication and install support structure - excluding catwalk(s), ladder-way(s).
	✓	28. Prime and paint main support structure.
	✓	29. Prime and paint substructure
	✓	30. Lift and mount Equipment listed in this quotation.
	✓	31. Provide and install all required floor and wall boxes as per provided system electrical and signal drawings – provide written verification that all deck/wall boxes are installed and all cable has been pulled prior to installers' arrival.
	✓	32. Provide primary power feed up to and including demarcation point in the form of transformer and electrical disconnect with over current protection per all applicable electrical codes and regulations. Note: Maximum voltage of 120 volts line to neutral for all display systems.
	✓	33. Provide secondary power conduits, distribution panel, power cable and power hook-up from the demarcation point to all Daktronics supplied load centers/termination panel at/within the Equipment.
	✓	34. Provide and install signal cable conduit, with pull string, from control location to each equipment location. Conduit to be located five (5) feet off grade on the structure, as delineated in the electrical and signal drawings.
	✓	35. Provide and install signal cable conduit, with pull string, from five (5) feet off grade on structure to Equipment signal termination points, as delineated in the electrical and signal drawings.
	✓	36. Communication responsibility (DSL line, Network, Static IP address and associated monthly fees) as necessary for this system. Supply static IP address five (5) days prior to installation.
✓	✓	37. Installation of temperature sensor.
	✓	38. Furnish signal cable as delineated on the quote.
	✓	39. Labor to pull all new signal cable (and remove existing cable, if required).
	✓	40. Interface cabling with audio system including conduit, cabling, and installation of cabling.
✓		41. Terminate signal cable at control location and message center Equipment.
	✓	42. Provide a climate controlled and secure control room for all control systems. Normal operating temperature should be between 40° to 90° Fahrenheit (4° to 32° Celsius). Normal operating humidity should be less than 80% non-condensing. Storage temperature should be between -10° to 105° Fahrenheit (-23° to 41° Celsius). Storage humidity should be less than 95% non-condensing. Keep computers and monitors out of direct sunlight during storage. Allow control equipment taken out of storage to return to operating temperature range prior to turning it on (24 hours recommended).
	✓	43. Provide high speed internet connection to control room equipment.

DAKTRONICS QUOTE # 677833-1-0

	✓	44. Required power outlets on clean dedicated circuit(s) for all message center and control equipment.
✓		45. Unpack, set-up, hook-up, and testing of control system.
✓		46. Set-up and testing of results/statistics/timing system including portable cabling and Daktronics software installation.
	✓	47. Provide personnel for maintenance and operator training.
✓		48. Perform maintenance training during installation.
✓		49. Perform operator training.
✓		50. Perform final systems testing and commissioning.
	✓	51. Final acceptance, per DF-1252.

NOTE: All change order work performed by Daktronics or Daktronics subcontractor will be performed at cost plus 20% overhead and profit.

XC13mm LED Display

3.15f x 10.5f

72 x 240 resolution



Sales Quote Form
SQ #8256

Project Name: Gilroy High School XC13mm 3.15f x 10.5f	Effective Date: 09/13/2018
D3 LED, LLC 11370 Sunrise Park Drive, Rancho Cordova, CA 95742	Company Name: John Marinovich
Contact: Edward Wehrenberg	Address: 519 Bay View Drive, Aptos, CA 95003 - United States
Telephone: 888.99D3LED	Contact: John Marinovich
Email: ewehrenberg@d3led.com	Telephone: 831-662-8414
("D3")	Email: jamarinovich@sbcglobal.net
	("Client")

GENERAL SCOPE OF WORK

Pitch: XC13mm Lamp LED Display
 Dims: 3.15f x 10.5f
 Resolution: 72 x 240

Quoted for direct-connect Front End Control System within 300' of display. Beyond 300', may require Fiber Optic, or alternate data delivery. Mounting and Framing Hardware included.

All data / power cables, and conduit by others. Power to be supplied to required termination points inside of display by others. Duties, Taxes, Permitting, Shipping and Installation not included unless specifically noted.

- Includes 2-yr parts warranty.
- Includes On-Site Tech and Training at Install. All travel expenses to be billed with final billing.
- Includes Spare Parts Kit

PROJECT SCHEDULE:

Standard lead time is 90 days from receipt of deposit to ship date.

EQUIPMENT DESCRIPTION:

Item Type	Item Description	Qty	Unit Price	Extended Price
Custom Display	XC13mm LED Display 3.15f x 10.5f	1	\$17,447.62	\$17,447.62
Custom Cabinet	Display Cabinet	1	\$2,982.30	\$2,982.30
Custom Front End System	IEP Plus Front End Desktop Controller	1	\$3,990.00	\$3,990.00
Addons Package	One Day On-Site Tech and Training	1	\$1,100.00	\$1,100.00
Addons Package	Spare Parts Kit	1	\$898.00	\$898.00
TOTAL:				\$26,417.92

UNLESS OTHERWISE INDICATED, ALL TAXES, INCLUDING SALES AND USE TAXES ARE NOT INCLUDED;

AND/OR ANY TARIFFS, DUTIES AND VAT FOR NON US INSTALLATIONS ARE NOT INCLUDED.

DISPLAYS:

Display Description	XC13mm LED Display 3.15f x 10.5f
Module Name	XC13-LMP-TD-320X320-N
Pixel Pitch	13mm
Display Size (ft)	3.15 x 10.50
Total Square Feet	33.08
Display Size (m)	0.960 x 3.200
Total Square Meters	3.072
Module Matrix	24 x 24
Module Size (in)	12.6 x 12.6
Module Size (mm)	320 x 320
Modules High x Wide	3 x 10
Total # of Modules	30
Display Matrix	72 x 240
Total Pixels	17,280
Estimated Weight (lb)	111.00
Estimated Weight (kg)	50.349
Display Price	\$17,447.62
Display Qty	1
Total Price	\$17,447.62

CABINETS:

Cabinet Description	Display Cabinet
Cabinet Type	EMC - Aluminum Extrusion Cabinet
Height (ft)	3.57
Width (ft)	10.92
Depth (ft)	1.50
Total Square Feet	38.98
Height (m)	1.088
Width (m)	3.328
Depth (m)	0.457
Total Square Meters	3.622
Cabinet Price	\$2,982.30
Cabinet Qty	1
Total Price	\$2,982.30

FRONT END SYSTEMS:

FES Description	IEP Plus Front End Desktop Controller
FES Type	CONTROL SYSTEM
FES Name	IEP PLUS
Max Pixels	150,000
FES Price	\$3,990.00
FES Qty	1
Total Price	\$3,990.00

ADDONS:

One Day On-Site Tech and Training				
Type	Description	Qty	Unit Price	Extended Price
Other	One Day On-Site Tech and Training	1	\$1,100.00	\$1,100.00
				Total: \$1,100.00

Spare Parts Kit				
Type	Description	Qty	Unit Price	Extended Price
Other Hardware	Spare Parts Kit	1	\$898.00	\$898.00
				Total: \$898.00



3c

D3 LED, LLC

11370 Sunrise Park Drive, Rancho Cordova, CA 95742

Toll-Free: 1.888.99.D3LED Fax: 916.266.0960

The prices set forth in this Quote are subject to change if an Agreement is not executed by both parties on or prior to 11/12/2018.

This sales quotation is subject to D3 LED, LLC "Terms and Conditions of Sale" located at: (http://www.d3led.com/terms_conditions/terms-and-conditions-of-sale.pdf). Acceptance of this sales quotation via subsequent purchase order or contract constitutes acceptance of these terms and conditions and creates binding agreement in execution of the order and contract.

3d







Phone: (408) 710-7420

Fax: (408) 683-4120

License #917713 | DIR #1000021413

No. 1 of 1

Date: January 23, 2019

PROPOSAL

PROPOSAL SUBMITTED TO G.U.S.D. / DAN MC AULIFFE		EMAIL Dan.mcauliffe@gusd.k12.ca.us	DATE OF PLANS/PAGE #'S
PHONE NUMBER 408-337-3227	FAX NUMBER 408-848-6424	JOB NAME	
ADDRESS, CITY, STATE, ZIP 7810 ARROYO CIR. GILROY, CA. 95020		JOB LOCATION Elliot School Gilroy	

We propose hereby to furnish material and labor necessary for the completion of:

- Remove and replace 1470 sq. ft of concrete
- Install 36 LF of root barrier at every location that work is being done.
- Remove roots from sidewalk @ \$250 per tree root removal (9 trees)

TOTAL COST \$20,790.00

We propose hereby to furnish material and labor – complete in accordance with above specifications for the sum of:

Twenty thousand seven hundred ninety ----- dollars \$20,790.00

Payment as follows: Payment in full is expected upon completion

All material is guaranteed to be as specified. All work to be completed in a substantial workmanlike manner according to specifications submitted, per standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance. If either party commences legal action to enforce its rights pursuant to this agreement, the prevailing party in said legal action shall be entitled to recover its reasonable attorney's fees and costs of litigation relating to said legal action, as determined by a court of competent jurisdiction.

Authorized
Signature

Note: this proposal may be withdrawn by us

if not accepted within 10 Days.

ACCEPTANCE OF PROPOSAL The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

Signature _____

Date of Acceptance _____

REQUEST FOR QUALIFICATIONS (RFQ) FOR ENERGY
CONSERVATION DESIGN-BUILD SERVICES

Issued by:

Gilroy Unified School District

Issued Date: 8am, February 15, 2019

Due Date: Noon, March 19, 2019

Gilroy Unified School District
ENERGY CONSERVATION DESIGN-BUILD SERVICES
REQUEST FOR QUALIFICATIONS (RFQ)

RESPONSE DEADLINE FOR PROPOSALS: Noon, March 19, 2019

All Requests for Information must be submitted no later than: 8am, March 1, 2019

I. DESCRIPTION OF PROJECT

NOTICE IS HEREBY GIVEN THAT Gilroy Unified District (District) issues this Request for Qualifications (RFQ) and invites the submittal of Statements of Qualification from Energy Services Companies (ESCO) that meet the minimum requirements contained herein and can serve the District's needs for Energy Conservation Design-Build Services. It is necessary for Respondents to read the information contained in this RFQ to understand how to submit, what documents must be included and what legal obligations the Respondent is submitting by providing a successful statement of qualification. Any Respondent that wishes to be considered must submit the information requested in this RFQ and, if invited, participate in an interview. Proposals must be received by Gilroy Unified School District by **Noon, March 19, 2019**

Gilroy Unified School District desires to pursue a district-wide, design-build energy conservation program, including an initial ASHRAE Level 2 Audit of all campus buildings, identification of Energy Conservation Measures (ECMs) as defined in Government Code Section 4217.11 that would be cost-effective and subject to award of one or more agreements pursuant to Government Code Sections 4217.10 through 4217.18, design and engineering of such ECMs, installation and construction of such ECMs, and project management of the installation and construction of ECMs.

All proposals must be **mailed** to:

**Gilroy Unified School District Office
Attention Purchasing
7810 Arroyo Circle, Gilroy CA 95020**

Received no later than noon on **March 19, 2019**

Each proposal must conform to the requirements in this Request for Qualifications.

The District reserves the right to reject any or all RFQ responses, in whole or in part, and to waive any irregularities or informalities. The selection of one or more companies/individuals will be solely at the discretion of the District. The District reserves the right to negotiate contract fees, terms, and conditions and to terminate such negotiations at any time, and to not enter into contract with any or all RFQ responders.

II. PROJECT GOALS

Respondents shall support the District's goal by offering a turn-key comprehensive energy efficiency program that accomplishes the following:

- Reduces energy costs and maximizes the net economic benefit to the District by identifying and

installing qualified energy conservation measures (ECM's) that support the District's goals and meets specifications

- Achieves an annual guarantee for cost savings for each year of the contract that requires zero impact on the General Fund
- A Performance Contract that pays for the entire designed project with zero out of pocket costs
- Prepares a long-term strategic approach that maximizes the ongoing benefits of energy conservation measures (ECM's)
- Leverages all other available funding sources to reduce project costs
- Meets any and all requirements with Title 24 and the California Building Code
- Provides required measurement and verification (M&V) of implemented ECMs
- Upgrades old and/or inefficient systems
- Maintains consistent and reasonable levels of occupant comfort
- Maintains building functionality and compatibility with existing comfort
- Improves utilization of technology to achieve optimum performance and savings
- Provides additional benefits that directly result from energy related services & capital improvements, reduced maintenance needs, improved indoor air quality, building improvements, reduced greenhouse gases, etc.
- Minimizes financial and technical risk to the Gilroy Unified District
- Provides training to employees on maintenance and repair of equipment and/or controls
- Provides comprehensive funding solutions
- Promotes private job sector creation

III. PROPOSED TIMELINE

February 15, 2019, 8 am	RFQ Released and Publicized
March 1, 2019, 8 am	Questions Due
March 11, 2019, 8 am	Questions & Answers Released
March 19, 2019, Noon	RFQ Responses Due
March 26, 2019	Interviews at Districts Discretion
April 19, 2019	Respondents Notified

IV. MINIMUM REQUIREMENTS FOR SUBMITTAL

Respondents must prequalify with the minimum requirements to participate in the District's RFQ process:

- Accredited by the National Association of Energy Services Companies (NAESCO).
- Successfully implemented at least five (5) energy savings performance contracts for the public sector in California in the last five (5) years.
- Extensive experience in successful analysis and development of energy efficiency measures; including auditing, savings calculations, project costing, strategic planning, design specifications, construction oversight, commissioning, maintenance and energy management.

- Be licensed in the State of California to design and construct any project listed in the ESCO's Proposal and possess the requisite design licensing and engineering qualifications. Any such licenses must be in good standing at the time of Proposal submission.
- Be able to meet any applicable bonding, insurance, non-collusion, and criminal records check requirements, at the District's request.
- No pending or recent litigation in the past five (5) years associated with the savings performance and/or measurement and verification (M&V) of a guaranteed energy savings project. Provide an acknowledgment letter stating such, signed by an officer of the company. Please include title of company officer. Failure to provide accurate and complete information as requested is grounds for disqualification.
- Experience in securing all available grants, rebates, incentives and financing available through Federal, State, local and utility company programs.

V. SCOPE OF WORK

Upon award, the selected respondent will be required to perform site walks at the District's facilities to evaluate facility infrastructure improvements. Specifically, the awarded respondent will evaluate and propose applicable energy conservation measures (ECMs) including but not limited to:

- Detailed analysis of energy consumption to quantify base loads, seasonal variation, and effective energy costs
- Evaluation of solar, battery storage, lighting, air quality, temperature, ventilation, humidity, and other conditions that may affect energy performance
- Heating Ventilation & Air Conditioning (HVAC) system optimization, retrofit, upgrade or replacement
- Interior lighting retrofit or replacement
- Building Automation System (BAS) installation, upgrade, or expansion leveraging existing technology
- Other infrastructure improvements
- Other training, remote monitoring services, and on-going support services that will ensure objectives of program are met over the term of the agreement
- Work with District staff to explore potential problem areas, and clarify financial and non-financial goals of the program

All proposed ECM's must be provided on a turn-key basis including all necessary permits, engineering, delivery, installation, commissioning, training and warranty service.

VI. PROPOSAL INSTRUCTIONS

Ink or Typewritten

All information, prices, notations, signatures, and corrections must be typewritten.

Signature Verification

To be considered for award, each proposal must be signed by a legally authorized representative of your company.

Examination of Contract Documents

It is the responsibility of your firm to thoroughly examine and be familiar with the contract documents. The failure or neglect of the company to receive or examine any of the contract documents shall in no way relieve them from any obligations with respect to the RFQ. No claim will be allowed for additional compensation that is based upon a lack of knowledge of any solicitation document.

Proposal Documents

Failure to completely execute and submit the required documents before the RFQ submittal deadlines will render a proposal non-responsive.

Formation of Contract

The formation of a contract will be completed upon affirmative Board action on the Contract Agreement. The District's Board requires contracts to be signed, signaling agreement to the terms of the contract prior to board action. The contract is not finalized until Board approval, and until an authorized District signer countersigns the Contract Agreement.

Informed Respondent

It will be your responsibility to be fully informed as to the conditions, requirements, and specifications before submitting proposals. Failure to do so will be at your firm's own risk and relief cannot be secured on the plea of error.

VII. PROPOSAL SUBMISSION REQUIREMENTS

One (1) electronic copy of the proposal shall be submitted in the format contained in the RFQ. It is critical that all responses follow the same format to allow equal and fair evaluation of each response. Responses should be limited to thirty-five (35) pages (not including table of contents, cover letter or M&V report) and include the following:

COVER LETTER

A signed letter of interest (no more than two (2) pages), stating the respondent's interest and qualifications in providing the services as outlined in the RFQ. **Please describe how the respondent meets the minimum requirements as described in Section IV of the RFQ.**

TABLE OF CONTENTS

The table of contents of the proposal should include a clear and complete identification of the materials submitted by tab section and page number.

SECTION TABS

Proposals should be divided by tab sections according to items in the index. This will assist the evaluating team in identifying items and information submitted with the proposal.

Tab 1: Background, Financial Capacity & Management Structure

- a. Provide general information on the respondent including: Brief history of the firm, key differentiating factors and areas of expertise, length of time performing services, location of main office, telephone number, contact name, and local resources.
- b. Provide a statement of the respondent's financial capacity and capability to perform to the terms of this solicitation request. Include a statement if the ESCO holds the guarantee or if it is held by a third party.
- c. Provide three (3) years of audited financials along with the name, address, and the telephone number of firm(s) that prepared Financial Statements.
- d. Provide proof of insurance showing coverage and limits in place at the time of this RFQ.
- e. Identify the key members of the project team and describe the management structure of the responding firm. Provide resumes illustrating qualifications and experience of the key personnel to be used on this project.

Tab 2: Energy Project References

- a) Provide detailed project history for five (5) public sector California clients for which the respondent has contracted with for similar energy savings performance contracting services in the last five (5) years. Include the following (**All information is required**):
 - Owner's name, address, telephone number, and contact person
 - Description of the scope of work
 - Start/ completion date
 - Services and equipment provided
 - Energy savings guarantee amount
 - Project cost and funding description
 - Post Project Support Services
 - Contract term
 - Additional benefits to the client

For one (1) the projects listed above, provide the measurement & verification report, where the International Performance Measurement and Verification Protocol (IPMVP) Option C method was used.

- b) Provide a complete list of projects that in the last five (5) years have experienced a savings shortfall, include the amount of the shortfall and method in which it was remedied under your firm's savings guarantee.

- c) Provide a complete list of all projects that in the last five (5) years:
- Have a performance contract with the respondent cancelled or non-appropriated (list reason); or
 - Have past or pending lawsuits or litigation regarding performance contract with a customer (list reasons); or
 - Have past “out of court” settlements regarding a performance contract (list reasons).
- d) Provide an acknowledgment letter signed by an officer of the respondent company affirming the statements in this section (Tab 2. Energy Project References) are true and correct. (Please include title of company officer). **Failure to provide accurate and complete information as requested is grounds for disqualification.**

Tab 3: Project Approach

- a. Provide a description of the respondent’s approach to performing audits and identifying improvement measures.
- b. Provide a description of the respondent’s approach to managing the project and procedures for minimizing occupant disruptions.
- c. Describe how the respondent ensures construction deadlines are met.
- d. Describe the steps taken by the respondent during and after the implementation process to ensure successful project implementation and continued savings.
- e. Describe the training program available for District employees.
- f. Describe the respondent’s experience in securing all available grants, rebates, incentives and financing available through Federal, State, local and utility company programs.

Tab 4: Savings

- a. Describe the experience and qualifications of your measurement and verification team, along with an organizational chart of M&V team members and structure.
- b. Describe the respondent’s approach to projecting and proving energy and operational savings.
- c. Provide a description of the monitoring services after installation to ensure continued savings.
- d. Provide a sample of your firm’s energy savings guarantee documents.
- e. Describe the reconciliation process of the guarantee.

Tab 5: Pricing

- a. Provide a proposed profit markup percentage your firm will apply to any and all subcontracted services resulting from this contract. Professional services fees may be negotiated separately upon partner selection. All subcontractors must be prequalified.
- b. Discuss your firms approach to change orders.

Tab 6: Value-Added Elements

Please describe any value-added elements your firm provides as part of the comprehensive energy program.

VIII. PROPOSAL EVALUATION CRITERIA

The District will evaluate qualifications based on the scoring criteria outlined in this section. Respondents who are not actively engaged in providing services of the nature proposed in their response to the RFQ and/or who cannot clearly demonstrate to the satisfaction of the District their ability to satisfactorily perform the work in accordance with the RFQ requirements will not be considered. Respondents who do not meet the minimum requirements will not be considered.

The District shall be the sole judge of the qualifications and services to be offered and its decision shall be final. Discussions may be conducted with respondents who submit qualifications determined to be reasonably acceptable of being selected for award:

Scoring Criteria

Category	Point Value
Background, Financial Capacity & Management Structure Local office support, financial capability and solvency, strength of proposed team	15
Energy Project References Strength of past energy savings performance contracts, quality of client service provided	30
Project Approach Project management and implementation approach, ability to minimize disruptions to occupants, approach to training staff	20
Guaranteed Savings & Pricing – Option C Only Savings approach, measurement & verification team, transparency of energy savings calculations and pricing information	20
Value-Added Elements Respondents value-added elements	15
Total Possible Points	100

MEASURE E: Priority Aging Middle Schools										
DRAFT										
Updated with GHS Pool, GECA Lab, GUSD Alt. Ed. Center										
2.5.2019 DRAFT										
Project	Description	Proceeds from Wren Ave	Developer Fees	Remaining Measure P Funds	2019		2019		Measure E Series C	Total Project Budget
					Measure E Series A	Measure E Series B	Remaining Measure P Series	Measure E Series C		
South Valley MS	Feasibility and Renovation	\$ -	\$ -	\$ -	\$ 500,000	\$ 2,000,000	\$ 87,000,000	\$ 87,000,000	\$ 89,500,000	\$ 89,500,000
Brownell MS	Feasibility and Renovation	-	-	-	34,500,000	7,911,544	28,450,000	-	70,861,544	70,861,544
GHS Pool	Pool repair/Renovation**	-	-	800,000	5,000,000	-	-	-	5,800,000	5,800,000
GUSD Alternative Ed Center	Separate campus (replace Odyssey)	1,459,708	-	-	-	-	-	-	1,459,708	1,459,708
GECA Science Lab	Renovate classroom for Lab	-	-	-	484,956	-	-	-	484,956	484,956
El Roble Renovation	Renovate Site	-	-	-	-	-	-	-	1,451,328	1,451,328
Deferred Maintenance	Various; Roofs, HVACs, etc.	-	-	-	1,000,000	2,138,456	-	-	3,138,456	3,138,456
Construction Mgmt	Staff directly involved in projects	-	-	-	-	3,272,723	-	5,275,949	8,548,672	8,548,672
COMPLETED PROJECTS										
Project	Description	Proceeds from Wren Ave	Developer Fees	Remaining Measure P Funds	2019		2019		Measure E Series C	Total Project Budget
					Measure E Series A	Measure E Series B	Remaining Measure P Series	Measure E Series C		
Brownell MS	Lunch shelter	125,000	-	-	-	-	-	-	125,000	125,000
GHS Building G Acoustic	Phase 2 of recommendations	400,000	-	-	-	-	-	-	400,000	400,000
GHS Bathrooms	Demo & replace outside bathrooms	-	-	-	300,000	-	-	-	300,000	300,000
GHS Science Lab	Science/Physics Lab	-	-	-	113,016	-	-	-	113,016	113,016
GHS Science Lab	Science/Physics Lab	-	-	-	395,616	-	-	-	395,616	395,616
El Roble	Painting	-	-	-	135,780	-	-	-	135,780	135,780
All Elementary Schools	Safe school locks	-	-	923,941	-	-	-	-	923,941	923,941
I.T. Infrastructure *	Infrastructure Districtwide	-	-	-	12,500,000	-	500,000	-	13,000,000	13,000,000
New Elementary School	Approval process funded by Measure P	-	-	758,211	-	-	-	-	758,211	758,211
Gilroy High School	New 20 classrooms (permanent building)	8,285,727	1,500,000	-	4,700,000	-	-	-	14,485,727	14,485,727
Total Expend. by Funding Source										
		\$ 10,270,435	\$ 1,500,000	\$ 2,482,152	\$ 59,629,368	\$ 15,322,723	\$ 28,950,000	\$ 93,727,277	\$ 211,881,955	\$ 211,881,955
Total Rev. Available by Source:		\$ 10,270,435	\$ 1,500,000	\$ 2,482,152	\$ 60,000,000	\$ 15,322,723	\$ 28,950,000	\$ 94,677,277	\$ 213,202,587	\$ 213,202,587
Diff (over) under:		\$ -	\$ -	\$ -	\$ 370,632	\$ -	\$ -	\$ 950,000	\$ 1,320,632	\$ 1,320,632

Measure E Series B = \$15,322,723 + Remaining Measure P Series = \$28,950,000 = \$44,272,723
 * IT Work not complete \$1,366,928 encumbered