

Gilroy Unified School District

Request to Prequalify and for Qualifications and Proposals for Lease Leaseback Pre-Construction and Construction Services

South Valley Middle School Modernization Project

Responses Due: August 6, 2020 @ 2PM

Respondents must mail or deliver sealed proposals containing five (5) bound copies and one (1) electronic copy on USB stick of their RFQ/P response conforming to the requirements of this RFQ/P to:

**GILROY UNIFIED SCHOOL DISTRICT
7810 Arroyo Circle
Gilroy, California 95020**

Respondents must also transmit one (1) PDF copy via email to paul.nadeau@gilroyunified.org

Only firms that have registered with the California Department of Industrial Relations (DIR) regulations are eligible to be further considered for a construction contract. For any public project, as defined in subdivision (c) of Section 22002 of the Public Contract Code, for which the District uses funds received pursuant to the Leroy F. Greene School Facilities Act of 1998 (Chapter 12.5 (commencing with Section 17070.10) of Part 10 of Division 1 of Title 1 of the Education Code) or any funds from any future State school bond for a public project that involves a projected expenditure of one million dollars (\$1,000,000) or more, the District shall require that prospective general contractors and prospective electrical, mechanical and/or plumbing subcontractors complete and submit a standardized prequalification questionnaire and financial statement, verified under oath.

Gilroy Unified School District
Request to Prequalify and Request for Qualifications and Proposals (RFQ/P)
for Lease Leaseback Pre-Construction and Construction Services for
South Valley Middle School Campus Replacement & Modernization Project

I. INTRODUCTION

Gilroy Unified School District (the “District”) invites interested firms to submit a prequalification questionnaire. In addition, the District invites interested firms to submit a statement of qualifications and proposals for pre-construction and construction services for the South Valley Middle School Campus Replacement & Modernization project (the “Project”).

Section II outlines the prequalification procedure. Section III outlines the desired pre-construction and construction scope of work for the Project. Section IV provides a summary of the Board adopted scope, budget, and schedule of the Project. Sections V through XI and related attachments outline the RFQ/P submittal requirements and selection procedure as well as general information, requirements, and sample agreements.

At the conclusion of the selection process, recommended firm(s) will be considered by the District’s Board of Trustees for the Project. Subject to Board approval and upon notification to proceed, the selected firm(s) shall perform pre-construction services, including reviewing design documents for constructability, completeness, deficiencies, scheduling, clarity, consistency and coordination, undertaking a value-engineering analysis, soliciting subcontract bids, and preparing reports with recommendations to the District and the architect to maintain the established budget, pursuant to a Pre-Construction Services Agreement.

The Project shall be performed under the direction of the District. The selected firm(s) shall work with assigned architects for the Project as needed to conduct the proposed scope of work. Following the completion of pre-construction services, the District may begin negotiations with the selected firm(s) to enter into a Construction Services Agreement and requisite documents establishing a GMP pursuant to a Lease Leaseback method of construction delivery (“LLB”).

II. PREQUALIFICATION

Contractor Prequalification. All contractors must submit by the date indicated herein the Prequalification Questionnaire attached hereto as Attachment A.

Mechanical, Electrical and Plumbing Subcontractors Prequalification. All mechanical, electrical and plumbing subcontractors that hold a C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and/or C-46 California Contractors’ licenses (“MEP Subcontractors”) that the contractor intends to use on the Project must complete the Prequalification Questionnaire attached hereto as Attachment A by the date indicated herein.

III. SCOPE OF WORK

The District desires to select firm(s) capable of providing LLB pre-construction and construction services for the Project. The selected firm(s) for the Project should expect to perform pre-construction services as established by the District pursuant to a Pre-Construction Services Agreement attached hereto as Attachment B. If the District proceeds with the construction of the Project, the selected firm(s) may be retained as a LLB contractor pursuant to a Construction Services Agreement/General Conditions, Lease and Sublease attached hereto as Attachments C, D and E, respectively, and may contract with separate specialty trade contractors to perform the required scope of work.

Pre-Construction Services are anticipated to include the following:

1. Review design and support documentation for content, constructability, completeness, deficiencies, scheduling, clarity, consistency and coordination
2. Attend meetings with the Architect of Record and engineers and undertake value-engineering analysis and prepare reports with recommendations to the District and Architect of Record to maintain established program budget, specifications and schedule
3. Provide detailed cost estimates at schematic, design development, and construction document design phases as well as schedule analysis
4. Expedite design reviews, including modifications, if any, based on value analysis
5. Provide a proposed Guaranteed Maximum Price (“GMP”) for the construction of the Project with identified subcontractor bids and self-performed work, complying with Board of Education approved District Design Standards from winter of 2017, updated fall of 2020

Construction Services are anticipated to include, but not be limited to the following:

1. Provision of a proposed Guaranteed Maximum Price (“GMP”) for the construction of the Project with identified subcontractor bids and self-performed work
2. Construction of the Project providing Board of Education approved District Design Standards products and requirements
3. Coordination of record drawings and specifications
4. Compilation of operations and maintenance manuals, warranties/guarantees, and certificates
5. Obtaining occupancy permits and coordinating testing, documentation, and governmental inspections and approvals
6. Preparation of accounting and closeout reports and occupancy plan reports
7. Other responsibilities as necessary for the completion of the program

IV. SOUTH VALLEY MIDDLE SCHOOL CAMPUS REPLACEMENT & MODERNIZATION PROJECT

A. Project Description

The existing South Valley Middle School campus is owned by the Gilroy Unified School District and consists of approximately 22 acres. The Site consists of 19 buildings that will be reconfigured into a new campus for the existing middle school. Replacement buildings will consist of all new construction for new learning communities, administration, gymnasium, multi-use, food service, library/media center and other academic programs. New construction will consist of approximately 70,000 square feet.

The new campus will be constructed in phases.

B. Approved Project Budget

The construction budget (projected GMP) for required buildings, demolition, and site work is \$70,000,000.00, inclusive of general conditions and requirements, contractor fees and overhead. Soft costs identified below include design fees, consulting services, testing and inspection services, agency approval fees, etc. The total “all in” budget combining hard and soft costs is \$90,000,000.00 estimated in current 2020 dollars (including contingencies).

C. Summary Timeline & Schedule

The construction schedule and academic schedule may require that both new and old portions of the campus be in operation simultaneously. Confirming that existing site utilities have adequate capacity for this simultaneous use will be a critical component of achieving a successful project. Firms are encouraged to engage with the Architect of Record and engineering consultants early in the process in this regard.

D. Conceptual Design

The conceptual design locates the facility at 385 I.O.O.F. Avenue, Gilroy, California. Additional conceptual design drawings prepared by the Architect of Record, including conceptual floor plans and renderings, will be made available as soon as possible.

V. SUBMITTAL FORMAT AND REQUIREMENTS

Prequalification: Firms are required to complete and submit the attached Prequalification Questionnaire for the Project, and proof of completed registration with the California Department of Industrial Relations by 2:00 PM on July 23, 2020. These items may be submitted via email to paul.nadeau@gilroyunified.org. SUBJECT: SVMS Pre-Qualification

RFQ/P Response: Firms are required to prepare a response to this RFQ/P that includes general information about the firm’s qualifications as well as a site-specific proposal that assesses and evaluates the conceptual design of the Project as to construction recommendations, logistics, cost, value engineering, and schedule.

Firm Qualifications: submittals are required to provide a response with regard to a firm’s capabilities, prior experience, and past projects. This information should include, but need not be limited to, the following:

- A. Provide three (3) or more references of school projects or similar facilities as examples of the firm's experience on projects such as this with respect to size and complexity.
- B. Provide one (1) or more references of modernization of school projects or similar facilities as examples of the firm's experience on projects such as this with respect to size and complexity.
- C. Description of size of firm with respect to the number of personnel by management category. Please provide an organizational chart identifying the key staff members assigned to each role and their level of experience on projects such as this.
- D. Description of the firm's practices for managing project schedules, budgets, subcontracts, change orders, project documents, and other construction issues. Provide a description of the firm's project control systems. Sample project specific progress reports are encouraged for inclusion in the firm's response to this question (not counted toward page limit of the RFQ/P).
- E. Provide a description of the firm's safety record and Experience Modification Rating ("EMR").
- F. Provide a letter from the firm's bonding company on their letterhead that states the bonding capacity of the firm.
- G. A narrative identifying any potential construction issues or other challenges that may arise during the Project and proposed solutions to ensure that said challenges do not create unnecessary delays or added cost to the Project.
- H. A conceptual site logistics plan identifying site access, parking for contractors, access for delivery and storage of materials, and provisions for the safety of students and faculty.
- I. Detailed proposal of the firm's pre-construction fee and how it would be broken down based on the deliverables identified in the attached form Pre-construction Services Agreement.
- J. Detailed breakout of the factors or elements that are anticipated to comprise the calculation of a future Guaranteed Maximum Price including a specific proposal for the overhead, general conditions, markups, insurance, bonds, fees and return of contingency that will be included in the Guaranteed Maximum Price.
- K. Brief description of two to five value engineering opportunities that the firm would propose to keep the Project within the proposed budget identified herein.
- L. Description of the firm's approach to keeping the Project delivered on schedule, while minimizing impact on existing school facilities and neighboring communities throughout construction. Please provide a proposed Project schedule that demonstrates this approach, including pre-construction milestones that the firm will help to establish to optimize the construction phase.
- M. Description of the firm's ability to meet all of the insurance requirements set forth in the agreement attached hereto.
- N. The firm shall certify that it is an Equal Opportunity Employer and has made a good faith effort to improve minority employment and agrees to meet federal and state guideline.

RFQ/P Response Format:

Responses shall be concise, well organized and demonstrate respondent's qualifications and proposed approach to the Project. Each response should have a cover letter briefly discussing the firm's conceptual understanding of the Project and an executive summary of the firm's proposal.

Limit response for the *Firm Qualifications* to no more than ten (10) single-sided 8 ½ x 11 pages. *Firm Qualifications* includes the cover letter indicated above. For the *Proposal*, limit responses to no more than ten (10) single-sided 8 ½ x 11 pages.

Excluded from the page count limitation are pages exclusively used for layout and organization of the submittal package (e.g. front and back covers, table of contents, tabbed dividers, etc.) as well as sample materials representative of prior project work included as addenda (e.g. schedules, progress reports, graphics, etc.). Also excluded from the page count limit are materials indicated for prequalification.

The printed and email copies are due by no later than noted above.

Please be advised that the District reserves the right to decline all responses and to amend, abandon, or modify the Project or the method of delivery at its sole discretion in whole or in part.

VI. METHOD OF SELECTION

The District's Selection Committee shall review and evaluate all responses received by the deadline. Each firm will be evaluated based on the Evaluation Criteria identified in Section VII. Based on these criteria and rating system, points are assigned to each respondent, with each respondent ranked according to the average total points awarded by members of the Selection Committee. Failure to satisfy a pass/fail requirement will result in the immediate rejection of the proposal. Final point totals of all respondents will be considered to determine the best value for the District.

The firm(s) determined to have the best value for the District will be invited to perform pre-construction services for the Project. Following the completion of pre-construction services, and at the discretion of the District, the selected firm may be recommended to the Board for entering into a Lease Leaseback Construction Services Agreement for the Project. The District retains the right in its sole discretion to reject all submittals or revise this request for said services.

VII. SUBMITTAL EVALUATION CRITERIA

Submittals received will be evaluated per the criteria adopted by the Board at its September 3rd, 2020 Regular Board Meeting, included in Administrative Regulation 3311.2 and listed below:

Proposers shall be selected based on total best value score as determined by the District, based on the following evaluation criteria and rating system adopted and shown in the table below:

EVALUTION CRITERIA	MAXIMUM POINTS
Follows page length and layout direction and includes requested document attachments as described by the RFQ/P	Pass/Fail
Experience with the local environment and a local presence for interfacing with the District	Pass/Fail
Provides germane and relevant responses to questions contained within the RFQ/P	25
Details a proposed method and overall strategic approach	25
Proposed detailed pre-construction fee and estimate of the firm's costs and break-down of overhead, general conditions, markups, insurance, bonds, and fees for the construction of the Project	15
Demonstrates specialized experience and technical competence of the firm, including principals, joint venture-partners, and sub-consultants regarding the types of service required and the complexity of the projects	15
Relevant experience of key personnel	5
Overall financial condition of the firm, including the principal contractor and/or contractor team	5
Ability to meet the insurance requirements unless the District, at its sole discretion, decides to modify or waive the insurance requirements or elects to provide program insurance	5
Litigation and arbitration history for the past five (5) years	5
TOTAL: 100 POINTS	

VIII. SELECTION SCHEDULE

The following is a proposed schedule for selection. The District reserves the right to modify this schedule in its sole discretion.

Request for Qualifications/Proposals Released: July 10, 2020

Non-Mandatory pre-proposal meeting for the Project and tour of South Valley Middle School Site: July 22, 2020 @ 10AM

Deadline to submit questions related to the Project: July 30, 2020 @ 5 PM

Prequalification Questionnaire due: July 23, 2020 @ 2PM

Announcement of prequalified firms: July 28, 2020

Submittal of Response to RFQ/P Due: August 6, 2020 @ 2PM

Anticipated Interview Dates: August 19 & 20th 2020

Board approval: September 3, 2020

IX. GENERAL INFORMATION

- A. Compliance. Submittals must be in strict accordance with the requirements set forth herein. Any response not submitted in accordance with such requirements will not be considered.
- B. Amendments. The District reserves the right to cancel or revise in part or whole this request. If the District cancels or revises this request, all respondents will be notified by addendum. The District also reserves the right to extend the date responses are due.
- C. Inquiries. All questions about the meaning or intent of this request shall be submitted to paul.nadeau@gilroyunified.org in writing via or email no later than July 30nd, 2020 at 5:00 pm. Responses to all questions received prior to the non-mandatory site walk on July 22nd, 2020 will be provided at the non-mandatory site walk. Any additional response, if required, will be issued by addendum via email to all parties having received this document and recorded in attendance at the non-mandatory site walk. Questions received after the July 30th, 2020 at 5:00 pm deadline will not be answered.
- D. Late Response to Proposals. It is the respondent's responsibility to ensure its response to this request for services is received on or before the time and date specified. Submittals received after the date and time specified will not be considered.
- E. District Not Responsible For Preparation Costs. All costs incurred in the preparation, submission and/or preparation of firms responding to the RFQ/P including, but not limited to, the firm's travel expenses to attend any pre-conferences, oral presentations, long distance charges, and negotiation sessions, shall be the sole responsibility of the firm and will not be reimbursed by the District. The District shall not pay for any costs incurred for qualification, proposal or contract preparation as a result of termination of the RFQ/P or termination of the agreement resulting from the RFQ/P.
- F. Right to Use Ideas. All proposals and other materials submitted become the property of the District. The District reserves the right to use any ideas presented in any response to the RFQ/P. Selection or rejection of the proposal shall not affect this right.
- G. Covenant Against Gratuities. The firm warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the firm or any agent or representative of the firm, to any officer or employee or consultant of the District with a view toward securing the resultant contract or securing favorable treatment with respect to any determinations concerning the award of the contract. For breach or violation of this provision, the District shall have the right to terminate any negotiation or the resultant contract, either in whole or in part, and any loss or damage sustained by the District in procuring any items or services which the firm agreed to supply shall be borne and paid for by the firm. The rights and remedies of the District provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.
- H. Special Conditions
 - 1. Public Record. All Responses submitted in response to the request for services become the property of the District's public records and as such, might be subject to public view.
 - 2. Non-Discrimination. The District does not discriminate on the basis of race, color, national origin, religion, age, ancestry, medical condition, disability or gender in consideration for an award of contract.
 - 3. Drug-Free Policy and Fingerprinting. The selected firm(s) shall be required to complete any and all fingerprinting requirements and criminal background checks required by State law and shall also be required to complete a Drug-Free workplace certificate.

4. Costs. Costs of preparing a response to this request are solely the responsibility of the respondent.
5. Prevailing Wages. Respondents are advised that this Project is a public work for purposes of the California Labor Code, which requires payment of prevailing wages. District will obtain from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work. These rates will be on file at the District and will be available to any interested party upon request. Any firm(s) to which a contract is awarded must pay the prevailing rates, post copies thereof at the job site, and comply with applicable provisions of State law.
6. Securities. Respondents are advised that if awarded a contract they will be permitted, at their request and expense and in accordance with Section 22300 of the California Public Contract Code, to substitute securities equivalent to retention monies withheld by District to insure performance under the contract.
7. Contractor Registration. No contractor or sub-contractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code Subsection 1725.5.
8. Contractor Prequalification. A respondent must be prequalified in accordance with subdivisions (b) to (m), inclusive, of Section 20111.6 of the Public Contract Code. In addition to this requirement, all responding firms are required to complete the attached Prequalification Questionnaire. These prequalification requirements shall be included in a Lease Leaseback instrument created pursuant to California Education Code Section 17406(a)(1).
9. Prequalification of Designated Subcontractors. MEP Subcontractors shall be prequalified to perform construction work as a first-tier subcontractor on the Project pursuant to Public Contract Code section 20111.6. MEP Subcontractors must be prequalified prior to negotiation and acceptable of a Guaranteed Maximum Price.
10. Bonding. The firm(s) will be required to furnish a Performance Bond in the amount of one hundred percent of the contract price, and a Payment (Material and Labor) Bond in the amount of one hundred percent of the contract price.
11. Limitations. This request for services does not commit District to award a contract, to defray any costs incurred in the preparation of a response pursuant to this request for services, or to procure or contract for work.

X. HOLD HARMLESS/INDEMNIFICATION/INDEPENDENT CONTRACTOR

The firms shall indemnify, defend, and save the District, its Board of Trustees, officers, agents, and employees harmless from any and all claims, damages, losses, causes of action and demands, including reasonable attorney's fees and costs, incurred in connection with or in any manner arising out of the firms' performance or failure to perform any duties contemplated by this request for qualifications and proposal or subsequent agreements.

The responding firms and their employees are not employees of the District and are deemed to be independent contractors. Nothing contained in this request for services or subsequent agreements shall be deemed to create any contractual relationship between the firms and any of the other contractors or material suppliers for the Program, nor shall anything contained in this request for qualifications and proposals or subsequent agreements be deemed to give any third party any claim or right of action against the District or firms which do not otherwise exist.

XI. CONSTRUCTION SERVICES RELATED AGREEMENTS

The following links provide interested firms with copies of the District's form construction services related agreements: <https://aedisarchitects.sharefile.com/d-scd6841141704218b>

Any questions or concerns regarding this RFQ/P or the above form agreements should be addressed in writing to Paul Nadeau via email: paul.nadeau@gilroyunified.org and mpuckett@aedisarchitects.com by July 30, 2020 at 5:00 pm.

To the extent respondent has any objections to the form pre-construction agreement, respondent must state the objection, and must provide a reasonable description of its requested change in response to the objection. Unidentified objections, or vaguely described objections will not be entertained by the District during any contract negotiation. Objections may be attached as an Appendix to respondent's response and shall not count toward the page limit.

ATTACHMENT A
Gilroy Unified School District
Prequalification Questionnaire

**GILROY UNIFIED SCHOOL DISTRICT
PREQUALIFICATION QUESTIONNAIRE FOR PROSPECTIVE BIDDERS**

The Gilroy Unified School District ("District") has determined that contractors on future projects ("Contractor(s)" or "Firm(s)") must be prequalified prior to submitting a bid or proposal on a project. This form must be completed by:

- A Contractor with a B, C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and/or C-46 license(s) that intends to bid as a general contractor (prime contractor) directly to the District .
- A Contractor with an A, B, C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and/or C-46 license(s) that intends to bid as a first-tier subcontractor to a general contractor (prime contractor) that is bidding directly to the District.
- A potential Contractor as the designer/builder that intends to propose to the District on an "energy contract" pursuant to Government Code section 4217.10, et seq.
- A potential Contractor that intends to propose to the District on a "lease-leaseback contract" pursuant to Education Code section 17406.

Form Submission. Contractors must complete this District form; no other prequalification documents submitted by a Contractor will meet the District's requirements. All Contractors shall submit completed questionnaires and financial statements as follows by mail or other suitable delivery method to:

**Gilroy Unified School District
7810 Arroyo Circle
Gilroy, Ca 95020
Prequalification
Attention: Leeanna Hammer**

Contractor List. The District will provide a list of prequalified general contractors and electrical, mechanical, and plumbing subcontractors to all prequalified Contractors at least five (5) business days prior to the date for submission of any response to a District bid or other solicitation covered by this prequalification.

References. The District reserves the right to contact any representative at Contractor's previous projects to gather information about the Contractor and/or to base the District's prequalification determination on a scoring of Contractor's references' responses to questions.

Project Size. The District reserves the right to prequalify a Contractor up to a maximum project size based on Eighty percent(80 %) of the Contractor's largest previous project within the past five (5) years.

Updates. Contractors who are prequalified must update their prequalification questionnaire if or when Contractor's status or information changes. The District reserves the right to adjust, suspend, or rescind the prequalification rating of any Contractor based on subsequently learned information.

Non-responsiveness. A Contractor's prequalification questionnaire shall be deemed nonresponsive if, without limitation, the Contractor's prequalification questionnaire is not returned on time, does not provide all requested information, is not signed under penalty of perjury by an individual who has the authority to bind the Contractor, is not updated as required or is misleading or inaccurate in any material manner (e.g., financial resources are overstated; previous violations of law are not accurately reported).

Rejection/Waiver/Request. The District reserves the right, in its sole discretion, to reject any or all prequalification questionnaires, to waive irregularities in any prequalification questionnaire or to request further information or documentation from any Contractor.

Public Records. Although the names of Contractors seeking prequalification may be public information, pursuant to, without limitation, Public Contract Code sections 20111.5(a) and 20111.6 (b), each Contractor's questionnaire and financial statements "shall not be public records and shall not be open to public inspection.

Appeal. A Contractor may appeal the District's decision. If a Contractor decides to appeal the District's prequalification decision, it must follow the following procedure:

1. Contractor shall submit, in writing, within five (5) working days from District's determination, a request for a written response from the District to explain the District's determination.
2. Within five (5) working days from receipt of the District's written response to the Contractor's request, Contractor may submit, in writing, a request for a meeting with the District's staff. Contractor may submit with the request any and all information that it believes supports a finding that District's determination should be changed.
3. Within five (5) working days from receipt of the District's written response to the Contractor's submittal of information, Contractor may submit, in writing, a request for a meeting with the District's Assistant Superintendent at which time Contractor may discuss information that it believes supports a finding that District's determination should be changed.
4. Within five (5) working days from receipt of the District's written response to the Contractor's request, Contractor may submit, in writing, a request that the District's finding be submitted to the District's Board of Education ("Board"), at which time the Contractor may address the Board pursuant to the Board's procedures for public inquiry.
5. **FAILURE OF A CONTRACTOR TO TIMELY FOLLOW ALL APPEAL STEPS SHALL BE A WAIVER OF THE CONTRACTOR'S RIGHT TO APPEAL THE DISTRICT'S DECISION.**

**GILROY UNIFIED SCHOOL DISTRICT
PREQUALIFICATION QUESTIONNAIRE FOR PROSPECTIVE BIDDERS**

CONTRACTOR (OR "FIRM") INFORMATION			
Contractor's company name:			
Address:			
Telephone:			
Mobile telephone:			
E-mail:			
Years in business under current company name:			
Years at the above address:			
Types of work performed with own forces:			
Gross revenue of the Firm for the past three (3) years:			
Most recent fiscal year	1 Year prior	2 Years prior	
Submit an audited or reviewed financial statement for the past two (2) full fiscal years. A letter verifying availability of a line of credit may also be attached; however, it will be considered as supplemental information only, and is not a substitute for the required financial statement.			
Name of license holder exactly as on file with the California State License Board:			
License classification(s):			
License number(s):			
License expiration date(s):			
Responsible Managing Officer (RMO) or Employee (RME) for Contractor:			
Number of years license holder has held the listed license(s):			
Number of years Contractor has done business in California under contractor's license law:			
Number of years Contractor has done business in California under current Contractor's license:			
Has your Firm changed name(s) or license number(s) in the past five (5) years? (Y/N). If "yes", explain on a separate signed sheet, including the reason for the change.			
Has there been any change in ownership of the Firm at any time in the past five (5) years? NOTE: A corporation whose shares are publicly traded is not required to answer this question. (Y/N). If "yes", explain on a separate signed sheet, including the reason for the change.			
Is the Firm a subsidiary, parent, holding company, or affiliate of another construction firm? NOTE: Include information about other firms if one firm owns ten percent (10%) or more of another, or if an owner, partner, or officer of your Firm holds a similar position in another firm. (Y/N). If "yes", explain on a separate signed sheet, the name of the related company(ies) and the percent ownership.			
Indicate the form of Contractor's firm (type of business entity):			
<ul style="list-style-type: none"> Individual Sole Proprietorship Partnership Limited Partnership Corporation, State: _____ Limited Liability Company Joint Venture Other: 			

List the following for each corporation officer, general partner, limited partner, owner, etc. (as applicable) for the Contractor's type of entity. For joint ventures, include this information for each entity in the joint venture and the percent ownership of each joint venture. Attach all additional information on separate signed sheets as needed.

Name	Position	Years with Co.	% Ownership

Identify every construction firm, contractor and/or construction management firm that the Contractor or any person listed above has been associated with (as officer, general partner, limited partner, owner, RMO, RME etc.) at any time during the **past five (5) years** ("Associated Firm"). Include all additional references and/or information on separate signed sheets. NOTE: For this question, "owner" and "partner" refers to ownership of ten percent (10%) or more of the business, or ten percent (10%) or more of its stock if the business is a corporation. include all additional information on separate signed sheets as needed.

Name of Person at Associated Firm	Name of Associated Firm	Contractor's License No. of Associated Firm	Dates of Person's Participation with Associated Firm

CONTRACTOR'S BONDING COMPANY (SURETY) INFORMATION

Name(s) of bonding company(ies) your Firm has utilized over the past five (5) years (not broker or agency):

Address(es) of those bonding company(ies):

Number of years Contractor has been with those bonding company/surety:

--

Name of broker/agent:

--

Address of broker/agent:

--

Telephone number of broker/agent:

--

E-mail of broker/agent:

--

Contractor's total current bonding capacity:\$

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CONTRACTOR'S INSURANCE INFORMATION

Name of insurance company(ies) your Firm has utilized over the past five (5) years (not broker or agency):

Address of those insurance company(ies):

"Best" rating(s) for those insurance company(ies):

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Number of years Contractor has been with those insurance company(ies):

--	--	--

Name of broker/agent:

Address of broker/ agent :

Telephone number of broker/agent:

E-mail of broker/agent:

Contractor's current insurance limits for the following types of coverage :


Commercial General Liability	Combined Single Limit (per occurrence)	\$
	Combined Single Limit (aggregate)	
Product Liability & Completed Operations	(aggregate)	\$
	(per occurrence)	\$
Automobile Liability -Any Auto	Combined Single Limit (aggregate)	
Automobile Liability - Any Auto	Combined Single Limit (per occurrence)	\$
Employers' Liability		
Builder's Risk (Course of Construction)		

Workers' Compensation Experience Modification Rate for the past five (5) premium years:

(1) Current year:	(2)	(3)
	(4)	(5)

QUESTIONS

Pass/Fail Questions (Essential Criteria)

1.	Does your Firm currently hold all contractors' license(s) necessary to perform the work and have those license(s) been consistently active for at least five (5) years without revocation or suspension? (Please circle one).	<u>YES</u> <u>NO</u> NO= cannot prequalify
2.	Has your Firm or an Associated Firm been found non-responsible, debarred, disqualified, forbidden, or otherwise prohibited from performing work and/or bidding on work for any public agency within California within the past five (5) years? (Please circle one).	<u>YES</u> <u>NO</u> YES= cannot prequalify
3.	Has your Firm or an Associated Firm defaulted on a contract or been terminated for cause by any public agency on any project within California within the past five (5) years and, if so and if challenged, has that default or termination been upheld by a court or an arbitrator? (Please circle one).	<u>YES</u> <u>NO</u> YES= cannot prequalify
4.	Has your Firm or an Associated Firm or any of their owners or officers been convicted of a crime under federal, state, or local law involving: (1) Bidding for, awarding of, or performance of a contract with a public entity; (2) Making a false claim(s) to any public entity; or (3) Fraud, theft, or other act of dishonesty to any contracting party within the past ten (10) ears ? (Please circle one).	<u>YES</u> <u>NO</u> YES= cannot prequalify
5.	Has a performance bond surety for your Firm or a performance bond surety for an Associated Firm had to: (1) Take over or complete a project, (2) Supervise the work of a project, or (3) Pay amounts to third parties, related to construction activities of your Firm or an Associated Firm within the past five (5) years? (Please circle one).	<u>YES</u> <u>NO</u> YES= cannot prequalify
 <p>If you answered: "NO" to questions 1, or "YES" to questions 2-5 then STOP. You are not eligible for prequalification at this time.</p>		

Scored Questions

1.	<p>Has your Firm paid liquidated damages pursuant to a contract for a project with either a public or a private owner within the past five (5) years? (Please circle one).</p> <p style="text-align: center;">If YES, explain and indicate on separate signed sheet(s) the project name(s), damages(s), and date(s).</p>	YES <u>NO</u>
2.	<p>Has your Firm paid a premium of more than one percent (1%) for a performance and payment bond on any project(s) within the past five (5) years? (Please circle one).</p> <p style="text-align: center;">If YES, explain and indicate on separate signed sheet(s) the project name(s), the premium amount(s), and date(s).</p>	YES <u>NO</u>
3.	<p>Has any insurer had to pay amounts to third parties that were in any way related to construction activities of your Firm within the past five (5) years? (Please circle one).</p> <p style="text-align: center;">If YES, explain and indicate on separate signed sheet(s) the project name(s), the amount(s) paid, and date(s).</p>	YES <u>NO</u>
4.	<p>Has your Firm's Workers' Compensation Experience Modification Rate exceeded 1.0 at any time for the past five (5) premium years? (Please circle one).</p> <p style="text-align: center;">If YES, explain and indicate on separate signed sheet(s) the EMR(s) and the applicable date(s).</p>	YES <u>NO</u>
5.	<p>Has there been a period when your Firm had employees but was without workers' compensation insurance or state-approved self-insurance within the past five (5) years? (Please circle one).</p> <p style="text-align: center;">If YES, explain and indicate on separate signed sheet(s) the reason(s) for not having this insurance and the applicable date(s).</p>	YES <u>NO</u>
6.	<p>Has your Firm declared bankruptcy or been placed in receivership within the past five (5) years? (Please circle one).</p> <p style="text-align: center;">If YES, explain and indicate on separate signed sheet(s) the type of bankruptcy, the Firm's current recovery plan, and the applicable date(s).</p>	YES <u>NO</u>
7.	<p>Has your Firm been denied bond coverage by a surety company, or has there been a period of time when your Firm had no surety bond in place during a public construction project when one was required within the past five (5) years? (Please circle one).</p> <p style="text-align: center;">If YES, provide details on a separate signed sheet indicating the date(s) when your Firm was denied coverage and the name of the company or companies which denied coverage; and the period(s) during which you had no surety bond in place.</p>	YES <u>NO</u>
8.	<p>Has a project owner, general contractor, architect, or construction manager filed claim(s) in an amount exceeding \$50,000 against your Firm, or has your Firm filed claim(s) in an amount exceeding \$50,000 against a project owner, general contractor, architect, or construction manager in the past five (5) years?</p> <p style="text-align: center;">If YES, explain and indicate on separate signed sheet(s) the project name(s), claim(s) and the date(s) of claim(s).</p>	YES <u>NO</u>

9.	<p>Has your Firm or an Associated Firm been cited and/or assessed any penalties for non-compliance with state and/or federal laws and/or regulations, including public bidding requirements and Labor Code violations, within the past five (5) years?</p> <p>If "YES," indicate on separate signed sheet(s) the project name(s), violation(s), and date(s) of citation(s) and/or assessment(s).</p>	<p>YES NO</p>
10.	<p>Has your Firm been cited and/or assessed penalties by the Environmental Protection Agency, any air quality management district, any regional water quality control board, or any other environmental agency within the past five (5) years?</p> <p>If "yes," indicate on separate signed sheet(s) the project name(s), violation(s), and date(s) of citation .</p>	<p>YES NO</p>
11.	<p>Has CAL OSHA and/or federal Occupational Safety and Health Administration cited and assessed penalties against your Firm, including any "serious," "willful" or "repeat" violations of safety or health regulations within the past five (5) years?</p> <p>If "yes, " indicate on separate signed sheet(s) the project name(s), violation(s), and date(s) of citation . If the citation was appealed and a decision has been issued, state the case number and the date of the decision.</p>	<p>YES NO</p>
12.	<p>Has your Firm been required to pay either back wages or penalties for its failure to comply with California's prevailing wage laws, with California's apprenticeship laws or regulations, or with federal Davis-Bacon prevailing wage laws within the past five (5) years?</p> <p>If "yes," indicate on separate signed sheet(s) the project name(s), the nature of the violation(s), the name and owner of the project(s), the number of employees who were initially underpaid and the amount of back wages and penal ties that you' re Firm was required to pay.</p>	<p>YES NO</p>
13.	<p>Does your Firm require <u>weekly</u> documented safety meetings to be held for construction employees and field supervisors during the course of a project?</p>	<p>YES NO</p>
14.	<p>Provide the name, address and telephone number of the apprenticeship program (approved by the California Apprenticeship Council) from whom you intend to request the dispatch of apprentices to your Firm for use on any public work project for which you are awarded a contract by the District.</p>	
15.	<p>Has your Firm contracted for and completed construction of a minimum of:</p> <ul style="list-style-type: none"> • <u>Three (1)</u> California K-12 public school district construction projects, • Each with a value of at least \$500,000. and • All within the past five (5) years? <p>NOTE: You must list these projects in the "Contractor Project References" Section .</p>	<p>YES NO</p>

CONTRACTOR PROJECT REFERENCES

List **ALL** projects in which your Firm has participated as a contractor or first-tier subcontractor during the past **five (5) years**

- You may limit your response to the thirty (30) most-recently completed projects, but you **must** include at least the four (4) most recent California K-12 public school projects. Include all information indicated below on separate signed sheets as necessary, and explain or clarify any response as necessary

Project name/identification:
Project address/ location:
Project owner, contact person, and telephone :
Project architect name and telephone number:
If Contractor was a subcontractor on the project, name of general contractor and telephone number:
Scope of Work:
Original completion date:
Date completed:
Initial Firm contract value (as of time of bid award):
Final Firm contract value:
Did the project include constructing or modernizing an earthquake resistant building?

CERTIFICATION

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

Proper name of Contractor:

Name: _____

Title: _____

Signature: _____

Date: _____

ATTACHMENT B
Gilroy Unified School District
Pre-Construction Services Agreement

AGREEMENT FOR PRE-CONSTRUCTION SERVICES

BETWEEN

AND

GILROY UNIFIED SCHOOL DISTRICT

FOR

SOUTH VALLEY MIDDLE SCHOOL MODERNIZATION PROJECT

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AGREEMENT FOR PRE-CONSTRUCTION SERVICES

PREAMBLE

This Agreement for Pre-Construction Services (the “Agreement”) is entered into on this ____ day of _____, 2020 by and between _____ (“Pre-Construction Contractor”), with a business address at _____ and the Gilroy Unified School District, a California public school district (“District”), with offices located at 7810 Arroyo Circle, Gilroy, California 95020. District and Pre-Construction Contractor are sometimes individually referred to herein as “Party” and collectively as “Parties.”

RECITALS

WHEREAS, the District proposes to undertake the demolition, renovation, construction and installation of certain improvements at South Valley Middle School, as further defined and described below, and requires the services of a duly qualified pre-construction contractor.

WHEREAS, Pre-Construction Contractor represents that its employees are licensed to perform the services required under this Agreement in the State of California, as appropriate, and that Pre-Construction Contractor is qualified to perform the services required under this Agreement.

WHEREAS, the Parties intend that Pre-Construction Contractor provide professional services pursuant to this Agreement in such manner as to enable the Project to be designed with the standard of care described herein without burdening the District’s staff.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and covenants herein and other valuable consideration, receipt of which is acknowledged, the Parties agree as follows:

SECTION 1 GENERAL PROVISIONS

- 1.1** **DEFINITIONS.** When used in this Agreement or in the Exhibits, the following terms shall have the meanings set forth below:
- 1.1.1** **“Addendum”** shall mean written or graphic information (including without limitation drawings and specifications), prepared and issued prior to the receipt of Bids, which modifies or interprets the Bid Set by additions, deletions, clarifications, or corrections.
 - 1.1.2** **“Additional Services”** shall mean those services in addition to the Basic Services that are provided by Pre-Construction Contractor pursuant to a written request by the District.
 - 1.1.3** **“Agreement”** shall mean this document and all its identified exhibits, attachments and amendments.
 - 1.1.4** **“Architect”** shall mean the Architect of Record for the design of the Project, or any successor architect of record approved and appointed by the District for the design of the Project.

- 1.1.5 “Architect Consultant”** shall mean a person properly qualified and licensed in an aspect of design and construction employed at Architect’s sole expense, pursuant to prior approval from the District, to provide services for the Project.
- 1.1.6 “Architect’s Supplemental Instruction” or “ASI”** shall mean a set of drawings which better explains the Architect’s intent with respect to the design of a building or structure
- 1.1.7 “As-Built Documents”** shall mean the collection of documents assembled and prepared by the Contractor (including, without limitations the As-Built Drawings and specifications, shop drawings, approved changes, RFIs, manuals, etc.) showing the condition of the Project as actually built and accepted.
- 1.1.8 “As-Built Drawings”** shall mean the final set of drawings prepared by the Architect that incorporates all changes from all drawings, sketches, details, and clarifications recording all changes from the Bid Set.
- 1.1.9 “Basic Fee”** shall mean the compensation provided to Pre-Construction Contractor for providing Basic Services.
- 1.1.10 “Basic Services”** are described in Section 4 of this Agreement.
- 1.1.11 “Bid”** shall mean the written proposal submitted to the District by a contractor in accordance with the Bid Set for the construction of the Project.
- 1.1.12 “Bid Set”** shall mean the DSA Record Set, the construction contract, general conditions and any other documents included in the bid packages, including but not limited to any addenda, all in a form that District approves and uses to bid the construction of the Project.
- 1.1.13 “Bidder”** shall mean the person or entity submitting a Bid.
- 1.1.14 “BIM” or “Building Information Modeling”** shall mean the process of generating and managing building data during its life cycle. Typically it uses three-dimensional, real-time, dynamic modeling software to increase productivity in building design and construction. The process encompasses building geometry, spatial relationships, geographic information, and quality and properties of building components.
- 1.1.15 “Board”** shall mean the Board of Trustees of the Gilroy Unified School District.
- 1.1.16 “CDE”** shall mean the California Department of Education.
- 1.1.17 “Change Order” or “CO”** shall mean a written document between the District and the Contractor that is signed by the District and the Contractor authorizing a change in the work or and adjustment in the contract, or the contract time.
- 1.1.18 “Change Order Request” or “COR”** shall mean a proposed change(s) in contract amount, requirements or time (outside the scope of the construction contract and/or provisions of its changes clause) which becomes a Change Order when approved by the District and the Contractor.
- 1.1.19 “CHPS”** shall mean Collaborative for High Performance Schools.

- 1.1.20 “Construction Budget”** shall mean the amount of money that the District has allocated for the total Construction Cost for the Project, as may be amended by the District in its sole discretion.
- 1.1.21 “Construction Cost”** shall mean, as of acceptance of the Project, the cost of all labor, materials, and fixtures (but not trade fixtures) supplied by the Contractor and subcontractors to construct the Project, including mobilization, demobilization, materials, construction management fees, general conditions fees and expenses, fees paid to a Lease-Leaseback Contractor, and other costs typically included in this calculation and *excluding* (i) all fees and costs paid to the Architect and any Architect Consultant; (ii) all costs and expenses of services, reports, information, equipment and materials furnished by the District; (iii) all costs and fees related to off-site improvements; (iv) all costs incurred to remedy any design or construction defects or errors; and (v) any other Project-related costs and fees typically excluded.
- 1.1.22 “Construction Documents”** shall mean those documents which are required for the actual construction of the Project, including but not limited to the agreement between the District and the Contractor; complete working drawings and specifications setting forth in detail the work to be done and the materials, workmanship, finishes and equipment required for architectural, structural, mechanical, electrical systems and utility service-connected equipment and site work.
- 1.1.23 “Construction Phase(s)”** shall mean individual construction contract packages that are bid and/or contracted for separately.
- 1.1.24 “Constructability Review”** shall mean the review of the design documents to ascertain whether the design of the Project as depicted in the Construction Documents, and the documents themselves: (i) accurately and completely reflects the District’s objectives as explained to the Architect and Pre-Construction Contractor by the District; and (ii) are free of errors, omissions, conflicts or other deficiencies so that the Contractor can construct the Project as therein depicted within the Project Budget and without delays, disruptions, or additional costs.
- 1.1.25 “Contractor”** shall mean the general contractor or any other contractor selected to perform work or services on the Project or any replacement.
- 1.1.26 “District Design Standards”** shall be the implementation of standard equipment and/or products as determined by the District, into the overall Project design.
- 1.1.27 “District’s Representative”** shall mean the District’s Superintendent and/or Assistant Superintendent of Facilities and Operations and/or Director of Planning and Construction, or any authorized designee of those officers.
- 1.1.28 “DSA”** shall mean the Division of the State Architect of the State of California.
- 1.1.29 “DSA Record Set”** shall mean such documents, plans, drawings and specifications submitted to DSA as part of the design phase and stamped and approved by DSA for the Project.
- 1.1.30 “Educational Specifications”** shall mean the interrelated statements that communicate what educators believe is required to support a specific educational program.
- 1.1.31 “Funding Consultant”** shall mean any consultant designated by the District that assists the District in submitting applications for funding from programs administered by the State of California.

- 1.1.32 “Guaranteed Maximum Price” or “GMP”** shall mean the cost for construction and installation of a project and shall include both the “Estimated GMP” and the “Final GMP”.
- 1.1.33 “Inspector of Record” or “IOR”** shall mean a certified Inspector approved by DSA to inspect work pursuant to the Field Act (California Education Code §17280 *et seq.*) and applicable provisions of the California Code of Regulations. The IOR also serves as the representative of the District to conduct field inspections of the Project during construction.
- 1.1.34 “Lease-Leaseback”** shall mean a project delivery method under which the District leases real property it owns to a lease-leaseback entity and the lease-leaseback entity causes the construction of a facility the District desires on said real property and subleases the facility back to the District, with title to the facility vesting in the District at the end of the term of the sublease, as set forth in California Education Code §17406.
- 1.1.35 “LEED”** shall mean Leadership in Energy and Environmental Design as administered by the U.S. Green Building Council.
- 1.1.36 “Modernization/New Construction”** shall mean the comprehensive replacement or restoration of virtually all major systems, interior work (such as ceilings, partitions, doors, floor finishes, etc.) and building elements and features.
- 1.1.37 “MOU”** shall mean a memorandum of understanding.
- 1.1.38 “Notice of Completion” or “NOC”** shall mean the legal notice filed with the County Recorder after completion of the Project.
- 1.1.39 “OPSC”** shall mean the Office of Public School Construction of the State of California.
- 1.1.40 “Phase”** when used without the word “Construction” shall mean the various phases of architectural work described in the agreement with the Architect.
- 1.1.41 “Potential Change Order” or “PCO”** shall mean a written document before it has been approved and affected by the Contractor and the District.
- 1.1.42 “Prime Contract”** shall mean a contract entered into between the District and a Contractor.
- 1.1.43 “Principal(s)”** shall mean individual(s) who are participating owners of Pre-Construction Contractor and are authorized to act on behalf of the firm.
- 1.1.44 “Program Implementation Handbook”** shall mean the Program Implementation Handbook, First Edition dated December 2012 (a copy of which has been provided to the Pre-Construction Contractor), and any revisions thereto which are approved by the District, which contains information related to project deliverables, project management procedures, and other requirements that are inherent to the performance of this Agreement.
- 1.1.45 “Project”** shall mean the project described hereinafter in Section 3.
- 1.1.46 “Project Budget”** shall mean the sum total of all monies allocated by the District to defray costs of the work and services related to the Project including, but not limited to, professional services, all construction services (such as site work, prime contracts, consultants, materials), contingencies and applicable general conditions for each construction phase.

- 1.1.47 “Project Director”** shall mean, with reference to Pre-Construction Contractor, a licensed, experienced and well trained professional employed by Pre-Construction Contractor and fully authorized to represent Pre-Construction Contractor in all matters related to the Project including, but not limited to, executing change orders during construction, and to bind Pre-Construction Contractor to any commitments made on Pre-Construction Contractor’s behalf in connection herewith.
- 1.1.48 “Project Contractor”** shall mean the person assigned by the District to supervise the Project. The District will identify the Project Contractor(s) for each Project.
- 1.1.49 “Project Schedule”** shall mean the entire series of events necessary to design and construct the Project and encompasses work and services of the Architect, Architect Consultant(s), the Contractor and other consultants.
- 1.1.50 “Primavera Contract Management System” or “CMS”** shall mean the program/project management software required by the District to maintain, route and issue all design phase documents, construction documents, and close out documents.
- 1.1.51 “Request for Information” or “RFI”** shall mean a written request from the Contractor to the District or the Architect for clarification or information about the Construction Documents following contract award.
- 1.1.52 “Re-Use of Plans” or “Re-Use”** shall mean the process by which the Architect develops a design for the Project which meets the District’s Design Standards, Educational Specifications, Project Budget, and Project Schedule requirements, and is based upon a record set of plans, drawings, and specification approved by DSA for past projects constructed in other locations and including all Site Adaption requirements.
- 1.1.53 “SAB”** shall mean the State Allocation Board of the State of California.
- 1.1.54 “Services”** shall mean all labor, materials, supervision, services, tasks, and work that Pre-Construction Contractor is required to perform hereunder, including Basic Services and work reasonably inferred from this Agreement, as further described and clarified in Article 4 of this Agreement.
- 1.1.55 “Site Adaption”** shall mean all necessary revisions to a record set of plans, drawings and specifications approved by DSA for a past project utilized in the Re-Use of Plans to ensure that site specific conditions and District requirements are incorporated into the final design, and DSA Pre-Check (“PC”) Approval, if applicable, is maintained.
- 1.1.56 “SWPPP”** shall mean Storm Water Prevention and Pollution Plan.
- 1.1.57 “Time Impact Analysis” or “TIA”** shall mean a simplified analysis procedure typically specified on construction projects to facilitate the award of excusable days to project completion due to delays caused by either the District or the Contractor.
- 1.2 INCORPORATION OF RECITALS, EXHIBITS AND REFERENCED DOCUMENTS.** The Recitals above and all Exhibits attached to this Agreement, now or hereafter by agreement of the Parties, are incorporated herein by reference and made a part of this Agreement.

SECTION 2
RETENTION OF PRE-CONSTRUCTION CONTRACTOR

- 2.1 RETENTION OF PRE-CONSTRUCTION CONTRACTOR.** The District hereby retains Pre-Construction Contractor to perform, for consideration and upon the terms and conditions set forth herein, the Services, as may be hereafter amended in an expeditious, safe and satisfactory manner. Pre-Construction Contractor hereby accepts such retention and commits to perform all the Services in a professional and conscientious manner in accordance and consistent with highest industry standards and the standard of care generally employed by professionals licensed and qualified to perform similar services within the State of California. The Services shall be performed in a safe, expeditious and satisfactory manner, with allowance for periods of time required for (i) the District's review and approval of submissions to the District by Pre-Construction Contractor; (ii) review and approval of submissions to those authorities having jurisdiction over the Project; and (iii) Pre-Construction Contractor's review of submissions to Pre-Construction Contractor from the District, the Architect, or authorities having jurisdiction over the Project.
- 2.2 PROJECT DIRECTOR AND OTHER EMPLOYEES.** Pre-Construction Contractor shall appoint and designate one employee to serve as the Project Director for the Project. The Project Director shall maintain personal oversight of the Project and the Services and shall be the primary contact on Pre-Construction Contractor's behalf for all matters related to the Project for which he or she is designated as Project Director. The Project Director shall be vested with full authority to represent and act on behalf of Pre-Construction Contractor for all purposes under this Agreement.
- 2.3 PRE-CONSTRUCTION CONTRACTOR COVENANT AGAINST CONTINGENT FEES.** Pre-Construction Contractor warrants and represents that it has not employed or retained any company or person, other than a bona fide employee working solely for Pre-Construction Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Pre-Construction Contractor, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the Basic Fee or otherwise recover, the full amount of such fee, commission, percentage fee, gift, or contingency.

SECTION 3
THE PROJECT

The Project consists of the demolition, renovation, construction and installation of certain improvements at South Valley Middle School as is described more fully on Exhibit A.

SECTION 4
SERVICES

- 4.1 IN GENERAL.**
- 4.1.1 Employment of Personnel.** Pre-Construction Contractor shall employ, at its own cost and expense, any and all personnel needed to perform the Services and the Additional Services. Pre-Construction Contractor must identify all personnel that will perform work at any District site and must obtain fingerprinting clearance from the District, as described in Section 14.2.3 below. Pre-Construction Contractor agrees to reallocate any personnel whose work is unsatisfactory to the District. Pre-

Construction Contractor shall at all times be solely responsible for the compensation, benefits, tax deductions, insurance or other requirements of any laws applicable to its personnel.

4.1.2 Cooperation with District and Other Consultants. Pre-Construction Contractor shall confer and cooperate with the District, DSA, the Project Contractor, the Architect and other District consultants, if any, in all matters and activities as related to this Agreement and the Project.

4.1.3 Project Communication. In all cases, Pre-Construction Contractor shall direct Project communication to the District's Project Contractor, including any correspondence to the District, the District's consultants, District staff, the Architect, contractors (excluding those contracted by Pre-Construction Contractor directly to complete the Project), and/or any members of the public related to the Project.

4.1.4 Primavera Contract Management System or CMS. The Project will be managed through the Primavera Contract Management System project management software during the construction phase through closeout. Pre-Construction Contractor will utilize the Primavera Contract Management System software as required by the District. Pre-Construction Contractor understands and agrees that Pre-Construction Contractor shall be responsible for the cost of all fees and licenses to utilize and participate in the Primavera Contract Management System. Pre-Construction Contractor further understands and agrees that the District may, at its sole option, advance the cost for such fees and licenses on behalf of Pre-Construction Contractor. In the event that the District advances the cost of such fees and licenses on behalf of Pre-Construction Contractor, Pre-Construction Contractor understands and agrees that the District shall be entitled to a credit in the amount of such costs to be charged against Pre-Construction Contractor's compensation for reimbursable expenses pursuant to Section 5.4 and such costs will be charged against Pre-Construction Contractor's maximum allowable reimbursable expenses.

4.2 BASIC SERVICES.

4.2.1 Pre-Construction Phase.

4.2.1.1 Pre-Construction Contractor shall communicate and coordinate with the District and the Architect to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the District.

4.2.1.2 Pre-Construction Contractor shall provide a preliminary evaluation of the Project Schedule, the Construction Budget, and the Construction Cost, each in terms of the other.

4.2.1.3 The Architect's agreement with the District may include numerous Phases of services described in such agreement. During the Architect's services, Pre-Construction Contractor shall coordinate with the Architect as necessary to deliver the Services and support the schematic design, design development, construction documents, DSA submittal development and approval, and bid preparation, administration, review of bids, and development of a proposed Guaranteed Maximum Price ("GMP").

4.2.1.4 Pre-Construction Contractor shall:

- (1) Perform an ongoing review of the Architect's programming plan including the size of space, proposed finishes, ceiling heights, building height, exterior finishes, circulation spaces, any necessary ancillary spaces, and any anticipated site work;

(i) Pre-Construction Contractor shall submit to the Project Contractor, at each document review Phase, an analysis of the Architect's program in comparison to the District's approved

Educational Specifications, including quantified cost and time impacts associated with each variance.

- (2) Perform an ongoing analyses and review of the Construction Documents during their development and advise and make recommendations on proposed site use and improvements, facility improvements, selection of materials, building systems and equipment, Constructability Reviews, value engineering and related quality assurance/quality control consulting, scheduling, and methods of Project delivery.
- (3) Pre-Construction Contractor shall advise and provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to construction cost and scheduling including, but not limited to, costs of alternative designs or materials, preliminary budgets, and possible economies.
- (4) Regularly revise and update a Project scope of work document in coordination with the Architect to:
 - (i) Identify, quantify, and delineate the trade-specific scopes of work, how they are separate from each other, and where coordination is required to deliver a complete system for all components of the Project;
 - (ii) Identify potential scope gaps, or scope overlaps between trades and present such findings to the Architect and the Project Contractor in a timely manner for review and consideration;
 - (iii) Identify long lead procurement items and approval activities required for each trade's scope of work; and
 - (iv) Identify submittal requirements, agency approvals, permit requirements, licensing requirements, and any other necessary items that are required for timely completion of each trade's scope of work.
- (5) Coordinate actively with the Architect to provide trade coordination input into the design process to ensure that all Construction Documents are fully coordinated to the extent reasonable given the information available at the time of submittal.
- (6) Perform ongoing and accurate Construction Cost estimating to confirm that cost to complete the Project does not exceed the Project Budget or the Construction Budget, including regular reconciliation reports between Architect's and Pre-Construction Contractor's cost estimates, including square foot pricing at schematics, detailed line item quantities and costs at conceptual design, and regular cost estimate updates at design development, construction documents, DSA submittal, bid set and further Phases as needed.
- (7) Prepare and periodically update an ongoing and accurate Project Schedule for the Architect's review and the District's acceptance showing major construction milestones including but not limited to: start of construction, mobilization, demolition, abatement, site work, foundations, structure, mechanical/electrical/plumbing/fire sprinkler (MEPF) systems, building envelope, exterior finishes, interior finishes, landscaping/hardscaping, and Project completion. The Project Schedule must include the following information: detailed work activities properly sequenced for trade coordination planning as needed to ensure that the Project can be completed within the allotted construction schedule, long lead items are identified, curing

times are identified, procurement schedule requirements are defined, submittal schedule requirements are defined, and other timeline and schedule planning as necessary to ensure that the Project can be constructed within the allotted timeframe. Pre-Construction Contractor shall obtain the Architect's approval for the portion of the preliminary Project Schedule relating to the performance of the Architect's services. In the Project Schedule, Pre-Construction Contractor shall coordinate and integrate Pre-Construction Contractor's Services, the Architect's services, the construction of the Project, the District's responsibilities, inspection requirements, document review periods, and all other activities required for Project completion, highlighting critical and long-lead-time items.

- (8) Develop a list of recommended contingencies, allowances, and estimated escalation.
- (9) Develop proposed general conditions and all proposed markups including but not limited to: temporary utilities, trailers, equipment and other on-site and off-site costs, fees, insurance, and bonding.
- (10) Develop site logistics and a safety plan showing laydown areas, construction traffic flow, construction personnel parking, school staff access, student safe routes, site safety measures, emergency evacuation areas, and other issues affecting the school site's vehicular and pedestrian circulation, as well as any and all effects on the educational program of the school.
- (11) Develop a complete list of bid alternates and proposed bid list of trade contractors as well as criteria for trade contractors pre-qualification, with at least three (3) trade contractors per trade.
- (12) Develop a proposed GMP with full detail, bid results, and Pre-Construction Contractor notes, including bid alternates and associated pricing.

4.2.1.5 Further, Pre-Construction Contractor shall provide ongoing advice to the District and the Architect in a team effort to assure that the Project is delivered on time and on budget. To provide such ongoing support and consulting, the Pre-Construction Contractor shall:

- (1) Participate in weekly Project progress meetings with Architect and Project Contractor to provide ongoing updates of status of items set forth in 4.2.1.4 (1) through (12) above, and to discuss any and all issues that arise that may affect the Project.
- (2) Submit by 12:00 p.m. every Friday, a weekly progress report which includes, but is not to be limited to, the following information:
 - (i) Status of all required deliverables in progress, and required within 4 weeks of date of report;
 - (ii) Design intent and scope questions;
 - (iii) Programming status;
 - (iv) Coordination reviews;
 - (v) Regulatory and agency review updates;
 - (vi) Progress on any required studies and deliverables;
 - (vii) Contract administration;

(viii) Budget and value engineering; and

(ix) Schedule status.

- (3) Provide support to the Project Contractor as requested and or required to provide accurate and complete monthly updates to the Board and the Citizen's Bond Oversight Committee, including but not limited to (i) attending meetings with the Project Contractor; (ii) preparing reports and presentations to demonstrate Project progress; and (iii) coordinating with Architect and Architect Consultants to ensure complete and accurate information is provided at all times to the Board and Citizen's Bond Oversight Committee.

4.2.1.6 Following the District's approval of each Phase of the development of Construction Documents, Pre-Construction Contractor shall update and submit the latest estimate of the Construction Cost and the Project Schedule, and all other Phase Deliverables as indicated in the Program Implementation Handbook for the Architect's review and the District's approval.

4.2.1.7 Changes Required to Meet Construction Budget. If the lowest responsible bid, the preconstruction estimate as validated by the District, or the GMP exceeds one hundred ten percent (110%) of the Construction Budget, Pre-Construction Contractor shall work with the Architect to revise the scope and/or design of the Project at no additional expense to the District. The District shall approve or disapprove, in its sole discretion, all proposed changes to the scope and/or design intended to effect cost reduction and no such changes shall be effective until approved by the District.

4.2.1.8 Bidding. All questions concerning the intent or interpretation of the bidding and Construction Documents shall be referred to the District for screening and subsequent processing through the Architect and/or Pre-Construction Contractor.

Pre-Construction Contractor shall assist the District in evaluating all Bids and contract proposals, evaluating substitutions proposed by Bidders, and awarding the Prime Contracts. Pre-Construction Contractor shall review the qualifications of all Bidders and make recommendations to the District as to whether, in Pre-Construction Contractor's professional opinion, Bidders are qualified and meet minimum requirements for performance of the work.

4.3 ADDITIONAL SERVICES

4.3.1 Pre-Construction Contractor Additional Services. Additional Services for the Project will require written request or pre-authorization in writing by the District following specific approval of such services by the District Board of Trustees. It is understood and agreed that Pre-Construction Contractor shall not perform any Additional Services unless and until Pre-Construction Contractor receives specific written approval for such Additional Services from the District Board of Trustees. If Additional Services result in a modification of the Basic Fee, then Pre-Construction Contractor shall be paid for such additional services as part of the payment for the Basic Fee. All other Additional Services shall be paid by the District as provided in Section 5.2, Compensation for Additional Services. It is understood and agreed that if Pre-Construction Contractor performs any services which it claims are Additional Services without receiving prior written approval from the District Board of Trustees, Pre-Construction Contractor shall not be paid for such claimed Additional Services.

SECTION 5

PRE-CONSTRUCTION CONTRACTOR'S COMPENSATION & PAYMENT SCHEDULE

5.1 COMPENSATION FOR BASIC SERVICES

5.1.1 Compensation Description. Pre-Construction Contractor shall perform the Basic Services in exchange for compensation equal to the Basic Fee of:

_____ – the “Basic Fee”.

Pre-Construction Contractor shall submit for the District’s approval a proposed Schedule of Values (“SOV”) within 14 days of receipt of the executed Agreement, indicating the Pre-Construction Contractor’s distribution of the Basic Fee among the various Services, for use in determining the billable amounts to be invoiced by Pre-Construction Contractor to the District. The District’s approval of the SOV shall not be unreasonably withheld. Pre-Construction Contractor shall allocate in the SOV a minimum of 5% of the Basic Fee to the DSA approval of the Project, and 5% of the Basic Fee to the completion of the bid documents/preparation of the proposed GMP.

5.1.2 Pre-Construction Contractor agrees that if it is selected to perform the construction services for the Project, the GMP shall limit the Pre-Construction Contractor’s fee for overhead, general conditions, markups, insurance, bonds, fees and retune of contingency to the following: **[INSERT pursuant to response to RFP/Q]**

5.2 COMPENSATION FOR ADDITIONAL SERVICES

5.2.1 Fees negotiated for Additional Services pursuant to 4.3.1 that result in a change in the scope of the Project or Basic Services shall be processed as an amendment to the Basic Services and Basic Fee, subject to the approval of District’s Board of Trustees.

5.2.2 All other fees for Additional Services may be negotiated on a fixed fee or time and materials basis.

5.3 DISPUTED AMOUNTS. In the event of any good faith dispute concerning a particular payment or a portion of a payment under this Agreement, the District shall have the right to do either of the following: (i) make such disputed payment to Pre-Construction Contractor without prejudice to the District’s right to contest the amount so paid; or (ii) withhold up to 150% of the disputed amounts. If the District withholds amounts invoiced by Pre-Construction Contractor, the District will notify Pre-Construction Contractor in writing of the reasons for the withholding. From and after the date such notice is given, the District and Pre-Construction Contractor shall use their good faith efforts to resolve the dispute as quickly as practicable under the circumstances. If the District has given such notice, Pre-Construction Contractor shall not be entitled to terminate this Agreement or suspend Services hereunder on account of such nonpayment, provided the District makes payment for all undisputed sums. If the District chooses to withhold payments under clause (ii) of this Section and if it is subsequently determined that the District owes an additional payment to Pre-Construction Contractor, the District shall pay such amount to Pre-Construction Contractor. If the District chooses to proceed under clause (i) of this Section and it is subsequently determined that the District overpaid Pre-Construction Contractor, Pre-Construction Contractor shall promptly refund to the District the amount of such overpayment.

5.4 COMPENSATION FOR REIMBURSABLE EXPENSES

5.4.1 PRIOR APPROVAL. Reimbursable expenses and other approved charges are not included in the Basic Fee; however, the reimbursable expenses and other approved charges shall not exceed _____ dollars (\$_____.00) without the prior written approval by the District. The following will not be reimbursed under this Agreement:

5.4.1.1 Travel costs associated with delivery of Basic Services not explicitly approved under Section 5.4.2.

5.4.1.2 Consultant fees and expenses not explicitly approved under Section 5.4.2.

5.4.1.3 Any other cost or expense not explicitly approved under Section 5.4.2.

5.4.2 REIMBURSABLE EXPENSES. Claims for reimbursable expenses shall be documented by appropriate invoices and supporting receipts. Pre-Construction Contractor may be reimbursed for those reasonable out-of pocket expenses set forth below that are incurred and paid for by Pre-Construction Contractor in furtherance of performance of its obligations under this Agreement, but only to the extent that such expenses are directly related to Services satisfactorily completed, are approved by the District in writing and in total do not exceed the amount set forth in Section 5.4.1. The following is the EXCULSIVE list of reimbursable expenses:

5.4.2.1 Travel and Mileage. Pre-Construction Contractor must request the travel in writing and justify why the travel should be reimbursed. Travel expenses must be approved in writing by District, in its sole discretion. Trips from any Pre-Construction Contractor's office to the Project site(s) or to the District's office will not be approved for reimbursement.

5.4.2.2 Fees for Consultants. Fees for consultants hired and paid by Pre-Construction Contractor at the written request of District that are not provided as Basic Services.

5.5 INVOICES

5.5.1 Invoices for Pre-Construction Contractor's Basic Services. Following completion of the Services applicable to each phase set forth in the SOV, or agreement by the District to consider an interim invoice, Pre-Construction Contractor shall submit an invoice in form and substance satisfactory to the District in an amount not to exceed the amount specified as the portion of the Basic Fee to be paid for that phase set forth in the SOV for the Services identified in the invoice.

5.5.1.1 Each invoice must be accompanied by an Invoice Cover Sheet indicating amounts billed to date and remaining to be paid.

5.5.1.2 The District shall pay Pre-Construction Contractor for all undisputed amounts, which are approved by the District pursuant to this Agreement, no later than sixty (60) calendar days from the date of receipt by the District of an invoice from Pre-Construction Contractor. If District withholds any amount following a default, as provided in Section 6 of this Agreement, Pre-Construction Contractor shall certify in each subsequent invoice that none of the amounts invoiced represent any portion of the amounts identified for withholding. Withheld amounts shall be paid as specified on the notice from the District informing Pre-Construction Contractor that the District elects to exercise its right to withhold payment following a Pre-Construction Contractor default, if any.

5.5.2 Invoices for Additional Services. Except for Additional Services that are incorporated into the Basic Fee, payments for Additional Services shall be made monthly after approval by the District's Board of Trustees. Pre-Construction Contractor's invoice shall be clearly marked "Request for Payment for Additional Services." Each invoice shall be accompanied by receipts and adequate supporting

information. Payment on a properly submitted, fully supported and documented invoice will be due within sixty (60) days of the date all required supporting information is received by the District.

- 5.5.3 Invoices for Reimbursable Expenses.** Payments for Reimbursable Expenses, if any, shall be made monthly, unless otherwise specified within the reimbursable expense authorization. Pre-Construction Contractor's invoice shall be clearly marked "Request for Payment of Reimbursable Expenses." Each invoice shall be accompanied by receipts and adequate supporting information. Payment on a properly submitted, fully supported and documented invoice will be due within sixty (60) days of the date all required supporting information is received by the District, unless the District disputes in good faith any portion of the amount claimed by Pre-Construction Contractor to be due.
- 5.5.4 Final Invoice.** Upon completion of all Services, Pre-Construction Contractor shall prepare a final invoice for the remaining amount due, including and separately identifying any amounts withheld by District hereunder. This invoice shall be prominently noted **FINAL INVOICE FOR PRE-CONSTRUCTION SERVICES FOR THE SOUTH VALLEY MIDDLE SCHOOL PROJECT.** The District shall make payment within sixty (60) days of the District's approval of the final invoice.
- 5.5.5 Combined Invoices.** Invoices for Basic Services, Additional Services and Reimbursable Expenses may be combined on a single invoice provided that the invoice is itemized and follows the instructions above.

SECTION 6

DEFAULT; REMEDIES; SUSPENSION AND TERMINATION

6.1 TERMINATION BY DISTRICT

- 6.1.1 For Cause.** The District may terminate all or any portion of this Agreement or the Services for cause in the event of a Pre-Construction Contractor Default. With respect to any monetary Pre-Construction Contractor Default, the termination shall be effective if Pre-Construction Contractor fails to cure such default within fifteen (15) calendar days following issuance of written notice thereof by the District. With respect to any non-monetary Pre-Construction Contractor Default for which no time period for cure is otherwise specified below, the termination shall be effective if Pre-Construction Contractor fails to cure such default within thirty (30) calendar days following issuance of written notice thereof by the District, or if the cure by its nature takes longer, fails to commence such cure within thirty (30) calendar days from the date of issuance of the notice and diligently prosecute such cure to the satisfaction of the District. If the District does not terminate, the District will have the right to withhold monies otherwise payable to Pre-Construction Contractor until completion of all Services. If the District incurs additional costs, expenses or other damages due to the failure of Pre-Construction Contractor to properly perform pursuant to this Agreement, those costs, expenses or other damages shall be deducted from the amount payable to Pre-Construction Contractor. If the amount payable to Pre-Construction Contractor exceeds the amounts withheld, the balance will be paid to Pre-Construction Contractor upon completion of all Services. If the costs, expenses or other damages incurred by the District exceed the amounts withheld, Pre-Construction Contractor shall be liable to District for the difference and Pre-Construction Contractor shall promptly pay the District such difference. The provisions of this Paragraph 6.1.1 are in addition to, and not a limitation upon, any other rights and remedies of the District under law or in equity and shall survive the termination of this Agreement.
- 6.1.2 For Convenience.** The District may terminate, abandon or suspend performance of this Agreement for convenience and without cause at any time upon thirty (30) days written notice to Pre-Construction Contractor, in which case the District will pay Pre-Construction Contractor as provided in Section 5

for all Services and authorized Additional Services actually performed, and all authorized Reimbursable Expenses actually incurred and paid, under and in accordance with this Agreement, up to and including the date of termination; provided that such payments shall not exceed the percentage amounts specified as compensation for the phases set forth in the SOV of the Services completed, plus any Additional Services and Reimbursable Expenses completed prior to termination, unless the District at its sole discretion determines that demobilization or other compensation is appropriate. After a notice of termination is given, Pre-Construction Contractor shall submit to the District a final claim for payment, in the form and with certifications prescribed by the District. Such claim shall be submitted promptly, but in no event later than sixty (60) calendar days after the Termination Date specified on the notice of termination.

Such payment shall be Pre-Construction Contractor's sole and exclusive compensation and the District shall have no liability to Pre-Construction Contractor for any other compensation or damages, including without limitation, anticipated profit, prospective losses, legal fees or costs associated with legal representation or consequential damages, of any kind.

6.1.3 Temporary Suspension of Services. If the Services are suspended in whole or in part by the District for less than one hundred twenty (120) consecutive calendar days and notice to that effect was provided to Pre-Construction Contractor prior to the suspension of the Services, Pre-Construction Contractor shall complete any remaining Services in accordance with the terms herein as in existence at the time of suspension and Pre-Construction Contractor shall not be entitled to additional compensation. If the Services are suspended, in whole or in part, by the District for one hundred twenty (120) consecutive calendar days or more, the Project Schedule shall be adjusted and Pre-Construction Contractor's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Services.

6.2 PRE-CONSTRUCTION CONTRACTOR DEFAULT. The occurrence of one or more of the following events shall constitute a "Pre-Construction Contractor Default" under this Agreement:

6.2.1 Inability to pay Debts and Failure to Pay Consultants. At any time prior to the expiration or termination of this Agreement, Pre-Construction Contractor is unable to pay its debts in the ordinary course of business as they come due, including but not limited to failure to pay, when due, invoices from consultant(s) providing services in connection with this Agreement.

6.2.2 Assignment for the Benefit of Creditors. 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 Pre-Construction Contractor, and the same is not discharged within ninety (90) days of commencement.

6.2.3 False or Misleading. Any representation or warranty made by Pre-Construction Contractor in this Agreement or in connection with any Services proves to be false or misleading in any material respect.

6.2.4 Defective Services; Errors or Omissions; Failure to Perform. Pre-Construction Contractor (a) provides defective services, including any deficiencies due to errors or omissions; or (b) fails to deliver Services in a timely manner; or (c) causes any delays for any reason, including providing defective Services; or (d) fails to perform any obligations under this Agreement (including, without limitation, failure to supply sufficient skilled personnel or suitable materials or equipment or failure to adhere to the Project Schedule).

- 6.2.5 Willful Violation.** The District determines that (a) Pre-Construction Contractor is willfully violating any conditions or covenants of this Agreement or the Construction Documents; or (b) Pre-Construction Contractor is executing Services in bad faith or not in accordance with terms hereof.
- 6.2.6 Failure to Cooperate With DSA.** Failure to comply with DSA requirements or to submit documents at any pre-scheduled times in accordance with the MOU process will constitute an automatic default.
- 6.2.7 Unapproved Assignment.** Pre-Construction Contractor attempts to assign this Agreement or any Services hereunder without prior written approval from the District.
- 6.2.8 Disregard of District Authority or Direction.** Pre-Construction Contractor disregards the authority of the District or fails or refuses to perform any reasonable act or service requested by the District hereunder.
- 6.2.9 Violation of Applicable Law.** Pre-Construction Contractor violates any applicable law, statute or governmental regulation in connection with any Services or this Agreement.
- 6.2.10 Failure To Maintain Errors and Omissions Insurance.** Pre-Construction Contractor fails to maintain the insurance required pursuant to Section 11.2. herein.

6.3 DISTRICT REMEDIES

- 6.3.1 General Remedies.** If a Pre-Construction Contractor Default occurs under this Agreement, the District may exercise any right or remedy it has under this Agreement, or otherwise available at law or equity, and all of the District's rights and remedies shall be cumulative.
- 6.3.2 Withholding Payment.** If a Pre-Construction Contractor Default occurs, the District's obligation to disburse further funds to Pre-Construction Contractor pursuant to this Agreement may be terminated or suspended by the District, in its sole discretion. In connection with any Pre-Construction Contractor Default, the District may withhold all or a portion of any payments then or thereafter due to Pre-Construction Contractor until Pre-Construction Contractor cures any and all defaults to the satisfaction of the District.
- 6.3.3 Stop Work.** Upon the occurrence of a Pre-Construction Contractor Default, the District may, at its sole and absolute discretion, order Pre-Construction Contractor in writing to stop work on the Services, or any portion thereof, until the Pre-Construction Contractor Default has been cured. Pre-Construction Contractor shall make best efforts to avoid delays and shall be solely responsible for any additional costs to the Project in connection with such "stop work" order.
- 6.3.4 Self Help.** Upon the occurrence of a Pre-Construction Contractor Default, the District may, at its sole and absolute discretion, without prejudice to other remedies, correct any deficiencies resulting from the Pre-Construction Contractor Default. In such case, the District may deduct costs relating to correcting such deficiencies, including, without limitation, compensation for additional services and expenses of a supplemental or replacement architect, design or engineering consultants and other consultants made necessary by such defaults, including services of legal counsel, from payments then or thereafter due to Pre-Construction Contractor and may adjust the Basic Fee and any fees for Additional Services accordingly. If the payments then or thereafter due to Pre-Construction Contractor are not sufficient to cover the amount of the deduction, Pre-Construction Contractor shall pay the difference to the District.

6.3.5 Payment to Consultant. If the Pre-Construction Contractor Default is due to Pre-Construction Contractor's failure to pay, when due, invoices of a consultant providing Services in connection with this Agreement, the District shall have the right, but no obligation, to pay the amount invoiced directly to that consultant from any amounts then due Pre-Construction Contractor, provided that the District has accepted the Services to which the invoices refer. The District shall have no further liability to Pre-Construction Contractor in connection therewith.

6.4 TERMINATION BY PRE-CONSTRUCTION CONTRACTOR. Pre-Construction Contractor may terminate this Agreement only upon the occurrence of one of the following conditions:

6.4.1 Failure to Pay Undisputed Amounts. Pre-Construction Contractor may terminate upon thirty (30) days written notice if the District fails to make any undisputed payment to Pre-Construction Contractor when due and such failure remains uncured for forty-five (45) calendar days after written notice to the District.

6.4.2 Long Term Suspension of Project. If the Project on which Pre-Construction Contractor is providing Services are suspended or abandoned by the District for more than one hundred twenty (120) consecutive calendar days, Pre-Construction Contractor may terminate this Agreement upon ninety (90) calendar days' notice to the District, provided the District does not reactivate the Project within such ninety (90) calendar day period.

6.5 SOLE REMEDY UPON TERMINATION BY PRE-CONSTRUCTION CONTRACTOR

6.5.1 Payment for Services. In the event of a termination of this Agreement by Pre-Construction Contractor in accordance with Section 6.4, the District shall pay Pre-Construction Contractor an amount for its Services, Additional Services and Reimbursable Expenses calculated in accordance with Paragraph 6.1.2 of this Agreement. Such payment shall be Pre-Construction Contractor's sole and exclusive compensation and the District shall have no further liability or obligation to Pre-Construction Contractor for any other compensation or damages, including, without limitation, anticipated profit, prospective losses, business devastation, legal fees or costs associated with legal representation or consequential damages of any kind.

SECTION 7

DUTIES AND LIABILITIES OF DISTRICT

7.1 DUTIES

7.1.1 Project Contractor: The Project Contractor represents the District it in all matters pertaining to the Services. The Project Contractor shall cooperate with Pre-Construction Contractor in all matters relative to this Agreement in order to permit the performance of the work without undue delay.

7.1.2 Statement of Building Program. The District shall provide full information as to the requirements for and the education program to be conducted in the Project, including budget limitations and scheduling. Pre-Construction Contractor shall have the right to rely upon such information unless Pre-Construction Contractor knows or should know that the information is inaccurate or incomplete.

7.1.3 Architect. The District shall retain the Architect whose services, duties and responsibilities are described in the agreement between the District and the Architect. The District-Architect agreement shall be furnished to Pre-Construction Contractor.

7.1.4 District Performance of Work. The District reserves the right to perform work related to the Project with the District's own forces and/or to award contracts in connection with the Project. The District shall notify Pre-Construction Contractor of the District's intent to perform work related to the Project with the District's own forces and/or to award contracts in connection with the Project.

7.2 LIMITATION ON LIABILITY OF DISTRICT

7.2.1 Other than as specifically provided elsewhere in this Agreement, the District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall the District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

7.2.2 The District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Pre-Construction Contractor, its employees, agents, consultants, invitees or guests even if such equipment has been furnished or loaned to Pre-Construction Contractor by the District.

SECTION 8 PROJECT CONSTRUCTION COST ESTIMATES

8.1 CONSTRUCTION BUDGET. The Construction Budget may be revised at the conclusion of design or other earlier phase of the Project at the discretion of the District based on input from the Architect and Pre-Construction Contractor.

8.2 ESTIMATED PROJECT CONSTRUCTION COST. The estimated Construction Cost shall be prepared and updated by the Pre-Construction Contractor as required by this Agreement. The estimated Construction Cost shall under no circumstances exceed the Construction Budget, including a reasonable allowance built in for estimating design contingency. The Pre-Construction Contractor shall, at no additional cost to the District, incorporate any and all revisions needed to the preliminary studies, schematic drawings, site utilization plans and Construction Documents if at any time Pre-Construction Contractor becomes aware that the estimated Construction Cost, as recalculated, will exceed the Construction Budget; provided that this limitation shall not apply to unanticipated cost increases beyond the reasonable control of Pre-Construction Contractor.

SECTION 9 PROJECT SCHEDULE

9.1 SCHEDULE

9.1.1 Time for Completion. Time is of the essence and failure of Pre-Construction Contractor to perform the Services on time shall constitute a material breach of this Agreement. It shall not be a material breach if a delay is beyond Pre-Construction Contractor's control as set forth in Section 9.1.4 below. The milestones set forth on the Project Schedule are binding, unless extended in writing by the District Representative.

9.1.2 Delays. Except as otherwise provided in Section 5.2, Pre-Construction Contractor shall not be entitled to any compensation additional to the Basic Fee, damages or any losses incurred in connection with

delays due to errors, omissions, intentional or negligent acts of Pre-Construction Contractor (including their respective employees or those in a direct contractual relationship with either).

9.1.3 Notice of Delay. Pre-Construction Contractor shall immediately notify the District of any delay in: (i) the preparation and/or production of any of the Architect's documents hereunder; (ii) the performance of Services; or (iii) connection with any matter attended to by Pre-Construction Contractor or with which Pre-Construction Contractor is familiar (whether or not as the result of an act or omission of another).

Pre-Construction Contractor shall consult and advise the District in connection with any such delay and its effect on the Project Schedule and shall take such action on the District's behalf as the District may request in accordance with the terms and conditions of this Agreement.

9.1.4 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 delayed 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 or sixty (60) days, whichever is less.

SECTION 10

DOCUMENTS OWNERSHIP, LICENSE, COPYRIGHT AND USE

10.1 OWNERSHIP. Pursuant to California Education Code Section 17316 and the requirements of the District, all plans, specifications, original or reproducible transparencies of any drawings and master plans, preliminary sketches, architectural presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded in electronic form (hereinafter referred to as the "Project Documents") shall be and remain the property of the District.

10.2 DELIVERABLES UPON TERMINATION. Following the termination of any Services, for any reason, or abandonment of all or a portion of the Project, the District may utilize the Construction Documents and the Project Documents as it sees fit and Pre-Construction Contractor shall deliver to the District all Construction Documents and Project Documents.

10.3 NO REPRODUCTION OR USE BY PRE-CONSTRUCTION CONTRACTOR OR THIRD PARTIES. After completion of the Project, or earlier termination of the Services, Pre-Construction Contractor shall not use the Construction Documents for any purpose without District's prior written consent. In addition, Pre-Construction Contractor shall not permit reproductions to be made of any Construction Documents without the approval of the District and shall refer all requests by other persons to the District.

SECTION 11

INDEMNIFICATION AND INSURANCE

11.1 INDEMNIFICATION.

11.1.1 INDEMNITY AND LITIGATION COSTS. To the fullest extent permitted by law, Pre-Construction Contractor agrees that it will indemnify, defend and hold the District, the District's Representative, members of the District's Board of Trustees, directors, officers, employees, agents and authorized volunteers (the "Indemnitees") entirely harmless from all liability arising out of:

11.1.1.1 any and all claims under worker's compensation acts and other employee benefit acts with respect to Pre-Construction Contractor's employees arising out of Pre-Construction Contractor's work under this Agreement; and

11.1.1.2 any claim, loss, injury to or death of persons or damage to property to the extent that it is caused by any negligent or reckless act, error or omission or willful misconduct (other than a professional act or omission) of Pre-Construction Contractor, its officers, employees, consultants, subconsultants or agents, including all damages due to loss or theft sustained by any person, firm or corporation including the Indemnitees, arising out of, or in any way connected with the Project, including injury or damage either on or off District property, but not for any loss, injury, death or damage caused by the active negligence or willful misconduct of the Indemnitees or of other third parties for which Pre-Construction Contractor is not legally liable.

11.1.2 To the fullest extent permitted by law, Pre-Construction Contractor agrees to indemnify and hold the Indemnitees entirely harmless from all claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct in the performance of professional services by Pre-Construction Contractor, its officers, employees, consultants, subconsultants or agents, pursuant to this Agreement.

11.1.3 Pre-Construction Contractor's obligation to indemnify does not include the obligation to defend actions or proceedings brought against the Indemnitees but rather to reimburse the Indemnitees for attorney's fees and costs incurred by the Indemnitees in defending such actions or proceedings brought against the Indemnitees to the extent such actions or proceedings arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Pre-Construction Contractor, but not to the extent of loss, injury, death or damage caused by the active negligence or willful misconduct of District or of other third parties for which Pre-Construction Contractor is not legally liable.

11.1.4 Survival of Indemnities. The provisions of this Section shall survive the termination of this Agreement.

11.2 INSURANCE. Without in any way affecting the indemnity provided in or by Section 11.1, before commencement of any Services, Pre-Construction Contractor shall procure and maintain at its own cost and expense for the duration of the Services, and longer as required by the District against claims for injuries to persons or damages to property which may arise from or in connection with the Services, the types and amounts of insurance set forth herein.

11.2.1 Minimum Limits of Insurance. Pre-Construction Contractor shall procure and maintain the types and amounts of coverage as follows:

11.2.1.1 Commercial General Liability Insurance with a limit of not less than \$1,000,000 each occurrence for bodily injury, personal injury and property damage/\$2,000,000.

11.2.1.2 Automobile Liability Insurance (Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto)). Minimum of \$2,000,000 limit each accident.

11.2.1.3 Professional Liability (Errors and Omissions) Insurance with a limit not less than \$1,000,000 per claim and \$2,000,000.00 in the annual aggregate.

11.2.1.4 Workers' Compensation Insurance as required by the State of California (Division IV of the California Labor Code, and any amendatory acts or provisions thereto).

11.2.1.5 Employer's Liability Insurance in an amount not less than \$1,000,000 per accident for bodily injury or disease.

11.2.2 Minimum Scope of Insurance.

11.2.2.1 Commercial General Liability insurance shall be written on Insurance Services Office form CG 0001 (or a substitute for providing coverage at least as broad) and shall cover liability arising from bodily injury and property damage (broad form property damage), premises, operations, independent contractors, products-completed operations, personal injury and advertising injury liability (including the tort liability of another assumed in a business contract), contractual liability with respect to this Agreement, explosion, collapse and underground hazards.

11.2.2.2 Automobile Insurance shall cover liability arising out of any automobiles (including owned, hired and non-owned automobiles). Coverage shall be written on Insurance Services Office form CA 0001, or a substitute form providing liability coverage at least as broad. The policy may require deductibles acceptable to the Director of Risk Management of the District, but not self-insured retention without written approval from District.

11.2.2.3 If the Professional Liability Insurance policy is written on a claims made basis, it shall be maintained continuously for a period of no less than four (4) years after Final Completion of the Project to which it applies. The "retro date" must be shown and must be before the date of this Agreement.

11.2.3 Valuable Document Insurance: Pre-Construction Contractor shall carry adequate insurance on all drawings and specifications as may be required to protect District in the amount of its full equity in those drawings and specifications, and shall file with District a certificate of that insurance. The cost of that insurance shall be paid by Pre-Construction Contractor.

11.2.4 Content and Endorsements: Each policy must contain, or be endorsed to contain, the following provisions:

11.2.4.1 The Commercial General Liability policy shall name District, its Board of Trustees and each member thereof, its officers, employees, agents, and designated volunteers as named additional insureds ("Additional Insureds"). The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. Coverage shall be primary and not contributory with respect to the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of Pre-Construction Contractor's insurance and shall not contribute with it.

11.2.4.2 On each policy of insurance, the insurer shall agree to waive all rights of subrogation against District, its Board of Trustees and each member thereof, its officers, employees, agents, and volunteers.

11.2.4.3 Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice has been given to the District by the carrier. In the case of cancellation for non-payment, ten (10) days notice is acceptable. Qualified statements such as carrier "will endeavor" or that "failure to mail such notice shall impose no obligation and liability upon the company" shall not be acceptable.

11.2.4.4The insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

11.2.5 General Insurance Matters: All insurance coverage required under this Agreement shall:

11.2.5.1Be issued by insurance companies admitted to do business in the State of California, with a financial rating of at least an A:VII as rated in the most recent edition of Best's Insurance Reports. Architect shall notify District in writing if any of its insurer(s) have an A.M. Best rating of less than A:VII. At the option of District, either 1) District can accept the lower rating; or 2) Pre-Construction Contractor shall be required to procure insurance from another insurer.

11.2.5.2Except for professional liability policies, all insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the District, its directors, officials, officers, employees and agents.

11.2.5.3Pre-Construction Contractor shall promptly notify the District of any materials change in the coverage, scope, or amount of any policy.

11.2.5.4Except for professional liability policies for which primary coverage is not available, all such insurance shall be primary insurance. Any insurance of the District shall be excess coverage for benefit of the District only and non-contributory.

11.2.5.5At all times while this Agreement remains in effect, Pre-Construction Contractor shall maintain on file with the District valid and up to date certificates of insurance showing that the required insurance coverage is in effect in not less than the required amounts. If not contained on the face of the policy, endorsements signed by a person authorized by the insurer to bind coverage on its behalf, shall be separately provided. Each policy endorsement, copy, or a certificate of the policy executed by the insurance company, and evidence of payment of premiums for each policy shall be deposited with the District within twenty-one (21) days of execution of this Agreement and prior to the commencement of services, and on renewal of the policy, not less than twenty (20) days before the expiration of the term of the policy.

11.2.5.6If Pre-Construction Contractor fails to provide or maintain the required insurance, the District may, at its sole and absolute discretion, obtain such insurance at Pre-Construction Contractor's expense and deduct the premium from any fees or reimbursable expenses subsequently invoiced by Pre-Construction Contractor.

11.2.5.7Any deductibles or self-insured retentions in excess of \$25,000 must be declared to the District and must be reduced to a level deemed acceptable by the District in writing. Pre-Construction Contractor agrees that, at the option of the District, it will either: (A) arrange for the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the District, its directors, officials, officers, employees and agents; or (B) procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

SECTION 12

DISPUTE RESOLUTION

12.1 RESOLUTION OF CLAIMS. Claims shall be resolved by the Parties in accordance with the provisions of this Section 12. All Claims shall be subject to the "Claims Resolution Process" set forth in this Section 12, which shall be the exclusive recourse of Pre-Construction Contractor and the District

for determination and resolution of Claims.

For purpose of this Section 12, 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.

12.2 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.

12.3 SUBMISSION OF A CLAIM

12.3.1 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.

12.3.2 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.

12.4 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.

12.4.1 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.

12.4.2 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.

12.4.3 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.

12.4.3.1 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.

12.4.3.2 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.

12.4.3.3 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.

12.4.3.4 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.

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

SECTION 13
NOTICES

13.1 NOTICES. All notices, demands, or requests to be given under this Agreement shall be given in writing and conclusively shall be deemed received when received in any of the following ways: (i) on the date delivered if delivered personally; (ii) on the date sent if sent by facsimile transmission and confirmation of transmission is received; (iii) on the date it is accepted or rejected if sent by certified mail; and (iv) the date it is received if sent by regular U.S. mail. All notices, demands or requests shall include the name of this Agreement and be addressed to the parties as follows:

TO DISTRICT:

Gilroy Unified School District

Attn: Dr. Deborah A. Flores,
Superintendent
7810 Arroyo Circle
Gilroy, CA 95020

**TO PRE-CONSTRUCTION
CONTRACTOR:**

Attn: _____

SECTION 14
REPRESENTATIONS OF PRE-CONSTRUCTION CONTRACTOR

14.1 REPRESENTATIONS OF PRE-CONSTRUCTION CONTRACTOR. By executing this Agreement, and hereafter each and every time this Agreement is amended, Pre-Construction Contractor makes each of the following covenants and representations.

- 14.1.1** Pre-Construction Contractor represents that it has previously acted as a pre-construction Contractor, that is professionally qualified and is licensed to perform the Services in the State of California by all public entities having jurisdiction over the Architect and the Project, and that it has the expertise and experience in constructability reviews, cost estimating, value engineering, construction supervision, bid preparation, evaluation of construction projects, project scheduling, cost benefit analysis, claims review and negotiation, and general management and administration of construction projects to perform the Services.
- 14.1.2** Pre-Construction Contractor covenants to maintain, at all times Services are performed hereunder, all necessary licenses, permits or other authorizations necessary to perform the Services for the Project until Pre-Construction Contractor's duties in connection therewith have been fully satisfied.
- 14.1.3** Pre-Construction Contractor represents that it has become familiar with the Project site and the local conditions under which the Project is to be designed, constructed, and operated.
- 14.1.4** Pre-Construction Contractor represents and covenants that it shall prepare, or cause to be prepared, all documents and things required by this Agreement in accordance with the standards of the profession.
- 14.1.5** Pre-Construction Contractor assumes full responsibility to the District for the improper acts and omissions of its employees. Pre-Construction Contractor covenants that each Project Director and all other Pre-Construction Contractor employees now or in future assigned by Pre-Construction

Contractor to work on a Project shall have the level of skill, experience and qualifications required to perform the Services assigned to them, and shall also have all licenses, permits or approvals legally required to perform such Services.

14.1.6 Pre-Construction Contractor covenants that it shall be responsible for all costs and damages, including those due to any delays, resulting from its failure to prepare adequate documentation or to implement any changes identified as necessary either in connection with the Constructability Review or other review.

14.2 COMPLIANCE WITH LAWS. Pre-Construction Contractor covenants that it shall, at all times while providing Services, remain in full compliance with the provisions of all applicable laws, rules and regulations, including without limitation, the provisions of the Education Code regarding design and construction of school facilities, the provisions of the California Labor Code regarding employer's insurance, the provisions of the California Labor Code regarding payment prevailing wages, all non-discriminations laws (including federal and state laws), and any and all other laws rules and regulations applicable to this Agreement, Pre-Construction Contractor, the District, the Project or the Services.

14.2.1 Cost Disclosure - Documents and Written Reports. Pre-Construction Contractor shall be responsible for compliance with California Government Code section 7550 if the total cost of the contract is over five thousand dollars (\$5,000).

14.2.2 Disabled Veteran Business Enterprise Participation. Pursuant to Education Code section 17076.11, the District has a participation goal for disabled veteran business enterprises (DVBES) of at least three (3) percent, per year, of funds expended each year by the District on projects that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act. Unless waived in writing by the District, Pre-Construction Contractor shall provide proof of compliance with any applicable policies of the District or the State Allocation Board, within thirty (30) days of its execution of this Agreement.

14.2.3 Fingerprinting & Other Operational Requirements of the District. Unless exempted, Pre-Construction 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. Pre-Construction Contractor shall also ensure that its consultants on the Project also comply with the requirements of Section 45125.1. Pre-Construction Contractor must complete the District's certification form prior to any of Pre-Construction Contractor's employees coming into contact with any of the District's pupils. Pre-Construction Contractor also agrees to comply, and ensure that all its 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.

14.2.4 Name and Trademarks. Pre-Construction Contractor shall not use any name, trademark or service mark of the District without first having received the District's written consent to such use.

14.2.5 Conflict of Interest. No member, official or employee of the District shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

14.2.6 Safety. Pre-Construction Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, Pre-Construction Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and

shall exercise all necessary precautions for the safety of its employees and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

14.2.7 Labor Certification. By its signature hereunder, Pre-Construction Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code and agrees to comply with such provisions before commencing the performance of the Services.

14.3 SUPPLEMENTAL CONDITIONS. Any supplemental conditions agreed to by the Parties shall be attached as an exhibit to this Agreement and incorporated herein by reference.

SECTION 15

MISCELLANEOUS PROVISIONS

15.1 SUCCESSORS AND ASSIGNS. Inasmuch as this Agreement is intended to secure the specialized Services of Pre-Construction Contractor, Pre-Construction Contractor may not assign, transfer, delegate or sublet any interest therein without the prior written consent of the District and any such assignment, transfer, delegation or sublease without the District's prior written consent shall be considered null and void. Likewise, the District may not assign, transfer, delegate or sublet any interest therein without the prior written consent of Pre-Construction Contractor and any such assignment, transfer, delegation or sublease without Pre-Construction Contractor's prior written consent shall be considered null and void.

15.2 SEVERABILITY. If any term, covenant, condition or provision of this Agreement 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.

15.3 ENTIRE AGREEMENT. This Agreement including Exhibits hereto, contains the entire understanding of the Parties, and supersedes all other written or oral agreements. Pre-Construction Contractor shall be entitled to no other benefits other than those specified herein. No changes, amendments or alternations shall be effective unless in writing and signed by both Parties and approved by the District's Board of Trustees. Pre-Construction Contractor specifically acknowledges that in entering into this Agreement, Pre-Construction Contractor relied solely upon the provisions contained in this Agreement and no others.

15.4 GOVERNING LAW AND VENUE. This Agreement shall be construed in accordance with and governed by the laws of the State of California, excluding its choice of law rules. Venue shall be exclusively in Santa Clara County.

15.5 NON-WAIVER. None of the provisions of this Agreement shall be considered waived by either party unless such waiver is specifically specified in writing. Neither the District's review, approval of, nor payment for, any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Pre-Construction Contractor shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Pre-Construction Contractor's failure to perform any of the Services to the applicable standard of care. This provision shall survive the termination of this Agreement.

- 15.6 INDEPENDENT CONTRACTOR.** Pre-Construction Contractor is, for all purposes arising out of this Agreement, an independent contractor, and neither Pre-Construction Contractor nor its employees shall be deemed an employee of the District for any purpose. It is expressly understood and agreed that Pre-Construction Contractor shall in no event be entitled to any benefits to which District employees are entitled, including, but not limited to, overtime, retirement benefits, insurance, vacation, workers' compensation benefits, sick or injury leave or other benefits.
- 15.7 NO ASBESTOS CERTIFICATION.** No asbestos or asbestos-containing materials will be used or substituted in conjunction with the Project. Upon completion of all work under the Project, Pre-Construction Contractor will certify to the District that to the best of Pre-Construction Contractor's knowledge, no asbestos or asbestos-containing materials were used in the Project.
- 15.8 NON-DISCRIMINATION.** No discrimination shall be made by Pre-Construction Contractor in the employment of persons to work under this Agreement because of race, national origin, sex, age, ancestry, religion, physical disability, marital status, sexual orientation, or political affiliation of such person. Pre-Construction Contractor shall comply with all applicable regulations and laws governing nondiscrimination in employment, including without limitation the following laws:
- (a) California Fair Employment and Housing Act (California Government Code Section 12900 et seq.) which prohibits discrimination in employment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex and prohibits harassment of an employee or applicant because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex or age;
 - (b) Federal Civil Right Act of 1964 (42 U.S. Code Section 2000e, et seq.) which prohibits discrimination in employment on the basis of race, religious creed, color, national origin, or sex;
 - (c) Title I of the Americans With Disabilities Act of 1990 (42 U.S. Code Section 12101 et seq.) which prohibits discrimination against qualified individuals with a disability in hiring and employment practices;
 - (d) The Age Discrimination in Employment Act (29 U.S. Code Section 621, et seq., prohibiting age discrimination in employment against individuals who are least forty years of age;
 - (e) California Labor Code Section 1102.1 which prohibits discrimination in any aspect of employment or opportunity for employment based on actual or perceived sexual orientation.
- 15.9 NO THIRD PARTY BENEFICIARY.** There are no intended third party beneficiaries of any right or obligation assumed by the Parties.
- 15.10 ASSISTANCE OF COUNSEL.** Each Party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each Party acknowledges that the drafting of this Agreement was the product of negotiation and that this Agreement shall not be construed against any Party as the drafter of the Agreement.
- 15.11 AUTHORITY TO EXECUTE.** The persons executing this Agreement on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

15.12 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 Agreement or in any way to affect the terms and provisions set forth herein.

15.13 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.

NOW, THEREFORE, the parties, through their authorized representatives, have executed this Agreement on the dates indicated under their respective signatures.

Pre-Construction Contractor

District

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit “A”

Project Description

The existing South Valley Middle School campus is owned by the Gilroy Unified School District and consists of approximately 22 acres. The Site consists of 19 buildings that will be reconfigured into a new campus for the existing middle school. Replacement buildings will consist of all new construction for new learning communities, administration, gymnasium, multi-use, food service, library/media center and other academic programs. New construction will consist of approximately 70,000 square feet. The new campus will be constructed in phases.

ATTACHMENT C
Gilroy Unified School District

Form Construction Services Agreement and General Conditions

CONSTRUCTION SERVICES AGREEMENT

This Construction Services Agreement (hereinafter referred to as the "Agreement") is entered into this ____ day of _____, 2020, 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 _____ which is a contractor licensed by the State of California, with its principal place of business at _____ (hereinafter referred to as "Contractor").

WHEREAS, the District operates South Valley Middle School, located at 385 I.O.O.F Avenue 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

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

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. **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.
- F. **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.
- G. **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.
- H. **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.
- I. **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.
- J. **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.

- K. **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.
- L. **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.
- M. **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 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 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.

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 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 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 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.
- 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.

- 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.
- 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.

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 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, 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 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

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:

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.

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.

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

THE DISTRICT

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

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Date: _____

Date: _____

EXHIBIT A

Scope of Work (Plans & Specifications)

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

SECTION 00700

**GENERAL CONDITIONS
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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 be 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 §8134 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 Manger 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

ATTACHMENT D
Gilroy Unified School District
Form Site Lease

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 _____ which is a contractor licensed by the State of California, with its principal place of business at _____ (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 South Valley Middle School, 385 I.O.O.F Avenue, 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 Santa Clara, 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:

- (a) The District has good title to the Site.

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(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, 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

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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.

(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

SITE LEASE AGREEMENT

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 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.

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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 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.

SITE LEASE AGREEMENT

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:

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.

SITE LEASE AGREEMENT

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.

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.

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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

THE DISTRICT

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

By: _____

By: _____

Title: _____

Title: _____

Date: _____

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

ATTACHMENT E
Gilroy Unified School District

Form Sub Lease

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, _____ which is a contractor licensed by the State of California, with its principal place of business at _____ (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 South Valley Middle School, 385 I.O.O.F Avenue, 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 six 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

GILROY UNIFIED SCHOOL DISTRICT
SUBLEASE

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:

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

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

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

GILROY UNIFIED SCHOOL
South Valley Middle School Project

11 DISTRICT
SUBLEASE

_____, 20__

GILROY UNIFIED SCHOOL
South Valley Middle School Project

12DISTRICT
SUBLEASE
_____, 20__

**EXHIBIT A
TO SUBLEASE
PAYMENT PROVISIONS**

GILROY UNIFIED SCHOOL
South Valley Middle School Project

13DISTRICT
SUBLEASE
_____, 20__