

**BID SET**  
**for**  
**Leona Valley School Exterior Painting**

**Westside Union School District**  
**41914 50<sup>th</sup> Street West**  
**Quartz Hill, CA 93534**

**April 2021**

The following documents are contained within this Bid Set:

- Notice to Bidders
- Instructions to Bidders
- Bid Form
- Designation of Subcontractors
- Bid Bond
- Non-Collusion Declaration for Bidders
- Owner Contractor Agreement
- Payment Bond
- Performance Bond
- Worker's Compensation Certificate
- Fingerprinting Notice
- Escrow Agreement for Security Deposit
- Drug Free Workplace Certification
- Sufficient Funds Declaration
- General Conditions
- Specifications
- Scope of Work
- Site Map
- Photos

# **NOTICE TO BIDDERS**

## *INFORMAL BID PROCESS (CUPCCAA)*

Notice is hereby given that Westside Union School District (hereinafter referred to as "Owner") will receive sealed bids prior to the date and time stated for the Bid Opening for:

### **Leona Valley School Exterior Painting**

as per drawings and specifications which may now be obtained in PDF format from the Owner

Westside Union School District  
41910 50<sup>th</sup> Street West  
Quartz Hill, CA 93536

Bids will be received for Leona Valley School Exterior Painting

The lowest bid shall be determined:

On the amount of the base bid.

The Owner reserves the right to add or deduct any of the additive or deductive items after the lowest responsible and responsive bidder is determined.

Public works projects shall be subject to compliance monitoring and enforcement by the Department of Industrial Relations. A contractor or subcontractor shall not be qualified to submit a bid or to be listed in a bid proposal subject to the requirements of Public Contract Code section 4104 unless currently registered and qualified under Labor Code section 1725.5 to perform public work as defined by Division 2, Part 7, Chapter 1 (§§1720 et seq.) of the Labor Code. A contractor or subcontractor shall not be qualified to enter into, or engage in the performance of, any contract of public work (as defined by Division 2, Part 7, Chapter 1 (§§1720 et seq.) of the Labor Code) unless currently registered and qualified under Labor Code section 1725.5 to perform public work.

Time of completion for the Project shall be Fifty Five ( 55 ) calendar days from the date of commencement of the Work as established in the Owner's Notice to Proceed.

**Bids will be sealed and filed in the Purchasing Office of the Owner**

**Westside Union School District  
41914 50<sup>th</sup> Street West  
Quartz Hill, CA 93536**

**on April 20, 2021, before 2:00 pm on the clock designated by the Owner or its representative as the bid clock. Facsimile (FAX) and Email copies of the bid will not be accepted.**

**Bids will be opened on April 20, 2021 at Westside Union School District Offices located at 41914 50<sup>th</sup> Street West, Quartz Hill, CA 93536, at 2:40 pm as calculated by the clock designated by the Owner or its representative as the bid clock. Please note that COVID guidelines for gathering will be strictly followed and enforced.**

**Mandatory Job Walk will be held on April 9, 2021 at 11:45 am at Leona Valley School, 9063 West Leona Avenue, Leona Valley, CA 93551. Bidders not attending one of the conferences will be disqualified.**

**Bidders must be prequalified through QualityBidders as CUPCAA vendors with Westside Union School District by April 8, 2021 to bid on this project.**

Bids must be accompanied by a bidder's bond, cashier's check, or certified check for at least ten percent (10%) of the amount of the base bid and made payable to the Owner. If a bid bond is used, it must be issued by an Admitted Surety (an insurance organization authorized by the Insurance Commissioner to transact surety insurance in the State of California during this calendar year), which shall be given as a guarantee that the bidder will enter into a Contract if awarded the Work and will be declared forfeited, paid to, or retained by the Owner as liquidated damages if the bidder refuses or neglects to enter into the Contract provided by the Owner after being requested to do so. The surety insurer must, unless otherwise agreed to by Owner in writing, at the time of issuance of the bond, have a rating not lower than "A-" as rated by A.M. Best Company, Inc. or other independent rating companies. Owner reserves the right to approve or reject the surety insurer selected by Contractor and to require Contractor to obtain a bond from a surety insurer satisfactory to the Owner.

Bids must be accompanied by an executed Fingerprinting Notice and Acknowledgment.

Owner, or its designee, has determined that certain materials, services, products or things designated by specific brand or trade name shall not be subject to Public Contract Code section 3400(a) in order that: a field test or experiment may be made to determine the product's suitability for future use; in order to match other materials, services, products or things in use on a particular Owner public improvement either completed or in the course of completion; in order to obtain a necessary item that is only available from one source; in order to respond to an emergency declared by Owner. These specific materials, services, products or things are identified in Project Specifications

Pursuant to the Contract Documents, the successful bidder will be required to furnish a Payment (Labor and Material) Bond in the amount of one hundred percent (100%) of the Contract Sum, and a Faithful Performance Bond in the amount of one hundred percent (100%) of the Contract Sum, said bonds to be secured from Admitted Surety insurers (an insurance organization authorized by the Insurance Commissioner to transact business of insurance in the State of California during this calendar year). The surety insurers must, unless otherwise agreed to by Owner in writing, at the time of issuance of the bonds, have a rating not lower than "A-" as rated by A.M. Best Company, Inc. or other independent rating companies. Owner reserves the right to approve or reject the surety insurers selected by the successful bidder and to require the successful bidder to obtain bonds from surety insurers satisfactory to the Owner. The bidder will be required to furnish insurance as set forth in the Contract Documents.

The successful bidder will be allowed to substitute securities or establish an escrow in lieu of retainage, pursuant to Public Contract Code Section 22300, and as described in the Agreement Between Owner and Contractor and General Conditions.

The Owner will not consider or accept any bids from contractors who are not licensed to do business in the State of California, in accordance with the California Public Contract Code, providing for the licensing of contractors. In accordance with Section 3300 of said Code, the bidder shall have a Class "C33" license and shall maintain that license in good standing through Project completion and all applicable warranty periods. Bidder shall state the California contractor license number on the Designation of Subcontractors form for all subcontractors doing more than one-half of one percent (0.5%) of the bidder's total bid. An inadvertent error in listing a California contractor's license number shall not be grounds for filing a bid protest or for considering the bid nonresponsive if the bidder submits the corrected contractor's license number to the Owner within 24 hours after the bid opening, or any continuation thereof, so long as the corrected contractor's license number corresponds to the submitted name and location for that subcontractor.

Subcontractors shall maintain their licenses in good standing through Project completion and all applicable warranty periods. Owner reserves the right to reject any bid as nonresponsive if bidder or any subcontractor is not licensed in good standing from the time the bid is submitted to Owner up to award of the Contract, whether or not the bidder listed the subcontractor inadvertently, or if a listed subcontractor's license is suspended or expires prior to award of the Contract. Owner also reserves the right to reject any bid as non responsive if a listed subcontractor's license is not in good standing to perform the work for which it is listed from the time of submission of the bidder's bid to award of the Contract.

The Director of Industrial Relations of the State of California, in the manner provided by law, has ascertained the general prevailing rate of per diem wages and rate for legal holidays and overtime work. The Contractor must pay for any labor therein described or classified in an amount not less than the rates specified. Copies of the required rates are on file at the Owner's business office and are available to any interested party on request.

The Owner reserves the right to waive any irregularity and to reject any or all bids.

Unless otherwise required by law, no bidder may withdraw its bid for a period of sixty (60) days after the date set for the opening thereof or any authorized postponement thereof. The Owner reserves the right to take more than sixty (60) days to make a decision regarding the rejection of bids or the award of the Contract.

## **Instructions to Bidders**

### **SECURING DOCUMENTS:**

Drawings and Specifications are available in PDF format from:

Westside Union School District  
41914 50<sup>th</sup> Street Westside Union School District  
Quartz Hill CA 93536

### **DEPOSIT:**

A deposit of \$0 for PDF file

### **BID FORMAT:**

Lump Sum

### **REGISTRATION:**

The Owner shall not accept any bid or enter into any contract without proof of the bidder's current registration to perform public work under Labor Code section 1725.5.

The bidder shall not accept any sub-bid or enter into any subcontract without proof of the subcontractor's current registration to perform public work under Labor Code section 1725.5.

### **BIDS:**

Bids to receive consideration shall be made in accordance with the following instructions:

1. Bids shall be made on a form therefor, obtained from the Architect or Owner. Bids not made on the proper form shall be disregarded. Numbers must be stated in words and figures, and the signatures of all individuals must be in longhand.
2. No bid will be considered which makes exceptions, changes, or in any manner makes reservations to the terms of the drawings or specifications.
3. Questions regarding documents, discrepancies, omissions, or doubt as to meanings shall be referred immediately to the Architect/Owner who will send written instructions clarifying such questions to each bidder. Oral

responses will not be binding on the Owner or Architect or any Construction Manager.

4. Each bid must give the full business address of the bidder and be signed by bidder with bidder's usual signature. Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature. Bids by corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the signature. Satisfactory evidence of the authority of the officer signing on behalf of a corporation shall be furnished.
5. Pursuant to the provisions of Sections 4100 to 4114, inclusive, of the Public Contract Code of the State of California, which are hereby incorporated and made a part hereof and these Instructions to Bidders, every bidder shall set forth in its bid:
  - A. The name and location of the place of business and the California contractor's license number of each subcontractor who will perform work or labor or render service to the bidder in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the bidder, specially fabricates and installs a portion of the Work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half ( $\frac{1}{2}$ ) of one percent (1%) of the bidder's total bid. An inadvertent error in listing a California contractor's license number shall not be grounds for filing a bid protest or for considering the bid nonresponsive if the bidder submits the corrected contractor's license number to the Owner within 24 hours after the bid opening, or any continuation thereof, so long as the corrected contractor's license number corresponds to the submitted name and location for that subcontractor.
  - B. The portion of the Work which will be done by each such subcontractor. If the bidder fails to specify a subcontractor for any portion of the Work to be performed under the Contract in excess of one-half ( $\frac{1}{2}$ ) of one percent (1%) of the bidder's total bid, the bidder

agrees to perform that portion itself. The successful bidder shall not, without the consent of the Owner:

- 1) Substitute any person as subcontractor in place of the subcontractor designated in the original bid.
  - 2) Permit any subcontract to be assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the bid.
  - 3) Sublet or subcontract any portion of the Work in excess of one-half ( $\frac{1}{2}$ ) of one percent (1%) of the total bid as to which the original bid did not designate a subcontractor.
6. The Director of Industrial Relations of the State of California, in the manner provided by law, has ascertained the general prevailing rate of per diem wages and the rate for legal holidays and overtime work. The Contractor must pay for any labor therein described or classified in an amount not less than the rates specified. Copies of the required rates are on file at the Owner's business office and are available to any interested party on request.
  7. All bids must be accompanied by a completed Noncollusion Declaration and Sufficient Funds Declaration (Labor Code § 2810). All bids must be accompanied by an executed Fingerprinting Notice and Acknowledgment.
  8. Bids must be accompanied by a certified check, cashier's check, or bidder's bond, for an amount not less than ten percent (10%) of the amount of the base bid, made payable to the order of the Owner. If a bidder's bond accompanies the bid, said bond shall be secured by an Admitted Surety (an insurance organization authorized by the Insurance Commissioner to transact business of insurance in the State of California during this calendar year). The surety insurer must, unless otherwise agreed to by Owner in writing, at the time of issuance of the bond, have a rating not lower than "A-" as rated by A.M. Best Company, Inc. or other independent rating companies. Owner reserves the right to approve or reject the surety insurer selected by Contractor and to require Contractor to obtain a bond from a surety insurer satisfactory to the Owner. Said check or bond shall be given as a guarantee that the bidder will enter into the Contract if awarded the Work, and in case of refusal or failure to enter into said Contract, the check or bond, as the case may be, shall be payable to the Owner and retained as liquidated damages.
  9. Bids shall be sealed and filed as indicated in the Notice to Bidders. Irrespective of how a bidder chooses to deliver the bid and other documents to the Owner, the bidder is responsible for ensuring that the



bid and other documents are actually received at the location designated in the Contract Documents for receipt of the bid and other documents prior to the time for the bid opening. Bids and other documents for any reason not actually received at the designated location prior to the time for the bid opening shall not be opened or considered.

10. **THIS CONTRACT IS NOT SUBJECT TO THE DVBE REQUIREMENTS OF EDUCATION CODE SECTION 17076.11.**

**WITHDRAWAL OF BIDS:**

Bids may be withdrawn by bidders prior to the time fixed for the submittal of bids or any authorized postponement thereof. A successful bidder shall not be relieved of the bid unless by consent of the Owner or bidder's recourse to Public Contract Code §5100 et seq.

**OPENING OF BIDS:**

Opening of bids shall be as soon after the hour set as will be possible; opening and declaration to be as set forth in the Notice to Bidders. Any and all bidders will be permitted to attend.

**EXAMINATION OF CONTRACT DOCUMENTS AND SITE:**

Before submitting a bid, bidders shall examine the drawings, read the specifications, the form of Agreement between Contractor and Owner, and the other Contract Documents. Bidders shall visit the site of the proposed Work, examine the building, or buildings, if any, and any work that may have been done thereon. Bidders shall fully inform themselves of all conditions, in, at, and about the site, the building or buildings, if any, and any work that may have been done thereon.

Pursuant to Public Contract Code section 1104: 1) bidders shall not be required to assume responsibility for the completeness and accuracy of architectural or engineering plans and specifications, except on clearly designated design build projects; 2) however, bidders shall be required to review architectural or engineering plans and specifications prior to submission of their bids and to report any errors and omissions to the Architect or Owner; and 3) the review shall be confined to the bidder's capacity as a bidder and not as a licensed design professional.

**FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR:**

The form of Agreement between Owner and Contractor which the successful bidder will be required to execute, if awarded the Work, is a part of this Bid Package.

### **ADDENDA OR BULLETINS:**

Any addenda or bulletins, issued during the time of bidding, shall form a part of the drawings and specifications loaned to the bidder for the preparation of its bid, shall be covered in the bid, and shall be made a part of the Contract Documents. All addenda or bulletins shall be signed by the Architect and approved by the Division of State Architect.

### **EVIDENCE OF RESPONSIBILITY:**

Upon the request of Owner, a bidder shall submit promptly to the Owner or its designee satisfactory evidence showing the bidder's financial resources, the bidder's experience in the type of work required by the Owner, the bidder's organization available for the performance of the Contract, and any other required evidence of the bidder's or its subcontractor's qualifications to perform the proposed Contract. The Owner may consider such evidence before making its decision awarding the proposed Contract. Failure to submit evidence of the bidder's or its subcontractors' responsibility to perform the proposed Contract may result in rejection of the bid.

### **AWARD OF CONTRACT:**

Rejection of any or all bids, to contract work with whomever and in whatever manner, to abandon work entirely, and/or to waive any informality in receiving of bids is reserved as the right of the Owner. Before the Contract is awarded, the Owner may at its sole discretion, require from the proposed Contractor on the Project further evidence of the reasonable qualifications of such contractor to faithfully, capably, and reasonably perform such proposed Contract and may consider such evidence before making its decision on the award of such proposed Contract.

The Contract shall be awarded to the lowest responsible and responsive bidder as interpreted by the Owner under California law and as specified herein and shall be entered into by the successful bidder within ten (10) days after mailing, faxing or delivery of the Notice of Award of Contract. Owner reserves the right, without any liability, to cancel the award of any bid for any reason at any time before the full execution of the Agreement between Owner and Contractor.

### **EXECUTION OF AGREEMENT BETWEEN OWNER AND CONTRACTOR:**

The Agreement between Owner and Contractor shall be signed by the successful bidder in as many originals as the Owner deems necessary and returned, together with the required Contract bonds, insurance certificates, additional insured endorsement, declarations page, a Public Contract Code section 3006(a) Roof Project Certification, if required, and Independent Contractor Student Contact Form, within ten (10) days after the mailing, faxing or delivering of the

Notice of Award of Contract. If the ten (10) day period would expire after the date for commencement of the Work, Contractor must submit the documents before the date of commencement of the Work. If the successful bidder does not comply with this paragraph, Owner may revoke and/or cancel the award to the successful bidder and award the Contract to the next lowest bidder, or may otherwise proceed as allowed by law. A Roof Project Certification is not required if (1) the Owner has ADA (average daily attendance) of 2,500 or less, or (2) the Project involves repair of 25% or less of the roof, or costs \$21,000 or less.

### **CONTRACT BONDS:**

As required by the Contract Documents, two bonds, as itemized below and in the forms presented in these Contract Documents, shall be furnished by the successful bidder on the Project at the time of entering into the Contract and filed with the Owner before the successful bidder commences any work on the Project. They shall be in the form of surety bonds issued by Admitted Surety insurers (an insurance organization authorized by the Insurance Commissioner to transact business of insurance in the State of California during this calendar year). The surety insurers must, unless otherwise agreed to by Owner in writing, at the time of issuance of the bond, have a rating not lower than "A-" as rated by A.M. Best Company, Inc. or other independent rating companies. Owner reserves the right to approve or reject the surety insurers selected by Contractor and to require Contractor to obtain bonds from surety insurers satisfactory to the Owner.

**Performance Bond** in the amount of one hundred percent (100%) of the Contract Sum to insure Owner during construction, and for one year after completion and during any warranty or guaranty period, against faulty or improper materials or workmanship and to assure Owner of full and prompt performance of the Contract.

**Payment Bond** (Labor and Material) in the amount of one hundred percent (100%) of the Contract Sum in accordance with the laws of the State of California to secure payment of any and all claims for labor and materials used or consumed in performance of this Contract.

### **SUBSTITUTION OF MATERIALS:**

The Contractor must ensure that the proposed substitutions by the Contractor or its subcontractors are submitted to the Architect's office a minimum of fourteen (14) calendar days prior to the Bid Opening for review and possible approval of any equipment or materials thought to be equal to or better than those specified in the drawings or specifications. An addendum will be issued seven (7) calendar days prior to Bid Opening, including all equipment and materials deemed equivalent to those specified and approved by the Architect. Submittals

shall include comparative spec-data of the specified equipment or material and the proposed substitution as set forth in the Contract Documents. Submittals without this information will be automatically rejected.

**PAYMENTS:**

Payments to the Contractor on account of the Contract shall be made in accordance with the terms of the Contract Documents.

**TAXES:**

The Owner is generally exempt from payment of Federal Excise Tax on materials. The Owner will furnish exemption certificates to the Contractor to be used to obtain materials ordinarily subject to Federal Excise Tax without payment of the tax. Bidder shall deduct Federal Excise Taxes from their bid prices before submitting bids, so that such taxes will not be included in the Contract Sum.

**EARLY TERMINATION:**

Notwithstanding any provision herein to the contrary, if for any fiscal year of this Contract the governing body of the Owner fails to appropriate or allocate funds for future periodic payments under the Contract after exercising reasonable efforts to do so, the Owner may upon thirty (30) days' notice, order work on the Project to cease. The Owner will remain obligated to pay for the work already performed but shall not be obligated to pay the balance remaining unpaid beyond the fiscal period for which funds have been appropriated or allocated and for which the work has not been done.

**TIME OF COMPLETION AND LIQUIDATED DAMAGES:**

Time of completion for the Project shall be Fifty Five ( 55 ) calendar days from (a) the date of commencement of the Work as established in the Owner's Notice to Proceed, or (b) if no other date is established in a Notice to Proceed from Owner, the date of Contractor's actual commencement of the Work (including mobilization).

Liquidated damages will accrue and may be assessed as provided in the Contract Documents. Should said Work not be completed within the time limit as may be extended as herein provided, damages will be sustained by the Owner. It is understood and agreed that it is and will be impracticable or extremely difficult to determine the actual amount of damages which the Owner will sustain in the event of and by reason of such delay, and it is therefore agreed that the Contractor will pay the Owner the sum of **\$500.00 per calendar day** for each and every day's delay beyond the time specified as and for liquidated damages, during or as a result of each calendar day by which completion of the Project is delayed beyond the completion date; in case the Contractor fails to make such

payment, the Owner may deduct the amount thereof from any money due or that may become due the Contractor under the Contract. Should such money not be sufficient, the Owner shall have the right to recover the balance from the Contractor or its sureties.

W-9 form shall be submitted by successful bidder at the same time as contract forms are submitted.

**Bid Form**

***TO BE EXECTURED BY BIDDER AND SUBMITTED WITH BID***

\_\_\_\_\_  
\_\_\_\_\_, California, \_\_\_\_\_

\_\_\_\_\_  
*(ENTER SPECIFIC ADDRESS & ROOM LOCATION)*

Dear Board Members:

The undersigned doing business under the firm name of:

\_\_\_\_\_  
hereby propose and agree to enter into a Contract, to furnish any and all labor, materials, applicable taxes, equipment and services for the completion of Work described hereinafter and in the Contract Documents:

**Leona Valley School Exterior Painting**  
9063 Leona Avenue  
Leona Valley, CA 93551

prepared by:

Westside Union School District  
41914 50<sup>th</sup> Street West  
Quartz Hill, CA 93536  
661-722-0716

Base Bid in the amount of:

\_\_\_\_\_ Dollars

(\$\_\_\_\_\_)

11.1.6.1 COURSE-OF-CONSTRUCTION INSURANCE REQUIREMENTS

Contractor, during the progress of the Work and until final acceptance of the Work by Owner upon completion of the entire Contract, shall maintain Builder's Risk/Course-of-

If written notice of the Award of Contract is mailed, faxed, or delivered to the undersigned at any time before this bid is withdrawn, the undersigned shall, within ten (10) days after the date of such mailing, faxing, or delivering of such notice, execute and deliver an agreement in the form of agreement present in these Contract Documents and give Performance and Payment Bonds in accordance with the specifications and bid as accepted.

The undersigned hereby designates as the office to which such Notice of Award of Contract may be mailed, faxed, or delivered:

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---

Our Public Liability and Property Damage Insurance is placed with:

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Our Workers' Compensation Insurance is placed with:

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Circular letters, bulletins, addenda, etc., bound with the specifications or issued during the time of bidding are included in the bid, and, in completing the Contract, they are to become a part thereof.

The receipt of the following addenda to the specifications is acknowledged:

Addendum No. \_\_\_\_\_ Date \_\_\_\_\_ Addendum No. \_\_\_\_\_ Date \_\_\_\_\_

Addendum No. \_\_\_\_\_ Date \_\_\_\_\_ Addendum No. \_\_\_\_\_ Date \_\_\_\_\_

Addendum No. \_\_\_\_\_ Date \_\_\_\_\_ Addendum No. \_\_\_\_\_ Date \_\_\_\_\_

This bid may be withdrawn at any time prior to the scheduled time for the opening of bids or any authorized postponement thereof.

A bidder shall not submit a bid unless the bidder's California contractor's license number appears clearly on the bid, the license expiration date and class are stated, and the bid contains a statement that the representations made therein are made under penalty of perjury. Any bid submitted by a contractor who is not licensed pursuant to Business and Professions Code section 7028.15 shall be considered nonresponsive and shall be

rejected. Any bid not containing the above information may be considered nonresponsive and may be rejected.

**NOTE:** Each bid must give the full business address of the bidder and be signed by bidder with bidder's usual signature. Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature. Bids by corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the signature. Satisfactory evidence of the authority of the officer signing on behalf of a corporation shall be furnished.

The undersigned declares under penalty of perjury under the laws of the State of California that the representations made in this bid are true and correct.

Print or Type Name : \_\_\_\_\_

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

Name of Company as Licensed: \_\_\_\_\_

Business Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone Number: \_\_\_\_\_

California Contractor License No.: \_\_\_\_\_

Class and Expiration Date: \_\_\_\_\_

State of Incorporation, if Applicable: \_\_\_\_\_

( ) Evidence of authority to bind corporation is attached.

Dated: \_\_\_\_\_, \_\_\_\_\_

Signed: \_\_\_\_\_



## **DESIGNATION OF SUBCONTRACTORS**

Each bidder shall set forth below the name and the location of the place of business of each subcontractor and the California contractor license number of each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the Work or improvement, or to a subcontractor licensed by the State of California who, under subcontract to the Contractor, specially fabricates and installs a portion of the Work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent (0.5%) of the bidder's total bid, and the portion of the Work which will be done by each subcontractor. An inadvertent error in listing a California contractor's license number shall not be grounds for filing a bid protest or for considering the bid nonresponsive if the bidder submits the corrected contractor's license number to the Owner within 24 hours after the bid opening, or any continuation thereof, so long as the corrected contractor's license number corresponds to the submitted name and location for that subcontractor.

If the Contractor fails to specify a subcontractor for any portion of the Work to be performed under the Contract in excess of one-half of 1 percent (0.5%) of the Contractor's total bid, the Contractor shall be deemed to have agreed to perform such portion itself, and shall not be permitted to subcontract that portion of the Work except under the conditions hereinafter set forth.

Subletting or subcontracting of any portion of the Work as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the legislative body of the Owner.

For any bid proposal submitted and for any contract for public work entered into, an inadvertent error in listing a subcontractor who is not registered under Labor Code section 1725.5 shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that either: the subcontractor is registered prior to the bid opening; or the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5(a)(2)(E), if applicable, within 24 hours after the bid opening; or the subcontractor is replaced by another registered subcontractor under Public Contract Code section 4107. Failure of a listed subcontractor to be registered shall be grounds under Public Contract Code section 4107 for the Contractor, with the Owner's consent, to substitute a registered subcontractor for the unregistered subcontractor.

Failure to provide this information in a legible manner may result in the rejection of an otherwise acceptable bid.

**NOTE:** *Reproduce page two of this section for additional listings needed beyond the length of this form.*

<b>Portion of Work</b>	<b>Name of Subcontractor &amp; Phone No.</b>	<b>Location of Subcontractor</b>	<b>California Contractor License Number</b>

I am the authorized representative of the Bidder submitting this Designation of Subcontractors and I declare that each subcontractor listed holds a valid and current contractor license in good standing in California to perform the portion of work for which the subcontractor is listed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_[city], \_\_\_\_\_[state].

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

## **BID BOND**

KNOW ALL MEN BY THESE PRESENTS that we the undersigned \_\_\_\_\_ as Principal and \_\_\_\_\_ as Surety, are hereby held and firmly bound unto the \_\_\_\_\_ "Owner" in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for payment of which sum, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

The condition of the above obligation is such that whereas the Principal has submitted to the Owner a certain bid, attached hereto and hereby made a part hereof, to enter into a Contract in writing for the construction of \_\_\_\_\_ in strict accordance with Contract Documents.

NOW, THEREFORE,

a. If said bid shall be rejected, or, in the alternative;

b. If said bid shall be accepted and the Principal shall execute and deliver a contract in the form of agreement attached hereto and shall execute and deliver Performance and Payment Bonds in the forms attached hereto (all properly completed in accordance with said bid), and shall in all other respects perform the agreement created by the acceptance of said bid;

Then this obligation shall be void, otherwise the same shall remain in full force and effect, it being expressly understood and agreed that the liability of the Surety for any and all default of the Principal hereunder shall be the amount of this obligation as herein stated.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract on the call for bids, or to the Work to be performed hereunder, or the specifications accompanying the same, shall in any way affect its obligation under this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said Contract or the call for bids, or to the Work, or to the specifications.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under several seals this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the name and corporate party being hereto affixed and these presents duly signed by its

undersigned representative, pursuant to authority of its governing body. In the presence of:

(Notary Seal)

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Corporate Surety)

\_\_\_\_\_  
Business Address)

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

\_\_\_\_\_

The rate or premium of this bond is \_\_\_\_\_ per thousand, the total amount of premium charged, \$\_\_\_\_\_.

(The above must be filled in by Corporate Surety).

**NONCOLLUSION DECLARATION**  
*TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID*

Owner: Westside Union School District

Project: Hillview School Exterior Painting

The undersigned declares:

I am the \_\_\_\_\_ of \_\_\_\_\_, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_, 20\_\_, at \_\_\_\_\_ [city], \_\_\_\_\_ [state].

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

**AGREEMENT BETWEEN OWNER AND CONTRACTOR**

This Agreement effective \_\_\_\_\_, 20\_\_, by and between Westside Union School District, the "Owner" and \_\_\_\_\_ hereinafter called the "Contractor."

**WITNESSETH:** That the Contractor and the Owner for the consideration hereinafter named agree as follows:

**ARTICLE I. SCOPE OF WORK.**

The Contractor agrees to furnish all labor, equipment and materials, including tools, implements, and appliances required, and to perform all the work in a good and workmanlike manner, free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers required for:

**Leona Valley School Exterior Painting  
9023 Leona Avenue  
Leona Valley, CA 93551**

all in strict compliance with the plans, drawings and specifications therefore prepared by:

**Westside Union School District  
41914 50<sup>th</sup> Street West  
Quartz Hill CA 93536  
661-722-0716**

and other contract documents relating thereto.

**ARTICLE II. CONTRACT DOCUMENTS.**

The Contractor and the Owner agree that all of the documents listed in Article 1.1.1 of the General Conditions form the Contract Documents which form the Contract.

**ARTICLE III. TIME TO COMPLETE AND LIQUIDATED DAMAGES.**

Time is of the essence in this contract, and the time of completion for the Project shall be Fifty Five (\_55\_) calendar days from (a) the date of commencement of the Work as established in the Owner's Notice to Proceed, or (b) if no other date is established in a Notice to Proceed from Owner, the date June 6, 2021 (55) calendar days after full execution of the Agreement.

Failure to complete the Project within the time and in the manner provided for by the Contract Documents shall subject the Contractor to liquidated damages. For purposes of liquidated damages, the concept of substantial completion shall not constitute completion and is not part of the Contract Documents. The actual occurrence of damages and the actual amount of the damages which the Owner would suffer if the Project were not

completed within the specified times set forth are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Damages which the Owner would suffer in the event of delay include, but are not limited to, loss of the use of the Project, disruption of activities, costs of administration, supervision and the incalculable inconvenience and loss suffered by the public.

Accordingly, the parties agree that the amount herein set forth shall be the amount of damages which the Owner shall directly incur upon failure of the Contractor to complete the Project within the time specified: **\$500.00**, for each calendar day by which completion of the Project is delayed beyond the completion date as adjusted by change orders.

If the Contractor becomes liable under this section, the Owner, in addition to all other remedies provided by law, shall have the right to withhold any and all retained percentages of payments and/or progress payments, and to collect the interest thereon, which would otherwise be or become due the Contractor until the liability of the Contractor under this section has been finally determined. If the retained percentages and withheld progress payments appear insufficient to discharge all liabilities of the Contractor incurred under this Article, the Contractor and its sureties shall continue to remain liable to the Owner for such liabilities until all such liabilities are satisfied in full.

If the Owner accepts any work or makes any payment under this Agreement after a default by reason of delays, the payment or payments shall in no respect constitute a waiver or modification of any Agreement provisions regarding time of completion and liquidated damages.

**ARTICLE IV. PAYMENT AND RETENTION.**

The Owner agrees to pay the Contractor in current funds \_\_\_\_\_ dollars (\$\_\_\_\_\_) for work satisfactorily performed after receipt of properly documented and submitted Applications for Payment and to make payments on account thereof, as provided in the General Conditions.

**ARTICLE V. CHANGES.**

Changes in this Agreement or in the Work to be done under this Agreement shall be made as provided in the General Conditions.

**ARTICLE VI. TERMINATION.**

The Owner or Contractor may terminate the Contract as provided in the General Conditions.

**ARTICLE VII. PREVAILING WAGES.**

The Project is a public work, the Work shall be performed as a public work and pursuant to the provisions of Section 1770 et seq. of the Labor Code of the State of California, which are hereby incorporated by reference and made a part hereof, the Director of Industrial Relations has determined the general prevailing rate of per diem wages and the

general prevailing rate for holiday and overtime work in the locality in which the work is to be performed, for each craft, classification or type of worker needed to execute this Contract. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, apprenticeship or other training programs, and similar purposes. Copies of the rates are on file at the Owner's principal office. The rate of prevailing wage for any craft, classification or type of workmanship to be employed on this Project is the rate established by the applicable collective bargaining agreement which rate so provided is hereby adopted by reference and shall be effective for the life of this Agreement or until the Director of the Department of Industrial Relations determines that another rate be adopted. It shall be mandatory upon the Contractor and on any subcontractor to pay not less than the said specified rates to all workers employed in the execution of this Agreement.

The Contractor and any subcontractor under the Contractor as a penalty to the Owner shall forfeit not more than Two Hundred Dollars (\$200.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed. The difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

The Contractor and each Subcontractor shall keep or cause to be kept an accurate record for work on this Project showing the names, addresses, social security numbers, work classification, straight time and overtime hours worked and occupations of all laborers, workers and mechanics employed by them in connection with the performance of this Contract or any subcontract thereunder, and showing also the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by the Owner, its officers and agents and to the representatives of the Division of Labor Law Enforcement of the State Department of Industrial Relations. The Contractor and each subcontractor shall furnish a certified copy of all payroll records directly to the Labor Commissioner

Public works projects shall be subject to compliance monitoring and enforcement by the Department of Industrial Relations. A contractor or subcontractor shall not be qualified to submit a bid or to be listed in a bid proposal subject to the requirements of Public Contract Code section 4104 unless currently registered and qualified under Labor Code section 1725.5 to perform public work as defined by Division 2, Part 7, Chapter 1 (§§1720 et seq.) of the Labor Code. A contractor or subcontractor shall not be qualified to enter into, or engage in the performance of, any contract of public work (as defined by Division 2, Part 7, Chapter 1 (§§1720 et seq.) of the Labor Code) unless currently registered and qualified under Labor Code section 1725.5 to perform public work.

#### **ARTICLE VIII. WORKING HOURS.**

In accordance with the provisions of Sections 1810 to 1815, inclusive, of the Labor Code of the State of California, which are hereby incorporated and made a part hereof, the time of service of any worker employed by the Contractor or a Subcontractor doing or



contracting to do any part of the Work contemplated by this Agreement is limited and restricted to eight hours during any one calendar day and forty hours during any one calendar week, provided, that work may be performed by such employee in excess of said eight hours per day or forty hours per week provided that compensation for all hours worked in excess of eight hours per day, and forty hours per week, is paid at a rate not less than one and one-half (1½) times the basic rate of pay. The Contractor and every Subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by them in connection with the Work. The records shall be kept open at all reasonable hours to inspection by representatives of the Owner and the Division of Labor Law Enforcement. The Contractor shall as a penalty to the Owner forfeit Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day, and forty hours in any one calendar week, except as herein provided.

#### **ARTICLE IX. APPRENTICES.**

The Contractor agrees to comply with Chapter 1, Part 7, Division 2, Sections 1777.5 and 1777.6 of the California Labor Code, which are hereby incorporated and made a part hereof. These sections require that contractors and subcontractors employ apprentices in apprenticeable occupations in a ratio of not less than one hour of apprentice's work for each five hours of work performed by a journeyman (unless an exemption is granted in accordance with Section 1777.5) and that contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public works solely on the ground of sex, race, religious creed, national origin, ancestry or color. Only apprentices as defined in Labor Code Section 3077, who are in training under apprenticeship standards and who have signed written apprentice agreements, will be employed on public works in apprenticeable occupations. The responsibility for compliance with these provisions is fixed with the Contractor for all apprenticeable occupations.

#### **ARTICLE X. DSA OVERSIGHT PROCESS.**

The Contractor must comply with the applicable requirements of the Division of State Architect ("DSA") Construction Oversight Process ("DSA Oversight Process"), including but not limited to (a) notifying the Owner's Inspector of Record/Project Inspector ("IOR") upon commencement and completion of each aspect of the work as required under DSA Form 156; (b) coordinating the Work with the IOR's inspection duties and requirements; (c) submitting verified reports under DSA Form 6-C; and (d) coordinating with the Owner, Owner's Architect, any Construction Manager, any laboratories, and the IOR to meet the DSA Oversight Process requirements without delay or added costs to the Project.

Contractor shall be responsible for any additional DSA fees related to review of proposed changes to the DSA-approved construction documents, to the extent the proposed changes were caused by Contractor's wrongful act or omissions. If inspected work is found to be in non-compliance with the DSA-approved construction documents or the

DSA-approved testing and inspection program, then it must be removed and corrected. Any construction that covers unapproved or uninspected work is subject to removal and correction, at Contractor's expense, in order to permit inspection and approval of the covered work in accordance with the DSA Oversight Process.

**ARTICLE XI. INDEMNIFICATION AND INSURANCE.**

The Contractor will defend, indemnify and hold harmless the Owner, its governing board, officers, agents, trustees, employees and others as provided in the General Conditions.

By this statement the Contractor represents that it has secured the payment of Workers' Compensation in compliance with the provisions of the Labor Code of the State of California and during the performance of the work contemplated herein will continue so to comply with said provisions of said Code. The Contractor shall supply the Owner with certificates of insurance evidencing that Workers' Compensation Insurance is in effect and providing that the Owner will receive thirty (30) days' notice of cancellation.

Contractor shall provide the insurance set forth in the General Conditions. The amount of general liability insurance shall be \$ 1 million per occurrence for bodily injury, personal injury and property damage and the amount of automobile liability insurance shall be \$1 million per accident for bodily injury and property damage combined single limit.

**ARTICLE XII. ENTIRE AGREEMENT.**

The Contract constitutes the entire agreement between the parties relating to the Project, and supersedes any prior or contemporaneous agreement between the parties, oral or written, including the Owner's award of the Project to Contractor, unless such agreement is expressly incorporated herein. The Owner makes no representations or warranties, express or implied, not specified in the Contract. The Contract is intended as the complete and exclusive statement of the parties' agreement pursuant to Code of Civil Procedure section 1856.

**ARTICLE XIII. EXECUTION OF OTHER DOCUMENTS.**

The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Contract.

**ARTICLE XIV. EXECUTION IN COUNTERPARTS.**

This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

**ARTICLE XV. BINDING EFFECT.**

Contractor, by execution of this Agreement, acknowledges that Contractor has read this Agreement and the other Contract Documents, understands them, and agrees to be bound by their terms and conditions. The Contract shall inure to the benefit of and shall be binding upon the Contractor and the Owner and their respective successors and assigns.

**ARTICLE XVI. SEVERABILITY; GOVERNING LAW; CHOICE OF FORUM.**

If any provision of the Contract shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. The Contract shall be governed by the laws of the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Los Angeles, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by Owner.

**ARTICLE XVII. AMENDMENTS.**

The terms of the Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties and approved or ratified by the Governing Board.

**ARTICLE XVIII. ASSIGNMENT OF CONTRACT.**

The Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of the surety on the payment bond, the surety on the performance bond and the Owner.

**ARTICLE XIX. WRITTEN NOTICE.**

Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who gives the notice.

**(CONTRACTOR)**

**(OWNER)**

\_\_\_\_\_  
SIGNED BY (Contractor)

\_\_\_\_\_

\_\_\_\_\_  
CALIFORNIA CONTRACTOR'S  
LICENSE NO.

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
LICENSE EXPIRATION DATE

**NOTE:**

Contractor must give the full business address of the Contractor and sign with Contractor's usual signature. Partnerships must furnish the full name of all partners and

the Agreement must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature. Corporations must sign with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the signature. Satisfactory evidence of the authority of the officer signing on behalf of a corporation shall be furnished.

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**PAYMENT BOND**  
**(Labor and Material)**

**KNOW ALL MEN BY THESE PRESENTS:**

That WHEREAS, Westside Union School District (the "Owner" of the public works project described below) and \_\_\_\_\_, hereinafter designated as the "Principal," have entered into a Contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to construct:

**Leona Valley School Exterior Painting**

Which said agreement dated \_\_\_\_\_, \_\_\_\_\_, and all of the Contract Documents are hereby referred to and made a part hereof;

and

WHEREAS, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by whom the Contract is awarded to secure the claims arising under said agreement.

**NOW, THEREFORE, THESE PRESENTS WITNESSETH:**

That the said Principal and the undersigned \_\_\_\_\_ ("Surety") are held and firmly bound unto all laborers, material men, and other persons, and bound for all amounts due, referred to in Civil Code section 9554, subdivision (b), in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_ ) which sum well and truly be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the said Principal or any of its subcontractors, or the heirs, executors, administrators, successors, or assigns of any, all, or either of them, shall fail to pay any of the persons named in Civil Code section 9100, or any of the amounts due, as specified in Civil Code section 9554, subdivision (b), that said Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay costs and reasonable attorney's fees to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

And the said Surety, for value received, thereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of said contract or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(To be signed by \_\_\_\_\_ )  
(Principal and Surety, \_\_\_\_\_ )  
(and acknowledged and \_\_\_\_\_ )  
(Notarial Seal attached \_\_\_\_\_ )

\_\_\_\_\_  
Principal  
\_\_\_\_\_

\_\_\_\_\_  
Surety  
\_\_\_\_\_

By: \_\_\_\_\_  
Attorney-in-Fact  
\_\_\_\_\_

The above bond is accepted and approved this \_\_\_\_ day of \_\_\_\_\_.

**PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS** that we, \_\_\_\_\_  
\_\_\_\_\_ as Principal and  
\_\_\_\_\_ as Surety, are held and  
firmly bound unto \_\_\_\_\_, in the County of \_\_\_\_\_, State of California, hereinafter  
called the "Owner", in the sum of \_\_\_\_\_ Dollars  
(\$\_\_\_\_\_) for the payment of which sum well and truly made, we bind  
ourselves, our heirs, executors, administrators, and successors, jointly and severally, to  
the Owner for the full performance of a certain contract with the Owner, the terms of  
which are incorporated herein by reference, dated \_\_\_\_\_, 20\_\_\_\_, for  
construction of:

**Leona Valley School Exterior Painting  
9063 Leona Ave  
Leona Valley, CA 93551**

The condition of this obligation is such that, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said Contract during the original term of said Contract and any extensions thereof that may be granted by the Owner, with or without notice to the Surety, and for the period of time specified in the Contract after completion for correction of faulty or improper materials and workmanship and during the life of any guaranty or warranty required under the Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreement of any and all duly authorized modifications of said Contract that may hereafter be made, then this obligation is to be void, otherwise to remain in full force and virtue.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work, or to the specifications.

No further agreement between Surety and Owner shall be required as a prerequisite to the Surety performing its obligations under this bond.

**IN WITNESS WHEREOF**, the above-bounden parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(To be signed by \_\_\_\_\_ )  
(Principal and Surety, \_\_\_\_\_ )  
(and acknowledged and \_\_\_\_\_ )  
(Notarial Seal attached \_\_\_\_\_ )

(Affix Corporate Seal)

\_\_\_\_\_  
(Individual Principal)

\_\_\_\_\_  
(Business Address)

(Affix Corporate Seal)

\_\_\_\_\_  
(Corporate Principal)

\_\_\_\_\_  
(Business Address)

(Affix Corporate Seal)

\_\_\_\_\_  
(Corporate Surety)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_

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

\_\_\_\_\_

The rate of premium on this bond is \_\_\_\_\_ per thousand.

The total amount of premium charged is \_\_\_\_\_.

The above must be filled in by Corporate Surety.



**WORKERS' COMPENSATION CERTIFICATE**

Labor Code Section 3700, in relevant part, provides:

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

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

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

I am aware of the provisions of the Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract. I shall supply the Owner with certificates of insurance evidencing that Workers' Compensation Insurance is in effect and providing that the Owner will receive thirty (30) days' notice of cancellation.

_____ Name of Contractor	
_____ Signature	
_____ Print Name	_____ Date

(In accordance with Article 5 (commencing at Section 1860), Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under the contract.)

**FINGERPRINTING NOTICE AND ACKNOWLEDGMENT**  
(Education Code Section 45125.2(a))

*Note: This document must be executed and submitted with the bid.*

Business entities entering into contracts with the Owner for the construction, reconstruction, rehabilitation or repair of a facility must comply with Education Code sections 45125.1 and 45125.2. Such entities are responsible for ensuring full compliance with the law and should therefore review all applicable statutes and regulations. The following information is provided simply to assist such entities with compliance with the law.

1. If the Owner determines your employee(s) will have more than limited contact with students, then you must take one or more of the following steps:
  - a. Install a physical barrier at the worksite to limit contact with pupils.
  - b. Have an employee, who the Department of Justice has ascertained has not been convicted of a violent or serious felony, continually monitor and supervise employees. The entity shall verify in the Independent Contractor Student Contact Form to the Owner that the employee charged with monitoring and supervising its employees has no such convictions. (See attached.)
  - c. Arrange, with Owner’s approval, for surveillance by Owner’s personnel.

If one or more of these steps is taken, you are not required to comply with Education Code section 45125.1.

2. If you are providing the services in an emergency or exceptional situation, you are not required to comply with Education Code section 45125.2. An “emergency or exceptional” situation is one in which pupil health or safety is endangered or when repairs are needed to make a facility safe and habitable. Owner shall determine whether an emergency or exceptional situation exists.

I have read the foregoing and agree to comply with the requirements of Education Code §§ 45125.1 and 45125.2 as applicable.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

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

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

## ATTACHMENT

Under Education Code section 45125.1, no employee of a contractor or subcontractor who has been convicted of or has criminal proceedings pending for a violent or serious felony may come into contact with any student. A violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code. Those felonies are presently defined as:

- (1) Murder or voluntary manslaughter.
- (2) Mayhem.
- (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
- (4) Sodomy as defined in subdivision (c) or (d) of Section 286.
- (5) Oral copulation as defined in subdivision (c) or (d) of Section 288a.
- (6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.
- (7) Any felony punishable by death or imprisonment in the state prison for life.
- (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.
- (9) Any robbery.
- (10) Arson, in violation of subdivision (a) or (b) of Section 451.
- (11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.
- (12) Attempted murder.
- (13) A violation of Section 18745, 18750, or 18755.
- (14) Kidnapping.
- (15) Assault with the intent to commit a specified felony, in violation of Section 220.
- (16) Continuous sexual abuse of a child, in violation of Section 288.5.

- (17) Carjacking, as defined in subdivision (a) of Section 215.
- (18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.
- (19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.
- (20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.
- (21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.
- (22) Any violation of Section 12022.53.
- (23) A violation of subdivision (b) or (c) of Section 11418.

A serious felony is any felony listed in subdivision (c) Section 1192.7 of the Penal Code. Those felonies are presently defined as:

- (1) Murder or voluntary manslaughter; (2) Mayhem; (3) Rape; (4) Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) Oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) Lewd or lascivious act on a child under the age of 14 years; (7) Any felony punishable by death or imprisonment in the state prison for life; (8) Any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (9) Attempted murder; (10) Assault with intent to commit rape, or robbery; (11) Assault with a deadly weapon or instrument on a peace officer; (12) Assault by a life prisoner on a non-inmate; (13) Assault with a deadly weapon by an inmate; (14) Arson; (15) Exploding a destructive device or any explosive with intent to injure; (16) Exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem; (17) Exploding a destructive device or any explosive with intent to murder; (18) Any burglary of the first degree; (19) Robbery or bank robbery; (20) Kidnapping; (21) Holding of a hostage by a person confined in a state prison; (22) Attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) Any felony in which the defendant personally used a dangerous or deadly weapon; (24) Selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any

methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) Any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) Grand theft involving a firearm; (27) carjacking; (28) any felony offense, which would also constitute a felony violation of Section 186.22; (29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220; (30) throwing acid or flammable substances, in violation of Section 244; (31) assault with a deadly weapon, firearm, machine gun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245; (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Sections 245.2, 245.3, or 245.5; (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246; (34) commission of rape or sexual penetration in concert with another person, in violation of Section 264.1; (35) continuous sexual abuse of a child, in violation of Section 288.5; (36) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 26100; (37) intimidation of victims or witnesses, in violation of Section 136.1; (38) criminal threats, in violation of Section 422; (39) any attempt to commit a crime listed in this subdivision other than an assault; (40) any violation of Section 12022.53; (41) a violation of subdivision (b) or (c) of Section 11418; and (42) any conspiracy to commit an offense described in this subdivision.

**INDEPENDENT CONTRACTOR STUDENT CONTACT FORM**

Contractor Name: \_\_\_\_\_  
Supervisor/Foreman Name: \_\_\_\_\_  
Start Date: \_\_\_\_\_  
Completion Date: \_\_\_\_\_  
Location of Work: \_\_\_\_\_  
Hours of Work: \_\_\_\_\_  
Length of Time on Grounds: \_\_\_\_\_  
Number of Employees on the Job: \_\_\_\_\_

Yes No  
[ ] [ ] Employees will have more than limited contact with students as determined by  
Owner, or if by Contractor, please explain:

\_\_\_\_\_  
\_\_\_\_\_

If yes, the following steps will be taken to ensure student safety (check):

- A physical barrier will be installed at the worksite to limit contact with pupils.
- Employees will be continually monitored and supervised by an employee who has not been convicted of a violent or serious felony.

Name of Supervising Employee:  
\_\_\_\_\_

Date of Department of Justice verification that supervising employee has not been  
convicted of a violent or serious felony:  
\_\_\_\_\_

Name of employee who is the custodian of the Department of Justice verification  
information:  
\_\_\_\_\_

- Owner agrees: Employees will be surveilled by Owner’s personnel.

I declare under penalty of perjury that the foregoing is true and correct to the best of my  
knowledge.

Dated: \_\_\_\_\_  
Signature \_\_\_\_\_  
Typed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*Note: This document must be executed and submitted with the executed Agreement between  
Owner and Contractor.*

**This is a fiduciary account created by statute, Public Contract Code section 22300. The funds deposited in this account shall not be released to Contractor or any other person or entity, other than Owner, including pursuant to any purported lien or writ of attachment or execution, without the prior written, express approval of Owner.**

## **Escrow Agreement for Security Deposits in Lieu of Retention**

This Escrow Agreement is made and entered into by and between the Westside Union School District (hereinafter called "Owner"), whose address is 41914 50<sup>th</sup> Street West, Quartz Hill, CA 93536, \_\_\_\_\_ (hereinafter called "Contractor"); and \_\_\_\_\_, a state or federally chartered bank in California whose address is \_\_\_\_\_ (hereinafter called "Escrow Agent").

For the consideration hereinafter set forth, the Owner, Contractor, and Escrow Agent agree as follows:

1. Pursuant to section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by the Owner pursuant to the Contract entered into between the Owner and Contractor in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), and dated \_\_\_\_\_, \_\_\_\_\_, (the "Contract"). Alternatively, on written request of the Contractor, the Owner shall make payments of the retention earnings directly to the Escrow Agent. When Contractor deposits the securities as a substitute for retention earnings, the Escrow Agent shall notify the Owner within ten (10) calendar days of the deposit. The market value of the securities at the time of the substitution, as valued by the Owner, shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Owner and Contractor. If the Owner determines that the securities are not adequate it will notify Contractor and Escrow Agent, and Contractor shall deposit additional security as further determined by the Owner. Securities shall be held in the name of the Owner and shall designate the Contractor as the beneficial owner.
2. Thereafter, Owner shall make progress payments to the Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.
3. Pursuant to Public Contract Code section 22300, as an alternative to the procedures set forth above, Contractor may request in writing that the Owner pay retention amounts directly to Escrow Agent. When the Owner makes payment of

retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for benefit of the Contractor until such time as the escrow created under this Escrow Agreement is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.

4. The Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor and Escrow Agent.

5. The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.

6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.

7. The Owner shall have the right to draw upon the securities or any amount paid directly to Escrow Agent in the event of default by the Contractor. Upon seven (7) days written notice to the Escrow Agent from the Owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash, including any amounts paid directly to Escrow Agent pursuant to Section 3 above, as instructed by Owner. Escrow Agent shall not be concerned with the validity of any notice of default given by Owner pursuant to this paragraph, and shall promptly comply with Owner's instructions to pay over said escrowed assets. Escrow Agent further agrees to not interplead the escrowed assets in response to a conflicting demand and hereby waives any present or future opportunity of interpleader.

8. Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payment of fees and charges.

9. Escrow Agent shall rely on the written notifications from the Owner and Contractor pursuant to Sections (4), (5), (6), (7) and (8) of this Agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.



10. The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner, the Contractor and the Escrow Agent in connection with the foregoing, and exemplars of their respective signatures are as follows:

ON BEHALF OF OWNER:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typewritten Name

\_\_\_\_\_  
Title

ON BEHALF OF CONTRACTOR:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typewritten Name

\_\_\_\_\_  
Title

ON BEHALF OF ESCROW AGENT:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typewritten Name

\_\_\_\_\_  
Title

**IN WITNESS WHEREOF**, the parties have executed this Agreement by their proper officers on the date first set forth above.

OWNER:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typewritten Name

\_\_\_\_\_  
Title

CONTRACTOR:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typewritten Name

\_\_\_\_\_  
Title

ESCROW AGENT:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typewritten Name

\_\_\_\_\_  
Title

At the time the Escrow Account is opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

**DRUG-FREE WORKPLACE CERTIFICATION**

This Drug-Free Workplace Certification is required pursuant to Government Code Sections 8350 *et seq.*, the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of any property or services from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract awarded by a State agency may be subject to suspension of payments or termination of the contract, or both, and the contractor may be subject to debarment from future contracting if the state agency determines that specified acts have occurred.

Pursuant to Government Code Section 8355, every person or organization awarded a contract or grant from a State agency shall certify that it will provide a drug-free workplace by doing all of the following:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition;
- (b) Establishing a drug-free awareness program to inform employees about all of the following:
  - (1) The dangers of drug abuse in the workplace;
  - (2) The person's or organization's policy of maintaining a drug-free workplace;
  - (3) The availability of drug counseling, rehabilitation and employee-assistance programs;
  - (4) The penalties that may be imposed upon employees for drug abuse Violations;
- (c) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of Government Code Section 8355 listed above and will publish a statement notifying employees concerning (a) the prohibition of controlled substance at the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by Section 8355(a) and requiring that the employee agree to abide by the terms of that statement.

I also understand that if the Owner determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of Section 8355, that the contract or grant awarded herein is subject to suspension of payments, termination, or both. I further understand that should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of Section 8350 *et seq.*

I acknowledge that I am aware of the provisions of Government Code Section 8350 *et seq.* and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

**Sufficient Funds Declaration**  
**(Labor Code section 2810)**  
**To Be Executed by Bidder and Submitted with Bid**

Owner: Westside Union School District  
Project: Leona Valley School Exterior Painting

I, \_\_\_\_\_, declare that I am the \_\_\_\_\_ of \_\_\_\_\_, the entity making and submitting the bid for the above Project that accompanies this Declaration, and that such bid includes sufficient funds to permit \_\_\_\_\_ [insert name of entity] to comply with all local, state or federal labor laws or regulations during the Project, including payment of prevailing wage, and that \_\_\_\_\_ [the entity] will comply with the provisions of Labor Code section 2810(d) if awarded the Contract.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and executed on \_\_\_\_\_ 20\_\_, at \_\_\_\_\_ [city], \_\_\_\_\_ [state].

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

\_\_\_\_\_

Signature

Print Name: \_\_\_\_\_

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

*[short form for bid projects \$15,000-\$175,000]*

**SHORT-FORM GENERAL CONDITIONS**

**for**

**CONTRACT OF CONSTRUCTION**

**FOR LEONA VALLEY EXTERIOR PAINTING PROJECT**

**WESTSIDE UNION SCHOOL DISTRICT [OWNER]**

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(date)

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# ARTICLE 1 GENERAL CONDITIONS

## 1.1 BASIC DEFINITIONS

**1.1.1 The Contract Documents.** The “Contract Documents” consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to bid, Instructions to Bidders, Notice to Bidders, the Bid Form, Payment Bond, Performance Bond, required insurance certificates, additional insured endorsement and declarations page, Designation of Subcontractors, Noncollusion Declaration, Roof Project Certification (where applicable), Sufficient Funds Declaration (Labor Code section 2810) and the Fingerprinting Notice and Acknowledgment and Independent Contractor Student Contact Form, other documents referred to in the Agreement, and Modifications issued after execution of the Agreement. A Modification is a written amendment to the Contract signed by both parties, a Change Order, a Construction Change Directive, or a written order for a minor change in the Work issued by the Owner. The Contract Documents are complementary, and each obligation of the Contractor, Subcontractors, material or equipment suppliers in any one shall be binding as if specified in all.

**1.1.2 The Contract.** The Contract Documents form the Contract. The “Contract” represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Architect and Contractor, between the Owner and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the Owner and the Contractor. The terms of the Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties and approved or ratified by the Governing Board.

**1.1.3 The Work.** The “Work” shall include all labor, materials, services, manuals, training, as-builts, and equipment necessary for the Contractor to fulfill all of its obligations pursuant to the Contract Documents, including, but not limited to, punch list items. The Work shall constitute a “work of improvement” under Civil Code section 8050 and Public Contract Code section 7107.

**1.1.4 The Project.** The “Project” is the total construction of the Work performed in accordance with the Contract Documents in whole or in part and which may include construction by the Owner or by separate contractors.

**1.1.5 The Drawings.** The “Drawings” are graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location, and scope of the Work, generally including plans, elevations, sections, details, schedules, and diagrams as drawn or approved by the Architect.

**1.1.6 The Specifications.** The “Specifications” are that portion of the Contract Documents consisting of the written requirements for material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.

**1.1.7 The Project Manual.** The “Project Manual” is the volume usually assembled for the Work which may include, without limitation, the bidding requirements, sample forms, Agreement, Conditions of the Contract, and Specifications.

**1.1.8 OR.** “Or” shall include “and/or.”

**1.1.9 COMPLETION.** Statutory definitions of “completion” and “complete” shall apply for those statutory purposes. For accrual of liquidated damages, Claim and warranty purposes, “completion” and “complete” mean the point in the Project where (1) Contractor has fully and correctly performed all Work in all parts and requirements, including corrective and punch list work, and (2) Owner’s representatives have conducted a final inspection that confirmed this performance. Substantial or any other form of partial or non-compliant, performance of the Work shall not constitute “completion” or “complete” under the Contract Documents.

**1.2 EXECUTION, CORRELATION AND INTENT** - The Contract Documents are complementary and are intended to include all items required for the proper execution and completion of the Work. Any item of work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided by Contractor as if shown or mentioned in both. Without limiting Contractor’s obligation to identify conflicts for resolution by the Owner, it is intended that the more stringent, higher quality, and greater quantity of Work shall apply. Each and every provision of law required by law to be inserted in this Contract shall be deemed to be inserted herein, and the Contract 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 correctly inserted, then upon application of either party the Contract shall be amended in writing to make such insertion or correction. Where requirements of the Contract Documents exceed those of the applicable building codes and ordinances, the Contract Documents shall govern. Contractor shall comply with all applicable Federal, State and local laws.

**1.3 OWNERSHIP AND USE OF ARCHITECT’S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS** - The Drawings, Specifications, and other documents prepared on behalf of the Owner are instruments of the services of the Architect and its consultants and are the property of the Owner. The Contractor may retain one contract record set.

## **ARTICLE 2 OWNER**

**2.1 DEFINITION** - The term “Owner” means the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Owner” means the Owner or the Owner’s authorized representatives, including, but not limited to, architects and construction managers. To the extent the Contract Documents indicate that Owner has assigned duties to particular representatives of the Owner (such as the architect,

or any construction manager), Owner reserves the right at all times to reassign such duties to different Owner representatives.

## **2.2 EXISTING UTILITY LINES; SITE SURVEY; CONTRACTOR RELIANCE –**

Pursuant to Government Code section 4215, the Owner assumes the responsibility for removal, relocation, and protection of utilities located on the Site at the time of commencement of construction under this Contract with respect to any such utility facilities which are not identified in the drawings and specifications made part of the invitation to bid. The Contractor shall not be assessed for liquidated damages for delay in completion of the Project caused by failure of the Owner to provide for removal or relocation of such utility facilities. Owner shall compensate the Contractor for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, removing or relocating such utility facilities, and for equipment necessarily idle during such work. When required by the scope of the Project, the Owner will furnish, at its expense, a legal description or a land survey of the site, giving, as applicable, grades and lines of streets, alleys, pavements, adjoining property, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site. Surveys to determine locations of construction, grading, and site work shall be provided by the Contractor.

Any test borings and soils reports for the Project have been made for the Owner to indicate the subsurface materials that might be encountered at particular locations on the Project. The Owner has made these documents available to the Contractor and the Contractor has studied the results of such test borings and information that it has as to the subsurface conditions and Site geology as set forth in the test borings and soils reports. The Owner does not assume any responsibility whatsoever with respect to the sufficiency or accuracy of the borings made, or of the logs of the test borings, or of other investigations, or of the soils reports furnished pursuant hereto, or of the interpretations to be made beyond the location or depth of the borings. There is no warranty or guarantee, either express or implied that the conditions indicated by such investigations, borings, logs, soil reports or other information are representative of those existing throughout the site of the Project, or any part thereof, or that unforeseen developments may not occur. At the Owner's request, the Contractor shall make available to the Owner the results of any Site investigation, test borings, analyses, studies or other tests conducted by or in the possession of the Contractor of any of its agents. Nothing herein contained shall be deemed a waiver by the Contractor to pursue any available legal right or remedy it may have at any time against any third party who may have prepared any report and/or test relied upon by the Contractor.

The Contractor may rely upon the accuracy of any utility services or site survey information that the District may provide, except that the Contractor may not rely upon and must question in writing to the Owner and the Architect any information which appears incorrect based upon Contractor's Site inspection, knowledge of the Project, and prior experience with similar projects, unless specifically stated in writing that the Contractor may rely upon the designated information.

**2.3 OWNER'S RIGHT TO STOP THE WORK -** If the Contractor fails to correct Work, which is not in accordance with the requirements of the Contract Documents as required by

paragraph 12.2, or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, after providing Notice pursuant to paragraph 2.4, may order the Contractor to stop the Work or any portion thereof, until the Contractor corrects the deficiencies.

**2.4 OWNER'S RIGHT TO CARRY OUT THE WORK** - If the Contractor fails or refuses to carry out the Work in accordance with the Contract Documents, the Owner may correct such deficiencies by whatever reasonable method the Owner may deem expedient without prejudice to other remedies the Owner may have, including but not limited to having another contractor perform some or all of the Work without terminating the Contract. Owner shall first provide written notice to Contractor of Contractor's failure or refusal to perform. The notice will provide the time period within which Contractor must begin correction of the failure or refusal to perform. If the Contractor fails to begin correction within the stated time, or fails to continue correction, the Owner may proceed to correct the deficiencies. In the event the Owner bids the work, Contractor shall not be eligible for the award of the contract. The Contractor may be invoiced the cost to Owner of the work, including compensation for additional professional and internally generated services and expenses made necessary by Contractor's failure or refusal to perform. Owner may withhold that amount from the retention, or progress payments due the Contractor, pursuant to Section 9.5. If retention and payments withheld then or thereafter due the Contractor are not sufficient to cover that amount, the Contractor shall pay the difference to the Owner.

### **ARTICLE 3 THE CONTRACTOR**

**3.1 DEFINITION** - The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representatives. To the extent that any portion of the Work is provided with the Contractor's own forces, any reference to Subcontractors shall be equally applicable to the Contractor. The Contractor shall post at appropriate conspicuous points on the Site, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned and all other required job site notices as prescribed by regulation.

#### **3.2 SUPERVISION AND CONSTRUCTION PROCEDURES**

**3.2.1 Contractor.** The Contractor shall supervise and direct the Work using the Contractor's best skill and attention, which shall meet or exceed the standards in the industry. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters. If any of the Work is performed by contractors retained directly by the Owner, Contractor shall be responsible for the coordination and sequencing of the Work of those other contractors so as to avoid any impact on the Project Schedule.

**3.2.2 Contractor Responsibility.** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors, material and equipment

suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with the Contractor or any of its Subcontractors.

**3.2.3 Obligations not Changed by Architect's Actions.** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by the activities or duties of the Owner's representatives, including but not limited to, any construction manager, the Architect or Inspector of Record, or by tests, inspections, or approvals required or performed by persons other than the Contractor.

**3.2.4 Contractor Responsibility for Readiness for Work.** The Contractor shall be responsible for inspection of Work already performed under the Contract Documents to determine that such portions are in proper condition to receive subsequent work.

**3.3 SUPERINTENDENT** - The Contractor shall provide a competent superintendent and assistants as necessary, all of whom shall be reasonably proficient in speaking, reading and writing English and, who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor and each Subcontractor shall: furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and keep an adequate force of skilled workers on the job to complete the Work in accordance with all requirements of the Contract Documents. Owner shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of any Contractor, Subcontractor, material or equipment supplier, etc., for cause.

**3.4 LABOR AND MATERIALS** - Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

**3.5 WARRANTY** - For the period of one (1) year after completion of the Work, the Contractor warrants to the Owner that material and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents, per Section 12.2.

**3.6 TAXES** - Contractor will pay all applicable Federal, State, and local taxes on all materials, labor, or services furnished by it, and all taxes arising out of its operations under the Contract Documents. Owner is exempt from Federal Excise Tax, and a Certificate of Exemption shall be provided upon request.

**3.7 PERMITS, FEES AND NOTICES** - The Contractor shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and are legally required by any authority having jurisdiction over the Project, except those required by the Division of the State Architect (DSA). Owner shall be responsible for all testing and inspection as required by the DSA on-Site or within the distance limitations set forth in paragraph 13.4.1, unless a different mileage range is specified in the Contract Documents.

**3.8 ALLOWANCES** - The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against whom the Contractor makes reasonable and timely objection.

**3.9 CONTRACTOR'S CONSTRUCTION SCHEDULES** - The Contractor, promptly after executing the Contract, shall prepare and submit for the Owner's and any construction manager's information the construction schedule for the Work, which shall conform to the Contract Documents requirements. The schedule shall not exceed time limits current under the Contract Documents and shall comply with all of the scheduling as required by the Contract Documents (including these General Conditions and Division 1 of the Specifications) and the standards of the industry. The construction schedule shall be in the form of a tabulation, chart, or graph and shall be in sufficient detail to show the chronological relationship of all activities of the project including, but not limited to, estimated starting and completion dates of various activities, (including early and late dates and reasonable float for each activity), procurement of materials, the critical path, and scheduling of equipment. In connection with the DSA Construction Oversight Process, which includes inspection cards and review of changes to the DSA-approved construction documents, the Contractor must (a) include specific tasks in its baseline schedule to take into account these procedures since they are critical path issues; and (b) include a reasonable amount of float in the baseline schedule to accommodate the additional time required by these DSA procedures. Failure of the Contractor to provide proper schedules as required by this paragraph may, at the sole discretion of Owner, constitute either grounds to withhold, in whole or in part, progress payments to the Contractor, or a breach of contract allowing Owner to terminate the Contract.

**3.10 DOCUMENTS AND SAMPLES AT THE SITE** - The Contractor shall maintain at the Site for the Owner one applicable copy of Titles 19 and 24 and record copy of the Drawings, Specifications, Addenda, Change Orders, and other Modifications, in good order and marked currently to record changes and selections made during construction. In addition, the Contractor shall maintain at the Site approved Shop Drawings, Product Data, Samples, and similar required submittals.

### **3.11 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES**

**3.11.1 Shop Drawings.** The term "shop drawings" as used herein means drawings, diagrams, schedules, and other data, which are prepared by Contractor, Subcontractors,

manufacturers, suppliers, or distributors illustrating some portion of the Work. The Contractor shall obtain and submit with the shop drawings all seismic and other calculations and all product data from equipment manufacturers. Shop drawings shall: establish the actual detail of all manufactured or fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.

**3.11.2 Samples.** The term “samples” as used herein are physical examples furnished by Contractor to illustrate materials, equipment, or quality. All Work shall be in accordance with the approved samples.

**3.11.3 Contractor’s Responsibility.** Contractor shall obtain and shall submit to Architect all required shop drawings and samples in accordance with Contractor’s “Schedule for Submission of Shop Drawings and Samples” as required in Division 1 of the Specifications with such promptness as to cause no delay in its own Work or in that of any other contractor, Owner or subcontractor but in no event later than ninety (90) days after the execution of the Agreement. Review by Owner and Architect shall not relieve the Contractor or any Subcontractor from its responsibility in preparing and submitting proper shop drawings, product data and samples in accordance with the Contract Documents. Any submission, which in Architect’s opinion is incomplete, contains numerous errors, or has been checked only superficially by Contractor will be returned unreviewed by the Architect for resubmission by the Contractor. Contractor shall not commence any portion of the Work requiring a shop drawing or sample submission until the Architect has approved the submission.

**3.11.4 Extent of Review.** In reviewing shop drawings, the Owner will not verify dimensions and field conditions. The Architect will review and approve shop drawings, product data, and samples for aesthetics and for conformance with the design concept of the Work and the information given in the Contract Documents. The Architect’s review shall not relieve the Contractor from responsibility for any deviations from the requirements of the Contract Documents unless the Architect has given specific written approval. Contractor and Subcontractors shall be solely responsible for determining any quantities, whether or not shown on the shop drawings.

**3.11.5 Substitution.** Unless the Specifications state that no substitution is permitted, whenever in the Contract Documents any specific brand or trade name is specified such specification shall be deemed to be followed by the words “or equal.” The Owner may consider an untimely substitution request if the product specified is no longer commercially available.

**3.12 CLEANING UP** - The Contractor shall keep the Site and surrounding area free from accumulation of waste material or rubbish caused by operations under the Contract. The Site shall be maintained in a safe, neat and orderly condition. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so, without prior notice to the Contractor and the cost thereof shall be invoiced to the Contractor and withheld from progress payments and/or retention. When directed by the Owner or the Architect, Contractor and Subcontractor shall dismantle temporary structures, if any, and remove from the Site all



construction and installation equipment, fences, scaffolding, surplus materials, rubbish, and supplies belonging to Contractor or Subcontractor.

**3.13 ACCESS TO WORK** - The Contractor shall provide the Owner, the Architect, and the Inspector of Record, access to the Work in preparation and progress wherever located.

**3.14 ROYALTIES AND PATENTS** - The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims of infringement of patent rights and shall hold the Owner and the Architect harmless and indemnify them from loss on account thereof, to the extent not caused by the Owner's active negligence, sole negligence or willful misconduct, and shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer is required by the Contract Documents, unless Contractor has reason to believe it is an infringement of a patent and does not inform Architect.

### **3.15 INDEMNIFICATION**

**3.15.1 Scope: Contractor.** To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the Owner, the construction manager, Architect, Architect's consultants, the Inspector of Record, the State of California, and their respective agents, employees, officers, volunteers, Boards of Trustees, members of the Boards of Trustees, and directors ("Indemnitees"), from and against claims, actions, damages, liabilities, losses (including but not limited to injury or death of persons, property damage, and compensation owed to other parties), and expenses (including but not limited to attorneys' fees and costs including fees of consultants) alleged by third parties against Indemnitees arising out of or resulting from the following: Contractor's, its Subcontractors', or its suppliers' performance of the Work, including but not limited to the Contractor's or its Subcontractors' use of the Site; the Contractor's or its Subcontractors' construction of the Project, or failure to construct the Project, or any portion thereof; the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment including, but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnitees; or any act, omission, negligence, or willful misconduct of the Contractor or its Subcontractors or their respective agents, employees, material or equipment suppliers, invitees, or licensees but only to the extent caused in whole or in part by the acts or omissions of the Contractor, its Subcontractors, its suppliers, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph. The obligation to defend, indemnify and hold harmless includes any claims or actions by third parties arising out of or resulting from Labor Code section 2810. Contractor shall have no obligation to defend or indemnify the Indemnitees against claims, actions, damages, liabilities, losses, and expenses caused by the active negligence, sole negligence or willful misconduct of Indemnitees. This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Contractor.

### **3.15.2 Scope: Subcontractors.**

**3.15.2.1 Indemnity.** The Subcontractors shall defend, indemnify, and hold harmless the Indemnitees from and against claims, actions, damages, liabilities, and losses (including but not limited to injury or death of persons, property damage, and compensation owed to other parties), and expenses (including but not limited to attorneys' fees and costs including fees of consultants) alleged by third parties against Indemnitees arising out of or resulting from the following: Subcontractors' performance of the Work, including but not limited to the Subcontractors' use of the Site; the Subcontractors' construction of the Project or failure to construct the Project or any portion thereof; the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment, including, but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnitees; or any act, omission, negligence, or willful misconduct of the Subcontractors or their respective agents, employees, material or equipment suppliers, invitees, or licensees but only to the extent caused in whole or in part by the acts or omissions of the Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph. This obligation to defend, indemnify and hold harmless includes any claims or actions by third parties arising out of or resulting from Labor Code section 2810. Subcontractors shall have no obligation to defend or indemnify the Indemnitees against claims, actions, damages, liabilities, losses, and expenses caused by the active negligence, sole negligence or willful misconduct of Indemnitees. This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Subcontractors.

**3.15.2.2 Joint and Several Liability.** In the event more than one Subcontractor is connected with an accident or occurrence covered by this indemnification, then all such Subcontractors shall be jointly and severally responsible to each of the Indemnitees for indemnification, and the ultimate responsibility among such indemnifying Subcontractors for the loss and expense of any such indemnification shall be resolved without jeopardy to any Indemnitee. The provisions of the indemnity provided for herein shall not be construed to indemnify any Indemnitee for its own negligence if not permitted by law or to eliminate or reduce any other indemnification or right which any Indemnitee has by law or equity.

**3.15.3 No Limitation.** The Contractor's and the Subcontractor's obligation to indemnify and defend the Indemnitees hereunder shall include, without limitation, any and all claims, damages, and costs: for injury to persons and property (including loss of use), and sickness, disease or death of any person; for breach of any warranty, express or implied; for

failure of the Contractor or the Subcontractor to comply with any applicable governmental law, rule, regulation, or other requirement; and for products installed in or used in connection with the Work.

**3.16 NOTICE OF EXCUSE FOR NONPERFORMANCE** - If Contractor believes that acts or omissions of Owner (including, but not limited to, Owner-caused delay) have prevented Contractor from performing the Work as required by the Contract Documents and Contractor intends to rely on Owner's acts or omissions and Civil Code section 1511(1) as reasons to excuse Contractor's nonperformance or to support, among other things, Contractor's requests for time extensions under these General Conditions, Contractor shall provide written notice of the excuse within five (5) days of the Owner's acts or omissions. If Contractor fails to timely submit the written notice, Contractor shall have waived any right to later rely on the acts or omissions as a defense to Contractor's nonperformance or as the basis for a time extension, regardless of the merits of the defense or time extension. Contractor will not have satisfied a condition precedent or exhausted administrative remedies. Contractor acknowledges that these written notices are of critical importance to the Owner's Project management and the mitigation of Project costs and delays.

## **ARTICLE 4 ADMINISTRATION OF THE CONTRACT**

**4.1 ARCHITECT** - The term "Architect" means the Architect or the Architect's authorized representative, shall also refer to all consultants under the Architect's direction and control, and is referred to as if singular in number. The Architect will have authority to act on behalf of the Owner only to the extent set forth in the Owner/Architect agreement.

### **4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT**

**4.2.1 Status.** The Architect may provide administration of the Contract as described in the Contract Documents and may be one of several Owners' representatives during construction.

**4.2.2 Limitations of Construction Responsibility.** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect, or by tests, inspections, or approvals required or performed by persons other than the Contractor.

**4.2.3 Communications Facilitating Contract Administration.** Except as otherwise provided in the Contract Documents or when direct communications are warranted by special circumstances, the Owner and the Contractor shall communicate through the Architect, unless there is a construction manager for the Project or the Owner directs otherwise.

**4.2.4 Rejection of Work.** In addition to the rights, duties, and obligations of the Inspector of Record under this Article, the Architect may recommend to the Owner that the Owner reject Work which does not conform to the Contract Documents.

**4.3 INSPECTOR OF RECORD** - One or more Project inspectors (“Inspector of Record”) employed by the Owner and approved by the Division of the State Architect will be assigned to the Work in accordance with the requirements of Title 24 of the California Code of Regulations. The Inspector of Record’s duties will be as specifically defined in Title 24. All Work shall be under the observation of or with the knowledge of the Inspector of Record. The Inspector of Record shall have free access to any or all parts of the Work at any time. The Contractor shall furnish the Inspector of Record such information as may be necessary to keep the Inspector of Record fully informed regarding progress and manner of work and character of materials. Such observations shall not, in any way, relieve the Contractor from responsibility for full compliance with all terms and conditions of the Contract, or be construed to lessen to any degree the Contractor’s responsibility for providing efficient and capable superintendence. The Inspector of Record is not authorized to make changes in the drawings or specifications. The Inspector of Record shall have the authority to reject work that does not comply with the provisions of the Contract Documents. In addition, the Inspector of Record may stop any Work which poses a probable risk of harm to persons or property.

**4.4 RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE OWNER FOR PROFESSIONAL SERVICES** - If at any time prior to the completion of the requirements under the Contract Documents, through no fault of its own, the Owner is required to provide or secure additional professional services for any reason by any act or omission of the Contractor, the Contractor shall be invoiced by the Owner for any actual costs incurred for any such additional services, which costs may, among other remedies, be withheld from the progress payments and/or retention.

#### **4.5 CLAIMS**

**4.5.1 General.** A “Claim” is a separate demand by the Contractor for (a) a time extension, (b) payment of money or damages arising from work done by, or on behalf of, the Contractor, payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (c) an amount the payment of which is disputed by the local agency. A Claim includes any dispute Contractor may have with the Owner, including one regarding an alleged breach of contract by the Owner. The responsibility to substantiate Claims shall rest with the Contractor.

Claims, including those alleging an error or omission by the Architect, shall be submitted to the Architect and Owner. If Contractor intends to rely on Owner’s acts or omissions in support of a request for a time extension, then Contractor must also provide the notice set forth in section 3.16, above. A timely decision by the Owner shall be provided. Claims must be made by written notice prior to the final progress payment. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered. The failure of the Contractor to make a Claim within the specified time shall constitute an express waiver of any right to assert such Claim, whether affirmatively or defensively. Despite submission or rejection of a Claim, the Contractor shall proceed diligently with performance of the Contract, and the Owner shall continue to make any undisputed payments in accordance with the Contract. When any excavation or trenching extends greater than four feet below the surface, Public Contract Code section 7104 shall control.

The Contractor shall certify, at the time of submission of a Claim, as follows:

I, \_\_\_\_\_, being the \_\_\_\_\_ (Must be an officer) of \_\_\_\_\_ (Contractor), declare under penalty of perjury under the laws of the State of California, and do personally certify and attest that: I have thoroughly reviewed the attached Claim for additional cost and/or extension of time, and know its contents, and said Claim is made in good faith; the supporting data is truthful, accurate and complete; that the amount requested accurately reflects the adjustment for which the Contractor believes the Owner is liable; and further, that I am familiar with California Penal Code section 72 pertaining to false claims, and further know and understand that submission or certification of a false claim may lead to fines, imprisonment and/or other severe legal consequences.

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

Contractor understands and agrees that any Claim submitted without this certification does not meet the terms of the Contract Documents, that Owner, or Owner's representatives, may reject the Claim on that basis and that unless Contractor properly and timely files the Claim with the certification, Contractor cannot further pursue the Claim in any forum. A condition precedent will not have been satisfied.

#### **4.5.2 Claims for Concealed or Unknown Conditions**

**4.5.2.1 Trenches or Excavations Less Than Four Feet below the Surface.** If Contractor encounters conditions at the Site which are subsurface or otherwise concealed physical conditions, which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the Contractor shall be given to the Owner promptly before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. If Contractor believes that such conditions differ materially and will cause an increase in the Contractor's cost of, time required for, or performance of any part of the Work, Contractor must comply with the provisions above for Claims.

**4.5.2.2 Trenches or Excavations Greater Than Four Feet below the Surface.** Pursuant to Public Contract Code section 7104, when any excavation or trenching extends greater than four feet below the surface:

4.5.2.2.1 The Contractor shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, of any:

- (1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law.

(2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.

(3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

4.5.2.2.2 The public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required or, performance of any part of the work shall issue a change order under the procedures described in the Contract.

4.5.2.2.3 In the event that a dispute arises between the public entity and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

**4.6 CLAIMS OF \$375,000 OR LESS** - Notwithstanding any other provision herein, claims of \$375,000 or less shall be handled pursuant to the procedures set forth in Public Contract Code sections 20104.2, including claim, response, informal meet and confer conference, non-binding mediation if a claim of over \$100,000 remains in dispute after the meet and confer conference, and Government Code claim. As a precedent to initiation of any litigation against the Owner, Contractor must observe and comply with the Government Code claim procedures in Government Code sections 901 et seq. after completion of the contractual claim procedures above, including but not limited to timely presentation of a Government Code claim. The claim procedures described herein do not supersede or replace the requirement of a Government Code claim, and the two claim procedures shall be sequential.

**4.7 CLAIMS IN EXCESS OF \$375,000** - Claims over \$375,000 shall be handled by Contractor and Owner pursuant to Section 4.6, above, except as follows: (a) Procedures in Public Contract Code section 20104.2(b) shall not be applicable; (b) Owner shall respond in writing to all written Claims within 90 days of receipt of the Claim, or may request, in writing, within 45 days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim the Owner may have against the Contractor; (c) Owner shall respond within 45 days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or documentation, whichever is greater; and (d) following any meet and confer conference pursuant to Public

Contract Code section 20104.2(d), if the Claim or any portion of it remains in dispute and Contractor wishes to pursue it, Contractor must demand in writing within fifteen (15) days that the parties mediate, and such requirement for mediation shall not toll or supersede the requirement for submission of a Government Code claim, as specifically required in Section 4.6 above. If Contractor fails to timely notify the Owner in writing that it wishes to mediate pursuant to this paragraph, then Contractor will have waived all rights to further pursue the Claim. The parties shall reasonably cooperate to schedule and attend mediation as soon as reasonably possible.

## **ARTICLE 5 SUBCONTRACTORS**

### **5.1 DEFINITIONS**

**5.1.1 Subcontractor.** A Subcontractor is a person or entity, who has a contract with the Contractor to perform a portion of the Work at the Site. The term “Subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term “Subcontractor” does not include a separate contractor or subcontractors of a separate contractor. To the extent that the term Trade Contractor is utilized in the Contract Documents, it shall have the same meaning as the term “Subcontractor.”

**5.1.2 Sub-Subcontractor.** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site. The term “Sub-subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

**5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK** - Subcontractors shall be listed by Contractor pursuant to Public Contract Code section 4104. Subcontractor substitution shall be handled in accordance with Public Contract Code sections 4107 and 4107.5. Any substitutions of Subcontractors shall not result in any increase in the Contract Sum or the granting of any extension of time for the completion of the Project.

**5.3 SUBCONTRACTUAL RELATIONS** - By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all obligations and responsibilities, which the Contractor, by the Contract Documents, assumes toward the Owner.

**5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS** - Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

A. Assignment is effective only after termination of the Contract with the Contractor by the Owner for cause pursuant to Article 14 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and

B. Assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to the Contract.

## **ARTICLE 6**

### **CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

#### **6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

**6.1.1 Owner's Rights.** The Owner reserves the right to perform work related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site under Conditions of the Contract identical or substantially similar to these, including those portions related to insurance. Upon the election to perform work with its own forces or by separate contracts, the Owner shall notify the Contractor. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall proceed pursuant to the Contract Documents.

**6.1.2 Contractor's Duties.** The Contractor shall have overall responsibility for coordination and scheduling of the activities of the Owner'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 Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule and Contract Sum deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors, and the Owner until subsequently revised.

**6.1.3 Owner Obligations.** Unless otherwise provided in the Contract Documents, when the Owner performs work related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, which apply to the Contractor under the General Conditions.

#### **6.2 MUTUAL RESPONSIBILITY**

**6.2.1 Delivery and Storage.** The Contractor shall afford the Owner and separate contractors reasonable opportunity for delivery and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the separate contractors' construction and operations with theirs as required by the Contract Documents.

**6.2.2 Notice by Contractor.** If part of the Contractor's Work depends upon proper execution or results from work by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner patent 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 Owner'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 reasonably discoverable.



## **ARTICLE 7 CHANGES IN THE WORK**

### **7.1 CHANGES**

**7.1.1 No Changes without Authorization.** The Owner reserves the right to change the Work by making such alterations, deviations, additions to, or deletions from the plans and specifications, as may be deemed by the Owner to be necessary or advisable for the proper completion or construction of the Work contemplated, and the Owner reserves the right to require Contractor to perform such work. There shall be no change whatsoever in the drawings, specifications, or in the Work without an executed Change Order, Construction Change Directive, or order by the Owner for a minor change in the Work as herein provided. Owner shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the same shall have been authorized by and the cost thereof approved in writing by Change Order or Construction Change Directive. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order.

**7.1.2 Architect Authority.** The Owner will have authority to order minor changes in the Work not involving any adjustment in the Contract Sum, an extension of the Contract Time, or a change which is inconsistent with the intent of the Contract Documents. Such changes shall be effected by written Change Order and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

**7.2 CHANGE ORDERS (“CO”)** - A CO is a written instrument prepared by the Architect and signed by the Owner, the Contractor, the Architect, and the DSA, stating their agreement upon all of the following: (A) A change in the Work; (B) the amount of the adjustment in the Contract Sum, if any; and (C) the extent of the adjustment in the Contract Time, if any.

**7.3 CONSTRUCTION CHANGE DIRECTIVES (“CCD”)** - A CCD is a written unilateral order prepared by the Architect and signed by the Owner, and if necessary by the Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by CCD, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions the Contract Sum and Contract Time being adjusted accordingly. A CCD shall be used in the absence of agreement on the terms of a CO. If Contractor disagrees with the terms of a CCD, it shall nevertheless perform the work directed by the CCD, but it may pursue the notice, COR and claim procedures if Contractor believes it is entitled to changes in the Contract Sum or Contract Time.

**7.4 REQUEST FOR INFORMATION (“RFI”)** - An RFI is a written request prepared by the Contractor asking the Owner to provide additional information necessary to clarify an item which the Contractor feels is not clearly shown or called for in the drawings or specifications, or to address problems which have arisen under field conditions. The RFI shall reference all the

applicable Contract Documents including specification section, detail, page numbers, drawing numbers, and sheet numbers, etc. The Contractor shall make suggestions and/or interpretations of the issue raised by the RFI. An RFI cannot modify the Contract Sum, Contract Time, or the Contract Documents. The Owner and Contractor agree that an adequate time period for the Architect to respond to an RFI is generally fourteen (14) calendar days after the Architect's receipt of an RFI, unless the Owner and Contractor agree otherwise in writing. However, in all cases, the Architect shall take such time, whether more or less than 14 days, as is necessary in the Architect's professional judgment to permit adequate review and evaluation of the RFI. If Contractor informs the Architect that it needs a response to an RFI expedited to avoid delay to the critical path, the Architect shall provide a response as quickly as reasonably possible. The Contractor shall be invoiced by the Owner for any costs incurred for professional services, which shall be withheld from progress payments or retention, if an RFI requests an interpretation or decision of a matter where the information sought is equally available to the party making such request.

**7.5 REQUEST FOR PROPOSAL (“RFP”)** - An RFP is a written request prepared by the Architect asking the Contractor to submit to the Owner and the Architect an estimate of the effect of a proposed change on the Contract Sum and the Contract Time. An RFP shall contain adequate information, including any necessary drawings and specifications, to enable Contractor to provide the cost breakdowns required by section 7.7. The Contractor shall not be entitled to any Additional Compensation for preparing a response to an RFP, whether ultimately accepted or not.

**7.6 CHANGE ORDER REQUEST (“COR”)** - A COR is a written request prepared by the Contractor asking the Owner and the Architect to incorporate a proposed change called for in an RFP or a notice of claim into a CO. A COR shall include breakdowns to validate any change in Contract Sum due to proposed change or claim. A COR shall also include any additional time required to complete the Project. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Project Schedule as defined in section 3.9 and Division 1 of the Specifications.

## **7.7 COST OF CHANGE ORDERS**

**7.7.1 Scope.** Within ten (10) days or such lesser period of time as may be required by Owner after a request is made for a change that impacts the Contract Sum or the Contract Time, the Contractor shall provide to the Owner and the Architect in writing an estimate of the effect of the proposed CO upon the Contract Sum and the actual cost of construction, which shall include a complete itemized cost breakdown of all labor and material showing actual quantities, hours, unit prices, wage rates, required for the change, and the effect upon the Contract Time of such CO. Changes may be made by Owner by an appropriate written CO, or, at the Owner's option, such changes shall be implemented immediately upon the Contractor's receipt of an appropriate written CCD.

**7.7.2 Determination of Cost.** The amount of the increase or decrease in the Contract Sum resulting from a CO, if any, shall be determined in one or more of the following ways as applicable to a specific situation: (A) Mutual acceptance of a lump sum properly itemized and

supported by sufficient substantiating data to permit evaluation; (B) unit prices stated in the Contractor's original bid, the Contract Documents, or subsequently agreed upon between the Owner and the Contractor; (C) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or (D) by cost of material and labor and percentage of overhead and profit. Contractor and Subcontractors may mark up their own work by 15% for overhead, bond and insurance premiums, and profit. Contractor may mark up a Subcontractor's total costs by 5%.

**7.7.3 Accounting Records.** With respect to portions of the Work performed by COs and CCDs on a time-and-materials, unit-cost, or similar basis, the Contractor shall keep and maintain cost-accounting records satisfactory to the Owner, which shall be available to the Owner on the same terms as any other books and records the Contractor is required to maintain under the Contract Documents.

**7.7.4 Notice Required.** If the Contractor desires an increase in the Contract Sum, or any extension in the Contract Time for completion, it shall give the Owner and the Architect written notice of the potential change within five (5) days after the occurrence of the event giving rise to the claim, together with detailed estimates of the impact on the Contract Sum and/or the Contract Time. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with paragraph 10.4 hereof. No notice shall be considered unless made in accordance with this Subparagraph; however, the mere presentation of such claim shall not establish the validity of the cause giving rise to such claim, or of the extension of the Contract Time, and/or the increase in the Contract Sum. Contractor shall proceed to execute the Work even though the adjustment has not been agreed upon. Any change in the Contract Sum or extension of the Contract Time resulting from such claim shall be authorized by a CO.

## **ARTICLE 8 TIME**

### **8.1 DEFINITIONS**

**8.1.1 Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Completion of the Work.

**8.1.2 Notice to Proceed.** The date of commencement of the Work is the date established in the Notice to Proceed. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for which the Contractor is responsible.

**8.1.3 Days.** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

## **8.2 HOURS OF WORK**

**8.2.1 Sufficient Force.** Contractors and Subcontractors shall furnish sufficient forces to ensure the prosecution of the Work in accordance with the Construction Schedule.

**8.2.2 Performance during Working Hours.** Work shall be performed during regular working hours except that in the event of an emergency or when required to complete the Work in accordance with job progress, work may be performed outside of regular working hours with the advance written consent of the Owner.

**8.2.3 Labor Code Application.** As provided in Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any Subcontractor on any subcontract under this Contract, upon the work or upon any part of the work contemplated by this Contract, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision hereinabove set forth, work performed by employees of Contractors in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work with compensation provided for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

Contractor or subcontractor shall pay to the Owner a penalty of Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by the Contractor, or by any Subcontractor, 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 (1) calendar week, in violation of the provisions of Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation for the workers so employed by Contractor is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

**8.3 PROGRESS AND COMPLETION** - Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work. The Contractor shall not knowingly, except by agreement or instruction of the Owner, in writing, commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance. The Contractor shall proceed expeditiously with adequate forces, labor, materials, equipment and management, and shall achieve Completion within the Contract Time.

## **8.4 EXTENSIONS OF TIME - LIQUIDATED DAMAGES**

**8.4.1 Excusable Delay.** The Contractor shall not be charged for liquidated damages, as set forth in the Agreement, because of any delays in completion of the Work due to acts of God, acts of public enemy, acts of Government, acts of the Owner or anyone employed by it, acts of another contractor in performance of a contract (other than this Contract) with the Owner,

fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, or delays of subcontractors due to such causes.

**8.4.2 Notice by Contractor Required.** The Contractor shall within ten (10) calendar days of beginning of any such delay (unless Owner grants in writing a further period of time to file such notice prior to the date of final payment under the Contract) notify the Owner in writing of causes of delay. Owner will then ascertain the facts and extent of the delay and grant an extension of time for completing the Work when, in its judgment, the findings of fact justify such an extension. The Owner's findings of fact thereon shall be final and conclusive on the parties. Extensions of time shall apply only to that portion of the Work affected by the delay and shall not apply to other portions of the Work not so affected. The sole remedy of Contractor for extensions of time under paragraph 8.4.1 shall be an extension of the Contract Time at no cost to the Owner.

**8.4.3 Conditions for Extension of Time.** If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner, the Architect, an employee of either, or of a separate contractor employed by the Owner, by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, or unavoidable casualties, by delay authorized by the Owner pending arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

**8.4.4 Early Completion.** Regardless of the cause therefore, the Contractor may not maintain any Claim or cause of action against the Owner for damages incurred as a result of its failure or inability to complete its work on the Project in a shorter period than established in the Contract Documents.

**8.4.5 Liquidated Damages.** Failure to complete the Project within the time and in the manner provided for by the Contract Documents shall subject the Contractor to liquidated damages, as described in the Agreement. For purposes of liquidated damages, the concept of substantial completion shall not constitute completion and is not part of this agreement.

**8.5 GOVERNMENT APPROVALS** - Owner shall not be liable for any delays or damages related to the time required to obtain government approvals.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

**9.1 CONTRACT SUM** - The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

**9.2 COST BREAKDOWN** - On forms approved by the Owner within ten (10) days of the execution of the Agreement, the Contractor shall furnish a schedule of values and a list of all subcontractors and suppliers. The Owner shall review all submissions received in a timely manner. All submissions must be accepted by the Owner before becoming the basis

of any payment.

**9.3 APPLICATIONS FOR PAYMENT** - On or before the fifth (5th) day of each calendar month during the progress of the portion of the Work for which payment is being requested, the Contractor shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the Schedule of Values through the end of the previous calendar month. As the Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from Owner, to assure that there will be no delays, payment by the Owner for stored material shall be made only in unusual circumstances where the Owner specifically approves the payment in writing. The Contractor warrants that title to all work covered by an Application for Payment will pass to the Owner no later than the time of payment.

**9.4 REVIEW OF PROGRESS PAYMENT** - The Owner will, within seven (7) days after receipt of the Contractor's Application for Payment, either accept such payment or notify the Contractor in writing of the Owner's reasons for withholding acceptance in whole or in part. The review of the Contractor's Application for Payment by the Owner is based on the Owner's observations at the Site and the data comprising the Application for Payment whether the Work has progressed to the point indicated and whether, to the best of the Owner's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents.

**9.5 DECISIONS TO WITHHOLD PAYMENT** - The Owner may decide to withhold a progress or retention payment in whole, or in part, to the extent reasonably necessary to protect the Owner. In addition, the Owner may withhold payment, in whole, or in part, to such extent as may be necessary to protect the Owner from loss because of any acts or omissions by Contractor, including any rights to withhold mentioned in the Contract Documents or based on stop payment notices.

**9.6 PROGRESS PAYMENTS** - Progress payments shall be made in accordance with Public Contract Code sections 7201, 9203, and 20104.50. Owner shall retain five percent (5%) of any approved progress payment, except it may retain more if it makes special findings pursuant to Public Contract Code section 7201.

**9.7 COMPLETION OF THE WORK** - Upon receipt of the Contractor's request for final inspection, the Owner will make an inspection to determine whether the Work, or designated portion thereof, is complete. If the Owner's inspection discloses any item which is not completed in accordance with the requirements of the Contract Documents, the Contractor shall, before Owner's issuance of the Notice of Completion, diligently complete or correct such item.

**9.8 PARTIAL OCCUPANCY OR USE** - Owner may occupy or use any completed or partially completed portion of the Work at any stage without accepting that work and without waiving rights to claim damages as to that work. The Owner and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents.

**9.9 ACCEPTANCE, NOTICE OF COMPLETION, AND FINAL PAYMENT** - If the Owner's representatives find the Work fully performed under the Contract Documents, they shall so notify Contractor, who shall then submit to the Owner its final application for progress payment. After the Owner's representatives find the Work fully performed, the Owner's governing body should accept the Work as fully complete. After completion, the Owner may record a Notice of Completion with the County Recorder in accordance with Civil Code section 8182. Contractor shall, upon receipt of final progress payment from Owner, pay the amounts due Subcontractors. Owner shall pay the retainage pursuant to Public Contract Code section 7107. Any application for final progress payment shall be accompanied by the same details required for monthly progress payments. Acceptance of final progress payment shall constitute a waiver of Claims except for those previously identified in writing and identified by that payee as unsettled at the time of final payment.

**9.10 SUBSTITUTION OF SECURITIES** - In accordance with section 22300 of the Public Contract Code, the Owner will permit the substitution of securities for any retention monies withheld by the Owner to ensure performance under the Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the Owner, or with a state or federally chartered bank as the escrow agent, who shall then pay such retention monies to the Contractor. Upon completion of the Contract, the securities shall be returned to the Contractor if Owner has no basis to withhold under the Contract Documents. Securities eligible for investment under this section shall include those listed in Government Code section 16430, bank or savings and loan certificates of deposit, interest-bearing, demand-deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the Owner. The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon. Any escrow agreement used shall be substantially similar to the form set forth in Public Contract Code section 22300.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

**10.1 SAFETY PRECAUTIONS AND PROGRAMS** - The Contractor shall have responsibility for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. Subcontractors have the responsibility for participating in, and enforcing, the safety and loss prevention programs established by the Contractor for the Project, which will cover all Work performed by the Contractor and its Subcontractors. Subcontractors shall promptly report in writing and by phone to the Contractor all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. The Contractor will provide and maintain at the Site first-aid supplies for minor injuries.

**10.2 SAFETY OF PERSONS AND PROPERTY** - The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to: (A) Employees on the Work and other persons who may be affected thereby; (B) the

Work, material, and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody, or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and (C) other property at the Site or adjacent thereto such as trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury, or loss.

The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent Sites and utilities.

When use or storage of explosives, other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall notify the Owner any time that explosives or hazardous materials are expected to be stored on Site. Location of storage shall be coordinated with the Owner and local fire authorities.

At its own expense, Contractor shall comply with all fingerprinting requirements under law and Contract, including but not limited to the requirements of Education Code section 45125.2 and the Independent Contractor Student Contact Form which is part of the Contract. Contractor shall hold harmless, defend and indemnify the Owner under section 3.15 of these General Conditions, for any costs, including attorneys' fees, Owner incurs from Contractor's failure to comply.

**10.3 PROTECTION OF WORK AND PROPERTY** - The Contractor and Subcontractors shall continuously protect the Work, the Owner's property, and the property of others, from damage, injury, or loss until formal acceptance of the Work or completion of the Work if there is no formal acceptance of the Work. The Contractor and Subcontractors shall make good any such damage, injury, or loss, except such as may be solely due to, or caused by, agents or employees of the Owner.

The Contractor and the Subcontractors shall use only those ingress and egress routes designated by the Owner, observe the boundaries of the Site designated by the Owner, park only in those areas designated by the Owner, which areas may be on or off the Site, and comply with any parking control program established by the Owner such as furnishing license plate information and placing identifying stickers on vehicles.

**10.4 EMERGENCIES** - In an emergency affecting the safety of persons or property, the Contractor shall take any action necessary, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 7. The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work, which caused death, personal injury, or property damage, giving full details and



statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

**10.5 HAZARDOUS MATERIALS** - In the event the Contractor encounters or suspects the presence on the Site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or any other material defined as being hazardous by section 25249.5 of the California Health and Safety Code, which (a) has not been rendered harmless, and (b) the handling or removal of which is not within the scope of the Work, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and the Architect in writing, whether or not such material was generated by the Contractor or the Owner.

## **ARTICLE 11 INSURANCE AND BONDS**

### **11.1. CONTRACTOR'S LIABILITY INSURANCE**

**11.1.1 Liability Insurance Requirements.** By the earlier of the deadline set forth in the Instructions to Bidders or the commencement of the Work and within limits acceptable to the Owner, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in California as admitted carriers with a financial rating of at least A+, Class XII status as rated in the most recent edition of Best's Insurance Reports such commercial general liability insurance per occurrence for bodily injury, personal injury and property damage as set forth in the Agreement and automobile liability insurance per accident for bodily injury and property damage combined single limit as set forth in the Agreement, as will protect the Contractor from claims, which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations are by the Contractor, by a Subcontractor, by Sub-subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. This insurance shall be subject to the approval of Owner, and Owner's approval shall not be unreasonably withheld. The Contractor shall require its Subcontractors and any Sub-subcontractors to take out and maintain similar public liability insurance and property damage insurance in like amounts.

Owner may partially or fully occupy and/or use the Project before acceptance of the entire Project by the Owner. All of contractor's required insurance must allow such occupancy and/or use without prior consent from insurer.

**11.1.2 Additional Insured Endorsement Requirements.** The Contractor shall name, on any policy of insurance, the Owner and the Architect as additional insureds.

**11.1.3 Workers' Compensation Insurance.** During the term of this Contract, the Contractor shall provide workers' compensation insurance for all of the Contractor's employees engaged in Work under this Contract on or at the site of the Project and, in case any of the Contractor's work is sublet, the Contractor shall require the Subcontractor to provide workers'

compensation insurance for all the Subcontractor's employees engaged in Work under the subcontract.

**11.1.4 Builder's Risk / "All Risk" Insurance.** Unless provided by the Owner at Owner's sole discretion, Contractor, during the progress of the Work and until final acceptance of the Work by Owner upon completion of the entire Contract, shall maintain Builder's Risk/Course-of-Construction insurance, issued on a completed value basis on all insurable Work included under the Contract Documents. This insurance shall be subject to the approval of Owner, and Owner's approval shall not be unreasonably withheld. This insurance shall insure against all risks, including but not limited to the following perils: vandalism, theft, malicious mischief, fire, sprinkler leakage, civil authority, sonic boom, explosion, collapse, flood, earthquake (for projects not solely funded through revenue bonds, limited to earthquakes equivalent to or under 3.5 on the Richter Scale in magnitude), wind, hail, lightning, smoke, riot or civil commotion, debris removal (including demolition) and reasonable compensation for the Architect's services and expenses required as a result of such insured loss. This insurance shall provide coverage in an amount not less than the full cost to repair, replace or reconstruct the Work. Such insurance shall include the Owner, the Architect, and any other person or entity with an insurable interest in the Work as an additional named insured.

**11.1.5 Fire Insurance.** Before the commencement of the Work, the Contractor shall procure, maintain, and cause to be maintained at the Contractor's expense, fire insurance on all Work included under the Contract Documents, insuring the full replacement value of such Work as well as the cost of any removal and demolition necessary to replace or repair all Work damaged by fire. The amount of fire insurance shall be subject to approval by the Owner and shall be sufficient to protect the Project against loss or damage in full until the Work is accepted by the Owner. Should the Work being constructed be damaged by fire or other causes during construction, it shall be replaced in accordance with the requirements of the drawings and specifications without additional expense to the Owner.

**11.1.6 Other Insurance.** The Contractor shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations. Such insurance shall be subject to the approval of Owner, and Owner's approval shall not be unreasonably withheld.

**11.1.7 Proof of Carriage of Insurance.** The Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract until all required insurance, certificates, and an Additional Insured Endorsement and Declarations Page have been obtained and delivered in duplicate to the Owner for approval, and such approval shall not be unreasonably withheld.

**11.1.8 Compliance.** In the event of the failure of any contractor to furnish and maintain any insurance required by this Article, the Contractor shall be in default under the Contract.

**11.2 PERFORMANCE AND PAYMENT BONDS -** Unless otherwise specified in the Contract Documents, prior to commencing any portion of the Work, the Contractor shall apply for and furnish Owner separate payment and performance bonds for its portion of the Work which shall cover 100% faithful performance of and payment of all obligations arising under the

Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the Work. Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure section 995.120 shall be accepted. The surety insurers must, unless otherwise agreed to by Owner in writing, at the time of issuance of the bonds, have a rating not lower than "A-" as rated by A.M. Best Company, Inc. or other independent rating companies. Owner reserves the right to approve or reject the surety insurers selected by Contractor and to require Contractor to obtain bonds from surety insurers satisfactory to the Owner.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

**12.1 UNCOVERING OF WORK** - If a portion of the Work is covered contrary to the Owner's request or to requirements specifically expressed in the Contract Documents, Contractor must, if required in writing by the Owner, uncover it for the Owner's observation and replace the removed work at the Contractor's expense without change in the Contract Sum or Time.

**12.2 CORRECTION OF WORK; WARRANTY** - The Contractor shall promptly correct the Work rejected by the Owner for failing to conform to the requirements of the Contract Documents, until the statutes of limitation (or repose) and all warranties have run, as applicable, and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Owner's expenses and costs incurred.

If, within one (1) year after completion of the Work or within a longer time period for an applicable special warranty or guarantee required by the Contract Documents, any of the Work does not comply with the Contract Documents, the Contractor shall correct it after receipt of Owner's written notice to do so, unless the Owner has previously waived in writing such right to demand correction. Contractor shall correct the Work promptly, and passage of the applicable warranty period shall not release Contractor from its obligation to correct the Work if Owner provided the written notice within the applicable warranty period. Contractor's obligation to correct the warranty item continues until the correction is made. After the correction is made to Owner's satisfaction, a new warranty period of the same length as the original warranty period shall run on the corrected work. The obligations under this paragraph 12.2 shall survive acceptance of the Work under the Contract and termination of the Contract.

The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are not corrected by the Contractor or accepted by the Owner. If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with paragraph 2.4. The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Contractor's correction or removal of the nonconforming Work. Nothing in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

**13.1 GOVERNING LAW** - The Contract shall be governed by the law of the place where the Project is located.

**13.2 SUCCESSORS AND ASSIGNS** - Owner shall, at Contractor's cost, timely notify Contractor of Owner's receipt of any third party claims relating to the Contract.

**13.3 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 a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by the Inspector of Record, the Owner, or the Architect shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed to in a written amendment to the Contract.

**13.4 TESTS AND INSPECTIONS** - Tests, inspections, and approvals of portions of the Work required by the Contract Documents will comply with Title 24, and with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction.

**13.4.1 Independent Testing Laboratory.** The Owner will select and pay an independent testing laboratory to conduct all tests and inspections, including shipping or transportation costs or expenses (mileage and hours). Selection of the materials required to be tested shall be made by the laboratory or the Owner's representative and not by the Contractor. However, if Contractor requests that the Owner use a different testing laboratory and Owner chooses to approve such request, Contractor shall pay any additional shipping or transportation costs or expenses (mileage and hours). If Owner pays such additional costs or expenses instead of Contractor, then Owner may invoice such costs or expenses to the Contractor or withhold such costs or expenses from progress payments and/or retention.

**13.4.2 Advance Notice to Inspector of Record.** The Contractor shall notify the Inspector of Record a sufficient time in advance of its readiness for required observation or inspection so that the Inspector of Record may arrange for same. The Contractor shall notify the Inspector of Record a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents which must, by terms of the Contract Documents, be tested in order that the Inspector of Record may arrange for the testing of the material at the source of supply.

**13.4.3 Testing Off-Site.** Any material shipped by the Contractor from the source of supply, prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said Inspector of Record that such testing and inspection will not be required, shall not be incorporated in the Work.

**13.4.4 Additional Testing or Inspection.** If the Inspector of Record, the Architect, the Owner, or public authority having jurisdiction determines that portions of the Work require

additional testing, inspection, or approval not included under section 13.4, the Inspector of Record will, upon written authorization from the Owner, make arrangements for such additional testing, inspection, or approval. The Owner shall bear such costs except as provided in section 13.4.5.

**13.4.5 Costs for Retesting.** If such procedures for testing, inspection, or approval under sections 13.4, 13.4.1, 13.4.2 and 13.4.4 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs arising from such failure, including those of re-testing, re-inspection, or re-approval, including, but not limited to, compensation for the Architect's services and expenses. Any such costs shall be paid by the Owner, invoiced to the Contractor, and, among other remedies, can be withheld from progress payments and/or retention.

**13.4.6 Costs for Premature Test.** In the event the Contractor requests any test or inspection for the Project and is not completely ready for the inspection, the Contractor shall be invoiced by the Owner for all costs and expenses resulting from that testing or inspection, including, but not limited to, the Architect's fees and expenses, and the amount of the invoice can among other remedies, be withheld from progress payments and/or retention.

**13.4.7 Tests or Inspections not to Delay Work.** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

**13.5 TRENCH EXCAVATION** - Pursuant to Labor Code section 6705, if the Contract Sum exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the Contractor shall, in advance of excavation, submit to the Owner or a registered civil or structural engineer employed by the Owner a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the Owner or by the person to whom authority to accept has been delegated by the Owner. Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon the Owner or any of its employees.

**13.6 DEBARMENT** - Pursuant to Public Contract Code section 6109, no contractor or subcontractor may perform work on a public works project if ineligible to perform work on the project pursuant to section 1777.1 of the Labor Code.

**13.7 ASSIGNMENT OF ANTITRUST CLAIMS** - Pursuant to Public Contract Code section 7103.5 and Government Code section 4552, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the Owner all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 [commencing with § 16700] of Part 2 of Division 7 of the

Bus. & Prof. Code), arising from the purchase of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final progress payment to the Contractor, without further acknowledgment by the parties.

**13.8 AUDIT** - Contractor's Contract books, records and files shall be subject to audit and examination under Government Code section 8546.7 and any amendments thereto.

**13.9 STORM WATER DISCHARGE PERMIT** - If applicable, the Contractor shall file a Notice of Intent to comply with the terms of the general permit to discharge storm water associated with construction activity (WQ Order No. 920-08-DWQ) prior to the start of any construction activity.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

**14.1 TERMINATION BY THE CONTRACTOR FOR CAUSE** - Contractor may not terminate for convenience. Contractor may only terminate for cause if the Work is stopped by others for a period of one hundred eighty (180) consecutive days through no act or fault of the Contractor, a Subcontractor of any tier, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible, and the Work was stopped by others for one of the following reasons: (A) Issuance of an order of a court or other public authority having jurisdiction which requires Owner to stop all Work; or (B) an act of government, such as a declaration of national emergency, making material unavailable which requires Owner to stop all Work. If such grounds exist, the Contractor may serve written notice of such grounds on Owner and demand a meet-and-confer conference to negotiate a resolution in good faith within twenty (20) days of Owner's receipt of such notice. If such conference does not lead to resolution and the grounds for termination still exist, Contractor may terminate the Contract and recover from the Owner payment for Work executed and for reasonable verified costs with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit, and damages for the Work executed, but excluding overhead (field and home office) and profit for (i) Work not performed and (ii) the period of time that the Work was stopped.

### **14.2 TERMINATION BY THE OWNER FOR CAUSE**

**14.2.1 Grounds for Termination.** The Owner may terminate the Contract if the Contractor:

A. Refuses or fails to supply enough properly skilled workers or proper materials, or refuses or fails to take steps to adequately prosecute the work toward completion within the Contract Time;

B. Fails to make payment to Subcontractors for materials or labor in accordance with Public Contract Code section 10262 or Business and Professions Code section 7108.5, as applicable;

C. Violates Labor Code section 1771.1(a), subject to the provisions of Labor Code section 1771.1(f);

D. Disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; or

E. Otherwise is in breach of the Contract Documents.

**14.2.2 Notification of Termination.** When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner, give notice to Contractor of the grounds for termination and demand cure of the grounds within seven (7) days (a “Notice of Intent to Terminate”). If Contractor fails to either (a) completely cure the grounds for termination within seven (7) days or (b) reasonably commence cure of the grounds for termination within seven (7) days and reasonably continue to cure the grounds for termination until such cure is complete, then Owner may terminate the Contract effective immediately upon service of written Notice of Termination and may, subject to any prior rights of Contractor’s surety on the performance bond (“Surety”):

A. Take possession of the Site and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

B. Accept assignment of subcontracts pursuant to section 5.4; and

C. Complete the Work by whatever reasonable method the Owner may deem expedient.

**14.2.3 Payments Withheld.** If the Owner terminates the Contract for one of the reasons stated in section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is complete.

**14.2.4 Payments upon Completion.** If the unpaid balance of the Contract Sum exceeds costs of completing the Work, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This payment obligation shall survive completion of the Contract.

**14.2.5 Inclusion of Termination for Convenience.** Any purported termination by Owner for cause under this section 14.2, which is revoked or determined to not have been for cause, shall be deemed to have been a termination for convenience effective as of the same date as the purported termination for cause.

### **14.3 SUSPENSION OR TERMINATION BY THE OWNER FOR CONVENIENCE**

**14.3.1 Suspension by Owner.** The Owner may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the

Owner may determine.

**14.3.1.1 Adjustments.** An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent:

A. That performance is, was or would have been so suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or

B. That an equitable adjustment is made or denied under another provision of this Contract.

**14.3.1.2 Adjustments for Fixed Cost.** Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

### **14.3.2 Termination by the Owner for Convenience.**

**14.3.2.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**14.3.2.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

1. Cease operations as directed by the Owner in the notice;
2. Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
3. Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**14.3.2.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

**14.4 NOT A WAIVER** - Any suspension or termination by Owner for convenience or cause under this Article 14 shall not act as a waiver of any claims by Owner against Contractor or others for damages based on breach of contract, negligence or other grounds.

**14.5 MUTUAL TERMINATION FOR CONVENIENCE** - The Contractor and the Owner may mutually agree in writing to terminate this Contract for convenience. The Contractor shall receive payment for all Work performed to the date of termination in accordance with the provisions of Article 9.



**14.6 EARLY TERMINATION** - Notwithstanding any provision herein to the contrary, if for any fiscal year of this Contract the governing body of the Owner fails to appropriate or allocate funds for future periodic payments under the Contract after exercising reasonable efforts to do so, the Owner may upon thirty (30) days' notice, order work on the Project to cease. The Owner will remain obligated to pay for the work already performed but shall not be obligated to pay the balance remaining unpaid beyond the fiscal period for which funds have been appropriated or allocated and for which the work has not been done.

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SECTION 099113  
EXTERIOR PAINTING

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. Section includes surface preparation and the application of paint systems on exterior substrates listed in part, 3.6 Exterior Painting Schedule.

1.3 DEFINITIONS

- A. Gloss Level 1: Not more than 5 units at 60 degrees and 10 units at 85 degrees, according to ASTM D 523.
- B. Gloss Level 2: Not more than 10 units at 60 degrees and 35 units at 85 degrees, according to ASTM D 523
- C. Gloss Level 3: 10 to 25 units at 60 degrees and 10 to 35 units at 85 degrees, according to ASTM D 523.
- D. Gloss Level 4: 20 to 35 units at 60 degrees and not less than 35 units at 85 degrees, according to ASTM D 523.
- E. Gloss Level 5: 35 to 70 units at 60 degrees, according to ASTM D 523.
- F. Gloss Level 6: 70 to 85 units at 60 degrees, according to ASTM D 523.
- G. Gloss Level 7: More than 85 units at 60 degrees, according to ASTM D 523.
- H. EG: Ethylene Glycol. Ethylene glycol is listed as a hazardous air pollutant (HAP) by the U.S. EPA.
- I. Blocking: Two painted surfaces sticking together such as a painted door sticking to a painted jamb.
- J. RAVOC: Reactivity adjusted VOC 'Reactivity' means the ability of a VOC to promote ozone formation.
- K. PDCA: Painting & Decorating Contractors of America [www.pdca.org](http://www.pdca.org)
- L. SSPC: Scopes of SSPC Surface Preparation Standards and Specifications. [www.sspc.org](http://www.sspc.org).

M. Green Wise: Green Wise products are tested in an ISO accredited laboratory to meet environmentally determined performance standards established by Coatings Research Group, Inc.

N. Dunn-Edwards Conformance Chart: DE CONFORMANCE TABLE

#### 1.4 ACTION SUBMITTALS

A. Product Data: For each type of product. Include preparation requirements and application instructions.

B. Samples for Initial Selection: For each type of topcoat product.

C. Samples for Verification: For each type of paint system and each color and gloss of topcoat.

1. Submit Samples on rigid backing, no smaller than 7 inches by 10 inches (177.8 mm by 254 mm) or larger than 8.5 inches by 11 inches (215.9 mm by 279.4 mm).

2. Label each Sample for project, architect, general contractor, painting contractor, paint color name and number, paint brand name, "P" number if applicable, and application area.

D. Product List: For each product indicated, include the following:

1. Cross-reference to paint system and locations of application areas. Use same designations indicated on Drawings and in schedules.

2. VOC content.

#### 1.5 MAINTENANCE MATERIAL SUBMITTALS

A. Furnish extra materials that match products installed and that are packaged with protective covering for storage and identified with labels describing contents.

1. Paint: Provide not less than 1 gal. (3.8 L) of each material and color applied.

#### 1.6 QUALITY ASSURANCE

A. Mockups: Apply mockups of each paint system indicated and each color and finish selected to verify preliminary selections made under Sample submittals and to demonstrate aesthetic effects and set quality standards for materials and execution.

1. Architect will select one surface to represent surfaces and conditions for application of each paint system specified in Part 3.

a. Vertical and Horizontal Surfaces: Provide samples of at least 100 sq. ft. (9 sq. m).

b. Other Items: Architect will designate items or areas required.

2. Final approval of color selections will be based on mockups.
  - a. If preliminary color selections are not approved, apply additional mockups of additional colors selected by Architect at no added cost to Owner.
3. Approval of mockups does not constitute approval of deviations from the Contract Documents contained in mockups unless Architect specifically approves such deviations in writing.
4. Subject to compliance with requirements, approved mockups may become part of the completed Work if undisturbed at time of Substantial Completion.

#### 1.7 DELIVERY, STORAGE, AND HANDLING

- A. Store materials not in use in tightly covered containers in well-ventilated areas with ambient temperatures continuously maintained at not less than 45 degrees F (7 degrees C) or more than 120 degrees F (49 degrees C).
  1. Maintain containers in clean condition, free of foreign materials and residue.
  2. Remove rags and waste from storage areas daily.

#### 1.8 FIELD CONDITIONS

- A. Apply paints only when temperature of surfaces to be painted and ambient air temperatures are between 50 and 90 degrees F (10 and 32 degrees C).
- B. Do not apply paints in snow, rain, fog, or mist; when relative humidity exceeds 85 percent; or at temperatures less than 5 degrees F (3 degrees C) above the dew point; or to damp or wet surfaces.
- C. Painting contractor should follow proper painting practices and exercise judgment based on his or her experience and project specific conditions as to when to proceed.

### PART 2 - PRODUCTS

#### 2.1 MANUFACTURERS

- A. Basis-of-Design Product: Provide products listed from Dunn-Edwards Corporation

#### 2.2 PAINT, GENERAL

- A. Material Compatibility:
  1. Provide materials for use within each paint system that are compatible with one another and substrates indicated, under conditions of service and application as demonstrated by manufacturer, based on testing and field experience.
  2. For each coat in a paint system, provide products recommended in writing by manufacturers of topcoat for use in paint system and on substrate indicated.

- B. VOC Content: Provide materials that comply with VOC limits of authorities having jurisdiction.
- C. Colorants: The use of colorants containing hazardous chemicals, such as ethylene glycol, is prohibited.
- D. Colors: As selected by the Architect.
  - 1. Refers to drawings for various color locations.

### 2.3 SOURCE QUALITY CONTROL

- A. Testing of Paint Materials: Owner reserves the right to invoke the following procedure:
  - 1. Owner may engage the services of a qualified testing agency to sample paint materials. Contractor will be notified in advance and may be present when samples are taken. If paint materials have already been delivered to Project site, samples may be taken at Project site. Samples will be identified, sealed, and certified by testing agency.
  - 2. Testing agency will perform tests for compliance with product requirements.
  - 3. Owner may direct Contractor to stop applying paints if test results show materials being used do not comply with product requirements. Contractor shall remove noncomplying paint materials from Project site, pay for testing, and repaint surfaces painted with rejected materials. Contractor will comply with requirements to use compatible products and systems as described in Paragraph 2.2.A. Contractor will be required to remove rejected materials from previously painted surfaces if, on repainting with complying materials, the two paints are incompatible.

## PART 3 - EXECUTION

### 3.1 EXAMINATION

- A. Examine substrates and conditions, with Applicator present, for compliance with requirements for maximum moisture content and other conditions affecting performance of the Work.
- B. Maximum Moisture Content of Substrates: When measured with an electronic moisture meter as follows:
  - 1. Concrete: 12 percent.
  - 2. Masonry (Clay and CMU): 12 percent.
  - 3. Wood: 15 percent.
  - 4. Portland Cement Plaster: 12 percent.
  - 5. Gypsum Board: 12 percent.
- C. Portland Cement Plaster Substrates: Verify that plaster is fully cured, including pH testing to determine that alkalinity is within limits established by the manufacturer.
- D. Exterior Gypsum Board Substrates: Verify that finishing compound is sanded smooth.

- E. Verify suitability of substrates, including surface conditions and compatibility with existing finishes and primers.
- F. Proceed with coating application only after unsatisfactory conditions have been corrected.
  - 1. Application of coating indicates acceptance of surfaces and conditions.

### 3.2 PREPARATION

- A. Comply with manufacturer's written instructions.
- B. Remove hardware, covers, plates, and similar items already in place that are removable and are not to be painted. If removal is impractical or impossible because of size or weight of item, provide surface-applied protection before surface preparation and painting.
  - 1. After completing painting operations, use workers skilled in the trades involved to reinstall items that were removed. Remove surface-applied protection.
- C. Clean substrates of substances that could impair bond of paints, including dust, dirt, oil, grease, and incompatible paints and encapsulants.
  - 1. Remove incompatible primers and re-prime substrate with compatible primers or apply tie coat as required to produce paint systems indicated.
- D. Concrete Substrates: Remove release agents, curing compounds, efflorescence, and chalk. Do not paint surfaces if moisture content or alkalinity of surfaces to be painted exceeds that permitted in manufacturer's written instructions.
- E. Masonry Substrates: Remove efflorescence and chalk. Do not paint surfaces if moisture content or alkalinity of surfaces or mortar joints exceeds that permitted in manufacturer's written instructions.
- F. Steel Substrates: Remove rust, loose mill scale, and shop primer if any. Clean using methods recommended in writing by paint manufacturer. At all existing handrails and railing, supports, etc. that have been previously painted remove all paint to expose bare metal and prep for new paint as required.
- G. Shop Primed Steel Substrates: Clean field welds, bolted connections, and abraded areas of shop paint, and paint exposed areas with the same material as used for shop priming to comply with SSPC-PA 1 for touching up shop primed surfaces.
- H. Galvanized Metal Substrates: Remove grease and oil residue from galvanized sheet metal fabricated from coil stock to produce clean, lightly etched surfaces that promote adhesion of subsequently applied paints. At all existing handrails and railing, supports, etc. that have been previously painted remove all paint to expose bare metal and prep for new paint as required.
- I. Aluminum Substrates: Remove loose surface oxidation.

J. Wood Substrates:

1. Scrape and clean knots. Before applying primer, apply coat of knot sealer recommended in writing by topcoat manufacturer for exterior use in paint system indicated.
2. Sand surfaces that will be exposed to view and dust off.
3. Prime edges, ends, faces, undersides, and backsides of wood.
4. After priming, fill holes and imperfections in the finish surfaces with putty or plastic wood filler. Sand smooth when dried.

3.3 APPLICATION

A. Apply paints according to manufacturer's written instructions.

1. Use applicators and techniques suited for paint and substrate indicated.
2. The number of coats scheduled is the minimum number of coats required. Additional coat(s) shall be applied at no additional cost to the Owner, to completely hide base material, provide uniform color, and to produce satisfactory finish results.
3. Apply coatings without thinning except as specifically required by label directions or required by these specifications. In such cases, thinning shall be the minimum reduction permitted.
4. Paint surfaces behind movable items same as similar exposed surfaces. Before final installation, paint surfaces behind permanently fixed items with prime coat only.
5. Paint exterior sides of exterior doors and exterior exposed surface of exterior door frames.
6. Paint entire exposed surface of window frames and sashes.
7. Do not paint over labels of independent testing agencies or equipment name, identification, performance rating, or nomenclature plates.
8. Priming may not be required on items delivered with prime or shop coats, unless otherwise specified. Touch up prime coats applied by others as required ensuring an even primed surface before applying finish coat.

B. Tint each undercoat to a lighter shade of the finish coat (not to exceed 2 ounces of colorant) to facilitate identification of each coat if multiple coats of same material are to be applied.

C. If undercoats or other conditions show through topcoat, apply additional coats until cured film has a uniform paint finish, color, and appearance.

D. Apply paints to produce surface films without cloudiness, spotting, holidays, laps,

brush marks, roller tracking, runs, sags, ropiness, or other surface imperfections. Cut in sharp lines and color breaks. Backroll all surfaces where paint is spray applied.

E. Block Fillers: Provide block fill as scheduled to conform to the following: PDCA Standard P12-05.

1. Level 3 - Premium fill: One or multiple coats of high performance block filler manufactured to be applied at a high dry film build. Block filler shall be back-rolled to eliminate voids and reduce the majority of the masonry profile depth.

F. Painting Fire Suppression, Plumbing, HVAC, Electrical, Communication, and Electronic Safety and Security Work:

1. Paint the following work where exposed to view:
  - a. Equipment, including panelboards and switch gear.
  - b. Uninsulated metal piping.
  - c. Uninsulated plastic piping.
  - d. Pipe hangers and supports.
  - e. Metal conduit.
  - f. Plastic conduit.
  - g. Tanks that do not have factory-applied final finishes.
  - h. Other items as directed by the Architect.

### 3.4 FIELD QUALITY CONTROL

A. Dry Film Thickness Testing: Owner may engage the services of a qualified testing and inspecting agency to inspect and test paint for dry film thickness.

1. Contractor shall touch up and restore painted surfaces damaged by testing.
2. If test results show that dry film thickness of applied paint does not comply with paint manufacturer's written recommendations, Contractor shall pay for testing and apply additional coats as needed to provide dry film thickness that complies with paint manufacturer's written recommendations.

### 3.5 CLEANING AND PROTECTION

- A. At end of each workday, remove rubbish, empty cans, rags, and other discarded materials from Project site.
- B. After completing paint application, clean spattered surfaces. Remove spattered paints by washing, scraping, or other methods. Do not scratch or damage adjacent finished surfaces.
- C. Protect work of other trades against damage from paint application. Correct damage to work of other trades by cleaning, repairing, replacing, and refinishing, as approved by Architect, and leave in an undamaged condition.
- D. At completion of construction activities of other trades, touch up and restore damaged or defaced painted surfaces.



### 3.6 EXTERIOR PAINTING SCHEDULE

#### A. Concrete Substrates, Non-Traffic Surfaces:

##### 1. Premium Latex System:

- a. Prime Coat: Primer, alkali resistant, waterbased, interior/exterior, Dunn-Edwards, Eff-Stop Select ESSL00.
- b. Intermediate Coat: Latex, exterior, matching topcoat.
- c. Topcoat: Latex, exterior, semi-gloss, Dunn-Edwards, Spartashield SSHL50 100% acrylic, (Gloss Level 5).

##### 2. Ultra-Premium Latex System:

- a. Prime Coat: Primer, alkali resistant, waterbased, interior/exterior, Dunn-Edwards, Eff-Stop Premium ESPR00.
- b. Intermediate Coat: Latex, exterior, matching topcoat.
- c. Topcoat: Latex, exterior, semi-gloss, Dunn-Edwards, Evershield EVSH50 100% acrylic, (Gloss Level 5).

#### B. Clay-Masonry, CMU (without block filler) Substrates:

##### 1. Premium Latex System:

- a. Prime Coat: Primer, alkali resistant, waterbased, interior/exterior Dunn-Edwards, Eff-Stop Select ESSL00.
- b. Intermediate Coat: Latex, exterior, matching topcoat.
- c. Topcoat: Latex, exterior, semi-gloss, Dunn-Edwards, Spartashield SSHL50 100% acrylic, (Gloss Level 5).

##### 2. Ultra-Premium Latex System:

- a. Prime Coat: Primer, alkali resistant, waterbased, interior/exterior, Dunn-Edwards, Eff-Stop Premium ESPR00.
- b. Intermediate Coat: Latex, exterior, matching topcoat.
- c. Topcoat: Latex, exterior, semi-gloss, Dunn-Edwards, Evershield EVSH50 100% acrylic, (Gloss Level 5).

#### C. CMU Substrates:

##### 1. Premium Latex System:

- a. Prime Coat: Block filler, latex, interior/exterior, Dunn-Edwards, Smooth BLOCFIL Select SBSL00.
- b. Intermediate Coat: Latex, exterior, matching topcoat.
- c. Topcoat: Latex, exterior, semi-gloss, Dunn-Edwards, Spartashield SSHL50 100% acrylic, (Gloss Level 5).

##### 2. Ultra-Premium Latex System:

- a. Prime Coat: Block filler, latex, interior/exterior, Dunn-Edwards, Smooth BLOCFIL Premium SBPR00.
- b. Intermediate Coat: Latex, exterior, matching topcoat.

- c. Topcoat: Latex, exterior, semi-gloss, Dunn-Edwards, Evershield EVSH50 100% acrylic, (Gloss Level 5).

D. Steel Substrates:

1. Premium Latex over a Waterborne Alkyd Primer System:

- a. Prime Coat: Primer, rust inhibitive, waterborne alkyd, interior/exterior, Dunn-Edwards, Bloc-Rust Premium BRPR00 Series or Enduraprime Rust Preventative Primer ENPR00.
- b. Intermediate Coat: Latex, exterior, matching topcoat.
- c. Topcoat: Latex, exterior, semi-gloss, Dunn-Edwards, Spartashield SSHL50 100% acrylic, (Gloss Level 5).

2. Ultra-Premium Latex over a Waterborne Alkyd Primer System:

- a. Prime Coat: Primer, rust inhibitive, waterborne alkyd, interior/exterior, Dunn-Edwards, Bloc-Rust Premium BRPR00 Series or Enduraprime Rust Preventative Primer ENPR00.
- b. Intermediate Coat: Latex, exterior, matching topcoat.
- c. Topcoat: Latex, exterior, semi-gloss, Dunn-Edwards, Evershield EVSH50 100% acrylic, (Gloss Level 5).

3. Waterborne Urethane Alkyd Enamel System:

- a. Prime Coat: Primer, rust inhibitive, waterborne alkyd, interior/exterior, Dunn-Edwards, Bloc-Rust Premium BRPR00 Series or Enduraprime Rust Preventative Primer ENPR00.
- b. Intermediate Coat: Waterborne urethane alkyd, interior/exterior matching topcoat.
- c. Topcoat: Waterborne urethane alkyd, interior/exterior, semi-gloss, Dunn-Edwards, Aristoshield ASHL50, (Gloss Level 5)

E. Galvanized Metal Substrates:

1. Premium Latex System:

- a. Prime Coat: Primer, waterbased, interior/exterior, Dunn-Edwards, Ultrashield Galvanized Metal Primer ULGM00.
- b. Intermediate Coat: Latex, exterior, matching topcoat.
- c. Topcoat: Latex, exterior, semi-gloss, Dunn-Edwards, Spartashield SSHL50 100% acrylic, (Gloss Level 5).

2. Ultra-Premium Latex System:

- a. Prime Coat: Primer, waterbased, interior/exterior, Dunn-Edwards, Ultrashield Galvanized Metal Primer ULGM00.
- b. Intermediate Coat: Latex, exterior, matching topcoat.
- c. Topcoat: Latex, exterior, semi-gloss, Dunn-Edwards, Evershield EVSH50 100% acrylic, (Gloss Level 5).

3. Waterborne Urethane Alkyd Enamel over a Latex Primer System:

- a. Prime Coat: Primer, waterbased, interior/exterior, Dunn-Edwards

- Ultrashield Galvanized Metal Primer ULGM00.
- b. Intermediate Coat: Waterborne urethane alkyd, interior/exterior, matching topcoat.
- c. Topcoat: Waterborne urethane alkyd, interior/exterior, semi-gloss, Dunn-Edwards Aristoshield ASHL50, (Gloss Level 5)

F. Aluminum Substrates:

1. Premium Latex System:

- a. Prime Coat: Primer, waterbased, interior/exterior, Dunn-Edwards, Ultrashield Galvanized Metal Primer ULGM00.
- b. Intermediate Coat: Latex, exterior, matching topcoat.
- c. Topcoat: Latex, exterior, semi-gloss, Dunn-Edwards, Spartashield SSHL50 100% acrylic, (Gloss Level 5).

2. Ultra-Premium Latex System:

- a. Prime Coat: Primer, waterbased, interior/exterior, Dunn-Edwards, Ultrashield Galvanized Metal Primer ULGM00.
- b. Intermediate Coat: Latex, exterior, matching topcoat.
- c. Topcoat: Latex, exterior, semi-gloss, Dunn-Edwards, Evershield EVSH50 100% acrylic, (Gloss Level 5).

3. Waterborne Urethane Alkyd Enamel over a Latex Primer System:

- a. Prime Coat: Primer, waterbased, interior/exterior, Dunn-Edwards, Ultrashield Galvanized Metal Primer ULGM00.
- b. Intermediate Coat: Waterborne urethane alkyd, interior/exterior, matching topcoat.
- c. Topcoat: Waterborne urethane alkyd, interior/exterior, semi-gloss, Dunn-Edwards, Aristoshield ASHL50, (Gloss Level 5)

G. Wood Substrates:

1. Premium Latex System:

- a. Prime Coat: Primer, waterbased, exterior, Dunn-Edwards, EZ-Prime Premium EZPR00.
- b. Intermediate Coat: Latex, exterior, matching topcoat.
- c. Topcoat: Latex, exterior, semi-gloss, Dunn-Edwards, Spartashield SSHL50 100% acrylic, (Gloss Level 5).

2. Ultra-Premium Latex System:

- a. Prime Coat: Primer, waterbased, exterior, Dunn-Edwards, EZ-Prime Premium EZPR00.
- b. Intermediate Coat: Latex, exterior, matching topcoat.
- c. Topcoat: Latex, exterior, semi-gloss, Dunn-Edwards, Evershield EVSH50 100% acrylic, (Gloss Level 5).

H. Portland Cement Plaster (Stucco) Substrates:

1. Premium Latex over Alkali Resistant Primer System:

- a. Prime Coat: Primer, alkali resistant, waterbased, interior/exterior, Dunn-Edwards, Eff-Stop Select ESSL00.
- b. Intermediate Coat: Latex, exterior, matching topcoat.
- c. Topcoat: Latex, exterior, semi-gloss, Dunn-Edwards, Spartashield SSHL50 100% acrylic, (Gloss Level 5).

2. Ultra-Premium Latex System:

- a. Prime Coat: Primer, alkali resistant, waterbased, interior/exterior, Dunn-Edwards, Eff-Stop Premium ESPR00.
- b. Intermediate Coat: Latex, exterior, matching topcoat.
- c. Topcoat: Latex, exterior, semi-gloss, Dunn-Edwards, Evershield EVSH50 100% acrylic, (Gloss Level 5).

I. Exterior Gypsum Board Substrates:

1. Premium Latex System:

- a. Prime Coat: Primer, waterbased, interior/exterior, Dunn-Edwards, Ultra-Grip Select UGSL00.
- b. Intermediate Coat: Latex, exterior, matching topcoat.
- c. Topcoat: Latex, exterior, semi-gloss, Dunn-Edwards, Spartashield SSHL50 100% acrylic, (Gloss Level 5).

2. Ultra-Premium Latex System:

- a. Prime Coat: Primer, waterbased, interior/exterior, Dunn-Edwards, Ultra-Grip Premium UGPR00.
- b. Intermediate Coat: Latex, exterior, matching topcoat.
- c. Topcoat: Latex, exterior, semi-gloss, Dunn-Edwards, Evershield EVSH50 100% acrylic, (Gloss Level 5).

END OF SECTION

# Leona Valley School Exterior Painting Scope of Work

Paint Administration Building, Lower Classroom Building, Relocatable Buildings, and all Storage Containers complete, to include doors, transoms above doors, door frames, window frames, stucco, soffits, siding, handrails, conduits, down spouts, flashing.

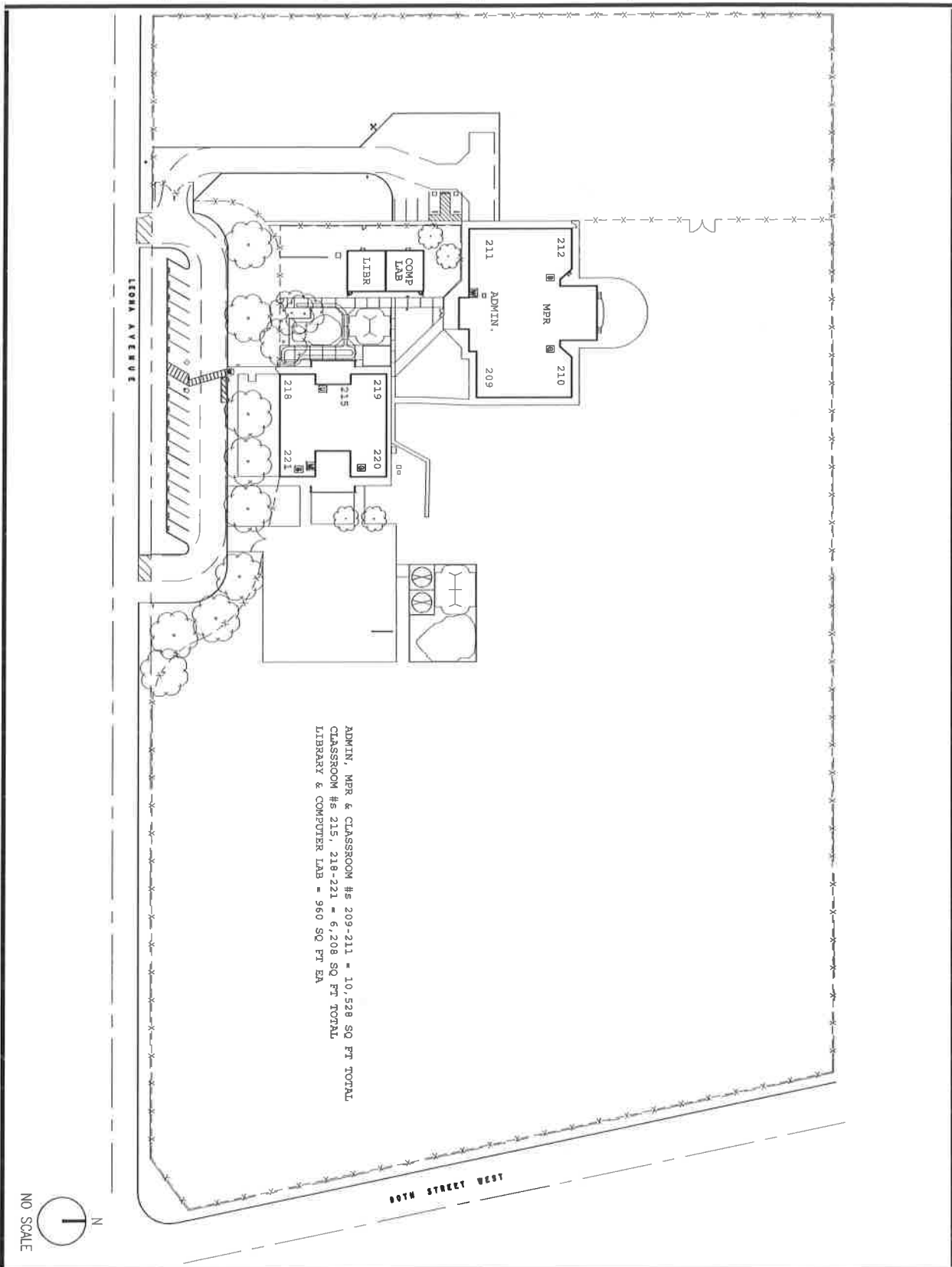
Paint wood hand ball wall

Paint exterior metal gates

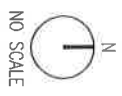
Paint all non factory finished walls doors frames, equipment wells inside and out on the roof, of listed buildings

Paint all room numbers back on the doors

Inspector will inspect/verify between coats for all painted surfaces.



ADMIN, MPR & CLASSROOM #s 209-211 = 10,528 SQ FT TOTAL  
 CLASSROOM #s 215, 218-221 = 6,208 SQ FT TOTAL  
 LIBRARY & COMPUTER LAB = 960 SQ FT EA



LEONA VALLEY ELEMENTARY SCHOOL WESTSIDE UNION SCHOOL DISTRICT
SITE PLAN WITH ROOM NUMBERS

Form  
 Job No. 12-15-2008  
 Sheet No. 1A

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