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GOVERNING BOARD MEETING

Thursday, July 23, 2020

Due to current school closures the
HUSD Governing Board Meeting
will be conducted via live streaming
available at www.humboldtunified.com
(Select 'School Board' and then 'Virtual Meetings')

Special Session 6:30 PM

OFFICIAL COPY

Mr. John Pothast, Superintendent

Ryan Gray, President
Rich Adler, Vice President
Corey Christians, Member
Suzie Roth, Member
Paul Ruwald, Member

HUMBOLDT UNIFIED SCHOOL DISTRICT #22

A Caring, Learning Community Transforming Today's Learners into Tomorrow's Successes

NOTICE OF COMBINED PUBLIC MEETING AND EXECUTIVE SESSION OF THE GOVERNING BOARD OF EDUCATION

VIRTUAL MEETING NOTICE

Notice is hereby given that the Governing Board of the Humboldt Unified School District #22 will convene during a virtual meeting open to the public on **July 23, 2020 at 6:30 PM**. Please see below for access information.

- If authorized by a majority vote of the members of the Governing Board, any matter on the Open Meeting Agenda may be discussed in executive session for the purpose of obtaining legal advice thereon, pursuant to A.R.S. 38-431.03 (A)(3). The Board may also vote to convene in executive session to review and discuss issues marked with an asterisk (*). These sessions are not open to the public; however, Board decisions will be made in open public assembly.
- Members of the HUSD Governing Board who are not able to attend in person may participate via an electronic medium.
- The Agenda may be revised up to twenty-four (24) hours prior to the meeting. Revisions will be posted at the HUSD District Office located at 6411 N. Robert Road, Prescott Valley, Arizona, and on the district website www.humboldtunified.com and go to the Governing Board Tab.
- Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting Rebecca Cooley at (928)759-5007 or rebecca.cooley@humboldtunified.com. Requests should be made as early as possible to arrange the accommodation.
- **Members of the public wishing to access this virtual meeting** should visit www.humboldtunified.com and navigate to the Virtual Meetings page under the School Board heading.
- Discussion by the Board is limited to items posted on the agenda.

AGENDA

6:30 PM SPECIAL SESSION

1. **WELCOME AND CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE/FLAG CEREMONY**
3. **ROLL CALL**
4. **AGENDA REVIEW/ACCEPT**
5. **DISCUSSION**

Pages 1-2

- A. Update on pandemic preparedness plan
 - Updates from Governor's Office
 - Update on parent communications and communication plan
 - Results of pre-registration
 - Preparations for online learning
 - Preparations for face-to-face learning
 - Staff communications and on-premises safety policy
 - Consideration of beginning date for face-to-face instruction

6. **ACTION**

Pages 3-4

- A. Possible action concerning delaying the date for the beginning of in-person, on-site student school attendance from August 17, 2020 until a later date

Pages 5-7

- B. Discussion and possible action to approve a statement by the Governing Board to be included in the informational pamphlet of the proposed override election.

Pages 8-62 C. Discussion and possible action to approve awarding the bid for the roof replacement at Glassford Hill Middle School

7. ANNOUNCEMENTS

A. Next Scheduled Board Meetings are:

August 11, 2020	6:30 PM	Regular Meeting	@ TBD
September 8, 2020	6:30 PM	Regular Meeting	@ TBD
October 6, 2020	6:30 PM	Regular Meeting	@ TBD

8. ADJOURNMENT

Copies of agendas and supporting documentation relative to public meetings are available at the District Administration Office during normal work hours, 24 hours prior to a meeting. Please call ahead (759-4000) to arrange copies to be picked up. Documentation is also available on the District website www.humboldtunified.com. On the home page, go to the School Board tab → Board Packets → Select Year → Select Meeting Date. (Note: Large packets are saved in multiple sections by date).

DISCUSSION

Item 5A.

Pandemic Preparedness Plan

HUMBOLDT UNIFIED SCHOOL DISTRICT

TO:	Humboldt Unified School District Governing Board	Item # 5A
FROM:	John Pothast, Superintendent	Reading
DATE:	July 23, 2020	Discuss X
SUBJECT:	Update on Pandemic Preparedness Plan in HUSD	Action
		Consent

OBJECTIVE: Goal #2: To Focus on Planning for Future Student Needs
Goal #3: To Increase Parental and Community Engagement
Goal #4: To Attract and Retain Highly Effective Employees

SUPPORTING DATA

Superintendent Pothast will update the Governing Board regarding Humboldt Unified School District's pandemic preparedness plan, to include the following:

- Updates from Governor's Office
- Update on parent communications and communication plan
- Results of re-registration
- Preparations for online learning
- Preparations for face-to-face learning
- Staff communications and on-premises safety policy
- Consideration of beginning date for face-to-face instruction

SUMMARY & RECOMMENDATION

No action necessary. Report presented for informational purposes only.

Sample Motion

N/A

Approved for transmittal to the Governing Board:


Mr. John Pothast, Superintendent

Questions should be directed to: John Pothast, Superintendent (928)759-4000

ACTION Item 6A.

Start date for on-site
school attendance
for SY 2020-21

HUMBOLDT UNIFIED SCHOOL DISTRICT

TO:	Humboldt Unified School District Governing Board	Item # 6A
FROM:	John Pothast, Superintendent	Reading
DATE:	July 23, 2020	Discuss
SUBJECT:	Start date for the beginning of in-person, on-site student school attendance for school year 2020-21	Action X
		Consent
OBJECTIVE:	Goal #2: To Focus on Planning for Future Student Needs	
	Goal #4: To Attract and Retain Highly Effective Employees	

SUPPORTING DATA

Superintendent Pothast and the Governing Board will discuss and possibly take action concerning delaying the date for the beginning of in-person, on-site student school attendance from August 17, 2020 until a later date

SUMMARY & RECOMMENDATION

Sample Motion

I move to delay the beginning of in-person, on-site student school attendance until _____ and to authorize the Superintendent to take all necessary measures to implement the new in-person, on-site beginning date.

Approved for transmittal to the Governing Board: _____

Mr. John Pothast, Superintendent

Questions should be directed to: John Pothast, Superintendent (928)759-4000

ACTION

Item 6B.

Affirmative Statement for Override Election

HUMBOLDT UNIFIED SCHOOL DISTRICT

TO:	Humboldt Unified School District Governing Board	Item # 6B
FROM:	Ryan Gray, HUSD Governing Board President	Reading
DATE:	July 23, 2020	Discuss
SUBJECT:	Governing Board Statement for HUSD Override Election	Action X
		Consent

OBJECTIVE: Goal #2: To Focus on Planning for Future Student Needs

SUPPORTING DATA

A.R.S. 15-481 (B) (9) allows the Governing Board to make an affirmative statement in support of an override election. The statement is made in the name of the Board and not individual board members.

As such, the Humboldt Unified School District Governing Board will discuss a statement in support of the upcoming Override election in November, and possibly approve its final draft.

SUMMARY & RECOMMENDATION

Sample Motion

I move to approve the affirmative statement for the Override election as discussed by the Board.

Approved for transmittal to the Governing Board:


Mr. John Pothast, Superintendent

Questions should be directed to:

Mr. Ryan Gray, HUSD Governing Board President, ryan.gray@humboldtunified.com

The Governing Board of the Humboldt Unified School District has called for a 5% Budget Override in the November Election. In Arizona, districts that wish to provide important services that they are unable to fund through regular budgetary means must ask their constituents to lend local support to these efforts. The Governing Board has identified several significant needs, and it strongly believes it is critical at this time to address those needs. The two areas that will be addressed are:

- Counselors and/or Social Workers
- Reduced class sizes

The Board did not arrive at these conclusions without key community input and metrics. At our February Board/Community Summit, there was a clear consensus that our children were in need of an increased focus on social-emotional needs.

Please consider the following metrics:

- Recommended counselor to student ratio: 250:1
(Source: American School Counselor Association)
- USA average: 482:1
- Arizona average: 905:1 (ranked last in the nation)

The intent will be to provide every campus with at least one counselor or social worker.

Counselors provide an important resource for our students and along with smaller class sizes, promote effective, healthy and safe learning environments.

Humboldt Unified School District Governing Board

ACTION

Item 6C.

GHMS Roof Replacement

HUMBOLDT UNIFIED SCHOOL DISTRICT

TO:	Humboldt Unified School District Governing Board	Item # 6C
FROM:	Kort Miner, Executive Director of Operations	Reading
DATE:	July 23, 2020	Discuss
SUBJECT:	Contractor Award for the Glassford Hill Middle School Roof Replacement Project	Action
		Consent
<hr/>		
OBJECTIVE:	Board Goal #1: To Raise the Level of Student Achievement	

SUPPORTING DATA

This project funded through an approved Building Renewal Grant awarded to the District by the Arizona School Facilities Board (SFB).

Pursuant to SB 1256, *School District Procurement Pilot Program*, Glassford Hill Middle School was selected as the most appropriate roofing project for a Design-Build Alternative Project Delivery Method (APDM). The Humboldt Unified School District Governing Board approved the determination to use an Alternate Project Delivery Method (APDM) for construction on June 9, 2020, as per A.A.C. R7-2-1106 (A).

A Request for Qualifications was issued under the rules and procedures promulgated by the School District Procurement Rules adopted by the Arizona State Board of Education and related State Statutes. The District utilized Sunny Path Associates, LLC to assist with the procurement process.

Six (6) submittals were received in a timely manner on or before the deadline for receipt from the following firms:

- Kinney Construction Services (KCS)
- Low Mountain Construction, Inc.
- LOR Construction
- EDGE Construction
- GCON, Inc.
- Progressive Roofing

In accordance with A.A.C. R7-2-1107, the Selection Committee consisted of five (5) evaluators, which included Roger Studley, HUSD Chief Financial Officer; Ray Rosario, HUSD Director of Facilities; Jeannette Artzen; HUSD Procurement Specialist; Mike Barkley, an Engineer Representative from LSW Engineers; and Tim Rosenow, a Licensed General Contractor Representative from Caliente Construction. The SFB liaison participated in non-voting advisory roles. All members reviewed and signed Evaluation Committee Disclosure Statements, which are found within the procurement file.

SCORING TABULATION

The Selection Committee evaluated the submittals on a 1,000 point scale, using the criteria outlined within the Request for Qualifications in order of importance, as well as criteria for responsiveness and responsibility. The shortlist consisted of the highest scoring three (3) firms.

Supplier	Total / 1,000.00 pts	Responsive and Responsible Pass/Fail	Method of Approach / 400 pts	Qualifications and Expertise of Team / 300 pts	Experience of Firm / 250 pts	Quality of SOQ Package / 50 pts
GCON Inc.	997.5	Pass	400	297.5	250	50
Progressive Roofing	932	Pass	390	270.5	226.5	45
EDGE Construction	891.5	Pass	340	282.5	219	50
Kinney Construction Services, Inc. (KCS)	853	Pass	370	252.5	180.5	50
LOR Construction	590	Pass	216	195.5	147.5	31
Low Mountain Construction, Inc.	532.5	Pass	202	178	126.5	26

The District held a virtual negotiations meeting with the highest ranked firm on the shortlist for Tuesday, July 21st. The purpose of this meeting was to negotiate fees for design and construction, as outlined in the Draft Design-Build Agreement and General Conditions found within the RFQ and was successful in arriving at the following fees: Design and Preconstruction at \$75,106 and the Contractor's fee agreed upon at 6% given location, schedule and market conditions.

Contractor status shall be reverified pursuant to A.R.S. Title 32, Chapter 10 and R7-2-1112, upon award by Governing Board. The Governing Board and SFB will be presented with a Guaranteed Maximum Price (GMP) proposal for review and approval at a subsequent date prior to the start of any construction services.

Proposed Schedule

Substantial Completion shall occur no later than February 28, 2021, and Final Completion on March 31, 2021.

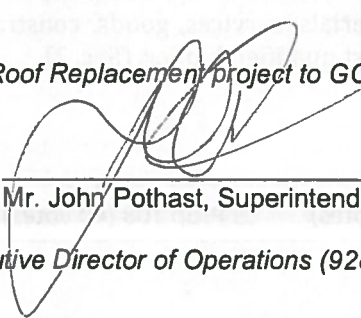
SUMMARY & RECOMMENDATION

Based on the consensus from the Selection Committee and corresponding Evaluation Summary provided, the recommendation is to award the Glassford Hill Middle School Roof Replacement project to GCON, Inc.

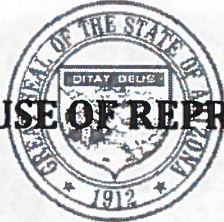
Sample Motion

I move to award the Glassford Hill Middle School Roof Replacement project to GCON, Inc.

Approved for transmittal to the Governing Board:


Mr. John Pothast, Superintendent

Questions should be directed to: Kort Miner, Executive Director of Operations (928) 759-5016



ARIZONA HOUSE OF REPRESENTATIVES

SB 1256: school districts: procurement practices: auditors

PRIME SPONSOR: Senator Gray, LD 21

BILL STATUS: Transmitted to Governor

Overview

Removes restrictions on a school district auditing and consulting services, and repeals procurement contracts awarding the lowest qualified bidders. Establishes the School Procurement Consulting Pilot Program (Program).

History

Cycling Audit Firms

Laws 2018, Ch. 285, §4 (HB 2663) amended statute to prevent school districts from hiring the same auditor or auditing firm for more than three consecutive years and prohibits the auditor or auditing firm from receiving consulting fees from that school district (A.R.S. §§ 15-213(Q) and (R)).

School District Procurement Rules

A.R.S. § 15-213 requires the State Board of Education (SBE) to adopt rules for the procurement by school districts of any materials, services, goods, construction and construction services. These rules are established in A.A.C. R7-2-1001. Laws 2018, Ch. 285, §§ 5 and 32 (HB 2663) amended this statute by specifically requiring the SBE to adopt rules that school districts award contracts based on the lowest qualified bidder by June 30, 2019.

School Facilities Board

The School Facilities Board (SFB) provides services and funding for school districts through administration of Building Renewal Grants Fund (A.R.S. § 15-2032), New School Facilities Fund (A.R.S. § 15-2041) and the Emergency Deficiencies Correction Fund (A.R.S. § 15-2022). The SFB Executive Director is responsible for analyzing applications for SFB monies and reviewing or auditing the expenditure of monies by a school district for deficiencies corrections and new school facilities (A.R.S. § 15-2002).

Provisions

Cycling Audit Firms

1. Removes prohibitions for a school district to hire the same auditor or auditing firm for more than three consecutive years and removes prohibition on an auditor or auditing firm hired by school district from receiving consulting fees from that school district. (Sec. 1)

School District Procurement Rules

2. Repeals the requirement that the SBE adopt rules for school district procurement requiring contracts for materials, services, goods, construction or construction services to be awarded based on the lowest qualified bidder. (Sec. 2)

☐ Prop 105 (45 votes) ☐ Prop 108 (40 votes) ☒ Emergency (40 votes) ☐ Fiscal Note

Fifty-fourth Legislature
First Regular Session

SB 1256
Version 4: Transmitted

School District Procurement Pilot Program

3. Requires the School Facilities Board (SFB) to select three school districts with ongoing or planned procurements of construction services using alternative project delivery methods either as a SFB-approved project or as a locally procure project by September 1, 2019. (Sec. 3)
4. Specifies that one selected school district must have an average daily membership (ADM) between 2,000 and 8,000, and two selected school districts must have an ADM of less than 2,000. (Sec. 3)
5. Directs the SFB to provide technical assistance and procurement consulting to the selected school. (Sec. 3)
6. Mandates the SFB to submit a report of its findings to the Governor, President of the Senate and Speaker of the House of Representatives, the chairpersons of the Senate Education Committee and House of Representatives Education Committee, or their successor committees, and provide a copy to the Secretary of State, by September 1, 2020. (Sec. 3)
7. Defines *construction* for purposes of the Program. (Sec. 3)
8. Repeals the Program on February 16, 2021. (Sec. 3)

Miscellaneous

9. Contains an emergency clause. (Sec. 4)
10. Makes technical and conforming changes. (Sec. 1)

DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS BETWEEN DISTRICT AND CONTRACTOR

TABLE OF ARTICLES

1. AGREEMENT
2. GENERAL PROVISIONS
3. CONTRACTOR'S RESPONSIBILITIES
4. DISTRICT & PROJECT MANAGER'S RESPONSIBILITIES
5. SUBCONTRACTS
6. CONTRACT TIME
7. COMPENSATION
8. COST OF THE WORK
9. CHANGES IN THE WORK
10. PAYMENT FOR CONSTRUCTION PHASE SERVICES
11. INSURANCE AND BONDS
12. TERMINATION OF THE AGREEMENT AND DISTRICT'S RIGHT TO
PERFORM CONTRACTOR'S RESPONSIBILITIES
13. DISPUTE RESOLUTION
14. MISCELLANEOUS PROVISIONS
15. EXISTING CONTRACT DOCUMENTS

AMENDMENT NO. 1

AMENDMENT NO. 2

ARTICLE 1

AGREEMENT

This Agreement is made this **23RD** day of **July** in the year 2020 by and between the

DISTRICT: HUMBOLDT UNIFIED SCHOOL DISTRICT

Organized and operating in Yavapai County, Arizona;

and the **CONTRACTOR: GCON, Inc.**

for Design-Build services in connection with the following **PROJECT:**

The Glassford Hill Middle School Roofing Project includes Design-Build services for the project components listed below:

- The design services, construction services, and construction as identified in the RFQ #2020-03 for the roofing system replacement, to include but not be limited to, the following:
 1. Tear off existing roof down to deck.
 2. Remove abandon equipment and repair decking.
 3. Move equipment that is too close to walls.
 4. Install 2 layers plus a cover board with a minimum R-25 insulation to meet IECC code.
 5. Install polyisocyanurate taper cricket system.
 6. Install new 3 ply modified bitumen self-adhered SBS roof system.
 7. Coat new roof with white coatings.
 8. Repair all wall expansion joints.
 9. Repair tops of deteriorated parapet walls.
 10. Repair fractured CMU walls.
 11. Install new wall copings with waterproof membrane installed.
 12. Remove and reinstall solar panels.
- All site work, including paving and utilities, associated with the above.

ARTICLE 2

GENERAL PROVISIONS

2.1 TEAM RELATIONSHIP

The District and the Contractor agree to proceed with the Project on the basis of trust, good faith and fair dealing, and will take all actions reasonably necessary to perform this Agreement in an economical and timely manner, including consideration of design modifications and alternative materials or equipment that will permit the Work to be constructed within the Guaranteed Maximum Price (GMP) and by the date of Substantial Completion, as and if they are established by Amendment. The Contractor agrees to procure the architectural and engineering services set forth below, and to furnish construction and administration of the construction of the Work.

2.2 RELATIONSHIP OF THE PARTIES

2.2.1 CONTRACTOR SERVICES

The Contractor shall provide professional architectural/engineering services for the Project in accordance with the terms and conditions of this Agreement. The Contractor's performance of services to the District shall be to carry out the activities of Project design, furnish construction and administration of the construction for the work, and to provide the technical documents and supervision of the design team as necessary to achieve the District's Project objectives.

2.2.2 CONTRACTOR REPRESENTATION

2.2.2.1 The Contractor shall provide a list of all consultants that the Contractor intends to use relating to the Project. The list shall include such information on the qualifications of the consultants as may be requested by the District. The District reserves the right to review the consultants proposed, and the Contractor shall not retain a consultant to which the District expresses a reasonable objection. The District will pay the Contractor any increased costs of obtaining the services of consultants to replace those rejected by the District unless the rejected consultants lacked the qualifications and/or certifications to provide the services or unless the District can demonstrate a good cause basis for its rejection.

2.2.2.2 The Contractor shall provide to the District a list of the proposed key project personnel of the Contractor and its consultants to be assigned to the Project. This list shall include such information on the professional background of each of the assigned individuals as may be requested by the District. Such key personnel and consultants shall be satisfactory to the District and shall not be changed except with the consent of the District. The District's approval of substituted personnel will not be unreasonably withheld.

2.2.3 ARCHITECT/ENGINEER

Architectural and engineering services shall be provided by Arizona licensed, independent design professionals retained by the Contractor or furnished by licensed employees of the Contractor and as required or as permitted by the laws of the state of Arizona. The person or entity providing architectural and engineering services shall be referred to as the Architect/Engineer. If the

Architect/Engineer is an independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement between the Contractor and the Architect/Engineer. The Architect/Engineer for the Project is **Emc2 Group Architects Planners**.

2.2.4 EXTENT OF AGREEMENT

This Agreement is solely for the benefit of the parties, represents the entire and integrated agreement between the parties, and supercedes all prior negotiations, representations or agreements, either written or oral. In the event language in this document contradicts or is in conflict with any other agreement, written or oral, this agreement language takes precedence.

2.3 DEFINITIONS

2.3.1 The Contract Documents consist of:

- a. Change Orders and written amendments to this Agreement signed by both the District and Contractor, including a GMP Amendment if executed;
- b. Amendment No. 1;
- c. Documents approved by the District pursuant to Subparagraphs 3.1.4, 3.1.5 or 3.1.6;
- d. This Agreement;
- e. The information provided by the District pursuant to Clause 4.1.2.a;
- f. The Contract Documents in existence at the time of execution of this Agreement which are set forth in Article 15;
- g. The District's Program provided pursuant to Subparagraph 4.1.1.
- h. The District's RFQ for this project;
- i. The Contractor's responses to the District's RFQ to the extent they do not conflict with the above;
- j. The Contractor's Guaranteed Maximum Price Proposal, if any.

In case of any inconsistency, conflict or ambiguity among the Contract Documents, the Documents shall govern in the order in which they are listed above.

2.3.2 The **Work** is the Design Phase Services procured in accordance with Paragraph 3.1, the GMP Proposal provided in accordance with Paragraph 3.2, the Construction Phase Services provided in accordance with Paragraph 3.3, Additional Services that may be provided in accordance with Paragraph 3.7, and other services

which are necessary to complete the Project that are in accordance with and are reasonably inferable from the Contract Documents.

2.3.3 The term **Day** shall mean calendar day.

2.3.4 A **Subcontractor** is a person or entity who has an agreement with the Contractor to perform any portion of the Work. The term Subcontractor does not include the Architect/Engineer or any separate contractor employed by the District or Project Manager or any separate contractor's subcontractors.

2.3.5 A **Sub-subcontractor** is a person or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's work.

2.3.6 **Substantial completion** of the Work, or of a designated portion, occurs on the date when construction is sufficiently complete and in accordance with the Contract Documents so that the District can safely occupy and fully utilize the Project, or a designated portion, for the use for which it is intended. This date shall be confirmed by a certificate of Substantial Completion signed by the District and Contractor. The certificate shall state the respective responsibilities of the District and Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance. The certificate shall also list the items to be completed or corrected and establish the time for their completion and correction.

2.3.7 **Final acceptance/completion** of the Work means 100% completion of all construction Work noted in or reasonably inferred from the Contract Documents, including but not limited to all Punch Lists work, all record and close-out documents specified in Owner's Project specifications and Owner training/start up activities.

2.3.8 The District's **Program** is an initial description of the District's objectives, including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

ARTICLE 3

CONTRACTOR'S RESPONSIBILITIES

The Contractor shall be responsible for the procurement of the design and the construction of the Work consistent with the District's Program; as such Program may be modified by the District during the course of the Work. The Contractor shall exercise reasonable skill and judgment in the performance of its services to accomplish the goals of the District's program.

3.1 DESIGN PHASE SERVICES

3.1.1 PRELIMINARY EVALUATION

The Contractor shall provide a preliminary evaluation of the Project's feasibility based on the District's Program and other relevant information.

3.1.2 PRELIMINARY MASTER SCHEDULE

The Contractor shall prepare a preliminary Master Schedule of the Work for the District's written approval. The schedule shall show the activities of the District, Architect/Engineer and Contractor necessary to meet the District's completion requirements. The schedule shall be updated periodically according to the District's direction with the level of detail necessary to provide clarification as requested by the District in order to assure compliance with the Master Schedule. If an update indicates that a previously approved schedule will not be met, the Contractor shall recommend corrective action to the District in the form of a detailed, realistic, recovery schedule. The work will be scheduled, planned and reported using the Critical Path Method with Primavera or SureTrak software.

3.1.3 PRELIMINARY ESTIMATE

When sufficient Project information has been identified or upon District's reasonable demand, the Contractor shall prepare for the District's written approval a preliminary estimate utilizing area, volume or similar conceptual estimating techniques. The estimate shall be updated periodically with the level of detail for each estimate update reflecting the information then available. If the preliminary estimate or any update exceeds the District's budget, the Contractor shall make written recommendation to the District as to methods for resolving the issue.

3.1.4 SCHEMATIC DESIGN DOCUMENTS

The Contractor shall submit for the District's written approval Schematic Design Documents, based on the District's Program and other relevant information. Schematic Design Documents shall include drawings, outline specifications and other conceptual documents illustrating the Project's basic elements, scale and their relationship to the site and other structures. This submittal shall include an update of the preliminary schedule and a Schematic Design cost estimate. Eight sets of these documents shall be furnished to the District.

3.1.5 DESIGN DEVELOPMENT DOCUMENTS

The Contractor shall submit for the District's written approval Design Development Documents based on the approved Schematic Design Documents. The Design Development Documents shall further define the Project including drawings and outline specifications fixing and describing the Project size and character, and other appropriate elements incorporating the structural, architectural, mechanical and electrical systems. Ten sets of these documents shall be furnished to the District. The Contractor shall update the schedule and estimate based on the Design Development Documents.

3.1.6 CONSTRUCTION DOCUMENTS

The Contractor shall submit for the District's written approval Construction Documents based on the approved Design Development Documents. The Construction Documents shall set forth in detail the requirements for construction of the Work, and shall consist of drawings and specifications, including District supplied general conditions and general requirements, based upon codes, laws or regulations enacted at the time of their preparation. Construction shall be in accordance with these approved Construction Documents. Twelve sets of these documents shall be furnished to the District prior to commencement of construction.

3.1.7 DESIGN PHASE MEETINGS

Throughout the Design Phase, the Contractor and Architect/Engineer shall meet at least weekly with the District to solicit the District's input into the design and to review the progress of the design. The Architect/Engineer shall record and distribute meeting minutes of design phase meetings, noting all District directives and requests.

3.1.8 OWNERSHIP OF DOCUMENTS

The District acknowledges the Contractor's construction documents as instruments of professional service. Nevertheless, the plans and specifications prepared under this Agreement shall become property of the District upon completion of the construction documents and payment in full of all monies due to the Contractor for the Design Phase Services as identified in this Article, or upon termination of this Agreement at an earlier time and upon District payment of any pro rata amount due Contractor at the time of such termination. The Contractor shall not use the drawings and specifications, therefore, for any purpose not related to the Project without District's consent. The District will not reuse, for matters unrelated to the Work and its subsequent usage, or make any modification to the plans and specifications without the prior written authorization of the Contractor. The District agrees to the fullest extent permitted by law, to indemnify and hold the Contractor harmless from any claim, liability or cost (including reasonable attorney's fees and defense cost) arising or allegedly arising out of any unauthorized reuse or modification of the construction documents by the District or any person or entity that acquires or obtains the plans and specifications from or through the District without the written authorization of the Contractor.

3.2 GUARANTEED MAXIMUM PRICE PROPOSAL

3.2.1 At an appropriate stage of design as established by the District, the Contractor shall, if requested by the District, and at the sole discretion of the District, propose a GMP, which shall be the sum of the estimated Cost of the Work as defined in Article 8 and the contractor's Fee as defined in Article 7. At the District's sole discretion, the District may require multiple GMPs for specific elements of the Project to expedite and/or phase the Work or for such other purpose that may be in the District's best interest. If multiple or phased GMPs are utilized, they shall comply with all requirements set forth in this section 3.2 and all other sections of this Agreement. Acceptance of one GMP does not obligate the District to accept subsequent or any other GMPs, nor does it obligate the District in any manner beyond the GMP actually accepted. The Contractor shall provide the GMP document and a detailed schedule of values in a format that will be provided by the District. The GMP is subject to modification as provided in Article 9.

3.2.2 If a GMP, or any one of multiple of phased GMPs, is not established or agreed to by the District, all references in this Agreement to the GMP shall not be applicable, and the parties shall proceed on the basis of reimbursement of design phase services as set forth in Article 7. No amount shall be paid for construction or construction services not established or agreed to by the District absent a written agreement between the parties to the contrary.

3.2.3 The estimated Cost of the Work may include a contingency, a sum established by the Contractor and approved by the District, for use upon approval by the District to cover costs that are properly reimbursable as a Cost of the Work but are not the basis for a Change Order. Contractor is responsible for detailed documentation in writing of all requests, approvals and use of contingencies.

3.2.4 BASIS OF GUARANTEED MAXIMUM PRICE

The Contractor shall include with the GMP proposal a written statement of its basis, which shall include:

- a. a list of the drawings and specifications, including all addenda, which were used in preparation of the GMP proposal;
- b. a list of allowances and a statement of their basis;
- c. a list of the assumptions and clarifications made by the Contractor in the preparation of the GMP proposal to supplement the information contained in the drawings and specifications;
- d. the date of Substantial and Final Completion upon which the proposed GMP is based, and the Schedule of Work upon which the date of Substantial and Final Completion is based;
- e. a schedule of applicable alternate prices;
- f. a schedule of applicable unit prices;
- g. a detailed Schedule of Values;
- h. a statement of Additional Services included, if any; and
- i. the time limit for acceptance of the GMP proposal.

3.2.5 The Contractor shall meet with the District and Project Manager to review the GMP proposal. In the event that the District and Project Manager discover any inconsistencies or inaccuracies in the information presented, the District will promptly give written notice to the Contractor, who shall make appropriate adjustments to the GMP, its basis or both.

3.2.6 Unless the District accepts the GMP proposal in writing on or before the date specified in the GMP proposal for such acceptance and so notifies the Contractor, the GMP proposal shall not be effective.

3.2.7 Prior to the District's acceptance of the Contractor's GMP proposal, the Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Agreement or as the District may specifically authorize in writing.

3.2.8 Upon acceptance by the District of the GMP proposal, the GMP and its basis shall be set forth in an Amendment. The GMP and the date of Substantial Completion shall be subject to modification by changes in the Work as provided in Articles 6 and 9.

3.2.9 The GMP shall include in the Cost of the Work those taxes which are applicable at the time the GMP is established. If in accordance with the District's express written direction an exemption is claimed for taxes, the District agrees to

indemnify, defend and hold the Contractor harmless for any liability, penalty, interest, fine, tax assessment, attorneys fees or other expense or cost incurred by the Contractor as a result of any action taken by the Contractor in accordance with the District's direction relative to the taxes as described in this section only.

3.3 CONSTRUCTION PHASE SERVICES

3.3.1 The Construction Phase will commence upon the issuance by the District of a written notice to proceed with construction. If construction commences prior to execution of a GMP Amendment, the District's written notice to proceed will list the documents that are applicable to the part of the Work which the District has authorized. No Work shall commence until Contractor secures and provides, to the District, proof of all bonds as required by Arizona law and in strict compliance with A.A.C. R7-2-1103 to include, but not be limited to, performance and payment bonds.

3.3.2 In order to complete the Work, the Contractor shall provide all necessary construction supervision, inspection, construction equipment, labor, materials, tools, and subcontracted items.

3.3.3 The Contractor shall give all notices, obtain and pay for all approvals and permits necessary, and comply with all laws and ordinances legally enacted at the date of execution of the Agreement, which govern the proper performance of the Work.

3.3.4 The Contractor shall prepare and submit a Preliminary Master Schedule of Work for the District's written approval. This schedule shall indicate the dates for the start and completion of the various stages of the Project including the dates when information and approvals are required from the District. Schedule software shall be Primavera or SureTrak. At the time a GMP proposal is submitted, a bar graph Construction Progress Schedule for each major element of construction shall also be submitted. Schedule software shall be as agreed with the District. The Progress Schedule is subject to review by the District. The Progress Schedule must be directly related to Substantial and Final Completion and shall indicate the dates for the start and completion of the various components and phases of construction and shall be revised as required by the conditions of the Work, upon request of and subject to review by the District. This shall be done no less than monthly. The contractor shall provide an electronic copy of the original schedule and each monthly update to the Project Manager. Contractor agrees to promptly respond to all inquiries by the District concerning any deviation of the progress of construction from the Progress Schedule and to provide a recovery schedule for approval by the District upon request. Progress payments, in whole or in part, may be withheld if Contractor fails to timely respond to such request or if there is a significant delay from the Progress Schedule.

- a. The Construction Progress Schedule shall illustrate the planned, logical progression of construction activities and shall include all work to be performed under this contract. Individual work activities shall be limited to a two (2) week maximum duration.
- b. The Construction Progress Schedule shall have been derived from a network analysis. The Progress Schedule shall clearly indicate the path

of critical activities and shall further indicate activity duration, earliest and latest start and finish dates, and float time for all except critical activities. The Progress Schedule shall also indicate all relationships between activities, shall not contain more than one critical path, and shall be presented in a time scaled graphical format for the project as a whole, with milestone dates shown for various required phases. The schedule will be rejected if the float is not able to be accurately calculated due to faulty activity logic. Float shall be shared and not sequestered by either party.

- c. The Construction Progress Schedule shall include projected dates of submittal of all items of material for which submittals are required and shall include delivery dates of all items of material and equipment that are critical or have a long lead time. Contractor shall submit a monthly report summarizing all deviations from the Progress Schedule that will or may result in delay of the Project. Contractor shall prepare, not less frequently than monthly, a schedule summary report in a form and of sufficient detail and character as approved by District. The report, at a minimum, shall specify whether the Project is on schedule, and, if not, the reasons therefore, and the new schedule.
- d. Contractor shall also prepare a report not less than thirty calendar days after the GMP proposal is submitted which shall include a complete list of suppliers, items to be purchased from the suppliers or fabricators, time required for fabrication and the scheduled delivery dates for each item.
- e. Contractor shall prepare a monthly updated Construction Progress Schedule. The updated Schedule shall identify the status of all change requests, bulletins, and modifications. Progress Schedule updates shall indicate work completed to date and shall adjust the schedule to reflect any change in the planned sequence of activities. The Contractor shall at all times manage the Work in substantial conformance with the Progress Schedule. Failure of the Contractor to manage the Work in substantial conformance with the Progress Schedule may be considered as a material default of this Contract. Failure to submit the update when required may delay processing of the Application for payment until acceptable submission is made.
- f. In the event of significant delays, lags or changes in the planned sequence of activities as determined by District, Contractor shall provide to District a revised Progress Schedule indicating proposed rescheduling of activities to achieve completion of the Project by the Substantial completion date.
- g. Additions to or deletions from the Contract authorized by Change Orders shall be reflected in the Progress Schedule.
- h. In conjunction with the Progress Schedule, Contractor shall provide a Procurement Schedule for all major or time critical components to be

acquired and incorporated in the Project, which schedule shall be integrated into the Progress Schedule.

- i. The District will hold weekly construction progress meetings at the Site. The Project Manager will record and distribute the official meeting minutes. The Contractor shall report the progress of the Work in detail with reference to construction schedules. Contractor shall ensure that each then active subcontractor shall have present a competent representative to report the condition of its work and to receive information.

3.3.5 The Contractor shall secure and pay for all permits necessary for complete Project construction.

3.3.6 The Contractor shall take necessary precautions for the safety of its employees on the Project, and shall comply with all applicable provisions of federal, state, county and municipal safety laws to prevent accidents or injury to persons on, about or adjacent to the Project site. The Contractor, directly, or through its Subcontractors, shall erect and properly maintain at all times, as required by the conditions and progress of the Work, necessary safeguards for the protection of workers and the public. The Contractor, however, shall not be responsible for the elimination or abatement of safety hazards created or otherwise resulting from work at the Project site carried on by the District and Project Manager or their employees, agents, separate contractors or tenants, unless said hazards are identified within the Scope of Work as agreed upon within the GMP. The District agrees to cause their employees, agents, separate contractors and tenants to abide by and fully adhere to all applicable provisions of federal, state and municipal safety laws and regulations. The above provision shall not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with all applicable provisions of relevant laws.

3.3.7 The Contractor shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. The District and the Project Manager will be afforded access to all Contractor records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement. The Contractor shall preserve all such records for a period of five years after the final payment or longer where required by law.

3.3.8 The Contractor shall provide daily written reports to the District on the progress of the Work. Such reports shall include at a minimum: weather conditions, equipment and manpower on site, and a narrative of each element of Work in progress.

3.3.9 The Contractor shall develop a system of cost reporting for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes in the Work. The reports shall be presented to the District at mutually agreeable intervals.

3.3.10 At all times the Contractor shall maintain the site of the Work in a clean and hazard-free state. Debris and waste materials resulting from the Work shall be removed

at the end of each workday. At the completion of the Work, the Contractor shall remove from the premises all construction equipment, tools, surplus materials, waste materials and debris including disbursed waste materials.

3.3.11 The District will be conducting school operations within nearby buildings and outdoor areas. The Contractor will be required to perform work in a manner that will minimize the disruption of school activities. Prior to beginning construction operations, the Contractor shall propose and receive District approval of the perimeter of a work area necessary for safe and efficient operations over which the Contractor shall maintain control during the construction period. Contractor shall not unreasonably encumber the site with materials or equipment. Contractor shall perform in a manner that safeguards the health, safety and welfare of students, staff and community.

3.3.12 Contractor shall maintain at the Site (or other location approved by District) for District one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections (all changes and selections to be approved by District in advance) made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to District and shall be delivered to District upon completion of the Work.

3.3.13 At the date of Substantial Completion and as a condition precedent to final payment, Contractor shall furnish the following documents to District: Record Drawings showing the field changes and selections (all changes and selections to be approved by District in advance) affecting the general construction, mechanical, electrical, plumbing, and all other work, and indicating the Work as actually installed. These shall consist of scaled and accurately drawn markings on a set of reproducible prints of the Drawings obtained and paid for by Contractor. Contractor shall maintain at the Site one set of Drawings and indicate thereon each field change as it occurs. Within thirty (30) days of Substantial Completion, the Contractor shall furnish a computer disk of the record drawings, drawn in an AutoCAD format approved by the District.

3.3.14 Contractor shall maintain at the Site at all times a daily log ("Daily Log"), which describes daily manpower (by type and trade) working at the Site on the Project, any special or heavy equipment on Site and its use, weather conditions, labor disputes, tests conducted, persons visiting the Site, and any events that might affect the Progress Schedule or the quality of the Work. Contractor shall provide a current copy of the Daily Log to Project Manager at the weekly construction meetings.

3.3.15 Contractor is responsible for completing the Project consistent with District's existing property and other projects. Contractor accepts full and exclusive responsibility for any damage to any portion of the Project, whether in full or in part, due to cutting, patching, alterations, excavation or other actions which may affect District or the work of other contractors. In the event Contractor feels that an alteration is necessary regarding the above, it is Contractor's affirmative responsibility to request and receive written consent by District for such action. All parties to this Contract agree that they will perform this provision of this Agreement in good faith and in a commercially reasonable manner.

3.3.16 All areas requiring cutting and patching shall be restored to a completely finished condition, matching adjacent unpatched areas, and acceptable to District.

3.4 HAZARDOUS MATERIAL

3.4.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and /or clean-up. The Contractor shall not be obligated to commence or continue Work until any known or suspected Hazardous Material(s) discovered at the Project site has been removed or rendered or determined to be harmless by the District as certified by an independent testing laboratory and approved by the appropriate government agency.

3.4.2 If, after the commencement of the Work, a known or reasonably suspected Hazardous Material is discovered at the Project site, the Contractor shall be entitled to immediately stop Work in the affected area. Under such conditions the Contractor shall immediately report the condition to the District and Project Manager and, if required, the government agency with jurisdiction.

3.4.3 The Contractor shall not be required to perform any Work relating to, or in the area of, known or suspected Hazardous Material without written mutual agreement.

3.4.4 The District will be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures and/or remedial action. Such measures will be the sole responsibility of the District and will be performed in a manner minimizing any adverse effect upon the Work of the Contractor. The Contractor shall resume Work in the area affected by any Hazardous Material only upon written notification by the District that the Hazardous Material has been removed or rendered harmless.

3.4.5 If the Contractor reasonably incurs actual and direct additional costs and/or is actually delayed in achieving substantial and/or final completion due directly to the presence of known or suspected Hazardous Material, which the Contractor did not in whole or part introduce to the site, the Contractor shall be entitled to an equitable adjustment in the GMP and/or the date of Substantial Completion. If Contractor introduced or was responsible for the Introduction of Hazardous Material to the site, Contractor shall be responsible for all costs arising therefrom.

3.4.6 INDEMNIFICATION

3.4.6.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the District, Project Manager, Project Manager's Consultants, and agents and employees (collectively "Indemnities") of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, court costs and the cost of appellate proceedings, arising out of or resulting from, either directly or indirectly, the performance of the Work or the conditions of the Site, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness,

disease or death, or to injury to or destruction of tangible property (including the Work itself) including loss of use resulting therefrom. 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 or person described in this paragraph. The Contractor, at its own expense and risk, shall defend all legal proceedings that may be brought against the Indemnities on any such claim, damage, loss or expense, and satisfy any resulting judgment that may be rendered against any of them.

3.4.6.2 In claims against any person or entity indemnified under this paragraph by anyone directly or indirectly employed by the Contractor, a Subcontractor, or anyone for whose acts they may be liable, the indemnification obligation under this paragraph shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, employee benefit acts or other insurance.

3.4.7 The terms of this Paragraph 3.4 shall survive the completion of the Work under this Agreement and/or any termination of this Agreement.

3.5 ROYALTIES, PATENTS AND COPYRIGHTS

3.5.1 The Contractor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated in the Work. The Contractor shall defend, indemnify and hold the District and Project Manager harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection.

3.6 WARRANTIES AND COMPLETION

3.6.1 The Contractor warrants that all materials and equipment furnished for the Construction of this Project will be new unless otherwise approved by District; of good quality, in conformance with the Contract Documents, and free from defective workmanship, materials and hazardous materials. Warranties shall commence on the date of Substantial Completion of the Work or of a designated portion of the Work if the warranted items are fully installed, operational, and available for use and if not, at such time after the date of Substantial Completion as they are. The Contractor agrees to correct all construction performed under this Agreement which proves to be defective in workmanship and materials within a period of two years from the date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents or as may be allowed by law.

3.6.2 The Contractor shall secure required certificates of inspection, testing or approval and deliver them to the District.

3.6.3 The Contractor shall collect all written warranties and equipment manuals and deliver them to the District.

3.6.4 The Contractor shall perform the checkout of utilities and operations of systems and equipment for readiness, perform their initial start-up and testing, and conduct a training program for District personnel in their operation.

3.7 ADDITIONAL SERVICES

3.7.1 Any Additional Services must be authorized in advance by the District in writing; the Contractor shall furnish or obtain from others the authorized services. The Contractor shall be paid for these additional services by the District as herein provided to the extent they exceed the obligation or reasonably inferable obligation of the Contractor under this Agreement. Examples of potential additional services are as follows:

- a. Providing additional financial feasibility or other special studies other than as required by or reasonably inferable from this Agreement.
- b. Providing additional planning surveys or alternative site evaluations other than as required by or reasonably inferable from this Agreement.
- c. Providing design services relative to future facilities, systems and equipment that are not intended to be constructed as part of the Project, other than general planning and Master Planning for future work as may be indicated by the Program of Requirements.
- d. Making major revisions in Drawing, Specifications, or other documents when such revisions are inconsistent with written approvals or instructions previously given by the District or are due to causes beyond the control and without the fault or negligence or partial fault or negligence of the Contractor or its consultants or agents.
- e. Providing additional soils sampling, classification, and analysis other than as required by or reasonably inferable from this Article. However, analysis of existing soils information and soils analysis during the Design Phase and recommendations needed during the Construction Phase of the Project are not considered to be additional services under any event.
- f. Preparing to serve or serving as an expert witness for the District in connection with any public hearing, arbitration proceeding, or legal proceeding wherein the Contractor or Subcontractor of the Contractor is not a party or allegedly at fault; however, preparing to serve or serving as a fact witness for the District or rendering testimony necessary to secure governmental approval of zoning or land-use clearances for the Project shall not constitute an additional service.
- g. Providing surveying services such as platting, mapping, subdivision agreements, or recording subdivision plats other than as required by or reasonably inferable from this Agreement.
- h. Providing additional services and costs necessitated by out-of-town travel required of and approved in writing by the District other than visits to the Project and other than for travel required to accomplish the Work and/or as expressly required by the Contract Documents.
- i. Providing any other services not otherwise included in this Agreement, reasonably inferable from this Agreement, or not customarily furnished in

accordance with generally accepted Contractual practices consistent with the term of this Agreement.

- j. Providing design and engineering of any work outside the property line if said work is not expressly identified and included in the scope of Work subject to this Agreement.
- k. Providing consultation concerning replacement of Work damaged by fire or other causes and not due in whole or in part to Contractor's action or inaction during construction or furnishing services required in connection with the replacement of such work.
- l. Preparing additional documents for alternate, separate, or sequential bids or providing services in connection with bidding, negotiation, or construction prior to the completion of the Construction Documents Phase, other than as required by or reasonably inferable from this Agreement.
- m. Providing additional special surveys, environmental studies, and submissions required for approvals of governmental authorities or others having jurisdiction over the project, other than as required by or reasonably inferable from this Agreement.
- n. Providing extensive analyses of owning and operating costs.
- o. Providing interior design and other similar services required for or in connection with the selection, procurement, or installation of furniture, furnishings, and related equipment other than as required or reasonably inferable from this Agreement.
- p. Making revisions to design documents after they have been approved by the District when revisions are due to causes beyond the control and not the fault or partial fault of the Contractor.
- q. Design, coordination, management, expediting and other services supporting the procurement of materials to be obtained, or work to be performed, by the District.

ARTICLE 4

DISTRICT RESPONSIBILITIES

4.1 INFORMATION AND SERVICES PROVIDED BY DISTRICT

4.1.1 The District will provide full information in a timely manner regarding requirements for the Project, including the District's Program and other relevant information.

4.1.2 The District will provide:

- a. all available information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations;
- b. inspection and testing services made during construction at the District's own discretion or as mutually agreed; and
- c. unless otherwise provided in the Contract Documents, necessary approvals, site plan review, rezoning, easements and assessment, including legal and other required services.

4.2 DISTRICT RESPONSIBILITIES DURING DESIGN PHASE

4.2.1 The District will provide the Program at the inception of the Design Phase and will review and approve schedules, estimates, Schematic Design Documents, Design Development Documents and Construction Documents furnished during the Design Phase as set forth in Paragraph 3.1.

4.3 DISTRICT RESPONSIBILITIES DURING CONSTRUCTION PHASE

4.3.1 The District will review and approve the Schedule of the Work as set forth in Subparagraph 3.3.4.

4.3.2 If the District and Project Manager know or become informed of any error, omission or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, the District and Project Manager will give prompt written notice to the Contractor.

4.3.3 The District and Project Manager will communicate with the Contractor's Subcontractors, suppliers and Architect/Engineer only through the Contractor. The District and Project Manager will have no contractual obligations to Subcontractors, suppliers, or the Architect/Engineer.

ARTICLE 5

SUBCONTRACTS

Work not performed by the Contractor with its own forces shall be performed by Subcontractors.

5.1 SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

5.1.1 There are two ways to select Subcontractors and major Suppliers prior to submission of any GMP Proposal. They are:

- a) A combination of qualifications and price derived through competitive bidding;
- b) Qualitative selection with the subsequent negotiation of a price that is reasonable, a prudent use of public funds and in the District's best interest.

Absent special circumstances documented in writing by the Contractor as set forth below, the combination of qualifications and price derived through competitive bidding process shall be used to select Subcontractors and Major Suppliers. The District has the sole discretion as to whether or not to allow the purely qualitative selection of Subcontractors and Suppliers. In any event, Contractor shall insure compliance with A.A.C. R7-2-1112(G) and as said laws may be further modified relative to the selection of Subcontractors and Major Suppliers.

5.1.2 The District may approve the selection of a Subcontractor(s) or Supplier(s) based only on their qualifications when the Contractor can demonstrate, in writing, that it is in the best interest of the Project and that the selection process will constitute a prudent use of public funds.

5.1.3 A purely qualification based selection of a Subcontractor(s) or Supplier(s) should only occur prior to the submittal of any applicable GMP Proposal.

5.1.4 The Contractor will prepare a Subcontractor or Supplier selection plan and submit the plan to the District for approval. The Contractor shall apply the plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the District with its review and recommendation.

5.1.5 The Contractor must receive District approval of the selected Subcontractor(s) or Supplier(s). If the Contractor is to self-perform under this alternative the Contractor must submit a detailed explanation and demonstration of the cost of the work it will self-perform. The Contractor must further provide documentation to demonstrate that for any work that is self-performed, the cost of any such work is a reasonable and prudent use of public funds. The District must approve the Contractor self-performance of any part of the work and the cost therefore prior to accepting any GMP proposal.

5.1.6 The Contractor will negotiate costs for services/supplies from each Subcontractor or Supplier selected under this method.

5.1.7 Within three (3) days of negotiating cost for services/supplies from all Subcontractors or Suppliers selected under this method, the Contractor shall then prepare a report for the District's approval identifying the recommended Subcontractor or Supplier for each category of the Work to be performed. The report shall be in a format approved by the District's representative and shall include, among other things, the amount of each such cost. The Contractor may, at its discretion or at the request of the District's representative, request written verification of any costs selected. The Contractor shall provide an explanation of the qualifying factors for each selection.

5.1.8 In all other cases, Contractor shall select Subcontractors and Major Suppliers pursuant to the following process which includes a combination of qualifications and

price derived through competitive bidding or as may otherwise be agreed in writing by the parties. Contractor shall insure that any such process is fully compliant with A.A.C. R7-2-1112(G) and other applicable law.

5.1.9 The Contractor will develop Subcontractor interest, submit the names of a minimum of three qualified Subcontractors selected pursuant to a qualifications-based procedure, for each trade in the Project for approval by the District and solicit bids for the various construction categories. If there are not three qualified Subcontractors available for a specific trade or there are extenuating circumstances warranting such, the Contractor may request approval by the District to submit less than three names. Without prior approval by the District, no change in the District-approved Subcontractors will be allowed.

5.1.10 If the Contractor desires to self-perform certain portions of the construction, it shall comply with and be subject to the requirements set forth in paragraph 5.1.5.

5.1.11 If the District objects to any nominated Subcontractor or to any nominated self-performed construction for good reason, the Contractor will nominate a substitute Subcontractor.

5.1.12 The Contractor will distribute drawings and specifications, and when appropriate, conduct a pre-bid conference with prospective Subcontractors.

5.1.13 The Contractor shall receive, open, record and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals, the Contractor, in addition to bid price, shall consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the work to be performed, and performance schedule to complete the Work. The final evaluation of Subcontractor bids will be done with the District Representative in attendance to observe and witness the process. The Contractor will resolve any Subcontractor bid withdrawal, protest or disqualification in connection with the award at no increase in the cost of the construction.

5.1.14 Upon completion of the Subcontractor selection process, the Contractor shall submit a summary report to the District of the entire Subcontractor selection process. The report will indicate, by bid process, all Subcontractors contacted to determine interest, the Subcontractors solicited, the bids received and costs negotiated, compliance with Arizona law as cited in paragraph 5.1.1(b) and the selected Subcontractors for each category of Work.

5.1.15 The selected Subcontractors will provide a schedule of values, which will be used to create the overall project schedule of values.

5.1.16 Contractor shall employ only Subcontractors who are duly licensed in Arizona and qualified to perform the Work per the requirements of the Contract Documents.

5.1.17 Regardless of the selection procedure, the Contractor is responsible for ensuring that the costs of the Subcontractor's and/or Supplier's services are reasonable and a prudent use of public funds.

5.1.18 Regardless of the selection procedure and in any case, the Contractor is solely responsible for the cost and performance of the selected Subcontractors or Suppliers. The District's approvals under this section are not and shall not be construed to be a waiver, in part or in whole of Contractor's responsibility and obligation to perform as set forth in this Agreement or subsequent Construction Agreement or GMP and for the cost or less than the cost set forth in any GMP to which the parties agree.

5.1.19 Each subcontract agreement for a portion of the Work is hereby assignable by the Contractor to the District provided that:

1. Assignment is effective at the sole option of the District and only upon termination of the Contract for cause, and only for those subcontract agreements which the District elects to accept by notifying the subcontractor in writing, and
2. Assignment is subject to the prior rights of the surety obligated under the Bonds relating to the Contract.

5.2 RETAINING SUBCONTRACTORS

The Contractor shall not retain any Subcontractor to whom the District has a reasonable and timely objection. The Contractor shall not be required to retain any Subcontractor to whom the Contractor has a reasonable objection. Any objections shall be made in writing and shall identify the specific nature of the objection.

5.3 MANAGEMENT OF SUBCONTRACTORS

The Contractor shall be responsible for the management of the Subcontractors in the performance of their work.

5.4 ASSIGNMENT OF SUBCONTRACT AGREEMENTS

The Contractor shall provide for assignment of subcontract agreements in the event that the District terminates this Agreement for cause as provided in Paragraph 12.2. Following such termination, the District will notify in writing those subcontractors whose assignments will be accepted, subject to the rights of sureties.

ARTICLE 6

CONTRACT TIME

6.1 COMMENCEMENT OF THE WORK

The Work shall commence on the date established by Amendment and shall proceed in accordance with the Preliminary Master Schedule of Work, or subsequent approved schedules pursuant to articles 3.1.2 and 3.3.4.

6.2 SUBSTANTIAL AND FINAL COMPLETION

6.2.1 At such time as a GMP is accepted, dates of Substantial and Final Completion of the Work shall be established as set forth in an Amendment. If a GMP is not established and the parties desire to establish dates of Substantial and Final Completion, they shall be set forth in an Amendment. Time shall be of the essence of this Agreement.

6.2.2 The Contractor acknowledges that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, or within any proper extension granted in writing by the District, District will suffer damages which are difficult to accurately specify and ascertain. The Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date (such date hereinafter referred to as the "LD Date"), The Contractor agrees to pay Liquidated Damages, and further agrees that the District may deduct any or all sums for liquidated damages from any unpaid monies. Liquidated Damages are agreed to equal the sum of One Thousand dollars per day (\$1,000.00) for each day that actual Substantial Completion extends past the LD Date. All parties agree that the above stated liquidated damages amount and rate is reasonable given the needs, extreme scheduling and space difficulties, and disruption of the District in its educational process should the Work not be Substantially Complete by the LD Date.

6.2.3 Final Acceptance/Completion. Upon receipt of written notice that the Work or identified portions of the Work is ready for final inspection and acceptance, District and Contractor will jointly inspect to verify that the remaining items of Work have been completed as set forth in Section 2.3.7. Upon the District's determination that Final Completion has been achieved, the District will issue a Final Acceptance/Completion Letter and payment pursuant to Section 10.2. Contractor understands that if Final Acceptance/Completion is not attained within the Contract Time as adjusted, District will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Final Acceptance/Completion is not attained within the Contract Time as adjusted, Contractor shall pay the District (\$1,000.00) as liquidated damages for each Day that Final Completion extends beyond the date determined by the Contract Time as adjusted and further agrees that such amount is reasonable under the circumstances.

6.3 DELAYS IN THE WORK

6.3.1 If due to unexpected causes beyond the Contractor's control for which the District is responsible, and not due entirely or in part, to Contractor's or Subcontractors of Contractor's, actions or inactions a delay is incurred in the progress of the Work and Contractor incurs actual direct damages from such delay; then District and Contractor shall engage in negotiations regarding the above. In such case, the GMP, compensation for Design Phase Services, the Contractor's Fee and/or the date of Substantial Completion may be modified by written agreement as appropriate. Such causes shall include but not be limited to: changes ordered in the Work, acts or omissions of the District and Project Manager or separate contractors employed by the District, preventing the Contractor from performing the Work, Hazardous Materials, differing site conditions not reasonably foreseeable, adverse weather conditions not reasonably anticipated, fire not due to fault or partial fault of the Contractor.

6.3.2 In the event delays to the project are encountered for any reason, all parties agree to undertake reasonable steps to mitigate the effect of such delays.

ARTICLE 7

COMPENSATION

7.1 DESIGN PHASE COMPENSATION

7.1.1 The cost of services performed directly by the Architect/Engineer shall be identified in Amendment No. 1, attached hereto, and subsequently as a line item in the GMP, shall be computed separately, and is independent from the Contractor's compensation for work or services directly performed by the Contractor. These costs shall be shown as separate items on the application for payment for both the Design Phase fees, and services through project completion. If an Architect/Engineer is retained by the Contractor, the payments to the Architect/Engineer shall be as detailed in a separate agreement between the contractor and Architect/Engineer and shall be the responsibility of the Contractor.

7.1.2 The District will compensate the Contractor in the amounts specified in Amendment 1 for Design and Preconstruction Services performed during the Design Phase as described in Paragraph 3.1 and preparation of a GMP proposal as described in Paragraph 3.2.

7.1.3 Payments for Design Services will be due and payable within thirty (30) days following approval of the Contractor's monthly invoice to the District. Uncontested payments due the contractor remaining unpaid for more than thirty (30) days from the due date of the invoice will bear interest at the legal rate.

7.2 CONSTRUCTION PHASE COMPENSATION

7.2.1 If a GMP is established and accepted by the District pursuant to Amendment No. 2, attached hereto, the District will, up to the amount of the GMP established in a GMP Amendment, and as it may be adjusted under Article 9, compensate the Contractor for Work performed following the commencement of Construction on the following basis:

- a. the Cost of the Work as allowed in Article 8; and
- b. the Contractor's Fee, including General Conditions, as detailed in the GMP Amendment, subject to adjustment as provided in Paragraph 7.4.1. The Contractor's Fee will be paid proportionately to the ratio that the monthly cost of the Work bears to the total estimated Cost of the Work.

The District shall not pay any amount for construction or construction services absent a prior written acceptance of a GMP and a GMP amendment or alternative written agreement between the parties.

7.2.2 The compensation to be paid under this Paragraph will be limited to the GMP established by Amendment, as the GMP may be adjusted under Article 9. In the event the Cost of the Work plus the Contractor's Fee shall be less than the GMP as adjusted by Change Orders, the resulting savings shall be credited back to the District.

7.2.3 Payment for Construction Phase Services will be as set forth in Article 10. If Design Services continue to be provided after construction has commenced, the Contractor shall also continue to be compensated as provided in Paragraph 7.2, or as mutually agreed.

7.3 CONTRACTOR'S FEE

The Contractor's Fee includes the following if they are directly related to the Work:

- a. salaries and other mandatory or customary compensation of the Contractor's employees at its principal and branch offices, except employees listed in Subparagraph 8.2.2;
- b. general and administrative expenses of the Contractor's principal and branch offices other than the field office, except as may be expressly included in Article 8; and
- c. the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.
- d. costs related to the Contractor's safety program.

7.4 ADJUSTMENT IN THE CONTRACTOR'S FEE

7.4.1 Adjustment of the Contractor's Fee may be made as follows:

- a. for changes in the Work as provided in Article 9, the Contractor's Fee may be adjusted as follows as mutually agreed by the parties:
- b. for delays in the Work not caused, or not caused in part, by the Contractor, Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. There may be an equitable adjustment in the Contractor's Fee to compensate the Contractor for increased expenses actually incurred which are directly related to the Project; and
- c. if the Contractor is placed in charge of managing the replacement of an insured or uninsured loss not caused by or the fault of the Contractor, Subcontractors or other parties for whom Contractor and/or Subcontractor are responsible, the Contractor may be paid an additional Fee in the same proportion that the Contractor's Fee bears to the estimated Cost of the Work, or as otherwise agreed to by the parties.

7.5 SEGREGATION OF DESIGN AND ENGINEERING SERVICES

7.5.1 Contractor and District agree that design and engineering services under this Agreement are substantial in relation to the other services required by this Agreement and are not inconsequential or merely incidental to the business of Contractor. Contractor and District further agree that assessment of Arizona Transaction Privilege Taxes on such services is not appropriate and that Contractor shall not charge District and District shall not be responsible for payment of, directly or indirectly, any such taxes arising from the design and engineering services provided under this Agreement. Contractor affirms the need and his obligation to segregate and separately document, account and charge design and engineering services separately from construction services so as to avoid any inappropriate assessment of Arizona Transaction Privilege Taxes on such services. Contractor will indemnify District against the payment of any such taxes arising from the design and engineering services provided under this Agreement in the event such taxes are assessed as a result of Contractor's failure to properly segregate, separate, document, account and charge for said design and engineering services not otherwise required by operation of law. Should the separate accounting and documentation of design and engineering services be found to be void or otherwise barred by law as a means of precluding the assessment of Arizona Transaction Privilege Taxes, the District will be responsible for the payment of applicable taxes provided that any such taxes are not assessed as a result of any act or omission by Contractor.

ARTICLE 8

COST OF THE WORK

The District agrees to pay the Contractor for the Cost of the Work as defined in this Article. This payment shall be in addition to the Contractor's Fee stipulated in Article 7. However, in no event will the District pay the Contractor total compensation greater than the amount of the GMP established by Amendment, and as it may be adjusted under Article 9.

8.1 COST ITEMS FOR DESIGN PHASE SERVICES

8.1.1 Compensation for Design Phase Services as provided in Paragraph 7.1.

8.2 COST ITEMS FOR CONSTRUCTION PHASE SERVICES

8.2.1 Wages paid for labor in the direct employ of the Contractor in the performance of the Work.

8.2.2 Salaries of Contractor's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office performing the functions listed below, if such functions are directly related to the Work.

8.2.3 Cost of all employee benefits and taxes including but not limited to, unemployment compensation, Social Security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the Contractor's standard personnel policy, insofar as such costs are paid to employees of the Contractor who are included in the Cost of the Work under Subparagraphs 8.2.1 and 8.2.2.

8.2.4 Reasonable transportation, travel and hotel expenses of the Contractor's personnel incurred in connection with the Work.

8.2.5 Cost of all materials, supplies and equipment incorporated in the Work, including costs of inspection, testing, transportation, storage and handling.

8.2.6 Payments made by the Contractor to Subcontractors for work performed under this Agreement.

8.2.7 Fees and expenses for design services procured by the Contractor except as provided by the Architect/Engineer and compensated in Paragraph 7.1.

8.2.8 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value; and cost less salvage on such items used, but not consumed that remain the property of the Contractor. The Contractor shall reimburse the District for the salvage value of items used or salvage the items to the District.

8.2.9 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the site of the Work, whether rented from the Contractor or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation and delivery costs at rental charges consistent with those prevailing in the area.

8.2.10 Cost of premiums for normal and customary contractor's and subcontractor's liability, workman's compensation and builders risk insurance as outlined in Article 11, is to be identified as a separate line item within the GMP.

8.2.11 Sales, use, gross receipts or other taxes, tariffs or duties related to the Work for which the Contractor is liable.

8.2.12 Permits, fees, and licenses, as well as testing and inspection of all materials as may be required by construction codes or generally accepted industry practice.

8.2.13 All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.

8.2.14 Reproduction costs, photographs, cost of telegrams, facsimile transmissions, long distance telephone calls, data processing services, postage, express delivery charges, telephone service at the site and reasonable petty cash expenses at the field office.

8.2.15 All water, power and fuel costs necessary for the Work.

8.2.16 Cost of removal of all non-hazardous substances, debris and waste materials.

8.2.17 Costs incurred due to an emergency affecting the safety of persons and/or property, excluding such costs related to the negligence or willful acts of the Contractor or any person or entity for whom the Contractor is responsible.

8.2.18 All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Contractor's Fee as set forth in Article 7, which are reasonably inferable from the Contract Documents as necessary to produce the intended results.

8.3 DISCOUNTS

All discounts for prompt payment shall accrue to the District to the extent payments are made by the District. To the extent payments are made with funds of the Contractor, all cash discounts shall accrue to the Contractor, but shall be appropriately recorded, accounted and available for review by the District. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

8.4 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

8.4.1 Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to:

- a. conditions bearing upon transportation, disposal, handling, and storage of materials;
- b. the availability of labor, water, electric power, and roads
- c. uncertainties of weather or physical conditions at the site;
- d. the conformation and conditions of the ground; and
- e. the character of equipment and facilities needed preliminary to and during work performance.

ARTICLE 9

CHANGES IN THE WORK

Changes in the Work, which are within the general scope of this Agreement, may be accomplished by Change Order or other written instrument without invalidating this Agreement.

9.1 CHANGE ORDERS

A Change Order is a written instrument, issued after execution of this Agreement, signed by the District and Contractor stating their agreement upon a change and the adjustment in the GMP, compensation for Design Phase Services, the Contractor's Fee and/or the date of Substantial or Final Completion. Each adjustment in the GMP resulting from a Change Order shall clearly separate the amount attributable to compensation for Design Phase Services, other cost of the Work and the Contractor's Fee. All Change Orders must comply with A.A.C. R7-2-1005.

9.2 DETERMINATION OF COST

An increase or decrease in the GMP resulting from a change in the Work shall be determined by one or more of the following methods:

- a. unit prices set forth in this Agreement or as subsequently agreed;
- b. a mutually accepted, itemized lump sum;
- c. costs determined as defined in Paragraph 7.2 and Article 8 and a mutually acceptable Contractor's Fee as determined in Subparagraph 7.4.1.
- d. if an increase or decrease cannot be agreed to as set forth in subparagraphs 9.2.a through 9.2.c and the District issues a written order for the Contractor to proceed with the change, the cost of the change in the Work shall be determined by the reasonable expense or savings of the performance of the Work resulting from the change. If there is a net increase in the GMP, the Contractor's Fee shall be adjusted as set forth in Subparagraph 7.4.1. In case of a net decrease in the GMP, the Contractor's Fee shall not be adjusted. The Contractor shall maintain a documented, itemized accounting evidencing the expenses and savings.

9.3 NO OBLIGATION TO PERFORM

The Contractor shall not be obligated to perform changed Work until a Change Order or other written instrument has been executed by the District and Contractor, except as provided in Subparagraph 9.2.d.

9.4 ADJUSTMENT OF UNIT PRICES

If a proposed Change Order alters original quantities to a degree that application of previously agreed to unit prices would be inequitable to either the District or the Contractor, the unit prices and the GMP shall be equitably adjusted.

9.5 UNKNOWN CONDITIONS

If in the performance of the Work the Contractor finds latent, concealed or subsurface physical conditions which differ from the conditions the Contractor should have reasonably anticipated, or substantially different from available soils reports, or if

physical conditions are substantially and materially different from those normally encountered and generally recognized as inherent in the kind of work provided for in this Agreement at this location (occurrence of shifting and expansive soils, including clay soils and sandstone expressly noted as commonly occurring in these areas), then the GMP compensation for Design Phase Services, the Contractor's Fee, and/or the date of Substantial Completion may be equitably adjusted by Change Order or other written instrument within ten (10) days after the conditions are first observed for delays actually and directly arising from said conditions.

9.6 CLAIMS FOR ADDITIONAL COST OR TIME

For any claim for an increase in the GMP, compensation for Design Phase Services, the Contractor's Fee and/or an extension in the date of Substantial Completion, the Contractor shall give the District written notice of the claim within ten (10) days after the occurrence giving rise to the claim or within ten (10) days after the Contractor first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Claims for design and estimating costs incurred in connection with possible changes requested by the District, but which do not proceed, shall be made within ten (10) days after the decision is made not to proceed. Any change in the GMP, compensation for Design Phase Services, the Contractor's Fee, and/or date of Substantial or Final Completion resulting from such claim shall be authorized by Change Order or other written instrument.

9.7 EMERGENCIES

In any emergency affecting the safety of persons and/or property, the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the GMP, compensation for Design Phase Services, the Contractor's Fee and/or extension of the date of Substantial Completion on account of emergency work shall be determined as provided in this Article.

ARTICLE 10

PAYMENT FOR CONSTRUCTION PHASE SERVICES

10.1 PROGRESS PAYMENTS

10.1.1 At the last construction meeting of each month after the Construction Phase has commenced, the Contractor shall submit to the District a detailed, draft Application for Payment consisting of the Cost of the Work performed up to the last day of the month, including the cost of material stored on the site or at other locations approved by the District, along with a proportionate share of the Contractor's Fee. The format of the application document shall be as provided to the Contractor by the District. Prior to submission of the next Application for Payment, the Contractor shall furnish to the District a statement accounting for the disbursement of funds received under the previous Application. The extent of such statement shall be as agreed upon between the District and Contractor. All payments shall be made pursuant to and in compliance with Arizona Administrative Code (A.A.C.) R7-2-1104, 1105 and other applicable laws.

10.1.1.1 Ten percent (10%) retainage will be held from each Progress Payment until fifty percent (50%) of the total Project is deemed complete by the District. At the fifty

percent (50%) completion, the retention may be reduced to five percent (5%) subject to the relevant Arizona Revised Statutes and A.A.C. provisions. All retention shall be withheld pursuant to and in compliance with A.A.C. R7-2-1104.

10.1.1.2 Any securities submitted by Contractor in lieu of retainage as may be allowed by law, shall be deposited in an escrow account as directed by the District. The District shall be listed as Payee or Multiple Payee with Contractor on said securities.

10.1.2 Pursuant to and in strict compliance with A.A.C. R7-2-1105 and other applicable laws, after receipt by the District of each detailed monthly Application for Payment which has been certified by the Architect and is approved by the District, the District will pay directly to the Contractor the appropriate amount for which Application for Payment is made, less amounts previously paid by the District and less amounts allowed by A.A.C. R7-2-1104 and 1105 including amounts sufficient to pay expenses the District reasonably expects to incur in correcting deficiencies which are set forth in writing and provided to the Contractor.

10.1.3 The Contractor warrants and guarantees the title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the District upon receipt of such payment by the Contractor free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to as "liens."

10.1.4 The District's progress payment, occupancy or use of the Project, whether in whole or in part, shall not be deemed as acceptance of any Work not conforming to the requirements of the Contract Documents.

10.1.5 Pursuant to and in compliance with A.A.C. R7-2-1104 and 1105 and upon Substantial and Final Completion of the Work, the District will pay the Contractor the unpaid balance of the Cost of the Work, compensation for Design Phase Services and the Contractor's Fee, less a sum equal to the Contractor's estimated cost of completing any unfinished items and correction of any noted defects as agreed to between the District and Contractor as to extent and time for completion. The District thereafter will pay the Contractor monthly the amount retained for unfinished items or correction of noted defects as each item is completed.

10.2 FINAL PAYMENT

10.2.1 Pursuant to and in compliance with A.A.C. R7-1104 and 1105, final payment, consisting of the unpaid balance of the Cost of the Work, compensation for Design Services and the Contractor's Fee shall be due and payable when the Work is fully completed and accepted by the District. Before issuance of final payment, the District will require satisfactory evidence that all payrolls, materials bills and other indebtedness connected with the Work have been paid or otherwise satisfied.

10.2.2 In making final payment the District waives all claims except for:

- a. outstanding liens;
- b. deficient design, improper workmanship or defective materials;

- c. Work not in conformance with the Contract Documents;
- d. terms of any available general or special warranties and as may be required by the Contract Documents;
- e. right to audit Contractor records for a period of five years; and
- f. claims previously made in writing and which remain unsettled.

10.2.3 In accepting final payment, the Contractor waives all claims except those previously made in writing and which remain unsettled.

ARTICLE 11

INSURANCE AND BONDS

11.1 INSURANCE REPRESENTATIONS AND REQUIREMENTS

11.1.1 Without limiting any obligations or liabilities of Contractor, Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the District. Failure to maintain insurance as specified herein may result in termination of this Agreement at the District's option.

11.1.2 By requiring insurance herein, District does not represent that coverage and limits will be adequate to protect Contractor. District reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but District has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

11.1.3 All insurance coverage and self insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of the work included in this Agreement, the District, the Project Manager, their agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

11.1.4 All insurance required herein shall remain in effect until the District has issued a certificate of Final Completion for the entire Work, and the Contractor and the District have agreed in writing that the work is covered under insurance designed for the purpose of providing coverage for the accepted Work while occupied.

11.1.5 Contractor's insurance shall be primary insurance with respect to performance of the work included in this Agreement and in the protection of District as an Additional Insured. The policies required by the Contract Documents shall be endorsed to include the District, the Project Manager, as well as their agents, officials, and employees as insured parties and shall stipulate that the insurance afforded by the policies shall be by primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or participated in by the District, or their agents, officials or employees shall be excess and not contributory to insurance required herein.

11.1.6 In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the Work or services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

11.1.7 All policies, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the District, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Contractor. Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

11.1.8 The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to District. Contractor shall be solely responsible for any such deductible or self-insured retention amount. District, at its option, may require Contractor to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional letter of credit.

11.1.9 If any work under this Agreement is subcontracted in any way, Contractor shall execute written agreement with Subcontractor containing the indemnification provisions set forth in Section 11.6 below and insurance requirements set forth herein protecting the District and Contractor. At Contractor's option and at Contractor's risk, Contractor may, subject to the District's prior, written approval, which approval shall not be unreasonably withheld, allow subcontractors to deviate from these insurance requirements due to insurance market availability or affordability issues. Contractor shall be responsible for executing the agreement with Subcontractor and obtaining certificates of insurance verifying the insurance requirements.

11.1.10 Prior to commencing any work or services under this Agreement, Contractor shall furnish the District with certificate(s) of insurance, or formal endorsements as required by this Agreement, issued by the insurers of the Contractor, Consultants, and Subcontractors as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. If a certificate of insurance is submitted as verification of coverage, the District will reasonably rely upon the certificate of insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements

or obligations of this Agreement. If any of the above-cited policies expire during the life of this Agreement, it shall be Contractor's responsibility to forward renewal certificates within ten days after the renewal date containing all the aforementioned insurance provisions. Additionally, certificates of insurance submitted without referencing this Agreement will be subject to rejection and returned or discarded. Certificates of insurance shall specifically include the following provisions:

- a. The District, the Project Manager, their agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:
 - (i) Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") current Form CG 20 10 or equivalent.
 - (ii) Auto Liability - Under current ISO Form CA 20 48 or equivalent.
 - (iii) Excess Liability - Follow Form to underlying insurance.
- b. Contractor's insurance shall be primary insurance as respects performance of the work included in this Agreement.
- c. All policies, including Workers' Compensation, waive rights of recovery (subrogation) against District, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Contractor under this Agreement.
- d. A 60-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.
- e. Certificates of Insurance and any notice of cancellation or material change should be addressed as follows:

11.2 REQUIRED INSURANCE COVERAGE

11.2.1 Contractor shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$2,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO current policy form CG 00 010 or equivalent thereof, including but not limited to, separation of insured's clause. Further, the policy shall include coverage for the hazards commonly referred to as X (explosion), C (collapse), U (underground). The products and completed operations coverage shall extend for five years past acceptance, cancellation or termination of the Work. Said policy shall contain a severability of interest provision. To the fullest extent allowed by law, for claims arising out of the performance of this

Agreement, the District, the Project Manager, their agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO current Commercial General Liability Additional Insured Endorsement form CG 20 10, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

11.2.2 If this Agreement is the subject of any professional services or work, or if Contractor engages in or procures any professional services or work adjunct or residual to performing the work under this Agreement, Contractor shall maintain Professional occurrence based Liability insurance covering negligent errors and omissions arising out of the work or services performed by Contractor, or anyone employed by Contractor, or anyone for whose negligent acts, mistakes, errors and omissions Contractor is legally liable, with an unimpaired liability insurance limit of \$1,000,000 each claim and \$1,000,000 all claims.

11.2.3 Contractor shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Contractor's owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" current policy form CA 00 01 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the District, the Project Manager, their agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope then underlying insurance.

11.2.4 Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

11.2.5 The Contractor shall be responsible for purchasing and maintaining Builder's Risk and Course of Construction insurance to protect the Project from perils of physical loss. The insurance shall provide for the full cost of replacement for the entire Project at the time of any loss. The insurance shall include as named insureds the District, the Project Manager, the Contractor, the Contractor's subcontractors and sub subcontractors and shall insure against loss from the perils of fire and all-risk coverage for physical loss or damage due to theft, vandalism, collapse, malicious mischief, transit, flood, earthquake, testing, resulting loss arising from defective design, negligent workmanship or defective material. The Contractor shall increase the coverage limits as necessary to reflect changes in the estimated replacement cost.

11.3 CERTIFICATES OF INSURANCE

Prior to commencing the Work under this Agreement, Contractor shall furnish the District with certificates of insurance, or formal endorsements as required by this Agreement,

issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Agreement are in full force and effect. Unless otherwise specified in this Agreement, in the event any insurance policy(ies) required by this Agreement is(are) written on a "claims made" basis, coverage shall extend for three years past completion and acceptance of the Contractor's work or services and as evidenced by annual certificates of insurance. If a policy does expire during the life of the Agreement, a renewal certificate must be sent to the District 30 days prior to the expiration date. All certificates of insurance required by this Agreement shall be identified by project name. The District reserves the right to request and receive certified copies of any or all of the above insurance policies and/or endorsements.

11.4 CANCELLATION AND EXPIRATION NOTICE

Insurance required herein shall not expire, be canceled, or materially changed without 60 days' prior written notice to the District.

11.5 FAILURE OF COMPLIANCE

Should the Contractor fail to provide and maintain in force any and all insurance, or insurance coverage required by the Contract Documents or by law, or should a dispute arise between the District and any insurance company of Contractor over policy coverage or limits of liability as required herein, the District will be entitled to recover from the Contractor all amounts payable, as a matter of law, to the District or any other parties, including, but not limited to the Project Manager, had the required insurance or insurance coverage been in force. Said recovery will include, but is not limited to, interest for the loss of use of such amounts of money, plus all attorney's fees costs and expenses incurred in securing such determination and any other consequential damages arising out of the failure of the Contractor or insurance company to comply with the provisions of the Contract Documents, or any policy required hereby, or any other requirements regarding insurance imposed by law. Nothing herein shall limit any damages for which Contractor is responsible as a matter of law.

11.6 INDEMNITY

To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the District, the Project Manager, their agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs and the cost of appellate proceedings) relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Agreement. Contractor's duty to defend, hold harmless and indemnify the District, the Project Manager, their agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment or destruction of tangible real or personal property, including loss of use resulting therefrom. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

11.7 BID, PERFORMANCE AND PAYMENT BONDS

Bonds shall be provided by Contractor pursuant to and in compliance with A.A.C. R7-2-1112, R7-2-1113 and when applicable A.A.C R7-2-1102.

11.7.1 After the District and the Contractor have agreed to a GMP but prior to commencing any Construction, the Contractor shall be required to furnish the District with an irrevocable security binding the Contractor to provide faithful performance of the Agreement in the amount of 100% of the percentage of the GMP attributable to Construction, payable to the District. Performance security shall be in the form of a performance bond, as required by Arizona law. If the Contractor fails to execute the security document as required, the Contractor may be found in material default of the Agreement, permitting the District to terminate this Agreement. In case of default the District reserves all rights. All performance bonds shall be executed on State of Arizona approved forms, duly executed by the Bidder as Principal and having as Surety thereon a Surety company approved by the District and holding a Certificate of Authority issued by the Arizona Department of Insurance to transact surety business in the State of Arizona. The conditions and provisions of the bonds regarding the surety's obligation shall be in compliance with and follow the form required under A.R.S. § 34-222. The cost of the bonds shall be included in the contract sum. Individual sureties are unacceptable. All Insurers and Sureties shall have at the time of submission of bonds A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

11.7.2 After the District and the Contractor have agreed to a GMP but prior to commencing Construction, the Contractor shall be required to furnish the District with an irrevocable security for the protection of all persons supplying labor and material to the Contractor or any subcontractor for the performance of any work related to the Agreement. Payment security shall be in the amount of 100% of the portion of the GMP attributable to Construction and be payable to the District. Payment security shall be in the form of a payment bond, as required by Arizona law. All payment bonds shall be executed on State of Arizona approved forms, duly executed by the Bidder as Principal and having as Surety thereon a Surety company approved by the District and holding a Certificate of Authority issued by the Arizona Department of Insurance to transact surety business in the State of Arizona. The conditions and provisions of the bonds regarding the surety's obligation shall be in compliance with and follow the form required under A.R.S. § 34-222. The cost of the bonds shall be included in the contract sum. Individual sureties are unacceptable. All Insurers and Sureties shall have at the time of submission of bonds A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

11.7.3 The Contractor shall require the attorney-in-fact who executes the required bond on behalf of the surety to affix thereto a certified and current copy of the Power of Attorney.

11.7.4 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE 12

TERMINATION OF THE AGREEMENT

AND DISTRICT'S RIGHT TO PERFORM CONTRACTOR'S RESPONSIBILITIES

12.1 TERMINATION BY THE CONTRACTOR

12.1.1 Upon fourteen (14) days' written notice to the District, and if the District fails to cure or initiate reasonable action to cure within fourteen (14) days of said notice, the Contractor may terminate this Agreement for any of the following reasons:

- a. if the Work has been stopped for a forty-five (45) day period
 - (i) under court order or order of other governmental authorities having jurisdiction for reasons not related to Contractor's performance;
 - (ii) as a result of the declaration of a national emergency or other governmental act during which, through no act, omission or fault of the Contractor, materials are not available; or
- b. if the Work is suspended by the District for sixty (60) days;
- c. if the District, through no fault of the Contractor, materially delays the Contractor in the performance of the Work;
- d. if the District otherwise materially breaches this Agreement.

12.1.2 Upon termination by the Contractor in accordance with Subparagraph 12.1.1, the Contractor shall be entitled to recover from the District payment for all Work executed to the date of termination plus demobilization costs. The District shall not pay any amounts for lost profits or opportunities. The District may subtract reasonable estimates of costs for deficient work from the payments noted above.

12.2 DISTRICT'S RIGHT TO PERFORM CONTRACTOR'S OBLIGATIONS AND TERMINATION BY THE DISTRICT FOR CAUSE

12.2.1 If the Contractor refuses or fails, except in cases for which extension of time is provided, to supply sufficient properly skilled staff or proper materials, or disregards laws, ordinances, rules, regulations, or orders of any public authority jurisdiction, or otherwise substantially or materially violates or breaches any term or provision of this Agreement, and such nonperformance or violation continues without cure for fifteen (15) days after the Contractor receives from the District written notice of such nonperformance or violation, then the District may, without prejudice to any right or remedy otherwise available to the District, terminate this Agreement.

12.2.2 Upon termination of this Agreement by the District, the District will be entitled to furnish or have furnished the Services to be performed hereunder by the Contractor by whatever method the District may deem expedient. Also, in such case, the Contractor shall not be entitled to receive any further payment until completion of the Work; and the total compensation to the Contractor under this Agreement shall be the amount that is equitable under the circumstances. If the District and the Contractor are unable to agree on the amount to be paid under the foregoing sentence, the District will fix an amount, if any, that it deems appropriate in consideration of all of the

circumstances surrounding such termination and will make payment accordingly. The Contractor may dispute the District's assessment of the termination amount by any method of dispute resolution permitted under this Agreement.

12.2.3 Upon the appointment of a receiver for the Contractor, or if the Contractor makes a general assignment for the benefit of creditors, the District may terminate this Agreement, without prejudice to any right or remedy otherwise available to the District, upon giving three (3) working days' written notice to the Contractor. If an order for relief is entered under the bankruptcy code with respect to the Contractor, the District may terminate this Agreement by giving three (3) working days' written notice to the Contractor unless the Contractor or the trustee:

- a. Promptly cures all breaches.
- b. Provides adequate assurances of future performance.
- c. Compensates the District for actual pecuniary loss resulting from such breaches.
- d. Assumes the obligations of the Contractor within the statutory time limits.

12.3 TERMINATION BY THE DISTRICT FOR CONVENIENCE

The District may terminate this Agreement, in whole or in part, at any time for the convenience of the District, without prejudice to any right or remedy otherwise available to the District. Upon receipt of notice of termination, the Contractor shall immediately discontinue all services affected as of the stated effective date, unless such notice directs otherwise. In the event of a termination for convenience by the District, the Contractor's sole and exclusive right and remedy shall be to be paid for all work performed and to receive equitable adjustment for all work performed through the date of termination minus District's claims. The Contractor shall not be entitled to be paid any amount as profit for unperformed services or any other consideration for the terminated portions of the work or lost profits or opportunities.

12.4 SUSPENSION BY THE DISTRICT FOR CONVENIENCE

12.4.1 The District may order the Contractor in writing to suspend, delay or interrupt all or any part of the Work without cause for such period of time as the District may determine to be appropriate for its convenience.

12.4.2 Adjustments caused by suspension, delay or interruption may be made for actual, direct increases in the GMP, compensation for Design Phase Services, the Contractor's Fee and/or the date of Substantial Completion. No adjustment shall be made if the Contractor is or otherwise would have been responsible for or could have mitigated the suspension, delay or interruption of the Work, or if another provision of this Agreement is applied to render an equitable adjustment.

12.5 TERMINATION UPON FAILURE TO OBTAIN GMP

12.5.1 Should there be a failure to establish a GMP and/or should the District elect not to agree to a GMP, this Agreement shall terminate automatically absent any further written agreement between the parties.

12.5.2 Upon such a termination, the District shall pay Contractor undisputed fees for design phase services provided under this Agreement, to the date of termination. The District shall not be obligated to pay any other fees, except as may be specifically provided in an addendum or other separate subsequent written agreement of the parties.

ARTICLE 13

DISPUTE RESOLUTION

13.1 MATTERS IN QUESTION

In signing this Agreement, Contractor agrees that any cause Contractor may have against the District and its Governing Board arising in relation to this Procurement and Project, including but not limited to, contract claims and controversies, including claims related to assignees of the Contractor, shall be resolved exclusively through the procedures of the Arizona Education Procurement Code, A.A.C. R7-2-1001, et seq. and A.A.C. R7-2-1101, et seq., including but not limited to, A.A.C. R7-2-1141 through 1159 and R7-2-1181 through 1185.

Should this procedure be found to be void or otherwise barred by law, the provision set forth in A.A.C. R7-2-1155 through R7-2-1157 shall be required and shall be a condition precedent for the further prosecution of any such claim.

13.2 OTHER PARTIES

The parties agree that the Architect/Engineer, Design Consultants, or other parties involved in the Project, may be joined in the resolution of disputes, at the request of either party.

ARTICLE 14

MISCELLANEOUS PROVISIONS

14.1 ASSIGNMENT

Neither the District nor the Contractor shall assign their interest in this Agreement without the written consent of the other except as to the assignment of proceeds.

14.2 GOVERNING LAW

This Agreement shall be governed by the laws of the State of Arizona and venue shall be the County in which the work is to be constructed.

14.3 SEVERABILITY

The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

14.4 NO WAIVER OF PERFORMANCE

The failure of either party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition right with respect to further performance.

14.5 TITLES

The titles given to the Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

14.6 ASBESTOS FREE MATERIALS

14.6.1 The Project is to be constructed by the Contractor with asbestos free materials. A written, notarized statement on company letterhead is to be submitted to the District by Contractor with the final payment request certifying that the Contractor has incorporated no asbestos material into the Project. Final payment shall be withheld until such statement is submitted.

14.6.2 Contractor shall agree that if materials containing asbestos are subsequently discovered at any future time to have been included in the construction done by the Contractor or any of its subcontractors or agents and were not specified in the design or required by the contract document, Contractor shall be liable for all costs related to the abatement of such asbestos and damages or claims against the District notwithstanding any statute of limitations or other legal bar to any claim by the District.

14.7 EXTENT OF AGREEMENT

This Agreement (i) is solely for the benefit of the parties, (ii) represents the entire and integrated agreement between the parties and (iii) supersedes all prior negotiations, representations or agreements, either written or oral. In the event the terms of this Agreement contradict or conflict with any other agreement, written or oral, the terms of this Agreement shall govern.

14.8 NOTICES AND REQUESTS

Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (iii) given to a recognized and reputable overnight delivery service, to the address set forth below or (iv) delivered by electronic mail transmission to the address set forth below:

If to the District: Humboldt Unified School District, #22
Jeannette Arntzen, Procurement Specialist
Email: jeannette.arntzen@humboldtunified.com

If to the Contractor: GCON, Inc.
Tiffany Fisher, Executive Vice President
Email: tiffanyf@gconinc.com

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (iv) when received by electronic mail transmission during the normal business hours of the recipient. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

14.9 FAIR EMPLOYMENT PRACTICES CLAUSE

In connection with the performance of Work under the Contract, the Contractor agrees (as prescribed in A.R.S. Title 41, Chapter 9, Article 4 applicable Arizona and Federal Executive Orders and District Policy DJE which are incorporated herein by reference, and except as may be allowed or required by other applicable law) not to discriminate against any employee or applicant for employment because of race, color, religion, or national origin. These provisions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay for other forms of compensation, and selection or training, including apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, required legal notices or notes to be provided by the District or the Contractor, setting forth the provisions of the nondiscrimination clause. The Contractor further agrees to insert these provisions in all subcontracts hereunder, except subcontracts for standard commercial supplies of raw materials.

14.10 JOB OFFICE

Contractor will be provided a space at the District for a job trailer for purposes of this project.

14.11 LEGAL FEES AND COSTS

District will be entitled to recover its attorneys' fees, any costs of suit, any expert witness fees and the actual cost of any test or inspection incurred by District in connection with any effort undertaken by District to enforce any term of this Agreement against Contractor.

14.12 DISSEMINATION OF CONTRACT INFORMATION

Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning this Contract or work to be performed under this Contract, without the prior consent of the District.

14.13 NON-AVAILABILITY OF FUNDS

Every payment obligation of the District under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Contract, this Contract may be terminated by the District at the end of the period for which funds are available.

14.14 CERTIFICATION/BOYCOTT/ISRAEL SCRUTINIZED BENEFITS

In accordance with A.R.S. § 35-393.01, the Contractor hereby certifies that Contractor is not currently engage in, and agrees for the duration of the Contract, to not engage in, a boycott of goods or services from Israel.

14.15 CERTIFICATIONS/SCRUTINIZED BENEFITS

In accordance with A.R.S. § 35-392, the Contractor hereby certifies that the Contractor does not purchase any product or service from a country identified pursuant to A.R.S. § 35-392 relative to countries currently designated by the United States Department of State as state sponsors of terrorism.

14.16 COMPLIANCE WITH IMMIGRATION LAWS

By entering the contract, Contractor warrants compliance with ARS subsection 41-4401, ARS subsection 23-214, the Federal Immigration and Nationality Act (FINA), and all other federal immigration laws and regulations. The Contractor shall obtain statements from its Subcontractors certifying compliance with the foregoing requirements and shall furnish the statements to the District upon request. These warranties shall remain in effect through the term of the contract.

The Contractor and its Subcontractors shall also maintain employment eligibility verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under this contract. I-9 Forms are available for download at USCIS.GOV.

Contractor also warrants and certifies by execution of this contract that Contractor and all Subcontractors have or shall, prior to construction, comply and maintain compliance with FINA and A.R.S. § 41-4401 and 23-214 which require compliance with federal immigration laws by State employers, State contractors and State subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.

14.17 COMPLIANCE WITH BACKGROUND/FINGERPRINT REGULATIONS

Contractor, by its signature below, warrants and certifies that it has reviewed A.R.S. § 15-512 including but not limited to sub-paragraph H and further warrants that it shall comply and cause any employee, subcontractor or employee of subcontractor with access to District property arising from this Agreement to comply with A.R.S. § 15-512 and possesses a current Arizona fingerprint clearance card.

14.18 AUDIT/DOCUMENT RETENTION

Records of the Contractor's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the District and Contractor shall be kept on a generally recognized accounting basis and shall be available for five years after Final Acceptance/Completion of the Project.

The District, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the Contractor's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any change orders.

The District reserves the right to decrease Contract Price and/or payments made on this Agreement if, upon audit of the Contractor's records, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data. Records of the Contractor's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the District and Contractor shall be kept on a generally recognized accounting basis. The District, its authorized representative, and/or the appropriate federal agency, reserves the right to audit the Contractor's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this Contract and any change orders. The District reserves the right to decrease Contract price and/or payments made on this Contract if, upon audit of the Contractor's records, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data.

The Contractor shall include a similar provision in all of its agreements with subcontractors or subconsultants providing services under this Contract to ensure the District, its authorized representative, and/or the appropriate federal agency, has access to the subconsultants' records to verify the accuracy of cost and pricing data. The District reserves the right to decrease Contract price and/or payments made on this Contract if the above provision is not included in subconsultant contracts, and one or more subconsultants do not allow the District to audit their records to verify the accuracy and appropriateness of pricing data.

The Contractor shall provide all of the above records, documents, and materials and shall participate in the audit as part of Basic Services under this Contract and shall have no right of recovery or payment for providing the above-described records, documents, and materials in so participating. The cost of any audits conducted pursuant to this provision and not addressed elsewhere will be borne by the District unless certain exemption criteria are met. If the audit identifies overpricing or overcharges of any nature by the Contractor in excess of ½ of 1% (.5%) of the total Contract billings, the Contractor

shall reimburse the District for the total cost of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the District may recoup the cost of the audit work from the Contractor. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the foregoing invoices and/or records shall be made within a reasonable amount of time, not to exceed ninety (90) days, from the presentation of the District to the Contractor. The above-described records and documents shall be maintained as set forth above for five (5) years after the conclusion of the final completion of the project. This provision shall survive the termination of this Contract.

14.19 REGISTERED SEX OFFENDER NOTIFICATION RESTRICTION

Contractor represents and warrants that no employee of the contractor, or of it subcontractor, who has been adjudicated to be a registered sex offender will perform work on District's premises at any time without written approval of the District Representative. Contractor shall ensure that a same or similar provision is in all contractor's contracts with subcontractors, suppliers, and all other providing service or materials to the project.

Any breach of contractor's or any subcontractor's warranty shall be deemed to be a material breach of this contract, subjecting contractor to penalties up to and including contractual suspension and other penalties for cause of this contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor as soon as possible so as not to delay project completion.

Contractor shall advise each subcontractor of the District's rights and the subcontractor's obligations hereunder. Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of contractor.

ARTICLE 15

EXISTING CONTRACT DOCUMENTS

The Contract Documents in existence at the time of execution of this Agreement are as follows:

- a. This Agreement;
- b. Amendment No. 1;
- c. The information provided by the District pursuant to Clause 4.1.2.a;
- d. The District's Program provided pursuant to Subparagraph 4.1.1;
- e. The District's RFQ for this project;
- f. The Contractor's responses to the District's RFQ to the extent they do not conflict with the above;

- g. Amendment No. 2 (unexecuted);
- h. Other Amendments as may be executed by the parties.

In case of an inconsistency, conflict or ambiguity among the Contract Documents, the Documents shall govern in the order in which they are listed above.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date and year first written above.

DISTRICT: HUMBOLDT UNIFIED SCHOOL DISTRICT, #22

BY: _____

PRINT NAME: JOHN POTHAST

PRINT TITLE: SUPERINTENDENT

CONTRACTOR: GCON, INC.

BY: _____

PRINT NAME: TIFFANY FISHER

PRINT TITLE: EXECUTIVE VICE PRESIDENT

STATE OF ARIZONA)
) SS.
COUNTY OF _____)

This instrument was acknowledged before me this ____ day of _____, 2020
by _____ on behalf of _____.

Notary Public in and for the State of Arizona

My Commission Expires:

STATE OF ARIZONA)
) SS.
COUNTY OF _____)

This instrument was acknowledged before me this ____ day of _____, 2020
by _____ on behalf of _____
_____.

Notary Public in and for the State of Arizona

My Commission Expires:

AMENDMENT NO. 1

DATED JULY 23, 2020

DESIGN AND PRECONSTRUCTION FEES UP TO GMP SUBMITTAL

I. Scope

- A. The Project scope is generally as set forth in the Request for Qualifications #2020-03 and as the parties may subsequently agree in writing (the "Project").
- B. The Project's scope includes, but is not limited to, site preparation and construction of all infrastructure needed relative to the Project.
- C. The Project's scope includes all design services needed for the Project including, but not limited to, the requisite consultants such as mechanical engineering, civil engineering, electrical engineering, landscape design, and other such services reasonably necessary for this Project.
- D. The scope also includes all construction activity necessary to complete the Project and includes, but is not limited to, permits, fees, inspections and testing, as required; however, the permits, fees, inspections and testing may be treated as reimbursables to save mark up and sales taxes. Budget money may be allocated to allow treatment of these necessary expenses outside of this contract at the District's sole discretion.
- E. We hereby incorporate the Scope of Services, from the Request for Qualifications Design Build Services, RFQ No. 2020-03, as if fully rewritten herein.

II. List of Assumptions

- A. The Project will be delivered using two distinct amendments under this single agreement.
- B. The first phase will be for design services and will include pre-construction services, including scheduling, cost estimating, schematic and design development, value engineering and constructability analysis, and construction documents. The first phase will have cost breakdown as follows:
 - 1. Design services through 50% design development;
 - 2. Design services for the balance;
 - 3. Pre-construction services through 50% design development;
 - 4. Pre-construction services for the balance up to proposal and possible establishment of the GMP.

- C. The second phase will be for construction services and shall be performed pursuant to an agreed upon GMP or series of GMPs. The GMPs shall fully set forth all factors and assumptions relative to establishing the GMP.
- D. If the District does not accept a GMP, the second phase for construction services, will not be initiated, or if a prior construction services under a phased or multiple GMP has been accepted, subsequent GMPs and the construction services therein will not be performed nor be considered a liability against the District.
- E. All contingencies, cost savings and unused allowances shall be returned to the District for their use or redirected for additional improvements as needed.
- F. Additional assumptions that may arise must be agreed to by the parties in writing.

III. List of Clarifications

- A. The following items clarify further Project scope, intent and scope of services:
 - 1. The contract will be between Humboldt Unified School District and GCON, Inc.
 - 2. GCON, Inc. will contract directly with Emc2 Group Architects Planners for all design services and will include all consultants, contract administration, and requisite errors and omissions insurance coverage naming the Humboldt Unified School District as additional insured;
 - 3. GCON, Inc.'s primary representative on this Project in all stages is Jason Ward.
 - 4. This represents the foreseeable clarifications at this time. This list can be amended by mutual written agreement by the parties prior to incorporation into the final contract.

IV. Proposed Schedule

- A. Substantial Completion shall occur no later than February 28, 2021, and Final Completion on March 31, 2021.
- B. Phased delivery of a portion of the units shall be incorporated into the final schedule as agreed to by the parties.
- C. An initial proposed Project schedule is attached hereto, subject to modification by mutual written agreement of the parties.

V.

Design and Pre-construction Services Fee

A. The following are the fees for the design and pre-construction services anticipated for this Project. These and all other fees, costs, and other expenditures relative to this Project shall be provided to the District, without request, pursuant to the open book policy of this agreement.

1. Design services through 50% design development \$ 29,700;
2. Design services through completion, including documents and construction administration \$ 33,220
3. Pre-construction services through GMP \$ 12,186;
4. Construction Fees.

Date

By: JOHN POTHAST

Its: SUPERINTENDENT

Date

By: TIFFANY FISHER

Its: EXECUTIVE VICE PRESIDENT

AMENDMENT NO. 2

DATED _____,

TO DESIGN-BUILD AGREEMENT BETWEEN DISTRICT & CONTRACTOR

Pursuant to Paragraph 3.2 of the Agreement dated _____, 2020 between the District, _____, and the Contractor, _____, for the Project as previously described in the agreement and amendments, the District and the Contractor desire to establish a GMP for the Work. Therefore, the District and the Contractor agree as follows.

ARTICLE 1

GUARANTEED MAXIMUM PRICE:

The Contractor's GMP for the Work, including the Cost of the Work as defined in Article 8 of the Agreement and the Contractor's Fee as set forth in Paragraph 7.3 is

_____ dollars (\$_____).

The GMP is for the performance of the Work in accordance with the documents listed below, which are part of the Agreement.

EXHIBIT 1 Request for Qualifications , including Amendments, if any,
Dated _____, _____pages.

EXHIBIT 2 Drawings and specifications, as annotated,
Dated _____, _____pages.

EXHIBIT 3 A Guaranteed Maximum Price (GMP) proposal,
Dated _____, _____pages.

EXHIBIT 4 Assumptions and clarifications,
Dated _____, _____pages.

EXHIBIT 5 Allowance items
Dated _____, _____pages.

EXHIBIT 6 Alternate Prices
Dated _____, _____pages.

EXHIBIT 7 A Construction Progress Schedule of Work
Dated _____, _____pages.

EXHIBIT 8 Unit Prices
Dated _____, _____pages.

EXHIBIT 9 Detailed Schedule of Values

Dated _____, _____ pages.

EXHIBIT 10 Additional Services included

Dated _____, _____ pages.

ARTICLE 2

DATE OF SUBSTANTIAL COMPLETION:

The date of Substantial Completion of the Work is: _____

The date of Final Completion of the Work is: _____

PLEASE NOTE: TIME IS OF THE ESSENCE. SEE SECTION 6.2.2 FOR EXPLANATION OF THE APPLICATION OF LIQUIDATED DAMAGES FOR EACH DAY AFTER THE DATE OF SUBSTANTIAL COMPLETION THAT THE WORK IS NOT SUBSTANTIALLY COMPLETE.

CONTRACTOR: GCON, INC.

BY: _____

PRINT NAME: TIFFANY FISHER

PRINT TITLE: EXECUTIVE VICE PRESIDENT

DISTRICT: HUMBOLDT UNIFIED SCHOOL DISTRICT

BY: _____

PRINT NAME: JOHN POTHAST

PRINT TITLE: SUPERINTENDENT

