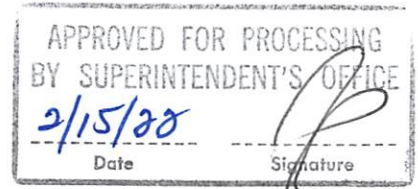


**Simi Valley Schools**

**SIMI VALLEY UNIFIED SCHOOL DISTRICT**

**BOARD APPROVED ITEMS  
FOR THE  
2.15.22 BOE MEETING**



**TITLE: APPROVAL OF CHANGE ORDER #1, BID NO. 21D6BX357  
SANTA SUSANA ELEMENTARY SCHOOL CLASSROOM  
RENOVATIONS**

Business & Facilities  
Consent #8

February 15, 2022  
Page 1 of 1

Prepared by: Ron Todo, Associate Superintendent  
Business & Facilities

**Background Information**

On April 20, 2021, the Board of Education authorized the award of Bid No. 21D6BX357 to G2K Construction Inc. in the amount of \$413,700 for classroom renovations to Santa Susana ES. During the course of construction, various changes became necessary or desirable. Attached is Exhibit "A" that describes the changes, related costs, and justification for Change Order No. 1.

**Fiscal Analysis**

Change Order No. 1 represents a decrease to the original contract by \$138.77 or -0.03%. The revised contract amount including Change Order No. 1 will be \$413,561.23. See attached Exhibit A.

Change Order No. 1 is funded by Measure X

Original Contract: \$413,700  
Change Order # 1: (\$138.77)  
Contract Balance: \$413,561.23

**Recommendation:**

It is recommended that the Board of Education approve Change Order No. 1 as presented.

On a motion # 121 by Trustee LaBelle, seconded by Trustee Bagdasaryan and carried by a vote of 5/0, the Board of Education approved, by roll-call vote, Change Order No. 1 for the Santa Susana ES Classroom Renovations Project, Bid No. 21D6BX357.

Ayes: Jubran  
Smolton  
LaBelle  
Bagdasaryan  
Blough Noes: 0 Absent: 0 Abstain: 0



**SimiValleySchools**  
SIMI VALLEY UNIFIED SCHOOL DISTRICT

101 West Cochran Street, Simi Valley, CA 93065  
805.306.4500 ext.4461

## CHANGE ORDER

Project Name: Classroom Renovation	Change Order #: 1	
Site: Santa Susana ES	Board Date: Jan18, 2022	
To (Contractor): G2K Construction Inc.	DSA Application #: N/A	
Address: 28348 Roadside Dr. #205 Agoura Hills, CA 91301	Contract #: 21D6BX357	Contract Date:4/21/2021
	PO #: P21-03202	PO Date:4/28/2021

### THE CONTRACT IS CHANGED AS FOLLOWS:

This Change Order is the allowance balance of \$138.77 to be deducted from the original contract amount.

Original amount: \$413,700

Allowance #1 \$17,871.33

Allowance #2 \$4,347.96

Allowance #3 \$7,641.94

Allowance Credit **\$(138.77)**

Total Allowance= \$30,000.00



# SimiValley Schools

SIMI VALLEY UNIFIED SCHOOL DISTRICT

101 West Cochran Street, Simi Valley, CA 93065  
805.306.4500 ext.4461

Adjustment to Contract Amount	Adjustment to Contract Schedule
Original Contract Amount: \$ 413,700	Original Contract Duration: 175 days
Prior Contract Adjustments: \$ 0	Original Completion Date: 10/25/21
Contract Sum Prior to this Amendment: \$ 413,700	Total Approve Time Extension to Date: N/A
Adjustment per this Amendment: \$ (138.77)	Adjustments per this Amendment: N/A
Revised Contract Amount: \$ 413,561.23	Completion Date: Unchanged

The amounts and/or time listed in this change order are full, complete and final mutual account and satisfaction from all direct, indirect, impact, delay cost and time for the work defined in this Amendment. All other terms and conditions of the original contract are to remain the same.

G2K  
Company

Emilia Levy  
(Signature)  
(Date)

2/2/2022 | 2:21 PM PST

[SimiPCC20118]

Malihe Shokouhi  
Project Coordinator

Malihe Shokouhi  
(Signature)  
(Date)

2/2/2022 | 3:00 PM PST

JEFF KIPP  
Construction Project Manager

Jeff Kipp  
(Signature)  
(Date)

2/22/2022 | 2:56 PM PST

LORI RUBENSTEIN  
Bond Program Manager

LORI RUBENSTEIN  
(Signature)  
(Date)

3/1/2022 | 3:57 PM PST

RON TODO  
Associate Superintendent,  
Business & Facilities

RJ  
(Signature)  
(Date)

3/9/2022 | 4:09 PM PST

409



**Certificate Of Completion**

Envelope Id: 8FF6BC5B39D34D57997CC3287122B23D

Status: Completed

Subject: Please DocuSign: Change Order No. 1 - SSES Classroom Renovation.pdf

Source Envelope:

Document Pages: 2

Signatures: 5

Envelope Originator:

Certificate Pages: 5

Initials: 1

Pamela Jewell

AutoNav: Enabled

pamela.jewell@simivalleyusd.org

EnvelopeId Stamping: Enabled

IP Address: 207.157.143.39

Time Zone: (UTC-08:00) Pacific Time (US &amp; Canada)

**Record Tracking**

Status: Original

Holder: Pamela Jewell

Location: DocuSign

2/2/2022 1:35:41 PM

pamela.jewell@simivalleyusd.org

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: Simi Valley Unified School District - Facilities Location: DocuSign

**Signer Events****Signature****Timestamp**

Emilia Levy

accounting@g2kconstruction.com

Security Level: Email, Account Authentication  
(None)*Emilia Levy*

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Malihe Shokouhi

malihe.shokouhi@simivalleyusd.org

Security Level: Email, Account Authentication  
(None)*Malihe Shokouhi*

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Jeff Kipp

jeffery.kipp@simivalleyusd.org

Security Level: Email, Account Authentication  
(None)*Jeff Kipp*

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Resent: 2/22/2022 1:58:59 PM

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**Electronic Record and Signature Disclosure:**

Accepted: 10/19/2021 2:55:24 PM

ID: 567fc118-cc2d-4f39-a3a6-6631fdc761ca

LORI RUBENSTEIN

lori.rubenstein@simivalleyusd.org

Security Level: Email, Account Authentication  
(None)*LORI RUBENSTEIN*

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
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
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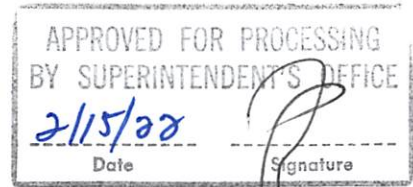
Signer Events	Signature	Timestamp
Pamela Jewell pamela.jewell@simivalleyusd.org Administrative Services Assistant II Simi Valley USD Security Level: Email, Account Authentication (None)	  Signature Adoption: Pre-selected Style Using IP Address: 207.157.143.39	Sent: 3/1/2022 3:57:44 PM Viewed: 3/1/2022 3:58:22 PM Signed: 3/1/2022 3:58:33 PM

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ID: 77a719ba-8cfa-478c-ab01-d769f2eee4d0

Ron Todo ron.todo@simivalleyusd.org Simi Valley Unified School District - Facilities Security Level: Email, Account Authentication (None)	  Signature Adoption: Uploaded Signature Image Using IP Address: 207.157.143.41	Sent: 3/1/2022 3:58:35 PM Viewed: 3/9/2022 4:08:05 PM Signed: 3/9/2022 4:09:09 PM
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**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	2/2/2022 1:43:54 PM
Certified Delivered	Security Checked	3/9/2022 4:08:05 PM
Signing Complete	Security Checked	3/9/2022 4:09:09 PM
Completed	Security Checked	3/9/2022 4:09:09 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		



**TITLE: APPROVAL OF AGREEMENT NO. R22-02903 BETWEEN SIMI VALLEY UNIFIED SCHOOL DISTRICT AND BALFOUR BEATTY CONSTRUCTION, LLC FOR THE MASTER AGREEMENTS AT ROYAL HIGH SCHOOL**

Business & Facilities  
Consent #9

February 15, 2022  
Page 1 of 1

Prepared by: Ron Todo, Associate Superintendent  
Business & Facilities

**Background Information**

On January 18, 2022 the Board of Education approved Balfour Beatty Construction, LLC as the Lease Leaseback Contractor for the projects at Royal High School.

Agreement No. R22-02903 is being utilized as the Master Construction Agreement for assigning projects to Balfour Beatty Construction, LLC.

The Master Agreement consist of:

- Exhibit A - Master Construction Agreement
- Exhibit B - Master Site Lease
- Exhibit C - Master Sublease

**Fiscal Analysis**

The dollar value of each Assigned Project is identified as a Guarantee Maximum Price (GMP) when an Assigned Project Amendment is issued.

**Recommendation**

It is recommended that the Board of Education approve Agreement R22-02903 for Master Construction Services, Royal High School.

On a motion # 121 by Trustee LaBelle, seconded by Trustee Bagdasaryan and carried by a vote of 5/0, the Board of Education approved, by roll-call-vote, Agreement R22-02903 for Master Construction Services Agreement, Royal High School.

Ayes: Jubran  
Smollen Noes: 0 Absent: 0 Abstained: 0  
LaBelle  
bagdasaryan  
Blough

**ROYAL HIGH SCHOOL MODERNIZATION PROJECTS  
MASTER CONSTRUCTION SERVICES AGREEMENT**

Between

**SIMI VALLEY UNIFIED SCHOOL DISTRICT**

and

**BALFOUR BEATTY CONSTRUCTION, LLC**

Dated as of February 15, 2022

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## ROYAL HIGH SCHOOL MODERNIZATION PROJECTS

### MASTER CONSTRUCTION SERVICES AGREEMENT

This Master Construction Services Agreement is made as of February 15, 2022, by and between the Simi Valley Unified School District, a California School District organized and existing under the laws of the State of California (hereinafter called the "District"), and Balfour Beatty Construction, LLC, a Delaware limited liability company licensed to contract under the laws of the State of California (the "Contractor").

General intent of agreement:

WHEREAS, the District entered into agreements with various architectural firms (the "Architect") to provide architectural services for the District for the purpose of developing Construction Documents for the construction of improvements for the Measure X Projects at Royal High School (the "Project" or Projects").

#### 1. GENERAL INTENT

- 1.1 The Board of Education has reviewed the different methodologies available to deliver a public works project and has carefully considered the options of competitive bid to a general contractor who would be responsible for the entire project, a construction management managed multi-prime trade contract project, an at-risk construction management contract, turn-key delivery by another public entity or delivered by another public entity through a joint use project, but have through Board action and independent staff and Board review determined that there are benefits and detriments to each delivery method.
- 1.2 The Board of Education has also reviewed the lease-leaseback methodology under California Education Code section 17406 which permits the governing board of a school district to lease to any person, firm, or corporation any real property owned by the District if the instrument by which such property is leased requires the lessee to construct on the leased premises, or provide for the construction thereon, of a building for the use of the school district, during the term of the lease, and provides that title to that building shall vest in the school district prior to or at the expiration of the lease.
- 1.3 As part of the Board of Education's consideration of the possible methods of delivery, the Board has also reviewed available information from the Coalition of Adequate School Housing materials on delivery methods, California School Board Association, California Association of School Business Officials, Office of Public School Construction Meeting Minutes and SAB Implementation Committee meeting minutes and considered the benefits and detriments of the lease-leaseback delivery method.
- 1.4 Further, the Board of Education understands that unique to the lease-leaseback delivery method, the lease-leaseback Contractor will not only be undertaking the traditional due diligence of investigating existing Project related information, documents and the Project site, but now included as part of the Contractor's "Due Diligence" (as defined herein) as part of this lease-leaseback delivery method, the Contractor will be performing a review of the Construction Documents to visualize conflicts that may have not been located by the Architect as part of the Architect's constructability review when the Construction Documents were being prepared.
- 1.5 The Board of Education in its consideration of the substantial evidence that is available to the District staff and through the Board's own research has determined that this ability to work between the Contractor and the Architect to resolve a greater percentage of construction claims that would ordinarily arise through any of the other delivery methods addressed in Article 1.1 above also provides the ability of the Contractor to determine the likely level of errors and omissions, and provides a Guaranteed Maximum Price for the Project based on the Contractor's Due Diligence. The unique ability to determine with certainty the budget numbers for the Project provides this



Board of Education the ability to not only ensure that the District is best serving the community and its school children, but also provides the ability to focus resources on future and simultaneous projects that could not be undertaken during any of the other delivery methods since a sizable contingency needs to be set aside for potential claims, litigation, arbitration, mediation, and delays that could jeopardize the ability to plan for occupancy of the building or the possibility of having to spend significant resources to procure alternative facilities.

- 1.6 As part of this lease-leaseback Master Construction Services Agreement, a site lease with Contractor (the "Master Site Lease"), for the Projects has been entered into and attached as Exhibits to the Master Site Lease is a description of the sites (the "Sites") in order for Contractor to construct improvements to this existing school Sites under the possessory interest of a lease with a greater degree of control over the overall Project, including ability to coordinate Site related items such as utilities, ability to ensure both the Projects and the Sites against a broader range of risks, and greater primary control and oversight over Subcontractors and suppliers for the Projects as the lessee of the Sites.
- 1.7 In addition, the Contractor subleases the constructed portions of the Sites and the Projects back to the District pursuant to a Master Sublease Agreement (the "Master Sublease") under which the District will be required to make Sublease Payments as described therein; and
- 1.8 It is agreed that upon the expiration of the Master Site Lease and Master Sublease, title to the Project shall vest in the District; and
- 1.9 Contractor represents that Contractor is uniquely experienced in Construction of public schools and community colleges including, but not limited to, the specific requirements and regulations of the Field Act as administered by the Division of State Architect, working with the Division of State Architect, Office of Public School Construction, California Department of Education and work with the various applicable other State and local agencies that have jurisdiction over the Project, is duly licensed as a contractor in the State of California and is prepared to analyze, synthesize and efficiently perform construction work for the District as more fully set forth in this Agreement
- 1.10 Contractor has thoroughly Due Diligence as defined in Articles 4 and 5 to establish a Guaranteed Maximum Price for the Projects (which may include an Errors and Omissions Contingency and a Construction Contingency for Contractor's own errors and omissions) that will not be exceeded. Contractor has investigated the site conditions and reviewed the Construction Documents to establish that there are no known problems with respect to the site conditions or the Construction Documents and that Contractor can and will construct the Project for the Guaranteed Maximum Price as set forth in Article 3 and defined in Article 5 of this Master Construction Services Agreement, and Contractor will not seek any additional compensation whatsoever, including, without limitation, any requests based upon known site conditions, extensions on the Lease beyond the Lease period or any requests, except for such additional compensation provided for herein based upon unforeseen conditions and/or errors or omissions contained within the plans and specification or Construction Documents.
- 1.11 Since the Contractor has entered into a negotiated Lease and is performing this Master Construction Services Agreement as the Lessee of the Premises, Contractor understands and agrees that:
  - 1.11.1 Public Contract Code section 4100 et seq. addressing subcontractor listing shall not apply except to the extent applicable under Education Code section 17406(a)(4). However, the District is requiring an open book accounting and the public selection of Subcontractors pursuant to Article 6.3 of this Agreement.
  - 1.11.2 Public Contract Code section 20111 addressing competitive bidding does not apply to the Project pursuant to the specific language of Education Code section 17406 which provides for a competitive procurement process through a request for sealed proposals from qualified proposers.

- 1.11.3 Public Contract Code section 3400 addressing proprietary specifications does not apply since the Contractor has entered into a negotiated Lease pursuant to which is obligated to build the Project. The Contractor agrees and acknowledges that it has had the great opportunity throughout the Due Diligence process and negotiation of the Lease and related agreements to propose any changes or substitutions, and warranties that it shall propose no further changes or substitutions pursuant to Public Contract Code section 3400. Substitutions and Value Engineering are allowed to address cost savings and to more efficiently build the Project in Articles 5.3 and 16.
- 1.11.4 The requirements in Public Contract Code section 22300 shall not apply.
- 1.12 Prequalification of Contractor and MEP Subcontractors. Prequalification is not required under Public Contract Code section 20111.6(l).

## **2. TITLE 24 RESPONSIBILITIES – GENERAL INTENT OF THE CSA**

Contractor accepts the contractual relationship established between it and District by this Master Construction Services Agreement, and Contractor covenants with District to furnish reasonable skill and judgment in constructing the Project as set forth in the Construction Documents, as defined in Article 4 for the Project which are described and/or set forth herein as Exhibit "A." Contractor agrees to furnish efficient business administration, coordination review of the Construction Documents, coordination of the work of the Subcontractors and vendors and superintendence to furnish at all times an adequate supply of professionals, workers, and materials and to perform the work appropriately, expeditiously, economically, and consistent with the Master Construction Services Agreement and Construction Documents as defined in Article 14, below.

- 2.1 **Title 24 Responsibilities.** The Contractor shall continually supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures; and shall coordinate all portions of the Work in conformance with the Contract Documents. Specific duties of the Contractor shall include those set out in Section 43 of Title 21 of the California Code of Regulations and Section 4-343 of Title 24 of the California Code of Regulations. These duties include, but are not limited to the following:
  - 2.1.1 *Responsibilities.* It is the duty of the Contractor to complete the Work covered by his or her Contract in accordance with the approved Construction Documents. The Contractor in no way is relieved of any responsibility by the activities of the Architect, Engineer, Inspector, or DSA in the performance of their duties.
  - 2.1.2 *Performance of the Work.* The Contractor shall carefully study the approved Construction Documents and shall plan its schedule of operations well ahead of time. If at any time it is discovered that work is being done which is not in accordance with the approved Construction Documents, the Contractor shall correct the Work immediately.
  - 2.1.3 *Inconsistencies.* All inconsistencies or timing or sequences which appear to be in error in the Construction Documents shall promptly be called to the attention of the Architect or, Engineer, for interpretation or correction. Local conditions which may affect the structure shall be brought to the Architect's attention at once. In no case, shall the instruction of the Architect be construed to cause work to be done which is not in conformity with the approved plans, specifications, change orders, construction change documents, and as required by law. (See Title 24 Section 4-343)
  - 2.1.4 *Verified Reports.* The Contractor shall make and submit to the office from time to time, verified reports as required in Title 24 Section 4-366. As part of the Close-Out of the Project (see Article 13.16), Contractor shall be required to execute a Form 6-C as required under Title 24 Sections 4-343.

- 2.1.5 *Reporting Requirements.* Contractor shall fully comply with any and all reporting requirements of Education Code sections 17315, et seq., in the manner prescribed by Title 24, as applicable.
- 2.1.6 *Contractor Responsibility.* The Contractor shall be responsible to the District for acts and omissions of the Contractor's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with the Contractor or any of its Subcontractors.
- 2.1.7 *All Work is performed Under the Direction of Inspector.* Pursuant to Title 24 requirements, the Contractor shall not carry on Work except with the knowledge of the Inspector. (See Title 24 generally)
- 2.1.8 *Contractor to Establish Timing and Protocol with Inspector.* Contractor shall establish a protocol for requesting inspection with Inspector so as to not delay the Work and provide adequate time for the Inspector to perform inspection. If such a protocol is not established ahead of time, Inspector may utilize the time criteria set by Title 24 of 48 hours in advance of submitting form DSA 156 for each new area. DSA requirements under PR 13-01 specifically give the Special Inspector fourteen (14) days to post to the DSA website. Contractor is responsible for delays and for failure to plan.
- 2.1.9 *Conformance with Approved Submittals.* This conformance includes performing all Work only in conformance with approved Submittals, Shop Drawings, and Samples or the Inspector may be required to issue a DSA Form 154 Notice of Deviation from approved DSA Contract Documents.
- 2.1.10 *Incremental Assemblies.* For some Projects, there may be a need to incrementally install certain assemblies. It is up to Contractor to identify areas and assemblies that may be constructed incrementally. Contractor must identify and establish incremental areas of construction and establish protocols with Inspector for DSA 152 approvals so they may be presented to DSA. See PR-13 item 2.1.10 for further discussion.
- 2.1.11 *Coordination with Outside Contractors.* If any of the Work for the Project is known to include Work performed by contractors retained directly by the District, Contractor shall be responsible for the coordination and sequencing of the Work of those other contractors so as to avoid any impact on the Project Schedule.

### 3. CONTRACT INFORMATION

- 3.1 District: Simi Valley Unified School District  
101 West Cochran Street  
Simi Valley, CA 93065  
(805) 306-4500
- 3.2 Notices: Lori Rubenstein  
lori.rubenstein@simivalleyusd.org
- 3.3 Contractor: Balfour Beatty Construction, LLC  
300 E. Esplanade Drive, #1120  
Oxnard, CA 93036  
(805) 983-1558
- 3.4 Notices: Dennis Kuykendall, Project Executive  
dkuykenall@balfourbeattyus.com

Each individual Project will have separate contract information for Sections 3.5-3.9, Scope of Work/Construction Documents (Exhibit A), Master Budget (Exhibit B), Payment Bond (Exhibit D), and Performance Bond (Exhibit E), which will be set forth in Exhibit Z to Master Construction Services Agreement which Exhibit Z shall be amended by the mutual agreement of the parties from time to time to reflect the Projects. The following are established through Contractor's review of the Program, Contract Documents, and through Contractor's Due Diligence prior to entering into this Agreement:

- 3.5 Contract Time is TBD Days. See Exhibit Z for each Project.
- 3.6 Liquidated Damages for overstaying Lease (Art. 18) is \$TBD per calendar day. See Exhibit Z for each Project.
- 3.7 Guaranteed Maximum Price (Art. 5) is \$TBD. See Exhibit Z for each Project.
  - 3.7.1 Construction Contingency (within GMP) is \$TBD. See Exhibit Z for each Project.
  - 3.7.2 Errors and Omissions Contingency (within GMP) is \$TBD. See Exhibit Z for each Project.
- 3.8 The only exception to the GMP is Unforeseen Underground Conditions, and District Contingency for Owner requested extras as follows:
  - 3.8.1 District's Contingency (Art. 8) is \$TBD. District Contingency is carried outside of the GMP. See Exhibit Z for each Project.
  - 3.8.2 Unforeseen Allowance is \$TBD. Unforeseen Allowance is carried outside of the GMP. See Exhibit Z for each Project.
- 3.9 The Contractor's fee for this Project is three point seven five percent (3.75%) and is included in the GMP. See Exhibit Z for each Project.

#### 4. **DEFINITIONS**

- 4.1 Action of the Governing Board is a vote of a majority of the District's Governing Board.
- 4.2 Allowances are separate from the Unforeseen Allowance and mean budgets established for specific scopes of the Work which cannot be fully defined in the Construction Documents at the time that the GMP is established. Allowances may only be drawn upon pursuant to a Change Order issued pursuant to Article 17. In the event that an Allowance is included, the Contractor shall provide all services, work, labor and materials reasonably implicit in the description of the Allowance for the amount stated for the Allowance, all in accordance with the Construction Documents. Contractor acknowledges and agrees that it has had ample time and consideration to fully assess any Allowance(s) and to negotiate the description and amount of the Allowance(s), such that Contractor fully accepts and shall bear the entire risk and responsibility of providing all services, work, labor and materials required for the Allowance(s) under this Agreement. Expenditures from the GMP will either arise from Construction Contingency or Errors and Omissions Contingency and shall be submitted pursuant to Article 17 addressing Change Orders. The amount of the Change Order shall reflect the difference between actual costs approved by the District and the allowance amounts established in the GMP.
- 4.3 As-Builts are a set of Construction Documents maintained by the Contractor clearly showing all changes, revisions, substitutions, field changes, final locations, and other significant features of the Project. The As-Builts shall be maintained continuously throughout the Work for the Project and is both a prerequisite to the issuance of Pay Application and a requirement for Contract Close-Out. See Article 13.14.

- 4.4 Architect means the architect, engineer, or other design professional engaged by the District to design and perform general observation of the work of construction and interpret the drawings and specifications for the Project.
- 4.5 Beneficial Occupancy is the point in time when a building or buildings are fit for occupancy is fit for occupancy and its intended use. Basic requirements are the building is safe, at or near Substantial Completion, and all life safety is operational. The fact that a building is occupied does not mean that the building is ready for Beneficial Occupancy if there are elements that are unsafe or if life safety items are not operational. Taking occupancy on a structure that is under a fire watch is not considered Beneficial Occupancy. Beneficial Occupancy is not be used by the Contractor as a basis to request Retention Payment unless the entire Project is Substantially Complete in accordance with Article 4.45.
- 4.6 Claims. A Claim is a request for payment, supported by back-up documentation which includes, invoices time sheets, or other documents substantiating legitimacy or entitlement that is submitted during the Project or immediately following the Project made prior to the Application for Retention Payment and prior to Final Completion of the Project. A "Claim" means a separate demand by the Contractor for (1) time extension, (2) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (3) and amount the payment of which is disputed by the District. See Article 20.
- 4.7 Close-Out means the process for Final Completion of the Project, but also includes the requirements for the DSA Certification that the Project is Complete (See DSA Certification Guide). See Article 13.16.
- 4.8 Commencement Date shall mean the Project commencement date found in the Notice to Proceed for the Project in accordance with Article 4.28 of this Construction Services Agreement.
- 4.9 Complete/ Final Completion means that all Work in the Contract Documents is finished, the requirements of the Contract Documents have been met, successful testing, startup and satisfactory operation of the Project as a total unit has been accomplished in substantial conformance with the Contract Documents, the Project is completed, all Work has ceased on the Project and the Project has been accepted by the District's Board. This may also be referred to as Final Completion. In most cases, the recording of a Notice of Completion shall represent Completion of the Project. Beneficial Occupancy or Substantial Completion does not mean the Work is Complete.
- 4.10 Completion Date is the date when all Work for the Project shall be Substantially Complete and is the date assigned at the end of the Contract Time for the Project.
- 4.11 Construction Change Document (CCD). A Construction Change Document is a DSA term that is utilized to address changes to the DSA approved Construction Documents. There are two types of Construction Change Documents. (1) DSA approved CCD Category A (DSA Form 140) for work affecting Structural, Access or Fire-Life Safety of the Project which will require a DSA approval; and, (2) CCD Category B (DSA Form 140) for work NOT affecting Structural Safety, Access Compliance or Fire and Life Safety that will not require a DSA approval (except to confirm that no Approval is required). See Article 17.4.
- 4.12 Master Construction Services Agreement (CSA) means this Master Construction Services Agreement, together with any duly authorized and executed amendments hereto.
- 4.13 Construction or Construction Services means all labor and services necessary for the construction of the Project, and all materials, equipment, tools, supplies and incidentals incorporated or to be incorporated in such construction as fully described in the Contract Documents.

- 4.14 Construction Costs means any and all costs incurred by the Contractor with respect to the construction and equipping, as the case may be, of the improvements performed, whether paid or incurred prior to or after the date hereof, including, without limitation, costs for Site preparation, the removal or demolition of existing structures, the construction of the Project and related facilities and improvements, and all other work in connection therewith, security of the Site and Project, Contractors' overhead and supervision at the Project Site, all costs and expenses including any taxes or insurance premiums paid by the Contractor with respect to the Property, and administrative and other expenses necessary or incident to the Project, excluding Contractors' and Developers' home office overhead and profit. The term "Construction Costs" includes all Contractor's costs associated with preparing or generating additional copies of any Construction Documents, as defined below, related to or required for the Project, including preparation or generation of additional Plans and/or Specifications for Contractor's Subcontractors. In no event shall Construction Costs exceed the Guaranteed Maximum Price.
- 4.15 Construction Documents comprise the Plans and Specifications approved by DSA for each Project Allowances stipulated in the Contract Documents, and all Addenda, if any, issued prior to the entry into this Agreement. The Construction Documents shall include all Modifications generated after the Effective Date in accordance with the Contract Documents, including, without limitation, a written amendment to the Contract signed by the Contractor and duly executed and approved by the District, a Change Order, a Construction Change Document, or a written order for a minor change in the Work issued by the Architect.
- 4.16 Contract Documents means those documents which form the entire Contract by and between District and Contractor. The Contract Documents consist of the Master Site Lease, Master Sublease, General, Supplementary and other Conditions, this Master Construction Services Agreement, including all exhibits and attachments hereto, and the Construction Documents. The Contract Documents collectively form the Contract. The Contract represents the entire and integrated Agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall be binding solely upon the District and Contractor, do not create a contractual relationship of any kind between the Architect and Contractor, between the District and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the District and the Contractor, and are not intended to and do not create any third party beneficiary.
- 4.17 Contract Time is the time period specified in the Contract Documents in which the Project shall be completed. This is sometimes referred to a Contract Duration, or "time in which the Contractor has to Complete the Project". See Article 9.
- 4.18 Day means a calendar day unless specifically designated as a business day.
- 4.19 Drawings or Plans are graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location, and scope of the Work, generally including plans, elevations, sections, details, schedules, and diagrams as drawn or approved by the Architect. Sometimes Drawings will also be included in Addenda, Change Orders, and Specifications.
- 4.20 Due Diligence is the review and analysis of as-built documents, title documents, any prior design documents for the Project or Site, geotechnical reports, surveys, site investigations and other documents and information provided by the District, and synthesizing of information utilized to determine the components of the GMP. Requirements for Due Diligence are further addressed at Article 5.
- 4.21 DSA is the Division of State Architect. DSA is the agency that provides design and construction oversight for K-12 Schools, Community Colleges, and State Funded Charter School Projects. DSA is the responsible agency for this Project and Contractor has submitted a bid for the Project since Contractor is familiar with Contractor's responsibilities under the DSA requirements more

thoroughly set forth at Title 24 of the California Code of Regulations. Contractor agrees to abide by the jurisdiction of DSA and shall construct the Project to conform with the approved plans, specifications, Addenda, and Change Orders (inclusive of approved CCD's and ICD's issued by the District pending CCD approval). The DSA website is at <http://www.dgs.ca.gov/dsa>.

- 4.22 Effective Date is the latter of the date upon which the District Board approves the Master Site Lease and the Master Sublease and Contractor has executed the Master Site Lease and Master Sublease.
- 4.23 Float the total number of days an activity may be extended or delayed without delaying the Completion Date shown in the schedule. Float will fall into three categories: (1) Rain Days; (2) Governmental Delays; and, (3) Project Float. See Article 9.2.
- 4.24 Immediate Change Directive (ICD) is a written order prepared by the Architect and signed by the District and the Architect, directing a change in the Work where the Work must proceed immediately and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. See Article 17.4.1.2
- 4.25 Inspector of Record (IOR) or Project Inspector (PI) is the individual retained by the District in accordance with Title 24 of the California Code of Regulations who will be assigned to the Project
- 4.26 Guaranteed Maximum Price or GMP means the Guaranteed Maximum Price established pursuant to Article 5 to be paid to Contractor for Contractor's construction of the Project hereunder, subject to any adjustments for Extra Work/Modifications as provided in Article 17.
- 4.27 Notice of Non-Compliance (DSA Form 154) is a document issued by the Inspector if there is a deviation from the DSA approved Plans, Specifications, and Change Orders. See Article 17.2.
- 4.28 Notice to Proceed. After execution of this Master Construction Services Agreement and the Master Site Lease(s) and Master Sublease(s) between the parties, the District shall issue a notice to the Contractor to proceed with the Project ("Notice to Proceed") for each Project, which Notice to Proceed shall include the date upon which commencement for the Project shall commence. If a legal challenge is made as to the validity of the Contract Documents, within 90 days from the date of the board award, the Parties may mutually elect to rescind any Notice to Proceed that has been issued by the District and the Master Construction Services Agreement and the Master Site Lease(s) and Master Sublease(s) between the Parties shall be terminated for the convenience of the Parties. Upon such termination, the District shall be obligated to pay Contractor in accordance with Section 19.2.
- 4.29 Plans are that portion of the Construction Documents consisting of the drawings and other pictorial or other graphic expression of requirements for the work of improvement to be completed by Contractor, including, without limitation, services, work, material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.
- 4.30 Project means the specific improvements to be constructed and installed by the Contractor at a particular Site, as more particularly described and/or referenced in Exhibit "A" attached hereto and as set forth in Exhibit "J" as may be applicable.
- 4.31 Provide shall include "provide complete in place," that is "furnish and install complete."
- 4.32 Punch List is a list of minor repair items, prepared after the issuance of a Certificate of Substantial Completion, by the Inspector and Architect of Work required in order to complete the Contract Documents and ensure compliance with the DSA Approved Plans so the Project may be Closed Out. Issuance of the Retention Payment is dependent upon the proper completion of the Punch List. See Article 13.16 and Article 29.
- 4.33 Request for Information (RFI) is a written request prepared by the Contractor requesting the Architect to provide additional information necessary to clarify or amplify an item which the

Contractor believes is not clearly shown or called for in the drawings or specifications, or to address problems which have arisen under field conditions.

- 4.34 Schedule is the Contractor's view of the practical way in which the Work will be accomplished. In this Agreement there is a requirement for a Baseline Schedule and regular Schedule Updates that show all Work to be completed during the Contract Time and shall include all items listed under Article 9.3. The Schedule shall be maintained throughout the Work for the Project and is both a prerequisite to the issuance of a Pay Application and Contract Closeout. The Baseline Schedule and Schedule Updates can be in Microsoft Project, Primavera, or other software program at District's discretion.
- 4.35 Schedule of Values is a detailed breakdown of the Contract Price for each Project, building, Phase of Work or Site as determined by the District. This Schedule of Values shall adequately detail the price for the Work so that the status of the construction of any improvements can be meaningfully reviewed by the Inspector, Architect of Record, Engineer of Record, and District. (See Article 13.12)
- 4.36 Separate Contracts are Contracts that the District may have with other Contractors, vendors, suppliers, or entities to perform Work on the Project. This may include, but is not limited to Multi-Prime Trade Contractors, furniture installers, testing agencies, clean-up contractors, or network or low voltage contractors. Contractor shall plan for certain other contractors that may also be working on the Project site and address these other contractors in Contractor's Schedule. See Article 32.
- 4.37 Site refers to the grounds of the Project or in some cases may refer to multiple sites as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work.
- 4.38 Master Site Lease and/or Lease means the Master Site Lease(s) of even date herewith, by and between the District and the Contractor together with any duly authorized and executed amendment thereto under which the District leases the Site to the Contractor.
- 4.39 Specifications are that portion of the Construction Documents consisting of the written requirements for the work of improvement to be completed by Contractor, including, without limitation, services, work, material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.
- 4.40 Standards, Rules, and Regulations referred to are recognized printed standards and shall be considered as one and a part of these specifications within limits specified. Federal, state and local regulations are incorporated into the Contract Documents by reference. The Contractor shall not be responsible for any violations of federal, state or local codes, laws or regulations applicable to the Construction Documents that are part of the Architect's standard of care. Nothing in this paragraph, however, shall be construed as a limitation or waiver of the Contractor's applicable standard of care for the Project.
- 4.41 Stop Work Order, or an Order to Comply is issued when either (1) the Work proceeds without DSA approval; (2) the Work proceeds without a DSA Project Inspector, or (3) where DSA determines that the Work is not being performed in accordance with applicable rules and regulations, and would compromise the structural integrity of the Project or would endanger lives. If a Stop Work Order is issued, the Work in the affected area shall cease until DSA withdraws the Stop Work Order. Pursuant to Education Code section 17307.5(b) and Education Code section 81133.5, the District shall not be held liable in any action filed against the District for any delays caused by compliance with the Stop Work Order.
- 4.42 Subcontractor means any person or entity, including trade contractors, who have a contract with Contractor to perform any work or supply materials for the Project.



- 4.43 Master Sublease(s) means the Master Sublease(s) of even date herewith by and between the District and Contractor together with any duly authorized and executed amendment hereto under which the District subleases the Site from the Contractor.
- 4.44 Sublease Payment means any payment required to be made by the District pursuant to Section 7 of the Master Sublease.
- 4.45 Substantial Completion is not reached unless and until each of the following four (4) conditions have been met: (1) all contractually required items have been installed with the exception of only minor and Incomplete Punch Items (See Article 13.16); (2) All Fire/Life Safety Systems have been installed, and are working and signed off on the DSA Form 152 Inspection Card, all building systems including mechanical, electrical and plumbing are all functioning; (3) all other items on the DSA Form 152 Inspection Card for the Project have been approved and signed off; and (4) the Project is fit for occupancy and its intended use, as certified by the Architect pursuant to the Certificate of Substantial Completion set forth in the Division 1 Forms attached hereto.
- 4.46 Substitution is a change in product, material, equipment, or method of construction from those required by the Construction Documents proposed by the Contractor. Specific requirements for substitutions are set forth at Article 16.
- 4.47 Unforeseen Allowance means the budget established for hazardous substances and underground conditions that differ from representations in the Contract Documents or Due Diligence Documents and meet the requirements under Article 13.15.5 and 18.4. The Unforeseen Allowance may also include other costs as allocated in the District's sole and absolute discretion related to the Project. The District, in its sole and absolute discretion, may use the District Contingency to fund any costs allowed under the Unforeseen Allowance. Any funds remaining in the Unforeseen Allowance at the completion of the Project shall remain unspent and allocated to the District as the District sees fit to use.
- 4.48 Work shall include all labor, materials, services and equipment necessary for the Contractor to fulfill all of its obligations pursuant to the Contract Documents as it pertains to each individual Project. It shall include extension of Contractor's obligations to Subcontractor to perform Subcontractor Due Diligence including, but not limited to, visiting the Site of the proposed Work (a continuing obligation after the commencement of the Work), fully acquainting and familiarizing itself with the conditions as they exist and the character of the operations to be carried out under the Contract Documents, and make such investigation as it may see fit so that it shall fully understand the facilities, physical conditions, and restrictions attending the Work under the Contract Documents. Each such Contractor or Subcontractor shall also thoroughly examine and become familiar with the Drawings, Specifications, and associated Contract Documents.
- 4.49 Workers include laborers, workers, and mechanics.

**5. ESTABLISHMENT OF GUARANTEED MAXIMUM PRICE "GMP"**

- 5.1 Guaranteed Maximum Price (GMP) is the amount agreed upon between the District and Contractor that shall not be exceeded for the Construction of each Project within the Contract Time based on Contractor's thorough review of the Contract Documents, Due Diligence in investigation of all aspects of the Project, as set forth in Exhibit J for each Project. The GMP includes the costs for the Sublease Payments being paid by the District as Progress Payments and Retention Payment during construction in accordance with the terms of this Master Construction Services Agreement. Any references to Progress Payments shall also mean Sublease Payments. A Construction Contingency (Article 5.2.1) and an Errors and Omissions Contingency (Article 5.2.2) is contained within the GMP. Costs that are outside of the GMP shall be as follows:
- 5.1.1 Owner requested additional work (See Article 8) to be paid under the District Contingency.

5.1.2 Unforeseen underground soil conditions or unforeseen hazardous materials that meet the requirements of Article 13.15.5 and 18.4 to be paid under the Unforeseen Allowance.

5.2 GMP. As a result of the Due Diligence of Contractor, the GMP for each Project is set forth under Article 3 and in Exhibit J for each Project. The GMP is based upon all Due Diligence performed, the approved Construction Documents, and all other Contract Documents existing and reviewed by the Contractor at the time this Master Construction Services Agreement is entered into as more fully described and referenced in the Scope of Work set forth in Exhibit "A." Contractor's detailed line item costing of the Project, or Master Budget, totaling the GMP is attached hereto as Exhibit "B." Furthermore, the District and Contractor represent and warrant that the GMP is separate and distinct from the Sublease Payments to be paid by the District under the Sublease. District represents and warrants and Contractor acknowledges that: 1) the total amount of Sublease Payments and any optional Prepayment under the Master Sublease include the total rental for the Project, which total does not exceed the fair market value for the Project, 2) said rental amount is separate and distinct from Progress Payments and Retention, and 3) said rental amount shall be paid by the District with District non-local match contribution local funds.

The GMP is an "all inclusive" price for the construction of the Project that is calculated after Due Diligence and shall not be exceeded except as set forth in this Agreement. Contractor has taken on all contingencies and calculated those contingencies out in the form of the Construction Contingency. Contractor specifically agrees that once the Construction Contingency is fully exhausted, that Contractor can and shall Complete the Project pursuant to the terms of this Agreement within the Contract Time. No disputes concerning compensation, extras, or application of Contingencies shall be utilized as grounds to slow down or to stop work. The following two contingencies have been calculated through the Due Diligence of the Contractor and shall be calculated against the contingency amounts based on application of the Change Order language of Article 17.

5.2.1 *Construction Contingency*. The Construction Contingency set forth at Article 3.8.1 is for the use of the Contractor, as approved by the District, to pay for miscellaneous work items which are required to complete the Project including to cover trade scope gaps, missed work, areas of damage that may occur between trades during construction, Subcontractor coordination problems, and Contractor coordination errors. The Contractor shall not use the Construction Contingency to pay for costs related to the following: (a) errors or omissions in the Construction Documents; (b) discrepancies with the Construction Documents pertaining to applicable building code requirements; and/or (c) enhancements or additions to the Scope of Work desired by the District. The Contractor shall obtain written approval from the District prior to using the Construction Contingency. The following may be considered, at the District's sole discretion, valid Construction Contingency items: 1) overtime and premium time, 2) costs to address safety items, 3) Contractor coordination issues and errors, 4) scope gaps, 5) trade damage, and 6) for other items requested by the Contractor if approved by the District and in the District's sole discretion. If on Final Completion of the Project, funds are remaining in the Construction Contingency, Contractor shall be entitled to 25% and the District 75% of the remaining balance..

5.2.2 *Errors and Omissions Contingency*. Within the GMP shall be a line item amount to cover errors and omissions in the Construction Documents ("Errors and Omissions Contingency"). The Errors and Omissions Contingency at Article 3.7.2 is calculated based on coordination review of the Construction Documents and coordination meetings that have been held with the Subcontractors and Architect. Specifically, it is the coordination items that could not be addressed through coordination meetings and a factor determined based on the coordination review that has been performed by Contractor. The Errors and Omissions Contingency is created from Contractor's Due Diligence and based on Contractor's experience on similar projects. As a result,

Contractor agrees that Contractor shall not seek to charge District for Errors and Omissions in excess of the Errors and Omissions Contingency, where such Errors and Omissions should have reasonably been discovered by Contractor during the performance of the preconstruction services and/or Due Diligence.

Contractor shall notify the District under the Change Order Provisions of the need for such work and specifically identify the Work as Errors and Omissions by submitting to the District for its consideration and approval or disapproval, a written request for the work before such work is performed. If District approves such request in writing, the costs of the work, shall be added to or deducted from the Errors and Omissions Contingency within the GMP. Any funds remaining in the Errors and Omissions Contingency at the completion of the Project shall remain unspent and allocated to the District as the District sees fit to use, except for any portions of Savings added to the Errors and Omissions Contingency, which Savings shall be allocated between the parties as provided in Article 7 below.

### 5.3 Due Diligence

- 5.3.1 *Documents Reviewed.* Contractor has visited the site, entered and evaluated the structures on the site, reviewed all as-built information, environmental reports, Asbestos Hazard Emergency Response Act of 1986 reports applicable to the Project, lead reports, reports on any other hazardous substances, reviewed environmental impact reports, reviewed applicable mitigation measures for the Project, reviewed and observed the current site conditions, reviewed available records from City and/or County Records on the Project. All documents provided or reviewed by the Contractor shall be referred to collectively as the Due Diligence Documents.
- 5.3.2 *Review of Existing Conditions.* Contractor must have performed basic confirmation of the As-Built information that exists as part of the Due Diligence process. This basic confirmation shall include:
  - 5.3.3 Confirmation of overall dimensions of major column lines, location of elements where coordination of new construction to existing construction is to occur, confirmation that the rooms noted are located on the drawings, review and confirmation that rooms have not been reconfigured.
    - 5.3.3.1 Confirmation of location for utilities and supporting infrastructure. Contractor shall review the utilities and confirm that the infrastructure from the As-Built and Contract Documents are consistent with the actual As-Built Conditions of the Project site.
    - 5.3.3.2 Confirmation that fire/life safety elements are consistent with expectations of the Contract Documents. Specifically, confirmation of the integrity of one-hour corridors, fire separations, working fire sprinklers, working fire alarms, communications systems, EMS systems, and other systems that are to remain in use and relied upon as part of the anticipated Project.
    - 5.3.3.3 Review of the Environmental Documents (Asbestos, Lead, PCB's, etc.) and general confirmation that the scope of hazardous substances is consistent with that which is shown on the environmental reports that are provided.
    - 5.3.3.4 Confirmation of Working hours and specific conditions which will affect the ability to work. Contractor shall check requirements for the local city and county and confirm working hours and days, testing schedules at the

District for days when work shall not occur, other critical days when work cannot occur, mitigation measures in the EIR or Negative Declaration that may affect the ability to Work on the Project. This review shall help Contractor build a working schedule for the Project.

- 5.3.4 *Review of Construction Documents.* Contractor has performed a complete and diligent review of all plans, specifications, addenda, bulletins or other documents provided as the Construction Documents or otherwise mentioned in the Construction Documents. The Contractor has written and submitted RFIs to address potential design issues prior to the GMP development to obtain a comprehensive GMP that addresses design and constructability issues.
- 5.3.5 *Inconsistencies.* All inconsistencies, timing or sequences which appear to be in error in the Construction Documents shall promptly be called to the attention of the Architect or, Engineer, for interpretation or correction. Local conditions which may affect the structure shall be brought to the Architect's attention at once. In no case, shall the instruction of the Architect be construed to cause work to be done which is not in conformity with the approved plans, specifications, change orders, construction change documents, and as required by law. (See Title 24 Section 4-343)
- 5.3.6 *Coordination Review.* Contractor shall perform a constructability review of the Construction Documents as part of its Due Diligence to determine the level of Errors and Omissions that should be included in the Errors and Omissions Contingency.
- 5.3.7 *Price Fluctuations.* As part of Contractor's Due Diligence responsibilities, Contractor is required schedule and plan to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost to assure that there will be no delays. Contractor understands that this may be a multi-year contract and that materials fluctuate in value and shall have adequately addressed market fluctuations through agreements with Contractor vendors or by other means. Contractor further understands and incorporates into Contractor's bid or proposal cost any wage rate increases during the Project for the Contractor's labor force as well as all other subcontractor and vendor labor forces. Contractor also understands the length of the Project schedule and has incorporated an appropriate budget to include labor, material, and equipment escalation costs into the GMP. At no time will the District accept any costs associated with these increases. District shall not be responsible for market fluctuations in costs or labor rate increases during the Project. Contractor further has incorporated any and all cost increases in areas of Work where there may be schedule variations so that cost increases are not passed through to the District.
- 5.3.8 *Coordination Review.* Contractor has thoroughly reviewed the plans, specifications, and other Due Diligence Documents and satisfied itself that the Construction Contingency is adequate to complete the Project for the GMP.
- 5.3.9 *Due Diligence Determinations.* Contractor has utilized all the available Due Diligence information to verify that the contingencies are adequate and that the Project can be constructed without exceeding the GMP:
  - 5.3.9.1 Construction Contingency. Based on review of the scope of work submitted from each Subcontractor, Contractor's Due Diligence and review shall be utilized to determine the size of the Construction Contingency to cover unforeseen conditions (other than noted in Article 5.1), cover trade scope gaps, missed work, areas of damage that may occur between trades during construction, Subcontractor coordination problems, Contractor coordination errors, and miscellaneous work items.

- 5.3.9.2 Errors and Omission Contingency. Based on a thorough review of the available Construction Documents and information located pursuant to the Due Diligence performed, a set-aside has been made for an Errors and Omissions Contingency that may be utilized to compensate for construction work to correct Errors and Omissions in the Construction Documents.
- 5.3.9.3 District Contingency (sometimes called Owner Contingency). District Contingency is a sum that is set aside by the District to address any additional services. In the District's sole discretion, design errors or omissions as determined by the District (to the extent the Errors and Omissions Contingency is exhausted) and unforeseen conditions as approved by the District, may be allocated to the District Contingency. Specifics on application of the Owner Contingency are set forth at Article 8.
- 5.3.9.4 Unforeseen Allowance. Unforeseen Allowance is a sum set aside for unforeseen conditions that differ from representations in the Contract Documents or Due Diligence Documents or meet the requirements under Article 13.15.5 and 18.4. The Unforeseen Allowance may also include other costs as allocated in the District's sole and absolute discretion related to the Project.
- 5.3.10 *Schedule.* Contractor's Due Diligence will also be critical to the Contractor's determination of the number of days required to complete the Project. Contractor will determine if the suggested number of days from the District and Architect can be performed and shall also consider whether the Project requires Governmental or Rain day float that exceeds that set forth in Article 9. If Contractor does not note any concerns with the suggested Contract Time, then it is presumed that Contractor is in agreement with the proposed completion date the Contractor, by entering into this Agreement, has determined for itself that the Project Contract Time is realistic, reasonable and includes all required Float under Article 9.

## 6. OPEN BOOK ACCOUNTING AND SELECTION OF SUBCONTRACTORS

- 6.1 Open Book Accounting. The Contractor's GMP shall be based on actual procured quotes and bids from Subcontractors, vendors, and suppliers or based on estimated costs. In addition, Contractor shall include an estimated overhead and profit line item along with the cost for Contractor supplied labor. This total construction cost, or Base Cost, shall be added to Subcontractor, vendor and supplier contingencies and the Construction Contingency (which includes an Errors and Omissions Contingency) to form the entire GMP. As costs are incurred during the course of the Project, the Job Cost Accounting shall be updated to include actual costs incurred. A report on costs shall be prepared as part of the GMP process and shall be provided on a regular basis to the District.
  - 6.1.1 *Purpose.* While competitive bidding is often viewed as the lowest price, utilizing the lowest bid neither results in the best contractor, efficient construction, or a properly completed product. In some cases, the Project becomes significantly more expensive because competitive bid contractors either don't understand the drawings, aren't qualified to build the Project, or are seeking to utilize the legal process to make money by bringing claims against the District. The lease leaseback methodology provides the ability to negotiate for the most qualified competent contractor and allow coordination and interaction between the Contractor, Architect and District to alleviate unnecessary problems or areas that would result in claims. However, in exchange for this flexibility and reduction in claims, it is in the District's best interests, as a public entity, to ensure that the Project accounting information is available for review and the financial aspects of the Project can be fully reviewed. Thus, Contractor agrees that all job cost

information shall be kept in an "open book" manner, shall show the actual transactions that occurred for the Project and shall be disclosable to the State if State funds are being utilized.

- 6.1.2 *State Allocation Board Issues.* The Office of Public School Construction, the administering agency for the State Allocation Board, audits the costs for construction under the general authority of Education Code section 17076.10 and under the specific authority of Regulation Section 1859.100 et seq. governing program accountability audit, material inaccuracy, and expenditure audits. Given the fact the State has approved the lease-leaseback delivery method, and the likelihood that the records of the Project will be audited if there are State Funds involved, a permanent record of all the financial transactions for the construction of the Project shall be available through an Open Book Accounting of the Project expenditures of both hard and soft costs including, but not limited to labor, material and services costs, including the subcontract and material costs that were utilized to build the Project.
- 6.1.3 *Value Engineering During the Project.* In addition to Value Engineering addressed at Article 7 below, Contractor may have occasion where better pricing can be obtained from Subcontractors or suppliers. This better pricing shall be treated as part of Savings under Article 7.
- 6.2 Scope Reduction Not Savings. The District at all times shall have the right to reduce the scope of the Project. If the District reduces the scope of the Project, the GMP shall be reduced to reflect the reduced Scope of Work, pursuant to the provisions of Article 17. To the extent possible, it is the mutual goal of the District and Contractor to maximize the Scope of Work as allowed by the GMP. Reductions in scope are not considered Savings.
- 6.3 Selection of Subcontractors.
  - 6.3.1 If identified or requested in the District's Request for Proposal/ Qualifications ("RFP/RFQ"), the Contractor must use any Subcontractors identified and included in the Contractor's response to the District's RFP/RFQ pursuant to Education Code section 17406(a)(4). All Subcontractors identified and included in the Contractor's response to the District's RFP/RFQ shall be afforded the protections of the Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code).
  - 6.3.2 Following the award of the Contract to the Contractor by the District's Board of Education, and for all Subcontractors not identified in the Contractor's response to the District's RFP/RFQ, the Contractor shall proceed as follows in awarding construction Subcontracts with a value exceeding one-half of one percent of the price allocable to construction work:
    - 6.3.2.1 Provide public notice of availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the District, including a fixed date and time on which qualifications statements, bids, or proposals will be due.
    - 6.3.2.2 Establish reasonable qualification criteria and standards.
    - 6.3.2.3 Award the subcontract either on a best value basis or to the lowest responsible bidder. The process may include prequalification or short-listing. The process shall not apply to Subcontractors identified and included in the Contractor's response to the District's RFP/RFQ. Subcontractors awarded construction subcontracts under this Article 6.3.2 shall be afforded all the protections of the Subletting and

Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code).

- 6.3.2.4 All MEP Subcontractors must be prequalified as set forth in Article 1.12 above.
- 6.3.3 In no case will the Contractor award any subcontracts until the District has concurred to the scope and price of the subcontracted services.
- 6.3.4 All subcontractors (of any tier) performing any portion of the Work must comply with the Labor Code sections 1725.5 and 1771.1 and must be properly and currently registered with the California Department of Industrial Relations and qualified to perform public works pursuant to Labor Code section 1725.5 throughout the duration of the Project.
- 6.3.5 Contractor shall provide the District with full documentation regarding the bids or competitive quotes received by Contractor. In no event shall such documentation be redacted or obliterated. In the event the Contractor does not comply with this provision, the District may terminate this Construction Services Agreement in accordance with the provisions of Article 19 below.
- 6.3.6 Compliance with Disabled Veteran Business Enterprise (DVBE) contracting goals is required under this Construction Services Agreement. In accordance with Education Code section 17076.11 the District has a DVBE participation goal of 3% per year of the overall dollar amount of state funds allocated to the District pursuant to the Leroy F. Greene School Facilities Act of 1998, and expended each year by the District. The District is seeking DVBE participation under this Construction Services Agreement. The Contractor must require Subcontractors to make a good faith effort to contact and utilize DVBE contractors and suppliers in securing bids for performance of the Project. Their efforts shall be documented on the DVBE Good Faith Effort Form attached as Exhibit "C".

## 7. SAVINGS AND VALUE ENGINEERING

- 7.1 General Intent. The purpose of Savings is to minimize the expenditure of funds for the construction of the Project on items that exceed the minimum criteria required without a corresponding benefit to the District. The District also wishes to eliminate any excess quality levels or performance criteria provided in the Construction Documents so long as such elimination does not alter the design, aesthetics, safety standards or configuration or space, and does not increase future maintenance and operation costs. The District and the Contractor shall work cooperatively with each other, in good faith, to identify appropriate opportunities to reduce the Project costs and promote Savings. There are two stages when Savings may be generated. They are (1) Value Engineering when establishing the GMP and (2) Savings generated through changes, reductions, or Subcontractor negotiations that may occur after the GMP is established.
  - 7.1.1 *Value Engineering* is a review of systems so excess quality, unnecessary design elements, reconfiguration for efficiency, or other changes may be made to reduce the cost of a project. Sometimes, timing and sequences or re-use of materials that are unique to a project or area may generate savings. For example, if export soil is generated on a site which may have a substantial cost for transportation and removal could be sold to offset the costs incurred then a savings may be generated for the Project. Similarly, if concrete is ground, it may be sold for aggregate rather than as demolished construction materials.
  - 7.1.2 *Other Savings* generated over the course of the Project through Subcontractor negotiations, replacement of Subcontractors, or through other means shall be calculated

as part of the overall costs for the Project as part of the "Open Accounting" of the Project and shall be counted towards Project Savings.

7.2 Sharing and Calculation for Return of Savings. If Contractor realizes a Savings on an aspect of the Project, including but not limited to, Value Engineering or other Savings after the GMP is established and after execution of this Construction Services Agreement, such Savings shall be divided in the following proportion: Seventy Five Percent (75%) of any Savings shall be returned to the District and Twenty Five Percent (25%) of any Savings shall be returned to the Contractor. Calculation of Savings shall be determined by adding all expenses for the Project (excluding Change Orders and Owner and Construction Contingency Expenses), separating out overhead costs and either using the actual overhead costs, or the percentage set for overhead in the Article 5.3, whichever is higher an applying the percentage for profit against the GMP (less Change orders, Owner and Construction Contingency). Any remaining money shall be considered Savings. If the Project expenses exceed the GMP, then there are no Savings for the Project and the GMP shall apply. A separate calculation of whether there are savings associated with Change Orders under the Owner and Construction Contingency may be performed to determine if there are any savings that remain on these areas and applied to the overall savings calculation

7.3 Savings Determined Through Audit. District may, at its own costs, have an audit conducted of the Project related job costs to determine Savings as further outlined in Article 21.

## 8. DISTRICT CONTINGENCY

8.1 The District Contingency is an allowance for use by the District that can be used to pay the Contractor to perform additional services ("Additional Services") not described in this Construction Services Agreement. This District Contingency is outside of the GMP, is not part of the original bond, except to the extent that District contingency is utilized as a Change to the Contract under Article 17, and may be used for Owner requested additions, revisions to the Project, moving furniture or equipment, and other District unforeseen items, or at District's discretion. Contractor shall provide a cost estimate and a written description of the Additional Services required to perform such work. The District shall set aside a contingency amount outside the GMP, defined at Article 5 ("District Contingency") in the amount set forth at Article 3, which District Contingency shall be used for such Additional Services. Compensation for such Additional Services shall be negotiated and agreed upon in writing, in advance of Contractor's performing or contracting for such Additional Services. Nothing in this Construction Services Agreement shall be construed as limiting the valuation and amount to be paid to Contractor for such Additional Services or its implementation should a written agreement for such services be executed. Contractor shall not be entitled to compensation for Additional Services required as a result of Contractor's acts, errors or omissions. Further any Architectural Errors and Omissions shall not come out of District Contingency unless agreed upon in writing by the District in its sole discretion.

8.2 Additionally, while District is in no way limited by the manner in which it decides to utilize the District Contingency, said District Contingency shall not be used for any costs associated with errors or omissions in the Construction Documents until such time, if ever, the Errors and Omissions Contingency has been fully exhausted. Any funds remaining in the District Contingency at the completion of the Project shall remain unspent and remain allocated to the District.

## 9. SCHEDULE

9.1 Contract Time: Contractor shall perform and reach Substantial Completion (See Article 4.45) within the time specified in the Agreement. Moreover, Contractor shall proceed on a properly developed and approved CPM Master Baseline Schedule, which represents the Contractor's view of the practical way in which the Work will be accomplished. Note that Contract Time includes and incorporates all Float and other Baseline inclusions as noted in Article 9.3 and as otherwise specifically noted in Article 9.



- 9.2 Float is the total number of days an activity may be extended or delayed without delaying the Completion Date shown in the schedule. Float will fall into three categories: (1) Rain Days; (2) Governmental Delays; and (3) Project Float. Project Float and Rain Days are owned by the Project and may be utilized as necessary for critical path delays once the days become available for consumption (i.e. the rain day arrives and is not utilized since rain did not occur or Work was performed on the interior of a building). However, Governmental Delay float shall not be utilized for purposes other than to address critical path delays that arise due to approvals, Inspector approvals or verifications on governmental forms.
- 9.2.1 *Governmental Delay Float.* Given DSA requirements for submission and approval of CCD's prior to a DSA Form 152 sign off on areas of Work that deviate from approved Construction Documents, and the anticipated delays that may arise from this CCD procedure, no less than twelve (12) days per calendar year shall be set aside as Governmental Float to be utilized on critical path delays. A pro-rated number of days shall be calculated based on length of Contract Time. (For example, a two (2) year Contract Time shall require twenty-four (24) days of Governmental Float. If the Contract Time is 182 days, then the Contract Time shall require six (6) days of Governmental Float) This Governmental Delay float must be incorporated into the schedule and should be incorporated in each critical activity as Contractor deems fit. Specifically, major categories of Work under the DSA 152 (Project Inspection Card) should be allocated Governmental Delay Float at the Contractor's discretion. Governmental Delay Float on the Project may exceed 12 days per one (1) year period, but Contractor is required to include not be less than 12 days of Governmental Delay Float during each one (1) year period.
- 9.2.2 *Inclement Weather (Rain Days).* The Contractor will only be allowed a time extension for unusually severe weather if it results in precipitation or other conditions which in the amount, frequency, or duration is in excess of the norm at the location and time of year in question as established by the National Oceanic and Atmospheric Administration (NOAA) weather data. No less than 22 calendar days for each Calendar year for Southern California. The NOAA weather related days (22 days in Southern California) shall be set aside as float within the Baseline Schedule. Additional days beyond the NOAA shall be considered under the same criteria that weather days are granted below.
- 9.2.3 *Granting of Days beyond those Anticipated.* A Rain Day shall be granted by Architect or CM if the weather prevents the Contractor from beginning Work at the usual daily starting time, or prevents the Contractor from proceeding with seventy-five (75%) of the normal labor and equipment force towards completion of the day's current controlling item on the accepted schedule for a period of at least five hours, and the crew is dismissed as a result thereof, the Architect will designate such time as unavoidable delay and grant one (1) critical path activity calendar-day extension if there is no available float for the calendar year.
- 9.2.4 *Project Float* is all remaining float, including extra days included in a particular activity.
- 9.3 Inclusions in Baseline. In addition to Scheduling requirements set forth at Article 9, Contractor is specifically directed to include in Contractor's Baseline Schedule and all Schedule updates that provide for the following items required pursuant to this CSA, including but not limited to:
- 9.3.1 *Rain Day Float (excluding inclement weather) as required under Article 9.2.2.* For example, if the NOAA provides 22 days of rain days, all 22 days must be incorporated and noted in the schedule. Further, any days required to clean-up or dry out shall be included for operations that are likely to require a clean-up or dry out period. Days that are not utilized shall be considered float owned by the Project.

- 9.3.2 *Governmental Delay Float under Article 9.2.1.* This Governmental Delay Float shall only be utilized for Governmental Delays and shall not be considered available float owned by the Project. This float shall be distributed to the Project as granted and approved by the District, and shall be used to offset liquidated damages for overstaying the Lease, and shall not generate compensable delays.
- 9.3.3 Submittal and Shop drawing schedule under Article 9.6 and 15.6.
- 9.3.4 Deferred Approvals under Article 15.3 and 15.6
- 9.3.5 Time for separate contractors, including furniture installation and start up activities, under Article 32.
- 9.3.6 Coordination and timing of any drawings, approvals, notifications, permitting, connection, and testing for all utilities for the Project. Article 13.15.2 .
- 9.3.7 Testing, special events, or District activities.
- 9.3.8 The Baseline Schedule and Schedule Updates can be in Microsoft Project, Primavera, or other software program at District's discretion.
- 9.4 Schedule Updates. Contractor shall update the schedule each month to address actual start dates and durations, the percent complete on activities, actual completion dates, estimated remaining duration for the Work in progress, estimated start dates for Work scheduled to start at future times and changes in duration of Work items. The Schedule shall be maintained throughout the Work for the Project and is both a prerequisite to the issuance of a Pay Application and Contract Closeout.
  - 9.4.1 *Listing of Items Causing Delays.* Schedule Updates shall provide a listing of activities which are causing delay in the progress of Work and a narrative shall be provided showing a description of problem areas, anticipated delays, and impacts on the Construction Schedule. Simply stating "District Delay" or "Architect Delay" shall be an inadequate listing.
  - 9.4.2 *Recovery Schedule.* In addition to providing a schedule update every thirty (30) days, the Contractor, shall take the steps necessary to improve Contractor's progress and demonstrate to the District and Architect that the Contractor has seriously considered how the lost time, the Completion Date, or the milestones that are required to be met within the terms of the Contract. Contractor shall provide a Recovery Schedule showing how Milestones and the Completion Date will be met.
    - 9.4.2.1 Failure to Provide a Recovery Schedule. Shall subject Contractor to the assessment of Liquidated Damages for failure to meet the Contract Time.
- 9.5 Time of the Essence. Time limits stated in the Contract Documents are of the essence to the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work
- 9.6 Time for Preparing Submittals Must Be Incorporated in Schedule: Contractor shall include Submittals as line items in the Baseline Schedule. Time for preparing and coordinating Submittals shall not delay the Work, Milestones, or the Completion Date, and shall be in conformance with Article 15.6.

## 10. INSPECTION OF WORK/ INSPECTOR AND ARCHITECT

- 10.1 Inspection of Work/Inspector. The District shall hire its own Division of State Architect Inspector as required by law. District, District's Representatives, and the Division of the State Architect shall

at all times have access to the work whether it is in preparation or progress, and Contractor shall provide proper facilities for such access and for inspection.

- 10.1.1 *General.* One or more Project Inspectors employed by the District and approved by the Division of the State Architect will be assigned to the Work in accordance with the requirements of Title 24 of the California Code of Regulations. The Inspector(s) duties are as specifically defined in Title 24 Section 4-333 and 4-342 and in DSA IR A-8.
- 10.1.2 *Inspector's Duties and DSA Noted Timelines for Inspection.* All Work shall be under the observation of the Inspector. Contractor shall establish a protocol for requesting inspection with Inspector so as to not delay the Work and provide adequate time for the Inspector to perform inspection. If such a protocol is not established ahead of time, Inspector may utilize the time criteria set by Title 24 of 48 hours in advance of submitting form DSA 156 for each new area. The Inspector shall have free access to any or all parts of the Work at any time. The Contractor shall furnish the Inspector such information as may be necessary to keep the Inspector fully informed regarding progress and manner of Work and character of materials. Such observations shall not, in any way, relieve the Contractor from responsibility for full compliance with all terms and conditions of the Contract, or be construed to lessen to any degree the Contractor's responsibility for providing efficient and capable superintendence. The Inspector is not authorized to make changes in the drawings or specifications nor shall the Inspector's approval of the Work and methods relieve the Contractor of responsibility for the correction of subsequently discovered defects, or from its obligation to comply with the Contract Documents.
- 10.1.3 *Electronic Posting.* Inspector shall electronically post DSA required documents on the DSA electronic posting website. It is the Contractor's responsibility to determine the status of posting and determine if all the criteria for sign off of a category of Work on the Project Inspection Card (Form DSA 152) as defined more thoroughly in the most current version of the DSA 152 manual posted on the DSA website.
- 10.1.4 *Incremental Approvals under PR-13.* Inspector may collaborate with Contractor about approval of areas that may be constructed and approved incrementally under the DSA 152 card pursuant to the guidelines of PR-13. Inspector shall work with Contractor to present incremental approval proposals to DSA.
- 10.1.5 *Inspector's Authority to Reject or Stop Work.* The Inspector shall have the authority to reject Work whenever provisions of the Contract Documents are not being complied with, and Contractor shall instruct its Subcontractors and employees accordingly. In addition, the Inspector may stop any Work that poses a probable risk of harm to persons or property. The Contractor shall instruct its employees, Subcontractors, material and equipment suppliers, etc., accordingly. The absence of any Stop Work Order or rejection of any portion of the Work shall not relieve the Contractor from any of its obligations pursuant to the Contract Documents.
- 10.1.6 *Inspector's Facilities.* Within seven (7) days after notice to proceed, the Contractor shall provide the Inspector with the temporary facilities as required. More specific requirements for the Inspector facilities may be further described under Division 1 of the Specifications.
- 10.1.7 *Testing Times.* The District will provide inspection and testing at its cost during the normal eight (8) hour day Monday through Friday (except holidays). Work by the Contractor outside of the normal eight (8) hour day shall constitute an authorization from the Contractor to the District to provide inspection and testing as required outside of the normal eight (8) hour day. Contractor shall provide adequate time for inspections so as to not delay the Work. An advanced timing protocol may be established pursuant

to Article 10. If the Contractor is behind Schedule then it is incumbent on the Contractor to provide advance forecast through look ahead of the anticipated date for inspection so the Inspector may plan their activities so as to not delay the Project. Contractor shall reimburse District for any additional costs associated with inspection and testing (including re-inspection and re-testing) outside the normal eight-hour day and for any retests caused by the Contractor pursuant to Article 10.4.

10.1.8 *Contractor Is Required to Coordinate Testing and Inspections.* It is the Contractor's responsibility to request special inspections with sufficient time so all testing may be timely completed and posted so work may proceed and the Inspector's signature is attached to the Project Inspection Card (Form 152). Specifically, timely request for special inspection under the DSA Verified Report Forms 291 (laboratory), DSA Verified Report Form 292 (Special Inspection), and DSA Verified Report 293 (geotechnical) since DSA requirements under PR 13-01 specifically gives the Special Inspections 14 days to post to the DSA website. It is the Contractor's responsibility to timely schedule and pay (if applicable) for Special Inspections as to not delay the Project, and any failure or resulting delay is not considered Governmental Delay Float under Article 9.2.1.

10.1.9 *Special Inspection Out of State, Out of Country or Remote from Project.* If Contractor has a Subcontractor or supplier that requires in plant or special inspections or tests that are out of the country, out of state or a distance of more than 200 miles from the Project site, the District shall provide the Special Inspector or individual performing tests time for inspection and testing during normal work hours. Contractor, however, is responsible for the cost of travel, housing, food, out of area premiums that may be in the Inspector/Testing Agreement with District, or other expenses necessary to ensure proper inspection or testing is provided by a DSA Certified Inspector, Special Inspector, or individual performing tests. In some cases all three (DSA Inspector, Special Inspector, and Testing) may be required. In addition, if the DSA Certified Inspector, Special Inspector, or individual performing test has contractual travel clauses or special rates for out of town inspection, Contractor is responsible for all costs associated with the contractual travel costs in addition to all other costs. Arrangements for inspection and/or testing shall be made far enough in advance so as to not delay the Work.

10.2 STOP WORK ORDER. DSA may issue a Stop Work Order, or an Order to Comply, when either (1) the Work proceeds without DSA approval; (2) the Work proceeds without a DSA Project Inspector, or (3) where DSA determines that the Work is not being performed in accordance with applicable rules and regulations, and would compromise the structural integrity of the Project or would endanger lives. If a Stop Work Order is issued, the Work in the affected area shall cease until DSA withdraws the Stop Work Order. Pursuant to Education Code section 17307.5(b) and Education Code section 81133.5, the District shall not be held liable in any action filed against the District for any delays caused by compliance with the Stop Work Order, except to the extent that an error or omission by the District is the basis for the issuance of the Stop Work Order.

10.3 Inspector's Field Office. Contractor shall provide for the use of inspector a separate trailer or temporary private office of not less than seventy five square feet of floor area to be located as directed by District and to be maintained until removal is authorized by District. The Office shall be of substantial waterproof construction with adequate natural light and ventilation. Door shall have a key type lock or padlock hasp. The Inspector's field office shall have heating and air-conditioning and shall be equipped with a telephone, internet connection, working computer, a fax machine and use of an on-site copier at Contractor's expense. A table satisfactory for the study of plans and two chairs shall be provided by Contractor. Contractor shall provide and pay for adequate electric lights, and adequate heat and air conditioning for the field office until authorized removal.

10.4 RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE DISTRICT FOR PROFESSIONAL SERVICES

- 10.4.1 If at any time prior to the completion of the requirements under the Contract Documents, the District is required to provide or secure additional professional services (including CM, Inspection, Architect, Engineering and Special Consultant Services) for any reason by any act of the Contractor, the District may seek a Deductive Change Order for any costs incurred for any such additional services, which costs shall be deducted from the next scheduled Progress Payment. A Deductive Change Order shall be independent from any other District remedies and shall not be considered a waiver of any District rights or remedies. If payments then or thereafter due to the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the District. Additional services shall include, but shall not be limited to, the following:
- a) Services made necessary by the default of the Contractor (Article 19 or Article 12.2).
  - b) Services made necessary due to the defects or deficiencies in the Work of the Contractor.
  - c) Preparation of a CCD or ICD to correct a Contractor Deficiency, or Contractor Caused Notices of Non-Compliance (Article 17.2)
  - d) Services required by failure of the Contractor to perform according to any provision of the Contract Documents.
  - e) Services in connection with evaluating substitutions of products, materials, equipment, Subcontractors' proposed by the Contractor, and making subsequent revisions to drawings, specifications, obtaining DSA approvals, DSA costs for review of CCD's, other governmental agency review costs, and providing other documentation required (except for the situation where the specified item is no longer manufactured or available). (Article 16
  - f) Services for evaluating and processing Claims or Disputes submitted by the Contractor in connection with the Work outside the established Change Order or Claims or Disputes process.
  - g) Services required by the failure of the Contractor to prosecute the Work in a timely manner in compliance within the specified time of completion.
  - h) Services in conjunction with the testing, adjusting, balancing and start-up of equipment other than the normal amount customarily associated for the type of Work involved.
  - i) Services in conjunction with more than one (1) re-review of Submittals of Shop Drawings, product data, samples, RFI's etc.

## 11. **ARCHITECT**

- 11.1 **Architect's Status.** In general and where appropriate and applicable, the Architect shall observe the progress and quality of the work on behalf of the District. The Architect shall have the authority to act on behalf of District only to the extent expressly provided in this Construction Services Agreement. After consultation with the Inspector and after using his/her best efforts to consult with the District, the Architect shall have authority to stop work whenever such stoppage may be necessary in his reasonable opinion to insure the proper execution of the Construction Services Agreement. Contractor further acknowledges that the Architect shall be, in the first instance, the judge of the performance of this Construction Services Agreement

- 11.2 Architect's Decisions. Contractor shall promptly notify District in writing if the Architect fails within a reasonable time, make decisions on all claims of the District or Contractor and on all other matters relating to the execution and progress of the Project.

## 12. DISTRICT RESPONSIBILITIES

- 12.1 District Site Representations. District warrants and represents that, District has, and will continue to retain at all times during the course of construction, legal title to the Site and that said land is properly subdivided and zoned so as to permit the construction and use of said Site. District further warrants and represents that title to said land is free of any easements, conditions, limitation, special permits, variances, agreements or restrictions which would prevent, limit, or otherwise restrict the construction or use of said facility. However, in the event easements for permanent structures or permanent changes in existing facilities are necessary, they shall be secured and paid for by District, unless otherwise specified. Reference is made to the fact that District has provided information on the Site to Contractor. Such information shall not relieve the Contractor of its responsibility; and the interpretation of such data regarding the Site, as disclosed by any borings or other preliminary investigations, is not warranted or guaranteed, either expressly or implicitly, by the District. The Contractor shall be responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the Site and for having satisfied itself as to the observable, known or documented conditions under which the work is to be performed.
- 12.2 Partial Default: District Right to Take Over Work (Two (2) day notice to Cure and Correct). If the Contractor Defaults or neglects to carry out the Work in accordance with the Contract Documents, the District may provide a two (2) business day written notice to cure (a shorter period of time in the case of Emergency or a critical path delay) Contractor's Partial Default in a specific segregated area of work. The District's right to issue a Partial Default of the Contractor's Work and take over that segregated area of Work includes, but is not limited to:
- a) Failure to supply adequate workers on the entire Project or any part thereof;
  - b) Failure to supply a sufficient quantity of materials;
  - c) Failure to perform any provision of this Contract;
  - d) Failure to comply with safety requirements, or due to Contractor is creation of an unsafe condition;
  - e) Cases of bona fide emergency;
  - f) Failure to order materials in a timely manner;
  - g) Failure to prepare deferred-approval items or Shop Drawings in a timely manner;
  - h) Failure to comply with Contractor's Baseline or Update Schedule, meet critical Milestones which would result in a Delay to the Critical Path, or Delay the Contract Time;
  - i) Failure to comply with the Subcontractor selection and award requirements under Education Code section 17406(a)(4);
  - j) Failure to meet the requirements of the American's with Disabilities Act;
  - k) Failure to complete Punch List work; or
  - l) Failure to proceed on an Immediate Change Directive.
- 12.2.1 *Failure to correct a Notice of Deviation.* If during the two (2) business day period, the Contractor fails to Cure and correct the deficiency noted in the notice of Partial Default

with diligence and promptness, the District may correct such deficiencies without prejudice to other remedies the District may have, including a Termination for Cause as set forth in Article 19.

- 12.2.2 *Service of Notice of Partial Default with Right to Cure.* A written notice of Partial Default and right to Cure under Article 12.2("Article 12.2 Notice" or "Notice of Partial Default") shall be served by facsimile (with a copy provided by e-mail to the e-mail address provided and copied to the Project Superintendent).
- 12.2.3 *Shortened Time for Partial Default in the Case of Emergencies.* In an Emergency situation, the District may correct any of the deficiencies described in Article 12.2 without prejudice to other remedies by providing service of written notice of Emergency requiring a shortened time for Partial Default specifying the time given to Cure, if any.
- 12.2.4 *Shortened Time for Partial Default in the Case of Critical Path Delay.* In the case of critical path delay, the District may correct any of the deficiencies described in Article 12.2 without prejudice to other remedies providing service of written notice of Critical Path Delay to the Contractor with a specific description of the critical path delay items noting the line item or area of Work that is on the Critical Path and prescribe the length of shortened time to Cure, if any.
- 12.2.5 *Written Notice of Partial Default to be Deducted by Deductive Change Order.* The District shall have the right to determine the reasonable value of the Article 12.2 Partial Default Work, or if there is an actual value for the Work, shall use that value and issue a Deductive Change Orders under Article 17.6.

### **13. CONTRACTOR RESPONSIBILITIES.**

- 13.1 **Full Time Supervision.** Contractor shall keep on the Work at all times during its progress a competent, English speaking construction Superintendent satisfactory to the District. The Superintendent shall be present on a full-time basis, shall be dedicated exclusively to the Project and shall not share superintendency duties with another project or job. The Superintendent shall not be replaced except with written consent of the District. The Superintendent shall represent the Contractor in its absence and shall be fully authorized to receive and fulfill any instruction from the Architect, the Inspector, the District or any other District representative (including CM in the cases where the District has a CM representative). All Requests for Information shall be originated by the Superintendent and responses thereto shall be given to the Superintendent. No Work shall begin on any day by any Subcontractor or other person on the Project site until the Superintendent has arrived, or shall any Work continue during the day after the Superintendent has departed from the Project site. The Superintendent shall have authority to bind Contractor through the Superintendent's acts. The Superintendent shall represent the Contractor, and communications given to the Superintendent shall be binding on the Contractor. Before commencing the Work, Contractor shall give written notice to District (and CM representative) and Architect of the name and a Statement of Qualifications of such superintendent. Superintendent shall not be changed except with written consent of District, unless a superintendent proves to be unsatisfactory to Contractor and ceases to be in its employ, in which case, Contractor shall notify District and Architect in writing. Contractor shall provide a replacement superintendent approved by the District prior to performing additional work.
- 13.2 **Staff.** Notwithstanding other requirements of the Contract Documents, the Contractor and each Subcontractor shall: (1) furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work; (2) organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and (3) keep an adequate force of skilled and fit workers on the job to complete the Work in accordance with all requirements of the Contract Documents.

- 13.3 Contractor shall notify District and Architect, in writing, when Contractor desires to change the Project Manager for the Project, and shall provide the information specified above. The new Project Manager cannot serve on the Project until approved by District. District shall have the right, at any time, to direct a change in Contractor's Project Manager if performance is unsatisfactory, as determined by District, in its sole discretion.
- 13.4 Contractor shall give efficient supervision to the work, using its skill and attention and shall cause working drawings and specifications to be prepared and submitted to the District. Following agreement by Contractor and District with respect to said working drawings and specifications, it shall be Contractor's responsibility to perform the work described in said working drawings and specifications in substantial compliance with the Construction Documents.
- 13.5 Right to Remove. District shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of any Contractor, Subcontractor, material or equipment supplier.
- 13.6 Discipline. The Contractor shall enforce strict discipline and good order among the Contractor's and Subcontractor's employees, and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. As used in this subsection, "unfit" includes any person who the District concludes is improperly skilled for the task assigned to that person, who fails to comply with the requirements of this Article, or who creates safety hazards which jeopardize other persons and/or property.
- 13.7 Labor and Materials
- 13.7.1 *Contractor to Provide.* Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, air conditioning, utilities, transportation, and other facilities, services and permits necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- 13.7.2 *Quality.* Unless otherwise specified, all materials and equipment to be permanently installed in the Project shall be new and shall be of the highest quality or as specifically stated in the Contract Documents. The Contractor shall, if requested, furnish satisfactory evidence as to kind and quality of all materials and equipment within ten (10) days of a written request by the District, including furnishing the District with bona fide copies of invoices for materials or services provided on the Project. All labor shall be performed by workers skilled in their respective trades, and shall be of the same or higher quality as with the standards of other public school construction.
- 13.7.3 *Replacement.* Any work, materials, or equipment, which do not conform to these requirements or the standards set forth in the Contract Documents, may be disapproved by the District, in which case, they shall be removed and replaced by the Contractor at no additional cost or extension of time to the District.
- 13.8 Pre-Construction Orientation/Construction Meetings. The Contractor, in conjunction with the District and the Architect, shall conduct pre construction orientation conferences for the benefit of Subcontractors to orient the Subcontractors to the various reporting procedures and site rules prior to the commencement of actual construction. These Pre-Construction meetings shall include coordination of the Subcontractor Work to help reduce Errors and Omissions and Construction Contingency requests and shall incorporate the Constructability Due Diligence review done by Contractor.
- 13.9 Owner Meetings. The Contractor shall conduct construction and progress meetings with District Representatives, and Construction Managers that occur at least weekly and as otherwise requested



by the District, to discuss such matters as procedures, progress problems and scheduling. The Contractor shall prepare and promptly distribute official minutes of such meetings to all parties in attendance including Architect, District and Inspector.

- 13.10 Budget/Cash Flow Reports. The Contractor shall incorporate approved changes as they occur, and develop cash flow reports and forecasts for submittal to the District on a monthly basis. The Contractor shall provide regular monitoring of the approved estimates of Construction Costs, showing actual costs for activities in progress, and estimates for uncompleted tasks. The Contractor shall identify variances between actual and budgeted or estimated costs, and advise the District and the Architect whenever Project costs exceed budgets or estimates. The Contractor shall maintain cost accounting records on authorized additional services or work performed under unit costs, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.
- 13.11 Progress Reports. The Contractor shall record the progress of the Project, and shall submit monthly written progress reports to the District and the Architect including information on the entire Project, showing percentages of completion and the number and amounts of proposed Extra Work/Modifications and their effect on the Construction Costs as of the date of the report. The Contractor shall also keep a daily log containing a record of weather, Contractors, work on the site, number of workers, work accomplished, problems encountered, and other similar relevant data as the District may require. The Contractor shall make the log available to the District and the Architect. The District shall be promptly informed of all anticipated delays. In the event that the Contractor determines that a schedule modification is necessary, the Contractor shall promptly submit a revised Schedule for approval by the District
- 13.12 Schedule of Values.
  - 13.12.1 *Break Down of Schedule of Values.* Schedule of Values shall be broken down by Project, site, building, milestone, or other meaningful method to measure the level of Project Completion as determined by the District. The schedule of values shall include, but not be limited, to Subcontractor costs, the costs for the Submittals, Punch Lists, Commissioning and Start-Up, Close Out Submittals, As-Builts; Close-Out; and Warranties.
  - 13.12.2 *Based on Contractor Costs.* The Schedule of Values shall be based on the costs from Contractor to the District. However, the submission of the Schedule of Values shall not be front loaded so the Contractor is paid a greater value than the value of the Work actually performed and shall not shift funds from parts of the Project that are later to Work that is performed earlier.
  - 13.12.3 *Largest Dollar Value for Each Line Item.* Identify Subcontractors and materials suppliers proposed to provide portions of Work equal to or greater than ten thousand dollars (\$10,000) or one-half (1/2) of one percent (1%) of their Contract Price, whichever is less, or as otherwise approved in writing by the District.
  - 13.12.4 *Allowances.* Any Allowances provided for in the Contract shall be a line item in the Schedule of Values.
  - 13.12.5 *Labor and Materials Shall Be Separate.* Labor and Materials shall be broken into two separate line items unless specifically agreed in writing by the District.
  - 13.12.6 *District Approval Required.* The District shall review all submissions of Schedule of Values received pursuant to this Article in a timely manner. All submissions must be approved by the District before becoming the basis of any payment.

- 13.13 Scheduling. Contractor shall complete the construction pursuant to the CPM Schedule as required under Article 9.
- 13.14 As-Builts. Throughout the duration of the Project, Contractor shall maintain on a current basis an accurate and complete set of As-Built Drawings (and Annotated Specifications) clearly showing all changes, revisions to specifications and substitutions during construction, including, without limitation, field changes and the final location of all electrical and mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions, and other significant features. In case a specification allows Contractor to elect one of several brands, makes, or types of material or equipment, the annotations shall show which of the allowable items the Contractor has furnished. The Contractor will update the As-Built Drawings and Annotated Specifications as often as necessary to keep them current, but no less often than weekly.
- 13.14.1 *Updates.* Contractor shall update As-Built Drawings and Schedules, including critical path and make-up time, with complete information on an area of Work at or near the time when the Work is being performed and prior to any DSA 152 sign off and prior to any Work being covered. Failure to provide monthly updates will cause delays in processing that monthly pay application.
- 13.14.2 *Storage.* The As-Built Drawings and Annotated Specifications shall be kept at the Site and available for review and inspection by the District and the Architect. Failure to maintain and update the As-Built Drawings is a basis to withhold scheduled Progress Payments pursuant to Article 29.4.
- 13.14.3 *Upon Beneficial Occupancy.* Contractor shall obtain and pay for reproducible plans upon Beneficial Occupancy. Contractor shall deliver Plans to District Representative (Construction Manager if one is hired for the Project).
- 13.14.4 *As-Builts at Completion of Work.* On completion of the Work and prior to and as a condition precedent to the Application for Retention Payment, the Contractor will provide one neatly prepared and complete set of As-Built Drawings and Annotated Specifications to the District. Contractor shall certify the As-Builts as a complete and accurate reflection of the actual construction conditions of the Work by affixing a Stamp indicating the Drawings are As-Builts and Certifying Accuracy on the final set of As-Builts.
- 13.14.5 *Log of Control and Survey Documentation.* Contractor shall complete and maintain an accurate log or all control and survey documentation for the Project as the Work progresses. All reference and control points shall be recorded on the As-Built drawings. The basis of elevations shall be one of the established benchmarks that must be maintained on the As-Builts.
- 13.14.6 *Record Coordinates for Key Items.* Contractor shall record, by coordinates, all utilities on-site with top of pipe elevations, major grade and alignment changes, rim, grate or top of curb and flow line elevations of all drainage structures and sewer manholes. Contractor shall update record information at or near the time when work is occurring in an area and prior to DSA 152 sign off on any category of Work and prior to covering the Work.
- 13.15 Miscellaneous Obligations of Contractor
- 13.15.1 *District Permit and Other Obligations.* It is expressly understood that the District shall pay the DSA for the DSA inspector, soils testing, DSA fees, special testing, etc. If additional review or permits become necessary for reasons not due to Contractor's fault or because of DSA requirements or regulations implemented after the date the GMP is established and not reasonably anticipated at the time the GMP is established,

Contractor may seek compensation only for the direct cost (without mark up or added fees) of that review, as an additional cost. In the alternative, District may pay such costs directly to DSA. (Offsite costs and additional inspection costs)

- 13.15.2 *Contractor Permit Obligations.* Contractor shall pay for all remaining general building permits and ancillary permits and licenses not paid by District prior to the commencement of this Construction Services Agreement. Contractor shall also be responsible for arranging and overseeing all necessary inspections and tests, including inspections by the DSA, permits and occupancy permits, and ensure compliance with any Federal and State laws. All municipal charges for permanent utilities including, but not limited to, sewer, electrical, phone, gas, water, and irrigation shall be paid for by District. Contractor shall be responsible for arranging the payment of such fees by District at least one (1) week in advance of when the payment is due. Contractor may either request reimbursement from District for such fees (at direct cost only), or obtain the funds from District prior to paying such fees.
- 13.15.3 *Protection.* The Contractor shall establish procedures for the protection of all existing structures, equipment, utilities, and other existing improvements, both on site and off site.
- 13.15.4 *Nuisance Abatement.* The Contractor shall develop a mutually agreed upon documented program with the District to abate and minimize noise, dust, and disruption to normal activities at the existing facilities on the Site, including procedures to control on site noise, dust, and pollution during construction.
- 13.15.5 *Site Mitigation and Remediation.* Contractor shall be required to undertake Site mitigation or remediation at its sole cost for items identified in the Due Diligence Documents provided to Contractor. For hazardous substances and underground conditions that differ from representations in Contract Documents or Due Diligence Documents, Contractor shall provide notice within five (5) days after the discovery of the occurrence of the unforeseen conditions. If Due Diligence Documents and information provided to Contractor does not provide notice of the unforeseen condition, then the costs for such work shall be added as an extra pursuant to Article 18. Costs shall be allocated to the Unforeseen Allowance. However, to the extent Unforeseen Allowance is exceeded, District may, in its sole and absolute discretion, allocate any costs that exceed the Unforeseen Allowance arising from unforeseen underground conditions and hazardous substances that are not documented in the Construction Documents or in the Due Diligence Documents reviewed to the District Contingency.
- 13.15.6 *Utilities.* The Contractor shall perform and pay for all temporary utility hook ups and connections; the District shall pay for use of utilities during construction, as well as any fees owed to utility suppliers for connection to existing mainline facilities. Buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.
- 13.15.7 *Sanitary Facilities.* The Contractor shall provide a sanitary temporary toilet building as directed by the inspector for the use of all workers. The building shall be maintained in a sanitary condition at all times and shall be left at the site until the inspector directs removal. Use of toilet facilities in the work under construction shall not be permitted except by approval of the Inspector.
- 13.15.8 *Layout and Field Engineering.* All field engineering required for laying out this work and establishing grades for earthwork operations shall be furnished by the Contractor at its expense. Such work shall be done by a qualified civil engineer or land surveyor licensed in California and approved by the Architect. Any required "as built" drawings

of site development shall be prepared by a qualified civil engineer or land surveyor licensed in California and approved by the Architect.

- 13.15.9 *Cutting and Patching.* Contractor shall do all cutting, fitting, or patching of work as required to make its several parts come together properly and fit it to receive or be received by work of other contractors showing upon, or reasonably implied by, the drawings and specifications for the completed structure. Contractor shall make good after them as Architect may direct. All cost caused by defective or ill-timed work shall be borne by party responsible therefore. Contractor shall not endanger any work by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor without consent or at the direction of Architect.
- 13.15.10 *Documents on the Project Site.* Contractor shall keep one copy of all Contract Documents, including specifications; addenda; change orders, directives and other modifications to the Contract; Construction Change Directives; reviewed shop drawings, product data, and samples; field test records; inspection certificates; manufacturer's certificates and material data sheets; updated project schedule and weekly schedule; Division I, Title 21 of the California Code of Regulations, Parts 1-5 and 12 of Title 24, and Title 22 of the California Code of Regulations, and the prevailing wage rates applicable to the Project, which are a part of Contract Documents, on job at all times. Said documents shall be kept in good order and shall be available to District representative, Architect and his representatives. Contractor shall be acquainted with and comply with the provisions of said Titles 21, 22 and 24 as they relate to this Project. (See particularly Duties of the Contractor, Title 24 California Code of Regulations, Section 4-343.) Contractor shall also be acquainted with and comply with all California Code of Regulations provisions relating to this Project, particularly Titles 17, 19, 21, 22 and 24.) Contractor shall also make available all books, records, accounts, contracts, bids, etc. upon request of District.
- Contractor shall record information concurrent with construction progress and will also be required to use the Procure software program.
- 13.15.11 *Contractor to Bind Subcontractors to the Provisions of this Contract.* Contractor shall ensure that Subcontractors are bound to the same extent as Contractor is bound to District.
- 13.15.12 *Contractor Responsible for Means and Methods.* Contractor shall be solely responsible for the construction means, methods, techniques, sequences, procedures, and coordinating all portions of the work under the Contract Documents, unless the Contract Documents give other specific instructions concerning these matters. Contractor shall be responsible to see that the finished work complies accurately with the Contract Documents. Contractor shall not perform the work without utilizing the Contract Documents or, where required, approved shop drawings, product data, or samples for any such portion of the work.
- 13.15.13 *Contractor Responsible for Acts and Omissions of Employees.* Contractor shall be responsible to District for acts and omissions of Contractor's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the work under direct or indirect contract with Contractor or any of its Subcontractors.
- 13.15.14 *General DSA Compliance.* During the entire term of this Agreement, Contractor shall coordinate its services with the District, Architect, Project Inspector, and other parties to ensure that all requirements set forth in the DSA's Inspection Card (Form 152) and any subsequent revisions or updates thereto issued or required by DSA, or any other/alternate processes are being met in compliance with DSA requirements.

Contractor shall take all action necessary as to not delay progress in meeting any DSA requirements. Contractor shall meet any applicable requirements set forth in DSA's Construction Oversight Process Procedure (PR 13-01) and any subsequent revisions or updates thereto issued or required by DSA. Any references to DSA requirements for the Project shall be deemed to include and incorporate any revisions or updates thereto.

13.16 Close Out

- 13.16.1 *All DSA Close-Out requirements (See DSA Certification Guide).* Contractor is also specifically directed to the DSA Certification Guide and the applicable certificates for the DSA-311 form.
- 13.16.2 *Punch List Is Prepared Only After the Project Is Substantially Complete.* The Inspector and Architect shall prepare a Punch List of items which is an inspection report of the Work, if any, required in order to complete the Contract Documents and ensure compliance with the DSA Approved Plans so the Project may be Completed by the Contractor and a final DSA Close-Out is approved. When all Work for the Project is Complete, including Punch Lists and all Work complies with the approved Contract Documents and Change Orders, the Project has reached Final Completion.
- 13.16.3 *Time for Completion of Punch List.* Contractor shall only be given a period of no more than thirty (30) days to complete the Punch List on Project. During the Punch List period Contractor Superintendent and Project Manager shall remain engaged in the Project and shall not be removed or replaced. If the Punch List is not completed at the end of the Punch List time then Contractor shall issue a valued Punch List within 5 days after the date the Punch List time ends. If Contractor does not issue such a list, the Owner or Architect may issue a valued Punch List to the Contractor and withhold up to 150% of the value of the Punch List Work.
- 13.16.4 *As-Builts Up to Date and Complete.* The intent of this procedure is to obtain an exact "As-Built" record of the Work upon completion of the Project. The following information shall be carefully and correctly drawn on the prints and all items shall be accurately located and dimensioned from finished surfaces of building walls on all As-Built drawings:
- 13.16.4.1 The exact location and elevations of all covered utilities, including valves, cleanouts, etc. must be shown on As-Builts
- 13.16.4.2 Contractor is liable and responsible for inaccuracies in As-Built drawings, even though they become evident at some future date.
- 13.16.4.3 Upon completion of the Work and as a condition precedent to approval of release of the Retention Payment, Contractor shall obtain the Inspector's approval of the "As-Built" information. When completed, Contractor shall deliver corrected sepias and/or a Diskette with an electronic file in a format acceptable to the District.
- 13.16.4.4 District may withhold the cost to hire a draftsman and potholing and testing service to complete Record As-Built Drawings at substantial cost if the Contractor does not deliver a complete set of Record As-Built Drawings. This shall result in withholding of between \$10,000 to \$20,000 per building that does not have a corresponding Record As-Built Drawing.
- 13.16.5 *Any Work not installed as originally indicated on drawings*

- 13.16.6 *All DSA Close-Out requirements* (See DSA Certification Guide). Contractor is also specifically directed to the DSA Certification Guide and the applicable certificates for the DSA-311 form.
- 13.16.7 *Submission of Form 6-C*. Contractor shall be required to execute a Form 6-C as required under Title 24 Sections 4-343. The Contractor understands that the filing with DSA of a Form 6-C is a requirement to obtain final DSA Approval of the Construction by Contractor and utilized to verify under penalty of perjury that the Work performed by Contractor complies with the DSA approved Contract Documents.
- 13.16.8 *Contractor shall be Responsible for All Costs to Certify the Project*. The District may Certify the Project complies with Approved Construction Documents by utilizing the procedures under the Project Certification Guide (Located at the DSA website at [http://www.documents.dgs.ca.gov/dsa/plan\\_review\\_process/project\\_certification\\_guide\\_updated\\_03-15-13.pdf](http://www.documents.dgs.ca.gov/dsa/plan_review_process/project_certification_guide_updated_03-15-13.pdf)). All costs for professionals, inspection, and testing required for an alternate Project Certification shall be the Contractor's responsibility and the District reserves its right to institute legal action against the Contractor and Contractor's Surety for all costs to certify the Project and all costs to correct Non-Compliant Work that is discovered during the Alternate Certification Process.
- 13.16.9 *ADA Work that must be corrected* to receive DSA certification. See Article 41.
- 13.16.10 *Maintenance Manuals*. At least thirty (30) days prior to final inspection, three (3) copies of complete operations and maintenance manuals, repair parts lists, service instructions for all electrical and mechanical equipment, and equipment warranties shall be submitted. All installation, operating, and maintenance information and drawings shall be bound in 8½" x 11" binders. Provide a table of contents in front and all items shall be indexed with tabs. Each manual shall also contain a list of Subcontractors, with their addresses and the names of persons to contact in cases of emergency. Identifying labels shall provide names of manufactures, their addresses, ratings, and capacities of equipment and machinery.
- 13.16.11 Maintenance manuals shall also be delivered in electronic media for the Project. Any demonstration videos shall also be provided on electronic media.
- 13.17 Correction of Work: Warranty. Neither a Progress Payment, Sublease Payment nor any provision in the Contract Documents shall relieve Contractor of responsibility for faulty materials or workmanship incorporated in the Project. Contractor warrants that all work under this Construction Services Agreement will be free of faulty materials or workmanship and hereby agrees, within ten (10) days upon receiving notification from District, to remedy, repair or replace, without cost to District, all defects which may appear as a result of faulty materials or workmanship in the Project, at any time, or from time to time, during a period beginning with commencement of the Project and ending two (2) years after the date of completion of the specific Project for which the warranty is being provided, as defined in Article 18 hereof. The foregoing warranty of Contractor also applies to the remedy, repair or replacement of defects which may in the documents prepared by Contractor and/or any party retained by, through or under Contractor in connection with the Project, but the foregoing warranty of Contractor does not guarantee against damage to the Project sustained by use, wear, intentional acts, accidents, or lack of normal maintenance or as a result of changes or additions to the Project made or done by parties not directly responsible to Contractor, except where such changes or additions to the Project are made in accordance with Contractor's directions. No guarantee furnished by a party other than Contractor with respect to equipment manufactured or supplied by such party shall relieve Contractor from the foregoing warranty obligation of Contractor. The warranty period set forth herein above shall not apply to latent defects appearing in the Project, and with respect to such defects, the applicable statute of limitations shall apply. Contractor agrees to provide the District with all equipment and materials warranties provided by

manufacturers to District but has no obligation to assist in processing such warranty claims after said one (1) year warranty period.

13.17.1 *Assignment of Subcontracts.* Upon the Completion of the Warranty period, Contractor shall assign to the District all subcontracts with Subcontractors, material suppliers or other vendors that provided Work for the Project. This assignment shall include all purchase orders and any change orders or addenda that were executed with the assigned Subcontractor.

13.17.1.1 Documents to be Provided to District. Contractor shall provide the following documents to the District as part of Close Out of the Project:

- a. *Subcontractor Warranty.* Contractor shall provide any warranty documents, including warranties consistent with the requirements of this Contract and the Contract Documents.
- b. *Contracts.* Contractor shall provide copies of all subcontracts, amendments, change orders and other documents associated with the Subcontractor's scope of work and price for work on the Project.
- c. *Subcontractors Bound to the Same Extent as Contractor.* The Subcontractors shall be bound to the same extent as the Contractor is bound by this CSA and Subcontractors shall be required to include assignment of their contracts to the District.
- d. *Bonds Assignable.* Contractor shall ensure that Subcontractor performance and payment bonds are assignable and can be assigned to the District.
- e. *Unconditional Releases.* Contractor shall provide as part of the Close Out of the Project, Unconditional Releases for each Subcontractor and Material supplier that provided Work for the Project.
- f. *Project Files.* Contractor shall provide the District a copy of the entire Subcontractor file, including any submittals or shop drawings that were provided by Subcontractor.
- g. *District Reserves the Right to Assume Subcontractor Contracts Prior to the End of the Warranty Period.* District reserves the right to take assignment of Subcontractor contracts prior to the end of the warranty period.

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

#### 14. CONTRACT DOCUMENTS AND INTERPRETATIONS

14.1 The Contract Documents shall be executed, and/or initialed as appropriate, in duplicate by District and Contractor. The Contract Documents are complementary, and what is required by any one shall

be as binding as if required by all. The intention of the Contract Documents is to include all labor, services and materials reasonably necessary for the proper execution of the work.

- 14.2 It is not intended that work and/or services not covered under any heading, section, branch, class or trade of the specifications shall be supplied, unless it is required elsewhere in the Contract Documents or is reasonably inferable therefrom as being necessary to produce the intended results, in which case such work and/or services shall be supplied by Contractor. Words which have well known technical or trade meanings are used herein in accordance with such recognized meanings. Mutual agreement shall be reached with respect to words which do not have a well-known technical or trade meaning and the definition of which come into question.
- 14.3 Plans and Specifications are intended to be fully cooperative and to agree. All Plan and Specification changes shall be dated and sequentially recorded. All modifications to Plans and Specifications shall be interpreted in conformity with the Contract Documents, which shall govern, unless otherwise specified.

## 15. SUBMITTALS

### 15.1 Definitions

- 15.1.1 *Deferred Approvals.* Approval of certain aspects of the construction may be deferred until the construction Contract has been awarded. To facilitate the design process, DSA grants deferred approval to the design and detailing of certain elements of the Project at the request of the Architect or Engineer of Record. Design elements that may be deferred may include, but are not limited to Access floors, Bleachers, Elevator guide rails and related elevator systems, Exterior wall systems - precast concrete, glass fiber reinforced concrete, etc., Skylights, Window wall systems, storefronts, Stage rigging, and other systems as noted in the Contract Documents. (Also see Article 15.3 and 15.6).
- 15.1.2 *Shop Drawings.* The term "Shop Drawings" as used herein means drawings, diagrams, equipment or product schedules, and other data, which are prepared by Contractor, Subcontractors, manufacturers, suppliers, or distributors illustrating some portion of the Work, and includes: illustrations; fabrication, erection, layout and setting drawings; manufacturer's standard drawings; schedules; descriptive literature, instructions, catalogs, and brochures; performance and test data including charts; wiring and control diagrams; and all other drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and methods of construction as may be required to show that the materials, equipment, or systems and their position conform to the requirements of the Contract Documents.
- 15.1.3 *Manufactured* applies to standard units usually mass-produced, and "Fabricated" means items specifically assembled or made out of selected materials to meet individual design requirements. Shop drawings shall: establish the actual detail of all manufactured or fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.
- 15.1.4 *Submittals* is a term used interchangeably and sometimes refers to Shop Drawings, Product Data, and Samples since all Subcontractor submissions are tracked in a Submittal Log and may include any of the noted items. However, generally, a Submittal is a manufacturer's product information and product data including description, characteristics, size, physical characteristics, and requirements to prepare the jobsite for receiving of the particular manufactured item.



15.1.5 *Samples.* The term “samples” as used herein are physical examples furnished by Contractor to illustrate materials, equipment, or quality and includes natural materials, fabricated items, equipment, devices, appliances, or parts thereof as called for in the Specifications, and any other samples as may be required by the Architect to determine whether the kind, quality, construction, finish, color, and other characteristics of the materials, etc., proposed by the Contractor conform to the required characteristics of the various parts of the Work. All Work shall be in accordance with the approved samples.

15.2 Shop Drawings.

15.2.1 *When Shop Drawings Are Required.* Shop drawings are required for prefabricated components and for installation and coordination of these prefabricated components into the Project. In addition, Shop Drawings, are prepared to address the actual size and installation of components from various Subcontractors and provides an opportunity for the Contractor to coordinate and address conflicts between the subcontracting trades. In some cases, each Subcontractor or trade will provide Shop Drawings in a format agreed upon by District.

15.2.2 *Purpose for Shop Drawings.* Shop drawings are the Contractor’s manufacturer, Subcontractor, supplier, vendor or the Contractor’s detailed drawings showing particularized method for assembly, specifics to a manufacturer, manufacturer component installation requirements, specifics as to a manufactured item, alterations to a manufactured, a custom created item, or drawn version of more detailed information expanding on the Architect’s design shown in the Contract Documents. The Shop Drawings address the appearance, performance, size, weight, characteristics and prescriptive descriptions associated with the Contractor or Contractor’s Subcontractor’s plan for installation or assembly based on the design in the specifications and Contract Documents. The shop drawing often is more detailed than the information shown in the Contract Documents to give the Architect and Engineer the opportunity to review the fabricator’s version of the product (along with particulars specific to that particular product), prior to fabrication. References to the Contract Documents, Construction Documents, Drawings, Plans, and Specifications assist the Architect and Engineer in their review of the Shop Drawings. Attachment of manufacturer’s material specifications, “catalog cut sheets,” and other manufacturer’s information may be provided to accompany Shop Drawings. Because Shop Drawings facilitate the Architect’s and Engineer’s approval of the system, they should be as clear and complete as possible so they may be reviewed by Architect or Engineer for the Project.

15.2.3 *Shop Drawing Requirements.* The Contractor shall obtain and submit with Shop Drawings all seismic and other calculations and all product data from equipment manufacturers. “Product data” as used herein are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work.

15.2.4 *Not a Reproduction of Architectural or Engineering Drawings.* The shop drawing are not a reproduction of the architectural or engineering drawings. Instead, they must show more detail than the Construction Documents and details the fabrication and/or installation of the items to the manufacturer’s production crew or Contractor’s installation crews.

15.2.5 *Shop Drawings Engineering Requirements:* Some shop drawings require an engineer stamp to be affixed on the drawings and calculations. In such cases, a current and valid engineering stamp shall be affixed by a California registered engineer. No out of State engineers shall stamp Shop Drawings. (See DSA IR A-18). In most cases, an engineer

means California registered mechanical, structural, electrical or plumbing engineer. California Registered Civil Engineers will not be accepted for structural details unless specifically approved by DSA.

- 15.2.6 *DSA Approvals Required Prior to Work.* No work on a Shop Drawing that requires DSA approval may proceed until DSA approval is received. Contractor has provided DSA approval time and allowed adequate time for corrections in Contractor's Schedule as required pursuant to Article 9.
- 15.2.7 *Shop Drawing Identification.* All Shop Drawings must be properly identified with the name of the Project and dated, and accompanied by a letter of transmittal referring to the name of the Project and to the Specification section number for identification of each item clearly stating in narrative form, as well as "clouding" all qualifications, departures, or deviations from the Contract Documents. Shop drawings, for each section of the Work shall be numbered consecutively and the numbering system shall be retained throughout all revisions. All Subcontractor submissions shall be made through the Contractor. Each drawing shall have a clear space for the stamps of Architect and Contractor.
- 15.3 Deferred Approvals. Deferred approvals shall be submitted and processed to ensure all DSA and other governmental approvals are secured so as to not delay the Project. There may be additional requirements for deferred approvals in Division 1 of the Specifications. All deferred approvals shall be prepared by Contractor or Contractor's agent early enough so as to not delay the Project. Contractor is aware that Title 24 California Code of Regulations Section 4-317 has specific requirements for deferred approvals as to governing agencies and as to the Architect and Engineer for the Project. As a result, any delay associated with the time for approval by applicable agencies or by the Architect or Architect's consultants shall be Contractor's. Contractor is required to comply with inclusion of Deferred Approvals in the Schedule as required under Article 9
  - 15.3.1 *DSA Approvals Required Prior to Work.* No work on a deferred approval item may proceed on the components until DSA approval is received. Contractor has provided DSA approval time and allowed adequate time for any DSA revisions in Contractor's Schedule as required pursuant to Article 9.
- 15.4 **Submittals and Samples**
  - 15.4.1 *Information Required With Submittals:* Manufacturer, trade name, model or type number and quantities: Information provided must be of sufficient detail to allow Architect and Engineer to compare the submitted item with the specified products and acceptable products listed, in the specification and addenda.
  - 15.4.2 *Description of Use and Performance Characteristics:* Information should be furnished describing the normal use and expected performance of the product. The Architect and Contractor review this information to confirm that the product is appropriate for the intended use.
  - 15.4.3 *Size and Physical Characteristics:* The size and physical characteristics, such as adjustment capabilities, which is reviewed by both the Contractor and Architect. The Contractor has the most available information for comparing adjoining materials and equipment. The Contractor also needs to know the size and weight of the equipment for lifting and handling considerations.
  - 15.4.4 *Finish Characteristics:* The Architect reviews the available finishes and selects the appropriate finish, if the finish was not previously specified in the documents. The Contractor should confirm that finish requirements in the specification are being met by the product.

- 15.4.5 *Contractor Responsible for Jobsite Dimensions:* Some material is custom-fabricated to job conditions, requiring dimensions from the jobsite. These jobsite dimensions are provided by the Contractor as part of the Contractor's responsibilities for the Project and shall be provided prior to release of the product for manufacture. Contractor shall not rely on Architect or Engineers to provide jobsite dimensions.
- 15.4.6 *Full Range of Samples Required (When Specific Items Not Specified).* Except in cases where the exact color and type of item is specified since the District is utilizing items Standardized or pre-selected by District, the full range of color, graining, texture, or other characteristics are anticipated for review in finished products, a sufficient number of samples of the specified materials shall be furnished by the Contractor to indicate the full range of characteristics which will be present in the finished products. Products delivered or erected without Submittal and approval without providing a full range of samples shall be subject to rejection. Except for range samples, and unless otherwise called for in the various sections of the Specifications, samples shall be submitted in duplicate.
- 15.4.7 *Labeling of Samples.* All samples shall be marked, tagged, or otherwise properly identified with the name of the submitting party, the name of the Project, the purpose for which the samples are submitted and the date.
- 15.4.8 *Transmittal letter.* All samples shall be accompanied by a letter of transmittal containing similar information, together with the Specification section number.
- 15.4.9 *Labels and Instructions.* All samples of materials shall be supplied with the manufacturer's descriptive labels and application instructions. Each tag or sticker shall have clear space for the review stamps of Contractor and Architect.
- 15.4.10 *Architect's Review.* The Architect will review and, if appropriate, approve submissions and will return them to the Contractor with the Architect's stamp and signature applied thereto, indicating the timing for review and appropriate action in compliance with the Architect's (or District's) standard procedures. In the cases where a CM is hired by the District, CM may be the party that receives and performance logging and initial processing of the Samples. CM may, in some cases, reject samples that are not in conformance with Contract requirements.
- 15.5 **Submittal Submission Procedure**
  - 15.5.1 *Transmittal Letter and Other Requirements.* All Submittals must be properly identified with the name of the Project and dated, and each lot submitted must be accompanied by a letter of transmittal referring to the name of the Project and to the Specification section number for identification of each item clearly stating in narrative form, as well as "clouding" on the submissions, all qualifications, departures, or deviations from the Contract Documents. Shop drawings, for each section of the Work shall be numbered consecutively and the numbering system shall be retained throughout all revisions. All Subcontractor submissions shall be made through the Contractor. Each drawing shall have a clear space for the stamps of Architect and Contractor. In the case where a CM is hired on the Project, the CM may be designated to receive the Submittals for the Project, log the Submittals, and in some cases reject Submittals that do not conform to Contract requirements.
  - 15.5.2 *Copies Required.* Each Submittal shall include one (1) legible, reproducible (if electronic is available, electronic copies shall also be provided) and five (5) legible prints of each drawing or schedule, table, cut sheet, etc., including fabrication, erection, layout and setting drawings, and such other drawings as required under the various sections of the Specifications, until final acceptance thereof is obtained. Subcontractor

shall submit copies, in an amount as requested by the Contractor, of: (1) manufacturers' descriptive data for materials, equipment, and fixtures, including catalog sheets showing dimensions, performance, characteristics, and capacities; (2) wiring diagrams and controls; (3) schedules; (4) all seismic calculations and other calculations; and (5) other pertinent information as required by the District or Architect.

15.5.3 *Corrections.* The Contractor shall make all corrections required by Architect, District or CM and shall resubmit, as required by Architect or CM, corrected copies of Shop Drawings or new samples until approved. Contractor shall direct specific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections required by the Architect on previous submissions. Professional services required for more than one (1) re-review of required Submittals of Shop Drawings, product data, or samples are subject to charge to the Contractor pursuant to Article 10.4.

15.5.4 *Approval Prior to Commencement of Work.* No portion of the Work requiring a shop drawing or sample submission or other Submittal shall be commenced until the submission has been reviewed by Contractor and Architect (and CM, if applicable) and approved by Architect (and CM where applicable) unless specifically directed in writing by the Architect. All such portions of the Work shall be in accordance with approved Shop Drawings and samples.

15.5.5 *District's Property.* All Submittals, Shop Drawings, computer disks, constructability reviews, schedules, annotated specifications, samples and other Submittals shall become the District's property upon receipt by the District or Architect.

15.6 Schedule Requirements for Submittals. Contractor shall obtain and shall submit all required Submittals (i.e. Shop Drawings, Deferred Approvals, Samples, etc.), in accordance with Contractor's "Schedule for Submission of Shop Drawings and Samples" as required in the scheduling portion of the CSA at Article 9 and the Specifications (as long as the Specifications do not conflict with CSA. In the case of conflict, the conflicting provision shall be controlled by the CSA and the remaining specification sections shall be interpreted as if the CSA language is inserted) with such promptness as to cause no delay in its own Work or in that of any other contractor or Subcontractor but in no event later than thirty five (35) days after the Notice to Proceed is issued except in the specific cases noted as an exception as set forth below. No extensions of time will be granted to Contractor or any Subcontractor because of its failure to have Shop Drawings and samples submitted in accordance with this Article 15 and the Schedule. Each Subcontractor shall submit all Shop Drawings, samples, and manufacturer's descriptive data for the review of the District, the Contractor, and the Architect through the Contractor.

15.6.1 *Consideration of Schedule.* Contractor has considered lead times, DSA or other agency governmental review times, Architect or Engineer review times, manufacturing seasons, and specific long lead procurement concerns for all submittals for the Project.

15.6.1.1 All Submittals for the Project except those specifically agreed upon by District and Architect, in writing, shall be specifically incorporated into the Submittal section of the Schedule so as to not delay the Work. The agreement to allow a later Submittal does not mean that Article 15.6 is waived. Contractor shall order materials and ensure prices are honored and secured for the Project.

a. Structural Steel may be included as a Submittal later than 35 days if Structural Steel is a significant portion of the Work, at least one or some of the Project is a structural steel structural system, or as specifically agreed upon by the Architect or District.

- b. It is specifically agreed that submissions of structural steel Submittals shall not be piecemeal (unless some portion is requested separately by the Owner or Architect), shall provide complete designs, shall be stamped by the Structural Steel Subcontractor, Contractor, and Structural Steel Subcontractor's structural engineer at time of submission and as further addressed in this Article.
- c. In no case shall the submission of Structural Steel Drawings delay the critical path for the schedule. If a Milestone is provided for submission of complete structural steel Shop Drawings then the date shall be no later than as set forth in the Milestone

15.6.1.2 Exceptions to Submittal Within Thirty-Five (35) Days by Written Agreement. A written request detailing the specific reasons for a submission later than 35 days due to complexity of design, or non-critical path status of the Submittal shall be submitted at the time the Baseline Schedule is submitted. The Baseline Schedule shall not include a delayed Submittal until written agreement is provided. In addition to the request for providing a Submittal after the thirty-five (35) day period, a copy of the Contract with the Subcontractor who shall be performing the Submittal, a written statement from the Subcontractor verifying that work has commenced on the Submittal and providing Subcontractor's own schedule of milestones and completion dates, and a corresponding Submittal designation in the Schedule as required under Article 9

- a. Approval of a delayed Submittal shall not result in any increase in the Contract Price or result in an extension of time for the completion of the Project.

15.6.1.3 Piecemeal Submissions of Submittals. Piecemeal Submittals mean providing portions of Shop Drawings or Submittals as they are being completed. The submission of piecemeal Submittals results in the appearance of a submission when there is inadequate information for the Architect or Engineer to adequately review a submission. Piecemeal differs from submission of complete buildings or phases of buildings or complete assemblies. The Architect may agree to allow submission of single buildings or areas as long as the Submittals are complete.

## 15.7 General Submittal Requirements

15.7.1 *Contractor Submittal Representations.* By submitting Shop Drawings, product data, samples, etc., the Contractor represents that it has determined and verified all materials, field measurements, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents, including the construction schedule.

15.7.2 *Contractor Coordination.* By submitting Shop Drawings, Submittals, product data, samples, etc., the Contractor represents that it has determined and verified all materials, field measurements, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents, including the construction

schedule. Contractor shall stamp, sign, and date each Submittal indicating its representation that the Submittal meets all of the requirements of the Contract Documents and evidence Contractor's review through execution of the following stamp to be placed on each Shop Drawings:

"The [contractor] has reviewed and approved the field dimensions and the construction criteria, and has also made written notation regarding any information in the Shop Drawings and Submittals that does not conform to the Contract Documents. This Shop Drawing or Submittal has been coordinated with all other Shop Drawings and Submittals received to date by me as Contractor and this duty of coordination has not been delegated to Subcontractors, material suppliers, the Architect, or the Engineers on this Project.

\_\_\_\_\_  
Signature of Contractor and date

- 15.7.3 *No Deviation from Contract Documents.* The submission of the Shop Drawings, product data, samples, etc., shall not deviate from the requirements of the Contract Documents including detailing and design intent which is specifically outlined in Contract Documents except as specifically authorized by the Architect or through an accepted substitution pursuant to Article 16. All deviations from the Contract Documents shall be narratively described in a transmittal accompanying the Shop Drawings. However, Shop Drawings shall not be used as a means of requesting a substitution, the procedure for which is defined in Article 16, "Substitutions."
- 15.7.4 *Contractor Responsibility for Shop Drawings Conformance to Contract Documents.* Review by District and Architect shall not relieve the Contractor or any Subcontractor from its responsibility in preparing and submitting proper Shop Drawings in accordance with the Contract Documents.
- 15.7.5 *Incomplete Submittals.* Any submission, which in Architect's opinion is incomplete, contains errors, or has been checked superficially will be returned unreviewed by the Architect for resubmission by the Contractor.
- 15.7.6 *Shop Drawings and Submittals Shall Not Be Used as a Method to Make a Substitution.* Shop drawings and Submittals shall not be used as a means of requesting a substitution or to make changes in the Contract Documents. If changes are made to the Contract Documents through the Shop Drawings, the Architect shall have the right to reject the Submittal. If the Architect does not note the deviation from the approved Construction Documents, the Contractor is still responsible for the change and the Architect or the District may require the Shop Drawings be revised to properly reflect the approved Contract Documents. The Architect or District may also require that the Contractor bear all costs under Article 10.4 and consequential damages associated with a CCD to revise Construction Documents to accommodate the deviation from approved Construction Documents.
- 15.7.7 *Extent of Review.* In reviewing Shop Drawings, the Architect will not verify dimensions and field conditions. The Architect will review and approve Shop Drawings, product data, samples, etc., for aesthetics and for conformance with the design concept of the Work and the information in the Contract Documents. The Architect's review shall neither be construed as a complete check which relieves the Contractor, Subcontractor, manufacturer, fabricator, or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents unless the Contractor has, in writing, called the Architect's attention to the deviations at the time of submission. The Architect's review shall not relieve the

Contractor or Subcontractors from responsibility for errors of any sort in Shop Drawings or schedules, for proper fitting of the Work, coordination of the differing Subcontractor trades and Shop Drawings and Work which is not indicated on the Shop Drawings at the time of submission of Shop Drawings. Contractor and Subcontractors shall be solely responsible for any quantities which may be shown on the Submittals or Contract Documents.

**16. REQUEST FOR SUBSTITUTIONS**

- 16.1 For purposes of this provision the term "substitution" shall mean a change in product, material, equipment, or method of construction from those required by the Construction Documents proposed by the Contractor.
- 16.2 Public Contract Code section 3400 does not apply to this agreement since the materials, services, and equipment used has been investigated as part of the Due Diligence investigation by Contractor and incorporated in the overall GMP.
- 16.3 Contractor may submit requests together with substantiating data for substitution of any "or equal" material, process or article. Any savings generated from the substitution shall be considered Project Savings under Article 7. The District shall not be responsible for any costs of Contractor associated with "or equal" substitution requests. The District has the complete and sole discretion to determine if a material, process or article is an "or equal" material, process or article that may be substituted. The data required to substantiate requests for substitutions of an "or equal" material, process or article data shall include a signed affidavit from the Contractor stating that the substituted "or equal" material, process or article is equivalent to that specified in the specification in every way except as listed on the affidavit. Substantiating data shall also include:
1. Is equal in quality/service/ability to the Specified Item;
  2. Will entail no changes in detail, construction, and scheduling of related work;
  3. Will be acceptable in consideration of the required design and artistic effect;
  4. Will provide no cost disadvantage to the District;
  5. Will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts; and
  6. Will required no change of the construction schedule
- 16.4 Failure to submit all the needed substantiating data, including the signed affidavit, to the Architect in a timely fashion so that the substitution can be adequately reviewed may result in the rejection of the proposed substitution. The District is not obligated to review multiple substitution submittals for the same product or item due to the Contractor's failure to submit a complete package initially.
- 16.5 Contractor shall bear the costs of all architectural and engineering work, DSA CCD review fees, and other costs associated with the review of submittals for substitution. See Article 10.4.
- 16.6 Contractor agrees to include the provisions of this Article in all Subcontractor contracts.

**17. EXTRA WORK/MODIFICATIONS (INCLUSION OF CCD COSTS, DSA COSTS, AND AN ICD PROCESS)**

- 17.1 No Changes Without Authorization. There shall be no change whatsoever in the drawings, specifications, or in the Work without an executed Change Order, Change Order Request, Immediate Change Directive, or order by the Architect for a minor change in the Work as herein provided. District shall not be liable for the cost of any extra work or any substitutions, changes,

additions, omissions, or deviations from the Drawings and Specifications unless authorized District representative has approved the cost in writing by Change Order or executed Construction Change Document. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications. Notwithstanding anything to the contrary in this Article 17, all Change Orders shall be prepared and issued by the Architect and shall become effective when executed by the authorized District representative (utilizing either a Construction Contingency Amount or a District Contingency Amount), the Architect, and the Contractor.

CONTRACTOR UNDERSTANDS, ACKNOWLEDGES, AND AGREES THAT THE REASON FOR THIS NOTICE REQUIREMENT IS SO THAT DISTRICT MAY HAVE AN OPPORTUNITY TO ANALYZE THE WORK AND DECIDE WHETHER THE DISTRICT SHALL PROCEED WITH THE CHANGE ORDER OR ALTER THE PROJECT SO THAT SUCH CHANGE IN WORK BECOMES UNNECESSARY AND TO AVOID THE POSSIBLE DELAYS ASSOCIATED WITH THE ISSUANCE OF A NOTICE OF NON-COMPLIANCE.

- 17.2 Notices of Non-Compliance. Contractor deviation or changes from approved Construction Documents may result in the issuance of a Notice of Non-Compliance (See DSA Form 154). Contractor is specifically notified that deviations from the Construction Documents, whether major or minor, may result in the requirement to obtain a DSA Construction Change Document to correct the Notice of Non-Compliance. (See Article 17.4.1.1 for Definition of CCD). In some cases, the lack of a DSA approved CCD AND verification from the Inspector that a Notice of Non-Compliance has been corrected may result in a critical path delay to the next stage of Work on the Project. Specifically, a deviation from approved Construction Documents may prevent approval of the category of Work listed in the DSA 152 Project Inspection Card. Any delays that are caused by the Contractor's deviation from approved Construction Documents shall be the Contractor's responsibility.
- 17.3 Architect Authority. The Architect will have authority to order minor changes in the Work that do not involve DSA Approval not involving any adjustment in the Contract Sum, or an extension of the Contract Time.
- 17.4 CONSTRUCTION CHANGE DOCUMENT (CCD Category A, and CCD Category B) and IMMEDIATE CHANGE DIRECTIVE (ICD)

17.4.1 *Definitions*

17.4.1.1 Construction Change Document (CCD). A Construction Change Document is a DSA term that is utilized to address changes to the DSA approved Construction Documents. There are two types of Construction Change Documents. (1) DSA approved CCD Category A (DSA Form 140) for Work affecting Structural, Access or Fire-Life Safety of the Project which will require a DSA approval; and, (2) CCD Category B (DSA Form 140) for work NOT affecting Structural Safety, Access Compliance or Fire and Life Safety that will not require a DSA approval (except to confirm that no Approval is required);

17.4.1.2 Immediate Change Directive (ICD). An Immediate Change Directive is a written order to the Contractor prepared by the Architect and signed by the District (and CM if there is a CM on the Project) and the Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The District may by ICD, without invalidating the Contract, direct immediate changes in the Work within the general scope of the Contract consisting



of additions, deletions, or other revisions within. If applicable, the Contract Sum and Contract Time will be adjusted accordingly.

In the case of an Immediate Change Directive being issued, Contractor must commence Work immediately or delays from failure to perform the ICD shall be the responsibility of Contractor and the failure to move forward with Work immediately shall also be grounds for Termination under Article 19 or determination of partial default under Article 12.2.

An ICD does not automatically trigger an Article 20 Dispute or Claim. Contractor must timely follow the procedures outlined at Article 20 and this Article where applicable.

Refer to Forms for a copy of the proposed Immediate Change Directive form.

17.4.1.3

Use to Direct Change. An ICD shall be used to move work forward immediately and to avoid delay. In some cases, an ICD shall be issued in the absence of agreement on the terms of an Extra, or RFP. A copy of an ICD form is provided in the Forms included with this CSA. The anticipated not to exceed price for the Work will be inserted into the ICD. In the case of an ICD issued to correct Contractor Deficiencies or to correct a Contractor caused Notice of Non-Compliance, the ICD may be issued with \$0 and 0 time. Contractor may prepare an Extra associated with the ICD pursuant to Article 17. However, Contractor shall proceed with all Work required under an Approved ICD immediately upon issuance. Failure to proceed with the Work under an ICD shall be grounds for Termination for Cause under Article 19 or take over the Work under Article 12.2.

If adequate time exists, an ICD may be subject of an RFP for pricing and determination if any time that may be required. However, if an RFP is not completed, Contractor shall immediately commence Work when an ICD is issued. If the RFP is incomplete, it may still be completed to be submitted for Pricing Purposes as long as the PR is submitted within the timeline provided by the PR, or within 10 days following issuance of the ICD.

17.4.1.4

ICD Issued Over a Notice of Non-Compliance or to Cover Work Subject to a DSA 152 Sign Off. In some cases, an ICD shall be for the purpose of proceeding with Work to keep the Project on Schedule and as an acknowledgement by the District that Contractor is proceeding with Work contrary to a Notice of Non-Compliance, prior to issuance of a DSA approved CCD Category A, or to direct the covering of Work which has not yet received a DSA 152 Inspection Approval to move forward.

- a. *Contractor Compliance with all Aspects of an ICD.* Contractor is to undertake the ICD and comply with all aspects of the Work outlined in the ICD. Inspector is to inspect the Work pursuant to the ICD. Failure to follow the ICD may result in deduction of the ICD Work under Article 12.2 or Termination of the Contractor pursuant to Article 19.
- b. *Exception in the Case of DSA Issued Stop Work Order.* Contractor must proceed with an ICD even if a CCD has not

been approved by DSA except in the case of a DSA issued Stop Work Order. If a DSA Stop Work Order is issued, Contractor must stop work and wait further direction from the District.

- c. *ICD Due to Contractor Deficiency or Contractor Caused Notice of Non-Compliance.* If an ICD is issued to correct a Contractor Deficiency or a Contractor caused notice of Non-Compliance, Contractor specifically acknowledges responsibility for all consequential damages associated with the Contractor Deficiency or Contractor Caused Notice of Non-Compliance and all consequential damages and costs incurred to correct the deficiency under Article 10.4.

- 17.5 Extras Request. Extra work or a modification or reduction of requirements or of methods of performing the Construction which differ from the work or requirements set forth in the Construction Documents ("Extra Work/Modifications"); and for such purposes, the District may at any time during the life of this Construction Services Agreement by written order, make such changes as it shall find necessary from Construction Contingency if District approves such request in writing. The costs of the Extra Work/Modifications, as established pursuant to this Article, shall be deducted from the Construction Contingency as mutually agreed in writing or the Errors and Omissions Contingency or the Unforeseen Allowance as determined by the District, and shall not affect the GMP.

- 17.5.1 *Format.* The following format shall be used, as applicable by the District and the Contractor to communicate proposed additions and deductions to the Contract. A copy of a proposed Construction Change Document form is provided in Division 1 of the Specifications. The most stringent guidelines will apply to all forms.

	<u>EXTRA</u>	<u>CREDIT</u>
(a) Material (attach itemized quantity and unit cost plus sales tax)	_____	_____
(b) Equipment (attach invoices)	_____	_____
(c) Labor Not to Exceed Applicable Prevailing Wage Rates (attach itemized hours and rates)	_____	_____
(d) Subtotal (a-d)	_____	_____
(e) If Subcontractor performed work, add Subcontractor's overhead and profit to portions performed by Subcontractor, not to exceed 10% of item (d).	_____	_____
(f) Subtotal	_____	_____

		<u>EXTRA</u>	<u>CREDIT</u>
(g)	Contractor's Overhead and Profit: Not to exceed 10% of Item (d) if Contractor performed the work. No more than 5% of Item (d) if Subcontractor performed the work. If work was performed by Contractor and Subcontractors, portions performed by Contractor shall not exceed 10% if Item (d), and portions performed by Subcontractor shall not exceed 10% of Item (d)		
(h)	Subtotal	_____	_____
(i)	Bond not to exceed one percent (1%) of Item (h)	_____	_____
(j)	TOTAL	_____	_____
(k)	Time/ Days	_____	_____

The undersigned Contractor approves the foregoing Extra Work as to the changes, if any, and the contract price specified for each item and as to the extension of time allowed, if any, for completion of the entire work on account of said Extra Work, and agrees to furnish all labor, materials and service and perform all work necessary to complete any additional work specified therein, for the consideration stated herein. It is understood that said Extra Work shall be effective upon approval from the District's Designee if such amounts are against the GMP and if Owner Contingency is used when approved by the Governing Board of the District.

It is expressly understood that the value of such extra Work or changes, as determined by any of the aforementioned methods, expressly includes any and all of the Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs, expenses, damages or time extensions not included are deemed waived.

The Contractor expressly acknowledges and agrees that any change in the Work performed shall not be deemed to constitute a delay or other basis for claiming additional compensation based on theories including, but not limited to, acceleration, suspension or disruption to the Project.

17.5.2 Should Contractor claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation (i) obligates the District to pay additional compensation to the Contractor; or (ii) obligates the District to grant an extension of time for the completion of the Construction Services Agreement; or (iii) constitutes a waiver of any provision in this Construction Services Agreement, CONTRACTOR SHALL NOTIFY THE DISTRICT, IN WRITING, OF SUCH CLAIM AS SOON AS POSSIBLE, BUT IN NO EVENT WITHIN MORE THAN TEN (10) BUSINESS DAYS FROM THE DATE CONTRACTOR HAS ACTUAL OR CONSTRUCTIVE NOTICE OF THE CLAIM. CONTRACTOR SHALL ALSO PROVIDE DISTRICT WITH SUFFICIENT WRITTEN DOCUMENTATION SUPPORTING THE FACTUAL BASIS OF THE CLAIM under Article 20. Contractor shall be required to certify under penalty of perjury the validity and accuracy of any claims submitted. The Contractor's failure to notify the District within the ten (10) business day period shall be deemed a waiver and relinquishment of the claim against the District. If such notice be given within the specified time, the procedure for its consideration shall be as stated above in this Section.

17.5.3 All costs associated with the Extra Work/Modification may be in terms of time, money or both.

17.6 Deductive Change Orders

- 17.6.1 All Deductive Change Order(s) must be prepared utilizing the form under Paragraph 17.5 (a)-(d) only setting forth the actual costs incurred. Except in the case of an Article 12.2 or 29.4 Deductive Change Order where no mark-up shall be allowed, Contractor will be allowed a maximum of 5% total profit and overhead.
- 17.6.2 For Unilateral Deductive Change Orders, or where credits are due from Contractor for Allowances, Deductive Items, Inspection, Damage, DSA CCD review costs, Architect or Inspector costs for after hours or corrective services, Work removed from the Agreement under Article 12.2 or Article 29.4, there shall be no mark-up.
- 17.6.3 District may, at any time, after a Deductive Change Order is presented to Contractor by District for items under Article 12.2 or Article 29.4 of if there is disagreement as to the Deductive Change Order, issue a unilateral Deductive Change Order on the Project and deduct the Deductive Change Order from a Progress Payment or the Retention Payment.

18. TIME OF COMPLETION

- 18.1 ONCE THE DISTRICT HAS ISSUED A NOTICE TO PROCEED, CONTRACTOR SHALL PROCEED WITH THE CONSTRUCTION OF THE PROJECT WITH REASONABLE DILIGENCE. CONTRACTOR AGREES THAT THE PROJECT WILL BE SUBSTANTIALLY COMPLETE WITHIN THE CALENDAR DAYS DESIGNATED IN ARTICLE 3 FROM THE NOTICE TO PROCEED. SAID CONTRACT TIME MAY BE EXTENDED FOR SUCH PERIODS OF TIME AS ALLOWED UNDER THE CONTRACT DOCUMENTS. IF THE PROJECT IS NOT SUBSTANTIALLY COMPLETED IN ACCORDANCE WITH THE FOREGOING, IT IS UNDERSTOOD THAT THE DISTRICT WILL SUFFER DAMAGE SINCE CONTRACTOR HAS OVERSTAYED ITS LEASE TERM. IT BEING IMPRACTICAL AND INFEASIBLE TO DETERMINE THE AMOUNT OF ACTUAL DAMAGE, IT IS AGREED THAT CONTRACTOR'S EXTENSION OF THE LEASE SHALL RESULT IN LIQUIDATED DAMAGES, AND NOT AS A PENALTY, THE SUM SET FORTH IN ARTICLE 3 FOR EACH CALENDAR DAY OF DELAY UNTIL WORK IS SUBSTANTIALLY COMPLETED. CONTRACTOR AND ITS SURETY SHALL BE LIABLE FOR THE AMOUNT THEREOF. ANY MONEY DUE OR TO BECOME DUE THE CONTRACTOR MAY BE RETAINED BY THE DISTRICT TO COVER SAID LIQUIDATED DAMAGES FOR OVERSTAYING THE LEASE. SHOULD SUCH MONEY NOT BE SUFFICIENT TO COVER SAID LIQUIDATED DAMAGES, THE DISTRICT SHALL HAVE THE RIGHT TO RECOVER THE BALANCE FROM THE CONTRACTOR OR ITS SURETIES, WHO WILL PAY SAID BALANCE FORTHWITH.
- 18.2 Within five (5) business days after the Project commencement date in the District's Notice to Proceed, Contractor shall furnish District with a Baseline CPM (Critical Path) Schedule pursuant to Article 9. The Contractor shall include the District's occupancy requirements showing portions of the Projects having occupancy priority.
- 18.3 Contractor shall not be charged for liquidated damages, as set forth in the Agreement, for materially differing underground soil conditions than those outlined in the soils report and from hazardous substances that are encountered that are not documented in the Contract Documents or in the Due Diligence Documents provided to Contractor.
  - 18.3.1 In case of encountering such unforeseen conditions noted above, Contractor shall notify the District in writing immediately and no later than seven (7) days following encountering the unforeseen condition. After providing written notice, Contractor shall test and provide District with Test results (unless District choses to test) and shall proceed with Work based on the Test results. A Change Order pursuant to Article 17 shall be submitted. All time and expenses shall be verified with the Inspector or District

Designee either on the day the extra work occurs, but no later than 10 am the following business day.

- 18.3.2 Change Orders associated with approved unforeseen conditions shall be billed as Change Order Work and allocated to the Unforeseen Allowance, and if the Unforeseen Allowance is exceeded, the District, in its sole and absolute discretion, may allocate such costs to the District Contingency to the extent unforeseen conditions as defined in this Article are encountered.
- 18.4 Contractor shall within ten (10) calendar days of beginning of any such delay notify District in writing of causes of delay. Thereupon District shall ascertain the facts and extent of delay and grant extension of time for completing work when, in its judgment, the findings of fact justify such an extension. Extension of time shall apply only to that portion of work affected by the delay, and shall not apply to other portions of work not so affected. Contractor agrees that the extension of time granted under this Article shall be its sole and exclusive remedy for the consequences of any delay described above. For any such delay resulting from the actions or inactions of Architect, District, or their officers, agents, and employees, or changes to the scope of the Work which impact the schedule, Contractor shall be entitled to reimbursement for its reasonable additional costs resulting from such delay, but not any additional profit or fee.
- 18.5 Contractor acknowledges the extreme importance of promptly notifying and thoroughly documenting any request for time extension and further specifically acknowledges that District will suffer extreme prejudice should Contractor fail in any way to comply with this requirement. Failure to comply with the procedures and time limits established in this Article shall constitute a waiver of such request. Evidence presented by Contractor that District had actual notice of the time extension request, that District was not prejudiced by Contractor's failure to comply with this requirement, and/or that District considered Contractor's request despite Contractor's failure to strictly comply with this provision shall not render this requirement unenforceable.
- 18.6 Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its work at no additional cost or advance payment from District to assure that there will be no delays. An extension of time will not be granted for a delay caused by a shortage of materials.
- 18.7 Contractor shall not be entitled to additional compensation for delays within its control. Contractor is aware that governmental agencies, such as the Department of General Services, gas companies, electrical utility companies, water districts and other agencies may have to approve Contractor-prepared drawings or approve a proposed installation. In the event of delays to the Project from such agencies for which Contractor has no control, provided such delays are not caused by Contractor's or any Subcontractor's acts or omissions, Contractor may be entitled to a time extension for such delays, but shall not be allowed additional compensation for the costs of such delays not impacting the Project's critical path.
- 18.8 District reserves the right to occupy any building or portion thereof or use any improvement contemplated by the Contract Documents prior to the completion of the entire Project. A list of work to be completed and corrected by Contractor, if any, shall be prepared and agreed to between District and Contractor before any such occupancy or use. Such occupancy or use shall not operate as an acceptance of any part of the Project but shall start the guaranty-warranty period on the structure or portion thereof so occupied or improvement or equipment so used; provided, however, that such occupancy or use shall not start the guaranty-warranty period as to items appearing on the list of work yet to be completed and corrected or as to structures or improvements (or portions thereof) that are not occupied or used. No such occupancy or use shall be deemed to have occurred unless and until District has given Contractor written notice of its intention to so occupy or use any particular structure or improvement specifying the portion or portions of the structure, improvement or equipment which will be deemed so occupied or used. District and Contractor shall take reasonable steps to obtain the consent of Contractor's insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would

cause cancellation, lapse of or reduction of such insurance. Such occupancy or use by District shall relieve Contractor of (and District shall assume) the responsibility for injury or damage to said occupied or used portions of the Project resulting from use by District or the public or from the action of the elements or from any other cause, except injury or damage resulting from the operations, negligence or intentional acts of Contractor, any Subcontractors or materialmen of any tier, or their officers, employees or agents.

- 18.9 Contractor shall not be charged for Liquidated Damages because of any delays in completion of Work which are not the fault or negligence of Contractor or its Subcontractors, arising from Rain Float or Project Float, including acts of God, as defined in Public Contract Code section 7105, acts of enemy, epidemics, pandemics, and quarantine restrictions. Any delays caused by acts of God, as defined in Public Contract Code section 7105, acts of enemy, epidemics, pandemics, quarantine restrictions, Project shutdowns, suspensions, or any orders issued a federal, state, local or other governmental authority (collectively, "Force Majeure Events") shall be deemed non-compensable excusable delays. Contractor shall within five (5) calendar days of beginning of any such delay notify District in writing of causes of delay; thereupon District shall ascertain the facts and extent of delay and grant extension of time for completing Work when, in its judgment, the findings of fact justify such an extension. Extensions of time shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected. An extension of time may only be granted after proper compliance with Article 8.3 requiring preparation and submission of a properly prepared CPM schedule.

- 18.9.1 Excusable Delay Is Not Compensable. No extended overhead, general conditions costs, impact costs, out-of-sequence costs or any other type of compensation, by any name or characterization, shall be paid to the Contractor for any delay to any activity not designated as a critical path item on the latest approved Project schedule or if caused by Force Majeure Events.

## 19. **TERMINATION OF AGREEMENT**

### 19.1 **Termination for Breach.**

- 19.1.1 If the Contractor refuses or fails to proceed with the construction of the Project or any separable part thereof with such diligence as will insure its completion within the time specified by this Construction Services Agreement or any extension thereof, or fails to Complete the Project within the Contract Time, or if the Contractor should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or the Contractor or any of its Subcontractors should violate any of the provisions of this Construction Services Agreement, the District may serve written notice upon the Contractor and its Surety of the District's intention to terminate this Construction Services Agreement. This notice of intent to terminate shall contain the reasons for such intention to terminate this Construction Services Agreement and a statement to that effect that the Contractor's right to perform work on the Project shall cease and terminate upon the expiration of ten (10) days unless such violations have ceased and arrangements satisfactory to the District have been made for correction of said violations.
- 19.1.2 In the event that the District serves such written notice of termination upon the Contractor and the Surety, the Surety shall have the right to take over and perform this Construction Services Agreement. If the Surety does not: (1) give the District written notice of Surety's intention to take over and commence performance of this Construction Services Agreement within fifteen (15) days of the District's service of said notice of intent to terminate upon Surety; and (2) actually commence performance of this Construction Services Agreement within thirty (30) days of the District's service of said notice upon Surety; then the District may take over the Project and prosecute

the same to completion by separate contract(s) or by any other method it may deem advisable for the account and at the expense of the Contractor.

- 19.1.3 In the event that the District elects to obtain an alternative performance of the Construction Services Agreement as specified above: (1) the District may, without liability for so doing, take possession of and utilize in completion of the Project such materials, appliances, plants and other property belonging to the Contractor that are on the site and reasonably necessary for such completion; and (2) Surety shall be liable to the District for any cost or other damage to the District necessitated by the District securing an alternate performance pursuant to this Article.

19.2 Termination for Convenience.

- 19.2.1 The District may terminate performance of the Project called for by the Contract Documents in whole or, from time to time, in part, if the District determines that a termination is in the District's interest.

- 19.2.2 The District shall terminate all or any part of the Project upon delivery to the Contractor of a "Notice of Termination" specifying that the termination is for the convenience of the District, the extent of termination, and the effective date of such termination.

- 19.2.3 After receipt of Notice of Termination, and except as directed by the District's Representative, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:

1. Stop Work as specified in the Notice of Termination.
2. Complete any work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
3. Leave the Property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
4. Terminate all subcontracts to the extent that they relate to the portions of the work terminated.
5. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Construction Services Agreement.
6. Submit to the District's Representative, within ten (10) days from the Project termination date found in the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Project termination date, including termination costs related to demobilizing and closing out the Project, found in the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the District's exercise of its right to terminate this Construction Services Agreement pursuant to this clause, which costs the Contractor is authorized under the Construction Services Agreement to incur, shall: (i) be submitted to and received by the District no later than thirty (30) days after the Project termination date found in the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as

“Termination Costs occasioned by the District’s Termination for Convenience.”

19.2.4 Termination of the Construction Services Agreement shall not relieve the Surety of its obligation for any just claims arising out of or relating to the work performed on the Project.

19.2.5 In the event that the District exercises its right to terminate this Construction Services Agreement pursuant to this clause, the District shall pay the Contractor, upon the Contractor’s submission of the documentation required by this provision, and other applicable provisions of the Construction Services Agreement the following amounts not already paid to Contractor:

1. All actual costs incurred according to the provisions of this Construction Services Agreement including but not limited to insurance costs incurred in connection with the Project.
2. A reasonable allowance for profit on the cost of the work on the Project performed and not otherwise paid for the District, provided Contractor establishes to the satisfaction of the District, that it is reasonably probable that the Contractor would have made a profit had the Construction Services Agreement been completed and provided further, that the profit allowed shall in no event exceed five percent (5%) of costs. In no event shall the total amount exceed GMP.
3. A reasonable allowance for Contractor’s administrative costs in determining the amount payable due to termination of the Construction Services Agreement under this Article.

19.3 Termination of Agreement by Contractor. The Contractor may terminate the Construction Services Agreement upon ten (10) days written notice to the District, whenever: (1) there is a substantial failure of performance on the part of the District; or (2) the District shall elect not to appropriate funds and/or not to make two (2) successive Sublease Prepayments (if exercised by the District in its sole discretion) following the receipt by District of a request from the Contractor in its capacity as Lessor for each such Sublease Prepayment pursuant to Article 21 of the Sublease. In the event of such termination, the Contractor shall have no claims against the District except for payment for the value of the work performed on the Project as of the date of termination.

19.4 Assignment of Subcontractors and Suppliers. If the Contract is Terminated, Contractor shall provide District copies of all subcontracts, purchase orders, addenda, invoices, payment records, and Project files associated with each Subcontractor and Material Supplier. The District shall have the option to assume any Subcontracts, contracts or purchase orders the District chooses. To the extent that vendors are not paid in full for the labor, materials, or services provided, Contractor shall provide an accounting statement showing the amounts paid and the amounts due to the Subcontractor and a statement on the anticipated payment status associated with the Termination.

19.5 Continuation of Work During Disputes. In the event of a dispute between the parties as to performance of the work or the interpretation of this contract, or payment dispute, the parties shall attempt to resolve the dispute. Pending resolution of this dispute, Contractor agrees to continue the work diligently to completion and shall neither rescind nor terminate the agreement.

## 20. RESOLUTION OF AGREEMENT CLAIMS

20.1 Decision of Architect. “Disputes” or “Claims” as defined in Article 20.9.1.1 between District and Contractor involving money or time, including those alleging an error or omission by the Architect shall be referred initially to the Architect for action as provided in Article 20.2 within ten (10) days



after Contractor's Article 17 request for extra work/ modification is denied. If there is a CM, the CM shall receive the Dispute and may review and also assemble opinions and documents to assist the Architect. A decision by the Architect, as provided in Article 20.5, shall be required as a condition precedent to proceeding with remedies set forth in Article 20.9 as to all such matters arising prior to the date Retention Payment Application is due, regardless of whether such matters relate to execution and progress of the Work, or the extent to which the Work has reached Final Completion.

The condition precedent of an Architect decision shall be waived if: (1) the position of Architect is vacant; (2) the Architect has failed to take action required under Article 20.5 within the time periods required therein; or (3) the Dispute or Claim relates to a stop notice claim not arising from any extra Change Order or Immediate Change Directive for which approval has not been provided.

- 20.2 Architect's Review. The Architect (and CM) will review the Dispute and take one or more of the following preliminary actions upon receipt of a Dispute: (1) request additional supporting data from the claimant; (2) submit a schedule to the parties indicating when the Architect expects to take action; (3) reject the Dispute in whole or in part, stating reasons for rejection; (4) recommend approval of the Dispute; or (5) suggest a compromise. The Architect may also, but is not obligated to, notify the Surety, if any, of the nature and amount of the Dispute..

20.2.1 Architectural Immunity. Architect review of Disputes and Claims shall be impartial and meant to resolve Disputes and Claims. Pursuant to the case, Huber, Hunt & Nichols, Inc. v. Moore (1977) 67 Cal.App.3d 278, the Architect is provided a quasi-judicial immunity for interpreting and deciding Disputes and Claims between the District and Contractor.

- 20.3 Documentation if Resolved. If a Dispute has been resolved, the Architect (and/or CM) will prepare a Change Order or obtain appropriate documentation to document the terms for Board approval.

- 20.4 Actions if Not Resolved. If a Dispute has not been resolved and all documentation requested pursuant to Article 20.2 has been provided, the Contractor shall, within ten (10) days after the Architect's initial response, assemble all the documents involved in the Dispute including copies of all back-up documentation of costs and the basis for the Dispute and take one or more of the following actions: (1) modify the initial Dispute; (2) notify the Architect that the initial Dispute stands; or (3) supplement with additional supporting data and re-submit to the Architect under Article 20.2.

- 20.5 Architect's Written Decision. If a Dispute has not been resolved after consideration of the foregoing and of other evidence presented by the parties or requested by the Architect, the Architect (or Architect through CM) shall provide a written decision twenty (20) days after compliance with Article 20.4. Upon expiration of such time period, the Architect (or Architect through CM) will render to the parties its written decision relative to the Dispute, including any change in the Contract Sum or Contract Time or both. The Architect may also request reasonable additional time to complete Architect's written decision.

If the resolution of the Dispute by the Architect is not satisfactory to the Contractor and copies of all back-up documentation of costs and the basis for the Dispute is fully articulated in a package of material that is complete, the Contractor may then submit a Claim to the District under Article 20.9.

- 20.6 Continuing Contract Performance. Pending final resolution of a Dispute or Claim, including, negotiation, mediation, arbitration, or litigation, the Contractor shall proceed diligently with performance of the Contract, and the District shall continue to make any undisputed payments in accordance with the Contract (less any withholdings or offsets). If the Claim is not resolved, Contractor agrees it will neither rescind the Contract nor stop the progress of the work, but Contractor's sole remedy shall be to submit such controversy to determination by a court of

competent jurisdiction in the county where the Project is located, after the Project has been completed, and not before.

20.6.1 *District's Option to Submit Individual Disputes to Arbitration during Claims and Disputes Process.* At the District's sole option, in order to more efficiently resolve Claims during the Project and prior to the completion of the Claims Process, pursuant to Government Code section 9201, the District may submit individual Disputes or Claims for binding arbitration and Contractor agrees to the resolution of for each individual Dispute or Claim by an Arbitrator, including resolution of time and delays. If binding arbitration is utilized for individual Disputes or Claims, such resolution is full and final as to that particular Dispute or Claim. THIS INDIVIDUAL DISPUTE ARBITRATION PROCESS IS NOT AN ARBITRATION CLAUSE AND SHALL NOT BE CONSTRUED AS AN AGREEMENT TO ARBITRATE. THIS INDIVIDUAL DISPUTES ARBITRATION PROCESS IS FOR THE SOLE PURPOSE OF STREAMLINING AND RESOLVING DISPUTES OR CLAIMS DURING CONSTRUCTION AND SHALL BE REQUESTED ON SPECIFIC INDIVIDUAL ITEMS BY THE DISTRICT PRIOR TO RETENTION PAYMENT (EVEN IF THERE ARE DEDUCTIONS MADE FROM RETENTION PAYMENT) WHICH REPRESENTS THE FINAL COMPLETION OF THE PROJECT.

20.6.1.1 If there is no Retention remaining on the Project, individual Disputes initiated prior to Project Final Completion shall continue until a final disposition of the Arbitration or resolution of the individual Claim or Dispute.

20.6.1.2 The Arbitration process shall not toll the Disputes or Claims process under Article 20 or the requirement to submit Claims to Court under Article 20.13.

20.7 Claims for Concealed Trenches or Excavations Greater Than Four Feet Below the Surface. When any excavation or trenching extends greater than four feet below the surface:

20.7.1 *Immediately upon discovery,* The Contractor shall promptly, and before the following conditions are disturbed, notify the District, by telephone and in writing of any:

20.7.1.1 Subsurface or latent physical conditions at the Site differing from those indicated in the Drawings, Specifications, or pursuant to the documents and information from Contractor's Due Diligence or Due Diligence Documents.

20.7.1.2 Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract.

20.7.1.3 Hazardous waste condition, except, if Contractor's bid includes removal or disposal of hazardous substances, or is part of Contractor's Due Diligence or Due Diligence Documents. Material that the Contractor believes may be a material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law. In such case, the notice procedures and requirements of Article 17.5.2 shall apply.

20.7.2 *The District shall investigate the conditions,* and if District finds that the conditions do materially so differ, and cause a decrease or increase in the Contractor's cost of, or the

time required for, performance of any part of the Work shall issue a change order or Construction Change Document under the procedures described in the Contract.

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

20.8 Dispute Concerning Extension of Time. If Contractor and District cannot agree upon an extension of time, whether compensable or not, then Contractor must have first completed the procedures set forth in Article 18. Upon completion of the procedures set forth under Article 18, Contractor must then comply with the requirements in this Article including those set forth under Article 20.9.

20.9 Claims Procedures. Pursuant to the remedies under Public Contract Code section 9201 and Government Code section 930.2, Contractor, through execution of this Agreement, also agrees to comply with the Claims requirements under Article 20 to quickly and efficiently resolve disputes. Further, to provide a level of accuracy to the records submitted, the District shall have the right to audit books and records pursuant to Article 21 based on the actual costs incurred and to reduce the uncertainty in resolving disputes with limited information.

20.9.1 *Procedure Applicable to all Claims*

20.9.1.1 Definition of Claim: A "Claim" is where a Dispute between the parties rises to the level where backup documentation is assembled and provided to the District as a separate demand by the Contractor for: (1) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by the District under the Contract; (2) payment by the District of money or damages arising from Work done by, or on behalf of, the Contractor pursuant to the Contract and payment for which is not otherwise expressly provided for or to which the Contractor is not otherwise entitled to; or (3) an amount of payment disputed by the District. If the Claim is for damages associated with a DSA Stop Work Order, the Contractor shall not be entitled to a request for Compensation, but shall be entitled to utilize Governmental Delay Float (See Article 9.2.1.)

20.9.1.2 Filing Claim Is Not Basis to Discontinue Work: The Contractor shall promptly comply with Work under the Contract or Work requested by the District even though a written Claim has been filed. The Contractor and the District shall make good faith efforts to resolve any and all Claims that may arise during the performance of the Work covered by this Contract.

20.9.1.3 Claim Notification: The Contractor shall within seven (7) calendar days after the written decision of the Architect, or if the time period for Architect's decision has passed under Article 20.5, submit a notification in writing sent by registered mail or certified mail with return receipt requested, with the District (and the District's CM) stating clearly the basis for the Claim and including all relevant and required documents. If the notification is not submitted within seven (7) days after the written decision of the Architect or the passage of time under Article 20.5, the Contractor shall be deemed to have waived all right to assert the Claim, and the Claim shall be denied. Claims submitted after the Retention

Payment date shall also be considered null and void by the District. All Claims shall be reviewed pursuant to Articles 20.1 through 20.5.

20.9.1.4 The Formal Notification of Claim must be presented as follows:

- a. The term "Claim" must be at the top of the page in no smaller than 20 point writing.
- b. All documentation submitted pursuant to Article 20 to the Architect shall be submitted with the title "claim."
- c. A stack of documents, copy of all Project documents, or the submission of random documents shall not constitute an adequate reference to supporting documentation
- d. Any additional or supporting documentation that Contractor believes is relevant should be submitted at this time.

20.9.1.5 Reasonable Documents to Support Claim: The Contractor shall furnish reasonable documentation to support the Claim. The Contractor shall provide all written detailed documentation which supports the Claim, including but not limited to: arguments, justifications, cost, estimates, Schedule analysis and detailed documentation. The format of the required reasonable documentation to support the Claim shall include, without limitation:

- a. Cover letter.
- b. Summary of factual basis of Claim and amount of Claim.
- c. Summary of the basis of the Claim, including the specific clause and section under the Contract under which the Claim is made.
- d. Documents relating to the Claim, including:
  1. Specifications sections in question.
  2. Relevant portions of the Drawings
  3. Applicable Clarifications (RFI's)
  4. Other relevant information, including responses that were received.
  5. Contractor Analysis of Claim merit.
    - (a) Contractor's analysis of any Subcontractor vendor claims that are being passed through.
    - (b) Any analysis performed by outside consultants.
    - (c) Any legal analysis that Contractor deems relevant.
- e. Breakdown of all costs associated with the Claim.
- f. For Claims relating to time extensions, an analysis and supporting documentation evidencing any effect upon the

critical path in conformance with the requirements of Article 9 and a chronology of events and related correspondence.

- g. Chronology of events and related correspondence.
- h. Applicable daily reports and logs.
  - 1. If the daily reports or logs are not available, lost or destroyed, there shall be a presumption that the lost documentation was unfavorable to the Contractor. See California Civil Jury Instruction 204.
- i. For Claims involving overhead, cost escalation, acceleration, disruption or increased costs, a full version of job costs reports organized by category of work or Schedule of Values with budget information tracked against actual costs. Any and all supporting back-up data, including the original bid or cost documents (and associated original unaltered metadata).
  - 1. The metadata and bid or cost information shall be provided confidentially and subject to a protective order to prevent dissemination to other contractors or to the public. However, the bid or cost documentation should remain intact and available for review and inspection in case of this type of increased cost Claim.
  - 2. This data on the bid or cost information shall be made available to any District attorneys or experts and shall also be utilized as evidence for any legal proceedings.
  - 3. If the bid or cost documentation is not available, lost or destroyed, there shall be a presumption that the lost bid or cost documentation was unfavorable to the Contractor. See California Civil Jury Instruction 204.
- j. Certification: The Contractor (and Subcontractors, if applicable) shall submit with the claim a certification under penalty of perjury:
  - 1. That the Contractor has reviewed the Claim and that such Claim is made in good faith;
  - 2. Supporting data are accurate and complete to the best of the Contractor's knowledge and belief;
  - 3. The amount requested accurately reflects the amount of compensation for which the Contractor believes the District is liable.
  - 4. That the Contractor is familiar with Government Code section 12650 et seq. and Penal Code section 72 and that false claims can lead to substantial fines and/or imprisonment.
- k. Signature of Certification: If the Contractor is not an individual, the certification shall be executed by an officer or

general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

- l. Upon receipt of a Claim and all supporting documents as required above, the District shall conduct a reasonable review of the Claim and, within a period not to exceed 45 days, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the District and Contractor may, by mutual agreement, extend the time period provided in this paragraph.
- m. If the District needs approval from its governing Board to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the governing Board does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, the District shall have up to three days following the next duly publicly noticed meeting of the governing Board after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.
- n. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the District issues its written statement. If the District fails to issue a written statement, paragraph t below shall apply.
- o. If the Contractor disputes the District's written response, or if the District fails to respond to a Claim issued pursuant to Article 20.9 within the time prescribed, the Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the District shall schedule a meet and confer conference within 30 days for settlement of the Claim.
- p. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the District shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the District issues its written statement. Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the District and the Contractor sharing the associated costs equally. The District and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection

with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to applicable procedures in Article 20.13.

- q. For purposes of Article 20.9, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.
- r. Unless otherwise agreed to by the District and the Contractor in writing, the mediation conducted pursuant to Article 20.9 shall excuse any further obligation under Public Contract Code section 20104.4 to mediate after litigation has been commenced.
- s. This Claims process does not preclude the District from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under Article 20.9 does not resolve the parties' Claim. This Claims process does not preclude the District from submitting individual Disputes or Claims to binding arbitration pursuant to Article 20.12 below.
- t. Failure by the District to respond to a Claim from the Contractor within the time periods described in this subdivision or to otherwise meet the time requirements of Article 20.9 shall result in the Claim being deemed rejected in its entirety. A Claim that is denied by reason of the District's failure to have responded to a Claim, or its failure to otherwise meet the time requirements of Article 20.9, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the Contractor.
- u. If a subcontractor or a lower tier subcontractor lacks legal standing to assert a Claim against a District because privity of contract does not exist, the Contractor may present to the District a Claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Contractor present a Claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the Claim be presented to the District shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, the Contractor shall notify the subcontractor in writing as to whether the Contractor presented the Claim to the District and, if the Contractor did not present the Claim, provide the subcontractor with a statement of the reasons for not having done so.
- v. Upon receipt of a Claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the

commencement of a civil action or binding arbitration, as applicable.

- w. The Contractor's Claim shall be denied if it fails to follow the requirements of this Article.

- 20.10 District (through CM or District's Agent or Attorney) May Request Additional Information. Within thirty (30) days of receipt of the Claim and the information under this Article, the District may request in writing any additional documentation supporting the Claim or documentation relating to defenses to the Claim which the District may assert. If additional documents are required, the time in which the Claim is evaluated may be extended by a reasonable time so the Claim and additional documents may be reviewed.
- 20.11 Claims Procedures in Addition to Government Code Claim. Nothing in the Claims procedures set forth in Article 20 of the CSA shall act to waive or relieve the Contractor from meeting the requirements set forth in Government Code section 900 et seq.
- 20.12 Binding Arbitration of Individual Claim Issues. To expedite resolution of Claims pursuant to Public Contract Code section 9201, at the District's sole option, the District may submit individual Claims to Arbitration prior to Retention Payment consistent with the requirements of Article 20.6.1.
- 20.13 Resolution of Claims in Court of Competent Jurisdiction. If Claims are not resolved under the procedure set forth and pursuant to Article 20.9, such Claim or controversy shall be submitted to a court in the County of the location of the Project after the Project has been completed, and not before
- 20.14 Warranties, Guarantees and Obligations. The duties and obligations imposed by this CSA and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor by the Contract Documents and amendments thereto; and all of the rights and remedies available to District and Architect thereunder, are in addition to, and are not to be construed in any way as a limitation of any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Article will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

## **21. MAINTENANCE OF RECORDS; AUDIT/OWNERSHIP OF DOCUMENTS**

- 21.1 State Audit. Pursuant to and in accordance with the provisions of Government Code § 10532, or any amendments thereto, all books, records, and files of the District, the Contractor, or any Subcontractor connected with the performance of this Contract involving the expenditure of state funds in excess of Ten Thousand Dollars (\$10,000.00), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the Office of the Auditor General of the State of California for a period of five (5) years after Retention Payment is made or a Notice of Completion is Recorded, whichever occurs first. Contractor shall preserve and cause to be preserved such books, records, hard drives, electronic media, and files for the audit period.
- 21.2 District Audit. Pursuant to the remedies under Public Contract Code section 9201 and Government Code section 930.2, Contractor, through execution of this Agreement, also agrees the District shall have the right to review and audit, upon reasonable notice, the books and records of the Contractor concerning any monies associated with the Project. The purpose of this Audit is to quickly and efficiently resolve disputes based on the actual costs incurred and to reduce the uncertainty in resolving disputes with limited information. The District shall perform any audits at its own cost and any such audit shall be performed by an independent auditor, having no direct or indirect relationship with the functions or activities being audited or with the business conducted by the Contractor or District. In the event the independent auditor determines that Change Orders,



Response to Request for Proposals, Claims, Appeal of Claims, or other requests for payment the Auditor shall report the results of the Audit findings to the District and provide a copy to the Contractor after giving the District Board the opportunity for at least 10 days review. If the Contractor disputes the findings of the independent auditor, such dispute shall be handled in the manner set forth under Article 20 entitled Disputes.

- 21.3 Failure to Produce Books or Records. If Contractor having agreed to the terms of this Contract fails to produce books or records requested by Auditor, such failure to produce books or records that were required to be preserved for audit, it shall be presumed that the information contained in the withheld books or records were unfavorable to the Contractor and the Auditor shall note this refusal in the results of the Audit findings for further evaluation by the District and the District's Board. The refusal to release records that are concerning monies associated with the Project may be used as a grounds to Debar the Contractor from future Projects for failure to preserve records under this Article and the failure to produce required audit records may also be used as a grounds for a negative finding against the Contractor depending on the significance of the records that are withheld by Contractor. Failure to produce Job Cost Data tied to Job cost categories and budgets shall be presumed an intentional failure to produce key audit records. Similarly, failure to produce daily time records (prepared at or near the time of the Work actually took place shall be presumed an intentional failure to produce key audited records.
- 21.4 Inefficiency, Acceleration or Delay Claims. If Contractor is seeking costs for inefficiency, home office overhead, or unanticipated increased costs due to delays or acceleration, Contractor shall also produce copies of the original bid or cost tabulation utilized in submitting Contractor's cost for the Project. This document shall be considered confidential and shall not be subject to disclosure through a Public Records Act and shall not be distributed to anyone other than the District and the District's counsel. This bid or cost tabulation shall only be used in litigation, arbitration, evaluation of Claims or Disputes, Audit, and trial. If the records for the bid or cost tabulation are kept on a computer, the Contractor shall also produce all metadata (in native format) that accompanies the bid or cost tabulation for inspection to prove the authenticity of the underlying bid or cost tabulation. Failure to produce the bid or cost tabulation for review of inefficiency, home office overhead, or unanticipated increased costs due to delays or accelerations shall be considered material evidence that the bid or cost tabulation was not favorable to the Contractor. This evidence shall be entered as a jury instruction for trial that the bid or cost tabulation was not produced and the bid or cost tabulation information was unfavorable to the Contractor. The evidence may also be used in Debarment Proceedings, and noted as an exception to an Audit Findings.
- 21.5 Upon notification of Contractor concerning the results of the audit and a reasonable time has passed for Contractor to respond to Audit Findings and if either there is no Dispute of the Audit findings under this Article or if the result after utilizing the Disputes Clause confirms the Audit findings, the District may seek any Savings that have not been accounted for with District and may also seek reimbursement for overstated Claims, Change Orders, or Appeal of Claims.
- 21.6 Ownership of Drawings. Notwithstanding any provision of this Agreement, all drawings, specifications, and copies thereof furnished by District are its property. They are not to be used on other work and with exception of signed contract sets, are to be returned to District on request at completion of work.

## **22. PREVAILING RATES OF WAGES; RECORDS, APPRENTICES**

- 22.1 Wage Rates. Pursuant to the provisions of Article 2 (commencing at § 1720), Chapter 1, Part 7, Division 2, of the Labor Code, the District has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public works project is to be performed for each craft, classification, or type of worker needed for this Project from the Director of the Department of Industrial Relations ("Director"). These rates are on file at the administrative office of the District and are also available from the Director of the Department of Industrial Relations. Copies will be made available to any interested party on request.

The Contractor shall post a copy of such wage rates at appropriate, conspicuous, weatherproof points at the Site.

Any worker employed to perform Work on the Project, but such Work is not covered by any classification listed in the published general prevailing wage rate determinations or per diem wages determined by the Director of the Department of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to the employment of such person in such classification.

- 22.2 Holiday and Overtime Pay. Holiday and overtime work, when permitted by law, shall be paid for at the rate set forth in the prevailing wage rate determinations issued by the Director of the Department of Industrial Relations or at least one and one-half (1½) times the specified basic rate of per diem wages, plus employer payments, unless otherwise specified in the Contract Documents or authorized by law
- 22.3 Wage Rates Not Affected by Subcontracts. The Contractor shall pay and shall cause to be paid each worker engaged in the execution of the Work on the Project not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor and such workers.
- 22.4 Per Diem Wages. The Contractor shall pay and shall cause to be paid to each worker needed to execute the Work on the Project per diem wages including, but not limited to, employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided for in Labor Code §1773.1.
- 22.5 Forfeiture and Payments. Pursuant to Labor Code §1775, the Contractor shall forfeit to the District, not more than Two Hundred Dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing wages rates as determined by the Director of the Department of Industrial Relations, for the work or craft in which the worker is employed for any Work done under the Agreement by the Contractor or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on consideration of: (1) whether the Contractor or Subcontractor's failure to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily correct upon being brought to the attention of the Contractor or Subcontractor; and (2) whether the Contractor or Subcontractor has a prior record of failing to meet its prevailing wage obligations.

## 23. RECORDS OF WAGES PAID

### 23.1 Payroll Records

- 23.1.1 Pursuant to §1776 of the Labor Code, each Contractor and Subcontractor shall keep an accurate payroll record showing the name, address, social security number, work classification and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the Project.
- 23.1.2 All payroll records shall be certified and submitted to the District with each application for payment, but not less than once per month or as otherwise requested by the District. All payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
- 23.1.3 A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
- 23.1.4 A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of District, the Division of Labor Standards

Enforcement or the Division of Apprenticeship Standards of the Department of Industrial Relations.

23.1.5 A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to Paragraph (2) above, the requesting party shall, prior to being provided the records, reimburse the costs, according to law for the preparation by the Contractor, Subcontractor(s), and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.

23.1.6 Unless required to be furnished directly to the Labor Commissioner in accordance with Labor Code section 1771.4, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division of Labor Standards Enforcement.

23.1.7 The Contractor or Subcontractor(s) shall file a certified copy of all payroll records with the entity that requested such records within 10 calendar days after receipt of a written request.

23.1.8 Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or the Subcontractor(s) performing the Contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.

23.1.9 The Contractor shall inform the District of the location of all payroll records, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

23.1.10 The Contractor or Subcontractor(s) shall have ten (10) calendar days in which to comply subsequent to receipt of a written notice requesting payroll records. In the event that the Contractor or Subcontractor(s) fails to comply within the 10-day period, the Contractor or Subcontractor(s) shall, as a penalty to the District, forfeit One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from Progress Payments or Retention Payment then due.

23.1.11 Responsibility for compliance with this Article shall rest upon the Contractor.

23.2 Withholding of Payments & Penalties

23.2.1 The District may withhold or delay Progress Payments to the Contractor or a Sublease Payment or Retention if:

- 23.2.1.1 The required prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations is not paid to all workers employed on the Project; or
- 23.2.1.2 The Contractor or Subcontractor(s) fail to submit all required certified payroll records with each application for payment, but not less than once per month; or
- 23.2.1.3 The Contractor or Subcontractor(s) submit incomplete or inadequate payroll records; or
- 23.2.1.4 The Contractor or Subcontractor(s) fail to comply with the Labor Code requirements concerning apprentices; or
- 23.2.1.5 The Contractor or Subcontractor(s) fail to comply with any applicable state laws governing workers on public works projects.

**24. APPRENTICES**

- 24.1 Apprentice Wages and Definitions. All apprentices employed by the Contractor to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which he or she is employed, and as determined by the Director of the Department of Industrial Relations, and shall be employed only at the craft or trade to which he or she is registered. Only apprentices, as defined in §3077 of the Labor Code, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprenticeship agreements under Chapter 4 (commencing with §3070) of Division 3, are eligible to be employed under this Contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training, or in accordance with the rules and regulations of the California Apprenticeship Council.
- 24.2 Employment of Apprentices. Contractor agrees to comply with the requirements of Labor Code §1777.5. The Contractor awarded the Project, or any Subcontractor under him or her, when performing any of the Work under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and Subcontractor shall employ apprentices in the ratio set forth in Labor Code §1777.5. The Contractor or any Subcontractor must apply to any apprenticeship program in the craft or trade that can provide apprentices to the Project site for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor upon the Contractor's or Subcontractor's request. "Apprenticeable craft or trade" as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The ratio of work performed by apprentices to journeyman employed in a particular craft or trade on the Project shall be in accordance with Labor Code §1777.5.
- 24.3 Submission of Contract Information. Prior to commencing Work on the Project, the Contractor and Subcontractors shall submit contract award information to the applicable apprenticeship program(s) that can supply apprentices to the Project and make the request for the dispatch of apprentices in accordance with the Labor Code. The information submitted shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the District if requested. Within sixty (60) days after concluding Work on the Project, the Contractor and Subcontractors shall submit to the District, if

requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Project.

- 24.4 Apprentice Fund. The Contractor or any Subcontractor under him or her, who, in performing any of the Work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the Director determines is the prevailing amount of apprenticeship training contributions in the area of the Project. The Contractor and Subcontractors may take as a credit for payments to the California Apprenticeship Council any amounts paid by the Contractor or Subcontractor to an approved apprenticeship program that can supply apprentices to the Project. The Contractor and Subcontractors may add the amount of the contributions in computing its bid or costs for the Contract.
- 24.5 Prime Contractor Compliance. The responsibility of compliance with this Article 13 §1777.5 of the Labor Code for all apprenticeable occupations is with the Prime Contractor. Any Contractor or Subcontractor that knowingly violates the provisions of this Article or Labor Code §1777.5 shall be subject to the penalties set forth in Labor Code §1777.7.
- 24.6 WHEN DETERMINING GMP, CONTRACTOR SHALL INCLUDE TO THE EXTENT POSSIBLE ANTICIPATED GENERAL PREVAILING WAGE RATES FOR THE TIME WHEN WORK ON THE PROJECT WILL ACTUALLY BE PERFORMED.

**25. REGISTRATION WITH DEPARTMENT OF INDUSTRIAL RELATIONS**

- 25.1 Strict compliance with all DIR registration requirements in accordance with Labor Code sections 1725.5 and 1771.1 is a material obligation of the Contractor and all of its subcontractors (of any tier) under the Contract Documents. The foregoing includes, without limitation, compliance with DIR registration requirements at all times during performance of the Work by the Contractor and all of its subcontractors of any tier. The failure of the Contractor and all subcontractors of any tier to be properly registered with DIR at all times during performance of the Work is a material breach of the Contract Documents and subject to termination for cause.
- 25.2 An affirmative and ongoing obligation of the Contractor under the Contract Documents is the verification that all subcontractors of any tier are at all times during performance of the Work are in full and strict compliance with the DIR registration requirements. The Contractor shall not permit or allow any subcontractor of any tier to perform any Work without the Contractor's verification that all subcontractors are in full and strict compliance with the DIR registration requirements. Any subcontractors of any tier not properly registered with DIR shall be substituted in accordance with Labor Code section 1771.1. Contractor or its subcontractors of any tier shall not be entitled to any additional costs or time arising from or in any way related to compliance with the DIR registration requirements.
- 25.3 The Contractor and all subcontractors shall furnish certified payroll records as required pursuant Labor Code section 1776 directly to the Labor Commissioner in accordance with Labor Code section 1771.4 on at least on a monthly basis (or more frequently if required by the District or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. The District reserves the right to withhold Progress Payments or Retention Payment if the District is notified, or determines as the result of its own investigation, that Contractor is in violation of any of the requirements set forth in Labor Code section 1720 et seq. at no penalty or cost to the District. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE).
- 25.4 The Labor Commissioner and the Division of Labor Standards Enforcement (DLSE) may conduct various compliance monitoring and enforcement activities including, but not limited to, confirming the accuracy of payroll records, conducting worker interviews, conducting audits, requiring submission of itemized statements prepared in accordance with Labor Code section 226, and

conducting random in-person inspections of the Project site ("On-Site Visits"). On-Site Visits may include inspections of records, inspections of the Work site and observation of work activities, interviews of workers and others involved with the Project, and any other activities deemed necessary by the Labor Commissioner/DLSE to ensure compliance with prevailing wage requirements. The Labor Commissioner/DLSE shall have free access to any construction site or other place of labor and may obtain any information or statistics pertaining to the lawful duties of the Labor Commissioner/DLSE.

- 25.5 Any lawful activities conducted or any requests made by the Labor Commissioner/DLSE shall not be the basis for any delays, claims, costs, damages or liability of any kind against the District by the Contractor. Contractor and all Subcontractors shall cooperate and comply with any lawful requests by the Labor Commissioner's office. The failure of the Labor Commissioner, DLSE, or any other part of the Department of Industrial Relations to comply with any requirement imposed by the California Code of Regulations, Title 8, Chapter 8 shall not of itself constitute a defense to the failure to pay prevailing wages or to comply with any other obligation imposed by Division 2, Part 7, Chapter 1 of the Labor Code.
- 25.6 Prior to commencing any Work on the Project, the Contractor shall post the notice/poster required under the California Code of Regulations and Labor Code section 1771.4 in both English and Spanish at a conspicuous, weatherproof area at the Project site. The required notice/poster is available on the Labor Commissioner's website.

**26. HOURS OF WORK**

- 26.1 Eight (8) hours of work shall constitute a legal day's work. The Contractor and each subcontractor shall forfeit, as penalty to the District, twenty five dollars (\$25) for each worker employed in the execution of work on the Project by the Contractor or any subcontractor under him for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any calendar week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of the Contractor and his subcontractors in excess of eight hours per day at not less than one and one half times the basic rate of pay, as provided in Labor Code section 1815.
- 26.2 Generally, construction work on the Project shall be accomplished on a regularly scheduled eight (8) hour per day work shift basis, Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m., however nothing herein shall prevent Contractor from working weekends and after school hours in order to complete the Project so long as not otherwise prohibited by law or local ordinances or regulations.
- 26.3 Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed and included within the GMP, unless otherwise agreed to in writing before the work in question is commenced pursuant to Article 9, Extra Work/Modifications.

**27. SKILLED AND TRAINED WORKFORCE**

- 27.1 Contractor and all Subcontractors of any tier must comply with the requirements set forth in Education Code section 17407.5, including providing an enforceable commitment that the Contractor and all Subcontractors of any tier will use a "Skilled and Trained Workforce" as defined in Education Code section 17407.5 (b)(3). Contractor and all Subcontractors are to carefully review all requirements set forth in Education Code section 17407.5 before entering into the Contract for the Project.
- 27.2 The Contractor's commitment that a Skilled and Trained Workforce will be used to perform Work on the Project and the Contract shall be established by the following:

- 27.2.1 Contractor shall include in all of its subcontracts, and Subcontractors shall require in its subcontracts of any tier, mandatory compliance with Education Code section 17407.5.
- 27.2.2 Contractor shall provide to the District, on a monthly basis while the Project or Contract is being performed, a written report demonstrating that the Contractor and all Subcontractors of any tier are complying with the requirements set forth in Education Code section 17407.5. If Contractor fails to provide the monthly report, the District shall withhold payment for the portion of the monthly pay application related to the non-compliance of the Contractor or portion of the monthly pay application related to the non-compliance of any subcontractor. Upon notice to the Contractor of withholding for non-compliance, the non-compliant Contractor and/or subcontractor may cure the non-compliance. If Contractor and/or any subcontractor cures the non-compliance or substantially complies with required percentages of Public Contract Code section 2601 any monies withheld by the District will be released no later than the next pay application. If Contractor and/or any subcontractor fails to cure the non-compliance or substantially comply with the requirements within 60 days of notice of the non-compliance, the Contractor and/or non-compliant subcontractor shall meet and confer with the District to demonstrate the Contractor's and/or subcontractor's efforts and plan to achieve substantial compliance with the requirements, on a cumulative basis, by completion of the Project. A meet and confer may be held earlier upon Contractor's written request to the District. The District, after reasonable demonstration by the Contractor and/or subcontractor that good faith and best efforts have been and are being made to substantially comply with the requirements of Section 2601, the District shall release any monies withheld. The Section 2601 percentages shall not apply to punchlist or warranty for a Contractor and/or subcontractor if that Contractor and/or subcontractor has otherwise substantially complied with the requirements of Section 2601 during the project. If Contractor and/or subcontractor is unable to substantially comply with the required percentages, on a cumulative basis, by completion of the project, the District, in its discretion may assess a charge to the non-compliant party of \$1,000.00 per percentage that the Contractor and/or subcontractor fails to meet the graduation percentage requirements, not to exceed \$5,000.00 or 10 percent of the total contract or subcontract value, whichever is less. This shall be the sole and exclusive remedy for Contractor's and/or any subcontractor's non-compliance with this section.
- 27.2.3 The monthly report provided to the District's Governing Board as required above shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), and shall be open to public inspection.
- 27.2.4 Contractor's commitment that a Skilled and Trained Workforce will be used to perform Work on the Project and the Contract may also be established by the Contractor providing evidence and any other information or documents reasonably requested by the District showing that the Contractor has entered into a project labor agreement that includes the requirements of Education Code section 17407.5(c) that will bind the Contractor and all its Subcontractors of any tier performing Work on the Project or Contract.
- 27.3 If the District's Governing Board has entered into a project labor agreement that will bind all contractors and subcontractors performing Work on this Project or Contract that includes the requirements of Education Code section 17407.5(c), the Contractor's agreement that it will become a party to that project labor agreement shall satisfy the requirements under Education Code section 17407.5(c).
- 27.4 If the Contractor or Subcontractor of any tier is not in compliance with all of the requirements set forth in Education Code section 17407.5, the District shall exercise any rights or remedies allowed under Education Code section 17407.5 or other applicable law.

**28. PROTECTION OF PERSONS AND PROPERTY**

- 28.1 **Fingerprinting.** If any portion of the work for the Project is to be performed at an operating school, Contractor shall comply with the applicable requirements of Education Code sections 45125.1 and 45125.2 with respect to fingerprinting of employees who may have contact with District's pupils. Contractor shall also ensure that its Subcontractors on the Project comply with the applicable requirements of Sections 45125.1 and 45125.2. To this end, Contractor and its Subcontractors must provide for the completion of the Fingerprint Certification form attached as Exhibit "F" and incorporated herein by this reference prior to commencing work on the Project. In no event shall any employees of Contractor or its Subcontractors come into contact with District's pupils before the certification is completed. Contractor's failure to comply with this law shall be considered a material breach of the Agreement upon where the Agreement may be terminated, at District's sole discretion, without any further compensation to Contractor. Contractor and Subcontractor personnel on Site shall not have been convicted of any criminal offense which may have a discernible adverse impact on District or its students. Contractor shall advise its employees of these requirements before they enter on the Site and shall immediately remove from the Site any employee in violation of these requirements as determined by Contractor or by District. Contractor shall impose these requirements on its Subcontractors.
- 28.2 Contractor has been advised and is aware that District has adopted a Board Policy which prohibits the use of tobacco products, including smokeless tobacco, anywhere on District property. Contractor shall be responsible for the enforcement of District's tobacco-free policy among all Contractor's employees and Subcontractors while on District property. Contractor understands and agrees that should any employee or Subcontractor of Contractor violate the Board Policy, after having already been warned once for violating District's tobacco-free policy, Contractor shall remove the individual for the duration of the Project. Contractor shall not be entitled to any additional compensation and/or time in completing the Project as a result of such removal.
- 28.3 Contractor shall take all steps necessary to insure that employees of Contractor or any of its Subcontractors' employees do not use, consume, or work under the influence of alcohol or illegal drugs while on the Project. Contractor shall prevent any of its employees or its Subcontractors' employees from playing any recorded music devices or radios or wearing any radio headphone devices for entertainment while working on the Project. Contractor shall also prevent its employees or Subcontractors' employees from bringing any animal onto the Project.
- 28.4 Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by District.
- 28.5 Contractor shall take, and require Subcontractors to take, all necessary precautions for safety of workers on the work and shall comply with all applicable federal, state, local and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where work is being performed and to provide a safe and healthful place of employment. In addition to meeting all requirements of OSHA, Cal-OSHA, state, and local codes, Contractor shall furnish, erect and properly maintain at all times, as directed by District or required by conditions and progress of work, all necessary safety devices, safeguards, construction canopies, signs, audible devices for protection of the blind, safety rails, belts and nets, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction. Contractor shall designate a responsible member of its organization on the work, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety and health of workers. Name and position of person so designated shall be reported to District by Contractor. Contractor shall correct any violations of safety laws, rules, orders,



standards or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, such violation shall be corrected promptly.

- 28.6 In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from District, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury; and Contractor shall so act if so authorized or instructed by District. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.
- 28.7 Contractor shall provide such heat, covering, and enclosures as are necessary to protect all work, materials, equipment, appliances, and tools against damage by weather conditions.
- 28.8 Contractor shall take adequate precautions to protect existing roads, sidewalks, curbs, pavements, utilities, adjoining property and structures (including, without limitation, protection from settlement or loss of lateral support), and to avoid damage thereto, and repair any damage thereto caused by construction operations. All permits, licenses, or inspection fees required for such repair work shall be obtained and paid for by Contractor.
- 28.9 Trenches Five Feet or More in Depth. The Contractor shall submit to the District, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches five feet or more in depth. The Contractor shall also submit a copy of its annual trench/excavation permit approved by CAL-OSHA. The plan shall be prepared by a registered civil or structural engineer. As part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with CAL OSHA Construction Safety Orders, or stating that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the Safety Orders.
- 28.9.1 All shoring submittal shall include surcharge loads from adjacent embankments, construction loads and spoil bank. Submittal shall indicate minimum horizontal distance from top of trench to edge of all surcharge loads for all cases of shoring and side slopes.
- 28.9.2 Nothing in this Section shall relieve Contractor of the full responsibility for providing shoring, bracing sloping, or other provisions adequate for worker protection. If such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer and shall be approved by CAL-OSHA. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the District or the person to whom authority to accept has been delegated by the District.
- 28.10 Contractor shall (unless waived by District in writing):
- 28.10.1 When performing construction on existing sites, become informed and take into specific account the maturity of the students on the site; and when performing work which may interfere with the school routine before, during or after school hours, enclose working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to students and faculty in their regular school activities.
- 28.10.2 Not allow any person, other than workers on the Project, or individuals authorized by District to come upon any portion of the premises where work is being performed. Contractor shall require all workers on the Project to be conspicuously identified either by a firm logo on their clothing, or by means of a prominent identification badge.
- 28.10.3 Provide substantial barricades around any shrubs or trees indicated to be preserved.

- 28.10.4 Deliver materials to building area over route designated by District.
- 28.10.5 Take preventive measures to eliminate dust.
- 28.10.6 Confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of District; and shall not interfere with the work or unreasonably encumber premises or overload any structure with materials; and enforce all instructions of District regarding signs, advertising, fires, smoking, the presence of liquor, and the presence of firearms and require that all workers comply with all regulations while on construction site.
- 28.10.7 Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved land surveyor or civil engineer at no cost to District.
- 28.10.8 Not allow personal radios on the work site
- 28.10.9 Where the Project involves work at an operating school, inform and take such preventive measures necessary to insure that all employees, Subcontractors and other individuals authorized on the Project site refrain from any personal contact or conversations with the students on site.
- 28.10.10 Contractor shall not impose structural loading upon any part of the work under construction or upon existing construction on or adjacent to the Site in excess of safe limits, or loading such as to result in damage to the structural, architectural, mechanical, electrical, or other components of the work. The design of all temporary construction equipment and appliances used in construction of the work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring, and temporary bracing of structural steel, is the sole responsibility of Contractor. All such items shall conform with the requirements of governing codes and all laws, ordinances, rules, regulations, and orders of all authorities having jurisdiction. Contractor shall take reasonable and customary precautions, such as shoring of masonry walls and temporary tie bracing of structural steel work, to prevent possible wind damage during construction of the work. The installation of such bracing or shoring shall not damage the work in place or the work installed by others. Any damage which does occur shall be promptly repaired by Contractor at no cost to District.
- 28.10.11 Contractor shall require that Subcontractors participate in, and enforce, the safety and loss prevention programs established by Contractor for the Project, which will cover all work performed by Contractor and its Subcontractors. All Subcontractors and material or equipment suppliers shall cooperate fully with Contractor, District, and all insurance carriers. Subcontractors shall immediately, within twenty four (24) hours, report in writing to Contractor all accidents whatsoever arising out of, or in connection with, the performance of the work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. Contractor shall thereafter immediately, within two (2) days, report the facts in writing to District giving full details of the accident.
- 28.10.12 Contractor and Subcontractors shall use only those ingress and egress routes designated by District, observe the boundaries of the Site designated by District, park only in those areas designated by District, which areas may be on or off the Site, and comply with any parking control program established by District, such as furnishing license plate information and placing identifying stickers on vehicles.

- 28.10.13 Contractor shall be responsible for providing security services for the Site as needed for the protection of the Site and as determined in District's reasonable discretion.
- 28.10.14 Contractor shall, for all contracts involving state funds, submit a "Drug-Free Workplace Certification." Contractor shall take all reasonable steps necessary to ensure that any employees of Contractor or any of its Subcontractors' employees report for work in a manner fit to do their job. Such employees shall not be under the influence of or in possession of any alcoholic beverage or of any controlled substance (except a controlled substance as prescribed by a physician so long as the performance or safety at the Project Site is not affected thereby). Contractor shall advise its employees of these requirements before they enter on the Site and shall immediately remove from the site any employee in violation of these requirements as determined by Contractor or by the District. Contractor shall impose these requirements on its Subcontractors.
- 28.10.15 Contractor and Subcontractors shall at all times enforce strict discipline and good order among their employees and other persons carrying out the Contract and shall not employ on work any unfit person or anyone not skilled in work assigned to such person. It shall be the responsibility of Contractor to ensure compliance with this Article. Any person in the employ of Contractor or Subcontractors whom District may deem incompetent, unfit, intemperate, troublesome or otherwise undesirable shall be excluded from the work Site and shall not again be employed on it except with written consent of District. Contractor must sign and cause all Subcontractors to sign the Conduct Rules for Contractors form attached as Exhibit "I" and incorporated herein by this reference prior to commencing work on the Project.
- 28.11 Contractor shall be at all times during the performance of work hereunder in full compliance with the provisions of the Immigration Reform and Control Act of 1986 ("IRCA") in the hiring of its employees, and Contractor shall indemnify, hold harmless and defend District against any and all actions, proceedings, penalties or claims arising out of Contractor's failure to comply strictly with the IRCA.

**29. PAYMENTS AND RETENTION**

The Construction Cost of each Project shall not exceed the GMP identified in Exhibit J as may be amended from time to time, except as otherwise provided in this Construction Services Agreement and Sublease. During the progress of construction, Contractor will provide monthly progress payment applications for the total scheduled value of the work completed under the GMP set forth in Article 3. District shall pay to Contractor a monthly progress payment comprising a sum equal to ninety-five percent (95%) of the scheduled value of the work approved and completed up to the last day of the previous month, less aggregate of previous payments ("Progress Payment"). If all of the necessary information is submitted and accurate (including the schedule of values), District shall approve the Progress Payments within fifteen (15) days after District's receipt of the periodic estimate for partial payment and District shall pay such payments within fifteen (15) days after the District's approval of the periodic estimate for partial payment. Progress Payments shall be made on the basis of monthly estimates which shall be prepared by Contractor on a form approved by District and certified by Architect and Project Inspector, or any other approved representative of the District, and filed before the fifth day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall release Contractor or any bondsman from such work or from enforcing each and every provision of this document and District shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment made for work performed so long as any lawful or proper direction concerning non-complying work or any portion thereof given by the District lacks correction by Contractor. District shall withhold from the Progress Payments 150% of the estimated value of non-complying work unless satisfactorily corrected or remedied. Contractor shall, at a minimum, provide the

following documents as part of its request for a Progress Payment: (1) Schedule of Values, (2) Project Contingency Trackers, (3) Project Allowance Trackers, (4) Project Savings Reports (Refer to the Project Savings Section for the Project Savings Items) including the budget versus actual costs of Project Management and General Condition Expenses, (5) Project Daily Reports (Contractor and Subcontractor), (6) Project Safety Reports, (7) Monthly Lien Releases Unconditional and Conditional Waivers (all contractors), and (8) Monthly Schedule Update and Narratives (with Recovery Schedules as needed).

29.1 The District shall retain five percent (5%) "Retention" from Progress Payments and release Retention as required in this CSA and specifically, not until after Close-Out under Article 13.16.

29.2 In no event shall the cumulative total of the Progress Payments/ Sublease Payments and Retention ever exceed the GMP as defined herein, unless specifically allowed under Article 5.

29.2.1 Title to new materials and/or equipment for the work of this contract, on a continuous basis while the Project is being completed, shall vest in the District. However, responsibility for such new material and/or work of this contract shall remain with the Contractor until incorporated into the work and accepted by District; no part of said materials and/or equipment shall be removed from its place of storage except for immediate installation in the work of this contract; and Contractor shall keep an accurate inventory of all said materials and/or equipment in a manner satisfactory to the owner or his authorized representative.

Notwithstanding anything to the contrary stated above, the Contractor may include in its request for payment the value of any structural steel, glue laminated beams, trusses, bleachers and other such custom-made materials prepared specifically for the Project and unique to the Project so long as all of the following requirements are satisfied:

29.2.1.1 The aggregate cost of materials stored off-site shall not exceed Twenty Five Thousand Dollars (\$25,000) at any time or as otherwise agreed to be District in writing;

29.2.1.2 Title to such materials shall be vested in the District as evidenced by documentation satisfactory in form and substance to the District, including, without limitation, recorded financing statements, UCC filings and UCC searches;

29.2.1.3 With each request for payment, the Contractor shall submit to the District a written list identifying each location where materials are stored off-site (which must be a bonded warehouse) and the value of the materials at each location. The Contractor shall procure insurance satisfactory to the District (in its reasonable discretion) for materials stored off-site in an amount not less than the total value thereof;

29.2.1.4 The consent of any Surety shall be obtained to the extent required prior to payment for any materials stored off-site;

29.2.1.5 Representatives of the District shall have the right to make inspections of the storage areas at any time; and

29.2.1.6 Such materials shall be (1) protected from diversion, destruction, theft and damage to the reasonable satisfaction of the District; (2) specifically marked for use on the Project; and (3) segregated from other materials at the storage facility.

29.3 Reasons to Withhold Payment. The District may withhold any payment, in whole, or in part, to such extent as may be necessary to protect the District from loss because of, but not limited to:

1. Defective Work not remedied;
2. Stop Notices served upon the District;
3. Liquidated damages assessed against the Contractor;
4. The cost of completion of the Contract if there exists reasonable doubt that the Work can be Completed for the unpaid balance of any Contract Price or by the completion date;
5. Damage to the District or other contractor;
6. Unsatisfactory prosecution of the Work by the Contractor;
7. Failure to store and properly secure materials;
8. Failure of the Contractor to submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including, without limitation, acceptable monthly progress schedules, Shop Drawings, Submittal schedules, schedule of values, product data and samples, proposed product lists, executed Change Order, Construction Change Documents, and verified reports;
9. Failure of the Contractor to provide an approvable schedule in compliance with this Master Construction Services Agreement or to provide an approved updated monthly schedule for any project under this Master Construction Services Agreement.
10. Failure of the Contractor to maintain As-Built drawings;
11. If, in the District's opinion, the representations to the District required pursuant to Article 9.4 cannot be made;
12. Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an application for payment;
13. Unauthorized deviations from the Contract Documents (including but not limited to Unresolved Notices of Deviations (DSA Form 154);
14. Failure of the Contractor to prosecute the Work in a timely manner in compliance with established progress schedules and completion dates;
15. Failure to properly pay prevailing wages as defined in Labor Code section 1720, et seq.;
16. Failure to properly maintain or clean up the Site;
17. Payments to indemnify, defend, or hold harmless the District;
18. Any payments due to the District including, but not limited to, payments for failed tests, or utilities changes or permits;
19. Failure to submit an acceptable schedule in accordance with Article 9;
20. Failure to pay Subcontractor or suppliers;
21. Failure to secure warranties, including the cost to pay for warranties

- 22. Failure to provide release from material suppliers or Subcontractors when requested to do so
  - 23. Items deducted pursuant to Article 17.6
  - 24. Incomplete Punch List items under Article 13.6 which have gone through the Article 12.2 process
  - 25. Allowances that have not been used
- 29.4 Reallocation of Withheld Amounts. District may, in its discretion, apply any withheld amount to payment of outstanding claims or obligations. In so doing, District shall make such payments on behalf of Contractor. If any payment is so made by District, then such amount shall be considered as a payment made under this CSA to Contractor and District shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligation. District will render Contractor an accounting of such funds disbursed on behalf of Contractor.

If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision thereof, District may, after ten (10) calendar days written notice to the Contractor and without prejudice to any other remedy make good such deficiencies. The District shall adjust the total Contract price by reducing the amount thereof by the cost of making good such deficiencies. If District deems it inexpedient to correct Work which is damaged, defective, or not done in accordance with Contract provisions, an equitable reduction in the Contract price (of at least 150% of the estimated reasonable value of the nonconforming Work) shall be made therefor.

- 29.5 Payment After Cure. When the grounds for declining approval are removed, payment shall be made for amounts withheld because of them. No interest shall be paid on any retention or amounts withheld due to the failure of the Contractor to perform in accordance with the terms and conditions of the Contract Documents.

### **30. NONCONFORMING WORK**

Contractor shall promptly remove from premises all Work identified by District as failing to conform to the Contract whether incorporated or not. Contractor shall promptly replace and re-execute its own Work to comply with the Contract without additional expense to District and shall bear the expense of making good all Work of other contractors destroyed or damaged by such removal or replacement.

If Contractor does not remove such Work which has been identified by District as failing to conform to the Contract Documents within a reasonable time, fixed by written notice, District may remove it and may store the material at Contractor's expense. If Contractor does not pay expenses of such removal within ten (10) calendar days' time thereafter, District may, upon ten (10) calendar days' written notice, sell such materials at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by Contractor.

### **31. SUBCONTRACTOR PAYMENTS**

- 31.1 Payments to Subcontractors. No later than ten (10) days after receipt, or pursuant to Business and Professions Code section 7108.5, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.
- 31.2 No Obligation of District for Subcontractor Payment. The District shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

- 31.3 Payment Not Constituting Approval or Acceptance. An approved request for a Progress Payment, a Certificate of Substantial Completion, or partial or entire use or occupancy of the Project by the District shall not constitute acceptance of Work that is not in accordance with the Contract Documents.
- 31.4 Joint Checks. District shall have the right, if necessary for the protection of the District, to issue joint checks made payable to the Contractor and Subcontractors and material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the District and a Subcontractor of any tier, any obligation from the District to such Subcontractor, or rights in such Subcontractor against the District. The District may choose to issue joint checks at District's sole discretion and only after all the requirements of that particular school district and county are specifically met. Some school districts cannot issue joint checks, so the ability to issue joint checks will depend on the District and the specific circumstances.

**32. SEPARATE CONTRACTS**

- 32.1 Reservation of Rights to have other Contractors on Site. District reserves the right to let other contractors enter the Site to perform work as part of its use of the Site. Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate the Project with the work of such Contractors. Such contractors shall comply with all applicable State safety laws and regulations and shall provide a certificate of insurance naming Contractor as additional insured
- 32.2 Notice of Coordination of Work. If the proper execution of any part of the Contractor's work on the Project depends upon the work of any such contractors, Contractor shall inspect and promptly report to District any patent defects or other problems it identifies in such work that render it unsuitable for such proper execution and results. Contractor is only required to inspect the work of such other contractors prior to commencing its own further work in connection with or in relation to that other work. Further, Contractor is only expected to identify patent defects or other problems, and is not required to do any destructive testing or to monitor the progress of such work by other contractors prior to its completion. In no event shall the work of such other contractors be covered by the warranty given by Contractor to the District, nor shall Contractor be required to provide insurance for such work.

**33. USE OF PREMISES/SAFETY**

Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits and the Construction Documents and shall not unreasonably encumber the Site or existing facilities on the Site with any materials or equipment. Contractor shall not load or permit any part of the work to be loaded with a weight so as to endanger the safety of persons or property at the Site. The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 USC, section 651 et seq.).

**34. CLEANING UP**

- 34.1 Contractor's Responsibility to Clean Up. Contractor at all times shall keep premises free from debris such as waste, dust, excess water, storm water runoffs, rubbish, and excess materials and equipment. Contractor shall not leave debris under, in, or about the premises, but shall promptly remove same from the premises and dispose of it in a lawful manner. Disposal receipts or dump tickets shall be furnished to the Architect within five (5) days of request.

Contractor shall remove rubbish and debris resulting from the Work on a daily basis. Contractor shall maintain the structures and Site in a clean and orderly condition at all times until acceptance of the Project by the District. Contractor shall keep its access driveways and adjacent streets, sidewalks, gutters and drains free of rubbish, debris and excess water by cleaning and removal each day. All concrete, sidewalks, and paths of travel shall be broom cleaned daily.

34.2 General Final Clean-Up. Upon completion of Work, Contractor shall employ experience workers or professional cleaners for final cleaning. Clean each surface to the condition expected in a normal, commercial, building cleaning and maintenance program.

1. Clean interior and exterior of buildings, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected, so surfaces are free from foreign material or discoloration;
2. Clean the Project site. The grounds should be cleared of any Contractor equipment, raked clean of debris and trash removed. Sweep paved areas broom clean.
3. Repair or replace any damaged materials. Replace any chipped or broken glass.
4. Remove any and all stains.
5. Remove labels that aren't permanent labels.
6. Clean and polish all glass, plumbing fixtures, equipment, finish hardware and similar finish surfaces. Remove any glazing compounds
7. Remove temporary utilities, fencing, barricades, planking, sanitary facilities and similar temporary facilities from Site.
8. Remove temporary film that remains on any hardware, doors or other surfaces.
9. Seal the bottom and tops of all doors
10. Special Clean-Up.
11. In addition to the general cleaning, the following special cleaning shall be done at the completion of the Work in accordance with the specifications including, but not limited to:
  - a. Remove putty stains from glazing, then wash and polish glazing.
  - b. Remove marks, stains, fingerprints and other soil or dirt from painted, stained or decorated work.
  - c. Remove temporary protection and clean and polish floors and waxed surfaces.
  - d. Clean and polish hardware and plumbing trim; remove stains, dust, dirt, plaster and paint
  - e. Wipe surfaces of mechanical and electrical equipment.
  - f. Remove spots, soil, plaster and paint from tile work, and wash tile.
  - g. Clean all fixtures and equipment, remove excess lubrication, clean light fixtures and lamps, polish metal surfaces.
  - h. Vacuum-clean carpeted surfaces.
  - i. Remove debris from roofs, down spout and drainage system.

34.3 Failure to Cleanup. If the Contractor fails to clean up as provided in the Contract Documents, the District may do so, and the cost thereof shall be the responsibility of the Contractor pursuant to Article 12.2 and seek a Deductive Change Order.



35. **INSURANCE**

- 35.1 **Insurance Requirements.** Before the commencement of the Work, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in California as admitted carriers with a financial rating of at least an A status as rated in the most recent edition of Best's Insurance Reports or as otherwise amended in these Contract Documents, such insurance as will protect the District from claims set forth below, which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations are by the Contractor, by a Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
1. Claims for damages because of bodily injury, sickness, disease, or death of any person District would require indemnification and coverage for employee claim;
  2. Claims for damages insured by usual personal injury liability coverage, which are sustained by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor or by another person;
  3. Claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents;
  4. Claims for damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under their own power and engaged in the Work;
  5. Claims involving contractual liability applicable to the Contractor's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Contractor and the Subcontractors; and
  6. Claims involving Completed Operations, Independent Contractors' coverage, and Broad Form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, and excavating. (XCU)
  7. Claims involving sudden or accidental discharge of contaminants or pollutants.
- 35.2 **Subcontractor Insurance Requirements.** The Contractor shall require its Subcontractors to take out and maintain similar public liability insurance and property damage insurance required under this Article in like amounts. A "claims made" or modified "occurrence" policy shall not satisfy the requirements of this Article without prior written approval of the District.
- 35.3 **Additional Insured Endorsement Requirements.** The Contractor shall name, on any policy of insurance required under this Article, the District, Architect, Inspector, the State of California, their officers, employees, agents and independent contractors as additional insureds. Subcontractors shall name the Contractor, the District, Architect, Inspector, the State of California, their officers, employees, agents and independent contractors as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall be CG 20 10 11 85 *or equivalent*. Any other version of CG 20 10 or CG 20 38 must be accompanied by CG 20 37 (04/13). Endorsement must state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The insurance provided by the Contractor pursuant to this Article must be designated in the policy as primary to any insurance obtained by the District. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.

#### 35.4 Specific Insurance Requirements

35.4.1 Contractor shall take out and maintain and shall require all Subcontractors, if any, whether primary or secondary, to take out and maintain:

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

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|-----|--|----------------|
| 8.  | Per occurrence (combined single limit)             | \$1,000,000.00 |
| 9.  | Project Specific Aggregate (for this Project only) | \$2,000,000.00 |
| 10. | Products and Completed Operations                  | \$1,000,000.00 |
| 11. | Personal and Advertising Injury Limit              | \$1,000,000.00 |

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

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|-----|--|----------------|
| 12. | Automotive and truck where operated in amounts   | \$1,000,000.00 |
| 13. | Material Hoist where used in amounts   | \$1,000,000.00 |
| 14. | Explosion, Collapse and Underground (XCU coverage)   | \$1,000,000.00 |
| 15. | In addition, provide Excess Liability Insurance coverage in the amount of Five Million Dollars (\$5,000,000.00). |                |

35.5 Workers' Compensation Insurance. During the term of this Contract, the Contractor shall provide workers' compensation insurance (not less than \$1M) for all of the Contractor's employees engaged in Work under this Contract on or at the Site of the Project and, in case any of the Contractor's Work is subcontracted, the Contractor shall require the Subcontractor to provide workers' compensation insurance (not less than \$1M) for all the Subcontractor's employees engaged in Work under the subcontract. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in Work under this Contract on or at the Site of the Project is not protected under the Workers' Compensation laws, the Contractor shall provide or cause a Subcontractor to provide adequate insurance coverage for the protection of those employees not otherwise protected. The Contractor shall file with the District certificates of insurance and in comply with Labor Code § 3700.

#### 35.6 Builder's Risk/All Risk

35.6.1 *Course-of-Construction Insurance Requirements.* The Contractor, during the progress of the Work and until final acceptance of the Work by District upon completion of the entire Contract, shall maintain Builder's Risk, Course of Construction or similar first party property coverage issued on a replacement value basis consistent with the total replacement cost of the structures where work is being performed inclusive of all Work for the Project included within the Contract Documents. Coverage is to insure against all risks of accidental direct physical loss, and must include, by the basic grant of coverage or by endorsement, the perils of vandalism, malicious mischief (both without any limitation regarding vacancy or occupancy), fire, sprinkler leakage, civil authority, sonic boom, earthquake, flood, collapse, wind, lightning, smoke and riot. The coverage must include debris removal, demolition, increased costs due to enforcement of building ordinance and law in the repair and replacement of damage and undamaged portions of the property, and reasonable costs for the Architect's and engineering services and

expenses required as a result of any insured loss upon the Work and Project which is the subject of the Contract Documents, including the underlying structure where Work is being performed, completed Work and Work in progress, to the full insurable value thereof. Such insurance shall include the District and the Architect as additional named insureds, and any other person with an insurable interest as designated by the District.

The Contractor shall submit to the District for its approval all items deemed to be uninsurable. The risk of the damage to the Work due to the perils covered by the "Builder's Risk/All Risk" Insurance, as well as any other hazard which might result in damage to the Work, is that of the Contractor and the surety, and no claims for such loss or damage shall be recognized by the District nor will such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.

- 35.7 Fire Insurance. Before the commencement of the Work, the Contractor shall procure, maintain, and cause to be maintained at the Contractor's expense, fire insurance on all Work subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project against loss or damage in full until the Work is accepted by the District.
- 35.8 Other Insurance. The Contractor shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.
- 35.9 Proof of Insurance. The Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract until all required insurance and certificates have been obtained and delivered in duplicate to the District for approval subject to the following requirements:
- 35.9.1 Certificates and insurance policies shall include the following clause:
1. "This policy shall not be non-renewed, canceled, or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice."
  2. Certificates of insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices.
  3. Certificates of insurance shall clearly state that the District and the Architect are named as additional insureds under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by District.
  4. The Contractor and its Subcontractors shall produce a certified copy of any insurance policy required under this Article upon written request of the District.
- 35.10 Compliance. In the event of the failure of Contractor to furnish and maintain any insurance required by this Article 34, the Contractor shall be in default under the Contract. Compliance by Contractor with the requirement to carry insurance and furnish certificates or policies evidencing the same shall not relieve the Contractor from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify the District and the Architect.
- 35.11 No Waiver Created through Payments. The making of any payments under this CSA or the Sublease shall not be construed as creating an insurable risk interest by or for the District or be construed as relieving the Contractor or his Subcontractors of responsibility for loss from any direct physical loss, damage, or destruction occurring prior to Completion of the Project.

- 35.12 Waiver of Subrogation. Contractor waives (to the extent permitted by law) any right to recover against the District for damages to the Work, any part thereof, or any and all claims arising by reason of any of the foregoing, but only to the extent that such damages and/or claims are covered by property insurance and only to the extent of such coverage (which shall exclude deductible amounts) by insurance actually carried by the District.

The provisions of this section are intended to restrict each party to recovery against insurance carriers only to the extent of such coverage and waive fully and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier. The District and the Contractor shall each obtain in all policies of insurance carried by either of them, a waiver by the insurance companies thereunder of all rights of recovery by way of subrogation for any damages or claims covered by the insurance.

35.13 Performance and Payment Bonds

- 35.13.1 *Bond Requirements.* Prior to commencing any portion of the Work, the Contractor shall furnish separate payment and performance bonds for its portion of the Work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the Work. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California as sureties.

To the extent, if any, that the Contract Price is increased in accordance with the Contract Documents, the Contractor shall, upon request of the District, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the District. To the extent available, the bonds shall further provide that no change or alteration of the Contract Documents (including, without limitation, an increase in the Contract Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor will release the surety. If the Contractor fails to furnish the required bonds, the District may terminate the Contract for cause.

- 35.13.2 *Surety Qualification.* Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure § 995.120 shall be accepted. Surety must be a California-admitted surety and listed by the U.S. Treasury with a bonding capacity in excess of the Project cost.

- 35.13.3 *Alternate Surety Qualifications.* If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with § 995.660 of the California Code of Civil Procedure and proof of such is provided to the District.

- 35.13.4 Contractor is hereby authorized to obtain a performance and payment bond from any Subcontractors selected by Contractor at its discretion and cost. Any bonds required by this subsection shall comply with the requirements set forth above.

36. HOLD HARMLESS AND INDEMNITY

Contractor shall defend, indemnify and hold harmless District, Construction Manager, and their officers, employees, and agents (excluding the Inspector, Architect, and any other design or engineering professionals retained by District or Architect) from all liabilities, claims, actions, liens, judgments, demands, damages, losses, costs or expenses of any kind arising from death, personal injury, property damage or other cause based or asserted upon any act, omission, or breach connected with or arising from the progress of Work or performance of service under this Agreement or the Contract Documents. As part of this indemnity, Contractor shall protect and defend, at its own expense, District, Construction Manager, and their officers, employees, and agents (excluding the Inspector, Architect, and any other

design or engineering professionals retained by District or Architect) from any legal action including attorney's fees or other proceeding based upon such act, omission, breach or as otherwise required by this Article.

Furthermore, Contractor agrees to and does hereby defend, indemnify and hold harmless District, Construction Manager, and their officers, employees, and agents (excluding the Inspector, Architect, and any other design or engineering professionals retained by District or Architect) from every claim or demand made, and every liability, loss, damage, expense or attorney's fees of any nature whatsoever, which may be incurred by reason of:

- 36.1.1 Liability for (1) death or bodily injury to persons; (2) damage or injury to, loss (including theft), or loss of use of, any property; (3) any failure or alleged failure to comply with any provision of law or the Contract Documents; or (4) any other loss, damage or expense, sustained by any person, firm or corporation or in connection with the Work called for in this Agreement or the Contract Documents, except for liability resulting from the sole or active negligence, or the willful misconduct of the District.
- 36.1.2 Any bodily injury to or death of persons or damage to property caused by any act, omission or breach of Contractor or any person, firm or corporation employed by Contractor, either directly or by independent contract, including all damages or injury to, loss (including theft), or loss of use of, any property, sustained by any person, firm or corporation, including District, arising out of or in any way connected with Work covered by this Agreement or the Contract Documents, whether said injury or damage occurs either on or off District property, but not for any loss, injury, death or damages caused by the sole or active negligence or willful misconduct of the District.
- 36.1.3 Any dispute between Contractor and Contractor's Subcontractors/supplies/sureties, including, but not limited to, any failure or alleged failure of the Contractor (or any person hired or employed directly or indirectly by the Contractor) to pay any Subcontractor or Materialman of any tier or any other person employed in connection with the Work and/or filing of any stop notice or mechanic's lien claims.

Contractor, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the District, its officers, agents, CM, or employees (excluding the Inspector, Architect, and any other design or engineering professionals retained by District or Architect) on account of or founded upon any cause, damage, or injury identified herein and shall pay or satisfy any judgment that may be rendered against the District, its officers, agents or employees (excluding the Inspector, Architect, and any other design or engineering professionals retained by District or Architect) in any action, suit or other proceedings as a result thereof.

Contractor shall ensure that its contract with each of its Subcontractors contains provisions requiring the Subcontractors to defend, indemnify and hold harmless the District, Architect, Inspector, the State of California to a minimum level as set forth in this Article and consistent with the language of this Article.

The Contractor's and Subcontractors' obligation to defend, indemnify and hold harmless the District, Architect, and their officers, employees, and agents (excluding the Inspector, Architect, and any other design or engineering professionals retained by District or Architect) hereunder shall include, without limitation, any and all claims, damages, and costs for the following: (1) any damages or injury to or death of any person, and damage or injury to, loss (including theft), or loss of use of, any property; (2) breach of any warranty, express or implied; (3) failure of the Contractor or Subcontractors to comply with any applicable governmental law, rule, regulation, or other requirement; (4) products installed in or used in connection with the Work; and (5) any claims of violation of the Americans with Disabilities Act ("ADA") claims arising from failure to comply with the Construction Documents.

### **37. SUBSTITUTION OF SECURITY**

In accordance with Public Contract Code section 22300, the District will permit the substitution of securities for any moneys withheld by the District to ensure performance under the Construction Services Agreement. At the request and expense of the Contractors, securities equivalent to the amount withheld shall be deposited with the District, or

with a state or federally chartered bank as the escrow agent, who shall then pay such moneys to the Contractor. Upon satisfactory completion of the Construction Services Agreement the securities shall be returned to the Contractor.

**38. TITLE TO WORK**

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

**39. COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION**

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

Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. Contractor shall provide copies of all reports and monitoring information to the District, Architect and the District's third party SWPPP consultant.

The Contractor shall comply with the lawful requirements of any applicable municipality, the County, drainage district, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

Failure to comply with the Permit is in violation of federal and state law. The Contractor hereby agrees to indemnify and hold harmless the District, its Board members, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the District, its Board members, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole negligence, willful misconduct or active negligence of the District, its Board members, officers, agents, employees or authorized volunteers. District may seek damages from the Contractor for delay in completing the Project caused by the Contractor's failure to comply with the Permit.

**40. EQUAL OPPORTUNITY CLAUSE**

The Contractor herein agrees not to discriminate in its recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age or physical handicap in the performance of this Construction Services Agreement and to comply with the provisions of the following laws:

- 40.1 California Fair Employment and Housing Act (Gov. Code 12900 et seq., prohibiting discrimination in employment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex, and prohibiting harassment of an employee or applicant because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age);

- 40.2 Federal Civil Rights Act of 1964 (42 USC '2000e et seq., prohibiting discrimination in employment on the basis of race, color, national origin, religion, or sex); Title I of the Americans With Disabilities Act of 1990 (42 USC 12101 et seq., prohibiting discrimination against qualified individuals with a disability in hiring and employment practices);
- 40.3 The Age Discrimination in Employment Act (29 USC 621 et seq., prohibiting age discrimination in employment against individuals who are at least forty years of age);
- 40.4 California Labor Code section 1102.1 (prohibiting discrimination in any aspect of employment or opportunity for employment based on actual or perceived sexual orientation);
- 40.5 Sexual orientation;
- 40.6 American with Disabilities Act (ADA) (See Article 41); and
- 40.7 Any other laws or regulations prohibiting discrimination as may be applicable to Contractor.

**41. SPECIAL NOTICE OF AMERICAN'S WITH DISABILITIES ACT**

Some of the requirements in the Construction Documents are meant to comply with the American's with Disabilities Act ("ADA"). The requirements of the ADA are technical in nature and may appear to be minor in nature (i.e. whether a walkway or ramp has a 2% cross-slope). Contractor is warned that even the slightest deviation from the specific requirements from the ADA is considered a Civil Rights Violation and subjects the District to fines of three times actual damages sustained by a handicap individual or up to \$4,000 per violation and attorney's fees required to enforce the ADA violation. As a result of the significant liability and exposure associated with ADA aspects of the Contract, Contractor shall take special care to meet all ADA requirements detailed in the Construction Documents. Failure to comply with ADA rules that results in a Notice of Non-Compliance shall be repaired to meet ADA requirements promptly. In addition, any ADA violations that are not identified by Inspector or Architect that are later identified shall be repaired and charged back to the Contractor through a Deductive Change Order.

- 41.1 Indemnification of ADA Claims. ADA claims arising from failure to comply with Construction Documents shall be indemnified, held harmless and defended by Contractor. Further, any withholdings for ADA violations in Article 29.4 shall include potential redesign costs and an accelerated repair costs due to the potential for ADA claims arising from DSA posting of ADA violations on the Project.

**42. PATENTS, ROYALTIES, AND INDEMNITIES**

The Contractor shall hold and save the District and its officers, agents, and employees harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of this Construction Services Agreement, including its use by the District, except to the extent a method or means was specifically required by the Contract Documents.

**43. EXCISE TAX**

If under federal excise tax law any transaction hereunder constitutes a sale on which a federal excise tax is imposed and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the District, upon request, will execute a certificate of exemption which will certify (1) that the District is a political subdivision of the state for the purposes of such exemption and (2) that the sale is for the exclusive use of the District. No excise tax for such materials shall be included in the GMP.

**44. PROHIBITED INTERESTS**

No official of District and no District representative who is authorized in such capacity and on behalf of District to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with construction

of Project, shall be or become directly or indirectly interested financially in this Construction Services Agreement or any part thereof. No officer, employee, architect, attorney, engineer or inspector of or for District who is authorized in such capacity and on behalf of District to exercise any executive, supervisory or other similar functions in connection with construction of Project, shall become directly or indirectly interested financially in this Construction Services Agreement or in any part thereof.

**45. COMPLIANCE WITH DTSC GUIDELINES – IMPORTED SOIL/SOILS INSPECTION**

- 45.1 If the Project requires the use of imported soils, the Contractor shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with California Law and the California Health and Safety Code. The District reserves the right to reject any imported material that has come from agricultural or commercial land uses. Contractor must notify the District of the source of material and comply with the applicable Regional Water Quality Control Board Resolution and when applicable, with the guidelines of the Department of Toxic Substances Control (DTSC).
- 45.2 Unless otherwise provided, when a soils investigation report obtained from test holes at the site is available, such report shall not be a part of this contract. Nevertheless, with respect to any such soils investigation and/or geotechnical report regarding the site, it shall be the responsibility of the Contractor to review and be familiar with such report. Any information obtained from such report or any information given on drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, and does not form a part of the contract, unless otherwise specifically provided. Contractor is required to make a visual examination of site and must make whatever tests it deems appropriate to determine the underground condition of the soil. Limited soil tests and subsurface investigations, if any, are available for review and consideration by Contractor and were conducted for the purpose of design only. Subsurface investigation information is made available by District solely as a matter of convenience and general information for Contractor and Contractor is expected to review and be familiar with such information. No representation is made by District or Architect that information provided is completely representative of all conditions and materials which may be encountered. If such a report is referenced in the Contract Documents for performance of the Project, such reference shall be to establish minimum requirements only. Further, no representation is made by District or Architect that information provided is solely adequate for purposes of construction. District disclaims responsibility for interpretations by Contractor of soil and subsurface investigation information, such as in protecting soil-bearing values, rock profiles, presence and scope of boulders and cobbles, soil stability and the presence, level and extent of underground water. Contractor shall determine means, methods, techniques and sequences necessary to achieve required characteristics of completed Work. Conditions found after execution of the Construction Services Agreement to be materially different from those reported and which are not customarily encountered in the geographic area of the Project shall be governed by provisions of this Construction Services Agreement for unforeseen conditions.

**46. HAZARDOUS WASTE AND UNKNOWN PHYSICAL CONDITIONS**

Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:

1. Material that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
2. Subsurface or latent physical conditions at the Site differing from those indicated, including geological, soils, and or water table issues which impede construction or increase Construction Costs.
3. Unknown physical conditions at the Site (not including structures or improvements) of any unusual nature, different materially from those ordinarily encountered and generally



recognized as inherent in work of the character provided for in the Construction Services Agreement.

- 46.1 District shall promptly investigate the conditions, and if it finds that the conditions materially so differ, and the materials that are not on reports or documents supplied or reviewed as part of Contractor's Due Diligence shall be submitted as a Change Order under Article 18 and, upon approval, shall be allocated to the Unforeseen Allowance.
- 46.2 In the event that a dispute arises between District and Contractor whether the conditions materially differ from Due Diligence Documents reviewed for hazardous substances, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by this Construction Services Agreement but shall proceed with all work to be performed under the Construction Services Agreement.

47. **NO ASBESTOS CERTIFICATION**

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

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

- 47.1.1.1 Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency (EPA).

- 47.1.1.2 The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.

- 47.1.1.3 The asbestos consultant shall be chosen and approved by the District which shall have sole discretion and final determination in this matter.

- 47.1.1.4 The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

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

- 47.1.3 **Hold Harmless:** Interface of work for the Project with work containing asbestos shall be executed by the Contractor at his/her risk and at his/her discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of the Construction Services Agreement the Contractor acknowledges the above and agrees to the fullest extent permitted by law to hold harmless the District, its Board and each member of the Board, its officers, employees, agents, representatives, including its Architect and assigns, for all asbestos liability which may be associated with this work. The

Contractor further agrees to instruct his/her employees with respect to the above mentioned standards, hazards, risk and liabilities.

**48. LAWS AND REGULATIONS**

Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on conduct of work as indicated and specified. If Contractor observes that drawings and specifications are at variance therewith, it shall promptly notify Architect in writing and any necessary changes shall be adjusted as provided in this Construction Services Agreement for changes in work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the District's Architect, it shall bear all costs arising therefrom.

**49. AGREEMENT MODIFICATIONS**

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

**50. NOTICES**

All communications in writing between District and Contractor, including without limitation, applications for payment, shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by telex, telegram, or fax followed by regular mail, addressed pursuant to the Notice Section of Article 3.

**51. THIRD-PARTY CLAIMS**

Pursuant to Public Contract Code section 9201(b) and (c), District shall provide Contractor with timely notification of the receipt of any third-party claim, relating to the Contract. District is entitled to recover its reasonable costs incurred in providing such notification.

**52. ASSIGNMENT**

Except Contractor's responsibility to assign Subcontractors and material suppliers to District upon Project Completion and the running of the Warranty Period, Contractor shall not assign or sublet the Lease, Sublease or this Construction Services Agreement, nor shall Contractor assign any monies due or to become due to it hereunder. Contractor has unique abilities and understanding of the Project from negotiations and the Due Diligence that has been undertaken and, thus, any assignment will not transfer to the assignee the specific understanding associated with Contractor on this Project.

**53. HEADINGS**

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

**54. INTEGRATION/MODIFICATION**

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

**55. APPLICABLE LAW/ PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

The terms and provisions of this Construction Services Agreement shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Construction Services

Agreement the action shall be brought in a state court situated in the County where the District is located, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county. In the event of any such litigation between the parties, the parties shall pay for their respective costs incurred, including attorneys' fees.

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

**56. SUCCESSION OF RIGHTS AND OBLIGATIONS**

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

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

CONTRACTOR

DISTRICT:

**BALFOUR BEATTY CONSTRUCTION, LLC**

**SIMI VALLEY UNIFIED SCHOOL DISTRICT**

By: 

Brian Cahill  
President – California Division

By: 

Ron Todo [SimiConSvcAgr]  
Assistant Superintendent Business & Facilities

DATE: 4/22/2022 | 11:55 AM PDT

DATE: 4/25/2022 | 2:22 PM PDT



**EXHIBIT "A"**

**SCOPE OF WORK / CONSTRUCTION DOCUMENTS**

*[TO BE INSERTED]*

**EXHIBIT "B"**  
**MASTER BUDGET**  
*[TO BE INSERTED]*

EXHIBIT C

**SIMI VALLEY UNIFIED SCHOOL DISTRICT**

**CERTIFICATION OF COMPLIANCE WITH PREVAILING WAGE AND  
RELATED LABOR REQUIREMENTS  
(SUBMIT WITH BID PROPOSAL)**

**Project      Royal High School Modernization Projects; BID #R22-02903**

CONTRACTOR: Balfour Beatty Construction, LLC.  
(Contractor Name)

\_\_\_\_\_  
[SimiLAB1771]

I hereby certify that the firm identified above will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours' notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project including, without limitation, labor compliance monitoring and enforcement by the Department of Industrial Relations.

I hereby certify that I will also conform to the Federal Labor Standards Provisions regarding minimum wages, withholding, payrolls and basic records, apprentice and trainee employment requirements, equal employment opportunity requirements, Copeland Act requirements, Davis-Bacon and Related Act requirements, Contract Work Hours and Safety Standards Act requirements, and any and all other applicable requirements for federal funding for all Work on the above Project.

Date: \_\_\_\_\_  
Company Name: \_\_\_\_\_  
Contractor Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT D

**NON-COLLUSION DECLARATION  
(SUBMIT WITH BID PROPOSAL)**

**PROJECT: Royal High School Modernization**

**Projects; BID # R22-02903STATE OF CALIFORNIA**

**COUNTY OF \_\_\_\_\_**

I, \_\_\_\_\_, being first duly sworn, deposes and says that I am  
(Typed or Printed Name) [SimiPCC7106]  
the \_\_\_\_\_ of \_\_\_\_\_, the party submitting  
(Title) (Bidder Name)

the foregoing Bid Proposal ("the Bidder"). In connection with the foregoing Bid Proposal, the undersigned declares, states and certifies that:

1. The Bid Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization or corporation.
2. The Bid Proposal is genuine and not collusive or sham.
3. The Bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any other bidder or anyone else to put in sham bid, or to refrain from bidding.
4. The Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price, or that of any other bidder, or to fix any overhead, profit or cost element of the bid price or that of any other bidder, or to secure any advantage against the public body awarding the contract or of anyone interested in the proposed contract.
5. All statements contained in the Bid Proposal and related documents are true.
6. The Bidder has not, directly or indirectly, submitted the bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any person, corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_  
(City, County and State)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name Printed or Typed)

EXHIBIT E

**CERTIFICATE OF WORKERS' COMPENSATION INSURANCE**

I, \_\_\_\_\_ the \_\_\_\_\_ of  
(Name) [SimiLAB3700] (Title)  
\_\_\_\_\_, declare, state and certify that:  
(Contractor Name)

1. I am aware that California Labor Code §3700(a) and (b) provides:

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

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees."

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

\_\_\_\_\_  
(Contractor Name)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or printed name)



EXHIBIT F

DRUG-FREE WORKPLACE CERTIFICATION

I, \_\_\_\_\_, am the \_\_\_\_\_ of \_\_\_\_\_  
(Print Name) [SimiGOV8350] (Title)  
\_\_\_\_\_  
(Contractor Name)

I declare, state and certify to all of the following:

1. I am aware of the provisions and requirements of California Government Code §8350 et seq., the Drug Free Workplace Act of 1990.
2. I am authorized to certify, and do certify, on behalf of Contractor that a drug free workplace will be provided by Contractor by doing all of the following:
  - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in Contractor's workplace and specifying actions which will be taken against employees for violation of the prohibition;
  - B. Establishing a drug-free awareness program to inform employees about all of the following:
    - i. The dangers of drug abuse in the workplace;
    - ii. Contractor's policy of maintaining a drug-free workplace;
    - iii. The availability of drug counseling, rehabilitation and employee-assistance programs; and
    - iv. The penalties that may be imposed upon employees for drug abuse violations;
  - C. Requiring that each employee engaged in the performance of the Contract be given a copy of the statement required by subdivision (A), above, and that as a condition of employment by Contractor in connection with the Work of the Contract, the employee agrees to abide by the terms of the statement.
  - D. Contractor agrees to fulfill and discharge all of Contractor's obligations under the terms and requirements of California Government Code §8355 by, inter alia, publishing a statement notifying employees concerning: (i) the prohibition of any controlled substance in the workplace, (ii) establishing a drug-free awareness program, and (iii) requiring that each employee engaged in the performance of the Work of the Contract be given a copy of the statement required by California Government Code §8355(a) and requiring that the employee agree to abide by the terms of that statement.
3. Contractor and I understand that if the District determines that Contractor has either: (i) made a false certification herein, or (ii) violated this certification by failing to carry out and to implement the requirements of California Government Code §§8355, the Contract awarded herein is subject to termination, suspension of payments, or both. Contractor and I further understand that, should Contractor violate the terms of the Drug-Free Workplace Act of 1990, Contractor may be subject to debarment in accordance with the provisions of California Government Code §§8350, et seq.
4. Contractor and I acknowledge that Contractor and I are aware of the provisions of California Government Code §§8350, et seq. and hereby certify that Contractor and I will adhere to, fulfill, satisfy and discharge all provisions of and obligations under the Drug-Free Workplace Act of 1990.

I declare under penalty of perjury under the laws of the State of California that all of the foregoing is true and correct.

Executed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(City and State)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed or Typed Name)

EXHIBIT F

**TOBACCO-FREE ENVIRONMENT CERTIFICATION**

**PROJECT: Royal High School Modernization Projects; BID # R22-02903**

**This Tobacco-Free Environment Certification form is required from the successful Bidder.**

The contract between SIMI VALLEY UNIFIED SCHOOL DISTRICT ("District") and \_\_\_\_\_ ("Contractor" or "Bidder") includes the following provisions: [SimiLAB6400]

Pursuant to, without limitation, 20 U.S.C. section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq. and District Board Policies, all District sites, including the Project site, are tobacco-free environments. Smoking, vaping, and the use of tobacco products by all persons is prohibited on or in District property. District property includes school buildings, school grounds, school owned vehicles and vehicles owned by others while on District property.

I acknowledge that I am aware of the District's policy regarding tobacco-free environments at District sites, including the Project site and hereby certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, subcontractors, or my firm's subcontractors' employees or agents to use tobacco and/or smoke/vape on any District site.

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

Contractor: \_\_\_\_\_

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

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

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

EXHIBIT G

**DISABLED VETERAN BUSINESS ENTERPRISE ("DVBE")  
PARTICIPATION GOAL PROGRAM POLICY**

1. DVBE Participation Goal Program Policy. SIMI VALLEY UNIFIED SCHOOL DISTRICT ("the District") is committed to achieving the legislatively and administratively established Participation Goal for Disabled Business Enterprises ("DVBEs"). Through the DVBE Participation Goal Program, the District encourages contractors to ensure maximum opportunities for the participation of DVBEs in the Work of the Contract. The District's commitment to the achievement of DVBE Participation Goal for the Work of the Contract shall not, however, result in the District's discrimination in the award of the Contract on the basis of ethnic group identification, ancestry, religion, age, sex, race, color, or physical or mental disability.
2. Definitions.
  - 2.1. Disabled Veteran. A "Disabled Veteran" means a veteran of the military, naval, or air service of the United States with at least ten percent (10%) service-connected disability who is a resident of the State of California.
  - 2.2. Disabled Veteran Business Enterprise. A "Disabled Veteran Business Enterprise" ("DVBE") means a business enterprise certified by the Office of Small and Minority Business, State of California, Department of General Services, as a "Disabled Veteran Business Enterprise".
  - 2.3. Good Faith Efforts. As use herein, the term "Good Faith Efforts" shall be deemed to mean demonstrable and effective efforts of the Bidder to seek out, consider and secure DVBEs as potential Subcontractors or Material Suppliers, or both, in order to meet the Participation Goal; the Good Faith Efforts must be an active and aggressive effort to meet the Participation Goal, as more particularly set forth herein.
3. Participation Goal.
  - 3.1. Participation Goal Defined. The term "Participation Goal" is a numerically expressed objective for DVBE participation in performing the Work of the Contract. The DVBE Participation Goal is not a quota, set-aside, or rigid proportion.
  - 3.2. DVBE Participation Goal. The DVBE Participation Goal is Three Percent (3%) of total amount of Bidder's Bid Proposal, inclusive of the value of additive Alternate Bid Items, if any.
4. Good Faith Efforts to Meet Participation Goal.
  - 4.1. Good Faith Efforts. The Bid Proposal submitted by any Bidder who has not met the DVBE Participation Goal shall be considered responsive only if the Bidder represents that it made Good Faith Efforts to meet the DVBE Participation Goal.
  - 4.2. Good Faith Efforts to Meet DVBE Participation Goal. A Bidder must secure the participation of DVBEs in a timely manner to ensure that potential DVBE Subcontractors or Material Suppliers have an adequate opportunity to respond to the Bidder's solicitation of sub-bids and be given serious consideration by the Bidder prior to the closing time for the receipt of Bid Proposals. Such Good Faith Efforts shall include, without limitation:
    - 4.2.1. DVBE Work and Active Solicitation of DVBEs. The Bidder's identification of portions of the Work which may be provided or performed by DVBE Subcontractors and/or Material Suppliers and the Bidder's active and sincere solicitation of DVBEs for those identified portions of the Work.
    - 4.2.2. Contact Agencies for DVBEs. Contact local, state and/or federal agencies, and local DVBE organizations to identify potential DVBEs for performing portions of the Work;

- 4.2.3. Advertisements. Advertise (with sufficient time for submission of sub-bids and the Bidder's good faith consideration of the same) prior to the last date for submittal of Bid Proposals in: (i) one or more daily or weekly newspapers of general circulation published in the locality of the Work, and (ii) one or more construction trade publications, and (iii) one or more construction trade publications, journals or papers focusing on DVBEs. Each of the advertisements pursuant to the preceding, must state the following: (i) identification of the general description of the Work and an identification of the District; (ii) state the closing date and time for the District's receipt of Bid Proposals; (iii) state the last date and time for submission of sub-bids from DVBEs to the Bidder; (iv) request sub-bids from DVBE Subcontractors or Material Suppliers; (v) identify the type of Work of the Contract available for sub-bids by DVBEs; and (vi) unequivocally state the requirement of bonds, if any, of a DVBE sub-Bidder and who is to bear the expense of obtaining any required bonds.
- 4.2.4. Direct Solicitation of DVBEs. Solicit by direct mail, telephone or personal contact a sufficient number of DVBEs who offer work or services appropriate for the Work identified by the Bidder under Paragraph 4.2.1 above. Solicitations shall be made in a timely manner and contain sufficient information for a sub-Bidder to make a reasonable sub-bid and the Bidder's good faith consideration of the same, including, without limitation, the following: (i) identification of the general description of the Work and an identification of the District; (ii) state the closing date and time for the District's receipt of Bid Proposals; (iii) state the last date and time for submission of bids from DVBEs to the Bidder; (iv) request sub-bids from Subcontractors or Material Suppliers; (v) identify the type of Work of the Contract available for sub-bids by DVBEs; and (vi) unequivocally state the requirement of bonds of a DVBE sub-Bidder and who is to bear the expense of obtaining any required bonds.
- 4.2.5. Bidder Follow-Up To DVBE Interest. The Bidder shall follow-up initial expressions of interest of DVBEs in performing a portion of the Work by contacting such DVBEs to determine with certainty whether such DVBEs are interested in performing specific items of the Work of the Contract and submitting a sub-bid for a portion of the Work.
- 4.2.6. Good Faith Negotiations With Potential DVBE Subcontractors. The Bidder shall negotiate in good faith with potential DVBEs Subcontractors or Material Suppliers and shall not unjustifiably reject, as unsatisfactory, bids prepared by any DVBE for a portion of the Work of the Project. In the event that the District shall reasonably determine that the Bidder has failed to engage in good faith negotiations with a potential DVBE participant or rejects the sub-bid of a DVBE without justification, the District may deem the Bid Proposal of such Bidder to be non-responsive.
5. Documentation of Achievement of Participation Goal or Good Faith Efforts. Each Bidder shall note, where indicated, in the form of Bid Proposal whether the DVBE Participation Goal was achieved and if not, that Good Faith Efforts were made to achieve the DVBE Participation Goal. **The Bidders submitting the three lowest priced Bid Proposals (as determined at the time of the District's public opening and reading of Bid Proposals), shall submit to the District documentation and supporting evidence of achievement of the DVBE Participation Goal or Good Faith efforts to achieve the DVBE Participation Goal.** Such documentation and supporting evidence shall be in the form of duly completed forms of the DVBE Participation Worksheets issued by the District; unless modified by the District, completed DVBE Worksheets must be submitted to the District Purchasing Department no later than 5:00 p.m. of the third (3<sup>rd</sup>) working day after the date of the opening of Bid Proposals. The District may, at its discretion, request that Bidders, other than the Bidders submitting the three lowest priced Bid Proposals, submit documentation of compliance with the DVBE Participation Goal Program at any time after the District's opening of Bid Proposals and

prior to the District's award of the Contract. If a Bidder is required or requested by the District to submit DVBE Participation Goal Program documentation, the failure of any Bidder to timely submit complete and accurate documentation on DVBE Participation Worksheets issued by the District at or prior to the time established herein will render the Bidder's Bid Proposal non-responsive and rejected.

6. Counting of DVBE Participation.

- 6.1. Certification. DVBEs must be certified in the category identified prior to the closing time for the District's receipt of Bid Proposals; any DVBE who is not so certified will result in such DVBE not counting towards the DVBE Participation Goal.
  - 6.2. Bidder Acceptance of Sub-Bid. Sub-bids of DVBEs shall be accepted by the Bidder prior to the closing time for the District's receipt of Bid Proposals, with such acceptance subject only to the District's award of the Contract to the Bidder.
  - 6.3. Value of Participation Goal. The total dollar value of a contract between the Bidder and a certified DVBE will count towards the DVBE Participation Goal.
  - 6.4. Joint Ventures. If a DVBE is a member of a joint venture, only the dollar value of the Work actually performed by the DVBE member of the joint venture will count towards the DVBE Participation Goal, unless the joint venture entity itself is certified as a DVBE.
  - 6.5. Bidder as DVBE. A Bidder certified as a DVBE may count towards the Participation Goal the dollar value of the Work actually performed by the Bidder's own forces. A Bidder certified as a DVBE is not relieved from meeting the DVBE Participation Goal or making Good Faith Efforts to achieve the Participation Goal if the value of its Work is less than the DVBE Participation Goal.
  - 6.6. Lower Tier Subcontractors; Material Suppliers. The Bidder may count towards the DVBE Participation Goal the total dollar value of contracts let by its Subcontractors or Material Suppliers to lower tier Subcontractors or Material Suppliers certified as DVBEs provided that such lower tier Subcontractors or Material Suppliers actually assume the contractual responsibility and obligation for the total dollar value of the Work or materials to be supplied by such lower tier Subcontractors or Material Suppliers.
  - 6.7. Commercially Useful Functions. DVBEs used by the Bidder to establish achievement of the Participation Goal shall be considered as meeting the Participation Goal only if the DVBE is responsible for execution of a distinct element of the Work of the Contract, carry out its obligations by actually performing, managing, or supervising the Work for which the DVBE is responsible for executing. Such DVBEs must be responsible for the portion of the Work which is normal for its business services and functions. A DVBE Subcontractor who subcontracts a significantly greater portion of the Work assumed by the DVBE Subcontractor than would be considered normal and usual under industry standards and practices will not be presumed to be performing a commercially useful function, and such DVBE Subcontractor will not count or be considered for purposes of achieving the Participation Goal.
7. Substitution of DVBEs. If the Bidder awarded the Contract deems it necessary to substitute a DVBE Subcontractor or Material Supplier identified in the Subcontractor's List submitted with the Bidder's Bid Proposal, all provisions of the Contract Documents relating to the substitution of Subcontractors shall be applicable and complied with by the successful Bidder. In addition to the provisions of the Contract Documents relating to the substitution of listed Subcontractors, if a DVBE under a direct contract with the Bidder is to be substituted, the successful Bidder is strongly encouraged to substitute the listed DVBE with an equivalent and certified DVBE.

8. Monitoring of DVBE Participation.

- 8.1. DVBE Participation Worksheets. If the Bidder awarded the Contract is required by the District to complete and submit DVBE Participation Worksheets, the completed forms of DVBE

Participation Worksheets submitted by the Bidder shall be deemed a part of the Contract Documents.

- 8.2. Continuing Responsibilities. Efforts of the successful Bidder to include the participation of DVBEs in the performance of the Work of the Contract shall not terminate with the award of the Contract to such Bidder. The successful Bidder's efforts to secure the participation of DVBEs shall continue for the duration of the Work of the Contract, including when the successful Bidder is purchasing materials, equipment, supplies, and/or needs additional Subcontractors (including substitution of listed Subcontractors).
- 8.3. DVBE Participation Reports and Data. During performance of the Work of the Contract, the successful Bidder shall maintain complete and accurate records of DVBE Participation in executing the Work. From time-to-time, upon the request of the District the Bidder awarded the Contract shall submit reports, in form and content satisfactory to the District, regarding DVBE Participation in the Work of the Contract, including the participation of DVBEs in the performance of approved Changes to the Work. The failure or refusal of the successful Bidder to submit reports of DVBE Participation during performance of the Work within ten (10) days of the District's request for such reports may be deemed by the District to be the successful Bidder's default of a material obligation of the Contract and thereupon, the District may exercise any right or remedy provided for under the Contract Documents or at law, including without limitation termination of the Contract for default or the withholding of payments otherwise due under the Contract Documents until such report(s) is/are received. If requested by the District, upon completion of the Work of the Contract, the successful Bidder shall submit a final report identifying all DVBEs utilized in the performance of the Work, the type or classification of the Work performed by each such DVBE and the dollar value of the Work performed by each such DVBE. In the event that the District shall request a report of DVBE utilization upon completion of the Work of the Contract, the submission of such report in form and content satisfactory to the District shall be deemed a condition precedent to the District's obligation to make payment of the Final Payment under the Contract Documents. In such event, the submission of such final report shall be in addition to, and not in lieu of any other conditions precedent set forth in the Contract Documents for the District's obligation to make payment of the Final Payment. The Bidder awarded the Contract shall maintain books and records of DVBE Participation in the Work for at least three (3) years following completion of the Project; during such time, the District shall have access, upon reasonable advance notice, to such books and records for inspection or reproduction.
- 8.4. Contract Audit. The successful Bidder awarded the Contract agrees that the District, or its designee, shall have the right to review, obtain and/or copy any and all writings, materials, documents and other records pertaining to utilization of DVBEs in performance of the Contract. The successful Bidder awarded the Contract agrees that the District, or its designee, shall have access to any of the successful Bidder's premises upon reasonable notice, during usual business hours for the purpose of interviewing employees and inspecting and/or copying such writings, materials, documents and other documents which may be relevant to a matter under investigation for the purpose of determining compliance with the DVBE Participation Goal Program Policy.
9. Capitalized Terms. Capitalized terms used herein shall be as defined herein or elsewhere in the Contract Documents.

[END OF SECTION]

**DVBE PARTICIPATION WORKSHEETS  
ATTACHMENT A  
BIDDER'S DVBE STATEMENT**

**1. General Information.**

1.1. Bidder Name: \_\_\_\_\_.

1.2. Total Amount of Bidder's Bid Proposal (inclusive of additive Alternate Bid Items, if any and Allowance Amount):

\_\_\_\_\_ Dollars (\$\_\_\_\_\_).

**2. Bidder's Compliance With DVBE Participation Program.** (Check the appropriate statement).

- ☐ The Bidder has achieved or exceeded the DVBE Participation Goal and all DVBEs counting towards the DVBE Participation Goal are set forth and identified in DVBE Attachments A, B, C and D.
- ☐ The Bidder did not achieve the Participation Goal for DVBEs, but has made the required Good Faith Efforts to secure the participation of DVBEs in accordance with guidelines established in the District's DVBE Participation Goal Program. Return Attachments A, E, F, G, and H.

**3. DVBE Participation Achieved.** The Bidder achieved a DVBE Participation Goal of % of the amount of the Bidder's Bid Proposal.

**4. Submittal of Documentation.** Concurrently with the submittal of this Bidder's DVBE Statement, the Bidder has also submitted duly completed, and executed if required, forms of DVBE Attachments B, C, D, E, F, G and H of these DVBE Participation Worksheets to the extent required by the District's DVBE Participation Goal Program Policy. All of the information provided by the Bidder in its responses to DVBE Attachments B, C, E, F, G and H are true, correct and accurate; there are no omissions in the responses of the Bidder to the foregoing Attachments which render any of the Bidder's statements or information provided therein to be false or misleading. Incomplete, inaccurate, false, misleading responses or omissions rendering responses to be false or misleading will render the Bid Proposal non-responsive and rejected.

**5. Certification of DVBE Status.** The Bidder certifies, warrants and represents to the District that the Bidder has exercised due diligence in ascertaining the status of each proposed DVBE identified in DVBE Attachment C as a DVBE in compliance with the applicable provisions of the District's DVBE Participation Program Policy and applicable law. By executing and submitting this Bidder's DVBE Statement, the Bidder represents to the District that each DVBE identified in DVBE Attachment C is duly and properly certified as a DVBE in conformity with the District's DVBE Program Goal Policy and applicable law. The Bidder acknowledges that in the event that the District shall reasonably determine that any DVBE identified in the Bidder's responses to DVBE Attachment C is not a duly and properly certified DVBE, the Bid Proposal may be rejected by the District as being non-responsive. For each DVBE identified in DVBE Attachment C, the Bidder has submitted forms of DVBE Certification (DVBE Attachment D) duly completed and executed by each such DVBE.

**6. Authority to Execute.** The individual executing this Bidder's DVBE Statement on behalf of the Bidder warrants and represents to the District that she/he is duly authorized to execute this Bidder's DVBE Statement on behalf of the Bidder.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_.  
(City and State)

I declare under penalty of perjury under the laws of the State of California that all of the foregoing is true and correct.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)





**INSTRUCTIONS FOR COMPLETION OF  
ATTACHMENT C  
DVBE PARTICIPATION SUMMARY**

1. **Submittal of Attachment C.** The Bidder shall complete and submit Attachment C regardless of whether or not such Bidder has achieved some or all of the Participation Goal. Failure of the Bidder to submit completed form of Attachment C as and when required by the DVBE Participation Goal Program Policy will result in the District rejecting the Bid Proposal of such Bidder as being non-responsive.
2. **Firm Name.** State name of the enterprise proposed by the Bidder for meeting DVBE Participation Goal; the full name of each enterprise identified must be listed and if the enterprise conducts business under a fictitious business name, the same shall be stated. If the Bidder is a certified DVBE and wishes to be counted in the category certified for purposes of meeting the Participation Goal, the Bidder must be identified in Attachment C.
3. **Item or Description of Work.** Identify, with specificity, the item or portion of the Work of the Contract to be provided or performed by the proposed DVBEs identified.
4. **Contracting With.** Identify the name of the company or firm with whom the proposed DVBE will be contracting with in connection with the Work of the Contract.
5. **Tier.** Identify the tier of contracting for each proposed DVBE with the following designations:
  - 0 = Bidder.
  - 1 = First Tier Subcontractor or Material Supplier under a direct contract with the Bidder.
  - 2 = Second Tier Subcontractor or Material Supplier under a direct contract with a First Tier Subcontractor or Material Supplier, regardless of whether or not the First Tier Subcontractor or Material Supplier is a DVBE.
  - 3 = Third Tier Subcontractor or Material Supplier under a direct contract with a Second Tier Subcontractor or Material Supplier, regardless of whether or not the Second Tier Subcontractor or Material Supplier is a DVBE.
6. **Claimed Value.** Set forth the total dollar value of the Work to be provided or performed by the proposed DVBE. The dollar value set forth in the responses to Attachments C must conform with the applicable provisions of the District's DVBE Participation Program Goal Policy.
7. **Certification.** For each DVBE identified in Attachment C, the Bidder shall indicate in this column whether such DVBE is self-certified or certified by a public agency as a DVBE. The Bidder's completion of this portion of Attachment C with respect to each DVBE identified therein is in addition to and not in lieu of the Bidder's submittal of duly completed and executed forms of DVBE Certification (Attachment D) from each proposed DVBE identified in Attachment C.

**[END OF SECTION]**

**PROJECT: Royal High School Modernization Projects; BID# R22-02903**

[illegible]

**DVBE PARTICIPATION WORKSHEETS  
INSTRUCTIONS FOR COMPLETION OF ATTACHMENT D  
DVBE CERTIFICATION**

1. DVBEs Completion of Attachment D. The Bidder submitting a Bid Proposal to the District shall make available to each DVBE identified by the Bidder in its responses to Attachment C a copy of the DVBE Certification (Attachment D) for completion and execution by each such DVBE.
2. Bidder Submittal of Completed Attachment D. The Bidder required by the DVBE Participation Goal Program Policy to submit documentation of compliance with the DVBE Participation Goal Program shall submit duly completed and executed forms of the DVBE Certification of each DVBE identified in the Bidder's responses to Attachment C. The failure or refusal, for any reason, of the Bidder to submit such completed and executed DVBE Certification(s) of each DVBE identified in the Bidder's responses to Attachment C as and when required by the DVBE Participation Goal Program Policy will result in the District rejecting the Bid Proposal of such Bidder as being nonresponsive.
3. Complete and Accurate Attachment D. Each DVBE identified in the Bidder's responses to Attachment C shall complete and execute, under penalty of perjury, a DVBE Certification. Each such DVBE and the Bidder acknowledge that if the District reasonably determines that any response in the DVBE Certification(s) submitted to the District which are incomplete, false or misleading or which omit facts rendering responses therein to be false or misleading, the District may reject the Bid Proposal of such Bidder as being non-responsive.

**[END OF SECTION]**

**DVBE PARTICIPATION WORKSHEETS  
ATTACHMENT D  
DVBE CERTIFICATION**

1. DVBE Information.

DVBE Firm Name	
DVBE Address	
DVBE Firm Contact Person	
DVBE Firm Contact Person Phone, Fax and Email	
Services or Goods Generally Provided by DVBE	
Services or Goods to be Provided by DVBE to Bidder	

2. Certification of DVBE Status. The above-identified DVBE is certified as such by California Department of General Services Office of Small Business and Disabled Veteran Business Enterprise Services and a true and correct copy of such certification is attached hereto. The Bidder and the above-identified DVBE acknowledge that if the certification of the above-identified DVBE's status is not attached, the above-identified DVBE will not be counted or considered for purposes of the Bidder's achievement of the Participation Goal.
3. Authority to Execute. The undersigned individual executing this DVBE Certification warrants and represents to the District that she/he has made diligent inquiry to ascertain that all of the information provided herein is true, correct and complete, that there are no omissions of fact in any of the responses herein which would render such responses false or misleading and that she/he is duly authorized to execute this DVBE Certification on behalf of the above-identified DVBE.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_  
(City and State)

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name of Individual Executing DVBE Certification)  
[Printed or Typed]

**DVBE PARTICIPATION WORKSHEETS  
ATTACHMENT E  
DVBEs CONTACTED**

For each Subcontractible Item of the Work identified in the Bidder's response to Attachment B (Subcontractible Items of the Work), provide the following:

1. List all the DVBES you solicited sub-bids from and how you obtained each firm's name.
2. Indicate method and date of solicitation (all written solicitations must conform with Public Contract Code § 4108 with respect to bonding requirements, if any).
3. List the method and date of follow-up and the person you contacted.

USE ONE SHEET FOR EACH SUBCONTRACTIBLE ITEM OF WORK IDENTIFIED IN ATTACHMENT B. (Photocopy as many sheets of this Attachment E as necessary.)

**Bidder Name:**

**PROJECT: Royal High School Modernization Projects; BID# R22-02903**

[illegible]

**DVBE PARTICIPATION WORKSHEETS  
ATTACHMENT F  
DVBE SUB-BIDS NOT ACCEPTED BY BIDDER**

List all DVBEs who submitted bids or quotations to the Bidder which were not accepted. Indicate if the sub-Bidder is a DVBE, identify the item of Work or materials, list the Subcontractor/Material Supplier the Bidder intends to use in lieu of the DVBE submitting a sub-bid for the identified portion of the Work, and the amount of such other sub-Bidder's bid. Give the reason the Bidder did not use the DVBE firm. (Photocopy if additional sheets are needed.)

**Bidder Name:** \_\_\_\_\_

**PROJECT:** Royal High School Modernization Projects; BID# R22-02903

<b>DVBEs Who Submitted Bids</b>	<b>Item of Work or Materials</b>	<b>Subcontractor/ Material Supplier to be Used</b>	<b>Reason DVBE Bid Not Accepted</b>

**DVBE PARTICIPATION WORKSHEETS  
ATTACHMENT G  
VERIFICATION OF DVBE SOLICITATIONS**

**Bidder Name:** \_\_\_\_\_

**PROJECT: Royal High School Modernization Projects; BID# R22-02903**

Identify ALL DVBE firms contacted by the Bidder for purposes of meeting the DVBE Participation Goal. If a DVBE was solicited in writing, the Bidder shall attach hereto a true and correct copy of such written solicitation; failure of the Bidder to do so may result in the District's rejection of the Bidder's Bid Proposal as being non-responsive.

[illegible]



**DVBE PARTICIPATION WORKSHEETS  
ATTACHMENT H  
AGENCY CONTACTS**

**Bidder Name:** \_\_\_\_\_

**PROJECT:** Royal High School Modernization Projects; BID# R22-02903

Identify all local, state or federal public agencies and DVBE organizations contacted by the Bidder for the purpose of identifying potential DVBEs to meet the Participation Goal. If the Bidder received any list or other writing identifying potential DVBEs from any agency or organization set forth in this Attachment H, the Bidder shall attach hereto a true and correct copy of each such list or other writing; failure of the Bidder to so attach such list(s) or other writing(s) may result in the District rejecting the Bid Proposal of such Bidder as being non-responsive. (Photocopy if additional sheets are necessary.)

**LOCAL, STATE OR FEDERAL AGENCIES.**

<b>Agency Name &amp; Address</b>	<b>Date of Bidder's Contact with Agency</b>	<b>Name &amp; Telephone Number of Individual Contacted</b>	<b>DVBE List Received by Bidder</b> (Indicate Yes or No & if Yes, the date of Bidder's receipt of list)

**DVBE ORGANIZATIONS CONTACTED.**

<b>Organization Name &amp; Address</b>	<b>Date of Bidder's Contact with Organization</b>	<b>Name &amp; Telephone Number of Individual Contacted</b>	<b>DVBE List Received by Bidder</b> (Indicate Yes or No & if Yes, the date of Bidder's receipt of list)

## EXHIBIT H

## FINGERPRINT CERTIFICATE

I, \_\_\_\_\_, am the \_\_\_\_\_ of \_\_\_\_\_  
 (Print Name) [SimiEDU45125-1] (Title)  
 (Entity/Contractor Name). I declare, state, and certify all of the following:

1. I am aware of the provisions and requirements of California Education Code §45125.1 and §45125.2, regarding fingerprinting of persons providing services to school districts. As such, I understand that as a public works contractor, California Education Code §45125.2 details three (3) methods for ensuring the safety of pupils as described below.

- 1.1. Installation of a physical barrier.
- 1.2. **Continual supervision and monitoring of all of contractor's employees by an employee of the contractor whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.**
- 1.3. Surveillance of contractor's employees by school personnel.

**The District requires Entity/Contractor to be able to comply with method (1.2) above.** As such, Entity/Contractor must have a California Department of Justice issued ORI number under which Entity's/Contractor's employees have been fingerprinted, allowing the California Department of Justice to notify Entity/Contractor upon ascertaining that an individual whose fingerprints were submitted to it has been convicted of a violent or serious felony. Upon such notification, Entity/Contractor shall immediately remove individual identified from District sites.

**Additional Fingerprint Certificates shall be provided to District as Entity's/Contractor's supervisory staff changes.**

Entity/Contractor  
DOJ issued ORI



← If your entity does not have an ORI #, STOP and contact the District's Purchasing Director at 805-306-4500 x4601.

**As an alternative to Entity/Contractor having an ORI number**, the District may allow Entity's/Contractor's supervisory employees to be fingerprinted under the District's ORI number. Contact the District's Purchasing Director at 805-306-4500 x4601.

2. I have personal knowledge of and/or have made due and diligent inquiry with respect to the following, and based on said knowledge and/or inquiry I certify that:
  - 2.1. The fingerprints of each person identified on Attachment B-1, providing continual supervision and monitoring of all of Entity's/Contractor's staff, including subcontractors of all tiers, while Entity/Contractor/subcontractor(s) are on District Sites, have been submitted to the California Department of Justice under the ORI number provided above pursuant to Education Code §45125.1 and §45125.2; and
  - 2.2. The California Department of Justice has issued written or electronic verification that each person identified on Attachment B-1 has not been convicted of a felony, as defined in Education Code §45122.1, and has no criminal felony proceedings, as defined in Education Code §45122.1, pending against him or her.
3. Entity/Contractor and I understand that if the District determines that Entity/Contractor has either: (a) made a false certification herein, or (b) violates this certification by failing to carry out and to implement the requirements of California Education Code §45125.1, the Contract is subject to termination, suspension of payments, or both.
4. I am authorized to execute this Fingerprint Certificate on behalf of the Entity/Contractor. All of the statements set forth above and all of the information provided in Attachment B-1 are true, correct, complete, and accurate. Further, there are no omissions or misstatements of material fact in the foregoing statements or in the information set forth in Attachment B-1 which would render such statements and/or information to be false or misleading.
5. Unsupervised Contact with students means contact that provides the person opportunity and probability for personal communication or touch with students when not under direct District supervision. Entity/Contractor shall ensure that Entity/Contractor, any subcontractors of all tiers, and their officers, employees, and agents will have no Unsupervised Contact with students while on District property. Entity/Contractor will work with the District and with Entity's/Contractor's subcontractors to ensure compliance with this requirement and shall take all measures necessary to ensure compliance with this requirement, without compromising the day-to-day educational operations at each school site where Entity/Contractor is performing work. If Entity/Contractor is unable to ensure through a security plan (which includes but is not limited to provision of an on-site Superintendent who has passed DOJ fingerprinting, and is present at the work areas whenever work is being performed, installation of temporary barriers and fencing, isolation of the work areas or rooms from the rest of the campus or building, provision of separate sanitation and break areas for the workers, and provision of a separate path or supervised escort to and from the work for construction employees) that prevention of unsupervised contact with students in a particular circumstance, cannot be achieved, then Entity/Contractor shall immediately notify the District before commencing or continuing any work that could result in

Unsupervised Contact, and shall refrain from commencing or continuing the work until Entity/Contractor has remedied the issues which may lead to Unsupervised Contact with students.

I declare under penalty of perjury under the laws of the State of California that all of the foregoing is true and correct.

Executed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.  
(City and State) [SimiEDU45125-1b]

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Handwritten or Typed Name)

**\* ATTACHMENT B-1 MUST BE COMPLETED IN ACCORDANCE WITH THE ABOVE \***

## **FINGERPRINT CERTIFICATE**

### **ATTACHMENT B-1**

[SimiEDU45125-2]

The fingerprints of each person identified below, providing continual supervision and monitoring of all of Entity's/Contractor's staff, including subcontractors of all tiers, while Entity/Contractor/subcontractor(s) are on District Sites, have been submitted to the California Department of Justice under the Entity's/Contractor's ORI number pursuant to Education Code §45125.1 and §45125.2; and,

The California Department of Justice has issued written or electronic verification that each person identified has not been convicted of a felony, as defined in Education Code §45122.1, and has no criminal felony proceedings, as defined in Education Code §45122.1, pending against him or her.

EXHIBIT I

**GUARANTEE AND CERTIFICATION OF NON-ASBESTOS; NON-LEAD**

**PROJECT: Royal High School Modernization Projects; BID# R22-02903**

Guarantee for ALL painting and installations for the above-referenced project. We hereby guarantee that the MATERIALS, PRODUCTS, COATINGS and IMPROVEMENTS we have installed at the above-mentioned Project ARE FREE OF LEAD AND ASBESTOS.

Contractor

Subcontractor

\_\_\_\_\_  
(Contractor Name)

\_\_\_\_\_  
(Subcontractor Name)

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

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

\_\_\_\_\_  
(Signature of General Contractor)

\_\_\_\_\_  
(Signature of General Contractor If for Subcontractor)

Representatives to be contacted for service:

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

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

Phone Number: \_\_\_\_\_

EXHIBIT J



SIMI VALLEY UNIFIED SCHOOL DISTRICT  
REQUEST FOR INFORMATION (RFI)

School Name: 


Project Name: 


To: (Architect) 


From: 


RFI Number: 


Date: 


Project No.: 


Bid Number: 


Drawing Number Detail	Specification Section	Page
-----------------------	-----------------------	------

Request:

--

Request Issued by: 

<hr/>	<hr/>	<hr/>
<i>Contractor's Signature</i>	<i>Name (Printed)</i>	<i>Date</i>

Response:

--

Response Issued by: 

<hr/>	<hr/>	<hr/>
<i>Architect's Signature</i>	<i>Name (Printed)</i>	<i>Date</i>

Response Review ed by: 

<hr/>	<hr/>	<hr/>
<i>Project Coordinator's Signature</i>	<i>Name (Printed)</i>	<i>Date</i>

<b>This Form Cannot Modify Contract Amount or Milestones and/or Contract Time.</b>
--

## EXHIBIT K

**IMPORTED SOILS/FILL MATERIALS CERTIFICATION****PROJECT: Royal High School Modernization Projects; Bid #R22-02903,**

This form shall be executed by all entities that, in any way, provide or deliver and/or supply any soils, aggregate, or related materials ("Fill") to the Project Site. All Fill shall satisfy all requirements of any environmental review of the Project performed pursuant to the statutes and guidelines of the California Environmental Quality Act, section 21000 et seq. of the Public Resources Code ("CEQA"), and all requirements of section 17210 et seq. of the Education Code, including requirements for a Phase I environmental assessment acceptable to the State of California Department of Education and Department of Toxic Substances Control.

<b>Certification of:</b>	<input type="checkbox"/>	Delivery Firm/Transporter	<input type="checkbox"/>	Supplier
	<input type="checkbox"/>	Manufacturer	<input type="checkbox"/>	Wholesaler
	<input type="checkbox"/>	Broker	<input type="checkbox"/>	Retailer
	<input type="checkbox"/>	Distributor	<input type="checkbox"/>	Other _____
<b>Type of Entity:</b>	<input type="checkbox"/>	Corporation	<input type="checkbox"/>	General Partnership
	<input type="checkbox"/>	Limited Partnership	<input type="checkbox"/>	Limited Liability Company
	<input type="checkbox"/>	Sole Proprietorship	<input type="checkbox"/>	Other: _____

Name of firm ("Firm"): \_\_\_\_\_ Mailing address: \_\_\_\_\_

\_\_\_\_\_ Addresses of branch office used for this Project: \_\_\_\_\_

If subsidiary, name and address of parent company: \_\_\_\_\_

By my signature below, I hereby certify that I am aware of section 25260 of the Health and Safety Code and the sections referenced therein regarding the definition of hazardous material. I further certify on behalf of the Firm that all soils, aggregates, or related materials provided, delivered, and/or supplied or that will be provided, delivered, and/or supplied by this Firm to the Project Site are free of any and all hazardous material as defined in section 25260 of the Health and Safety Code. I further certify that I am authorized to make this certification on behalf of the Firm.

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

Proper Name of Firm: \_\_\_\_\_

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

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

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

**[END OF DOCUMENT]**

## EXHIBIT L

**IRAN CONTRACTING ACT**  
**(Public Contract Code sections 2202-2208)**  
**(SUBMIT WITH BID PROPOSAL IF BID PROPOSAL PRICE EXCEEDS \$1,000,000)**

**PROJECT: Royal High School Modernization Projects; BID# R22-02903**

Prior to bidding on, submitting a proposal or executing a contract or renewal for a State of California contract for goods or services of \$1,000,000 or more, a vendor must either: a) certify it is **not** on the current list of persons engaged in investment activities in Iran created by the California Department of General Services ("DGS") pursuant to Public Contract Code section 2203(b) and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS; or b) demonstrate it has been exempted from the certification requirement for that solicitation or contract pursuant to Public Contract Code section 2203(c) or (d).

To comply with this requirement, please insert your vendor or financial institution name and Federal ID Number (if available) and complete **one** of the options below. Please note: California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Public Contract Code section 2205.)

**OPTION #1 - CERTIFICATION**

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person/vendor, for 45 days or more, if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

<i>Vendor Name/Financial Institution (Printed)</i>		<i>Federal ID Number (or n/a)</i>	
<i>By (Authorized Signature)</i>			
<i>Printed Name and Title of Person Signing</i>			
<i>Date Executed</i>		<i>Executed in</i>	

**OPTION #2 – EXEMPTION**

Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enters into or renews, a contract for goods and services.

If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

<i>Vendor Name/Financial Institution (Printed)</i>		<i>Federal ID Number (or n/a)</i>	
<i>By (Authorized Signature)</i>			
<i>Printed Name and Title of Person Signing</i>			
<i>Date Executed</i>		<i>Executed in</i>	



EXHIBIT M

**SIMI VALLEY UNIFIED SCHOOL DISTRICT  
CERTIFICATION OF FINANCIAL RELATIONSHIPS DISCLOSURES  
(Public Contract Code §3000 et seq.)**

*This form must be executed and returned with the executed Agreement if the Work is a project for the replacement or repair of a roof, excluding repairs of less than 25% of the roof or roof repairs valued at less than \$21,000.*

Certification of:

- |                                       |                                   |   |
|---------------------------------------|-----------------------------------|---|
| <input type="checkbox"/> Architect    | <input type="checkbox"/> Engineer | <input type="checkbox"/> Roofing Consultant     |
| <input type="checkbox"/> Contractor   | <input type="checkbox"/> Vendor   | <input type="checkbox"/> Materials Manufacturer |
| <input type="checkbox"/> Other: _____ |                                   |   |

I am the \_\_\_\_\_ of the \_\_\_\_\_  
(Title) [SimiPCC3000] (Contractor)

I Certify:

1. I have not offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with the roof project contract.
2. As used in this certification, "person" means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.
3. Throughout the duration of the contract, I will not have, any financial relationship in connection with the performance of this contract with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.
4. I have the following financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roof project contract:

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

I certify that to the best of my knowledge, the contents of this disclosure are true, or are believed to be true.

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

By: \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Name, typed or printed)  
\_\_\_\_\_  
(Contractor Name)



**SimiValleySchools**  
SIMI VALLEY UNIFIED SCHOOL DISTRICT

EXHIBIT N

SIMI VALLEY UNIFIED SCHOOL DISTRICT  
ALLOWANCE PROPOSAL AUTHORIZATION

**School Name:**

**Project Name:**

**To:** *Program Mgr*

**From:** Contractor

**Lori Rubenstein**

P.O. Number:

**Initiation Date:****Allowance Authorization No.:**

Project Number:

**Bid Number:**

**Description of Item(s) to be charged to Contract Allowance is as follows:**

[illegible]**Total**

\$

- A. Original Contract Allowance
- B. Net Allowance Disbursements previously authorized
- C. Charges to Contract Allowance as a result of this authorization
- D. Current Contract Allowance Balance including this authorization

\$ -

\$ -

\$ -

**Contractor**

Name (Printed)

Date \_\_\_\_\_

Architect

Name (Printed)

Date \_\_\_\_\_

## Project Coordinator

**Name (Printed)**

Date \_\_\_\_\_

**JEFF KIPP**

## Construction Project Manager

Name (Printed)

Date \_\_\_\_\_

LORI RUBENSTEIN

## Bond Program Manager

Name (Printed)

Date \_\_\_\_\_

RON TODO

**Associate Superintendent, Business & Facilities**

Name (Printed)

Date \_\_\_\_\_

**SIMI VALLEY UNIFIED SCHOOL DISTRICT**  
**DAILY EXTRA WORK REPORT**  
**for Construction Directive(s) Issued by the District**

**SUBJECT:**

**SIMI VALLEY UNIFIED SCHOOL DISTRICT**

Page \_\_\_\_\_ of \_\_\_\_\_

## NAME \_\_\_\_\_



**SimiValleySchools**  
SIMI VALLEY UNIFIED SCHOOL DISTRICT

## EXHIBIT P

### Rules of Conduct

#### **Project: Royal High School**

**Each contractor and subcontractor performing work on this project shall adhere to the following rules of conduct:**

- 1. All construction personnel will wear masks and appropriate protective gear to prevent transmission of COVID-19. If any worker has symptoms associated with COVID-19, the worker shall not continue working at the site. Continuously ensure that all workers are at least 6 feet away from each other at all times except for when essential assistance is required. Workers to be at least 6 feet apart during lunch and other breaks.**
- 2. Professional and courteous behavior is expected and will be used at all times.**
- 3. Interaction with students, staff, and/or other visitors is prohibited with the exception of designated administrators.**
- 4. The use of profanity and/or disparaging language will not be tolerated.**
- 5. All contractors, subcontractors, architects, engineers or consultants will be required to wear a badge issued by their company as a means of identification. The badge is to be worn at all times while on the Owner's property. The badge will be visibly noticeable and located on the front of the individual's shirt. All badges are required to be returned to the Owner or designee at the completion of the project as part of the final pay application requirements.**
- 6. All contractors and subcontractors:**
  - a. Shall remain in the immediate vicinity of his/her work and will not stray to other areas of the property that do not involve their company's scope of work. All restroom facilities, including student and staff, are not to be used. The contractor is responsible for mobilizing to the construction site, their own portable restroom. Specific rules regarding the portable restroom are indicated in the General Conditions.**
  - b. During the regular school year, each school holds classes during daytime hours. Students and staff shall be given unimpeded access to and from the classrooms and administrative areas at all times when classes are being held. Contractors and subcontractors shall not disrupt the existing utilities, which serve the classrooms and administrative offices during the course of the work. Any outages shall be scheduled with the District Project Coordinator at least 1-month in advance of the planned outage.**
  - c. Vehicles must be parked each day in the designated area(s). When vehicles need to be removed during school hours, the vehicles shall have lights and flashers engaged, and a "spotter," provided by the contractor and/or subcontractor, leading the vehicle off the District's property. At no time will the vehicle exceed 5 mph.**
- 7. Simi Valley Unified School District properties are drug free workplaces. This policy shall be strictly enforced.**

8. Alcoholic beverages are prohibited from being brought on or consumed on any portion of the Owner's property.
9. The use of any tobacco products on the Owner's property is strictly prohibited.
10. Any lewd, obscene or otherwise indecent acts, words, or behavior by any contractor, subcontractor, architect, engineer or consultant shall not be tolerated.
11. All contractors, subcontractors, architects, engineers or consultants shall conform to a dress code whereby:
  - a. No clothing that contains violent, suggestive, derogatory, obscene or racially based material may be worn. This interpretation will be made by the Owner or designee.
  - b. Garments, accessories or personal grooming artifacts with slogans, graphics or pictures promoting drugs, alcohol, tobacco or any other controlled substances that are prohibited to minors will not be allowed.
  - c. Tank top/mid-drift shirts and shorts of any kind are not allowed while on the Owners property.
12. All contractors, subcontractors, architects, engineers or consultants are responsible for their own means of communication including, but not limited to, telephone, cell phone, fax machine. At no time are the Owner's communication systems to be used.
13. All contractors, subcontractors, architects, engineers or consultants personal vehicles, as well as work vehicles and equipment, are the responsibility of the individual and/or company. Any damage that occurs to the vehicles and/or equipment while on the Owner's property is not the responsibility of the Owner and, therefore, any said claims for damages will not be acknowledged.

**Non-compliance with any of the above-stated rules of conduct by any contractor, or subcontractor may be sufficient grounds for immediate removal from the job site and termination of the contract.**

I acknowledge that I am aware of the above-stated rules of conduct and hereby certify that all of my Company's employees, consultants, suppliers, and/or any subcontractors will adhere to these provisions. I further acknowledge that any delays to the schedule perceived or otherwise, as a result of the Owner/designee removing my employee from the job site, are my company's responsibility.

\_\_\_\_\_  
Authorized Signature [SimiROC]

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Company

EXHIBIT Q

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that we, \_\_\_\_\_, as Surety and \_\_\_\_\_, as Principal, are jointly and severally, along with their respective heirs, executors, administrators, successors and assigns, held and firmly bound unto **SIMI VALLEY UNIFIED SCHOOL DISTRICT** ("the Oblige") for payment of the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Oblige, by resolution of its Board of Trustees has awarded to the Principal a Contract for the Work described as **Royal High School Modernization Projects; BID# R22-02903**.

WHEREAS, the Principal, has entered into an agreement with the Oblige for performance of the Work; the Agreement and all other Contract Documents set forth therein are incorporated herein and made a part hereof by this reference.

WHEREAS, by the terms of the Contract Documents, the Principal is required to furnish a bond ensuring the Principal's prompt, full and faithful performance of the Work of the Contract Documents.

NOW THEREFORE, if the Principal shall promptly, fully and faithfully perform each and all of the obligations and things to be done and performed by the Principal in strict accordance with the terms of the Contract Documents as they may be modified or amended from time to time; and if the Principal shall indemnify and save harmless the Oblige and all of its officers, agents and employees from any and all losses, liability and damages, claims, judgments, liens, costs, and fees of every description, which may be incurred by the Oblige by reason of the failure or default on the part of the Principal in the performance of any or all of the terms or the obligations of the Contract Documents, including all modifications, and amendments, thereto, and any warranties or guarantees required thereunder; then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

The Surety, for value received, hereby stipulates and agrees that no change, adjustment of the Contract Time, adjustment of the Contract Price, alterations, deletions, additions, or any other modifications to the terms of the Contract Documents, the Work to be performed thereunder, or to the Specifications or the Drawings shall limit, restrict or otherwise impair Surety's obligations or Oblige's rights hereunder; Surety hereby waives notice from the Oblige of any such changes, adjustments of Contract Time, adjustments of Contract Price, alterations, deletions, additions or other modifications to the Contract Documents, the Work to be performed under the Contract Documents, or the Drawings or the Specifications.

In the event of the Oblige's termination of the Contract due to the Principal's breach or default of the Principal's obligations thereunder, within twenty (20) days after written notice from the Oblige to the Surety of the Principal's breach or default of the Contract Documents and Oblige's termination of the Contract, the Surety shall notify Oblige in writing of Surety's assumption of obligations hereunder by its election to either remedy the default or breach of the Principal or to take charge of the Work of the Contract Documents and complete the Work at its own expense ("the Notice of Election"); provided, however, that the procedure by which the Surety undertakes to discharge its obligations under this Bond shall be subject to the advance written approval of the Oblige, which approval shall not be unreasonably withheld, limited or restricted. The insolvency of the Principal or the Principal's denial of a failure of performance or default under the Contract Documents shall not by itself, without the Surety's prompt, diligent inquiry and investigation of such denial, be justification for Surety's failure to give the Notice of Election or for its failure to promptly remedy the failure of performance or default of the Principal or to complete the Work.

In the event the Surety fails to issue its Notice of Election to Oblige within the time provided for

hereinabove, the Obligee may thereafter cause the cure or remedy of the Principal's failure of performance or default or to complete the Work. The Principal and the Surety shall be jointly and severally liable to the Obligee for all damages and costs sustained by the Obligee as a result of the Principal's failure of performance under the Contract Documents or default in its performance of obligations thereunder, including without limitation the costs of cure or completion of the Work exceeding the then remaining balance of the Contract Price; provided that the Surety's liability hereunder for the costs of performance, damages and other costs sustained by the Obligee upon the Principal's failure of performance or default under the Contract Documents shall be limited to the penalty hereof, which shall be deemed to include the costs or value of any Changes to the Work which increases the Contract Price. If suit or other proceeding is brought upon this Bond by the Obligee, the Surety and Principal shall be jointly and severally liable for payment to the Obligee of all costs, expenses and fees incurred by the Obligee therewith, including without limitation, attorneys' fees.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by their duly authorized agent or representative

_____ (Contractor-Principal Name)	
By:	_____ (Signature)
	_____ (Typed or Printed Name)
Title:	_____
(Attach Notary Public Acknowledgement of Principal's Signature)	

<table><tr><td colspan="2">_____ (Surety Name)</td></tr><tr><td>By:</td><td>_____ (Signature of Attorney-In-Fact for Surety)</td></tr><tr><td></td><td>_____ (Typed or Printed Name of Attorney-In-Fact)</td></tr><tr><td colspan="2">(Attach: (i) Attorney-In-Fact Certification; (ii) Notary Public Acknowledgment of Authorizing Signature on Attorney-Fact Certification; and (iii) Notary Public Acknowledgement of Attorney-In-Fact's Signature.)</td></tr></table>	_____ (Surety Name)		By:	_____ (Signature of Attorney-In-Fact for Surety)		_____ (Typed or Printed Name of Attorney-In-Fact)	(Attach: (i) Attorney-In-Fact Certification; (ii) Notary Public Acknowledgment of Authorizing Signature on Attorney-Fact Certification; and (iii) Notary Public Acknowledgement of Attorney-In-Fact's Signature.)		<p><b>Contact name, address, telephone number and email address for notices to the Surety</b></p> <table><tr><td colspan="2">_____ (Contact Name)</td></tr><tr><td colspan="2">_____ (Street Address)</td></tr><tr><td colspan="2">_____ (City, State &amp; Zip Code)</td></tr><tr><td>(_____) _____ Telephone</td><td>(_____) _____ Fax</td></tr><tr><td colspan="2">_____ (Email address)</td></tr></table>	_____ (Contact Name)		_____ (Street Address)		_____ (City, State & Zip Code)		(_____) _____ Telephone	(_____) _____ Fax	_____ (Email address)	
_____ (Surety Name)																			
By:	_____ (Signature of Attorney-In-Fact for Surety)																		
	_____ (Typed or Printed Name of Attorney-In-Fact)																		
(Attach: (i) Attorney-In-Fact Certification; (ii) Notary Public Acknowledgment of Authorizing Signature on Attorney-Fact Certification; and (iii) Notary Public Acknowledgement of Attorney-In-Fact's Signature.)																			
_____ (Contact Name)																			
_____ (Street Address)																			
_____ (City, State & Zip Code)																			
(_____) _____ Telephone	(_____) _____ Fax																		
_____ (Email address)																			

EXHIBIT R

**LABOR AND MATERIAL PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS that we, \_\_\_\_\_, as Surety and \_\_\_\_\_, as Principal, are jointly and severally, along with their respective heirs, executors, administrators, successors and assigns, held and firmly bound unto **SIMI VALLEY UNIFIED SCHOOL DISTRICT** ("the Obligee") for payment of the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

**THE CONDITION OF THIS OBLIGATION IS SUCH THAT:**

WHEREAS, the Obligee, by resolution of its Board of Trustees has awarded to the Principal a Contract for the Work described as **Royal High School Modernization Projects; BID# R22-02903**.

WHEREAS, the Principal, has entered into an Agreement with the Obligee for performance of the Work, the Agreement and all other Contract Documents set forth therein are incorporated herein by this reference and made a part hereof.

WHEREAS, by the terms of the Contract Documents, the Principal is required to furnish a bond for the prompt, full and faithful payment to any Claimant, as hereinafter defined, for all labor materials or services used, or reasonably required for use, in the performance of the Work.

NOW THEREFORE, if the Principal shall promptly, fully and faithfully make payment: (i) to any Claimant for all labor, materials or services used or reasonably required for use in the performance of the Work; (ii) of amounts due under the Unemployment Insurance Code for work or labor performed under the Contract; and (iii) of amounts required to be deducted, withheld and paid to the Employment Development Department from wages of the employees of the Principal and its Subcontractors under Section 13020 of the Unemployment Insurance Code with respect to work and labor under the Contract then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

The term "Claimant" shall refer to any person, corporation, partnership, proprietorship or other entity including without limitation, all persons and entities described in California Civil Code §9100, providing or furnishing labor, materials or services used or reasonably required for use in the performance of the Work under the Contract Documents, without regard for whether such labor, materials or services were sold, leased or rented. This Bond shall inure to the benefit of all Claimants so as to give them, or their assigns and successors, a right of action upon this Bond.

In the event that suit is brought on this Bond by any Claimant for amounts due such Claimant for labor, materials or services provided or furnished by such Claimant, the Surety shall pay for the same and reasonable attorneys' fees pursuant to California Civil Code §9554.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, deletion, addition, or any other modification to the terms of the Contract Documents, the Work to be performed thereunder, the Specifications or the Drawings, or any other portion of the Contract Documents, shall in any way limit, restrict or otherwise affect its obligations under this Bond; the Surety hereby waives notice from the Obligee of any such change, extension of time, alteration,

**[CONTINUED NEXT PAGE]**



deletion, addition or other modification to the Contract Documents, the Work to be performed under the Contract Documents, the Drawings or the Specifications of any other portion of the Contract Documents.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by their duly authorized agent or representative.

_____ (Contractor-Principal Name)	
By:	_____ (Signature)
	_____ (Typed or Printed Name)
Title:	_____
(Attach Notary Public Acknowledgement of Principal's Signature)	

_____ (Surety Name)	
By:	_____ (Signature of Attorney-In-Fact for Surety)
	_____ (Typed or Printed Name of Attorney-In-Fact)
(Attach: (i) Attorney-In-Fact Certification; (ii) Notary Public Acknowledgment of Authorizing Signature on Attorney-Fact Certification; and (iii) Notary Public Acknowledgement of Attorney-In-Fact's Signature)	

<b>Contact name, address, telephone number and email address for notices to the Surety</b>	
_____ (Contact Name)	
_____ (Street Address)	
_____ (City, State & Zip Code)	
(_____) _____ Telephone	(_____) _____ Fax
_____ (Email address)	

EXHIBIT S

**CONTRACTOR CERTIFICATION OF SUBCONTRACTOR CLAIM**

**PROJECT: Royal High School Modernization Projects; BID# R22-02903**

Pursuant to Article 16.11.2.7.2 of the General Conditions, I certify as follows:

1. The portion of the Claim made on behalf of the Subcontractor to which this certification is attached is made in good faith.
2. I have reviewed the attached Subcontractor Claim and certify that to the best of my knowledge and belief, the amounts claimed for costs, expenses and damages incurred and supporting data submitted to CM/Contractor by the Subcontractor on behalf of any and all subcontractors or suppliers to Subcontractor, of all tiers, or any person or entity under Subcontractor, are accurate and complete. Subcontractor will not submit, after the date of execution of this certification, any such supporting data, including any such new amounts that, to the best of my knowledge and belief, that are not accurate and complete.
3. The amount requested accurately reflects the amount for which the Subcontractor believes the District is liable to Contractor.
4. The Subcontractor Claim does not incorporate any request constituting a False Claim under applicable law, including the California False Claim Act (Government Code §12650 et seq).
5. I am duly authorized to certify the Subcontractor Claim on behalf of the Contractor.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at \_\_\_\_\_, on \_\_\_\_\_, 20\_\_\_\_.  
(City and State)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

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

\_\_\_\_\_  
(Name of Contractor)

EXHIBIT T

VERIFICATION OF CERTIFIED PAYROLL RECORDS SUBMITTAL  
TO LABOR COMMISSIONER

I am the \_\_\_\_\_ for \_\_\_\_\_ in  
(Title) (Contractor)

connection with **Royal High School Modernization Projects; BID# R22-02903**

This Verification is submitted to Simi Valley Unified School District concurrently with the Contractor's submittal of an Application for Progress Payment to the District, identified as Application For Progress Payment No. \_\_\_\_\_ ("the Pay Application").

1. The Pay Application requests the District's disbursement of a Progress Payment for the value of Work performed between \_\_\_\_\_, 20\_\_ and \_\_\_\_\_, 20\_\_.
2. The Contractor has submitted Certified Payroll Records ("CPR") to the Labor Commissioner for all employees of the Contractor engaged in performance of Work subject to prevailing wage rate requirements for the period of time covered by the Pay Application.
3. All Subcontractors who are entitled to any portion of payment to be disbursed pursuant to the Pay Application have submitted their CPRs to the Labor Commissioner for all of their employees performing Work subject to prevailing wage rate requirements for the period of time covered by the Pay Application.
4. I have reviewed the Contractor's CPRs submitted to the Labor Commissioner. The CPRs submitted to the Labor Commissioner by the Contractor are complete and accurate for the period of time covered by the Pay Application.
5. I have reviewed the Subcontractors' CPRs submitted to the Labor Commissioner. The CPRs submitted to the Labor Commissioner by the Subcontractors are complete and accurate for the period of time covered by the Pay Application.
6. I declare under penalty of perjury under California law that the foregoing is true and correct. I executed this Certification on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at

\_\_\_\_\_  
(City and State)

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

\_\_\_\_\_  
(Typed or Printed Name)

EXHIBIT U

**SUBSTITUTION REQUEST**

Project: Royal High School Modernization  
Projects \_\_\_\_\_

Bid No.: R22-02903

To: \_\_\_\_\_

Re: \_\_\_\_\_

Substitution Request Number: \_\_\_\_\_

From: \_\_\_\_\_

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

A/E Project Number: \_\_\_\_\_

Contract For: Simi Valley Unified School District

Specification Title: \_\_\_\_\_ Description: \_\_\_\_\_

Section: \_\_\_\_\_ Page: \_\_\_\_\_

Proposed Substitution: \_\_\_\_\_

Manufacturer: \_\_\_\_\_ Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Trade Name: \_\_\_\_\_ Model No.: \_\_\_\_\_

Attached data includes product description, specifications, drawings, photographs, and performance and test data adequate for evaluation of the request; applicable portions of the data are clearly identified.

Attached data also includes a description of changes to the Contract Documents that the proposed substitution will require for its proper installation.

The Undersigned certifies:

- Proposed substitution has been fully investigated and determined to be equal or superior in all respects to specified product.
- Same warranty will be furnished for proposed substitution as for specified product.
- Same maintenance service and source of replacement parts, as applicable, is available.
- Proposed substitution will have no adverse effect on other trades and will not affect or delay progress schedule.
- Proposed substitution does not affect dimensions and functional clearances.
- Contractor will be responsible for payment of charges and construction costs caused by the substitution for changes to building design, including A/E design, furnishings and detailing.

Submitted by: \_\_\_\_\_

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

Firm: \_\_\_\_\_

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

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

**A/E's REVIEW AND ACTION**

- ☐ Substitution approved – Make submittals in accordance with Specification Substitution procedures.
- ☐ Substitution approved as noted – Make submittals in accordance with Substitution procedures.
- ☐ Substitution rejected – Use specified materials.
- ☐ Substitution Request received too late – Use specified materials.

Signed by: \_\_\_\_\_ Date: \_\_\_\_\_

Supporting Data Attached: ☐ Drawings ☐ Product Data ☐ Samples ☐ Tests ☐ Reports ☐ \_\_\_\_\_

## EXHIBIT V



# SIMI VALLEY UNIFIED SCHOOL DISTRICT

## CHANGE ORDER PROPOSAL (COP)

School Name: **Royal High School**  
 Project Name: **Royal HS Modernization Projects**  
 To: *CM/ Project Coordinator*  
 From: *Contractor* **Balfour Beatty Construction, LLC**

Date:   
 COP Number:   
 Project Number:   
 Bid Number:

## Description of Work:

WORK PERFORMED OTHER THAN BY CONTRACTOR		ADD	DEDUCT
(a)	<b>Material</b> (attach itemized quantity and unit cost plus sales tax)		
(b)	<b>Add Labor</b> (attach itemized hours and rates, fully encumbered)		
(c)	<b>Add Equipment</b> (attach suppliers' invoice)		
(d)	<b>Subtotal</b>		
(e)	<b>Add overhead and profit for any and all tiers of Subcontractor,</b>		
(f)	<b>Subtotal</b>		
(g)	<b>Add overhead and profit for Contractor,</b> not to exceed five		
(h)	<b>Subtotal</b>		
(i)	<b>Add Bond and Insurance,</b> not to exceed one and a half		
(j)	<b>TOTAL</b>	\$	-
(k)	<b>Time</b> (zero unless indicated)	0	Calendar Days
WORK PERFORMED BY CONTRACTOR		ADD	DEDUCT
(a)	<b>Material</b> (attach itemized quantity and unit cost plus sales tax)		
(b)	<b>Add Labor</b> (attach itemized hours and rates, fully encumbered)		
(c)	<b>Add Equipment</b> (attach suppliers' invoice)		
(d)	<b>Subtotal</b>		
(e)	<b>Add overhead and profit for Contractor,</b> not to exceed fifteen		
(f)	<b>Subtotal</b>		
(g)	<b>Add Bond and Insurance,</b> not to exceed one and a half		
(h)	<b>TOTAL</b>	\$	-
(i)	<b>Time</b> (zero unless indicated)	0	Calendar Days

☐ The proposal would ☐ Increase ☐ Decrease the Contract Time by  Calendar Days.

☐ The proposal does NOT affect the Contract Time.

Contractor's Signature:

Printed Name &amp; Title

Date

Provide all supporting documentation as required by the Contract Documents



**Continuation Sheet- APPLICATION FOR PAYMENT**

## Royal HS Modernization Projects

**APPLICATION FOR PAYMENT containing Contractor's signed Certification must be attached. Use Column I on Contracts where variable retainage for line items may apply.**

**SCHOOL NAME:**

**APPLICATION NO.:**

**PROJECT NO.:**

APPLICATION DATE:

**BID NO.:**

**PERIOD FROM:****PERIOD TO:**

A	B	C	D	E	F	G		H	I
Item No.	SUMMARY	Scheduled Value	WORK COMPLETED			Total Completed & Stored To Date		Balance To Finish	Retainage (5%)
	Description of Work <b>Note: (SOV must be itemized in further detail by building and area)</b>		Previous Applications	This Application					
				Work in Place	Stored Mtls.				
1	General Conditions					0.00	#DIV/0!	0.00	0.000
2	Site Work					0.00	#DIV/0!	0.00	0.000
3	Concrete					0.00	#DIV/0!	0.00	0.000
4	Masonry					0.00	#DIV/0!	0.00	0.000
5	Metals					0.00	#DIV/0!	0.00	0.000
6	Carpentry					0.00	#DIV/0!	0.00	0.000
7	Thermal/Moisture					0.00	#DIV/0!	0.00	0.000
8	Doors & Windows					0.00	#DIV/0!	0.00	0.000
9	Finishes					0.00	#DIV/0!	0.00	0.000
10	Specialties					0.00	#DIV/0!	0.00	0.000
11	Equipment					0.00	#DIV/0!	0.00	0.000
12	Furnishings					0.00	#DIV/0!	0.00	0.000
14	Conveyance					0.00	#DIV/0!	0.00	0.000
15	Mechanical					0.00	#DIV/0!	0.00	0.000
16	Electrical					0.00	#DIV/0!	0.00	0.000
	ALLOWANCES:					0.00	#DIV/0!	0.00	0.000
						0.00	#DIV/0!	0.00	0.000
						0.00	#DIV/0!	0.00	0.000
	<b>SUBTOTAL</b>	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	\$ -	\$ -
	<b>APPROVED CHANGE ORDERS TO DATE</b>						#DIV/0!		
	Change Order #1					0.00	#DIV/0!	0.00	0.00
						0.00	#DIV/0!	0.00	0.00
						0.00	#DIV/0!	0.00	0.00
						0.00	#DIV/0!	0.00	0.00
						0.00	#DIV/0!	0.00	0.00
	<b>NET CHANGE ORDER SUBTOTAL</b>	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	\$ -	\$ -
	<b>TOTALS</b>	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	\$ -	\$ -

## EXHIBIT X



SimiValleySchools  
SIMI VALLEY UNIFIED SCHOOL DISTRICT

### SIMI VALLEY UNIFIED SCHOOL DISTRICT

Bid No. B21RM364

### Royal HS Modernization Projects

(Project Name)

## CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

California Civil Code Section 8136

**NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.**

#### Identifying Information

Name of Claimant: Balfour Beatty Construction, LLC.  
Name of Customer: Simi Valley Unified School District  
Job Location: Royal HS: 1402 Royal Ave., Simi Valley, CA 93065  
Owner: Simi Valley Unified School District

#### Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: Simi Valley Unified School District  
Amount of Check: \$  
Check Payable to: Balfour Beatty Construction, LLC.

#### Exceptions:

This document does not affect any of the following:

Disputed claims for extras in the amount of: \$

#### Signature

Claimant's Signature: \_\_\_\_\_ Date of Signature: \_\_\_\_\_  
Claimant's Printed Name: \_\_\_\_\_ Claimant's Title: \_\_\_\_\_





## SIMI VALLEY UNIFIED SCHOOL DISTRICT

Bid No. B21RM364

### Royal HS Modernization Projects

(Project Name)

## CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

California Civil Code Section 8132

**NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.**

#### Identifying Information

Name of Claimant: Balfour Beatty Construction, LLC.  
Name of Customer: Simi Valley Unified School District  
Job Location: Royal HS: 1402 Royal Ave., Simi Valley, CA 93065  
Owner: Simi Valley Unified School District  
Through Date:

#### Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: Simi Valley Unified School District  
Amount of Check: \$  
Check Payable to: Balfour Beatty Construction, LLC.

#### Exceptions:

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:  
Date(s) of waiver and release:  
Amount(s) of unpaid progress payment(s): \$

- (4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

#### Signature

Claimant's Signature: \_\_\_\_\_ Date of Signature: \_\_\_\_\_  
Claimant's Printed Name: \_\_\_\_\_ Claimant's Title: \_\_\_\_\_



## SIMI VALLEY UNIFIED SCHOOL DISTRICT

Bid No.: B21RM364

Royal HS Modernization Projects  
(Project Name)

### UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

California Civil Code Section 8134

**NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.**

#### Identifying Information

Name of Claimant: Balfour Beatty Construction, LLC.  
Name of Customer: Simi Valley Unified School District  
Job Location: Royal HS: 1402 Royal Ave. Simi Valley, CA 93065  
Owner: Simi Valley Unified School District  
Through Date:

#### Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment: \$

#### Exceptions:

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

#### Signature

Claimant's Signature: \_\_\_\_\_ Date of Signature: \_\_\_\_\_  
Claimant's Printed Name: \_\_\_\_\_ Claimant's Title: \_\_\_\_\_



## SIMI VALLEY UNIFIED SCHOOL DISTRICT

Bid No. B21RM364

Royal HS Modernization Projects

(Project Name)

### UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

California Civil Code Section 8138

**NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.**

#### Identifying Information

Name of Claimant: Balfour Beatty Construction, LLC.  
Name of Customer: Simi Valley Unified School District  
Job Location: 1402 Royal Ave. Simi Valley, CA 93065  
Owner: Simi Valley Unified School District

#### Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full.

#### Exceptions:

This document does not affect any of the following:

Disputed claims for extras in the amount of: \$

#### Signature

Claimant's Signature: \_\_\_\_\_ Date of Signature: \_\_\_\_\_  
Claimant's Printed Name: \_\_\_\_\_ Claimant's Title: \_\_\_\_\_

## EXHIBIT Y

SIMI VALLEY UNIFIED SCHOOL DISTRICT

## GUARANTEE

**Project: Royal HS Modernization Projects****Bid No.: B21RM364**

The Contractor hereby warrants and guarantees to the District that all work, materials, equipment and workmanship provided, furnished or installed by or on behalf of Contractor in connection with the above referenced Project (the "Work") have been provided, furnished and installed in strict conformity with the Contract Documents for the Work, including without limitation, the Drawings and the Specifications. Contractor further warrants and guarantees that all work, materials, equipment and workmanship as provided, furnished and/or installed are fit for use as specified and fulfill all applicable requirements of the Contract Documents including without limitation, the Drawings and the Specifications. Contractor shall, at its sole cost and expense, repair, correct and/or replace any or all of the work, materials, equipment and/or workmanship of the Work, together with any other items which may be affected by any such repairs, corrections or replacement, that may be unfit for use as specified or defective within a period of two (2) years from the date of the District's Final Acceptance of the Work, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of the Contractor's failure and/or refusal to comply with the provisions of this Guarantee, within the period of time set forth in the Contract Documents after the District's issuance of the Notice to the Contractor of any defect(s) in the Work, materials, equipment or workmanship, Contractor authorizes the District, without further notice to Contractor, to repair, correct and/or replace any such defective item at the expense of the Contractor. The Contractor shall reimburse the District for all costs, expenses or fees incurred by the District in providing or performing such repairs, corrections or replacements within ten (10) days of the District's presentation of a demand to the Contractor for the same.

The provisions of this Guarantee and the provisions of the Contract Documents for the Work relating to the Contractor's Guarantee(s) and warranty(ies) relating to the Work shall be binding upon the Contractor's Performance Bond Surety and all successors or assigns of Contractor and/or Contractor's Performance Bond Surety.

The provisions of this Guarantee are in addition to, and not in lieu of, any provisions of the Contract Documents for the Work relating to the Contractor's guarantee(s) and warranty(ies) or any guarantee(s) or warranty(ies) provided by any material supplier or manufacturer of any equipment, materials or other items forming a part of, or incorporated into the Work, or any other guarantee or warranty obligation of the Contractor, prescribed, implied or imposed by law.

The undersigned individual executing this Guarantee on behalf of Contractor warrants and represents that he/she is duly authorized to execute this Guarantee on behalf of Contractor and to bind Contractor to each and every provision hereof.

**Contractor****Balfour Beatty Construction, LLC.**

---

(Contractor Name)

---

(Signature of Contractor's Authorized Employee, Officer  
Or Representative)

---

(Printed Name and Title)

---

(Date)

**EXHIBIT "Z"**

**PROJECT CONTRACT INFORMATION**

Project Name:

Description of the Project:

Description of the Site:

Scope of Work/Construction Documents:

DSA Application Number:

DSA File No.:

Master Budget: See Attached

Section 3.5 Contract Time is completion by \_\_\_\_\_.

Section 3.6 Liquidated Damages for overstaying lease (Art. 18) is \$\_\_\_\_\_ per calendar day.

Section 3.7 Guaranteed Maximum Price (Art. 5) is \$\_\_\_\_\_

3.7.1 Construction Contingency (within GMP) is \$\_\_\_\_\_

3.7.2 Errors and Omissions Contingency (within GMP) is \$\_\_\_\_\_

Section 3.8 The only exception to the GMP is Unforeseen Underground Conditions, and District Contingency for Owner requested extras as follows:

3.8.1 District's Contingency (Art. 8) is \$\_\_\_\_\_  
District Contingency is carried outside of the GMP.

3.8.2 Unforeseen Allowance is \$\_\_\_\_\_  
Unforeseen Allowance is carried outside of the GMP.

Section 3.9 The Contractor's fee for this \_\_\_\_\_ Project is 3.75% percent and is included in the GMP.

## **PRE-CONSTRUCTION SERVICES AGREEMENT**

This Contractor Pre-Construction Services Agreement (“Agreement”) is made and entered into effective January 18, 2022, by and between the **Simi Valley Unified School District**, a California school district organized and operating under the laws of the State of California (hereinafter “District”) and **Balfour Beatty Construction, LLC**, a licensed California building contractor (hereinafter “Contractor”) in relation to the Measure X Projects at **Royal High School** (“Project”).

### **RECITALS**

WHEREAS, District conducted a best value selection process through a competitive request for sealed proposals to select a contractor to provide both preconstruction services and lease-leaseback construction services pursuant to and in accordance with Education Code section 17406, which resulted in the selection of Contractor as the successful respondent.

WHEREAS, Contractor and District desire to enter into a master lease-leaseback arrangement for construction of the Project pursuant to Education Code section 17406, which arrangement will be documented, if at all, by a Master Site Lease and Master Sublease with attachments, including a Master Construction Services Agreement (“Lease-Leaseback Agreement”).

WHEREAS, Education Code section 17406 allows for Contractor preconstruction services for the Project, as long as the construction work does not begin prior to the approval of the Plans and Specifications for the Project by the Division of the State Architect (“DSA”).

WHEREAS, Contractor desires to provide consulting services to the District with respect to reviewing the Plans and Specifications to identify and call out all deficiencies, incongruities and inconsistencies that may affect constructability of the Project, including but not limited to design and specification omissions, incomplete and/or inconsistent plans, details and specifications, and any lack of coordination, together with all other appropriate, necessary and/or required services in accordance with the applicable standard of care, excluding only responsibility for the professional negligence of any licensed engineer or architect in the preparation of the Plans and Specifications (“Services” or “Pre-Construction Services”) to facilitate, and in preparation for, the successful development and construction of the Project.

WHEREAS, this is not an agreement for design-build services.

WHEREAS, Contractor represents that it has the knowledge and experience necessary to perform the Services set forth in this Agreement.

WHEREAS, District and Contractor acknowledge and agree that this Preconstruction Agreement shall be incorporated into the Master Construction Services Agreement as Exhibit “L” and that Contractor shall not perform any preconstruction services until such time that the Master Construction Services Agreement is finalized and signed by District and Contractor.

NOW, THEREFORE, the parties agree as follows:

## **ARTICLE 1** **DEFINITIONS**

1.1 **DEFINITIONS.** As used in this Agreement, the following terms shall have the meanings specified herein unless the context requires otherwise.

“Architect” shall mean the Architect of Record for the design of each of the Measure X Projects, or any successor architect of record approved and appointed by the Board for the design of the Project. The District has contracted with a number of different architectural firms for the Measure X Projects.

“Board” shall mean the Board of Trustees of the Simi Valley Unified School District.

“Construction Budget” shall mean the amount of money that the District has allocated for all construction.

“Construction Cost” shall mean the cost to perform all Work pursuant to the Construction Documents.

“Consultant” includes an architect, engineer, planner, landscape architect, inspector or other professional/advisor with whom the District contracts with directly or indirectly to perform Project-related services.

“Construction Documents” shall mean those documents which are required for the actual construction of the Project as accepted and approved by DSA and the District’s Governing Board, including not limited to the complete final working drawings and specifications setting forth in detail the work to be done and the materials, workmanship, finishes and equipment required, as well as all related correspondence providing additional direction as to the design intent, including RFIs, reviewed submittals, CCDs, change orders, etc.

“Contractor” shall mean the licensed Contractor performing the professional services under this Agreement, as authorized by Government Code sections Government Code 4525, 4526, 4529.5.

“Day” shall mean a calendar day unless otherwise specifically designated.

“District Representative” shall mean Lori Rubenstein, and any successor appointed by District.

“DSA Laws and Regulations” shall mean, in connection with each construction phase, the laws and regulations relating to the jurisdiction and authority of the Division of the State Architect in effect at the time construction is approved and the applicable permits, if any, are obtained, including, without limitation, the Field Act, Education Code sections 17280 et seq., and the California Disabled Access Law, Government Code sections 4450, et seq., along with all related laws, regulations rules and policies.

“Educational Specifications” shall mean the District’s approved educational specifications for school facility construction and incorporated herein by this reference and approved by the Board.

“General Conditions” shall mean the agreed upon overhead, temporary utilities, trailers, equipment and other on site and off site costs borne by the Contractor during Construction Phase of the Project.

“GMP” shall mean the Guaranteed Maximum Price” as that term is defined by State law for

purposes of the Lease Leaseback delivery method of public school construction.

“IOR” shall mean Inspector of Record for the Project.

“Master Project Schedule” shall mean the Project schedule and any Master Project Schedule presented to, and approved by, the Board at a later date.

“Project” shall mean the pre-construction and construction of the facilities that will comprise the various Measure X Projects at Royal High School.

“Project Budget” shall mean the budget for the Project, prepared and revised by the Program Manager and the Contractor and approved by District during the pre-construction phase and approved by the Board.

“Reimbursable Expenses” shall mean, any item of expense approved by the District as a reimbursable expense in connection with this Agreement and as detailed in Exhibit B.

“Site” shall mean the Royal High School campus, located at 1402 Royal Avenue, Simi Valley, California, 93065.

“Work” shall mean all the construction, work, labor, materials, machinery, equipment, tools, supplies, services and other items that the Contractor is to perform or provide in connection with the Project pursuant to the Construction Documents.

## **ARTICLE 2**

### **PRE-CONSTRUCTION CONTRACTOR BASIC SERVICES AND RESPONSIBILITIES**

Contractor represents to the District that: (i) it has previously acted as a Contractor; (ii) it has the necessary license(s) required by law for the Services set forth in this Agreement, (License No. 979126); and (iii) it has expertise and experience in constructability reviews, cost estimating, value engineering, construction supervision, bid preparation, evaluation of construction projects, project scheduling, cost benefit analysis, claims review and negotiation, and general management and administration of construction projects.

Contractor covenants to provide its best skill and judgment in furthering the interests of the District in the performance of its obligations under this Agreement. Contractor agrees to furnish efficient business administration and management services and to perform in an expeditious and economical manner consistent with the interests of the District. Contractor shall provide all services with respect to the Project as set forth in this Agreement and the attached exhibits (the “Services”).

It is understood and agreed that time is of the essence in connection with the funding plan and the design and construction of the Project and Contractor agrees to use its best efforts to ensure that the Measure X Projects are submitted to DSA for approval in accordance with the following schedule:

Project	Date of Submittal to DSA
See attached schedule and phasing plans	To Be Determined per Project



Unless directed otherwise by the District, the District's Representative, and/or the Program Manager, the Contractor shall direct all communication, correspondence, and other interactions with the District through the Program Manager, including communication with the District's personnel, the Architect, the District's consultants, and any other agencies, organizations, or outside entities.

**2.1 BASIC SERVICES.** The Basic Services shall include project design review and evaluation, planning for construction mobilization and supervision, construction cost estimating and analysis, project scheduling, and cost-benefit analysis, including, but not limited to, the tasks identified below.

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

2.1.2 Contractor shall provide a preliminary evaluation of the District's schedule and Construction Budget, each in terms of the other.

2.1.3 The Architect's agreement with the District may include numerous phases of services described in such agreement. During the Architect's services, Contractor shall coordinate with the Architect as necessary to deliver the Services and support the schematic design, design development, construction documents, DSA submittal development and approval, and bid preparation, administration, review of bids, and development of proposed guaranteed maximum price ("GMP").

2.1.4 Contractor shall perform the Pre-Construction Services as defined in the Recitals and further detailed in this Article 2 in accordance with the applicable standard of care for a licensed contractor, excluding only responsibility for the professional negligence of any licensed engineer or architect in the preparation of the Plans and Specifications:

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

(i) Contractor shall submit to the Program Manager, at each document review phase, an analysis of the Architect's program in comparison to the District's approved Educational Specifications, including quantified cost and time impacts associated with each variance.

(2) Perform an ongoing analyses and review of the Construction Documents during their development and advise and make recommendations on proposed site use and improvements, facility improvements, selection of materials, building systems and equipment, constructability reviews, value engineering and related quality assurance/quality control consulting, scheduling, and methods of Project delivery.

(3) Contractor shall advise and provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to construction cost and scheduling including, but not limited to, costs of alternative designs or materials, preliminary budgets, and possible economies;

(4) Regularly revise and update a Project Scope of Work document in coordination with the Architect to:

(i) Identify, quantify, and delineate the trade-specific scopes of work, how they

are separate from each other, and where coordination is required to deliver a complete system for all components of the Project Scope of Work,

(ii) Identify potential scope gaps, or scope overlaps between trades and present such findings to the Architect and the Program Manager in a timely manner for review and consideration,

(iii) Identify long lead procurement items and approval activities required for each trade's scope of work, and

(iv) Identify submittal requirements, agency approvals, permit requirements, licensing requirements, and any other necessary items that are required for timely completion of each trade's scope of work;

(v) Ensure that all Construction Documents submitted to DSA shall be constructible by a competent general building contractor duly licensed by the State of California, without need for any Requests for Information, Supplemental Instructions, Change Orders or similar inquiries or changes in order to complete construction of the full Scope of Work within a Construction Cost, including all contingencies and allowances, not to exceed 90% of the Construction Budget and to form the basis of the Guaranteed Maximum Price for the Project.

(5) Coordinate actively with the Architect to provide trade coordination input into the design process to ensure that all Construction Documents are fully coordinated and that all clashes and inconsistencies are identified and remedied through, or to the equivalent extent of Building Information Management clash detection analysis;

(6) Perform ongoing and accurate Construction Cost estimating to confirm that cost to perform the Work does not exceed the Construction Budget, including regular reconciliation reports between Architect's and Contractor's cost estimates, including square foot pricing at schematics, detailed line item quantities and costs at conceptual design, and regular cost estimate updates at design development, construction documents, DSA submittal, bid set and further phases as needed;

(7) Prepare an ongoing and accurate, and periodically update, Master Project Schedule for the Architect's review and the District's acceptance showing major construction milestones including but not limited to: start of construction, mobilization, demolition, abatement, site work, foundations, structure, mechanical/electrical/plumbing/fire sprinkler (MEPF) systems, building envelope, exterior finishes, interior finishes, landscaping/hardscaping, and Project completion. The Master Project Schedule must include the following information: detailed work activities properly sequenced for trade coordination planning as needed to ensure that the Project can be completed within the allotted construction schedule, long lead items are identified, curing times are identified, procurement schedule requirements are defined, submittal schedule requirements are defined, and other timeline and schedule planning as necessary to ensure that the Project can be constructed within the allotted timeframe. Contractor coordinate and collaborate with the Architect as necessary to prepare, and shall prepare accordingly the portion of the preliminary Project schedule relating to the performance of the Architect's services in accordance with the Architect's agreement(s) with the District. In the Master Project Schedule, Contractor shall coordinate and integrate Contractor's Services, the Architect's services, the construction of the Project, the District's responsibilities, inspection requirements, document review periods, and all other activities required for Project completion, highlighting critical and long-lead-time items;

(8) Develop a list of recommended contingencies, allowances, and estimated escalation;

(9) Develop proposed General Conditions and all proposed markups including but not limited to: fee, insurance, and bonding. Develop site logistics and safety plan showing laydown areas, construction traffic flow and construction personnel parking;

(10) Develop a complete list of bid alternates, and proposed bid list of trade contractors as well as criteria for trade contractors pre-qualification, exercising all due diligence to obtain at least five (5) trade contractors per trade required for major trades, and three (3) trade contractors per trade required for minor trades, and in the event that Contractor is unable, despite the exercise of due diligence, to obtain the minimum number of trade contractor bids required, present to District the record of due diligence which District shall not unreasonably reject as adequate in lieu of obtaining the minimum number of trade contractor bids required;

(11) Develop proposed GMP with full detail, bid results, and notes, including bid alternates and associated pricing.

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

(1) Participate in Project progress meetings, as scheduled by the Program Manager, with Architect and Program Manager to provide ongoing updates of status of items set forth in 2.1.4 (1) through (12) above, and to discuss any and all issues that arise that may affect the Project;

(2) Prepare a monthly progress report and provide weekly updates as needed to include, but not be limited to, the following information:

(i) Status of all required deliverables in progress, and required within 4 weeks of date of report,

(ii) Design intent and scope questions,

(iii) Programming status,

(iv) Coordination reviews,

(v) Regulatory and agency review updates,

(vi) Progress on any required studies and deliverables,

(vii) Contract administration,

(viii) Budget and value engineering, and

(ix) Schedule status;

(3) Provide support to the Program Manager as requested and or required to provide accurate and complete monthly updates to the Board and the Citizen's Bond Oversight Committee, including but not limited to (i) attending meetings with Program Manager, (ii) preparing reports and presentations to demonstrate project progress, (iii) coordinating with Architect and Consultant to ensure

complete and accurate information is provided at all times to the Board and Citizens' Bond Oversight Committee.

2.1.6 Following the District's approval of each phase of the development of Construction Documents, Contractor shall update and submit the latest estimate of the Construction Cost and the Master Project Schedule, and all other Phase Deliverables.

## 2.2 ADDITIONAL SERVICES

Services in addition to those set forth in this Agreement will require written request or pre-authorization in writing by the District following specific approval of such services by the Board. It is understood and agreed that Contractor shall not perform any services in addition to those set forth in this Agreement unless and until Contractor receives specific written approval for such additional services from the Board. It is understood and agreed that if Contractor performs services in addition to those set forth in this Agreement without receiving prior written approval from the Board, Contractor shall not be paid for such services.

## 2.3 TIME

2.3.1 Contractor shall perform the Services set forth in this Agreement as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Project. Time is of the essence in connection with the Project and with all of Contractor's Services.

2.3.2 Contractor shall be entitled to an extension of time for the time of completion for delay which may arise due to an act of God, such as an earthquake, flood or fire, or an act of a public enemy or act of war, if such act results in delays on any approvals necessary for completion of the Project, but Contractor shall have no claim for any other compensation for such delay.

2.3.3 Should the schedule for the construction of the Project be extended due to an added scope of work as directed by the District and approved by the Board or an extension of the schedule related to governmental agency approvals necessary for completion of the Project, the time for performance under this Agreement shall be extended and Contractor shall be compensated for this extension as mutually agreed by the parties.

## **ARTICLE 3** **THE DISTRICT'S RESPONSIBILITIES**

3.1 The District shall provide all information actually known to District, without obligation or duty to undertake any investigation, research, inspection, inquiry, regarding the requirements of the Project including the District's objectives, constraints and criteria.

3.2 The District shall designate a District Representative to act on the District's behalf with respect to the Project. The District, or the District Representative, if authorized, shall render decisions promptly to avoid unreasonable delay in the progress of Contractor's Services.

3.3 The District shall furnish tests, inspections and reports as required by law or the Construction Documents.

3.4 If the District observes or otherwise becomes aware of any fault or defect in the Project, or nonconformance with the Construction Documents, prompt notice thereof shall be given by the District to Contractor. District has no obligation or duty to undertake any investigation, research, inspection, inquiry or other steps to discover any fault or defect in the Project, or nonconformance with the Construction Documents, but only the obligation to inform Contractor of any specific fault, defect or non-conformance of which the District actually becomes aware.

3.5 The District reserves all rights regarding the Project and any development, progress or work thereon, including the right to cease any or all work on or related to the Project, the right to perform work related to the Project with the District's own forces and/or whether to award any contracts to any person or entity in connection with the Project. Contractor understands and acknowledges that this Agreement contains no promise to enter into or negotiate any further agreement, work or engagement with or for District by and between the District and Contractor.

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

#### **ARTICLE 4**

#### **CONSTRUCTION COST**

4.1 Construction Cost shall not include the compensation of Contractor for the Services performed under this Agreement, nor all services of the Architect and Consultant, the cost of land, rights-of-way and other costs that are the responsibility of the District.

4.2 Contractor shall consult with the Architect and the District to suggest reasonable adjustments in the scope of each Measure X Project, and to suggest alternate bids in the Construction Documents to adjust the Construction Costs so that it does not exceed the allowable Construction Budget for each Measure X Project indicated in the attached Exhibit "A".

4.3 Contractor shall provide for the District's review and acceptance, a monthly report showing the status of each Measure X Project. With the District's assistance, and in accordance with District procedures, Contractor shall assist, if needed, District with all construction related Board agenda items for each Measure X Project.

#### **ARTICLE 5**

#### **BASIS OF COMPENSATION AND PAYMENT**

5.1 COMPENSATION AMOUNT. The Contractor shall perform the Services as set forth in this Agreement for a fee not to exceed \$280,000.00 (the "Total Project Fee") which shall otherwise be invoiced and paid in accordance with this Article. In any event that Contractor invoices the Total Project Fee prior to completion of all Services required of Contractor herein, Contractor shall continue to perform all Services required herein through completion for the Total Project Fee received as good and sufficient consideration of all Services required of Contractor herein.

Reimbursable expenses, other than Approved Charges, as designated in Exhibit "B," are included in the Total Project Fee. Approved Charges, as designated in Exhibit "B," shall be reimbursed by the District as described in this Article 5.

5.2 METHOD OF PAYMENT. Contractor shall submit for the District's approval a proposed Schedule of Values ("SOV") within 14 days of receipt of executed Agreement, indicating the Contractor's distribution of the Total Project Fee among the various Services for use in determining the billable amounts to be invoiced by the Contractor to the District. The District approval of the SOV shall not be unreasonably withheld.

Contractor shall allocate in the SOV a minimum of 5% of Total Project Fee to the DSA Approval of the Project, and 5% of the Total Project Fee to the completion of bid documents/preparation of the proposed GMP.

5.3 INVOICING FOR SERVICES. Following completion of the Services applicable to each phase set forth in the SOV, or agreement by the District to consider an interim invoice, Contractor shall submit an invoice in form and substance satisfactory to the District in an amount not to exceed the amount specified as the portion of the Total Project Fee to be paid for that phase set forth in the SOV for the Services identified in the invoice.

Contractor shall identify all reimbursable expenses or charges included in the invoice or request for payment as separate from Total Project Fee line items, and provide a cumulative total of reimbursable expenses billed to date, current reimbursable amount billed, and remaining amount for reimbursable expenses as provided for in this Agreement. All reimbursable expenses shall be identified using the categories agreed upon by the parties. Requests for reimbursable expenses shall be limited to the categories of charges listed in Exhibit "B", and any other categories of charges agreed to at a later date by the Board, and must be within the total amount allowable per this Agreement. A request for reimbursement of a Reimbursable Direct Charge (General Conditions) is limited to the categories of approved charges listed in Exhibit "B", and any other categories of charges agreed to at a later date by the Board.

Each invoice or request for payment shall also be accompanied by a certificate from Contractor to the effect that invoice or request for payment is a true and accurate reflection of the Services performed by Contractor and that the items for which compensation is requested have not been previously paid for or denied compensation by the District. Contractor shall use the Invoice Approval Form per attached Exhibit "E".

5.4 TIMING OF PAYMENT. District shall pay Contractor for all undisputed amounts, which are approved by the District pursuant to this Agreement no later than thirty (30) calendar days from the date of receipt by the District of an invoice from Contractor.

## **ARTICLE 6**

### **TERMINATION, ABANDONMENT OR SUSPENSION OF WORK**

#### **6.1 TERMINATION OF PRE-CONSTRUCTION CONTRACTOR SERVICES**

The District may terminate all or any portion of this Agreement or the Services for cause in the event Contractor fails to promptly and efficiently perform the Services or otherwise fails to comply with the terms of this Agreement. The termination shall be effective if Contractor fails to cure such default within thirty (30) Days following issuance of written notice thereof by the District, or if the cure by its nature takes longer, fails to commence such cure within thirty (30) Days of issuance of the notice and diligently prosecutes such cure to the satisfaction of the District.

Contractor may give thirty (30) Days written notice to the District of Contractor's intent to terminate this Agreement for the District's failure to perform its duties and responsibilities under this Agreement. If, after the expiration of such thirty (30) Days, the District fails to cure the performance as set forth in Contractor's notice of intent to terminate the Agreement, Contractor may issue a notice of termination. If the actions to be taken to cure the default would reasonably exceed thirty (30) Days and the District commences curing the default within said period of time, and thereafter continuously continues to cure the default, Contractor agrees not to suspend or terminate the Agreement until the District has had a reasonable opportunity to fully cure the default.

The District shall also have the right in its absolute discretion to terminate this Agreement without cause following forty-five (45) Days written notice from the District to Contractor.

## 6.2 CONTINUANCE OF WORK

In the event of a dispute between the parties as to performance of the Services by Contractor or the interpretation of this Agreement, or payment or nonpayment for Services performed or not performed, the parties shall attempt to resolve the dispute. The District and Contractor agree to seek, in good faith, a timely and equitable resolution of a dispute. All efforts will be made by both the District and Contractor to avoid any legal proceedings arising from a dispute.

However, pending resolution of a dispute, Contractor agrees to continue the Services diligently to completion and the District agrees to continue paying Contractor all undisputed compensation in accordance with Article 5. If the dispute is not resolved, Contractor agrees it shall neither terminate the Agreement nor stop the progress of its Services, but Contractor's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute.

## 6.3 ABANDONMENT OF THE PROJECT

The District has the absolute discretion to suspend or abandon all or any portion of the work on the Project and may do so upon fourteen (14) Days' written notice to Contractor. Upon notice of suspension or abandonment, Contractor shall immediately discontinue any further action on the Project or the abandoned portion of the Project, as applicable. If the entire work to be performed on the Project is abandoned, the parties shall each be relieved of the remaining executory obligation of the Agreement, as it relates to the Project, but shall not be relieved of any obligations arising prior to said abandonment.

## 6.4 COMPENSATION IN THE EVENT OF TERMINATION, ABANDONMENT OR SUSPENSION

In the event the District terminates this Agreement for cause, abandons or suspends the work on the Project, there shall be due and payable within thirty (30) Days following such termination, abandonment or suspension a sum of money sufficient to increase the total amount paid to Contractor to an amount which bears the same proportion to the Total Project Fee as the amount of Services performed or provided by Contractor prior to the time of such termination, suspension or abandonment of this Agreement bears to the entire Services Contractor is required to perform pursuant to this Agreement.

In the event of termination due to a breach of this Agreement by Contractor, the compensation due Contractor upon termination shall be reduced by the amount of damages sustained by the District due to such breach.

## **6.5 DELIVERY/OWNERSHIP OF DOCUMENTS**

Upon termination, abandonment or suspension, Contractor shall deliver to the District all documents and materials related to the Project. It is agreed that the District is the sole owner of all documents, schedules and materials concerning the Project.

## **ARTICLE 7** **INDEMNIFICATION**

7.1 To the fullest extent permitted by law, Contractor shall indemnify, defend and save and hold the District, its Board, officers, employees, agents and authorized volunteers (the "Indemnitees") harmless from any and all liability arising out of:

7.1.1 Any and all claims under worker's compensation acts and other employee benefit acts with respect to Contractor's employees arising out of Contractor's performance of Services under this Agreement; and

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

7.2 To the fullest extent permitted by law, Contractor agrees to indemnify and hold the Indemnitees entirely harmless from all liability arising out of, pertaining to, or relating to any claim, loss, injury to or death of persons or damage to property to the extent caused by the negligent professional act or omission in the performance of professional services by Contractor, its officers, employees, consultants, subconsultants or agents, pursuant to this Agreement.

7.3 Contractor's obligation to indemnify does not include the obligation to defend actions or proceedings brought against the Indemnitees but rather to reimburse the Indemnitees for attorney's fees and costs incurred by the Indemnitees in defending such actions or proceedings brought against the Indemnitees to the extent such actions or proceedings arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor, but not to the extent of loss, injury, death or damage caused by the active negligence or willful misconduct of the Indemnitees.

7.4 Contractor's obligation to indemnify as outlined above will be continuing and shall survive the term of this Agreement or any earlier termination of this Agreement.

## **ARTICLE 8** **SUCCESSORS, SUCCESSORS AND ASSIGNS**

This Agreement is binding upon and inures to the benefit of the successors, executors, administrators, and assigns of each party to this Agreement, provided, however, that Contractor shall not assign or transfer by operation of law or otherwise any or all rights, burdens, duties, or obligations



without prior written consent of the District. Any attempted assignment without such consent shall be invalid.

## **ARTICLE 9**

### **APPLICABLE LAW**

The laws of the State of California shall govern this Agreement, however, in the event that the District receives any State funding for the Project from the State Allocation Board, this Agreement shall also be governed by any applicable laws and/or regulations relating to such State funding from the State Allocation Board (collectively the "Applicable Law"). To the extent that there is any inconsistency between this Agreement and the Applicable Law, or this Agreement omits any requirement of the Applicable Law, the language of the Applicable Law, in effect on the date of the execution of this Agreement, shall prevail.

## **ARTICLE 10**

### **PRE-CONSTRUCTION CONTRACTOR NOT AN OFFICER OR EMPLOYEE OF DISTRICT**

While engaged in carrying out and complying with the terms and conditions of this Agreement, Contractor is an independent construction management consultant and not an officer or employee of the District.

## **ARTICLE 11**

### **INSURANCE**

11.1 Without in any way affecting the indemnity provided in or by Article 7, before commencement of any Services, Contractor shall procure and maintain at its own cost and expense for the duration of the Services, and longer as required by the District against claims for injuries to persons or damages to property which may arise from or in connection with the Services, the types and amounts of insurance set forth herein.

11.2 Minimum Limits of Insurance. Contractor shall procure and maintain the types and amounts of coverage as follows:

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

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

11.2.3 [This Section intentionally omitted]

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

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

### 11.3 Minimum Scope of Insurance.

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

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

11.3.3 If the Professional Liability Insurance policy is written on a claims made basis, it shall be maintained continuously for a period of no less than three (3) years after final completion of the Project to which it applies. The "retro date" must be shown and must be before the date of this Agreement.

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

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

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

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

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

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

11.5.1 Be issued by insurance companies admitted to do business in the State of California, or permitted to do business under the Surplus Line Law of the State of California,

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

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

11.5.3 Contractor shall promptly notify the District of any materials change in the coverage, scope, or amount of any policy.

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

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

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

11.5.7 Any deductibles or self-insured retentions in excess of \$100,000 must be declared to the District and must be reduced to a level deemed acceptable by the District in writing. Contractor agrees that, at the option of the District, it will either: (A) arrange for the insurer to reduce or eliminate such deductibles or self-insured retentions with respect to the District, its directors, officials, officers, employees and agents; or (B) procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

## **ARTICLE 12**

### **EXTENT OF AGREEMENT**

This Agreement represents the entire and integrated agreement between the District and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the District and Contractor.

Contractor, in the performance of this Agreement, shall be and act as an independent construction management consultant. Contractor understands and agrees that Contractor and all of Contractor's employees, Contractor, subconsultants or other subcontractors shall not be considered

officers, employees or agents of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation insurance. Contractor assumes full responsibility for the acts and/or omissions of Contractor's employees, agents, Contractor or subconsultants as they relate to the services to be provided under this Agreement. Contractor assumes full responsibility for payment of all federal, state and local taxes, and all contributions, including all employment benefits, unemployment insurance, social security and income taxes for Contractor's employees, Contractor, subconsultants or other subcontractors.

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the District or Contractor.

District and Contractor, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other party to this Agreement with respect to the terms of this Agreement. Contractor shall not assign this Agreement without the express, written consent of District, which may be withheld by District for any reason or no reason, in District's absolute discretion.

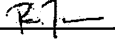
This Agreement shall be governed by the laws of the State of California. Venue for any action or proceeding shall rest in Orange County. In the event of any claim or civil action between District and Contractor to enforce this Agreement, each party will bear its own attorneys' fees.

While it is the intent of the parties that, if the Project continues, they will engage in good faith efforts to negotiate a further, separate and distinct set of agreements for construction of the Project, the District retains sole and complete discretion to cease the Project, suspend the Project, or engage any other person or firm to provide any or all further services related to the Project. Nothing in this Agreement obligates the District to engage the Contractor, or to attempt to negotiate with the Consultant to provide services or work in any further agreements or capacity, whatsoever.

The parties, through their authorized representatives, have executed this Agreement on the day and year first written above.

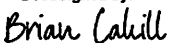
**SIMI VALLEY UNIFIED SCHOOL DISTRICT**

By: Ron Todo

DocuSigned by:  
  
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**BALFOUR BEATTY CONSTRUCTION, LLC**

By: Brian Cahill

DocuSigned by:  
  
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NON-COLLUSION DECLARATION

PROJECT: \_\_\_\_\_

STATE OF CALIFORNIA  
COUNTY OF San Diego

I, Brian Cahill, being first duly sworn, deposes and says that I am  
(Typed or Printed Name) [SimiPCC7106]  
the Division President of Balfour Beatty LLC, the party submitting  
(Title) (Bidder Name)

the foregoing Bid Proposal ("the Bidder"). In connection with the foregoing Bid Proposal, the undersigned declares, states and certifies that:

1. The Bid Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization or corporation.
2. The Bid Proposal is genuine and not collusive or sham.
3. The Bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any other bidder or anyone else to put in sham bid, or to refrain from bidding.
4. The Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price, or that of any other bidder, or to fix any overhead, profit or cost element of the bid price or that of any other bidder, or to secure any advantage against the public body awarding the contract or of anyone interested in the proposed contract.
5. All statements contained in the Bid Proposal and related documents are true.
6. The Bidder has not, directly or indirectly, submitted the bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any person, corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Executed this 17 day of 12, 2022 at San Diego, San Diego, CA  
17:23 PM PST (City, County and State)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(Signature)  
Brian Cahill  
(Name Printed as Typed)  
Brian Cahill

**CERTIFICATE OF WORKERS' COMPENSATION INSURANCE**

I, Brian Cahill the Division President of  
(Name) [SimiLAB3700] (Title)

Balfour Beatty LLC, declare, state and certify that:  
(Contractor Name)

1. I am aware that California Labor Code §3700(a) and (b) provides:

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

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees."

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

Balfour Beatty LLC

(Contractor Name)

DocuSigned by:

By: Brian Cahill

(Signature) 45A4EC...

Brian Cahill

(Typed or printed name)

**FINGERPRINT CERTIFICATE**

I, Brian Cahill, am the Division President of  
 (Print Name) (SimiEDU45125-1) (Title)

Balfour Beatty LLC. I declare, state, and certify all of the following:  
 (Entity/Contractor Name)

- I am aware of the provisions and requirements of California Education Code §45125.1 and §45125.2, regarding fingerprinting of persons providing services to school districts. As such, I understand that as a public works contractor, California Education Code §45125.2 details three (3) methods for ensuring the safety of pupils as described below.
  - Installation of a physical barrier.
  - Continual supervision and monitoring of all of contractor's employees by an employee of the contractor whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.**
  - Surveillance of contractor's employees by school personnel.

**The District requires Entity/Contractor to be able to comply with method (B) above. As such, Entity/Contractor must have a California Department of Justice issued ORI number under which Entity's/Contractor's employees have been fingerprinted, allowing the California Department of Justice to notify Entity/Contractor upon ascertaining that an individual whose fingerprints were submitted to it has been convicted of a violent or serious felony. Upon such notification, Entity/Contractor shall immediately remove individual identified from District sites.**

**Additional Fingerprint Certificates shall be provided to District as Entity's/Contractor's supervisory staff changes.**

Entity/Contractor DOJ issued ORI # → **DOJ issued ORI #** ← If your entity does not have an ORI #, STOP and contact the School District's Purchasing Director at 805-306-4500 x4601.

**As an alternative to Entity/Contractor having an ORI number, the District may allow Entity's/Contractor's supervisory employees to be fingerprinted under the District's ORI number. Contact the District's Purchasing Director at 805-306-4500 x4601.**

- I have personal knowledge of and/or have made due and diligent inquiry with respect to the following, and based on said knowledge and/or inquiry I certify that:
  - The fingerprints of each person identified on Attachment B-1, providing continual supervision and monitoring of all of Entity's/Contractor's staff, including subcontractors of all tiers, while Entity/Contractor/subcontractor(s) are on District Sites, have been submitted to the California Department of Justice under the ORI number provided above pursuant to Education Code §45125.1 and §45125.2; and,
  - The California Department of Justice has issued written or electronic verification that each person identified on Attachment B-1 has not been convicted of a felony, as defined in Education Code §45122.1, and has no criminal felony proceedings, as defined in Education Code §45122.1, pending against him or her.
- Entity/Contractor and I understand that if the District determines that Entity/Contractor has either: (a) made a false certification herein, or (b) violates this certification by failing to carry out and to implement the requirements of California Education Code §45125.1, the Contract is subject to termination, suspension of payments, or both.
- I am authorized to execute this Fingerprint Certificate on behalf of the Entity/Contractor. All of the statements set forth above and all of the information provided in Attachment B-1 are true, correct, complete, and accurate. Further, there are no omissions or misstatements of material fact in the foregoing statements or in the information set forth in Attachment B-1 which would render such statements and/or information to be false or misleading.

Unsupervised Contact with students means contact that provides the person opportunity and probability for personal communication or touch with students when not under direct District supervision. Entity/Contractor shall ensure that Entity/Contractor, any subcontractors of all tiers, and their officers, employees, and agents will have no Unsupervised Contact with students while on District property. Entity/Contractor will work with the District and with Entity's/Contractor's subcontractors to ensure compliance with this requirement and shall take all measures necessary to ensure compliance with this requirement, without compromising the day-to-day educational operations at each school site where Entity/Contractor is performing work. If Entity/Contractor is unable to ensure through a security plan (which includes but is not limited to provision of an on-site Superintendent who has passed DOJ fingerprinting, and is present at the work areas whenever work is being performed, installation of temporary barriers and fencing, isolation of the work areas or rooms from the rest of the campus or building, provision of separate sanitation and break areas for the workers, and provision of a separate path or supervised escort to and from the work for construction employees) that prevention of unsupervised contact with students in a particular circumstance, cannot be achieved, then Entity/Contractor shall immediately notify the District before commencing or continuing any work that could result in Unsupervised Contact, and shall refrain from commencing or continuing the work until Entity/Contractor has remedied the issues which may lead to Unsupervised Contact with students.

I declare under penalty of perjury under the laws of the State of California that all of the foregoing is true and correct.

Executed at San this 1/12/2022 | 7:23 PM PST day of January, 2022.

DocuSigned by: (City and State) (SimiEDU45125-1b)  
 Executed at Brian Cahill Brian Cahill  
 (Signature) (Handwritten or Typed Name)

**\* ATTACHMENT B-1 MUST BE COMPLETED IN ACCORDANCE WITH THE ABOVE \***

**FINGERPRINT CERTIFICATE**

**ATTACHMENT B-1**

[SimiEDU45125-2]

The fingerprints of each person identified below, providing continual supervision and monitoring of all of Entity's/Contractor's staff, including subcontractors of all tiers, while Entity/Contractor/subcontractor(s) are on District Sites, have been submitted to the California Department of Justice under the Entity's/Contractor's ORI number pursuant to Education Code §45125.1 and §45125.2; and,

The California Department of Justice has issued written or electronic verification that each person identified has not been convicted of a felony, as defined in Education Code §45122.1, and has no criminal felony proceedings, as defined in Education Code §45122.1, pending against him or her.

Full Name of Fingerprinted Supervisor

Full Name of Fingerprinted Supervisor

Full Name of Fingerprinted Supervisor

Full Name of Fingerprinted Supervisor

Full Name of Fingerprinted Supervisor



## DRUG-FREE WORKPLACE CERTIFICATION

I, Brian Cahill, am the Division President of  
(Print Name) (SimiGOV8350) (Title)

Balfour Beatty LLC

(Contractor Name)

I declare, state and certify to all of the following:

1. I am aware of the provisions and requirements of California Government Code §8350 et seq., the Drug Free Workplace Act of 1990.
2. I am authorized to certify, and do certify, on behalf of Contractor that a drug free workplace will be provided by Contractor by doing all of the following:
  - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in Contractor's workplace and specifying actions which will be taken against employees for violation of the prohibition;
  - B. Establishing a drug-free awareness program to inform employees about all of the following:
    - i. The dangers of drug abuse in the workplace;
    - ii. Contractor's policy of maintaining a drug-free workplace;
    - iii. The availability of drug counseling, rehabilitation and employee-assistance programs; and
    - iv. The penalties that may be imposed upon employees for drug abuse violations;
  - C. Requiring that each employee engaged in the performance of the Contract be given a copy of the statement required by subdivision (A), above, and that as a condition of employment by Contractor in connection with the Work of the Contract, the employee agrees to abide by the terms of the statement.
  - D. Contractor agrees to fulfill and discharge all of Contractor's obligations under the terms and requirements of California Government Code §8355 by, inter alia, publishing a statement notifying employees concerning: (i) the prohibition of any controlled substance in the workplace, (ii) establishing a drug-free awareness program, and (iii) requiring that each employee engaged in the performance of the Work of the Contract be given a copy of the statement required by California Government Code §8355(a) and requiring that the employee agree to abide by the terms of that statement.
3. Contractor and I understand that if the District determines that Contractor has either: (i) made a false certification herein, or (ii) violated this certification by failing to carry out and to implement the requirements of California Government Code §8355, the Contract awarded herein is subject to termination, suspension of payments, or both. Contractor and I further understand that, should Contractor violate the terms of the Drug-Free Workplace Act of 1990, Contractor may be subject to debarment in accordance with the provisions of California Government Code §8350, et seq.
4. Contractor and I acknowledge that Contractor and I are aware of the provisions of California Government Code §8350, et seq. and hereby certify that Contractor and I will adhere to, fulfill, satisfy and discharge all provisions of and obligations under the Drug-Free Workplace Act of 1990.

I declare under penalty of perjury under the laws of the State of California that all of the foregoing is true and correct.

Executed at San Diego, CA this 1 day of January, 2022.

(City and State)

1/12/2022 | 7:23 PM PST

DocuSigned by:

Brian Cahill

(Signature)

Brian Cahill

(Printed or Typed Name)

**TOBACCO-FREE ENVIRONMENT CERTIFICATION**

**PROJECT:**

**This Tobacco-Free Environment Certification form is required from the successful Bidder.**

The contract between **Simi Valley Unified School District** ("District") and

Balfour Beatty LLC ("Contractor" or "Bidder") includes the following provisions:  
[SimiLAB6400]

Pursuant to, without limitation, 20 U.S.C. section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq. and District Board Policies, all District sites, including the Project site, are tobacco-free environments. Smoking, vaping, and the use of tobacco products by all persons is prohibited on or in District property. District property includes school buildings, school grounds, school owned vehicles and vehicles owned by others while on District property.

I acknowledge that I am aware of the District's policy regarding tobacco-free environments at District sites, including the Project site and hereby certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, subcontractors, or my firm's subcontractors' employees or agents to use tobacco and/or smoke/vape on any District site.

Date: 1/12/2022 | 7:23 PM PST

Contractor: Balfour Beatty LLC

DocuSigned by:

Signature: Brian Cahill

Print Name: Brian Cahill

Title: Division President



**SimiValleySchools**  
SIMI VALLEY UNIFIED SCHOOL DISTRICT

## **Rules of Conduct**

**Each contractor and subcontractor performing work on this project shall adhere to the following rules of conduct:**

- 1. All construction personnel will wear masks and appropriate protective gear to prevent transmission of COVID-19. If any worker has symptoms associated with COVID-19, the worker shall not continue working at the site. Continuously ensure that all workers are at least 6 feet away from each other at all times except for when essential assistance is required. Workers to be at least 6 feet apart during lunch and other breaks.**
- 2. Professional and courteous behavior is expected and will be used at all times.**
- 3. Interaction with students, staff, and/or other visitors is prohibited with the exception of designated administrators.**
- 4. The use of profanity and/or disparaging language will not be tolerated.**
- 5. All contractors, subcontractors, architects, engineers or consultants will be required to wear a badge issued by their company as a means of identification. The badge is to be worn at all times while on the Owner's property. The badge will be visibly noticeable and located on the front of the individual's shirt. All badges are required to be returned to the Owner or designee at the completion of the project as part of the final pay application requirements.**
- 6. All contractors and subcontractors:**
  - a. Shall remain in the immediate vicinity of his/her work and will not stray to other areas of the property that do not involve their company's scope of work. All restroom facilities, including student and staff, are not to be used. The contractor is responsible for mobilizing to the construction site, their own portable restroom. Specific rules regarding the portable restroom are indicated in the General Conditions.**
  - b. During the regular school year, each school holds classes during daytime hours. Students and staff shall be given unimpeded access to and from the classrooms and administrative areas at all times when classes are being held. Contractors and subcontractors shall not disrupt the existing utilities, which serve the classrooms and administrative offices during the course of the work. Any outages shall be scheduled with the District Project Coordinator at least 1-month in advance of the planned outage.**
  - c. Vehicles must be parked each day in the designated area(s). When vehicles need to be removed during school hours, the vehicles shall have lights and flashers engaged, and a "spotter," provided by the contractor and/or subcontractor, leading the vehicle off the District's property. At no time will the vehicle exceed 5 mph.**

7. **Simi Valley Unified School District** properties are drug free workplaces. This policy shall be strictly enforced.
8. Alcoholic beverages are prohibited from being brought on or consumed on any portion of the Owner's property.
9. The use of any tobacco products on the Owner's property is strictly prohibited.
10. Any lewd, obscene or otherwise indecent acts, words, or behavior by any contractor, subcontractor, architect, engineer or consultant shall not be tolerated.
11. All contractors, subcontractors, architects, engineers or consultants shall conform to a dress code whereby:

No clothing that contains violent, suggestive, derogatory, obscene or racially based material may be worn. The Owner or designee will make this interpretation. Garments, accessories or personal grooming artifacts with slogans, graphics or pictures promoting drugs, alcohol, tobacco or any other controlled substances that are prohibited to minors will not be allowed. Tank top/mid-drift shirts and shorts of any kind are not allowed while on the Owners property.
12. All contractors, subcontractors, architects, engineers or consultants are responsible for their own means of communication including, but not limited to, telephone, cell phone, and fax machine. At no time are the Owner's communication systems to be used.
13. All contractors, subcontractors, architects, engineers or consultants personal vehicles, as well as work vehicles and equipment, are the responsibility of the individual and/or company. Any damage that occurs to the vehicles and/or equipment while on the Owner's property is not the responsibility of the Owner and, therefore, any said claims for damages will not be acknowledged.

**Non-compliance with any of the above-stated rules of conduct by any contractor, or subcontractor may be sufficient grounds for immediate removal from the job site and termination of the contract.**

I acknowledge that I am aware of the above-stated rules of conduct and hereby certify that all of my Company's employees, consultants, suppliers, and/or any subcontractors will adhere to these provisions. I further acknowledge that any delays to the schedule perceived or otherwise, as a result of the Owner/designee removing my employee from the job site, are my company's responsibility.

DocuSigned by:

*Brian Cahill*

Authorized Signature

[SimiROC]

Brian Cahill

Print Name

Balfour Beatty LLC

Company

Division President

Title

1/12/2022 | 7:23 PM PST

Date

## **EXHIBIT "A" PROJECT BUDGET**

See Attachment 1.



**SimiValleySchools**  
SIMI VALLEY UNIFIED SCHOOL DISTRICT

## Attachment 1

### Royal HS - Lease Leaseback Plan - Partial

Site	Phasing	Project	Architect	Building / Area	Budgeted Costs			Tentative Design Time Line		Tentative Construction Time Line		Comments
					Total Project Cost	Soft Costs (30% of Project Costs)	Construction Cost	Start Date	End Date	Start Date	End Date	
Royal HS	Construction Documents	2 Portables to RSRPD Pool	Amador Whittle		\$ 200,000.00	\$60,000	\$140,000	-	-	7-Jun-2022	30-Sep-2022	
Royal HS	Construction	MPR-PAC Modernization	A4E - In Construction		\$ 13,431,772.20	\$4,029,532	\$9,402,241	-	-	N/A	22-May-2022	On Going
Royal HS	Completed	*Boys Locker Room Modernization	Amador Whittle - Completed		\$ 520,000	\$156,000	\$364,000	-	-	N/A	30-Dec-2021	On Going
Royal HS	Phase F	New 12K S.F. Classroom Bldg	Little Diversified	Classroom Complex	\$ 7,995,000	\$2,398,500	\$5,596,500					
Royal HS		Quad Upgrades 1, 2, 3 Phased	Jordan Gilbert Bain		\$ 2,400,000	\$720,000	\$1,680,000					
Royal HS		Baseball/softball Field Upgrades	Nuvis		\$ 4,025,000	\$1,207,500	\$2,817,500					
Royal HS		Practice Field - Turf & Lighting	Nuvis		\$ 1,625,000	\$487,500	\$1,137,500					
Royal HS		Classroom Renovations	District		\$ 1,850,000	\$555,000	\$1,295,000					
Royal HS		Renovations Bldgs 5,6 & 7			\$ 6,727,500	\$2,018,250	\$4,709,250					
			District	Building 5								
			District	Building 6						25-May-2023	4-Aug-2023	
			District	Building 7								
Royal HS		MPR - Plaza Renovation	A4E / Jordon Gilbert Bain		\$ 1,500,000	\$450,000	\$1,050,000		1-Nov-2021	15-Apr-2022	20-Jul-2022	

## **EXHIBIT "B" BASIS OF COMPENSATION**

Total Project Fee Amount: **\$280,000.00 (100%)**

### **Proposed Fee Payout**

The preconstruction contractor shall bill the District by an hourly basis. The fees invoiced shall not exceed the following percentages of the not to exceed amount, by phase.

Program Feasibility & Constructability Review:	10%
Schematic Design Review:	10%
Design Development Review:	20%
Construction Document Review:	30%
DSA Submittal:	15%
DSA Approval:	5%
Bid Document & Proposed GMP Submittal:	5%
Bid Doc & GMP Approval:	5%
<b>Total Project Fee</b>	<b>100%</b>

### **Approved Charges\*:**

- Agency plan check fees, utility fees, permit fees, and other fees or costs associated with carrying out required approvals and permitting processes, if paid on behalf of the District.
- Expenses incurred on behalf of the District as directed in writing.

\*Note: Reimbursable Expenses and Charges not explicitly listed above must be approved in writing by the Program Manager prior to invoicing for reimbursement.

### **Approved Hourly Rates for Services, to be determined\*\*:**

\*\*Note: Additional services must be approved in writing by the Program Manager prior to proceeding with work, or invoice for services.

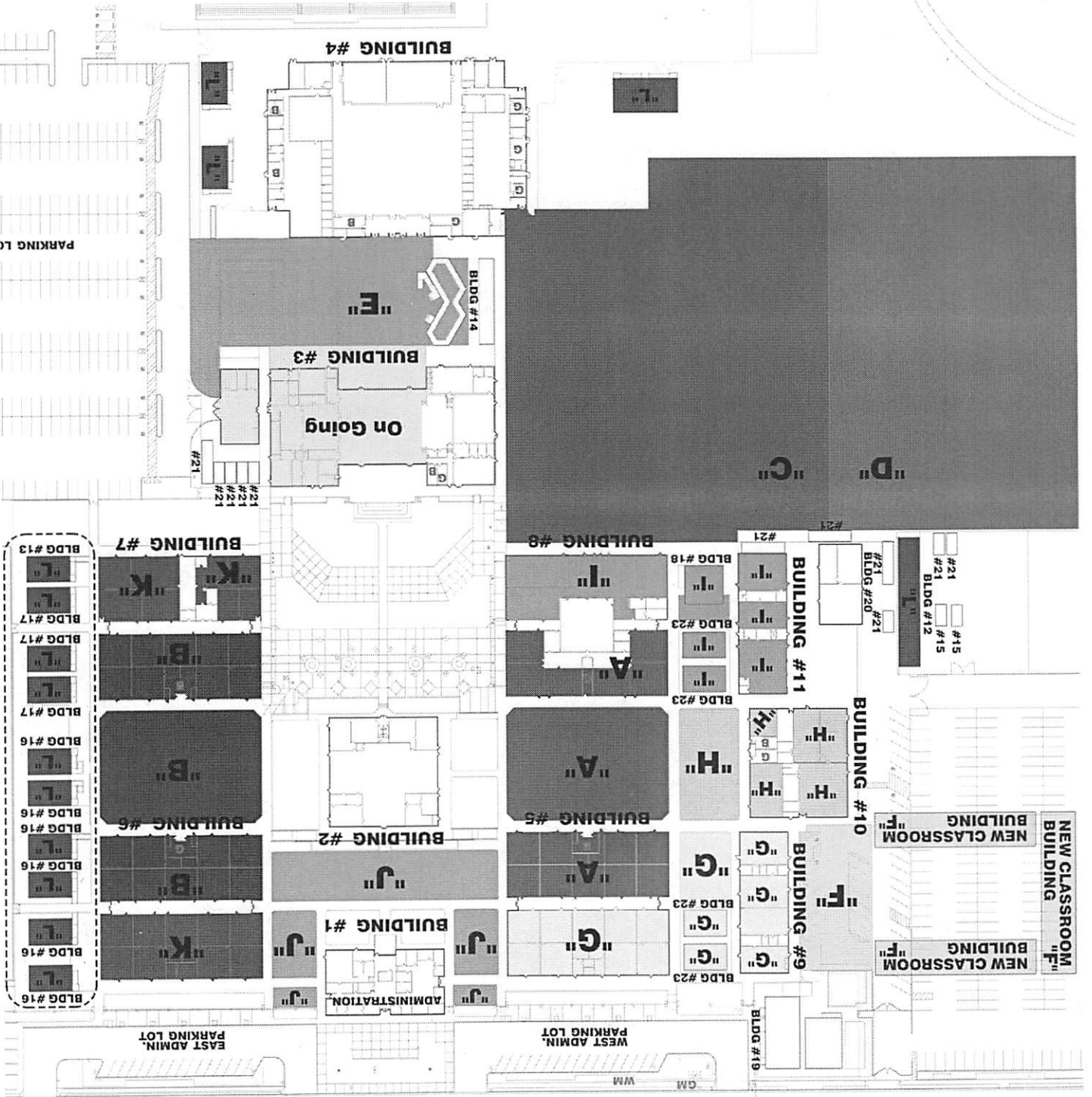
## **EXHIBIT "C" MASTER PROJECT SCHEDULE**

See The Project Plans by Phasing and The Project Plans attached.

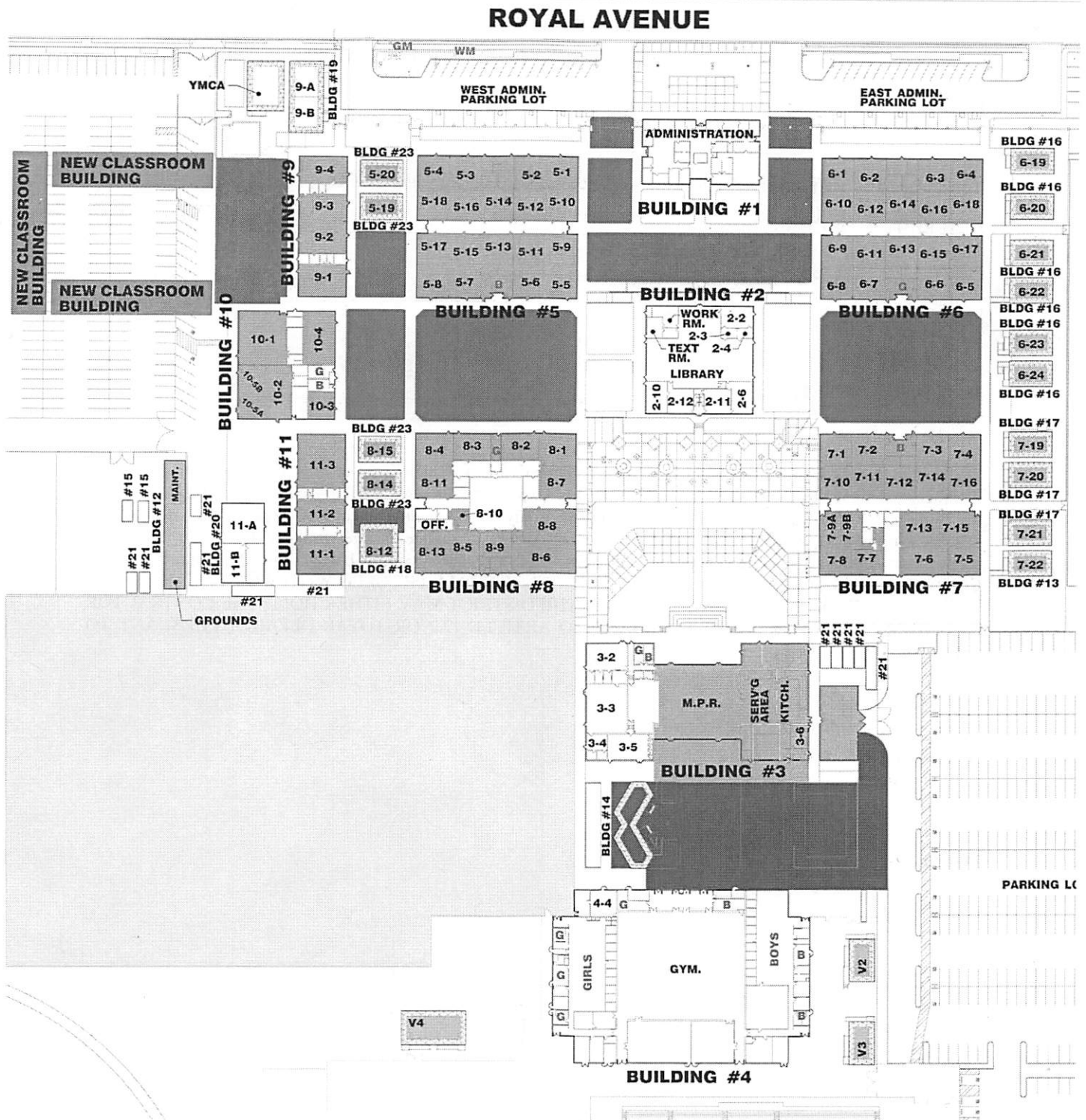


# The Project Plans by Phasing

ROYAL AVENUE

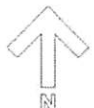


# The Project Plans



## LEGEND

- QUAD LANDSCAPING AREAS
- SPORTS FIELD
- CLASSROOM RENOVATIONS
- MPR-CONVERT MODERNIZATION CONSTRUCTION
- MPR-QUAD
- FUTURE PORTABLE RELOCATION/REPLACEMENT
- NEW CLASSROOM BUILDING



## ROYAL HIGH SCHOOL

1402 ROYAL AVENUE  
 SIMI VALLEY, CA. 93065  
 (805) 306-4875 8-19-21

**Division 1 Forms**

**IMMEDIATE CONSTRUCTION CHANGE DIRECTIVE NO.**

**PROJECT:** \_\_\_\_\_

**TO:** \_\_\_\_\_

You are hereby directed to provide the extra work necessary to comply with this ICD.

**DESCRIPTION OF CHANGE:** \_\_\_\_\_

\_\_\_\_\_

**COST (This cost shall not be exceeded):** \_\_\_\_\_

**TIME FOR COMPLETION:** \_\_\_\_\_

**NOTE:**

Pursuant to Article 17.4.1.2 An Immediate Change Directive is a written order to the Contractor prepared by the Architect and signed by the District (and CM if there is a CM on the Project) and the Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The District may by ICD, without invalidating the Contract, direct immediate changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions within. If applicable, the Contract Sum and Contract Time will be adjusted accordingly. **CONTRACTOR SHALL PROCEED WITH WORK SET FORTH IN THIS ICD IMMEDIATELY UPON RECEIPT OR THE DISTRICT MAY EITHER HOLD THE CONTRACTOR IN EITHER PARTIAL DEFAULT PURSUANT TO ARTICLE 12.2 OR TOTAL DEFAULT PURSUANT TO ARTICLE 19.**

\_\_\_\_\_  
Architect

\_\_\_\_\_  
District

**CERTIFICATE OF SUBSTANTIAL COMPLETION**

**PROJECT:** \_\_\_\_\_

**TO:** \_\_\_\_\_

**As the Architect for the Project described above, the Project has reached Substantial Completion. Substantial Completion is not reached unless and until each of the following three (3) conditions have been met: (1) all contractually required items have been installed with the exception of only minor and Incomplete Punch Items (See Article 13.16 of the Construction Services Agreement); (2) All Fire/Life Safety Systems have been installed, and are working and signed off on the DSA Form 152 Inspection Card, all building systems including mechanical, electrical and plumbing are all functioning; and (3) the Project is fit for occupancy and its intended use**

**I certify that the Project has reached Substantial Completion as defined above on the following date:**

\_\_\_\_\_.

\_\_\_\_\_  
**Architect**

**Certificate Of Completion**

Envelope Id: 9DE32EB944284A09A0F8E3B4A044F85F

Subject: Please DocuSign: LLB Master Construction Services Agreement - Royal HS.pdf

Source Envelope:

Document Pages: 169

Certificate Pages: 5

AutoNav: Enabled

EnvelopeId Stamping: Enabled

Time Zone: (UTC-08:00) Pacific Time (US &amp; Canada)

Status: Completed

Envelope Originator:

Bond Contracts

bondcontracts@simivalleyusd.org

IP Address: 207.157.143.39

**Record Tracking**

Status: Original

4/22/2022 10:50:02 AM

Security Appliance Status: Connected

Storage Appliance Status: Connected

Holder: Bond Contracts

bondcontracts@simivalleyusd.org

Pool: StateLocal

Pool: Simi Valley Unified School District - Facilities

Location: DocuSign

Location: DocuSign

**Signer Events**

Brian Cahill

bcahill@balfourbeattyus.com

Security Level: Email, Account Authentication  
(None)**Signature**

Signature Adoption: Drawn on Device

Signed by link sent to bcahill@balfourbeattyus.com

Using IP Address: 174.195.136.207

Signed using mobile

**Timestamp**

Sent: 4/22/2022 10:53:42 AM

Viewed: 4/22/2022 11:05:08 AM

Signed: 4/22/2022 11:55:01 AM

**Electronic Record and Signature Disclosure:**

Accepted: 4/22/2022 11:05:08 AM

ID: fda1dc05-82c8-44ef-b993-c043c846a8e6

Pamela Jewell

pamela.jewell@simivalleyusd.org

Administrative Services Assistant II

Simi Valley USD

Security Level: Email, Account Authentication  
(None)

Signature Adoption: Pre-selected Style

Signed by link sent to

pamela.jewell@simivalleyusd.org

Using IP Address: 207.157.143.39

Sent: 4/22/2022 11:55:03 AM

Viewed: 4/22/2022 1:39:46 PM

Signed: 4/22/2022 1:39:56 PM

**Electronic Record and Signature Disclosure:**

Accepted: 10/20/2021 10:27:18 AM

ID: 77a719ba-8cfa-478c-ab01-d769f2eee4d0

Ron Todo

ron.todo@simivalleyusd.org

Simi Valley Unified School District - Facilities

Security Level: Email, Account Authentication  
(None)

Signature Adoption: Uploaded Signature Image

Signed by link sent to ron.todo@simivalleyusd.org

Using IP Address: 207.157.143.41

Sent: 4/22/2022 1:39:58 PM

Viewed: 4/25/2022 2:22:38 PM

Signed: 4/25/2022 2:22:45 PM

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

**In Person Signer Events****Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp**

<b>Intermediary Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Certified Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Carbon Copy Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Witness Events</b>	<b>Signature</b>	<b>Timestamp</b>
<b>Notary Events</b>	<b>Signature</b>	<b>Timestamp</b>
<b>Envelope Summary Events</b>	<b>Status</b>	<b>Timestamps</b>
Envelope Sent	Hashed/Encrypted	4/22/2022 10:53:42 AM
Certified Delivered	Security Checked	4/25/2022 2:22:38 PM
Signing Complete	Security Checked	4/25/2022 2:22:45 PM
Completed	Security Checked	4/25/2022 2:22:45 PM
<b>Payment Events</b>	<b>Status</b>	<b>Timestamps</b>
<b>Electronic Record and Signature Disclosure</b>		

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, Simi Valley Unified School District - Facilities (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

#### **How to contact Simi Valley Unified School District - Facilities:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [ron.todo@simivalleyusd.org](mailto:ron.todo@simivalleyusd.org)

#### **To advise Simi Valley Unified School District - Facilities of your new email address**

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at [ron.todo@simivalleyusd.org](mailto:ron.todo@simivalleyusd.org) and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

#### **To request paper copies from Simi Valley Unified School District - Facilities**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to [ron.todo@simivalleyusd.org](mailto:ron.todo@simivalleyusd.org) and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

#### **To withdraw your consent with Simi Valley Unified School District - Facilities**

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:



- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to [ron.todo@simivalleyusd.org](mailto:ron.todo@simivalleyusd.org) and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

### **Required hardware and software**

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

### **Acknowledging your access and consent to receive and sign documents electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Simi Valley Unified School District - Facilities as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Simi Valley Unified School District - Facilities during the course of your relationship with Simi Valley Unified School District - Facilities.

**ROYAL HIGH SCHOOL MODERNIZATION PROJECTS**  
**MASTER SITE LEASE**

Between

**SIMI VALLEY UNIFIED SCHOOL DISTRICT**

and

**BALFOUR BEATTY COSTRUCTION, LLC**

Dated as of February 15, 2022

## ROYAL HIGH SCHOOL MODERNIZATION PROJECTS

### MASTER SITE LEASE

This MASTER SITE LEASE is dated as of February 15, 2022, and is by and between the Simi Valley Unified School District, a school district duly organized and existing under the laws of the State of California (the "District") as lessor and Balfour Beatty Construction, LLC, a Delaware limited liability company licensed to contract under the laws of the State of California (the "Lessee").

WHEREAS, the District desires to provide for the construction of certain public improvements at Royal High School under Bond Measure X (the "Projects"); and

WHEREAS, the District's governing board has determined that it is in the best interests of the District and for the common benefit of the citizens it serves to construct the Projects by leasing to the Lessee land and existing buildings at the various District school sites at which the public improvements are to be constructed, as more specifically described in Exhibit "A," (the "Sites"), and subleasing from the Lessee the Sites and the Projects under a Master Sublease Agreement (the "Master Sublease") attached hereto as Exhibit "B" and by this reference incorporated herein; and

WHEREAS, the Lessee has conducted Due Diligence of the Sites and the Projects to determine the suitability of the sites, site conditions, utilities, hazardous substances, and other conditions for the construction of the Projects (more fully detailed at Article 5 of the Master Construction Services Agreement); and

WHEREAS, the District is authorized under Section 17406 of the California Education Code to lease the Site and its governing body has duly authorized the execution of this Master Site Lease; and

WHEREAS, pursuant to this Master Site Lease, the District and Lessee have agreed to the terms of the Sublease, which is incorporated and attached hereto as Exhibit "B," by which the District will sublease the Sites and retain beneficial use and occupancy of the Sites during which term, improvements will be constructed by Lessee. As the constructed improvements are completed, the District shall receive full beneficial use and occupancy of the constructed improvements upon payment for such improvements by the District to the Lessee. As part of this Master Site Lease, the District and the Lessee have agreed to terms by which the Lessee will perform construction improvements on the Sites during the term of the Master Sublease according to the terms of the Master Construction Services Agreement ("Master CSA"), which is incorporated and attached to the Master Site Lease as Exhibit "C," to ensure that the improvements will meet the District's expectations and comply with applicable law.

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

1. **DEFINITIONS.** Unless the context otherwise requires, the terms defined in this Article shall, for all purposes of this lease, have the meanings as herein specified.
  - A. **"Commencement Date"** shall mean the Project commencement date found in the Notice to Proceed for each Measure X Project in accordance with the Master Construction Services Agreement.
  - B. **"Master Construction Services Agreement" (CSA)** means the Master Construction Services Agreement, together with any duly authorized and executed amendments hereto.
  - C. **"Construction Documents"** consist of the Plans and Specifications approved by DSA for each Project, Allowances stipulated in the Contract Documents, and all Addenda, if any, issued prior to the entry into this Agreement. The Construction Documents shall include all Modifications generated after the Effective Date in accordance with the Contract Documents, including,

without limitation, a written amendment to the Contract signed by the Contractor and duly executed and approved by the District, a Change Order, a Construction Change Document, or a written order for a minor change in the Work issued by the Architect.

- D. **“Contract Documents”** means those documents which form the entire Contract by and between District and Contractor. As of the effective date of the Master Site Lease and Master Sublease, the Contract Documents consist of the Lease, the Sublease, any General, Supplementary and other Conditions, the Master Construction Services Agreement, including all exhibits and attachments hereto, and the Construction Documents. The Contract Documents collectively form the Contract. The Contract represents the entire and integrated Agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall be binding solely upon the District and Contractor, do not create a contractual relationship of any kind between the Architect and Contractor, between the District and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the District and the Contractor, and are not intended to and do not create any third party beneficiary. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect’s duties. (See Article 14 of the Master CSA).
- E. **“Day”** means a calendar day unless specifically designated as a business day.
- F. **“District”** means the Simi Valley Unified School District, a school district duly organized and existing under the laws of the State of California.
- G. **“Effective Date”** is the latter of the date upon which the District Board approves the Master Site Lease and the Master Sublease and Contractor has executed the Master Site Lease and Master Sublease.
- H. **“Lessee”** shall mean Balfour Beatty Construction, LLP, and its successors and assigns.
- I. **“Project”** means the improvements and related work to be constructed and installed by the Contractor, as part of this Master Site Lease and in accordance with the Master Construction Services Agreement attached hereto as Exhibit “C”.
- J. **“Site”** refers to the grounds of the Projects or in some cases may refer to multiple sites as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work, more particularly described in Exhibit “A” attached hereto.
- K. **“Master Site Lease” or “Lease”** means this Master Site Lease together with any duly authorized and executed amendment hereto under which the District leases the Sites to the Lessee.
- L. **“Master Sublease”** means the Sublease attached hereto and incorporated as Exhibit “B”, together with any duly authorized and executed amendment thereto.
- M. **“Sublease Payment”** means any payment required to be made by the District pursuant to Article 8 of the Sublease.
- N. **“Term of this Lease” or “Term”** means the time during which this Lease is in effect, as provided for in Article 3 of this Master Site Lease.

2. **SITE LEASE.**

The District leases to the Lessee, and the Lessee leases from the District, on the terms and conditions set forth herein, the various Sites situated in Simi Valley, County of Ventura, State of California, more specifically described in Exhibit "A" attached hereto, including any improvements now or hereafter affixed thereto. The term of each Site Lease shall commence upon the completion of Lessee's Due Diligence with regard to the sites and the issuance of the Notice to Proceed for each Measure X Project.

3. **TERM.**

4. The Term of this Master Site Lease shall become effective upon the authorized execution of this Master Site Lease and shall terminate as of the last day of the Master Sublease, unless sooner terminated as provided thereby. If on the scheduled date of termination of this Master Site Lease, any Sublease Payments for any of the various phases of the Project shall have therefore been abated at any time and for any reason, then the term of this Master Site Lease shall be subject to a Liquidated Damages cost as set forth in Article 3.7 of the Master Construction Services Agreement and the Master Site Lease shall be extended until the date upon which all such Sublease Payments shall be fully paid. Without limiting any other term or provision of the Master Sublease Agreement or Master Construction Services Agreement between the parties, at the termination of this Master Site Lease, natural or otherwise, title to the Site, and any improvements constructed thereon by the Lessee, shall vest in the District in accordance with Education Code section 17406.

5. **REPRESENTATIONS, COVENANTS, AND WARRANTIES OF THE DISTRICT.** The District represents, covenants and warrants to the Lessee that:

- A. The District has good and merchantable fee title to the Sites and has authority to enter into and perform its obligations under this Master Site Lease;
- B. There are no liens on the Sites other than Permitted Encumbrances;
- C. All taxes, assessments or impositions of any kind with respect to the Sites, if applicable, except current taxes, have been paid in full;
- D. The Sites are properly zoned (or subject to an exception from zoning) for the intended purpose and utilization of the Site ;
- E. The District is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to the Sites;
- F. Except for Validation Actions concerning the Projects, there is no litigation of any kind currently pending or threatened regarding the Sites or the District's use of the Sites for the purposes contemplated by this Master Site Lease;
- G. To the best of the District's knowledge, except for that which shall be disclosed by the District prior to the Project commencement date in the Notice to Proceed:
  - (1) no dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by the provisions of any State or Federal Law relating thereto (hereinafter collectively called "Environmental Regulations", and also including, but not limited to, urea-formaldehyde, polychlorinated biphenyls, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the owner of the Site or the Lessee or the Lessee's subcontractors to any damages, penalties or liabilities under any applicable

Environmental Regulation (hereinafter collectively called "Hazardous Substances", are now or have been stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited or disposed of in, upon, under, over or from the Sites;

- (2) no threat exists of a discharge, release or emission of a Hazardous Substance upon or from the Sites into the environment;
- (3) the Sites have not been used as or for a mine, a landfill, a dump or other disposal facility, industrial or manufacturing facility, or a gasoline service station;
- (4) no underground storage tank is now located in the Sites or has previously been located therein;
- (5) no violation of any Environmental Regulation now exists relating to the Sites, no notice of any such violation or any alleged violation thereof has been issued or given by any governmental entity or agency, and there is not now any investigation or report involving the Sites by any governmental entity or agency which in any way relates to Hazardous Substances;
- (6) no person, party or private or governmental agency or entity has given any notice of or asserted any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment or natural resources, resulting or allegedly resulting from any activity or event described in (1) above;
- (7) there are not now any actions, suits, proceedings or damage settlements relating in any way to Hazardous Substances, in, upon, under over or from the Sites;
- (8) the Sites are not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of Hazardous Substance sites maintained by any federal, state or local governmental agency; and
- (9) the Sites are not subject to any lien or claim for lien or threat of a lien in favor of any governmental entity or agency as a result of any release or threatened release-of any Hazardous Substance.

H. To the extent permitted by law, the District shall not abandon the Sites for the use for which it is currently required by the District and further, shall not seek to substitute or acquire property to be used as a substitute for the uses for which the Sites and Projects are to be maintained under the Master Site Lease.

I. The term "Permitted Encumbrances" as used herein shall mean, as of any particular time:

- (1) liens for general ad valorem taxes and assessments, if any, not then delinquent;
- (2) this Master Site Lease; the Master Sublease; any right or claim of any mechanic, laborer, materialman, supplier, or vendor, if applicable, not filed or perfected in the manner prescribed by law; easements, rights of way, mineral rights, drilling rights, and other rights, reservations, covenants, conditions, or restrictions which exist of record as of the date of this Master Site Lease and which will not materially impair the use of the Sites;

- (3) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions, or restrictions established following the date of recordation of this Master Site Lease and to which the Lessee and the District consent in writing which will not impair or impede the operation of the Sites.

6. **REPRESENTATIONS AND WARRANTIES OF THE LESSEE.** The Lessee represents and warrants to the District that:

- A. The Lessee is duly organized in the State of California, and in good standing under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;
- B. The Lessee has full power, authority and legal right to enter into and perform its obligations under this Master Site Lease, and the execution, delivery and performance of this Master Site Lease has been duly authorized by all necessary corporate actions on the part of the Lessee and does not require any further approvals or consents;
- C. Execution, delivery and performance of this Master Site Lease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which the Lessee is a party or by which it or its property is bound;
- D. There is no pending or, to the best knowledge of the Lessee, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of the Lessee to perform its obligations under this Master Site Lease; and

7. **RENTAL.**

The Lessee shall pay to the District as and for advance rental hereunder \$1.00 per year or part thereof, on or before the date of commencement of the Term of this Master Site Lease. The Lessee shall have no obligation to make rental payments hereunder in the event the Commencement Date of this Master Site Lease does not occur as a result of the District's inability to issue a Notice to Proceed for the each Phase of the Project pursuant to the provisions of the Master Construction Services Agreement.

8. **PURPOSE.**

The Lessee shall use the Sites solely for the purpose of constructing the two phases of the Projects thereon and for subleasing the Sites and the improvements of the Projects to the District; provided, that upon the occurrence of an Event of Default by the District under the Master Sublease, the Lessee may exercise the remedies provided for in the Master Construction Services Agreement or the Master Sublease.

9. **TERMINATION.** The Lessee agrees, upon termination of this Master Site Lease or the end of the Term of this Master Site Lease:

- A. To quit and surrender the Sites in the same good order and condition as it was in at the time of commencement of the Term hereunder, reasonable wear and tear excepted;
- B. To release and re-convey to the District any liens and encumbrances created or caused by the Lessee; and
- C. That any permanent improvements and structures existing upon the Sites at the time of the termination of this Master Site Lease shall remain thereon and title thereto shall vest in the District.

Notwithstanding the District's foregoing rights in the event of termination, the Lessee shall retain the right to full compensation for all services rendered prior to the termination, including all rights they have under the Master Construction Services Agreement and the Master Sublease as well as all recourse provided by California law including common law, for the value of the work performed on the Site and/or the Project.

In the event the Master Construction Services Agreement is terminated pursuant to the provisions therein, this Master Site Lease shall immediately terminate.

10. **QUIET ENJOYMENT.**

Subject to the terms of the Master Sublease attached hereto as Exhibit "B", the District covenants and agrees that it will not take any action to prevent the Lessee's quiet enjoyment of the Sites during the Term hereof; and, that in the event District's fee title to the Sites is ever challenged so as to interfere with the Lessee's right to occupy, use and enjoy the Sites, the District will use all governmental powers at its disposal, including the power of eminent domain, to obtain unencumbered fee title to the Sites and to defend the Lessee's right to occupy, use, and enjoy the Sites. The District, however, retains the right, throughout the Master Site Lease Term, to use the Sites for District purposes, pursuant to the terms of the Master Sublease.

11. **NO LIENS.**

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

12. **RIGHT OF ENTRY.**

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

13. **ASSIGNMENT AND SUBLEASING.**

The Lessee will not assign or otherwise dispose of or encumber any of the Sites or this Master Site Lease without the written consent of the District.

14. **NO WASTE.**

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

15. **DEFAULT.**

In the event the Lessee shall be in default in the performance of any obligation on its part to be performed under the terms of the Master Construction Services Agreement and this Master Site Lease, which default continues for thirty (30) days following notice and demand for correction thereof to the Lessee, the District may exercise any and all remedies granted by law, except that no merger of this Master Site Lease and of the Master Sublease shall be deemed to occur as a result thereof.

16. **TITLE.**



During the Term of this Master Site Lease, the District shall hold title to the Sites and obtain title to the Project from the Lessee, including any and all additions which comprise improvements, fixtures, repairs, replacements or modifications, as such improvements are built and paid for pursuant to the Master Construction Services Agreement with full title vesting in the District to all improvements upon the end of the Term of this Master Site Lease.

17. **TAXES.**

The terms of this Master Site Lease may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this document, the private party may be subjected to the payment of personal property taxes levied on such interest. Pursuant to Section 107.6 of the California Revenue and Taxation Code, District hereby notifies Lessee that: (i) the property interest obtained by Lessee pursuant to the Master Site Lease may be subject to property taxation; and (ii) Lessee may be subject to the payment of property taxes levied on the property interest obtained by Lessee.

18. **EMINENT DOMAIN.**

In the event the whole or any part of the Sites or the improvements thereon, including but not limited to the Project, is taken by eminent domain, the financial interest of the Lessee shall be recognized and is hereby determined to be the amount of all Sublease Payments and Retention Payment, as applicable, then due or past due, less any allowed withholdings or offsets, and unearned interest as of the date the Lessee receives payment in full. The balance of the award in such eminent domain action, if any, shall be paid to the District.

19. **LIQUIDATED DAMAGES.**

Pursuant to Lessee's Due Diligence, as further described in Article 5 of the Master Construction Services Agreement, Lessee has determined the Term of this Master Site Lease which shall extend at least until the Punch List is completed under Article 13 of the Master Construction Services Agreement. Pursuant to the Master Construction Services Agreement, Liquidated Damages shall apply if the Contract Time is exceeded.

20. **PARTIAL INVALIDITY.**

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

21. **NOTICES.**

Any notices or filings required to be given or made under this Master Site Lease shall be served, given or made in writing upon the District or the Lessee, as the case may be, by personal delivery or registered mail to the respective addresses given below. Any change in the addresses noted shall not be binding upon the other party unless preceded by no less than thirty (30) days prior written notice. Any such notices shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by email, or fax followed by regular mail, addressed as follows:

If to Lessee:                      Balfour Beatty Construction, LLC  
   300 E. Esplanade Drive, #1120  
   Oxnard, CA 93036  
   Attn: Dennis Kuykendall, Project Executive  
   Email: dkuykendall@balfourbeattyus.com

If to District: Simi Valley Unified School District  
101 West Cochran Street  
Simi Valley, CA 93065  
Attn: Lori Rubenstein  
Email: lori.rubenstein@simivalleyusd.org

22. **BINDING EFFECT.**

This Master Site Lease shall inure to the benefit of and shall be binding upon the District, the Lessee and its respective successors in interest and assigns.

23. **AMENDMENTS AND MODIFICATIONS.**

This Master Site Lease shall not be effectively amended, changed, modified, altered or terminated without the written agreement of the District and the Lessee.

24. **EXECUTION IN COUNTERPARTS.**

This Master Site Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

25. **LAWS, VENUE AND ATTORNEYS' FEES.**

The terms and provisions of this Master Site Lease shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Master Site Lease, the action shall be brought in a state court situated in the County of Ventura, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county. In the event of any such litigation between the parties, the parties shall pay for their respective costs incurred, including attorneys' fees.

26. **INTEGRATION/MODIFICATION.**

This Master Site Lease represents the entire understanding of the District and Lessee as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered herein and shall not be amended, altered, or changed except by a written agreement signed by the parties hereto.

27. **HEADINGS.**

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

28. **TIME.**

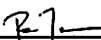
Time is of the essence in this Master Site Lease and each and all of its provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Master Site Lease by their authorized officers as of the day and year first written above.

**"DISTRICT"**

**SIMI VALLEY UNIFIED SCHOOL DISTRICT**

**BY:**



**Ron Todo**

**Assistant Superintendent Business and Facilities**

**"LESSEE"**

**BALFOUR BEATTY CONSTRUCTION, LLC**

**BY:**



**Brian Cahill**

**President – California Division**

**EXHIBIT "A"**

**DESCRIPTION OF SITES**

**ROYAL HIGH SCHOOL  
1402 ROYAL AVENUE  
SIMI VALLEY, CA 93065**

**SIMI ELEMENTARY  
2956 SCHOOL STREET  
SIMI VALLEY, CA 93065**

**RANCHO SIMI COMMUNITY PARK POOL  
1765 ROYAL AVENUE  
SIMI VALLEY, CA 93065**

**EXHIBIT "B"**  
**MASTER SUBLEASE**

**EXHIBIT "C"**

**MASTER CONSTRUCTION SERVICES AGREEMENT**

## Certificate Of Completion

Envelope Id: 7B68B21ED78244A2B4B7633A35A4F0C5  
 Subject: Please DocuSign: LLB Master Site Lease Royal HS (3-21-22).pdf  
 Source Envelope:  
 Document Pages: 13  
 Certificate Pages: 5  
 AutoNav: Enabled  
 EnvelopeId Stamping: Enabled  
 Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Status: Completed

Envelope Originator:  
 Pamela Jewell  
 pamela.jewell@simivalleyusd.org  
 IP Address: 207.157.143.39

## Record Tracking

Status: Original 3/21/2022 9:27:08 AM	Holder: Pamela Jewell pamela.jewell@simivalleyusd.org	Location: DocuSign
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: Simi Valley Unified School District - Facilities	Location: DocuSign

## Signer Events

Brian Cahill  
 bcahill@balfourbeattyus.com  
 Security Level: Email, Account Authentication  
 (None)

## Signature



Signature Adoption: Drawn on Device  
 Using IP Address: 174.197.64.24  
 Signed using mobile

## Timestamp

Sent: 3/21/2022 9:30:21 AM  
 Resent: 3/22/2022 4:01:58 PM  
 Viewed: 3/24/2022 2:35:06 PM  
 Signed: 3/24/2022 2:35:29 PM

**Electronic Record and Signature Disclosure:**  
 Accepted: 3/24/2022 2:35:06 PM  
 ID: 1ec45ab8-712d-4e80-aa60-2486d26a7cae

Ron Todo  
 ron.todo@simivalleyusd.org  
 Simi Valley Unified School District - Facilities  
 Security Level: Email, Account Authentication  
 (None)



Signature Adoption: Uploaded Signature Image  
 Using IP Address: 207.157.143.41

Sent: 3/24/2022 2:35:31 PM  
 Viewed: 3/30/2022 4:09:18 PM  
 Signed: 3/30/2022 4:09:29 PM

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

## In Person Signer Events

## Signature

## Timestamp

## Editor Delivery Events

## Status

## Timestamp

## Agent Delivery Events

## Status

## Timestamp

## Intermediary Delivery Events

## Status

## Timestamp

## Certified Delivery Events

## Status

## Timestamp

## Carbon Copy Events

## Status

## Timestamp

## Witness Events

## Signature

## Timestamp

## Notary Events

## Signature

## Timestamp

## Envelope Summary Events

## Status

## Timestamps

Envelope Sent	Hashed/Encrypted	3/21/2022 9:30:21 AM
Certified Delivered	Security Checked	3/30/2022 4:09:18 PM

Envelope Summary Events	Status	Timestamps
Signing Complete	Security Checked	3/30/2022 4:09:29 PM
Completed	Security Checked	3/30/2022 4:09:29 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		



## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, Simi Valley Unified School District - Facilities (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

#### **How to contact Simi Valley Unified School District - Facilities:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [ron.todo@simivalleyusd.org](mailto:ron.todo@simivalleyusd.org)

#### **To advise Simi Valley Unified School District - Facilities of your new email address**

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at [ron.todo@simivalleyusd.org](mailto:ron.todo@simivalleyusd.org) and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

#### **To request paper copies from Simi Valley Unified School District - Facilities**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to [ron.todo@simivalleyusd.org](mailto:ron.todo@simivalleyusd.org) and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

#### **To withdraw your consent with Simi Valley Unified School District - Facilities**

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to [ron.todo@simivalleyusd.org](mailto:ron.todo@simivalleyusd.org) and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

### **Required hardware and software**

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

### **Acknowledging your access and consent to receive and sign documents electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Simi Valley Unified School District - Facilities as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Simi Valley Unified School District - Facilities during the course of your relationship with Simi Valley Unified School District - Facilities.

**ROYAL HIGH SCHOOL MODERNIZATION PROJECTS**

**MASTER SUBLEASE AGREEMENT**

Between

**SIMI VALLEY UNIFIED SCHOOL DISTRICT**

and

**BALFOUR BEATTY CONSTRUCTION, LLC**

Dated as of February 15, 2022

## ROYAL HIGH SCHOOL MODERNIZATION PROJECTS

### MASTER SUBLEASE AGREEMENT

This MASTER SUBLEASE AGREEMENT ("Master Sublease") is dated as of February 15, 2022, and is by and between the Simi Valley Unified School District, a school district duly organized and existing under the laws of the State of California ("District"), and Balfour Beatty Construction, LLC, a Delaware limited liability company licensed to contract under the laws of the State of California ("Lessor" or "Contractor").

#### RECITALS:

WHEREAS, the District deems it essential for its own governmental purpose, to finance the construction of certain improvements as described in Measure X in Exhibit "A" attached hereto (the "Projects") and situated on the Royal High School site described in Exhibit "B" attached hereto (the "Site"); and

WHEREAS, pursuant to Section 17400 *et seq.* of the Education Code, the District may enter into leases and agreements relating to real property and buildings used by the District; and

WHEREAS, pursuant to Section 17406 of the Education Code, the District is leasing the Sites to Lessor under a lease agreement dated the date hereof (the "Master Site Lease") for the purpose of Lessor constructing improvements on the Sites during the Term of the Master Site Lease on the terms and conditions the District finds to be in its best interest and set forth in this Master Sublease and the Master Construction Services Agreement attached as Exhibit "C" to the Master Site Lease; and

WHEREAS, the District owns the Sites, and pursuant to the Master Construction Services Agreement, will prepare and adopt plans and specifications for the completion of improvements, which will be approved pursuant to law as required by Section 17402 of the Education Code prior to the start of any construction for any phase of the project; and

WHEREAS, the District and Lessor agree to mutually cooperate now or hereafter, to the extent possible, in order to sustain the intent of this Master Sublease and the bargain of both parties hereto, and to provide Sublease Payments to be made on the dates and in the amount set forth herein.

#### WITNESSETH:

In consideration of the mutual covenants hereinafter set forth, the District and Lessor parties hereto agree as follows:

1. **DEFINITIONS.** Unless the context otherwise requires, the terms defined in this Article shall, for all purposes of this Master Sublease, have the meanings as herein specified.
  - A. **"Commencement Date"** shall mean the Project commencement date found in the Notice to Proceed for each phase of the Project in accordance with the Master Construction Services Agreement.

- B. **“Construction Costs”** means any and all costs incurred by the Lessor with respect to the construction and equipping, as the case may be, of the Project, whether paid or incurred prior to or after the date hereof, including, without limitation, costs for Site preparation, the removal or demolition of existing structures, the construction of the Project and related facilities and improvements, and all other work in connection therewith, security of the Site and Project, Lessor’s overhead and supervision at the Project Site, all costs and expenses including any taxes or insurance premiums paid by the Lessor with respect to the Property, and administrative and other expenses necessary or incident to the Project, excluding Lessor’s and Developer’s home office overhead and profit. The term “Construction Costs” includes all Lessor’s costs associated with preparing or generating additional copies of any Construction Documents, as defined below, related to or required for the Project, including preparation or generation of additional plans and specifications for Lessor’s subcontractors. In no event shall Construction Costs exceed the Guaranteed Maximum Price.
- C. **“Master Construction Services Agreement”** (CSA) means the Master Construction Services Agreement attached hereto, together with any duly authorized and executed amendments hereto.
- D. **“Construction Documents”** consist of the Plans and Specifications approved by DSA for each phase of the project, Allowances stipulated in the Contract Documents, and all Addenda, if any, issued prior to the entry into this Agreement. The Construction Documents shall include all Modifications generated after the Effective Date in accordance with the Contract Documents, including, without limitation, a written amendment to the Contract signed by the Contractor and duly executed and approved by the District, a Change Order, a Construction Change Document, or a written order for a minor change in the Work issued by the Architect.
- E. **“Contract Documents”** means those documents which form the entire Contract by and between District and Contractor. As of the effective date of the Master Site Lease and Master Sublease, the Contract Documents consist of the Master Site Lease, the Master Sublease, any General, Supplementary and other Conditions, the Master Construction Services Agreement, including all exhibits and attachments hereto, and the Construction Documents. The Contract Documents collectively form the Contract. The Contract represents the entire and integrated Agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall be binding solely upon the District and Contractor, do not create a contractual relationship of any kind between the Architect and Contractor, between the District and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the District and the Contractor, and are not intended to and do not create any third party beneficiary. The Architect shall, however, be entitled to performance and enforcement of

obligations under the Contract intended to facilitate performance of the Architect's duties. (See Article 14 of the CSA).

- F. **"Day"** means a calendar day unless specifically designated as a business day.
- G. **"District"** means the Simi Valley Unified School District, a school district duly organized and existing under the laws of the State of California.
- H. **"Effective Date"** is the latter of the date upon which the District Board approves the Master Site Lease and the Master Sublease and Contractor has executed the Master Site Lease and Master Sublease.
- I. **"Event of Default"** means one or more events of default as defined in Article 16 of this Master Sublease.
- J. **"Guaranteed Maximum Price" or "GMP"** means the Guaranteed Maximum Price established pursuant to Article 5 of the CSA to be paid to Lessor for Lessor's construction of the Project hereunder, subject to any adjustments for Extra Work/Modifications as provided in Article 17 of the CSA.
- K. **"Lessor"** shall mean Balfour Beatty Construction, LLC, and its successors and assigns.
- L. **"Project"** means the improvements and related work to be constructed and installed by the Lessor, as more particularly described and/or referenced in Exhibit "A" attached hereto.
- M. **"Site"** refers to the grounds of the Projects or in some cases may refer to multiple sites as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work, particularly described in Exhibit "B" attached hereto.
- N. **"Master Site Lease" or "Lease"** means the Master Site Lease of even date herewith, by and between the District and the Lessor together with any duly authorized and executed amendment thereto under which the District leases the Sites to the Lessor.
- O. **"Master Sublease"** means this Master Sublease together with any duly authorized and executed amendment hereto.
- P. **"Sublease Payment"** means any payment required to be made by the District pursuant to Article 7 of this Sublease.
- Q. **"Term of this Master Sublease" or "Term"** means the time during which this Master Sublease is in effect, as provided for in Article 3 of this Master Sublease.
- R. **"Term of this Master Sublease" or "Term"** means the time during which this Master Sublease is in effect, as provided for in Article 3 of this Master Sublease.

2. **MASTER SUBLEASE.**

Lessor hereby leases and subleases to District, and District hereby leases and subleases from Lessor the Projects and the Sites, including any real property improvements now or hereafter affixed thereto in accordance with the provisions herein for the full Term of this Master Sublease. The leasing by the Lessor to the District of the Sites shall not effect or result in a merger of the District's leasehold estate pursuant to this Master Sublease and its fee estate as lessor under the Master Site Lease, and the Lessor shall continue to have and hold a leasehold estate in said Sites pursuant to the Master Site Lease throughout the Term thereof and the Term of this Master Sublease.

3. **TERM OF THE MASTER SUBLEASE.**

- A. The Term of this Master Sublease shall become effective upon the authorized execution of this Master Sublease and issuance of a Notice to Proceed for any phase of the Project under the terms of the CSA and payment of the last Sublease Payment, unless otherwise terminated pursuant to this Master Sublease, the Master Site Lease, or the CSA.
- B. Termination of Term. Except as otherwise provided, the Term of this Master Sublease shall terminate upon the earliest of any of the following events:
  - (1) An Event of Default and the Lessor's election to terminate this Master Sublease pursuant to the provisions of Articles 16 and 17, hereof;
  - (2) The arrival of the last day of the Term of this Master Sublease and payment of all Sublease Payments hereunder; or
  - (3) The exercise of the District's option under Article 21 hereof.

4. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF DISTRICT.** The District represents and warrants to Lessor that:

- A. District is a public school district, duly organized and existing under the Constitution and laws of the State of California with authority to enter into this Master Sublease and to perform all of its obligations hereunder;
- B. District's governing body has duly authorized the execution and delivery of this Master Sublease and further represents and warrants that all requirements have been met and procedures followed to ensure its enforceability;
- C. The execution, delivery and performance of this Master Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which District is a party by which it or its property is bound;
- D. There is no pending or, to the knowledge of District, threatened action or proceeding before any court or administrative agency which will materially



adversely affect the ability of District to perform its obligations under this Master Sublease;

- E. The Projects and the Sites are essential to District in the performance of its governmental functions and their estimated useful life to the District exceeds the Term of this Master Sublease;
- F. District shall take such action as may be necessary to include all Sublease Payments in its annual budget and annually to appropriate an amount necessary to make such Sublease Payments;
- G. District shall not abandon the Sites for the use for which it is currently required by District and, to the extent permitted by law, District shall not seek to substitute or acquire property to be used as a substitute for the uses for which the site is maintained under the Master Sublease; and
- H. District shall not allow any Hazardous Substances (as such term is defined in the Site Lease and limited by that which shall be disclosed by the District prior to the Project commencement date in the Notice to Proceed) to be used or stored on, under or about the Sites.

5. **REPRESENTATIONS AND WARRANTIES OF LESSOR.** Lessor represents and warrants to District that:

- A. Lessor is duly organized in the State of California, and in good standing as a corporation under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;
- B. Lessor has full power, authority and legal right to enter into and perform its obligations under this Master Sublease, and the execution, delivery and performance of this Master Sublease has been duly authorized by all necessary corporate actions on the part of Lessor and does not require any further approvals or consents;
- C. The execution, delivery and performance of this Master Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which Lessor is a party by which they or their property is bound;
- D. There is no pending or, to the knowledge of Lessor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Lessor to perform their obligations under this Master Sublease; and
- E. Lessor will not mortgage or encumber the Sites or the Master Sublease or assign this Master Sublease or their rights to receive Sublease Payments hereunder, except as permitted herein.

6. **APPROPRIATION OF FUNDS.**

- A. In order to ensure that moneys sufficient to pay all costs will be available for this purpose when required, District shall maintain on deposit, and shall annually appropriate funds sufficient to make all Sublease Payments which become due to Lessor under this Master Sublease Agreement.

7. **SUBLEASE PAYMENTS.**

- A. District shall pay Lessor sublease payments (the "Sublease Payments") for the improvements, use and occupancy of the various Projects and Sites. The obligation of the District to pay Sublease Payments hereunder shall constitute a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District. The Sublease Payments, which the parties acknowledge and agree, are good and sufficient consideration for the improvements and the District's use and occupancy of the Project and the Site.
- B. The District shall pay Lessor the portion of the GMP in accordance with the CSA, as the Sublease Tenant Improvement Payments. No Sublease Tenant Improvement Payment shall be made by the District in an amount that exceeds the aggregate cost approved in accordance with the CSA to the Lessor of the work on the Project completed to the date the Lessor submits an application for payment, less the aggregate amount of all Sublease Tenant Improvement Payments previously made by the District to the Lessor. The District shall also make Sublease Finance Payments for each Measure X Project commencing the date of Substantial Completion and payable monthly thereafter as set forth in Exhibit C to this Master Sublease. Each Measure X Project shall have its own Exhibit C. There is no prepayment penalty, as set forth in Article 21, for early payment of the Sublease Finance Payments at the option of the District. However, the District may not prepay the Sublease Finance Payments unless the following conditions are met: (1) District is not in default of any of the provision the Master Sublease or the Construction Services Agreement, and (2) the Project has reach substantial completion in accordance with the terms of the Construction Services Agreement.
- C. In the event the District elects to exercise its option under Article 21.B below, the District's obligations under this Sublease including, but not limited to, the District's obligations to make Sublease Payments under this Article, shall thereupon cease and terminate.
- D. Except as specifically provided in this Article and in Article 9 hereof or as otherwise provided by law, the obligation of the District to make Sublease Payments when due and payable hereunder will be absolute and unconditional

in all events and will not be subject to any set-off, defense, counterclaim, abatement or recoupment for any reason whatsoever.

8. **FAIR RENTAL VALUE.**

Sublease Payments shall be paid by District in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Projects and the Sites during the Term, as well as payment for any tenant improvements made by the Lessor which title to the tenant improvements shall vest progressively in the District as such tenant improvements are built and paid for pursuant to the Master Construction Services Agreement. Full ownership of each phase of the Project shall occur at the end of the Term of this Master Sublease and payment of any amounts owed under this Master Sublease, unless this Master Sublease, the Master Site Lease or Master Construction Services Agreement is terminated in accordance with their respective terms and conditions. The parties hereto have agreed and determined that such total rental is not in excess of the fair rental value of the Projects and the Sites. In making such determination, consideration has been given to the fair market value of the Projects and the Sites, that title to the improvements completed and paid for by District as to which the District shall have the right to possess, occupy and use, the uses and purposes which may be served by the Projects and the Sites and the benefits therefrom which will accrue to the District and the general public, the ability of the District to make additions, and modifications and improvements to the Projects and the Sites which are not inconsistent with the Master Construction Services Agreement (Exhibit "C" to Master Site Lease) and which do not interfere with the Lessor's work on the Projects and the Sites.

9. **SUBLEASE ABATEMENT.**

In addition to delay of Sublease Payments provided in Article 7, above, Sublease Payments due hereunder with respect to the Projects and the Sites shall be subject to abatement prior to the commencement of the use of the Projects and the Sites by the District or during any period in which, by reason of material damage to or destruction of the Projects or the Sites, there is substantial interference with the use and right of possession by the District of the Projects and the Sites or any substantial portion thereof. For each potential incident of substantial interference, decisions to be made on i) whether or not abatement shall apply; ii) the date upon which abatement shall commence; iii) the applicable portion of Sublease Payments to be abated and; iv) the concluding date of the particular abatement shall all be subject to determinations by the District. The amount of Sublease abatement shall be such that the Sublease Payments paid by the District during the period of Projects and Sites restoration do not exceed the fair rental value of the usable portions of the Projects and Sites. In the event of any damage or destruction to the Projects or the Sites, this Master Sublease shall continue in full force and effect.

10. **USE OF SITES AND PROJECTS.**

Subject to reasonable interference from construction operations by the Lessor under the terms of the Master Construction Services Agreement during the Term of this Master Sublease, Lessor shall provide the District with quiet use and enjoyment of the Sites

without suit, or hindrance from Lessor or their assigns, provided District is in compliance with its duties under this Master Sublease. District will not use, operate or maintain the Sites or Projects improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Master Sublease. District shall provide all permits and licenses, if any, necessary for the operation of the Projects and Sites. In addition, the District agrees to comply in all respects (including, without limitation, with respect to the time, maintenance and operation of the Projects and Sites) with laws of all jurisdictions in which its operations involving the Projects and Sites may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Sites or the Projects; provided, however, that District may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Lessor, adversely affect the estate of Lessor in and to the Sites or the Projects or its interest or rights under this Master Sublease. Lessor acknowledges that at any time during the Term of this Master Sublease, District may access the Site to conduct District business. Lessor acknowledges and agrees to the District's use or occupation of the Sites, so long as such use or occupation does not unreasonably interfere with construction of the Projects. Upon substantial completion of the Projects or severable portions hereof, the Lessor shall provide the District with quiet use and enjoyment of the Sites without suit or hindrance from the Lessor or its assigns, subject to reasonable interference from ongoing construction operations on any remaining portion of the Sites under construction by the Lessor. Notwithstanding any provision to the contrary in this Master Sublease or the Master Construction Services Agreement, the District shall, concurrent with any occupancy, use or possession of any portion of the Projects, furnish property and loss liability insurance to cover any such portion of the Projects or Sites it occupies, uses or possesses. District shall provide certificates of insurance and additional insured endorsement naming Lessor.

11. **LESSOR'S INSPECTION/ACCESS TO THE SITE.**

District agrees that Lessor and any of Lessor's representatives shall have the right at all reasonable times to enter upon the Sites or any portion thereof to construct and improve the Project, to examine and inspect the Sites or Projects, to make repairs or service warranty obligations, and to exercise its remedies pursuant to the section in this Master Sublease entitled "Remedies on Default." District further agrees that Lessor and any of Lessor's representatives shall have such rights of access to the Sites as may be reasonably necessary to cause the proper maintenance of the Sites and the Projects in the event of failure by District to perform its obligations hereunder.

12. **PROJECT ACCEPTANCE.**

District shall acknowledge final inspection and completion of the Projects by executing and recording a Notice of Completion. The validity of this Master Sublease will not be affected by any delay in or failure of completion of the Projects.

13. **ALTERATIONS AND ATTACHMENTS.**

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

14. **MAINTENANCE AND UTILITIES.**

Until the date of beneficial occupancy by the District of each Measure X Project and Substantial Completion of each Measure X Project as defined in the CSA, Lessor shall, in its own name, contract for and pay the expenses of all utility services required for each Measure X Project. Upon beneficial occupancy of each Measure X Project and Substantial Completion of each Measure X Project, the District shall, in its own name, contract for and pay the expenses of all utility services including, but not limited to, all air conditioning, heating, electrical, gas, refuse collection, water, and sewer units. The District shall be responsible for all utilities and maintenance of only the portion of the Sites occupied solely or beneficially by the District during construction of the Projects by Lessor. Once the Projects are accepted by the District as finally complete, the District shall have responsibility for maintenance and repair of each Measure X Project and the Sites, except for warranty or other obligations of Lessor relating to the improvements as set forth in the Master Construction Services Agreement.

15. **TAXES.**

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

16. **EVENTS OF DEFAULT.** The term "Event of Default," as used in this Master Sublease means the occurrence of any one or more of the following events:

- A. The District fails to make any unexcused Sublease Payment (or any other payment) within fifteen (15) days after the due date thereof or the District fails to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder and such failure to either make the payment or perform the covenant, condition or agreement is not cured within ten (10) days after written notice thereof by Lessor;
- B. The Lessor discovers that any statement, representation or warranty made by the District in this Master Sublease, or in any document ever delivered by the District pursuant hereto or in connection herewith is misleading or erroneous in any material respect;

- C. The District becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the benefit of creditors, applies or consents to the appointment of a receiver, trustee, conservator or liquidator of the District or of all or a substantial part of its assets, or a petition for relief is filed by the District under federal bankruptcy, insolvency or similar laws.
17. **REMEDIES ON DEFAULT.** Upon the happening of any Event of Default, Lessor may exercise remedies set forth below; provided, however, that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Sublease Payments or otherwise declare any Sublease Payments not then in default to be immediately due and payable. The District shall continue to remain liable for the payment of Sublease Payments and damages for breach of this Master Sublease and the performance of all conditions herein such Sublease Payments and damages shall be payable to Lessor at the time and in the manner set forth in subsections (A) and (B) of this Article:
- A. In the event that Lessor does not elect to terminate this Sublease pursuant to subsection (B) below, the District agrees to and shall remain liable for the payment of Sublease Payments and the performance of all conditions herein and shall reimburse Lessor for the full amount of the Sublease Payments to the end of the Sublease Term.
  - B. In the event of termination of this Sublease by Lessor at its option and in the manner hereinafter provided on account of default by the District, the District shall pay Lessor Sublease Payments then owing for past Sublease Payments due and not paid, not to exceed the approved costs for all labor, materials and services provided up to the date of Lessor's termination of the Master Sublease. Neither notice to pay Sublease Payments, nor to deliver up possession of the Project and the Site given pursuant to law, nor any proceeding in unlawful detainer taken by Lessor shall of itself operate to terminate this Master Sublease. In the event of any litigation between the parties, the parties shall pay for their respective costs incurred, including attorneys' fees.
  - C. No right or remedy herein conferred upon or reserved to Lessor is exclusive of any other right or remedy herein, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time; provided, however, that notwithstanding any provisions to the contrary herein, Lessor shall not under any circumstances have the right to accelerate the Sublease Payments that fall due in future Sublease periods or otherwise declare any Sublease Payments not then in default to be immediately due and payable.

18. **NON-WAIVER.**

No covenant or condition to be performed by District or Lessor under this Master Sublease can be waived except by the written consent of the other party. Forbearance or indulgence by District or Lessor in any regard whatsoever shall not constitute a waiver of

the covenant or condition in question. Until complete performance by the District or Lessor of said covenant or condition, the other party shall be entitled to invoke any remedy available to it under this Master Sublease or by law or in equity despite said forbearance or indulgence.

19. **ASSIGNMENT.**

Without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, the District shall not (a) assign, transfer, pledge, or hypothecate this Master Sublease, the Project and the Site, or any part thereof, or any interest therein, or (b) sublet or lend the use of the Project or any part thereof, except as authorized by the provisions of the California Civic Center Act, Education Code section 38130 *et seq.* However, District may lease, license or otherwise allow use or occupation of the Sites for third party use so long as such use or occupation does not unreasonably interfere with construction of the Project. Consent to any of the foregoing prohibited acts applies only in the given instance and is not a consent to any subsequent like act by the District or any other person. The Lessor shall not assign its obligations under this Master Sublease with the exception of their obligation to issue default notices and to convey or re-convey their interest in the Project and Site to the District upon full satisfaction of the District's obligations hereunder; however, the Lessor may assign their right, title and interest in this Master Sublease, the Sublease Payments and other amounts due hereunder and the Project in whole or in part to one or more assignees or sub-assignees at any time upon written notice to the District. No assignment shall be effective as against the District unless and until the District is so notified in writing. The District shall pay all Sublease Payments due hereunder pursuant to the direction of Lessor or the assignee named in the most recent assignment or notice of assignment. During the Sublease Term, the District shall keep a complete and accurate record of all such assignments. Subject always to the foregoing, this Master Sublease inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors, and assigns of the parties hereto.

20. **OWNERSHIP.**

During the Term of this Master Sublease, the District shall hold title to the Sites and progressively obtain title to the Projects from the Lessor, and any and all additions which comprise fixtures, repairs, replacements or modifications thereof, as Sublease Payments are made to Lessor. During the Term of this Master Sublease, the Lessor shall have a leasehold interest in the Sites pursuant to the Master Site Lease. If the District prepays the Sublease Payments in full pursuant to Article 21 hereof or otherwise pays all required Sublease Payments, all remaining rights, title and interests of the Lessor, if any, in and to the Project and Sites, shall be fully transferred to and vested in the District. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer. At the termination of this Master Sublease, title to the Site, and any improvements constructed thereon shall vest in the District.

21. **SUBLEASE PREPAYMENT/ PURCHASE OPTION.**

A. **Sublease Prepayments.** At any time during the term of this Master Sublease, the District may in its sole discretion, upon the request of the Lessor or on upon its own initiative, make Sublease Prepayments to the Lessor. No Sublease Prepayments requested by the Lessor may be made by the District in an amount exceeding the aggregate true cost to the Lessor of the work on the phases of the Project completed to the date the Lessor submits the request for a Sublease Prepayment less the aggregate amount of: (1) all Sublease Payments previously made by the District to the Lessor; (2) all Sublease Prepayments previously made by the District to the Lessor; (3) all amounts previously retained pursuant to Article 21(A)(3), below, from Sublease Prepayments previously made by the District to the Lessor; and (4) the retention for such Sublease Prepayment. Lessor must submit evidence that the conditions precedent set forth in Article 21(A)(1) below, have been met. In the event District elects to make Sublease Prepayments, the Prepayment Price, contemplated in Article 21(B), below, shall be adjusted accordingly.

(1) The following are conditions precedent to any Sublease Prepayments made to the Lessor pursuant to a request of the Lessor and exercised by the District in its sole discretion:

- a. Satisfactory progress of the work and construction pursuant to the approved schedule and "Contract Time" pursuant to Article 9 of the Master Construction Services Agreement shall have been made as determined in Article 21(A)(2), below.
- b. Lessor shall also submit to the District (i) duly executed conditional lien releases and waivers (in the form provided in California Civil Code section 8132) from the Lessor and all subcontractors, consultants and other persons retained by the Lessor in connection with the Project, whereby such persons conditionally waive all lien and stop notice rights against the



District, the Project and the Project site with respect to the pending Sublease Prepayment to be made by the District, (ii) duly executed unconditional lien releases and waivers (in the form provided in California Civil Code section 8134) from the Lessor and all subcontractors, consultants and other persons retained by the Lessor in connection with the Project, whereby such persons unconditionally and irrevocably waive all lien and stop notice rights against the District, the Project and the Project site with respect to all previous Sublease Prepayments made by the District, and (iii) any other items that the Lessor may be required to collect and distribute to the District pursuant to the terms and provisions of the CSA. Lessor shall promptly pay all amounts due to each subcontractor, consultant and other person retained by Lessor in connection with the Project no later than ten (10) days after Lessor's receipt of a Sublease Prepayment from the District.

- (2) The determination of whether satisfactory progress of the Construction pursuant to the approved schedule and "Contract Time" has occurred shall be made by the Project Inspector hired by the District pursuant to Article 10 of the CSA. If the Project Inspector determines that pursuant to the approved schedule and "Contract Time", the work required to be performed, as stated in the Lessor's Sublease Prepayment request has not been completed and approved, the Lessor shall not be eligible to receive the requested Sublease Prepayment.

- B. Purchase Option. If the District is not in default hereunder, the District shall be granted options to purchase not less than all of the Project in as-is condition. The Prepayment Price at any given time shall be an amount equal to the GMP, as it may be revised from time to time, less the sum of any Sublease Payments and/or Sublease Prepayments made by the District prior to the date on which the District elects to exercise its option under this Article.

## 22. RELEASE OF LIENS.

- A. Notwithstanding Article 21 above, upon Substantial Completion of the various improvements of the Projects as defined in the CSA and the recording of a Notice of Completion for the various phases of the Projects, Lessor or its assignee and the District shall release Lessor's leasehold interest in Projects and the Sites. However, District shall retain any and all claims and or warranties it may have under the CSA.
- B. Lessor shall authorize, execute and deliver to the District all documents reasonably requested by the District to evidence (i) the release of any and all liens created pursuant to the provisions of this Master Sublease and the Master Site Lease, and (ii) any other documents required to terminate the Master Site Lease and this Master Sublease.

23. **TERMINATION OF CONSTRUCTION SERVICES AGREEMENT.**

In the event the Master Construction Services Agreement is terminated pursuant to the provisions contained therein, this Master Sublease shall immediately terminate.

24. **SEVERABILITY.**

If any provision of this Master Sublease shall be held invalid or unenforceable by a court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provision of this Master Sublease, unless elimination of such provision materially alters the rights and obligations embodied in this Master Sublease.

25. **INTEGRATION/MODIFICATION.**

This Master Sublease constitutes the entire agreement between Lessor and the District as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered herein, and it shall not be amended, altered, or changed except by a written agreement signed by the parties hereto.

26. **NOTICES.**

Services of all notices under this Master Sublease shall be sufficient if given personally or mailed to the party involved at its respective address hereinafter set forth or at such address as such party may provide in writing from time to time. Any change in the addresses noted shall not be binding upon the other party unless preceded by no less than thirty (30) days prior written notice. Any such notices shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by email, or fax followed by regular mail, addressed as follows:

If to Lessor: Balfour Beatty Construction, LLC  
300 E. Esplanade Drive, #1120  
Oxnard, CA 93036  
Attn: Dennis Kuykendall, Project Executive  
Email: dkuykendall@balfourbeattyus.com

If to District: Simi Valley Unified School District  
101 West Cochran Street  
Simi Valley, CA 93065  
Attn: Lori Rubenstein  
Email: lori.rubenstein@simivalleyusd.org

27. **TITLES.**

The titles to the Articles or sections of this Master Sublease are solely for the convenience of the parties and are not an aid in the interpretation thereof.

28. **TIME.**

Time is of the essence in this Master Sublease and each and all of its provisions.

29. **LAWS, VENUE AND ATTORNEYS' FEES.**

The terms and provisions of this Master Sublease shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Master Sublease, the action shall be brought in a state court situated in the County of Ventura, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county. In the event of any such litigation between the parties, each party shall bear its own attorney's fees.

IN WITNESS WHEREOF, the parties hereto have executed this Master Sublease by their authorized officers as of the day and year first written above.

DISTRICT

"LESSOR"

SIMI VALLEY UNIFIED SCHOOL  
DISTRICT

BALFOUR BEATTY CONSTRUCTION,  
LLC

BY: R. J. Todo  
Ron Todo  
Assistant Superintendent Business and  
Facilities

BY: Brian Cahill  
Brian Cahill  
President – California Division

409

**EXHIBIT A**  
**DESCRIPTION OF PROJECT**

**EXHIBIT B**  
**DESCRIPTION OF SITE**

**EXHIBIT C****SUBLEASE PAYMENT SCHEDULE**

The Sublease Payments shall consist of the Sublease Tenant Improvement Payments and the Sublease Finance Payments as follows:

I. Sublease Tenant Improvement Payments to be paid in accordance with the provisions of the Master Construction Services Agreement Not to Exceed: \$\_\_\_\_\_.

II. Sublease Finance Payment of \$\_\_\_\_\_ (excluding finance charge) to be paid in accordance with the following Sublease Finance Payment Schedule which shall begin the date of Substantial Completion as defined in the Master Construction Services Agreement:

Monthly Payment No.	(a) Beginning Balance*	(b) Payment	(c) Interest at 5% per year	(d) Principal Paid	(e) Ending Balance [(a)-(d)]
1	\$	\$	\$	\$	\$
2	\$	\$	\$	\$	\$
3	\$	\$	\$	\$	\$
4	\$	\$	\$	\$	\$
5	\$	\$	\$	\$	\$
6	\$	\$	\$	\$	\$
<b>TOTAL</b>		\$	\$	\$	

\* The Prepayment Price shall be the Beginning Balance as of the date the Purchase Option is exercised pursuant to Section 7 of the Sublease Agreement.

**Certificate Of Completion**

Envelope Id: AEB3E50120F74C8EB127617FF25F901E

Status: Completed

Subject: Please DocuSign: LLB Master Sublease Royal HS (3-17-22).pdf

Source Envelope:

Document Pages: 19

Signatures: 2

Envelope Originator:

Certificate Pages: 5

Initials: 1

Pamela Jewell

AutoNav: Enabled

pamela.jewell@simivalleyusd.org

Envelopeld Stamping: Enabled

IP Address: 207.157.143.2

Time Zone: (UTC-08:00) Pacific Time (US &amp; Canada)

**Record Tracking**

Status: Original

Holder: Pamela Jewell

Location: DocuSign

4/1/2022 8:29:07 AM

pamela.jewell@simivalleyusd.org

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: Simi Valley Unified School District - Facilities

Location: DocuSign

**Signer Events****Signature****Timestamp**

Brian Cahill

bcahill@balfourbeattyus.com

Security Level: Email, Account Authentication  
(None)

Sent: 4/1/2022 8:32:16 AM

Viewed: 4/1/2022 9:09:26 AM

Signed: 4/1/2022 9:10:36 AM

Signature Adoption: Drawn on Device

Using IP Address: 70.234.3.120

Signed using mobile

**Electronic Record and Signature Disclosure:**

Accepted: 4/1/2022 9:09:26 AM

ID: c4e61a28-9b36-4fc4-b119-3ca8e640c144

Pamela Jewell

pamela.jewell@simivalleyusd.org

Administrative Services Assistant II

Simi Valley USD

Security Level: Email, Account Authentication  
(None)

Sent: 4/1/2022 9:10:38 AM

Viewed: 4/1/2022 9:48:54 AM

Signed: 4/1/2022 9:49:05 AM

Signature Adoption: Pre-selected Style

Using IP Address: 207.157.143.39

**Electronic Record and Signature Disclosure:**

Accepted: 10/20/2021 10:27:18 AM

ID: 77a719ba-8cfa-478c-ab01-d769f2eee4d0

Ron Todo

ron.todo@simivalleyusd.org

Simi Valley Unified School District - Facilities

Security Level: Email, Account Authentication  
(None)

Sent: 4/1/2022 9:49:06 AM

Viewed: 4/1/2022 10:31:33 AM

Signed: 4/1/2022 10:31:46 AM

Signature Adoption: Uploaded Signature Image

Using IP Address: 23.240.150.124

Signed using mobile

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

**In Person Signer Events****Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp**

Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	4/1/2022 8:32:16 AM
Certified Delivered	Security Checked	4/1/2022 10:31:33 AM
Signing Complete	Security Checked	4/1/2022 10:31:46 AM
Completed	Security Checked	4/1/2022 10:31:46 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		



## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, Simi Valley Unified School District - Facilities (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

#### **How to contact Simi Valley Unified School District - Facilities:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [ron.todo@simivalleyusd.org](mailto:ron.todo@simivalleyusd.org)

#### **To advise Simi Valley Unified School District - Facilities of your new email address**

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at [ron.todo@simivalleyusd.org](mailto:ron.todo@simivalleyusd.org) and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

#### **To request paper copies from Simi Valley Unified School District - Facilities**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to [ron.todo@simivalleyusd.org](mailto:ron.todo@simivalleyusd.org) and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

#### **To withdraw your consent with Simi Valley Unified School District - Facilities**

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to [ron.todo@simivalleyusd.org](mailto:ron.todo@simivalleyusd.org) and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

### **Required hardware and software**

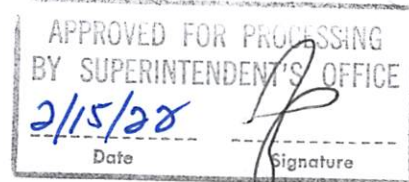
The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

### **Acknowledging your access and consent to receive and sign documents electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Simi Valley Unified School District - Facilities as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Simi Valley Unified School District - Facilities during the course of your relationship with Simi Valley Unified School District - Facilities.



**TITLE: APPROVAL OF AGREEMENT NO. R22-02902 BETWEEN SIMI VALLEY UNIFIED SCHOOL DISTRICT AND NEFF CONSTRUCTION, INC. FOR THE MASTER AGREEMENTS AT SIMI VALLEY HIGH SCHOOL**

Business & Facilities  
Consent #10

February 15, 2022  
Page 1 of 1

Prepared by: Ron Todo, Associate Superintendent  
Business & Facilities

**Background Information**

On January 18, 2022 the Board of Education approved Neff Construction, Inc as the Lease Leaseback Contractor for the projects at Simi Valley High School.

Agreement No. R22-02902 is being utilized as the Master Construction Agreement for assigning projects to Neff Construction, Inc.

The Master Agreement consist of:

- Exhibit A - Master Construction Agreement
- Exhibit B - Master Site Lease
- Exhibit C - Master Sublease

**Fiscal Analysis**

The dollar value of each Assigned Project is identified as a Guarantee Maximum Price (GMP) when an Assigned Project Amendment is issued.

**Recommendation**

It is recommended that the Board of Education approve Agreement R22-02902 for Master Construction Services, Simi Valley High School.

On a motion # 121 by Trustee LaBelle, seconded by Trustee Bagdasaryan and carried by a vote of 5/0, the Board of Education approved, by roll-call-vote, Agreement R22-02902 for Master Construction Services Agreement, Simi Valley High School.

Ayes: Subran  
Smollen  
LaBelle  
Bagdasaryan  
Blough Noes: 0 Absent: 0 Abstained: 0

**SIMI VALLEY HIGH SCHOOL MODERNIZATION PROJECTS**

**MASTER CONSTRUCTION SERVICES AGREEMENT**

Between

**SIMI VALLEY UNIFIED SCHOOL DISTRICT**

And

**NEFF CONSTRUCTION, INC.**

Dated as of February 15, 2022

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**SIMI VALLEY HIGH SCHOOL MODERNIZATION PROJECTS**  
**MASTER CONSTRUCTION SERVICES AGREEMENT**

This Master Construction Services Agreement is made as of February 15, 2022, by and between the Simi Valley Unified School District, a California School District organized and existing under the laws of the State of California (hereinafter called the "District"), and Neff Construction, Inc., a California licensed contractor operating under the laws of the State of California ("Contractor").

General intent of agreement:

WHEREAS, the District entered into agreements with various architectural firms (the "Architect") to provide architectural services for the District for the purpose of developing Construction Documents for the construction of improvements for the Measure X Projects at Simi Valley High School (the "Project" or Projects").

**1. GENERAL INTENT**

- 1.1 The Board of Education has reviewed the different methodologies available to deliver a public works project and has carefully considered the options of competitive bid to a general contractor who would be responsible for the entire project, a construction management managed multi-prime trade contract project, an at-risk construction management contract, turn-key delivery by another public entity or delivered by another public entity through a joint use project, but have through Board action and independent staff and Board review determined that there are benefits and detriments to each delivery method.
- 1.2 The Board of Education has also reviewed the lease-leaseback methodology under California Education Code section 17406 which permits the governing board of a school district to lease to any person, firm, or corporation any real property owned by the District if the instrument by which such property is leased requires the lessee to construct on the leased premises, or provide for the construction thereon, of a building for the use of the school district, during the term of the lease, and provides that title to that building shall vest in the school district prior to or at the expiration of the lease.
- 1.3 As part of the Board of Education's consideration of the possible methods of delivery, the Board has also reviewed available information from the Coalition of Adequate School Housing materials on delivery methods, California School Board Association, California Association of School Business Officials, Office of Public School Construction Meeting Minutes and SAB Implementation Committee meeting minutes and considered the benefits and detriments of the lease-leaseback delivery method.
- 1.4 Further, the Board of Education understands that unique to the lease-leaseback delivery method, the lease-leaseback Contractor will not only be undertaking the traditional due diligence of investigating existing Project related information, documents and the Project site, but now included as part of the Contractor's "Due Diligence" (as defined herein) as part of this lease-leaseback delivery method, the Contractor will be performing a review of the Construction Documents to visualize conflicts that may have not been located by the Architect as part of the Architect's constructability review when the Construction Documents were being prepared.
- 1.5 The Board of Education in its consideration of the substantial evidence that is available to the District staff and through the Board's own research has determined that this ability to work between the Contractor and the Architect to resolve a greater percentage of construction claims that would ordinarily arise through any of the other delivery methods addressed in Article 1.1 above also provides the ability of the Contractor to determine the likely level of errors and omissions, and provides a Guaranteed Maximum Price for the Project based on the Contractor's Due Diligence. The unique ability to determine with certainty the budget numbers for the Project provides this

Board of Education the ability to not only ensure that the District is best serving the community and its school children, but also provides the ability to focus resources towards future and simultaneous projects that could not be undertaken during any of the other delivery methods since a sizable contingency needs to be set aside for potential claims, litigation, arbitration, mediation, and delays that could jeopardize the ability to plan for occupancy of the building or the possibility of having to spend significant resources to procure alternative facilities.

- 1.6 As part of this lease-leaseback Master Construction Services Agreement, a site lease with Contractor (the "Master Site Lease"), for the Projects has been entered into and attached as Exhibits to the Master Site Lease is a description of the sites (the "Sites") in order for Contractor to construct improvements to this existing school Sites under the possessory interest of a lease with a greater degree of control over the overall Project, including ability to coordinate Site related items such as utilities, ability to insure both the Projects and the Sites against a broader range of risks, and greater primary control and oversight over Subcontractors and suppliers for the Projects as the lessee of the Sites.
- 1.7 In addition, the Contractor subleases the constructed portions of the Sites and the Projects back to the District pursuant to a Master Sublease Agreement (the "Master Sublease") under which the District will be required to make Sublease Payments as described therein; and
- 1.8 It is agreed that upon the expiration of the Master Site Lease and Master Sublease, title to the Project shall vest in the District; and
- 1.9 Contractor represents that Contractor is uniquely experienced in Construction of public schools and community colleges including, but not limited to, the specific requirements and regulations of the Field Act as administered by the Division of State Architect, working with the Division of State Architect, Office of Public School Construction, California Department of Education and work with the various applicable other State and local agencies that have jurisdiction over the Project, is duly licensed as a contractor in the State of California, and is prepared to analyze, synthesize and efficiently perform construction work for the District as more fully set forth in this Agreement
- 1.10 Contractor has thoroughly Due Diligence as defined in Articles 4 and 5 to establish a Guaranteed Maximum Price for the Projects (which may include an Errors and Omissions Contingency and a Construction Contingency for Contractor's own errors and omissions) that will not be exceeded. Contractor has investigated the site conditions and reviewed the Construction Documents to establish that there are no known problems with respect to the site conditions or the Construction Documents and that Contractor can and will construct the Project for the Guaranteed Maximum Price as set forth in Article 3 and defined in Article 5 of this Master Construction Services Agreement, and Contractor will not seek any additional compensation whatsoever, including, without limitation, any requests based upon known site conditions, extensions on the Lease beyond the Lease period or any requests, except for such additional compensation provided for herein based upon unforeseen conditions and/or errors or omissions contained within the plans and specification or Construction Documents.
- 1.11 Since the Contractor has entered into a negotiated Lease and is performing this Master Construction Services Agreement as the Lessee of the Premises, Contractor understands and agrees that:
  - 1.11.1 Public Contract Code section 4100 et seq. addressing subcontractor listing shall not apply except to the extent applicable under Education Code section 17406(a)(4). However, the District is requiring an open book accounting and the public selection of Subcontractors pursuant to Article 6.3 of this Agreement.
  - 1.11.2 Public Contract Code section 20111 addressing competitive bidding does not apply to the Project pursuant to the specific language of Education Code section 17406 that provides for a competitive procurement process through request for sealed proposals from qualified proposers.

- 1.11.3 Public Contract Code section 3400 addressing proprietary specifications does not apply since the Contractor has entered into a negotiated Lease pursuant to which is obligated to build the Project. The Contractor agrees and acknowledges that it has had great opportunity throughout the Due Diligence process and negotiation of the Lease and related agreements to propose any changes or substitutions, and warranties that it shall propose no further changes or substitutions pursuant to Public Contract Code section 3400. Substitutions and Value Engineering are allowed to address cost savings and to more efficiently build the Project at Articles 5.3 and 16.
- 1.11.4 The requirements in Public Contract Code section 22300 shall not apply.
- 1.12 Prequalification of Contractor and MEP Subcontractors. Prequalification is not required under Public Contract Code section 20111.6(l).

## **2. TITLE 24 RESPONSIBILITIES – GENERAL INTENT OF THE CSA**

Contractor accepts the contractual relationship established between it and District by this Master Construction Services Agreement, and Contractor covenants with District to furnish reasonable skill and judgment in constructing the Project as set forth in the Construction Documents, as defined in Article 4 for the Project which are described and/or set forth herein as Exhibit "A." Contractor agrees to furnish efficient business administration, coordination review of the Construction Documents, coordination of the work of the Subcontractors and vendors and superintendence to furnish at all times an adequate supply of professionals, workers, and materials and to perform the work appropriately, expeditiously, economically, and consistent with the Master Construction Services Agreement and Construction Documents as defined in Article 14, below.

- 2.1 Title 24 Responsibilities. The Contractor shall continually supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures; and shall coordinate all portions of the Work in conformance with the Contract Documents. Specific duties of the Contractor shall include those set out in Section 43 of Title 21 of the California Code of Regulations and Section 4-343 of Title 24 of the California Code of Regulations. These duties include, but are not limited to the following:
  - 2.1.1 *Responsibilities.* It is the duty of the Contractor to complete the Work covered by his or her Contract in accordance with the approved Construction Documents. The Contractor in no way is relieved of any responsibility by the activities of the Architect, Engineer, Inspector or DSA in the performance of their duties.
  - 2.1.2 *Performance of the Work.* The Contractor shall carefully study the approved Construction Documents and shall plan its schedule of operations well ahead of time. If at any time it is discovered that work is being done which is not in accordance with the approved Construction Documents, the Contractor shall correct the Work immediately.
  - 2.1.3 *Inconsistencies.* All inconsistencies, timing or sequences that appear to be in error in the Construction Documents shall promptly be called to the attention of the Architect or, Engineer, for interpretation or correction. Local conditions that may affect the structure shall be brought to the Architect's attention at once. In no case, shall the instruction of the Architect be construed to cause work to be done which is not in conformity with the approved plans, specifications, change orders, construction change documents, and as required by law. (See Title 24 Section 4-343)
  - 2.1.4 *Verified Reports.* The Contractor shall make and submit to the office from time to time, verified reports as required in Title 24 Section 4-366. As part of the Close-Out of the Project (see Article 13.16), Contractor shall be required to execute a Form 6-C as required under Title 24 Sections 4-343.

- 2.1.5 *Reporting Requirements.* Contractor shall fully comply with all reporting requirements of Education Code sections 17315, et seq., in the manner prescribed by Title 24, as applicable.
- 2.1.6 *Contractor Responsibility.* The Contractor shall be responsible to the District for acts and omissions of the Contractor's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with the Contractor or any of its Subcontractors.
- 2.1.7 *All Work is performed Under the Direction of Inspector.* Pursuant to Title 24 requirements, the Contractor shall not carry on Work except with the knowledge of the Inspector. (See Title 24 generally)
- 2.1.8 *Contractor to Establish Timing and Protocol with Inspector.* Contractor shall establish a protocol for requesting inspection with Inspector so as to not delay the Work and provide adequate time for the Inspector to perform inspection. If such a protocol is not established ahead of time, Inspector may utilize the time criteria set by Title 24 of 48 hours in advance of submitting form DSA 156 for each new area. DSA requirements under PR 13-01 specifically give the Special Inspector fourteen (14) days to post to the DSA website. Contractor is responsible for delays and for failure to plan.
- 2.1.9 *Conformance with Approved Submittals.* This conformance includes performing all Work only in conformance with approved Submittals, Shop Drawings, and Samples or the Inspector may be required to issue a DSA Form 154 Notice of Deviation from approved DSA Contract Documents.
- 2.1.10 *Incremental Assemblies.* For some Projects, there may be a need to incrementally install certain assemblies. It is up to Contractor to identify areas and assemblies that may be constructed incrementally. Contractor must identify and establish incremental areas of construction and establish protocols with Inspector for DSA 152 approvals so they may be presented to DSA. See PR-13 item 2.1.10 for further discussion.
- 2.1.11 *Coordination with Outside Contractors.* If any of the Work for the Project is known to include Work performed by contractors retained directly by the District, Contractor shall be responsible for the coordination and sequencing of the Work of those other contractors so as to avoid any impact on the Project Schedule.

### 3. CONTRACT INFORMATION

- 3.1 District: Simi Valley Unified School District  
101 West Cochran Street  
Simi Valley, CA 93065  
(805) 306-4500
- 3.2 Notices: Lori Rubenstein  
lori.rubenstein@simivalleyusd.org
- 3.3 Contractor: Neff Construction, Inc.  
1701 S. Bon View Avenue  
Ontario, CA 91761  
(760) 947-3768
- 3.4 Notices: Ed Mierau, President  
ed@neffcon.com

Each individual Project will have separate contract information for Sections 3.5-3.9, Scope of Work/Construction Documents (Exhibit A), Master Budget (Exhibit B), Payment Bond (Exhibit D), and Performance Bond (Exhibit E), which will be set forth in Exhibit Z to Master Construction Services Agreement which Exhibit Z shall be amended by the mutual agreement of the parties from time to time to reflect the Projects. The following are established through Contractor's review of the Program, Contract Documents and through Contractor's Due Diligence prior to entering into this Agreement:

- 3.5 Contract Time is TBD Days. See Exhibit Z for each Project.
- 3.6 Liquidated Damages for overstaying Lease (Art. 18) is \$TBD per calendar day. See Exhibit Z for each Project.
- 3.7 Guaranteed Maximum Price (Art. 5) is \$TBD. See Exhibit Z for each Project.
  - 3.7.1 Construction Contingency (within GMP) is \$TBD. See Exhibit Z for each Project.
  - 3.7.2 Errors and Omissions Contingency (within GMP) is \$TBD. See Exhibit Z for each Project.
- 3.8 The only exception to the GMP is Unforeseen Underground Conditions, and District Contingency for Owner requested extras as follows:
  - 3.8.1 District's Contingency (Art. 8) is \$TBD. District Contingency is carried outside of the GMP. See Exhibit Z for each Project.
  - 3.8.2 Unforeseen Allowance is \$TBD. Unforeseen Allowance is carried outside of the GMP. See Exhibit Z for each Project.
- 3.9 The Contractor's fee for this Project is three and a half percent (3.5 %) and is included in the GMP. See Exhibit Z for each Project.

#### 4. **DEFINITIONS**

- 4.1 Action of the Governing Board is a vote of a majority of the District's Governing Board.
- 4.2 Allowances are separate from the Unforeseen Allowance and mean budgets established for specific scopes of the Work, which cannot be fully defined in the Construction Documents at the time that the GMP is established. Allowances may only be drawn upon pursuant to a Change Order issued pursuant to Article 17. In the event that an Allowance is included, the Contractor shall provide all services, work, labor and materials reasonably implicit in the description of the Allowance for the amount stated for the Allowance, all in accordance with the Construction Documents. Contractor acknowledges and agrees that it has had ample time and consideration to fully assess any Allowance(s) and to negotiate the description and amount of the Allowance(s), such that Contractor fully accepts and shall bear the entire risk and responsibility of providing all services, work, labor and materials required for the Allowance(s) under this Agreement. Expenditures from the GMP will either arise from Construction Contingency or Errors and Omissions Contingency and shall be submitted pursuant to Article 17 addressing Change Orders. The amount of the Change Order shall reflect the difference between actual costs approved by the District and the allowance amounts established in the GMP.
- 4.3 As-Builts are a set of Construction Documents maintained by the Contractor clearly showing all changes, revisions, substitutions, field changes, final locations, and other significant features of the Project. The As-Builts shall be maintained continuously throughout the Work for the Project and is both a prerequisite to the issuance of Pay Application and a requirement for Contract Close-Out. See Article 13.14.

- 4.4 Architect means the architect, engineer, or other design professional engaged by the District to design and perform general observation of the work of construction and interpret the drawings and specifications for the Project.
- 4.5 Beneficial Occupancy is the point in time when a building or buildings are fit for occupancy is fit for occupancy and its intended use. Basic requirements are the building is safe, at or near Substantial Completion, and all life safety is operational. The fact that a building is occupied does not mean that the building is ready for Beneficial Occupancy if there are elements that are unsafe or if life safety items are not operational. Taking occupancy on a structure that is under a fire watch is not considered Beneficial Occupancy. Beneficial Occupancy is not be used by the Contractor as a basis to request Retention Payment unless the entire Project is Substantially Complete in accordance with Article 4.45.
- 4.6 Claims. A Claim is a request for payment, supported by back-up documentation, which includes, invoices time sheets, or other documents substantiating legitimacy or entitlement that is submitted during the Project or immediately following the Project made prior to the Application for Retention Payment and prior to Final Completion of the Project. A "Claim" means a separate demand by the Contractor for (1) time extension, (2) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (3) and amount the payment of which is disputed by the District. See Article 20.
- 4.7 Closeout means the process for Final Completion of the Project, but also includes the requirements for the DSA Certification that the Project is Complete (See DSA Certification Guide). See Article 13.16.
- 4.8 Commencement Date shall mean the Project commencement date found in the Notice to Proceed for the Project in accordance with Article 4.28 of this Construction Services Agreement.
- 4.9 Complete/ Final Completion means that all Work in the Contract Documents is finished, the requirements of the Contract Documents have been met, successful testing, startup and satisfactory operation of the Project as a total unit has been accomplished in substantial conformance with the Contract Documents, the Project is completed, all Work has ceased on the Project and the Project has been accepted by the District's Board. This may also be referred to as Final Completion. In most cases, the recording of a Notice of Completion shall represent Completion of the Project. Beneficial Occupancy or Substantial Completion does not mean the Work is Complete.
- 4.10 Completion Date is the date when all Work for the Project shall be Substantially Complete and is the date assigned at the end of the Contract Time for the Project.
- 4.11 Construction Change Document (CCD). A Construction Change Document is a DSA term that is utilized to address changes to the DSA approved Construction Documents. There are two types of Construction Change Documents. (1) DSA approved CCD Category A (DSA Form 140) for work affecting Structural, Access or Fire-Life Safety of the Project which will require a DSA approval; and, (2) CCD Category B (DSA Form 140) for work NOT affecting Structural Safety, Access Compliance or Fire and Life Safety that will not require a DSA approval (except to confirm that no Approval is required). See Article 17.4.
- 4.12 Master Construction Services Agreement (CSA) means this Master Construction Services Agreement, together with any duly authorized and executed amendments hereto.
- 4.13 Construction or Construction Services means all labor and services necessary for the construction of the Project, and all materials, equipment, tools, supplies and incidentals incorporated or to be incorporated in such construction as fully described in the Contract Documents.

- 4.14 Construction Costs means any and all costs incurred by the Contractor with respect to the construction and equipping, as the case may be, of the improvements performed, whether paid or incurred prior to or after the date hereof, including, without limitation, costs for Site preparation, the removal or demolition of existing structures, the construction of the Project and related facilities and improvements, and all other work in connection therewith, security of the Site and Project, Contractors' overhead and supervision at the Project Site, all costs and expenses including any taxes or insurance premiums paid by the Contractor with respect to the Property, and administrative and other expenses necessary or incident to the Project, excluding Contractors' and Developers' home office overhead and profit. The term "Construction Costs" includes all Contractor's costs associated with preparing or generating additional copies of any Construction Documents, as defined below, related to or required for the Project, including preparation or generation of additional Plans and/or Specifications for Contractor's Subcontractors. In no event shall Construction Costs exceed the Guaranteed Maximum Price.
- 4.15 Construction Documents comprise the Plans and Specifications approved by DSA for each Project Allowances stipulated in the Contract Documents, and all Addenda, if any, issued prior to the entry into this Agreement. The Construction Documents shall include all Modifications generated after the Effective Date in accordance with the Contract Documents, including, without limitation, a written amendment to the Contract signed by the Contractor and duly executed and approved by the District, a Change Order, a Construction Change Document, or a written order for a minor change in the Work issued by the Architect.
- 4.16 Contract Documents means those documents that form the entire Contract by and between District and Contractor. The Contract Documents consist of the Master Site Lease, Master Sublease, General, Supplementary and other Conditions, this Master Construction Services Agreement, including all exhibits and attachments hereto, and the Construction Documents. The Contract Documents collectively form the Contract. The Contract represents the entire and integrated Agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall be binding solely upon the District and Contractor, do not create a contractual relationship of any kind between the Architect and Contractor, between the District and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the District and the Contractor, and are not intended to and do not create any third party beneficiary.
- 4.17 Contract Time is the time period specified in the Contract Documents in which the Project shall be completed. This is sometimes referred to a Contract Duration, or "time in which the Contractor has to Complete the Project". See Article 9.
- 4.18 Day means a calendar day unless specifically designated as a business day.
- 4.19 Drawings or Plans are graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location, and scope of the Work, generally including plans, elevations, sections, details, schedules, and diagrams as drawn or approved by the Architect. Sometimes Drawings will also be included in Addenda, Change Orders, and Specifications.
- 4.20 Due Diligence is the review and analysis of as-built documents, title documents, any prior design documents for the Project or Site, geotechnical reports, surveys, site investigations and other documents and information provided by the District, and synthesizing of information utilized to determine the components of the GMP. Requirements for Due Diligence are further addressed at Article 5.
- 4.21 DSA is the Division of State Architect. DSA is the agency that provides design and construction oversight for K-12 Schools, Community Colleges, and State Funded Charter School Projects. DSA is the responsible agency for this Project and Contractor has submitted a bid for the Project since Contractor is familiar with Contractor's responsibilities under the DSA requirements more

thoroughly set forth at Title 24 of the California Code of Regulations. Contractor agrees to abide by the jurisdiction of DSA and shall construct the Project to conform to the approved plans, specifications, Addenda, and Change Orders (inclusive of approved CCD's and ICD's issued by the District pending CCD approval). The DSA website is at <http://www.dgs.ca.gov/dsa>.

- 4.22 Effective Date is the latter of the date upon which the District Board approves the Master Site Lease and the Master Sublease and Contractor has executed the Master Site Lease and Master Sublease.
- 4.23 Float the total number of days an activity may be extended or delayed without delaying the Completion Date shown in the schedule. Float will fall into three categories: (1) Rain Days; (2) Governmental Delays; and, (3) Project Float. See Article 9.2.
- 4.24 Immediate Change Directive (ICD) is a written order prepared by the Architect and signed by the District and the Architect, directing a change in the Work where the Work must proceed immediately and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. See Article 17.4.1.2
- 4.25 Inspector of Record (IOR) or Project Inspector (PI) is the individual retained by the District in accordance with Title 24 of the California Code of Regulations who will be assigned to the Project
- 4.26 Guaranteed Maximum Price or GMP means the Guaranteed Maximum Price established pursuant to Article 5 to be paid to Contractor for Contractor's construction of the Project hereunder, subject to any adjustments for Extra Work/Modifications as provided in Article 17.
- 4.27 Notice of Non-Compliance (DSA Form 154) is a document issued by the Inspector if there is a deviation from the DSA approved Plans, Specifications, and Change Orders. See Article 17.2.
- 4.28 Notice to Proceed. After execution of this Master Construction Services Agreement and the Master Site Lease(s) and Master Sublease(s) between the parties, the District shall issue a notice to the Contractor to proceed with the Project ("Notice to Proceed") for each Project, which Notice to Proceed shall include the date upon which commencement for the Project shall commence. If a legal challenge is made as to the validity of the Contract Documents, within 90 days from the date of the board award, the Parties may mutually elect to rescind any Notice to Proceed that has been issued by the District and the Master Construction Services Agreement and the Master Site Lease(s) and Master Sublease(s) between the Parties shall be terminated for the convenience of the Parties. Upon such termination, the District shall be obligated to pay Contractor in accordance with Section 19.2.
- 4.29 Plans are that portion of the Construction Documents consisting of the drawings and other pictorial or other graphic expression of requirements for the work of improvement to be completed by Contractor, including, without limitation, services, work, material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.
- 4.30 Project means the specific improvements to be constructed and installed by the Contractor at a particular Site, as more particularly described and/or referenced in Exhibit "A" attached hereto and as set forth in Exhibit "J" as may be applicable.
- 4.31 Provide shall include "provide complete in place," that is "furnish and install complete."
- 4.32 Punch List is a list of minor repair items, prepared after the issuance of a Certificate of Substantial Completion, by the Inspector and Architect of Work required in order to complete the Contract Documents and ensures compliance with the DSA Approved Plans so the Project may be Closed Out. Issuance of the Retention Payment is dependent upon the proper completion of the Punch List. See Article 13.16 and Article 29.
- 4.33 Request for Information (RFI) is a written request prepared by the Contractor requesting the Architect to provide additional information necessary to clarify or amplify an item that the



Contractor believes is not clearly shown or called for in the drawings or specifications, or to address problems, which have arisen under field conditions.

- 4.34 Schedule is the Contractor's view of the practical way in which the Work will be accomplished. In this Agreement, there is a requirement for a Baseline Schedule and regular Schedule Updates that show all Work to be completed during the Contract Time and shall include all items listed under Article 9.3. The Schedule shall be maintained throughout the Work for the Project and is both a prerequisite to the issuance of a Pay Application and Contract Closeout. The Baseline Schedule and Schedule Updates can be in Microsoft Project, Primavera, or other software program at District's discretion.
- 4.35 Schedule of Values is a detailed breakdown of the Contract Price for each Project, building, Phase of Work or Site as determined by the District. This Schedule of Values shall adequately detail the price for the Work so that the status of the construction of any improvements can be meaningfully reviewed by the Inspector, Architect of Record, Engineer of Record, and District. (See Article 13.12)
- 4.36 Separate Contracts are Contracts that the District may have with other Contractors, vendors, suppliers, or entities to perform Work on the Project. This may include, but is not limited to Multi-Prime Trade Contractors, furniture installers, testing agencies, clean-up contractors, or network or low voltage contractors. Contractor shall plan for certain other contractors that may also be working on the Project site and address these other contractors in Contractor's Schedule. See Article 32.
- 4.37 Site refers to the grounds of the Project or in some cases may refer to multiple sites as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work.
- 4.38 Master Site Lease and/or Lease means the Master Site Lease(s) of even date herewith, by and between the District and the Contractor together with any duly authorized and executed amendment thereto under which the District leases the Site to the Contractor.
- 4.39 Specifications are that portion of the Construction Documents consisting of the written requirements for the work of improvement to be completed by Contractor, including, without limitation, services, work, material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.
- 4.40 Standards, Rules, and Regulations referred to are recognized printed standards and shall be considered as one and a part of these specifications within limits specified. Federal, state and local regulations are incorporated into the Contract Documents by reference. The Contractor shall not be responsible for any violations of federal, state or local codes, laws or regulations applicable to the Construction Documents that are part of the Architect's standard of care. Nothing in this paragraph, however, shall be construed as a limitation or waiver of the Contractor's applicable standard of care for the Project.
- 4.41 Stop Work Order, or an Order to Comply is issued when either (1) the Work proceeds without DSA approval; (2) the Work proceeds without a DSA Project Inspector, or (3) where DSA determines that the Work is not being performed in accordance with applicable rules and regulations, and would compromise the structural integrity of the Project or would endanger lives. If a Stop Work Order is issued, the Work in the affected area shall cease until DSA withdraws the Stop Work Order. Pursuant to Education Code section 17307.5(b) and Education Code section 81133.5, the District shall not be held liable in any action filed against the District for any delays caused by compliance with the Stop Work Order.
- 4.42 Subcontractor means any person or entity, including trade contractors, who have a contract with Contractor to perform any work or supply materials for the Project.

- 4.43 Master Sublease(s) means the Master Sublease(s) of even date herewith by and between the District and Contractor together with any duly authorized and executed amendment hereto under which the District subleases the Site from the Contractor.
- 4.44 Sublease Payment means any payment required to be made by the District pursuant to Section 7 of the Master Sublease.
- 4.45 Substantial Completion is not reached unless and until each of the following four (4) conditions have been met: (1) all contractually required items have been installed with the exception of only minor and Incomplete Punch Items (See Article 13.16); (2) All Fire/Life Safety Systems have been installed, and are working and signed off on the DSA Form 152 Inspection Card, all building systems including mechanical, electrical and plumbing are all functioning; (3) all other items on the DSA Form 152 Inspection Card for the Project have been approved and signed off; and (4) the Project is fit for occupancy and its intended use, as certified by the Architect pursuant to the Certificate of Substantial Completion set forth in the Division 1 Forms attached hereto.
- 4.46 Substitution is a change in product, material, equipment, or method of construction from those required by the Construction Documents proposed by the Contractor. Specific requirements for substitutions are set forth at Article 16.
- 4.47 Unforeseen Allowance means the budget established for hazardous substances and underground conditions that differ from representations in the Contract Documents or Due Diligence Documents and meet the requirements under Article 13.15.5 and 18.4. The Unforeseen Allowance may also include other costs as allocated in the District's sole and absolute discretion related to the Project. The District, in its sole and absolute discretion, may use the District Contingency to fund any costs allowed under the Unforeseen Allowance. Any funds remaining in the Unforeseen Allowance at the completion of the Project shall remain unspent and allocated to the District as the District sees fit to use.
- 4.48 Work shall include all labor, materials, services and equipment necessary for the Contractor to fulfill all of its obligations pursuant to the Contract Documents as it pertains to each individual Project. It shall include extension of Contractor's obligations to Subcontractor to perform Subcontractor Due Diligence including, but not limited to, visiting the Site of the proposed Work (a continuing obligation after the commencement of the Work), fully acquainting and familiarizing itself with the conditions as they exist and the character of the operations to be carried out under the Contract Documents, and make such investigation as it may see fit so that it shall fully understand the facilities, physical conditions, and restrictions attending the Work under the Contract Documents. Each such Contractor or Subcontractor shall also thoroughly examine and become familiar with the Drawings, Specifications, and associated Contract Documents.
- 4.49 Workers include laborers, workers, and mechanics.

**5. ESTABLISHMENT OF GUARANTEED MAXIMUM PRICE "GMP"**

- 5.1 Guaranteed Maximum Price (GMP) is the amount agreed upon between the District and Contractor that shall not be exceeded for the Construction of each Project within the Contract Time based on Contractor's thorough review of the Contract Documents, Due Diligence in investigation of all aspects of the Project, as set forth in Exhibit J for each Project. The GMP includes the costs for the Sublease Payments being paid by the District as Progress Payments and Retention Payment during construction in accordance with the terms of this Master Construction Services Agreement. Any references to Progress Payments shall also mean Sublease Payments. A Construction Contingency (Article 5.2.1) and an Errors and Omissions Contingency (Article 5.2.2) is contained within the GMP. Costs that are outside of the GMP shall be as follows:
- 5.1.1 Owner requested additional work (See Article 8) to be paid under the District Contingency.

5.1.2 Unforeseen underground soil conditions or unforeseen hazardous materials that meet the requirements of Article 13.15.5 and 18.4 to be paid under the Unforeseen Allowance.

5.2 GMP. As a result of the Due Diligence of Contractor, the GMP for each Project is set forth under Article 3 and in Exhibit J for each Project. The GMP is based upon all Due Diligence performed, the approved Construction Documents, and all other Contract Documents existing and reviewed by the Contractor at the time this Master Construction Services Agreement is entered into as more fully described and referenced in the Scope of Work set forth in Exhibit "A." Contractor's detailed line item costing of the Project, or Master Budget, totaling the GMP is attached hereto as Exhibit "B." Furthermore, the District and Contractor represent and warrant that the GMP is separate and distinct from the Sublease Payments to be paid by the District under the Sublease. District represents and warrants and Contractor acknowledges that: 1) the total amount of Sublease Payments and any optional Prepayment under the Master Sublease include the total rental for the Project, which total does not exceed the fair market value for the Project, 2) said rental amount is separate and distinct from Progress Payments and Retention, and 3) said rental amount shall be paid by the District with District non-local match contribution local funds.

The GMP is an "all inclusive" price for the construction of the Project that is calculated after Due Diligence and shall not be exceeded except as set forth in this Agreement. Contractor has taken on all contingencies and calculated those contingencies out in the form of the Construction Contingency. Contractor specifically agrees that once the Construction Contingency is fully exhausted, that Contractor can and shall Complete the Project pursuant to the terms of this Agreement within the Contract Time. No disputes concerning compensation, extras, or application of Contingencies shall be utilized as grounds to slow down or to stop work. The following two contingencies have been calculated through the Due Diligence of the Contractor and shall be calculated against the contingency amounts based on application of the Change Order language of Article 17.

5.2.1 *Construction Contingency*. The Construction Contingency set forth at Article 3.8.1 is for the use of the Contractor, as approved by the District, to pay for miscellaneous work items which are required to complete the Project including to cover trade scope gaps, missed work, areas of damage that may occur between trades during construction, Subcontractor coordination problems, and Contractor coordination errors. The Contractor shall not use the Construction Contingency to pay for costs related to the following: (a) errors or omissions in the Construction Documents; (b) discrepancies with the Construction Documents pertaining to applicable building code requirements; and/or (c) enhancements or additions to the Scope of Work desired by the District. The Contractor shall obtain written approval from the District prior to using the Construction Contingency. The following may be considered, at the District's sole discretion, valid Construction Contingency items: 1) overtime and premium time, 2) costs to address safety items, 3) Contractor coordination issues and errors, 4) scope gaps, 5) trade damage, and 6) for other items requested by the Contractor if approved by the District and in the District's sole discretion. If on Final Completion of the Project, funds are remaining in the Construction Contingency, Contractor shall be entitled to 25% and the District 75% of the remaining balance..

5.2.2 *Errors and Omissions Contingency*. Within the GMP shall be a line item amount to cover errors and omissions in the Construction Documents ("Errors and Omissions Contingency"). The Errors and Omissions Contingency at Article 3.7.2 is calculated based on coordination review of the Construction Documents and coordination meetings that have been held with the Subcontractors and Architect. Specifically, it is the coordination items that could not be addressed through coordination meetings and a factor determined based on the coordination review that has been performed by Contractor. The Errors and Omissions Contingency is created from Contractor's Due Diligence and based on Contractor's experience on similar projects. As a result,

Contractor agrees that Contractor shall not seek to charge District for Errors and Omissions in excess of the Errors and Omissions Contingency, where such Errors and Omissions should have reasonably been discovered by Contractor during the performance of the preconstruction services and/or Due Diligence.

Contractor shall notify the District under the Change Order Provisions of the need for such work and specifically identify the Work as Errors and Omissions by submitting to the District for its consideration and approval or disapproval, a written request for the work before such work is performed. If District approves such request in writing, the costs of the work, shall be added to or deducted from the Errors and Omissions Contingency within the GMP. Any funds remaining in the Errors and Omissions Contingency at the completion of the Project shall remain unspent and allocated to the District as the District sees fit to use, except for any portions of Savings added to the Errors and Omissions Contingency, which Savings shall be allocated between the parties as provided in Article 7 below.

### 5.3 Due Diligence

- 5.3.1 *Documents Reviewed.* Contractor has visited the site, entered and evaluated the structures on the site, reviewed all as-built information, environmental reports, Asbestos Hazard Emergency Response Act of 1986 reports applicable to the Project, lead reports, reports on any other hazardous substances, reviewed environmental impact reports, reviewed applicable mitigation measures for the Project, reviewed and observed the current site conditions, reviewed available records from City and/or County Records on the Project. All documents provided or reviewed by the Contractor shall be referred to collectively as the Due Diligence Documents.
- 5.3.2 *Review of Existing Conditions.* Contractor must have performed basic confirmation of the As-Built information that exists as part of the Due Diligence process. This basic confirmation shall include:
- 5.3.3 Confirmation of overall dimensions of major column lines, location of elements where coordination of new construction to existing construction is to occur, confirmation that the rooms noted are located on the drawings, review and confirmation that rooms have not been reconfigured.
  - 5.3.3.1 Confirmation of location for utilities and supporting infrastructure. Contractor shall review the utilities and confirm that the infrastructure from the As-Built and Contract Documents are consistent with the actual As-Built Conditions of the Project site.
  - 5.3.3.2 Confirmation that fire/life safety elements are consistent with expectations of the Contract Documents. Specifically, confirmation of the integrity of one-hour corridors, fire separations, working fire sprinklers, working fire alarms, communications systems, EMS systems, and other systems that are to remain in use and relied upon as part of the anticipated Project.
  - 5.3.3.3 Review of the Environmental Documents (Asbestos, Lead, PCB's, etc.) and general confirmation that the scope of hazardous substances is consistent with that which is shown on the environmental reports that are provided.
  - 5.3.3.4 Confirmation of Working hours and specific conditions which will affect the ability to work. Contractor shall check requirements for the local city and county and confirm working hours and days, testing schedules at the

District for days when work shall not occur, other critical days when work cannot occur, mitigation measures in the EIR or Negative Declaration that may affect the ability to Work on the Project. This review shall help Contractor build a working schedule for the Project.

- 5.3.4 *Review of Construction Documents.* Contractor has performed a complete and diligent review of all plans, specifications, addenda, bulletins or other documents provided as the Construction Documents or otherwise mentioned in the Construction Documents. The Contractor has written and submitted RFIs to address potential design issues prior to the GMP development to obtain a comprehensive GMP that addresses design and constructability issues.
- 5.3.5 *Inconsistencies.* All inconsistencies, timing or sequences which appear to be in error in the Construction Documents shall promptly be called to the attention of the Architect or, Engineer, for interpretation or correction. Local conditions which may affect the structure shall be brought to the Architect's attention at once. In no case, shall the instruction of the Architect be construed to cause work to be done which is not in conformity with the approved plans, specifications, change orders, construction change documents, and as required by law. (See Title 24 Section 4-343)
- 5.3.6 *Coordination Review.* Contractor shall perform a constructability review of the Construction Documents as part of its Due Diligence to determine the level of Errors and Omissions that should be included in the Errors and Omissions Contingency.
- 5.3.7 *Price Fluctuations.* As part of Contractor's Due Diligence responsibilities, Contractor is required schedule and plan to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost to assure that there will be no delays. Contractor understands that this may be a multi-year contract and that materials fluctuate in value and shall have adequately addressed market fluctuations through agreements with Contractor vendors or by other means. Contractor further understands and incorporates into Contractor's bid or proposal cost any wage rate increases during the Project for the Contractor's labor force as well as all other subcontractor and vendor labor forces. Contractor also understands the length of the Project schedule and has incorporated an appropriate budget to include labor, material, and equipment escalation costs into the GMP. At no time will the District accept any costs associated with these increases. District shall not be responsible for market fluctuations in costs or labor rate increases during the Project. Contractor further has incorporated any and all cost increases in areas of Work where there may be schedule variations so that cost increases are not passed through to the District.
- 5.3.8 *Coordination Review.* Contractor has thoroughly reviewed the plans, specifications, and other Due Diligence Documents and satisfied itself that the Construction Contingency is adequate to complete the Project for the GMP.
- 5.3.9 *Due Diligence Determinations.* Contractor has utilized all the available Due Diligence information to verify that the contingencies are adequate and that the Project can be constructed without exceeding the GMP:
  - 5.3.9.1 Construction Contingency. Based on review of the scope of work submitted from each Subcontractor, Contractor's Due Diligence and review shall be utilized to determine the size of the Construction Contingency to cover unforeseen conditions (other than noted in Article 5.1), cover trade scope gaps, missed work, areas of damage that may occur between trades during construction, Subcontractor coordination problems, Contractor coordination errors, and miscellaneous work items.

- 5.3.9.2 Errors and Omission Contingency. Based on a thorough review of the available Construction Documents and information located pursuant to the Due Diligence performed, a set-aside has been made for an Errors and Omissions Contingency that may be utilized to compensate for construction work to correct Errors and Omissions in the Construction Documents.
- 5.3.9.3 District Contingency (sometimes called Owner Contingency). District Contingency is a sum that is set aside by the District to address any additional services. In the District's sole discretion, design errors or omissions as determined by the District (to the extent the Errors and Omissions Contingency is exhausted) and unforeseen conditions as approved by the District, may be allocated to the District Contingency. Specifics on application of the Owner Contingency are set forth at Article 8.
- 5.3.9.4 Unforeseen Allowance. Unforeseen Allowance is a sum set aside for unforeseen conditions that differ from representations in the Contract Documents or Due Diligence Documents or meet the requirements under Article 13.15.5 and 18.4. The Unforeseen Allowance may also include other costs as allocated in the District's sole and absolute discretion related to the Project.
- 5.3.10 *Schedule.* Contractor's Due Diligence will also be critical to the Contractor's determination of the number of days required to complete the Project. Contractor will determine if the suggested number of days from the District and Architect can be performed and shall also consider whether the Project requires Governmental or Rain day float that exceeds that set forth in Article 9. If Contractor does not note any concerns with the suggested Contract Time, then it is presumed that Contractor is in agreement with the proposed completion date the Contractor, by entering into this Agreement, has determined for itself that the Project Contract Time is realistic, reasonable and includes all required Float under Article 9.

## 6. OPEN BOOK ACCOUNTING AND SELECTION OF SUBCONTRACTORS

- 6.1 Open Book Accounting. The Contractor's GMP shall be based on actual procured quotes and bids from Subcontractors, vendors, and suppliers or based on estimated costs. In addition, Contractor shall include an estimated overhead and profit line item along with the cost for Contractor supplied labor. This total construction cost, or Base Cost, shall be added to Subcontractor, vendor and supplier contingencies and the Construction Contingency (which includes an Errors and Omissions Contingency) to form the entire GMP. As costs are incurred during the course of the Project, the Job Cost Accounting shall be updated to include actual costs incurred. A report on costs shall be prepared as part of the GMP process and shall be provided on a regular basis to the District.
  - 6.1.1 *Purpose.* While competitive bidding is often viewed as the lowest price, utilizing the lowest bid neither results in the best contractor, efficient construction, or a properly completed product. In some cases, the Project becomes significantly more expensive because competitive bid contractors either don't understand the drawings, aren't qualified to build the Project, or are seeking to utilize the legal process to make money by bringing claims against the District. The lease leaseback methodology provides the ability to negotiate for the most qualified competent contractor and allow coordination and interaction between the Contractor, Architect and District to alleviate unnecessary problems or areas that would result in claims. However, in exchange for this flexibility and reduction in claims, it is in the District's best interests, as a public entity, to ensure that the Project accounting information is available for review and the financial aspects of the Project can be fully reviewed. Thus, Contractor agrees that all job cost

information shall be kept in an "open book" manner, shall show the actual transactions that occurred for the Project and shall be disclosable to the State if State funds are being utilized.

6.1.2 *State Allocation Board Issues.* The Office of Public School Construction, the administering agency for the State Allocation Board, audits the costs for construction under the general authority of Education Code section 17076.10 and under the specific authority of Regulation Section 1859.100 et seq. governing program accountability audit, material inaccuracy, and expenditure audits. Given the fact the State has approved the lease-leaseback delivery method, and the likelihood that the records of the Project will be audited if there are State Funds involved, a permanent record of all the financial transactions for the construction of the Project shall be available through an Open Book Accounting of the Project expenditures of both hard and soft costs including, but not limited to labor, material and services costs, including the subcontract and material costs that were utilized to build the Project.

6.1.3 *Value Engineering During the Project.* In addition to Value Engineering addressed at Article 7 below, Contractor may have occasion where better pricing can be obtained from Subcontractors or suppliers. This better pricing shall be treated as part of Savings under Article 7.

6.2 Scope Reduction Not Savings. The District at all times shall have the right to reduce the scope of the Project. If the District reduces the scope of the Project, the GMP shall be reduced to reflect the reduced Scope of Work, pursuant to the provisions of Article 17. To the extent possible, it is the mutual goal of the District and Contractor to maximize the Scope of Work as allowed by the GMP. Reductions in scope are not considered Savings.

6.3 Selection of Subcontractors.

6.3.1 If identified or requested in the District's Request for Proposal/ Qualifications ("RFP/RFQ"), the Contractor must use any Subcontractors identified and included in the Contractor's response to the District's RFP/RFQ pursuant to Education Code section 17406(a)(4). All Subcontractors identified and included in the Contractor's response to the District's RFP/RFQ shall be afforded the protections of the Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code).

6.3.2 Following the award of the Contract to the Contractor by the District's Board of Education, and for all Subcontractors not identified in the Contractor's response to the District's RFP/RFQ, the Contractor shall proceed as follows in awarding construction Subcontracts with a value exceeding one-half of one percent of the price allocable to construction work:

6.3.2.1 Provide public notice of availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the District, including a fixed date and time on which qualifications statements, bids, or proposals will be due.

6.3.2.2 Establish reasonable qualification criteria and standards.

6.3.2.3 Award the subcontract either on a best value basis or to the lowest responsible bidder. The process may include prequalification or short-listing. The process shall not apply to Subcontractors identified and included in the Contractor's response to the District's RFP/RFQ. Subcontractors awarded construction subcontracts under this Article 6.3.2 shall be afforded all the protections of the Subletting and

Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code).

- 6.3.2.4 All MEP Subcontractors must be prequalified as set forth in Article 1.12 above.
- 6.3.3 In no case will the Contractor award any subcontracts until the District has concurred to the scope and price of the subcontracted services.
- 6.3.4 All subcontractors (of any tier) performing any portion of the Work must comply with the Labor Code sections 1725.5 and 1771.1 and must be properly and currently registered with the California Department of Industrial Relations and qualified to perform public works pursuant to Labor Code section 1725.5 throughout the duration of the Project.
- 6.3.5 Contractor shall provide the District with full documentation regarding the bids or competitive quotes received by Contractor. In no event shall such documentation be redacted or obliterated. In the event the Contractor does not comply with this provision, the District may terminate this Construction Services Agreement in accordance with the provisions of Article 19 below.
- 6.3.6 Compliance with Disabled Veteran Business Enterprise (DVBE) contracting goals is required under this Construction Services Agreement. In accordance with Education Code section 17076.11 the District has a DVBE participation goal of 3% per year of the overall dollar amount of state funds allocated to the District pursuant to the Leroy F. Greene School Facilities Act of 1998, and expended each year by the District. The District is seeking DVBE participation under this Construction Services Agreement. The Contractor must require Subcontractors to make a good faith effort to contact and utilize DVBE contractors and suppliers in securing bids for performance of the Project. Their efforts shall be documented on the DVBE Good Faith Effort Form attached as Exhibit "C".

## 7. SAVINGS AND VALUE ENGINEERING

- 7.1 General Intent. The purpose of Savings is to minimize the expenditure of funds for the construction of the Project on items that exceed the minimum criteria required without a corresponding benefit to the District. The District also wishes to eliminate any excess quality levels or performance criteria provided in the Construction Documents so long as such elimination does not alter the design, aesthetics, safety standards or configuration or space, and does not increase future maintenance and operation costs. The District and the Contractor shall work cooperatively with each other, in good faith, to identify appropriate opportunities to reduce the Project costs and promote Savings. There are two stages when Savings may be generated. They are (1) Value Engineering when establishing the GMP and (2) Savings generated through changes, reductions, or Subcontractor negotiations that may occur after the GMP is established.
  - 7.1.1 *Value Engineering* is a review of systems so excess quality, unnecessary design elements, reconfiguration for efficiency, or other changes may be made to reduce the cost of a project. Sometimes, timing and sequences or re-use of materials that are unique to a project or area may generate savings. For example, if export soil is generated on a site which may have a substantial cost for transportation and removal could be sold to offset the costs incurred then a savings may be generated for the Project. Similarly, if concrete is ground, it may be sold for aggregate rather than as demolished construction materials.
  - 7.1.2 *Other Savings* generated over the course of the Project through Subcontractor negotiations, replacement of Subcontractors, or through other means shall be calculated



as part of the overall costs for the Project as part of the "Open Accounting" of the Project and shall be counted towards Project Savings.

- 7.2 Sharing and Calculation for Return of Savings. If Contractor realizes a Savings on an aspect of the Project, including but not limited to, Value Engineering or other Savings after the GMP is established and after execution of this Construction Services Agreement, such Savings shall be divided in the following proportion: Seventy Five Percent (75%) of any Savings shall be returned to the District and Twenty Five Percent (25%) of any Savings shall be returned to the Contractor. Calculation of Savings shall be determined by adding all expenses for the Project (excluding Change Orders and Owner and Construction Contingency Expenses), separating out overhead costs and either using the actual overhead costs, or the percentage set for overhead in the Article 5.3, whichever is higher an applying the percentage for profit against the GMP (less Change orders, Owner and Construction Contingency). Any remaining money shall be considered Savings. If the Project expenses exceed the GMP, then there are no Savings for the Project and the GMP shall apply. A separate calculation of whether there are savings associated with Change Orders under the Owner and Construction Contingency may be performed to determine if there are any savings that remain on these areas and applied to the overall savings calculation
- 7.3 Savings Determined Through Audit. District may, at its own costs, have an audit conducted of the Project related job costs to determine Savings as further outlined in Article 21.

## 8. DISTRICT CONTINGENCY

- 8.1 The District Contingency is an allowance for use by the District that can be used to pay the Contractor to perform additional services ("Additional Services") not described in this Construction Services Agreement. This District Contingency is outside of the GMP, is not part of the original bond, except to the extent that District contingency is utilized as a Change to the Contract under Article 17, and may be used for Owner requested additions, revisions to the Project, moving furniture or equipment, and other District unforeseen items, or at District's discretion. Contractor shall provide a cost estimate and a written description of the Additional Services required to perform such work. The District shall set aside a contingency amount outside the GMP, defined at Article 5 ("District Contingency") in the amount set forth at Article 3, which District Contingency shall be used for such Additional Services. Compensation for such Additional Services shall be negotiated and agreed upon in writing, in advance of Contractor's performing or contracting for such Additional Services. Nothing in this Construction Services Agreement shall be construed as limiting the valuation and amount to be paid to Contractor for such Additional Services or its implementation should a written agreement for such services be executed. Contractor shall not be entitled to compensation for Additional Services required as a result of Contractor's acts, errors or omissions. Further any Architectural Errors and Omissions shall not come out of District Contingency unless agreed upon in writing by the District in its sole discretion.
- 8.2 Additionally, while District is in no way limited by the manner in which it decides to utilize the District Contingency, said District Contingency shall not be used for any costs associated with errors or omissions in the Construction Documents until such time, if ever, the Errors and Omissions Contingency has been fully exhausted. Any funds remaining in the District Contingency at the completion of the Project shall remain unspent and remain allocated to the District.

## 9. SCHEDULE

- 9.1 Contract Time: Contractor shall perform and reach Substantial Completion (See Article 4.45) within the time specified in the Agreement. Moreover, Contractor shall proceed on a properly developed and approved CPM Master Baseline Schedule, which represents the Contractor's view of the practical way in which the Work will be accomplished. Note that Contract Time includes and incorporates all Float and other Baseline inclusions as noted in Article 9.3 and as otherwise specifically noted in Article 9

- 9.2 Float is the total number of days an activity may be extended or delayed without delaying the Completion Date shown in the schedule. Float will fall into three categories: (1) Rain Days; (2) Governmental Delays; and (3) Project Float. Project Float and Rain Days are owned by the Project and may be utilized as necessary for critical path delays once the days become available for consumption (i.e. the rain day arrives and is not utilized since rain did not occur or Work was performed on the interior of a building). However, Governmental Delay float shall not be utilized for purposes other than to address critical path delays that arise due to approvals, Inspector approvals or verifications on governmental forms.
- 9.2.1 *Governmental Delay Float.* Given DSA requirements for submission and approval of CCD's prior to a DSA Form 152 sign off on areas of Work that deviate from approved Construction Documents, and the anticipated delays that may arise from this CCD procedure, no less than twelve (12) days per calendar year shall be set aside as Governmental Float to be utilized on critical path delays. A pro-rated number of days shall be calculated based on length of Contract Time. (For example, a two (2) year Contract Time shall require twenty-four (24) days of Governmental Float. If the Contract Time is 182 days, then the Contract Time shall require six (6) days of Governmental Float) This Governmental Delay float must be incorporated into the schedule and should be incorporated in each critical activity as Contractor deems fit. Specifically, major categories of Work under the DSA 152 (Project Inspection Card) should be allocated Governmental Delay Float at the Contractor's discretion. Governmental Delay Float on the Project may exceed 12 days per one (1) year period, but Contractor is required to include not be less than 12 days of Governmental Delay Float during each one (1) year period.
- 9.2.2 *Inclement Weather (Rain Days).* The Contractor will only be allowed a time extension for unusually severe weather if it results in precipitation or other conditions which in the amount, frequency, or duration is in excess of the norm at the location and time of year in question as established by the National Oceanic and Atmospheric Administration (NOAA) weather data. No less than 22 calendar days for each Calendar year for Southern California. The NOAA weather related days (22 days in Southern California) shall be set aside as float within the Baseline Schedule. Additional days beyond the NOAA shall be considered under the same criteria that weather days are granted below.
- 9.2.3 *Granting of Days beyond those Anticipated.* A Rain Day shall be granted by Architect or CM if the weather prevents the Contractor from beginning Work at the usual daily starting time, or prevents the Contractor from proceeding with seventy-five (75%) of the normal labor and equipment force towards completion of the day's current controlling item on the accepted schedule for a period of at least five hours, and the crew is dismissed as a result thereof, the Architect will designate such time as unavoidable delay and grant one (1) critical path activity calendar-day extension if there is no available float for the calendar year.
- 9.2.4 *Project Float* is all remaining float, including extra days included in a particular activity.
- 9.3 Inclusions in Baseline. In addition to Scheduling requirements set forth at Article 9, Contractor is specifically directed to include in Contractor's Baseline Schedule and all Schedule updates that provide for the following items required pursuant to this CSA, including but not limited to:
- 9.3.1 *Rain Day Float (excluding inclement weather) as required under Article 9.2.2.* For example, if the NOAA provides 22 days of rain days, all 22 days must be incorporated and noted in the schedule. Further, any days required to clean-up or dry out shall be included for operations that are likely to require a clean-up or dry out period. Days that are not utilized shall be considered float owned by the Project.

- 9.3.2 *Governmental Delay Float under Article 9.2.1.* This Governmental Delay Float shall only be utilized for Governmental Delays and shall not be considered available float owned by the Project. This float shall be distributed to the Project as granted and approved by the District, and shall be used to offset liquidated damages for overstaying the Lease, and shall not generate compensable delays.
- 9.3.3 Submittal and Shop drawing schedule under Article 9.6 and 15.6.
- 9.3.4 Deferred Approvals under Article 15.3 and 15.6
- 9.3.5 Time for separate contractors, including furniture installation and start up activities, under Article 32.
- 9.3.6 Coordination and timing of any drawings, approvals, notifications, permitting, connection, and testing for all utilities for the Project. Article 13.15.2 .
- 9.3.7 Testing, special events, or District activities.
- 9.3.8 The Baseline Schedule and Schedule Updates can be in Microsoft Project, Primavera, or other software program at District's discretion.
- 9.4 Schedule Updates. Contractor shall update the schedule each month to address actual start dates and durations, the percent complete on activities, actual completion dates, estimated remaining duration for the Work in progress, estimated start dates for Work scheduled to start at future times and changes in duration of Work items. The Schedule shall be maintained throughout the Work for the Project and is both a prerequisite to the issuance of a Pay Application and Contract Closeout.
  - 9.4.1 *Listing of Items Causing Delays.* Schedule Updates shall provide a listing of activities which are causing delay in the progress of Work and a narrative shall be provided showing a description of problem areas, anticipated delays, and impacts on the Construction Schedule. Simply stating "District Delay" or "Architect Delay" shall be an inadequate listing.
  - 9.4.2 *Recovery Schedule.* In addition to providing a schedule update every thirty (30) days, the Contractor, shall take the steps necessary to improve Contractor's progress and demonstrate to the District and Architect that the Contractor has seriously considered how the lost time, the Completion Date, or the milestones that are required to be met within the terms of the Contract. Contractor shall provide a Recovery Schedule showing how Milestones and the Completion Date will be met.
    - 9.4.2.1 Failure to Provide a Recovery Schedule. Shall subject Contractor to the assessment of Liquidated Damages for failure to meet the Contract Time.
- 9.5 Time of the Essence. Time limits stated in the Contract Documents are of the essence to the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work
- 9.6 Time for Preparing Submittals Must Be Incorporated in Schedule: Contractor shall include Submittals as line items in the Baseline Schedule. Time for preparing and coordinating Submittals shall not delay the Work, Milestones, or the Completion Date, and shall be in conformance with Article 15.6.

## 10. INSPECTION OF WORK/ INSPECTOR AND ARCHITECT

- 10.1 Inspection of Work/Inspector. The District shall hire its own Division of State Architect Inspector as required by law. District, District's Representatives, and the Division of the State Architect shall

at all times have access to the work whether it is in preparation or progress, and Contractor shall provide proper facilities for such access and for inspection.

- 10.1.1 *General.* One or more Project Inspectors employed by the District and approved by the Division of the State Architect will be assigned to the Work in accordance with the requirements of Title 24 of the California Code of Regulations. The Inspector(s) duties are as specifically defined in Title 24 Section 4-333 and 4-342 and in DSA IR A-8.
- 10.1.2 *Inspector's Duties and DSA Noted Timelines for Inspection.* All Work shall be under the observation of the Inspector. Contractor shall establish a protocol for requesting inspection with Inspector so as to not delay the Work and provide adequate time for the Inspector to perform inspection. If such a protocol is not established ahead of time, Inspector may utilize the time criteria set by Title 24 of 48 hours in advance of submitting form DSA 156 for each new area. The Inspector shall have free access to any or all parts of the Work at any time. The Contractor shall furnish the Inspector such information as may be necessary to keep the Inspector fully informed regarding progress and manner of Work and character of materials. Such observations shall not, in any way, relieve the Contractor from responsibility for full compliance with all terms and conditions of the Contract, or be construed to lessen to any degree the Contractor's responsibility for providing efficient and capable superintendence. The Inspector is not authorized to make changes in the drawings or specifications nor shall the Inspector's approval of the Work and methods relieve the Contractor of responsibility for the correction of subsequently discovered defects, or from its obligation to comply with the Contract Documents.
- 10.1.3 *Electronic Posting.* Inspector shall electronically post DSA required documents on the DSA electronic posting website. It is the Contractor's responsibility to determine the status of posting and determine if all the criteria for sign off of a category of Work on the Project Inspection Card (Form DSA 152) as defined more thoroughly in the most current version of the DSA 152 manual posted on the DSA website.
- 10.1.4 *Incremental Approvals under PR-13.* Inspector may collaborate with Contractor about approval of areas that may be constructed and approved incrementally under the DSA 152 card pursuant to the guidelines of PR-13. Inspector shall work with Contractor to present incremental approval proposals to DSA.
- 10.1.5 *Inspector's Authority to Reject or Stop Work.* The Inspector shall have the authority to reject Work whenever provisions of the Contract Documents are not being complied with, and Contractor shall instruct its Subcontractors and employees accordingly. In addition, the Inspector may stop any Work that poses a probable risk of harm to persons or property. The Contractor shall instruct its employees, Subcontractors, material and equipment suppliers, etc., accordingly. The absence of any Stop Work Order or rejection of any portion of the Work shall not relieve the Contractor from any of its obligations pursuant to the Contract Documents.
- 10.1.6 *Inspector's Facilities.* Within seven (7) days after notice to proceed, the Contractor shall provide the Inspector with the temporary facilities as required. More specific requirements for the Inspector facilities may be further described under Division 1 of the Specifications.
- 10.1.7 *Testing Times.* The District will provide inspection and testing at its cost during the normal eight (8) hour day Monday through Friday (except holidays). Work by the Contractor outside of the normal eight (8) hour day shall constitute an authorization from the Contractor to the District to provide inspection and testing as required outside of the normal eight (8) hour day. Contractor shall provide adequate time for inspections so as to not delay the Work. An advanced timing protocol may be established pursuant

to Article 10. If the Contractor is behind Schedule then it is incumbent on the Contractor to provide advance forecast through look ahead of the anticipated date for inspection so the Inspector may plan their activities so as to not delay the Project. Contractor shall reimburse District for any additional costs associated with inspection and testing (including re-inspection and re-testing) outside the normal eight-hour day and for any retests caused by the Contractor pursuant to Article 10.4.

10.1.8 *Contractor Is Required to Coordinate Testing and Inspections.* It is the Contractor's responsibility to request special inspections with sufficient time so all testing may be timely completed and posted so work may proceed and the Inspector's signature is attached to the Project Inspection Card (Form 152). Specifically, timely request for special inspection under the DSA Verified Report Forms 291 (laboratory), DSA Verified Report Form 292 (Special Inspection), and DSA Verified Report 293 (geotechnical) since DSA requirements under PR 13-01 specifically gives the Special Inspections 14 days to post to the DSA website. It is the Contractor's responsibility to timely schedule and pay (if applicable) for Special Inspections as to not delay the Project, and any failure or resulting delay is not considered Governmental Delay Float under Article 9.2.1.

10.1.9 *Special Inspection Out of State, Out of Country or Remote from Project.* If Contractor has a Subcontractor or supplier that requires in plant or special inspections or tests that are out of the country, out of state or a distance of more than 200 miles from the Project site, the District shall provide the Special Inspector or individual performing tests time for inspection and testing during normal work hours. Contractor, however, is responsible for the cost of travel, housing, food, out of area premiums that may be in the Inspector/Testing Agreement with District, or other expenses necessary to ensure proper inspection or testing is provided by a DSA Certified Inspector, Special Inspector, or individual performing tests. In some cases all three (DSA Inspector, Special Inspector, and Testing) may be required. In addition, if the DSA Certified Inspector, Special Inspector, or individual performing test has contractual travel clauses or special rates for out of town inspection, Contractor is responsible for all costs associated with the contractual travel costs in addition to all other costs. Arrangements for inspection and/or testing shall be made far enough in advance so as to not delay the Work.

10.2 STOP WORK ORDER. DSA may issue a Stop Work Order, or an Order to Comply, when either (1) the Work proceeds without DSA approval; (2) the Work proceeds without a DSA Project Inspector, or (3) where DSA determines that the Work is not being performed in accordance with applicable rules and regulations, and would compromise the structural integrity of the Project or would endanger lives. If a Stop Work Order is issued, the Work in the affected area shall cease until DSA withdraws the Stop Work Order. Pursuant to Education Code section 17307.5(b) and Education Code section 81133.5, the District shall not be held liable in any action filed against the District for any delays caused by compliance with the Stop Work Order, except to the extent that an error or omission by the District is the basis for the issuance of the Stop Work Order.

10.3 Inspector's Field Office. Contractor shall provide for the use of inspector a separate trailer or temporary private office of not less than seventy five square feet of floor area to be located as directed by District and to be maintained until removal is authorized by District. The Office shall be of substantial waterproof construction with adequate natural light and ventilation. Door shall have a key type lock or padlock hasp. The Inspector's field office shall have heating and air-conditioning and shall be equipped with a telephone, internet connection, working computer, a fax machine and use of an on-site copier at Contractor's expense. A table satisfactory for the study of plans and two chairs shall be provided by Contractor. Contractor shall provide and pay for adequate electric lights, and adequate heat and air conditioning for the field office until authorized removal.

10.4 **RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE DISTRICT FOR PROFESSIONAL SERVICES**

10.4.1 If at any time prior to the completion of the requirements under the Contract Documents, the District is required to provide or secure additional professional services (including CM, Inspection, Architect, Engineering and Special Consultant Services) for any reason by any act of the Contractor, the District may seek a Deductive Change Order for any costs incurred for any such additional services, which costs shall be deducted from the next scheduled Progress Payment. A Deductive Change Order shall be independent from any other District remedies and shall not be considered a waiver of any District rights or remedies. If payments then or thereafter due to the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the District. Additional services shall include, but shall not be limited to, the following:

- a) Services made necessary by the default of the Contractor (Article 19 or Article 12.2).
- b) Services made necessary due to the defects or deficiencies in the Work of the Contractor.
- c) Preparation of a CCD or ICD to correct a Contractor Deficiency, or Contractor Caused Notices of Non-Compliance (Article 17.2)
- d) Services required by failure of the Contractor to perform according to any provision of the Contract Documents.
- e) Services in connection with evaluating substitutions of products, materials, equipment, Subcontractors' proposed by the Contractor, and making subsequent revisions to drawings, specifications, obtaining DSA approvals, DSA costs for review of CCD's, other governmental agency review costs, and providing other documentation required (except for the situation where the specified item is no longer manufactured or available). (Article 16
- f) Services for evaluating and processing Claims or Disputes submitted by the Contractor in connection with the Work outside the established Change Order or Claims or Disputes process.
- g) Services required by the failure of the Contractor to prosecute the Work in a timely manner in compliance within the specified time of completion.
- h) Services in conjunction with the testing, adjusting, balancing and start-up of equipment other than the normal amount customarily associated for the type of Work involved.
- i) Services in conjunction with more than one (1) re-review of Submittals of Shop Drawings, product data, samples, RFI's etc.

## 11. **ARCHITECT**

11.1 **Architect's Status.** In general and where appropriate and applicable, the Architect shall observe the progress and quality of the work on behalf of the District. The Architect shall have the authority to act on behalf of District only to the extent expressly provided in this Construction Services Agreement. After consultation with the Inspector and after using his/her best efforts to consult with the District, the Architect shall have authority to stop work whenever such stoppage may be necessary in his reasonable opinion to insure the proper execution of the Construction Services Agreement. Contractor further acknowledges that the Architect shall be, in the first instance, the judge of the performance of this Construction Services Agreement

- 11.2 Architect's Decisions. Contractor shall promptly notify District in writing if the Architect fails within a reasonable time, make decisions on all claims of the District or Contractor and on all other matters relating to the execution and progress of the Project.

## 12. DISTRICT RESPONSIBILITIES

- 12.1 District Site Representations. District warrants and represents that, District has, and will continue to retain at all times during the course of construction, legal title to the Site and that said land is properly subdivided and zoned so as to permit the construction and use of said Site. District further warrants and represents that title to said land is free of any easements, conditions, limitation, special permits, variances, agreements or restrictions which would prevent, limit, or otherwise restrict the construction or use of said facility. However, in the event easements for permanent structures or permanent changes in existing facilities are necessary, they shall be secured and paid for by District, unless otherwise specified. Reference is made to the fact that District has provided information on the Site to Contractor. Such information shall not relieve the Contractor of its responsibility; and the interpretation of such data regarding the Site, as disclosed by any borings or other preliminary investigations, is not warranted or guaranteed, either expressly or implicitly, by the District. The Contractor shall be responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the Site and for having satisfied itself as to the observable, known or documented conditions under which the work is to be performed.

- 12.2 Partial Default: District Right to Take Over Work (Two (2) day notice to Cure and Correct). If the Contractor Defaults or neglects to carry out the Work in accordance with the Contract Documents, the District may provide a two (2) business day written notice to cure (a shorter period of time in the case of Emergency or a critical path delay) Contractor's Partial Default in a specific segregated area of work. The District's right to issue a Partial Default of the Contractor's Work and take over that segregated area of Work includes, but is not limited to:

- a) Failure to supply adequate workers on the entire Project or any part thereof;
- b) Failure to supply a sufficient quantity of materials;
- c) Failure to perform any provision of this Contract;
- d) Failure to comply with safety requirements, or due to Contractor is creation of an unsafe condition;
- e) Cases of bona fide emergency;
- f) Failure to order materials in a timely manner;
- g) Failure to prepare deferred-approval items or Shop Drawings in a timely manner;
- h) Failure to comply with Contractor's Baseline or Update Schedule, meet critical Milestones which would result in a Delay to the Critical Path, or Delay the Contract Time;
- i) Failure to comply with the Subcontractor selection and award requirements under Education Code section 17406(a)(4);
- j) Failure to meet the requirements of the American's with Disabilities Act;
- k) Failure to complete Punch List work; or
- l) Failure to proceed on an Immediate Change Directive.

- 12.2.1 *Failure to correct a Notice of Deviation.* If during the two (2) business day period, the Contractor fails to Cure and correct the deficiency noted in the notice of Partial Default

with diligence and promptness, the District may correct such deficiencies without prejudice to other remedies the District may have, including a Termination for Cause as set forth in Article 19.

- 12.2.2 *Service of Notice of Partial Default with Right to Cure.* A written notice of Partial Default and right to Cure under Article 12.2("Article 12.2 Notice" or "Notice of Partial Default") shall be served by facsimile (with a copy provided by e-mail to the e-mail address provided and copied to the Project Superintendent).
- 12.2.3 *Shortened Time for Partial Default in the Case of Emergencies.* In an Emergency situation, the District may correct any of the deficiencies described in Article 12.2 without prejudice to other remedies by providing service of written notice of Emergency requiring a shortened time for Partial Default specifying the time given to Cure, if any.
- 12.2.4 *Shortened Time for Partial Default in the Case of Critical Path Delay.* In the case of critical path delay, the District may correct any of the deficiencies described in Article 12.2 without prejudice to other remedies providing service of written notice of Critical Path Delay to the Contractor with a specific description of the critical path delay items noting the line item or area of Work that is on the Critical Path and prescribe the length of shortened time to Cure, if any.
- 12.2.5 *Written Notice of Partial Default to be Deducted by Deductive Change Order.* The District shall have the right to determine the reasonable value of the Article 12.2 Partial Default Work, or if there is an actual value for the Work, shall use that value and issue a Deductive Change Orders under Article 17.6.

### **13. CONTRACTOR RESPONSIBILITIES.**

- 13.1 Full Time Supervision. Contractor shall keep on the Work at all times during its progress a competent, English speaking construction Superintendent satisfactory to the District. The Superintendent shall be present on a full-time basis, shall be dedicated exclusively to the Project and shall not share superintendency duties with another project or job. The Superintendent shall not be replaced except with written consent of the District. The Superintendent shall represent the Contractor in its absence and shall be fully authorized to receive and fulfill any instruction from the Architect, the Inspector, the District or any other District representative (including CM in the cases where the District has a CM representative). All Requests for Information shall be originated by the Superintendent and responses thereto shall be given to the Superintendent. No Work shall begin on any day by any Subcontractor or other person on the Project site until the Superintendent has arrived, or shall any Work continue during the day after the Superintendent has departed from the Project site. The Superintendent shall have authority to bind Contractor through the Superintendent's acts. The Superintendent shall represent the Contractor, and communications given to the Superintendent shall be binding on the Contractor. Before commencing the Work, Contractor shall give written notice to District (and CM representative) and Architect of the name and a Statement of Qualifications of such superintendent. Superintendent shall not be changed except with written consent of District, unless a superintendent proves to be unsatisfactory to Contractor and ceases to be in its employ, in which case, Contractor shall notify District and Architect in writing. Contractor shall provide a replacement superintendent approved by the District prior to performing additional work.
- 13.2 Staff. Notwithstanding other requirements of the Contract Documents, the Contractor and each Subcontractor shall: (1) furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work; (2) organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and (3) keep an adequate force of skilled and fit workers on the job to complete the Work in accordance with all requirements of the Contract Documents.



- 13.3 Contractor shall notify District and Architect, in writing, when Contractor desires to change the Project Manager for the Project, and shall provide the information specified above. The new Project Manager cannot serve on the Project until approved by District. District shall have the right, at any time, to direct a change in Contractor's Project Manager if performance is unsatisfactory, as determined by District, in its sole discretion.
- 13.4 Contractor shall give efficient supervision to the work, using its skill and attention and shall cause working drawings and specifications to be prepared and submitted to the District. Following agreement by Contractor and District with respect to said working drawings and specifications, it shall be Contractor's responsibility to perform the work described in said working drawings and specifications in substantial compliance with the Construction Documents.
- 13.5 Right to Remove. District shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of any Contractor, Subcontractor, material or equipment supplier.
- 13.6 Discipline. The Contractor shall enforce strict discipline and good order among the Contractor's and Subcontractor's employees, and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. As used in this subsection, "unfit" includes any person who the District concludes is improperly skilled for the task assigned to that person, who fails to comply with the requirements of this Article, or who creates safety hazards which jeopardize other persons and/or property.
- 13.7 Labor and Materials
- 13.7.1 *Contractor to Provide.* Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, air conditioning, utilities, transportation, and other facilities, services and permits necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- 13.7.2 *Quality.* Unless otherwise specified, all materials and equipment to be permanently installed in the Project shall be new and shall be of the highest quality or as specifically stated in the Contract Documents. The Contractor shall, if requested, furnish satisfactory evidence as to kind and quality of all materials and equipment within ten (10) days of a written request by the District, including furnishing the District with bona fide copies of invoices for materials or services provided on the Project. All labor shall be performed by workers skilled in their respective trades, and shall be of the same or higher quality as with the standards of other public school construction.
- 13.7.3 *Replacement.* Any work, materials, or equipment, which do not conform to these requirements or the standards set forth in the Contract Documents, may be disapproved by the District, in which case, they shall be removed and replaced by the Contractor at no additional cost or extension of time to the District.
- 13.8 Pre-Construction Orientation/Construction Meetings. The Contractor, in conjunction with the District and the Architect, shall conduct pre construction orientation conferences for the benefit of Subcontractors to orient the Subcontractors to the various reporting procedures and site rules prior to the commencement of actual construction. These Pre-Construction meetings shall include coordination of the Subcontractor Work to help reduce Errors and Omissions and Construction Contingency requests and shall incorporate the Constructability Due Diligence review done by Contractor.
- 13.9 Owner Meetings. The Contractor shall conduct construction and progress meetings with District Representatives, and Construction Managers that occur at least weekly and as otherwise requested

by the District, to discuss such matters as procedures, progress problems and scheduling. The Contractor shall prepare and promptly distribute official minutes of such meetings to all parties in attendance including Architect, District and Inspector.

- 13.10 **Budget/Cash Flow Reports.** The Contractor shall incorporate approved changes as they occur, and develop cash flow reports and forecasts for submittal to the District on a monthly basis. The Contractor shall provide regular monitoring of the approved estimates of Construction Costs, showing actual costs for activities in progress, and estimates for uncompleted tasks. The Contractor shall identify variances between actual and budgeted or estimated costs, and advise the District and the Architect whenever Project costs exceed budgets or estimates. The Contractor shall maintain cost accounting records on authorized additional services or work performed under unit costs, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.
- 13.11 **Progress Reports.** The Contractor shall record the progress of the Project, and shall submit monthly written progress reports to the District and the Architect including information on the entire Project, showing percentages of completion and the number and amounts of proposed Extra Work/Modifications and their effect on the Construction Costs as of the date of the report. The Contractor shall also keep a daily log containing a record of weather, Contractors, work on the site, number of workers, work accomplished, problems encountered, and other similar relevant data as the District may require. The Contractor shall make the log available to the District and the Architect. The District shall be promptly informed of all anticipated delays. In the event that the Contractor determines that a schedule modification is necessary, the Contractor shall promptly submit a revised Schedule for approval by the District
- 13.12 **Schedule of Values.**
- 13.12.1 ***Break Down of Schedule of Values.*** Schedule of Values shall be broken down by Project, site, building, milestone, or other meaningful method to measure the level of Project Completion as determined by the District. The schedule of values shall include, but not be limited, to Subcontractor costs, the costs for the Submittals, Punch Lists, Commissioning and Start-Up, Close Out Submittals, As-Builts; Close-Out; and Warranties.
- 13.12.2 ***Based on Contractor Costs.*** The Schedule of Values shall be based on the costs from Contractor to the District. However, the submission of the Schedule of Values shall not be front loaded so the Contractor is paid a greater value than the value of the Work actually performed and shall not shift funds from parts of the Project that are later to Work that is performed earlier.
- 13.12.3 ***Largest Dollar Value for Each Line Item.*** Identify Subcontractors and materials suppliers proposed to provide portions of Work equal to or greater than ten thousand dollars (\$10,000) or one-half (1/2) of one percent (1%) of their Contract Price, whichever is less, or as otherwise approved in writing by the District.
- 13.12.4 ***Allowances.*** Any Allowances provided for in the Contract shall be a line item in the Schedule of Values.
- 13.12.5 ***Labor and Materials Shall Be Separate.*** Labor and Materials shall be broken into two separate line items unless specifically agreed in writing by the District.
- 13.12.6 ***District Approval Required.*** The District shall review all submissions of Schedule of Values received pursuant to this Article in a timely manner. All submissions must be approved by the District before becoming the basis of any payment.

- 13.13 Scheduling. Contractor shall complete the construction pursuant to the CPM Schedule as required under Article 9.
- 13.14 As-Builts. Throughout the duration of the Project, Contractor shall maintain on a current basis an accurate and complete set of As-Built Drawings (and Annotated Specifications) clearly showing all changes, revisions to specifications and substitutions during construction, including, without limitation, field changes and the final location of all electrical and mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions, and other significant features. In case a specification allows Contractor to elect one of several brands, makes, or types of material or equipment, the annotations shall show which of the allowable items the Contractor has furnished. The Contractor will update the As-Built Drawings and Annotated Specifications as often as necessary to keep them current, but no less often than weekly.
- 13.14.1 *Updates.* Contractor shall update As-Built Drawings and Schedules, including critical path and make-up time, with complete information on an area of Work at or near the time when the Work is being performed and prior to any DSA 152 sign off and prior to any Work being covered. Failure to provide monthly updates will cause delays in processing that monthly pay application.
- 13.14.2 *Storage.* The As-Built Drawings and Annotated Specifications shall be kept at the Site and available for review and inspection by the District and the Architect. Failure to maintain and update the As-Built Drawings is a basis to withhold scheduled Progress Payments pursuant to Article 29.4.
- 13.14.3 *Upon Beneficial Occupancy.* Contractor shall obtain and pay for reproducible plans upon Beneficial Occupancy. Contractor shall deliver Plans to District Representative (Construction Manager if one is hired for the Project).
- 13.14.4 *As-Builts at Completion of Work.* On completion of the Work and prior to and as a condition precedent to the Application for Retention Payment, the Contractor will provide one neatly prepared and complete set of As-Built Drawings and Annotated Specifications to the District. Contractor shall certify the As-Builts as a complete and accurate reflection of the actual construction conditions of the Work by affixing a Stamp indicating the Drawings are As-Builts and Certifying Accuracy on the final set of As-Builts.
- 13.14.5 *Log of Control and Survey Documentation.* Contractor shall complete and maintain an accurate log or all control and survey documentation for the Project as the Work progresses. All reference and control points shall be recorded on the As-Built drawings. The basis of elevations shall be one of the established benchmarks that must be maintained on the As-Builts.
- 13.14.6 *Record Coordinates for Key Items.* Contractor shall record, by coordinates, all utilities on-site with top of pipe elevations, major grade and alignment changes, rim, grate or top of curb and flow line elevations of all drainage structures and sewer manholes. Contractor shall update record information at or near the time when work is occurring in an area and prior to DSA 152 sign off on any category of Work and prior to covering the Work.
- 13.15 Miscellaneous Obligations of Contractor
- 13.15.1 *District Permit and Other Obligations.* It is expressly understood that the District shall pay the DSA for the DSA inspector, soils testing, DSA fees, special testing, etc. If additional review or permits become necessary for reasons not due to Contractor's fault or because of DSA requirements or regulations implemented after the date the GMP is established and not reasonably anticipated at the time the GMP is established,

Contractor may seek compensation only for the direct cost (without mark up or added fees) of that review, as an additional cost. In the alternative, District may pay such costs directly to DSA. (Offsite costs and additional inspection costs)

- 13.15.2 *Contractor Permit Obligations.* Contractor shall pay for all remaining general building permits and ancillary permits and licenses not paid by District prior to the commencement of this Construction Services Agreement. Contractor shall also be responsible for arranging and overseeing all necessary inspections and tests, including inspections by the DSA, permits and occupancy permits, and ensure compliance with any Federal and State laws. All municipal charges for permanent utilities including, but not limited to, sewer, electrical, phone, gas, water, and irrigation shall be paid for by District. Contractor shall be responsible for arranging the payment of such fees by District at least one (1) week in advance of when the payment is due. Contractor may either request reimbursement from District for such fees (at direct cost only), or obtain the funds from District prior to paying such fees.
- 13.15.3 *Protection.* The Contractor shall establish procedures for the protection of all existing structures, equipment, utilities, and other existing improvements, both on site and off site.
- 13.15.4 *Nuisance Abatement.* The Contractor shall develop a mutually agreed upon documented program with the District to abate and minimize noise, dust, and disruption to normal activities at the existing facilities on the Site, including procedures to control on site noise, dust, and pollution during construction.
- 13.15.5 *Site Mitigation and Remediation.* Contractor shall be required to undertake Site mitigation or remediation at its sole cost for items identified in the Due Diligence Documents provided to Contractor. For hazardous substances and underground conditions that differ from representations in Contract Documents or Due Diligence Documents, Contractor shall provide notice within five (5) days after the discovery of the occurrence of the unforeseen conditions. If Due Diligence Documents and information provided to Contractor does not provide notice of the unforeseen condition, then the costs for such work shall be added as an extra pursuant to Article 18. Costs shall be allocated to the Unforeseen Allowance. However, to the extent Unforeseen Allowance is exceeded, District may, in its sole and absolute discretion, allocate any costs that exceed the Unforeseen Allowance arising from unforeseen underground conditions and hazardous substances that are not documented in the Construction Documents or in the Due Diligence Documents reviewed to the District Contingency.
- 13.15.6 *Utilities.* The Contractor shall perform and pay for all temporary utility hook ups and connections; the District shall pay for use of utilities during construction, as well as any fees owed to utility suppliers for connection to existing mainline facilities. Buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.
- 13.15.7 *Sanitary Facilities.* The Contractor shall provide a sanitary temporary toilet building as directed by the inspector for the use of all workers. The building shall be maintained in a sanitary condition at all times and shall be left at the site until the inspector directs removal. Use of toilet facilities in the work under construction shall not be permitted except by approval of the Inspector.
- 13.15.8 *Layout and Field Engineering.* All field engineering required for laying out this work and establishing grades for earthwork operations shall be furnished by the Contractor at its expense. Such work shall be done by a qualified civil engineer or land surveyor licensed in California and approved by the Architect. Any required "as built" drawings

of site development shall be prepared by a qualified civil engineer or land surveyor licensed in California and approved by the Architect.

- 13.15.9 *Cutting and Patching.* Contractor shall do all cutting, fitting, or patching of work as required to make its several parts come together properly and fit it to receive or be received by work of other contractors showing upon, or reasonably implied by, the drawings and specifications for the completed structure. Contractor shall make good after them as Architect may direct. All cost caused by defective or ill-timed work shall be borne by party responsible therefore. Contractor shall not endanger any work by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor without consent or at the direction of Architect.
- 13.15.10 *Documents on the Project Site.* Contractor shall keep one copy of all Contract Documents, including specifications; addenda; change orders, directives and other modifications to the Contract; Construction Change Directives; reviewed shop drawings, product data, and samples; field test records; inspection certificates; manufacturer's certificates and material data sheets; updated project schedule and weekly schedule; Division I, Title 21 of the California Code of Regulations, Parts 1-5 and 12 of Title 24, and Title 22 of the California Code of Regulations, and the prevailing wage rates applicable to the Project, which are a part of Contract Documents, on job at all times. Said documents shall be kept in good order and shall be available to District representative, Architect and his representatives. Contractor shall be acquainted with and comply with the provisions of said Titles 21, 22 and 24 as they relate to this Project. (See particularly Duties of the Contractor, Title 24 California Code of Regulations, Section 4-343.) Contractor shall also be acquainted with and comply with all California Code of Regulations provisions relating to this Project, particularly Titles 17, 19, 21, 22 and 24.) Contractor shall also make available all books, records, accounts, contracts, bids, etc. upon request of District.
- Contractor shall record information concurrent with construction progress and will also be required to use the Procure software program.
- 13.15.11 *Contractor to Bind Subcontractors to the Provisions of this Contract.* Contractor shall ensure that Subcontractors are bound to the same extent as Contractor is bound to District.
- 13.15.12 *Contractor Responsible for Means and Methods.* Contractor shall be solely responsible for the construction means, methods, techniques, sequences, procedures, and coordinating all portions of the work under the Contract Documents, unless the Contract Documents give other specific instructions concerning these matters. Contractor shall be responsible to see that the finished work complies accurately with the Contract Documents. Contractor shall not perform the work without utilizing the Contract Documents or, where required, approved shop drawings, product data, or samples for any such portion of the work.
- 13.15.13 *Contractor Responsible for Acts and Omissions of Employees.* Contractor shall be responsible to District for acts and omissions of Contractor's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the work under direct or indirect contract with Contractor or any of its Subcontractors.
- 13.15.14 *General DSA Compliance.* During the entire term of this Agreement, Contractor shall coordinate its services with the District, Architect, Project Inspector, and other parties to ensure that all requirements set forth in the DSA's Inspection Card (Form 152) and any subsequent revisions or updates thereto issued or required by DSA, or any other/alternate processes are being met in compliance with DSA requirements.

Contractor shall take all action necessary as to not delay progress in meeting any DSA requirements. Contractor shall meet any applicable requirements set forth in DSA's Construction Oversight Process Procedure (PR 13-01) and any subsequent revisions or updates thereto issued or required by DSA. Any references to DSA requirements for the Project shall be deemed to include and incorporate any revisions or updates thereto.

13.16 Close Out

13.16.1 *All DSA Close-Out requirements (See DSA Certification Guide).* Contractor is also specifically directed to the DSA Certification Guide and the applicable certificates for the DSA-311 form.

13.16.2 *Punch List Is Prepared Only After the Project Is Substantially Complete.* The Inspector and Architect shall prepare a Punch List of items which is an inspection report of the Work, if any, required in order to complete the Contract Documents and ensure compliance with the DSA Approved Plans so the Project may be Completed by the Contractor and a final DSA Close-Out is approved. When all Work for the Project is Complete, including Punch Lists and all Work complies with the approved Contract Documents and Change Orders, the Project has reached Final Completion.

13.16.3 *Time for Completion of Punch List.* Contractor shall only be given a period of no more than thirty (30) days to complete the Punch List on Project. During the Punch List period Contractor Superintendent and Project Manager shall remain engaged in the Project and shall not be removed or replaced. If the Punch List is not completed at the end of the Punch List time then Contractor shall issue a valued Punch List within 5 days after the date the Punch List time ends. If Contractor does not issue such a list, the Owner or Architect may issue a valued Punch List to the Contractor and withhold up to 150% of the value of the Punch List Work.

13.16.4 *As-Builts Up to Date and Complete.* The intent of this procedure is to obtain an exact "As-Built" record of the Work upon completion of the Project. The following information shall be carefully and correctly drawn on the prints and all items shall be accurately located and dimensioned from finished surfaces of building walls on all As-Built drawings:

13.16.4.1 The exact location and elevations of all covered utilities, including valves, cleanouts, etc. must be shown on As-Builts

13.16.4.2 Contractor is liable and responsible for inaccuracies in As-Built drawings, even though they become evident at some future date.

13.16.4.3 Upon completion of the Work and as a condition precedent to approval of release of the Retention Payment, Contractor shall obtain the Inspector's approval of the "As-Built" information. When completed, Contractor shall deliver corrected sepias and/or a Diskette with an electronic file in a format acceptable to the District.

13.16.4.4 District may withhold the cost to hire a draftsman and potholing and testing service to complete Record As-Built Drawings at substantial cost if the Contractor does not deliver a complete set of Record As-Built Drawings. This shall result in withholding of between \$10,000 to \$20,000 per building that does not have a corresponding Record As-Built Drawing.

13.16.5 *Any Work not installed as originally indicated on drawings*

- 13.16.6 *All DSA Close-Out requirements* (See DSA Certification Guide). Contractor is also specifically directed to the DSA Certification Guide and the applicable certificates for the DSA-311 form.
- 13.16.7 *Submission of Form 6-C.* Contractor shall be required to execute a Form 6-C as required under Title 24 Sections 4-343. The Contractor understands that the filing with DSA of a Form 6-C is a requirement to obtain final DSA Approval of the Construction by Contractor and utilized to verify under penalty of perjury that the Work performed by Contractor complies with the DSA approved Contract Documents.
- 13.16.8 *Contractor shall be Responsible for All Costs to Certify the Project.* The District may Certify the Project complies with Approved Construction Documents by utilizing the procedures under the Project Certification Guide (Located at the DSA website at [http://www.documents.dgs.ca.gov/dsa/plan\\_review\\_process/project\\_certification\\_guide\\_updated\\_03-15-13.pdf](http://www.documents.dgs.ca.gov/dsa/plan_review_process/project_certification_guide_updated_03-15-13.pdf)). All costs for professionals, inspection, and testing required for an alternate Project Certification shall be the Contractor's responsibility and the District reserves its right to institute legal action against the Contractor and Contractor's Surety for all costs to certify the Project and all costs to correct Non-Compliant Work that is discovered during the Alternate Certification Process.
- 13.16.9 *ADA Work that must be corrected* to receive DSA certification. See Article 41.
- 13.16.10 *Maintenance Manuals.* At least thirty (30) days prior to final inspection, three (3) copies of complete operations and maintenance manuals, repair parts lists, service instructions for all electrical and mechanical equipment, and equipment warranties shall be submitted. All installation, operating, and maintenance information and drawings shall be bound in 8½" x 11" binders. Provide a table of contents in front and all items shall be indexed with tabs. Each manual shall also contain a list of Subcontractors, with their addresses and the names of persons to contact in cases of emergency. Identifying labels shall provide names of manufactures, their addresses, ratings, and capacities of equipment and machinery.
- 13.16.11 Maintenance manuals shall also be delivered in electronic media for the Project. Any demonstration videos shall also be provided on electronic media.
- 13.17 Correction of Work: Warranty. Neither a Progress Payment, Sublease Payment nor any provision in the Contract Documents shall relieve Contractor of responsibility for faulty materials or workmanship incorporated in the Project. Contractor warrants that all work under this Construction Services Agreement will be free of faulty materials or workmanship and hereby agrees, within ten (10) days upon receiving notification from District, to remedy, repair or replace, without cost to District, all defects which may appear as a result of faulty materials or workmanship in the Project, at any time, or from time to time, during a period beginning with commencement of the Project and ending one (1) year after the date of completion of the specific Project for which the warranty is being provided, as defined in Article 18 hereof. The foregoing warranty of Contractor also applies to the remedy, repair or replacement of defects which may in the documents prepared by Contractor and/or any party retained by, through or under Contractor in connection with the Project, but the foregoing warranty of Contractor does not guarantee against damage to the Project sustained by use, wear, intentional acts, accidents, or lack of normal maintenance or as a result of changes or additions to the Project made or done by parties not directly responsible to Contractor, except where such changes or additions to the Project are made in accordance with Contractor's directions. No guarantee furnished by a party other than Contractor with respect to equipment manufactured or supplied by such party shall relieve Contractor from the foregoing warranty obligation of Contractor. The warranty period set forth herein above shall not apply to latent defects appearing in the Project, and with respect to such defects, the applicable statute of limitations shall apply. Contractor agrees to provide the District with all equipment and materials warranties provided by

manufacturers to District but has no obligation to assist in processing such warranty claims after said one (1) year warranty period.

13.17.1 *Assignment of Subcontracts.* Upon the Completion of the Warranty period, Contractor shall assign to the District all subcontracts with Subcontractors, material suppliers or other vendors that provided Work for the Project. This assignment shall include all purchase orders and any change orders or addenda that were executed with the assigned Subcontractor.

13.17.1.1 Documents to be Provided to District. Contractor shall provide the following documents to the District as part of Close Out of the Project:

- a. *Subcontractor Warranty.* Contractor shall provide any warranty documents, including warranties consistent with the requirements of this Contract and the Contract Documents.
- b. *Contracts.* Contractor shall provide copies of all subcontracts, amendments, change orders and other documents associated with the Subcontractor's scope of work and price for work on the Project.
- c. *Subcontractors Bound to the Same Extent as Contractor.* The Subcontractors shall be bound to the same extent as the Contractor is bound by this CSA and Subcontractors shall be required to include assignment of their contracts to the District.
- d. *Bonds Assignable.* Contractor shall ensure that Subcontractor performance and payment bonds are assignable and can be assigned to the District.
- e. *Unconditional Releases.* Contractor shall provide as part of the Close Out of the Project, Unconditional Releases for each Subcontractor and Material supplier that provided Work for the Project.
- f. *Project Files.* Contractor shall provide the District a copy of the entire Subcontractor file, including any submittals or shop drawings that were provided by Subcontractor.
- g. *District Reserves the Right to Assume Subcontractor Contracts Prior to the End of the Warranty Period.* District reserves the right to take assignment of Subcontractor contracts prior to the end of the warranty period.

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

#### 14. CONTRACT DOCUMENTS AND INTERPRETATIONS

14.1 The Contract Documents shall be executed, and/or initialed as appropriate, in duplicate by District and Contractor. The Contract Documents are complementary, and what is required by any one shall



be as binding as if required by all. The intention of the Contract Documents is to include all labor, services and materials reasonably necessary for the proper execution of the work.

- 14.2 It is not intended that work and/or services not covered under any heading, section, branch, class or trade of the specifications shall be supplied, unless it is required elsewhere in the Contract Documents or is reasonably inferable therefrom as being necessary to produce the intended results, in which case such work and/or services shall be supplied by Contractor. Words which have well known technical or trade meanings are used herein in accordance with such recognized meanings. Mutual agreement shall be reached with respect to words which do not have a well-known technical or trade meaning and the definition of which come into question.
- 14.3 Plans and Specifications are intended to be fully cooperative and to agree. All Plan and Specification changes shall be dated and sequentially recorded. All modifications to Plans and Specifications shall be interpreted in conformity with the Contract Documents, which shall govern, unless otherwise specified.

## 15. SUBMITTALS

### 15.1 Definitions

- 15.1.1 *Deferred Approvals.* Approval of certain aspects of the construction may be deferred until the construction Contract has been awarded. To facilitate the design process, DSA grants deferred approval to the design and detailing of certain elements of the Project at the request of the Architect or Engineer of Record. Design elements that may be deferred may include, but are not limited to Access floors, Bleachers, Elevator guide rails and related elevator systems, Exterior wall systems - precast concrete, glass fiber reinforced concrete, etc., Skylights, Window wall systems, storefronts, Stage rigging, and other systems as noted in the Contract Documents. (Also see Article 15.3 and 15.6).
- 15.1.2 *Shop Drawings.* The term "Shop Drawings" as used herein means drawings, diagrams, equipment or product schedules, and other data, which are prepared by Contractor, Subcontractors, manufacturers, suppliers, or distributors illustrating some portion of the Work, and includes: illustrations; fabrication, erection, layout and setting drawings; manufacturer's standard drawings; schedules; descriptive literature, instructions, catalogs, and brochures; performance and test data including charts; wiring and control diagrams; and all other drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and methods of construction as may be required to show that the materials, equipment, or systems and their position conform to the requirements of the Contract Documents.
- 15.1.3 *Manufactured* applies to standard units usually mass-produced, and "Fabricated" means items specifically assembled or made out of selected materials to meet individual design requirements. Shop drawings shall: establish the actual detail of all manufactured or fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.
- 15.1.4 *Submittals* is a term used interchangeably and sometimes refers to Shop Drawings, Product Data, and Samples since all Subcontractor submissions are tracked in a Submittal Log and may include any of the noted items. However, generally, a Submittal is a manufacturer's product information and product data including description, characteristics, size, physical characteristics, and requirements to prepare the jobsite for receiving of the particular manufactured item.

15.1.5 *Samples.* The term “samples” as used herein are physical examples furnished by Contractor to illustrate materials, equipment, or quality and includes natural materials, fabricated items, equipment, devices, appliances, or parts thereof as called for in the Specifications, and any other samples as may be required by the Architect to determine whether the kind, quality, construction, finish, color, and other characteristics of the materials, etc., proposed by the Contractor conform to the required characteristics of the various parts of the Work. All Work shall be in accordance with the approved samples.

15.2 Shop Drawings.

15.2.1 *When Shop Drawings Are Required.* Shop drawings are required for prefabricated components and for installation and coordination of these prefabricated components into the Project. In addition, Shop Drawings, are prepared to address the actual size and installation of components from various Subcontractors and provides an opportunity for the Contractor to coordinate and address conflicts between the subcontracting trades. In some cases, each Subcontractor or trade will provide Shop Drawings in a format agreed upon by District.

15.2.2 *Purpose for Shop Drawings.* Shop drawings are the Contractor’s manufacturer, Subcontractor, supplier, vendor or the Contractor’s detailed drawings showing particularized method for assembly, specifics to a manufacturer, manufacturer component installation requirements, specifics as to a manufactured item, alterations to a manufactured, a custom created item, or drawn version of more detailed information expanding on the Architect’s design shown in the Contract Documents. The Shop Drawings address the appearance, performance, size, weight, characteristics and prescriptive descriptions associated with the Contractor or Contractor’s Subcontractor’s plan for installation or assembly based on the design in the specifications and Contract Documents. The shop drawing often is more detailed than the information shown in the Contract Documents to give the Architect and Engineer the opportunity to review the fabricator’s version of the product (along with particulars specific to that particular product), prior to fabrication. References to the Contract Documents, Construction Documents, Drawings, Plans, and Specifications assist the Architect and Engineer in their review of the Shop Drawings. Attachment of manufacturer’s material specifications, “catalog cut sheets,” and other manufacturer’s information may be provided to accompany Shop Drawings. Because Shop Drawings facilitate the Architect’s and Engineer’s approval of the system, they should be as clear and complete as possible so they may be reviewed by Architect or Engineer for the Project.

15.2.3 *Shop Drawing Requirements.* The Contractor shall obtain and submit with Shop Drawings all seismic and other calculations and all product data from equipment manufacturers. “Product data” as used herein are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work.

15.2.4 *Not a Reproduction of Architectural or Engineering Drawings.* The shop drawing are not a reproduction of the architectural or engineering drawings. Instead, they must show more detail than the Construction Documents and details the fabrication and/or installation of the items to the manufacturer’s production crew or Contractor’s installation crews.

15.2.5 *Shop Drawings Engineering Requirements:* Some shop drawings require an engineer stamp to be affixed on the drawings and calculations. In such cases, a current and valid engineering stamp shall be affixed by a California registered engineer. No out of State engineers shall stamp Shop Drawings. (See DSA IR A-18). In most cases, an engineer

means California registered mechanical, structural, electrical or plumbing engineer. California Registered Civil Engineers will not be accepted for structural details unless specifically approved by DSA.

- 15.2.6 *DSA Approvals Required Prior to Work.* No work on a Shop Drawing that requires DSA approval may proceed until DSA approval is received. Contractor has provided DSA approval time and allowed adequate time for corrections in Contractor's Schedule as required pursuant to Article 9.
- 15.2.7 *Shop Drawing Identification.* All Shop Drawings must be properly identified with the name of the Project and dated, and accompanied by a letter of transmittal referring to the name of the Project and to the Specification section number for identification of each item clearly stating in narrative form, as well as "clouding" all qualifications, departures, or deviations from the Contract Documents. Shop drawings, for each section of the Work shall be numbered consecutively and the numbering system shall be retained throughout all revisions. All Subcontractor submissions shall be made through the Contractor. Each drawing shall have a clear space for the stamps of Architect and Contractor.
- 15.3 Deferred Approvals. Deferred approvals shall be submitted and processed to ensure all DSA and other governmental approvals are secured so as to not delay the Project. There may be additional requirements for deferred approvals in Division 1 of the Specifications. All deferred approvals shall be prepared by Contractor or Contractor's agent early enough so as to not delay the Project. Contractor is aware that Title 24 California Code of Regulations Section 4-317 has specific requirements for deferred approvals as to governing agencies and as to the Architect and Engineer for the Project. As a result, any delay associated with the time for approval by applicable agencies or by the Architect or Architect's consultants shall be Contractor's. Contractor is required to comply with inclusion of Deferred Approvals in the Schedule as required under Article 9
  - 15.3.1 *DSA Approvals Required Prior to Work.* No work on a deferred approval item may proceed on the components until DSA approval is received. Contractor has provided DSA approval time and allowed adequate time for any DSA revisions in Contractor's Schedule as required pursuant to Article 9.
- 15.4 Submittals and Samples
  - 15.4.1 *Information Required With Submittals:* Manufacturer, trade name, model or type number and quantities: Information provided must be of sufficient detail to allow Architect and Engineer to compare the submitted item with the specified products and acceptable products listed, in the specification and addenda.
  - 15.4.2 *Description of Use and Performance Characteristics:* Information should be furnished describing the normal use and expected performance of the product. The Architect and Contractor review this information to confirm that the product is appropriate for the intended use.
  - 15.4.3 *Size and Physical Characteristics:* The size and physical characteristics, such as adjustment capabilities, which is reviewed by both the Contractor and Architect. The Contractor has the most available information for comparing adjoining materials and equipment. The Contractor also needs to know the size and weight of the equipment for lifting and handling considerations.
  - 15.4.4 *Finish Characteristics:* The Architect reviews the available finishes and selects the appropriate finish, if the finish was not previously specified in the documents. The Contractor should confirm that finish requirements in the specification are being met by the product.

- 15.4.5 *Contractor Responsible for Jobsite Dimensions:* Some material is custom-fabricated to job conditions, requiring dimensions from the jobsite. These jobsite dimensions are provided by the Contractor as part of the Contractor's responsibilities for the Project and shall be provided prior to release of the product for manufacture. Contractor shall not rely on Architect or Engineers to provide jobsite dimensions.
- 15.4.6 *Full Range of Samples Required (When Specific Items Not Specified).* Except in cases where the exact color and type of item is specified since the District is utilizing items Standardized or pre-selected by District, the full range of color, graining, texture, or other characteristics are anticipated for review in finished products, a sufficient number of samples of the specified materials shall be furnished by the Contractor to indicate the full range of characteristics which will be present in the finished products. Products delivered or erected without Submittal and approval without providing a full range of samples shall be subject to rejection. Except for range samples, and unless otherwise called for in the various sections of the Specifications, samples shall be submitted in duplicate.
- 15.4.7 *Labeling of Samples.* All samples shall be marked, tagged, or otherwise properly identified with the name of the submitting party, the name of the Project, the purpose for which the samples are submitted and the date.
- 15.4.8 *Transmittal letter.* All samples shall be accompanied by a letter of transmittal containing similar information, together with the Specification section number.
- 15.4.9 *Labels and Instructions.* All samples of materials shall be supplied with the manufacturer's descriptive labels and application instructions. Each tag or sticker shall have clear space for the review stamps of Contractor and Architect.
- 15.4.10 *Architect's Review.* The Architect will review and, if appropriate, approve submissions and will return them to the Contractor with the Architect's stamp and signature applied thereto, indicating the timing for review and appropriate action in compliance with the Architect's (or District's) standard procedures. In the cases where a CM is hired by the District, CM may be the party that receives and performance logging and initial processing of the Samples. CM may, in some cases, reject samples that are not in conformance with Contract requirements.
- 15.5 Submittal Submission Procedure
- 15.5.1 *Transmittal Letter and Other Requirements.* All Submittals must be properly identified with the name of the Project and dated, and each lot submitted must be accompanied by a letter of transmittal referring to the name of the Project and to the Specification section number for identification of each item clearly stating in narrative form, as well as "clouding" on the submissions, all qualifications, departures, or deviations from the Contract Documents. Shop drawings, for each section of the Work shall be numbered consecutively and the numbering system shall be retained throughout all revisions. All Subcontractor submissions shall be made through the Contractor. Each drawing shall have a clear space for the stamps of Architect and Contractor. In the case where a CM is hired on the Project, the CM may be designated to receive the Submittals for the Project, log the Submittals, and in some cases reject Submittals that do not conform to Contract requirements.
- 15.5.2 *Copies Required.* Each Submittal shall include one (1) legible, reproducible (if electronic is available, electronic copies shall also be provided) and five (5) legible prints of each drawing or schedule, table, cut sheet, etc., including fabrication, erection, layout and setting drawings, and such other drawings as required under the various sections of the Specifications, until final acceptance thereof is obtained. Subcontractor

shall submit copies, in an amount as requested by the Contractor, of: (1) manufacturers' descriptive data for materials, equipment, and fixtures, including catalog sheets showing dimensions, performance, characteristics, and capacities; (2) wiring diagrams and controls; (3) schedules; (4) all seismic calculations and other calculations; and (5) other pertinent information as required by the District or Architect.

15.5.3 *Corrections.* The Contractor shall make all corrections required by Architect, District or CM and shall resubmit, as required by Architect or CM, corrected copies of Shop Drawings or new samples until approved. Contractor shall direct specific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections required by the Architect on previous submissions. Professional services required for more than one (1) re-review of required Submittals of Shop Drawings, product data, or samples are subject to charge to the Contractor pursuant to Article 10.4.

15.5.4 *Approval Prior to Commencement of Work.* No portion of the Work requiring a shop drawing or sample submission or other Submittal shall be commenced until the submission has been reviewed by Contractor and Architect (and CM, if applicable) and approved by Architect (and CM where applicable) unless specifically directed in writing by the Architect. All such portions of the Work shall be in accordance with approved Shop Drawings and samples.

15.5.5 *District's Property.* All Submittals, Shop Drawings, computer disks, constructability reviews, schedules, annotated specifications, samples and other Submittals shall become the District's property upon receipt by the District or Architect.

15.6 Schedule Requirements for Submittals. Contractor shall obtain and shall submit all required Submittals (i.e. Shop Drawings, Deferred Approvals, Samples, etc.), in accordance with Contractor's "Schedule for Submission of Shop Drawings and Samples" as required in the scheduling portion of the CSA at Article 9 and the Specifications (as long as the Specifications do not conflict with CSA. In the case of conflict, the conflicting provision shall be controlled by the CSA and the remaining specification sections shall be interpreted as if the CSA language is inserted) with such promptness as to cause no delay in its own Work or in that of any other contractor or Subcontractor but in no event later than thirty five (35) days after the Notice to Proceed is issued except in the specific cases noted as an exception as set forth below. No extensions of time will be granted to Contractor or any Subcontractor because of its failure to have Shop Drawings and samples submitted in accordance with this Article 15 and the Schedule. Each Subcontractor shall submit all Shop Drawings, samples, and manufacturer's descriptive data for the review of the District, the Contractor, and the Architect through the Contractor.

15.6.1 *Consideration of Schedule.* Contractor has considered lead times, DSA or other agency governmental review times, Architect or Engineer review times, manufacturing seasons, and specific long lead procurement concerns for all submittals for the Project.

15.6.1.1 All Submittals for the Project except those specifically agreed upon by District and Architect, in writing, shall be specifically incorporated into the Submittal section of the Schedule so as to not delay the Work. The agreement to allow a later Submittal does not mean that Article 15.6 is waived. Contractor shall order materials and ensure prices are honored and secured for the Project.

a. Structural Steel may be included as a Submittal later than 35 days if Structural Steel is a significant portion of the Work, at least one or some of the Project is a structural steel structural system, or as specifically agreed upon by the Architect or District.

- b. It is specifically agreed that submissions of structural steel Submittals shall not be piecemeal (unless some portion is requested separately by the Owner or Architect), shall provide complete designs, shall be stamped by the Structural Steel Subcontractor, Contractor, and Structural Steel Subcontractor's structural engineer at time of submission and as further addressed in this Article.
- c. In no case shall the submission of Structural Steel Drawings delay the critical path for the schedule. If a Milestone is provided for submission of complete structural steel Shop Drawings then the date shall be no later than as set forth in the Milestone

15.6.1.2 Exceptions to Submittal Within Thirty-Five (35) Days by Written Agreement. A written request detailing the specific reasons for a submission later than 35 days due to complexity of design, or non-critical path status of the Submittal shall be submitted at the time the Baseline Schedule is submitted. The Baseline Schedule shall not include a delayed Submittal until written agreement is provided. In addition to the request for providing a Submittal after the thirty-five (35) day period, a copy of the Contract with the Subcontractor who shall be performing the Submittal, a written statement from the Subcontractor verifying that work has commenced on the Submittal and providing Subcontractor's own schedule of milestones and completion dates, and a corresponding Submittal designation in the Schedule as required under Article 9

- a. Approval of a delayed Submittal shall not result in any increase in the Contract Price or result in an extension of time for the completion of the Project.

15.6.1.3 Piecemeal Submissions of Submittals. Piecemeal Submittals mean providing portions of Shop Drawings or Submittals as they are being completed. The submission of piecemeal Submittals results in the appearance of a submission when there is inadequate information for the Architect or Engineer to adequately review a submission. Piecemeal differs from submission of complete buildings or phases of buildings or complete assemblies. The Architect may agree to allow submission of single buildings or areas as long as the Submittals are complete.

## 15.7 General Submittal Requirements

15.7.1 *Contractor Submittal Representations.* By submitting Shop Drawings, product data, samples, etc., the Contractor represents that it has determined and verified all materials, field measurements, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents, including the construction schedule.

15.7.2 *Contractor Coordination.* By submitting Shop Drawings, Submittals, product data, samples, etc., the Contractor represents that it has determined and verified all materials, field measurements, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents, including the construction

schedule. Contractor shall stamp, sign, and date each Submittal indicating its representation that the Submittal meets all of the requirements of the Contract Documents and evidence Contractor's review through execution of the following stamp to be placed on each Shop Drawings:

"The [contractor] has reviewed and approved the field dimensions and the construction criteria, and has also made written notation regarding any information in the Shop Drawings and Submittals that does not conform to the Contract Documents. This Shop Drawing or Submittal has been coordinated with all other Shop Drawings and Submittals received to date by me as Contractor and this duty of coordination has not been delegated to Subcontractors, material suppliers, the Architect, or the Engineers on this Project.

\_\_\_\_\_  
Signature of Contractor and date

- 15.7.3 *No Deviation from Contract Documents.* The submission of the Shop Drawings, product data, samples, etc., shall not deviate from the requirements of the Contract Documents including detailing and design intent which is specifically outlined in Contract Documents except as specifically authorized by the Architect or through an accepted substitution pursuant to Article 16. All deviations from the Contract Documents shall be narratively described in a transmittal accompanying the Shop Drawings. However, Shop Drawings shall not be used as a means of requesting a substitution, the procedure for which is defined in Article 16, "Substitutions."
- 15.7.4 *Contractor Responsibility for Shop Drawings Conformance to Contract Documents.* Review by District and Architect shall not relieve the Contractor or any Subcontractor from its responsibility in preparing and submitting proper Shop Drawings in accordance with the Contract Documents.
- 15.7.5 *Incomplete Submittals.* Any submission, which in Architect's opinion is incomplete, contains errors, or has been checked superficially will be returned unreviewed by the Architect for resubmission by the Contractor.
- 15.7.6 *Shop Drawings and Submittals Shall Not Be Used as a Method to Make a Substitution.* Shop drawings and Submittals shall not be used as a means of requesting a substitution or to make changes in the Contract Documents. If changes are made to the Contract Documents through the Shop Drawings, the Architect shall have the right to reject the Submittal. If the Architect does not note the deviation from the approved Construction Documents, the Contractor is still responsible for the change and the Architect or the District may require the Shop Drawings be revised to properly reflect the approved Contract Documents. The Architect or District may also require that the Contractor bear all costs under Article 10.4 and consequential damages associated with a CCD to revise Construction Documents to accommodate the deviation from approved Construction Documents.
- 15.7.7 *Extent of Review.* In reviewing Shop Drawings, the Architect will not verify dimensions and field conditions. The Architect will review and approve Shop Drawings, product data, samples, etc., for aesthetics and for conformance with the design concept of the Work and the information in the Contract Documents. The Architect's review shall neither be construed as a complete check which relieves the Contractor, Subcontractor, manufacturer, fabricator, or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents unless the Contractor has, in writing, called the Architect's attention to the deviations at the time of submission. The Architect's review shall not relieve the

Contractor or Subcontractors from responsibility for errors of any sort in Shop Drawings or schedules, for proper fitting of the Work, coordination of the differing Subcontractor trades and Shop Drawings and Work which is not indicated on the Shop Drawings at the time of submission of Shop Drawings. Contractor and Subcontractors shall be solely responsible for any quantities which may be shown on the Submittals or Contract Documents.

**16. REQUEST FOR SUBSTITUTIONS**

- 16.1 For purposes of this provision the term "substitution" shall mean a change in product, material, equipment, or method of construction from those required by the Construction Documents proposed by the Contractor.
- 16.2 Public Contract Code section 3400 does not apply to this agreement since the materials, services, and equipment used has been investigated as part of the Due Diligence investigation by Contractor and incorporated in the overall GMP.
- 16.3 Contractor may submit requests together with substantiating data for substitution of any "or equal" material, process or article. Any savings generated from the substitution shall be considered Project Savings under Article 7. The District shall not be responsible for any costs of Contractor associated with "or equal" substitution requests. The District has the complete and sole discretion to determine if a material, process or article is an "or equal" material, process or article that may be substituted. The data required to substantiate requests for substitutions of an "or equal" material, process or article shall include a signed affidavit from the Contractor stating that the substituted "or equal" material, process or article is equivalent to that specified in the specification in every way except as listed on the affidavit. Substantiating data shall also include:
1. Is equal in quality/service/ability to the Specified Item;
  2. Will entail no changes in detail, construction, and scheduling of related work;
  3. Will be acceptable in consideration of the required design and artistic effect;
  4. Will provide no cost disadvantage to the District;
  5. Will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts; and
  6. Will required no change of the construction schedule
- 16.4 Failure to submit all the needed substantiating data, including the signed affidavit, to the Architect in a timely fashion so that the substitution can be adequately reviewed may result in the rejection of the proposed substitution. The District is not obligated to review multiple substitution submittals for the same product or item due to the Contractor's failure to submit a complete package initially.
- 16.5 Contractor shall bear the costs of all architectural and engineering work, DSA CCD review fees, and other costs associated with the review of submittals for substitution. See Article 10.4.
- 16.6 Contractor agrees to include the provisions of this Article in all Subcontractor contracts.

**17. EXTRA WORK/MODIFICATIONS (INCLUSION OF CCD COSTS, DSA COSTS, AND AN ICD PROCESS)**

- 17.1 No Changes Without Authorization. There shall be no change whatsoever in the drawings, specifications, or in the Work without an executed Change Order, Change Order Request, Immediate Change Directive, or order by the Architect for a minor change in the Work as herein provided. District shall not be liable for the cost of any extra work or any substitutions, changes,



additions, omissions, or deviations from the Drawings and Specifications unless authorized District representative has approved the cost in writing by Change Order or executed Construction Change Document. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications. Notwithstanding anything to the contrary in this Article 17, all Change Orders shall be prepared and issued by the Architect and shall become effective when executed by the authorized District representative (utilizing either a Construction Contingency Amount or a District Contingency Amount), the Architect, and the Contractor.

CONTRACTOR UNDERSTANDS, ACKNOWLEDGES, AND AGREES THAT THE REASON FOR THIS NOTICE REQUIREMENT IS SO THAT DISTRICT MAY HAVE AN OPPORTUNITY TO ANALYZE THE WORK AND DECIDE WHETHER THE DISTRICT SHALL PROCEED WITH THE CHANGE ORDER OR ALTER THE PROJECT SO THAT SUCH CHANGE IN WORK BECOMES UNNECESSARY AND TO AVOID THE POSSIBLE DELAYS ASSOCIATED WITH THE ISSUANCE OF A NOTICE OF NON-COMPLIANCE.

- 17.2 Notices of Non-Compliance. Contractor deviation or changes from approved Construction Documents may result in the issuance of a Notice of Non-Compliance (See DSA Form 154). Contractor is specifically notified that deviations from the Construction Documents, whether major or minor, may result in the requirement to obtain a DSA Construction Change Document to correct the Notice of Non-Compliance. (See Article 17.4.1.1 for Definition of CCD). In some cases, the lack of a DSA approved CCD AND verification from the Inspector that a Notice of Non-Compliance has been corrected may result in a critical path delay to the next stage of Work on the Project. Specifically, a deviation from approved Construction Documents may prevent approval of the category of Work listed in the DSA 152 Project Inspection Card. Any delays that are caused by the Contractor's deviation from approved Construction Documents shall be the Contractor's responsibility.
- 17.3 Architect Authority. The Architect will have authority to order minor changes in the Work that do not involve DSA Approval not involving any adjustment in the Contract Sum, or an extension of the Contract Time.
- 17.4 CONSTRUCTION CHANGE DOCUMENT (CCD Category A, and CCD Category B) and IMMEDIATE CHANGE DIRECTIVE (ICD)

17.4.1 *Definitions*

17.4.1.1 Construction Change Document (CCD). A Construction Change Document is a DSA term that is utilized to address changes to the DSA approved Construction Documents. There are two types of Construction Change Documents. (1) DSA approved CCD Category A (DSA Form 140) for Work affecting Structural, Access or Fire-Life Safety of the Project which will require a DSA approval; and, (2) CCD Category B (DSA Form 140) for work NOT affecting Structural Safety, Access Compliance or Fire and Life Safety that will not require a DSA approval (except to confirm that no Approval is required);

17.4.1.2 Immediate Change Directive (ICD). An Immediate Change Directive is a written order to the Contractor prepared by the Architect and signed by the District (and CM if there is a CM on the Project) and the Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The District may by ICD, without invalidating the Contract, direct immediate changes in the Work within the general scope of the Contract consisting

of additions, deletions, or other revisions within. If applicable, the Contract Sum and Contract Time will be adjusted accordingly.

In the case of an Immediate Change Directive being issued, Contractor must commence Work immediately or delays from failure to perform the ICD shall be the responsibility of Contractor and the failure to move forward with Work immediately shall also be grounds for Termination under Article 19 or determination of partial default under Article 12.2.

An ICD does not automatically trigger an Article 20 Dispute or Claim. Contractor must timely follow the procedures outlined at Article 20 and this Article where applicable.

Refer to Forms for a copy of the proposed Immediate Change Directive form.

17.4.1.3

Use to Direct Change. An ICD shall be used to move work forward immediately and to avoid delay. In some cases, an ICD shall be issued in the absence of agreement on the terms of an Extra, or RFP. A copy of an ICD form is provided in the Forms included with this CSA. The anticipated not to exceed price for the Work will be inserted into the ICD. In the case of an ICD issued to correct Contractor Deficiencies or to correct a Contractor caused Notice of Non-Compliance, the ICD may be issued with \$0 and 0 time. Contractor may prepare an Extra associated with the ICD pursuant to Article 17. However, Contractor shall proceed with all Work required under an Approved ICD immediately upon issuance. Failure to proceed with the Work under an ICD shall be grounds for Termination for Cause under Article 19 or take over the Work under Article 12.2.

If adequate time exists, an ICD may be subject of an RFP for pricing and determination if any time that may be required. However, if an RFP is not completed, Contractor shall immediately commence Work when an ICD is issued. If the RFP is incomplete, it may still be completed to be submitted for Pricing Purposes as long as the PR is submitted within the timeline provided by the PR, or within 10 days following issuance of the ICD.

17.4.1.4

ICD Issued Over a Notice of Non-Compliance or to Cover Work Subject to a DSA 152 Sign Off. In some cases, an ICD shall be for the purpose of proceeding with Work to keep the Project on Schedule and as an acknowledgement by the District that Contractor is proceeding with Work contrary to a Notice of Non-Compliance, prior to issuance of a DSA approved CCD Category A, or to direct the covering of Work which has not yet received a DSA 152 Inspection Approval to move forward.

- a. *Contractor Compliance with all Aspects of an ICD.* Contractor is to undertake the ICD and comply with all aspects of the Work outlined in the ICD. Inspector is to inspect the Work pursuant to the ICD. Failure to follow the ICD may result in deduction of the ICD Work under Article 12.2 or Termination of the Contractor pursuant to Article 19.
- b. *Exception in the Case of DSA Issued Stop Work Order.* Contractor must proceed with an ICD even if a CCD has not

been approved by DSA except in the case of a DSA issued Stop Work Order. If a DSA Stop Work Order is issued, Contractor must stop work and wait further direction from the District.

- c. *ICD Due to Contractor Deficiency or Contractor Caused Notice of Non-Compliance.* If an ICD is issued to correct a Contractor Deficiency or a Contractor caused notice of Non-Compliance, Contractor specifically acknowledges responsibility for all consequential damages associated with the Contractor Deficiency or Contractor Caused Notice of Non-Compliance and all consequential damages and costs incurred to correct the deficiency under Article 10.4.

17.5 Extras Request. Extra work or a modification or reduction of requirements or of methods of performing the Construction which differ from the work or requirements set forth in the Construction Documents ("Extra Work/Modifications"); and for such purposes, the District may at any time during the life of this Construction Services Agreement by written order, make such changes as it shall find necessary from Construction Contingency if District approves such request in writing. The costs of the Extra Work/Modifications, as established pursuant to this Article, shall be deducted from the Construction Contingency as mutually agreed in writing or the Errors and Omissions Contingency or the Unforeseen Allowance as determined by the District, and shall not affect the GMP.

17.5.1 *Format.* The following format shall be used, as applicable by the District and the Contractor to communicate proposed additions and deductions to the Contract. A copy of a proposed Construction Change Document form is provided in Division 1 of the Specifications. The most stringent guidelines will apply to all forms.

	<u>EXTRA</u>	<u>CREDIT</u>
(a) Material (attach itemized quantity and unit cost plus sales tax)	_____	_____
(b) Equipment (attach invoices)	_____	_____
(c) Labor Not to Exceed Applicable Prevailing Wage Rates (attach itemized hours and rates)	_____	_____
(d) Subtotal (a-d)	_____	_____
(e) If Subcontractor performed work, add Subcontractor's overhead and profit to portions performed by Subcontractor, not to exceed 10% of item (d).	_____	_____
(f) Subtotal	_____	_____

	<u>EXTRA</u>	<u>CREDIT</u>
(g) Contractor's Overhead and Profit: Not to exceed 10% of Item (d) if Contractor performed the work. No more than 5% of Item (d) if Subcontractor performed the work. If work was performed by Contractor and Subcontractors, portions performed by Contractor shall not exceed 10% if Item (d), and portions performed by Subcontractor shall not exceed 10% of Item (d)		
(h) Subtotal		
(i) Bond not to exceed one percent (1%) of Item (h)		
(j) TOTAL		
(k) Time/ Days		

The undersigned Contractor approves the foregoing Extra Work as to the changes, if any, and the contract price specified for each item and as to the extension of time allowed, if any, for completion of the entire work on account of said Extra Work, and agrees to furnish all labor, materials and service and perform all work necessary to complete any additional work specified therein, for the consideration stated herein. It is understood that said Extra Work shall be effective upon approval from the District's Designee if such amounts are against the GMP and if Owner Contingency is used when approved by the Governing Board of the District.

It is expressly understood that the value of such extra Work or changes, as determined by any of the aforementioned methods, expressly includes any and all of the Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs, expenses, damages or time extensions not included are deemed waived.

The Contractor expressly acknowledges and agrees that any change in the Work performed shall not be deemed to constitute a delay or other basis for claiming additional compensation based on theories including, but not limited to, acceleration, suspension or disruption to the Project.

17.5.2 Should Contractor claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation (i) obligates the District to pay additional compensation to the Contractor; or (ii) obligates the District to grant an extension of time for the completion of the Construction Services Agreement; or (iii) constitutes a waiver of any provision in this Construction Services Agreement, CONTRACTOR SHALL NOTIFY THE DISTRICT, IN WRITING, OF SUCH CLAIM AS SOON AS POSSIBLE, BUT IN NO EVENT WITHIN MORE THAN TEN (10) BUSINESS DAYS FROM THE DATE CONTRACTOR HAS ACTUAL OR CONSTRUCTIVE NOTICE OF THE CLAIM. CONTRACTOR SHALL ALSO PROVIDE DISTRICT WITH SUFFICIENT WRITTEN DOCUMENTATION SUPPORTING THE FACTUAL BASIS OF THE CLAIM under Article 20. Contractor shall be required to certify under penalty of perjury the validity and accuracy of any claims submitted. The Contractor's failure to notify the District within the ten (10) business day period shall be deemed a waiver and relinquishment of the claim against the District. If such notice be given within the specified time, the procedure for its consideration shall be as stated above in this Section.

17.5.3 All costs associated with the Extra Work/Modification may be in terms of time, money or both.

17.6 Deductive Change Orders

- 17.6.1 All Deductive Change Order(s) must be prepared utilizing the form under Paragraph 17.5 (a)-(d) only setting forth the actual costs incurred. Except in the case of an Article 12.2 or 29.4 Deductive Change Order where no mark-up shall be allowed, Contractor will be allowed a maximum of 5% total profit and overhead.
- 17.6.2 For Unilateral Deductive Change Orders, or where credits are due from Contractor for Allowances, Deductive Items, Inspection, Damage, DSA CCD review costs, Architect or Inspector costs for after hours or corrective services, Work removed from the Agreement under Article 12.2 or Article 29.4, there shall be no mark-up.
- 17.6.3 District may, at any time, after a Deductive Change Order is presented to Contractor by District for items under Article 12.2 or Article 29.4 of if there is disagreement as to the Deductive Change Order, issue a unilateral Deductive Change Order on the Project and deduct the Deductive Change Order from a Progress Payment or the Retention Payment.

18. **TIME OF COMPLETION**

- 18.1 ONCE THE DISTRICT HAS ISSUED A NOTICE TO PROCEED, CONTRACTOR SHALL PROCEED WITH THE CONSTRUCTION OF THE PROJECT WITH REASONABLE DILIGENCE. CONTRACTOR AGREES THAT THE PROJECT WILL BE SUBSTANTIALLY COMPLETE WITHIN THE CALENDAR DAYS DESIGNATED IN ARTICLE 3 FROM THE NOTICE TO PROCEED. SAID CONTRACT TIME MAY BE EXTENDED FOR SUCH PERIODS OF TIME AS ALLOWED UNDER THE CONTRACT DOCUMENTS. IF THE PROJECT IS NOT SUBSTANTIALLY COMPLETED IN ACCORDANCE WITH THE FOREGOING, IT IS UNDERSTOOD THAT THE DISTRICT WILL SUFFER DAMAGE SINCE CONTRACTOR HAS OVERSTAYED ITS LEASE TERM. IT BEING IMPRACTICAL AND INFEASIBLE TO DETERMINE THE AMOUNT OF ACTUAL DAMAGE, IT IS AGREED THAT CONTRACTOR'S EXTENSION OF THE LEASE SHALL RESULT IN LIQUIDATED DAMAGES, AND NOT AS A PENALTY, THE SUM SET FORTH IN ARTICLE 3 FOR EACH CALENDAR DAY OF DELAY UNTIL WORK IS SUBSTANTIALLY COMPLETED. CONTRACTOR AND ITS SURETY SHALL BE LIABLE FOR THE AMOUNT THEREOF. ANY MONEY DUE OR TO BECOME DUE THE CONTRACTOR MAY BE RETAINED BY THE DISTRICT TO COVER SAID LIQUIDATED DAMAGES FOR OVERSTAYING THE LEASE. SHOULD SUCH MONEY NOT BE SUFFICIENT TO COVER SAID LIQUIDATED DAMAGES, THE DISTRICT SHALL HAVE THE RIGHT TO RECOVER THE BALANCE FROM THE CONTRACTOR OR ITS SURETIES, WHO WILL PAY SAID BALANCE FORTHWITH.
- 18.2 Within five (5) business days after the Project commencement date in the District's Notice to Proceed, Contractor shall furnish District with a Baseline CPM (Critical Path) Schedule pursuant to Article 9. The Contractor shall include the District's occupancy requirements showing portions of the Projects having occupancy priority.
- 18.3 Contractor shall not be charged for liquidated damages, as set forth in the Agreement, for materially differing underground soil conditions than those outlined in the soils report and from hazardous substances that are encountered that are not documented in the Contract Documents or in the Due Diligence Documents provided to Contractor.
  - 18.3.1 In case of encountering such unforeseen conditions noted above, Contractor shall notify the District in writing immediately and no later than seven (7) days following encountering the unforeseen condition. After providing written notice, Contractor shall test and provide District with Test results (unless District choses to test) and shall proceed with Work based on the Test results. A Change Order pursuant to Article 17 shall be submitted. All time and expenses shall be verified with the Inspector or District

Designee either on the day the extra work occurs, but no later than 10 am the following business day.

- 18.3.2 Change Orders associated with approved unforeseen conditions shall be billed as Change Order Work and allocated to the Unforeseen Allowance, and if the Unforeseen Allowance is exceeded, the District, in its sole and absolute discretion, may allocate such costs to the District Contingency to the extent unforeseen conditions as defined in this Article are encountered.
- 18.4 Contractor shall within ten (10) calendar days of beginning of any such delay notify District in writing of causes of delay. Thereupon District shall ascertain the facts and extent of delay and grant extension of time for completing work when, in its judgment, the findings of fact justify such an extension. Extension of time shall apply only to that portion of work affected by the delay, and shall not apply to other portions of work not so affected. Contractor agrees that the extension of time granted under this Article shall be its sole and exclusive remedy for the consequences of any delay described above. For any such delay resulting from the actions or inactions of Architect, District, or their officers, agents, and employees, or changes to the scope of the Work which impact the schedule, Contractor shall be entitled to reimbursement for its reasonable additional costs resulting from such delay, but not any additional profit or fee.
- 18.5 Contractor acknowledges the extreme importance of promptly notifying and thoroughly documenting any request for time extension and further specifically acknowledges that District will suffer extreme prejudice should Contractor fail in any way to comply with this requirement. Failure to comply with the procedures and time limits established in this Article shall constitute a waiver of such request. Evidence presented by Contractor that District had actual notice of the time extension request, that District was not prejudiced by Contractor's failure to comply with this requirement, and/or that District considered Contractor's request despite Contractor's failure to strictly comply with this provision shall not render this requirement unenforceable.
- 18.6 Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its work at no additional cost or advance payment from District to assure that there will be no delays. An extension of time will not be granted for a delay caused by a shortage of materials.
- 18.7 Contractor shall not be entitled to additional compensation for delays within its control. Contractor is aware that governmental agencies, such as the Department of General Services, gas companies, electrical utility companies, water districts and other agencies may have to approve Contractor-prepared drawings or approve a proposed installation. In the event of delays to the Project from such agencies for which Contractor has no control, provided such delays are not caused by Contractor's or any Subcontractor's acts or omissions, Contractor may be entitled to a time extension for such delays, but shall not be allowed additional compensation for the costs of such delays not impacting the Project's critical path.
- 18.8 District reserves the right to occupy any building or portion thereof or use any improvement contemplated by the Contract Documents prior to the completion of the entire Project. A list of work to be completed and corrected by Contractor, if any, shall be prepared and agreed to between District and Contractor before any such occupancy or use. Such occupancy or use shall not operate as an acceptance of any part of the Project but shall start the guaranty-warranty period on the structure or portion thereof so occupied or improvement or equipment so used; provided, however, that such occupancy or use shall not start the guaranty-warranty period as to items appearing on the list of work yet to be completed and corrected or as to structures or improvements (or portions thereof) that are not occupied or used. No such occupancy or use shall be deemed to have occurred unless and until District has given Contractor written notice of its intention to so occupy or use any particular structure or improvement specifying the portion or portions of the structure, improvement or equipment which will be deemed so occupied or used. District and Contractor shall take reasonable steps to obtain the consent of Contractor's insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would

cause cancellation, lapse of or reduction of such insurance. Such occupancy or use by District shall relieve Contractor of (and District shall assume) the responsibility for injury or damage to said occupied or used portions of the Project resulting from use by District or the public or from the action of the elements or from any other cause, except injury or damage resulting from the operations, negligence or intentional acts of Contractor, any Subcontractors or materialmen of any tier, or their officers, employees or agents.

- 18.9 Contractor shall not be charged for Liquidated Damages because of any delays in completion of Work which are not the fault or negligence of Contractor or its Subcontractors, arising from Rain Float or Project Float, including acts of God, as defined in Public Contract Code section 7105, acts of enemy, epidemics, pandemics, and quarantine restrictions. Any delays caused by acts of God, as defined in Public Contract Code section 7105, acts of enemy, epidemics, pandemics, quarantine restrictions, Project shutdowns, suspensions, or any orders issued a federal, state, local or other governmental authority (collectively, "Force Majeure Events") shall be deemed non-compensable excusable delays. Contractor shall within five (5) calendar days of beginning of any such delay notify District in writing of causes of delay; thereupon District shall ascertain the facts and extent of delay and grant extension of time for completing Work when, in its judgment, the findings of fact justify such an extension. Extensions of time shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected. An extension of time may only be granted after proper compliance with Article 8.3 requiring preparation and submission of a properly prepared CPM schedule.

- 18.9.1 Excusable Delay Is Not Compensable. No extended overhead, general conditions costs, impact costs, out-of-sequence costs or any other type of compensation, by any name or characterization, shall be paid to the Contractor for any delay to any activity not designated as a critical path item on the latest approved Project schedule or if caused by Force Majeure Events.

## 19. **TERMINATION OF AGREEMENT**

### 19.1 **Termination for Breach.**

- 19.1.1 If the Contractor refuses or fails to proceed with the construction of the Project or any separable part thereof with such diligence as will insure its completion within the time specified by this Construction Services Agreement or any extension thereof, or fails to Complete the Project within the Contract Time, or if the Contractor should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or the Contractor or any of its Subcontractors should violate any of the provisions of this Construction Services Agreement, the District may serve written notice upon the Contractor and its Surety of the District's intention to terminate this Construction Services Agreement. This notice of intent to terminate shall contain the reasons for such intention to terminate this Construction Services Agreement and a statement to that effect that the Contractor's right to perform work on the Project shall cease and terminate upon the expiration of ten (10) days unless such violations have ceased and arrangements satisfactory to the District have been made for correction of said violations.
- 19.1.2 In the event that the District serves such written notice of termination upon the Contractor and the Surety, the Surety shall have the right to take over and perform this Construction Services Agreement. If the Surety does not: (1) give the District written notice of Surety's intention to take over and commence performance of this Construction Services Agreement within fifteen (15) days of the District's service of said notice of intent to terminate upon Surety; and (2) actually commence performance of this Construction Services Agreement within thirty (30) days of the District's service of said notice upon Surety; then the District may take over the Project and prosecute

the same to completion by separate contract(s) or by any other method it may deem advisable for the account and at the expense of the Contractor.

- 19.1.3 In the event that the District elects to obtain an alternative performance of the Construction Services Agreement as specified above: (1) the District may, without liability for so doing, take possession of and utilize in completion of the Project such materials, appliances, plants and other property belonging to the Contractor that are on the site and reasonably necessary for such completion; and (2) Surety shall be liable to the District for any cost or other damage to the District necessitated by the District securing an alternate performance pursuant to this Article.

19.2 Termination for Convenience.

- 19.2.1 The District may terminate performance of the Project called for by the Contract Documents in whole or, from time to time, in part, if the District determines that a termination is in the District's interest.
- 19.2.2 The District shall terminate all or any part of the Project upon delivery to the Contractor of a "Notice of Termination" specifying that the termination is for the convenience of the District, the extent of termination, and the effective date of such termination.
- 19.2.3 After receipt of Notice of Termination, and except as directed by the District's Representative, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:
1. Stop Work as specified in the Notice of Termination.
  2. Complete any work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
  3. Leave the Property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
  4. Terminate all subcontracts to the extent that they relate to the portions of the work terminated.
  5. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Construction Services Agreement.
  6. Submit to the District's Representative, within ten (10) days from the Project termination date found in the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Project termination date, including termination costs related to demobilizing and closing out the Project, found in the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the District's exercise of its right to terminate this Construction Services Agreement pursuant to this clause, which costs the Contractor is authorized under the Construction Services Agreement to incur, shall: (i) be submitted to and received by the District no later than thirty (30) days after the Project termination date found in the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as



“Termination Costs occasioned by the District’s Termination for Convenience.”

19.2.4 Termination of the Construction Services Agreement shall not relieve the Surety of its obligation for any just claims arising out of or relating to the work performed on the Project.

19.2.5 In the event that the District exercises its right to terminate this Construction Services Agreement pursuant to this clause, the District shall pay the Contractor, upon the Contractor’s submission of the documentation required by this provision, and other applicable provisions of the Construction Services Agreement the following amounts not already paid to Contractor:

1. All actual costs incurred according to the provisions of this Construction Services Agreement including but not limited to insurance costs incurred in connection with the Project.
2. A reasonable allowance for profit on the cost of the work on the Project performed and not otherwise paid for the District, provided Contractor establishes to the satisfaction of the District, that it is reasonably probable that the Contractor would have made a profit had the Construction Services Agreement been completed and provided further, that the profit allowed shall in no event exceed five percent (5%) of costs. In no event shall the total amount exceed GMP.
3. A reasonable allowance for Contractor’s administrative costs in determining the amount payable due to termination of the Construction Services Agreement under this Article.

19.3 Termination of Agreement by Contractor. The Contractor may terminate the Construction Services Agreement upon ten (10) days written notice to the District, whenever: (1) there is a substantial failure of performance on the part of the District; or (2) the District shall elect not to appropriate funds and/or not to make two (2) successive Sublease Prepayments (if exercised by the District in its sole discretion) following the receipt by District of a request from the Contractor in its capacity as Lessor for each such Sublease Prepayment pursuant to Article 21 of the Sublease. In the event of such termination, the Contractor shall have no claims against the District except for payment for the value of the work performed on the Project as of the date of termination.

19.4 Assignment of Subcontractors and Suppliers. If the Contract is Terminated, Contractor shall provide District copies of all subcontracts, purchase orders, addenda, invoices, payment records, and Project files associated with each Subcontractor and Material Supplier. The District shall have the option to assume any Subcontracts, contracts or purchase orders the District chooses. To the extent that vendors are not paid in full for the labor, materials, or services provided, Contractor shall provide an accounting statement showing the amounts paid and the amounts due to the Subcontractor and a statement on the anticipated payment status associated with the Termination.

19.5 Continuation of Work During Disputes. In the event of a dispute between the parties as to performance of the work or the interpretation of this contract, or payment dispute, the parties shall attempt to resolve the dispute. Pending resolution of this dispute, Contractor agrees to continue the work diligently to completion and shall neither rescind nor terminate the agreement.

## 20. RESOLUTION OF AGREEMENT CLAIMS

20.1 Decision of Architect. “Disputes” or “Claims” as defined in Article 20.9.1.1 between District and Contractor involving money or time, including those alleging an error or omission by the Architect shall be referred initially to the Architect for action as provided in Article 20.2 within ten (10) days

after Contractor's Article 17 request for extra work/ modification is denied. If there is a CM, the CM shall receive the Dispute and may review and also assemble opinions and documents to assist the Architect. A decision by the Architect, as provided in Article 20.5, shall be required as a condition precedent to proceeding with remedies set forth in Article 20.9 as to all such matters arising prior to the date Retention Payment Application is due, regardless of whether such matters relate to execution and progress of the Work, or the extent to which the Work has reached Final Completion.

The condition precedent of an Architect decision shall be waived if: (1) the position of Architect is vacant; (2) the Architect has failed to take action required under Article 20.5 within the time periods required therein; or (3) the Dispute or Claim relates to a stop notice claim not arising from any extra Change Order or Immediate Change Directive for which approval has not been provided.

- 20.2 Architect's Review. The Architect (and CM) will review the Dispute and take one or more of the following preliminary actions upon receipt of a Dispute: (1) request additional supporting data from the claimant; (2) submit a schedule to the parties indicating when the Architect expects to take action; (3) reject the Dispute in whole or in part, stating reasons for rejection; (4) recommend approval of the Dispute; or (5) suggest a compromise. The Architect may also, but is not obligated to, notify the Surety, if any, of the nature and amount of the Dispute..

20.2.1 Architectural Immunity. Architect review of Disputes and Claims shall be impartial and meant to resolve Disputes and Claims. Pursuant to the case, Huber, Hunt & Nichols, Inc. v. Moore (1977) 67 Cal.App.3d 278, the Architect is provided a quasi-judicial immunity for interpreting and deciding Disputes and Claims between the District and Contractor.

- 20.3 Documentation if Resolved. If a Dispute has been resolved, the Architect (and/or CM) will prepare a Change Order or obtain appropriate documentation to document the terms for Board approval.

- 20.4 Actions if Not Resolved. If a Dispute has not been resolved and all documentation requested pursuant to Article 20.2 has been provided, the Contractor shall, within ten (10) days after the Architect's initial response, assemble all the documents involved in the Dispute including copies of all back-up documentation of costs and the basis for the Dispute and take one or more of the following actions: (1) modify the initial Dispute; (2) notify the Architect that the initial Dispute stands; or (3) supplement with additional supporting data and re-submit to the Architect under Article 20.2.

- 20.5 Architect's Written Decision. If a Dispute has not been resolved after consideration of the foregoing and of other evidence presented by the parties or requested by the Architect, the Architect (or Architect through CM) shall provide a written decision twenty (20) days after compliance with Article 20.4. Upon expiration of such time period, the Architect (or Architect through CM) will render to the parties its written decision relative to the Dispute, including any change in the Contract Sum or Contract Time or both. The Architect may also request reasonable additional time to complete Architect's written decision.

If the resolution of the Dispute by the Architect is not satisfactory to the Contractor and copies of all back-up documentation of costs and the basis for the Dispute is fully articulated in a package of material that is complete, the Contractor may then submit a Claim to the District under Article 20.9.

- 20.6 Continuing Contract Performance. Pending final resolution of a Dispute or Claim, including, negotiation, mediation, arbitration, or litigation, the Contractor shall proceed diligently with performance of the Contract, and the District shall continue to make any undisputed payments in accordance with the Contract (less any withholdings or offsets). If the Claim is not resolved, Contractor agrees it will neither rescind the Contract nor stop the progress of the work, but Contractor's sole remedy shall be to submit such controversy to determination by a court of

competent jurisdiction in the county where the Project is located, after the Project has been completed, and not before.

20.6.1 *District's Option to Submit Individual Disputes to Arbitration during Claims and Disputes Process.* At the District's sole option, in order to more efficiently resolve Claims during the Project and prior to the completion of the Claims Process, pursuant to Government Code section 9201, the District may submit individual Disputes or Claims for binding arbitration and Contractor agrees to the resolution of for each individual Dispute or Claim by an Arbitrator, including resolution of time and delays. If binding arbitration is utilized for individual Disputes or Claims, such resolution is full and final as to that particular Dispute or Claim. THIS INDIVIDUAL DISPUTE ARBITRATION PROCESS IS NOT AN ARBITRATION CLAUSE AND SHALL NOT BE CONSTRUED AS AN AGREEMENT TO ARBITRATE. THIS INDIVIDUAL DISPUTES ARBITRATION PROCESS IS FOR THE SOLE PURPOSE OF STREAMLINING AND RESOLVING DISPUTES OR CLAIMS DURING CONSTRUCTION AND SHALL BE REQUESTED ON SPECIFIC INDIVIDUAL ITEMS BY THE DISTRICT PRIOR TO RETENTION PAYMENT (EVEN IF THERE ARE DEDUCTIONS MADE FROM RETENTION PAYMENT) WHICH REPRESENTS THE FINAL COMPLETION OF THE PROJECT.

20.6.1.1 If there is no Retention remaining on the Project, individual Disputes initiated prior to Project Final Completion shall continue until a final disposition of the Arbitration or resolution of the individual Claim or Dispute.

20.6.1.2 The Arbitration process shall not toll the Disputes or Claims process under Article 20 or the requirement to submit Claims to Court under Article 20.13.

20.7 Claims for Concealed Trenches or Excavations Greater Than Four Feet Below the Surface. When any excavation or trenching extends greater than four feet below the surface:

20.7.1 *Immediately upon discovery,* The Contractor shall promptly, and before the following conditions are disturbed, notify the District, by telephone and in writing of any:

20.7.1.1 Subsurface or latent physical conditions at the Site differing from those indicated in the Drawings, Specifications, or pursuant to the documents and information from Contractor's Due Diligence or Due Diligence Documents.

20.7.1.2 Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract.

20.7.1.3 Hazardous waste condition, except, if Contractor's bid includes removal or disposal of hazardous substances, or is part of Contractor's Due Diligence or Due Diligence Documents. Material that the Contractor believes may be a material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law. In such case, the notice procedures and requirements of Article 17.5.2 shall apply.

20.7.2 *The District shall investigate the conditions,* and if District finds that the conditions do materially so differ, and cause a decrease or increase in the Contractor's cost of, or the

time required for, performance of any part of the Work shall issue a change order or Construction Change Document under the procedures described in the Contract.

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

20.8 Dispute Concerning Extension of Time. If Contractor and District cannot agree upon an extension of time, whether compensable or not, then Contractor must have first completed the procedures set forth in Article 18. Upon completion of the procedures set forth under Article 18, Contractor must then comply with the requirements in this Article including those set forth under Article 20.9.

20.9 Claims Procedures. Pursuant to the remedies under Public Contract Code section 9201 and Government Code section 930.2, Contractor, through execution of this Agreement, also agrees to comply with the Claims requirements under Article 20 to quickly and efficiently resolve disputes. Further, to provide a level of accuracy to the records submitted, the District shall have the right to audit books and records pursuant to Article 21 based on the actual costs incurred and to reduce the uncertainty in resolving disputes with limited information.

20.9.1 *Procedure Applicable to all Claims*

20.9.1.1 Definition of Claim: A "Claim" is where a Dispute between the parties rises to the level where backup documentation is assembled and provided to the District as a separate demand by the Contractor for: (1) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by the District under the Contract; (2) payment by the District of money or damages arising from Work done by, or on behalf of, the Contractor pursuant to the Contract and payment for which is not otherwise expressly provided for or to which the Contractor is not otherwise entitled to; or (3) an amount of payment disputed by the District. If the Claim is for damages associated with a DSA Stop Work Order, the Contractor shall not be entitled to a request for Compensation, but shall be entitled to utilize Governmental Delay Float (See Article 9.2.1.)

20.9.1.2 Filing Claim Is Not Basis to Discontinue Work: The Contractor shall promptly comply with Work under the Contract or Work requested by the District even though a written Claim has been filed. The Contractor and the District shall make good faith efforts to resolve any and all Claims that may arise during the performance of the Work covered by this Contract.

20.9.1.3 Claim Notification: The Contractor shall within seven (7) calendar days after the written decision of the Architect, or if the time period for Architect's decision has passed under Article 20.5, submit a notification in writing sent by registered mail or certified mail with return receipt requested, with the District (and the District's CM) stating clearly the basis for the Claim and including all relevant and required documents. If the notification is not submitted within seven (7) days after the written decision of the Architect or the passage of time under Article 20.5, the Contractor shall be deemed to have waived all right to assert the Claim, and the Claim shall be denied. Claims submitted after the Retention

Payment date shall also be considered null and void by the District. All Claims shall be reviewed pursuant to Articles 20.1 through 20.5.

20.9.1.4 The Formal Notification of Claim must be presented as follows:

- a. The term "Claim" must be at the top of the page in no smaller than 20 point writing.
- b. All documentation submitted pursuant to Article 20 to the Architect shall be submitted with the title "claim."
- c. A stack of documents, copy of all Project documents, or the submission of random documents shall not constitute an adequate reference to supporting documentation
- d. Any additional or supporting documentation that Contractor believes is relevant should be submitted at this time.

20.9.1.5 Reasonable Documents to Support Claim: The Contractor shall furnish reasonable documentation to support the Claim. The Contractor shall provide all written detailed documentation which supports the Claim, including but not limited to: arguments, justifications, cost, estimates, Schedule analysis and detailed documentation. The format of the required reasonable documentation to support the Claim shall include, without limitation:

- a. Cover letter.
- b. Summary of factual basis of Claim and amount of Claim.
- c. Summary of the basis of the Claim, including the specific clause and section under the Contract under which the Claim is made.
- d. Documents relating to the Claim, including:
  1. Specifications sections in question.
  2. Relevant portions of the Drawings
  3. Applicable Clarifications (RFI's)
  4. Other relevant information, including responses that were received.
  5. Contractor Analysis of Claim merit.
    - (a) Contractor's analysis of any Subcontractor vendor claims that are being passed through.
    - (b) Any analysis performed by outside consultants.
    - (c) Any legal analysis that Contractor deems relevant.
- e. Breakdown of all costs associated with the Claim.
- f. For Claims relating to time extensions, an analysis and supporting documentation evidencing any effect upon the

critical path in conformance with the requirements of Article 9 and a chronology of events and related correspondence.

- g. Chronology of events and related correspondence.
- h. Applicable daily reports and logs.
  - 1. If the daily reports or logs are not available, lost or destroyed, there shall be a presumption that the lost documentation was unfavorable to the Contractor. See California Civil Jury Instruction 204.
- i. For Claims involving overhead, cost escalation, acceleration, disruption or increased costs, a full version of job costs reports organized by category of work or Schedule of Values with budget information tracked against actual costs. Any and all supporting back-up data, including the original bid or cost documents (and associated original unaltered metadata).
  - 1. The metadata and bid or cost information shall be provided confidentially and subject to a protective order to prevent dissemination to other contractors or to the public. However, the bid or cost documentation should remain intact and available for review and inspection in case of this type of increased cost Claim.
  - 2. This data on the bid or cost information shall be made available to any District attorneys or experts and shall also be utilized as evidence for any legal proceedings.
  - 3. If the bid or cost documentation is not available, lost or destroyed, there shall be a presumption that the lost bid or cost documentation was unfavorable to the Contractor. See California Civil Jury Instruction 204.
- j. Certification: The Contractor (and Subcontractors, if applicable) shall submit with the claim a certification under penalty of perjury:
  - 1. That the Contractor has reviewed the Claim and that such Claim is made in good faith;
  - 2. Supporting data are accurate and complete to the best of the Contractor's knowledge and belief;
  - 3. The amount requested accurately reflects the amount of compensation for which the Contractor believes the District is liable.
  - 4. That the Contractor is familiar with Government Code section 12650 et seq. and Penal Code section 72 and that false claims can lead to substantial fines and/or imprisonment.
- k. Signature of Certification: If the Contractor is not an individual, the certification shall be executed by an officer or

general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

- l. Upon receipt of a Claim and all supporting documents as required above, the District shall conduct a reasonable review of the Claim and, within a period not to exceed 45 days, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the District and Contractor may, by mutual agreement, extend the time period provided in this paragraph.
- m. If the District needs approval from its governing Board to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the governing Board does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, the District shall have up to three days following the next duly publicly noticed meeting of the governing Board after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.
- n. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the District issues its written statement. If the District fails to issue a written statement, paragraph t below shall apply.
- o. If the Contractor disputes the District's written response, or if the District fails to respond to a Claim issued pursuant to Article 20.9 within the time prescribed, the Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the District shall schedule a meet and confer conference within 30 days for settlement of the Claim.
- p. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the District shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the District issues its written statement. Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the District and the Contractor sharing the associated costs equally. The District and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection

with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to applicable procedures in Article 20.13.

- q. For purposes of Article 20.9, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.
- r. Unless otherwise agreed to by the District and the Contractor in writing, the mediation conducted pursuant to Article 20.9 shall excuse any further obligation under Public Contract Code section 20104.4 to mediate after litigation has been commenced.
- s. This Claims process does not preclude the District from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under Article 20.9 does not resolve the parties' Claim. This Claims process does not preclude the District from submitting individual Disputes or Claims to binding arbitration pursuant to Article 20.12 below.
- t. Failure by the District to respond to a Claim from the Contractor within the time periods described in this subdivision or to otherwise meet the time requirements of Article 20.9 shall result in the Claim being deemed rejected in its entirety. A Claim that is denied by reason of the District's failure to have responded to a Claim, or its failure to otherwise meet the time requirements of Article 20.9, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the Contractor.
- u. If a subcontractor or a lower tier subcontractor lacks legal standing to assert a Claim against a District because privity of contract does not exist, the Contractor may present to the District a Claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Contractor present a Claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the Claim be presented to the District shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, the Contractor shall notify the subcontractor in writing as to whether the Contractor presented the Claim to the District and, if the Contractor did not present the Claim, provide the subcontractor with a statement of the reasons for not having done so.
- v. Upon receipt of a Claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the



commencement of a civil action or binding arbitration, as applicable.

- w. The Contractor's Claim shall be denied if it fails to follow the requirements of this Article.

- 20.10 District (through CM or District's Agent or Attorney) May Request Additional Information. Within thirty (30) days of receipt of the Claim and the information under this Article, the District may request in writing any additional documentation supporting the Claim or documentation relating to defenses to the Claim which the District may assert. If additional documents are required, the time in which the Claim is evaluated may be extended by a reasonable time so the Claim and additional documents may be reviewed.
- 20.11 Claims Procedures in Addition to Government Code Claim. Nothing in the Claims procedures set forth in Article 20 of the CSA shall act to waive or relieve the Contractor from meeting the requirements set forth in Government Code section 900 et seq.
- 20.12 Binding Arbitration of Individual Claim Issues. To expedite resolution of Claims pursuant to Public Contract Code section 9201, at the District's sole option, the District may submit individual Claims to Arbitration prior to Retention Payment consistent with the requirements of Article 20.6.1.
- 20.13 Resolution of Claims in Court of Competent Jurisdiction. If Claims are not resolved under the procedure set forth and pursuant to Article 20.9, such Claim or controversy shall be submitted to a court in the County of the location of the Project after the Project has been completed, and not before
- 20.14 Warranties, Guarantees and Obligations. The duties and obligations imposed by this CSA and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor by the Contract Documents and amendments thereto; and all of the rights and remedies available to District and Architect thereunder, are in addition to, and are not to be construed in any way as a limitation of any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Article will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

## **21. MAINTENANCE OF RECORDS; AUDIT/OWNERSHIP OF DOCUMENTS**

- 21.1 State Audit. Pursuant to and in accordance with the provisions of Government Code § 10532, or any amendments thereto, all books, records, and files of the District, the Contractor, or any Subcontractor connected with the performance of this Contract involving the expenditure of state funds in excess of Ten Thousand Dollars (\$10,000.00), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the Office of the Auditor General of the State of California for a period of five (5) years after Retention Payment is made or a Notice of Completion is Recorded, whichever occurs first. Contractor shall preserve and cause to be preserved such books, records, hard drives, electronic media, and files for the audit period.
- 21.2 District Audit. Pursuant to the remedies under Public Contract Code section 9201 and Government Code section 930.2, Contractor, through execution of this Agreement, also agrees the District shall have the right to review and audit, upon reasonable notice, the books and records of the Contractor concerning any monies associated with the Project. The purpose of this Audit is to quickly and efficiently resolve disputes based on the actual costs incurred and to reduce the uncertainty in resolving disputes with limited information. The District shall perform any audits at its own cost and any such audit shall be performed by an independent auditor, having no direct or indirect relationship with the functions or activities being audited or with the business conducted by the Contractor or District. In the event the independent auditor determines that Change Orders,

Response to Request for Proposals, Claims, Appeal of Claims, or other requests for payment the Auditor shall report the results of the Audit findings to the District and provide a copy to the Contractor after giving the District Board the opportunity for at least 10 days review. If the Contractor disputes the findings of the independent auditor, such dispute shall be handled in the manner set forth under Article 20 entitled Disputes.

- 21.3 Failure to Produce Books or Records. If Contractor having agreed to the terms of this Contract fails to produce books or records requested by Auditor, such failure to produce books or records that were required to be preserved for audit, it shall be presumed that the information contained in the withheld books or records were unfavorable to the Contractor and the Auditor shall note this refusal in the results of the Audit findings for further evaluation by the District and the District's Board. The refusal to release records that are concerning monies associated with the Project may be used as a grounds to Debar the Contractor from future Projects for failure to preserve records under this Article and the failure to produce required audit records may also be used as a grounds for a negative finding against the Contractor depending on the significance of the records that are withheld by Contractor. Failure to produce Job Cost Data tied to Job cost categories and budgets shall be presumed an intentional failure to produce key audit records. Similarly, failure to produce daily time records (prepared at or near the time of the Work actually took place shall be presumed an intentional failure to produce key audited records.
- 21.4 Inefficiency, Acceleration or Delay Claims. If Contractor is seeking costs for inefficiency, home office overhead, or unanticipated increased costs due to delays or acceleration, Contractor shall also produce copies of the original bid or cost tabulation utilized in submitting Contractor's cost for the Project. This document shall be considered confidential and shall not be subject to disclosure through a Public Records Act and shall not be distributed to anyone other than the District and the District's counsel. This bid or cost tabulation shall only be used in litigation, arbitration, evaluation of Claims or Disputes, Audit, and trial. If the records for the bid or cost tabulation are kept on a computer, the Contractor shall also produce all metadata (in native format) that accompanies the bid or cost tabulation for inspection to prove the authenticity of the underlying bid or cost tabulation. Failure to produce the bid or cost tabulation for review of inefficiency, home office overhead, or unanticipated increased costs due to delays or accelerations shall be considered material evidence that the bid or cost tabulation was not favorable to the Contractor. This evidence shall be entered as a jury instruction for trial that the bid or cost tabulation was not produced and the bid or cost tabulation information was unfavorable to the Contractor. The evidence may also be used in Debarment Proceedings, and noted as an exception to an Audit Findings.
- 21.5 Upon notification of Contractor concerning the results of the audit and a reasonable time has passed for Contractor to respond to Audit Findings and if either there is no Dispute of the Audit findings under this Article or if the result after utilizing the Disputes Clause confirms the Audit findings, the District may seek any Savings that have not been accounted for with District and may also seek reimbursement for overstated Claims, Change Orders, or Appeal of Claims.
- 21.6 Ownership of Drawings. Notwithstanding any provision of this Agreement, all drawings, specifications, and copies thereof furnished by District are its property. They are not to be used on other work and with exception of signed contract sets, are to be returned to District on request at completion of work.

## **22. PREVAILING RATES OF WAGES; RECORDS, APPRENTICES**

- 22.1 Wage Rates. Pursuant to the provisions of Article 2 (commencing at § 1720), Chapter 1, Part 7, Division 2, of the Labor Code, the District has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public works project is to be performed for each craft, classification, or type of worker needed for this Project from the Director of the Department of Industrial Relations ("Director"). These rates are on file at the administrative office of the District and are also available from the Director of the Department of Industrial Relations. Copies will be made available to any interested party on request.

The Contractor shall post a copy of such wage rates at appropriate, conspicuous, weatherproof points at the Site.

Any worker employed to perform Work on the Project, but such Work is not covered by any classification listed in the published general prevailing wage rate determinations or per diem wages determined by the Director of the Department of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to the employment of such person in such classification.

- 22.2 Holiday and Overtime Pay. Holiday and overtime work, when permitted by law, shall be paid for at the rate set forth in the prevailing wage rate determinations issued by the Director of the Department of Industrial Relations or at least one and one-half (1½) times the specified basic rate of per diem wages, plus employer payments, unless otherwise specified in the Contract Documents or authorized by law
- 22.3 Wage Rates Not Affected by Subcontracts. The Contractor shall pay and shall cause to be paid each worker engaged in the execution of the Work on the Project not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor and such workers.
- 22.4 Per Diem Wages. The Contractor shall pay and shall cause to be paid to each worker needed to execute the Work on the Project per diem wages including, but not limited to, employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided for in Labor Code §1773.1.
- 22.5 Forfeiture and Payments. Pursuant to Labor Code §1775, the Contractor shall forfeit to the District, not more than Two Hundred Dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing wages rates as determined by the Director of the Department of Industrial Relations, for the work or craft in which the worker is employed for any Work done under the Agreement by the Contractor or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on consideration of: (1) whether the Contractor or Subcontractor's failure to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily correct upon being brought to the attention of the Contractor or Subcontractor; and (2) whether the Contractor or Subcontractor has a prior record of failing to meet its prevailing wage obligations.

## 23. RECORDS OF WAGES PAID

### 23.1 Payroll Records

- 23.1.1 Pursuant to §1776 of the Labor Code, each Contractor and Subcontractor shall keep an accurate payroll record showing the name, address, social security number, work classification and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the Project.
- 23.1.2 All payroll records shall be certified and submitted to the District with each application for payment, but not less than once per month or as otherwise requested by the District. All payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
- 23.1.3 A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
- 23.1.4 A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of District, the Division of Labor Standards

Enforcement or the Division of Apprenticeship Standards of the Department of Industrial Relations.

- 23.1.5 A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to Paragraph (2) above, the requesting party shall, prior to being provided the records, reimburse the costs, according to law for the preparation by the Contractor, Subcontractor(s), and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.
- 23.1.6 Unless required to be furnished directly to the Labor Commissioner in accordance with Labor Code section 1771.4, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division of Labor Standards Enforcement.
- 23.1.7 The Contractor or Subcontractor(s) shall file a certified copy of all payroll records with the entity that requested such records within 10 calendar days after receipt of a written request.
- 23.1.8 Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or the Subcontractor(s) performing the Contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.
- 23.1.9 The Contractor shall inform the District of the location of all payroll records, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
- 23.1.10 The Contractor or Subcontractor(s) shall have ten (10) calendar days in which to comply subsequent to receipt of a written notice requesting payroll records. In the event that the Contractor or Subcontractor(s) fails to comply within the 10-day period, the Contractor or Subcontractor(s) shall, as a penalty to the District, forfeit One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from Progress Payments or Retention Payment then due.
- 23.1.11 Responsibility for compliance with this Article shall rest upon the Contractor.

23.2 Withholding of Payments & Penalties

- 23.2.1 The District may withhold or delay Progress Payments to the Contractor or a Sublease Payment or Retention if:

- 23.2.1.1 The required prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations is not paid to all workers employed on the Project; or
- 23.2.1.2 The Contractor or Subcontractor(s) fail to submit all required certified payroll records with each application for payment, but not less than once per month; or
- 23.2.1.3 The Contractor or Subcontractor(s) submit incomplete or inadequate payroll records; or
- 23.2.1.4 The Contractor or Subcontractor(s) fail to comply with the Labor Code requirements concerning apprentices; or
- 23.2.1.5 The Contractor or Subcontractor(s) fail to comply with any applicable state laws governing workers on public works projects.

## 24. APPRENTICES

- 24.1 Apprentice Wages and Definitions. All apprentices employed by the Contractor to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which he or she is employed, and as determined by the Director of the Department of Industrial Relations, and shall be employed only at the craft or trade to which he or she is registered. Only apprentices, as defined in §3077 of the Labor Code, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprenticeship agreements under Chapter 4 (commencing with §3070) of Division 3, are eligible to be employed under this Contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training, or in accordance with the rules and regulations of the California Apprenticeship Council.
- 24.2 Employment of Apprentices. Contractor agrees to comply with the requirements of Labor Code §1777.5. The Contractor awarded the Project, or any Subcontractor under him or her, when performing any of the Work under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and Subcontractor shall employ apprentices in the ratio set forth in Labor Code §1777.5. The Contractor or any Subcontractor must apply to any apprenticeship program in the craft or trade that can provide apprentices to the Project site for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor upon the Contractor's or Subcontractor's request. "Apprenticeable craft or trade" as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The ratio of work performed by apprentices to journeyman employed in a particular craft or trade on the Project shall be in accordance with Labor Code §1777.5.
- 24.3 Submission of Contract Information. Prior to commencing Work on the Project, the Contractor and Subcontractors shall submit contract award information to the applicable apprenticeship program(s) that can supply apprentices to the Project and make the request for the dispatch of apprentices in accordance with the Labor Code. The information submitted shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the District if requested. Within sixty (60) days after concluding Work on the Project, the Contractor and Subcontractors shall submit to the District, if

requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Project.

- 24.4 **Apprentice Fund.** The Contractor or any Subcontractor under him or her, who, in performing any of the Work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the Director determines is the prevailing amount of apprenticeship training contributions in the area of the Project. The Contractor and Subcontractors may take as a credit for payments to the California Apprenticeship Council any amounts paid by the Contractor or Subcontractor to an approved apprenticeship program that can supply apprentices to the Project. The Contractor and Subcontractors may add the amount of the contributions in computing its bid or costs for the Contract.
- 24.5 **Prime Contractor Compliance.** The responsibility of compliance with this Article 13 §1777.5 of the Labor Code for all apprenticeable occupations is with the Prime Contractor. Any Contractor or Subcontractor that knowingly violates the provisions of this Article or Labor Code §1777.5 shall be subject to the penalties set forth in Labor Code §1777.7.
- 24.6 WHEN DETERMINING GMP, CONTRACTOR SHALL INCLUDE TO THE EXTENT POSSIBLE ANTICIPATED GENERAL PREVAILING WAGE RATES FOR THE TIME WHEN WORK ON THE PROJECT WILL ACTUALLY BE PERFORMED.

**25. REGISTRATION WITH DEPARTMENT OF INDUSTRIAL RELATIONS**

- 25.1 Strict compliance with all DIR registration requirements in accordance with Labor Code sections 1725.5 and 1771.1 is a material obligation of the Contractor and all of its subcontractors (of any tier) under the Contract Documents. The foregoing includes, without limitation, compliance with DIR registration requirements at all times during performance of the Work by the Contractor and all of its subcontractors of any tier. The failure of the Contractor and all subcontractors of any tier to be properly registered with DIR at all times during performance of the Work is a material breach of the Contract Documents and subject to termination for cause.
- 25.2 An affirmative and ongoing obligation of the Contractor under the Contract Documents is the verification that all subcontractors of any tier are at all times during performance of the Work are in full and strict compliance with the DIR registration requirements. The Contractor shall not permit or allow any subcontractor of any tier to perform any Work without the Contractor's verification that all subcontractors are in full and strict compliance with the DIR registration requirements. Any subcontractors of any tier not properly registered with DIR shall be substituted in accordance with Labor Code section 1771.1. Contractor or its subcontractors of any tier shall not be entitled to any additional costs or time arising from or in any way related to compliance with the DIR registration requirements.
- 25.3 The Contractor and all subcontractors shall furnish certified payroll records as required pursuant Labor Code section 1776 directly to the Labor Commissioner in accordance with Labor Code section 1771.4 on at least on a monthly basis (or more frequently if required by the District or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. The District reserves the right to withhold Progress Payments or Retention Payment if the District is notified, or determines as the result of its own investigation, that Contractor is in violation of any of the requirements set forth in Labor Code section 1720 et seq. at no penalty or cost to the District. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE).
- 25.4 The Labor Commissioner and the Division of Labor Standards Enforcement (DLSE) may conduct various compliance monitoring and enforcement activities including, but not limited to, confirming the accuracy of payroll records, conducting worker interviews, conducting audits, requiring submission of itemized statements prepared in accordance with Labor Code section 226, and

conducting random in-person inspections of the Project site ("On-Site Visits"). On-Site Visits may include inspections of records, inspections of the Work site and observation of work activities, interviews of workers and others involved with the Project, and any other activities deemed necessary by the Labor Commissioner/DLSE to ensure compliance with prevailing wage requirements. The Labor Commissioner/DLSE shall have free access to any construction site or other place of labor and may obtain any information or statistics pertaining to the lawful duties of the Labor Commissioner/DLSE.

- 25.5 Any lawful activities conducted or any requests made by the Labor Commissioner/DLSE shall not be the basis for any delays, claims, costs, damages or liability of any kind against the District by the Contractor. Contractor and all Subcontractors shall cooperate and comply with any lawful requests by the Labor Commissioner's office. The failure of the Labor Commissioner, DLSE, or any other part of the Department of Industrial Relations to comply with any requirement imposed by the California Code of Regulations, Title 8, Chapter 8 shall not of itself constitute a defense to the failure to pay prevailing wages or to comply with any other obligation imposed by Division 2, Part 7, Chapter 1 of the Labor Code.
- 25.6 Prior to commencing any Work on the Project, the Contractor shall post the notice/poster required under the California Code of Regulations and Labor Code section 1771.4 in both English and Spanish at a conspicuous, weatherproof area at the Project site. The required notice/poster is available on the Labor Commissioner's website.

**26. HOURS OF WORK**

- 26.1 Eight (8) hours of work shall constitute a legal day's work. The Contractor and each subcontractor shall forfeit, as penalty to the District, twenty five dollars (\$25) for each worker employed in the execution of work on the Project by the Contractor or any subcontractor under him for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any calendar week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of the Contractor and his subcontractors in excess of eight hours per day at not less than one and one half times the basic rate of pay, as provided in Labor Code section 1815.
- 26.2 Generally, construction work on the Project shall be accomplished on a regularly scheduled eight (8) hour per day work shift basis, Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m., however nothing herein shall prevent Contractor from working weekends and after school hours in order to complete the Project so long as not otherwise prohibited by law or local ordinances or regulations.
- 26.3 Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed and included within the GMP, unless otherwise agreed to in writing before the work in question is commenced pursuant to Article 9, Extra Work/Modifications.

**27. SKILLED AND TRAINED WORKFORCE**

- 27.1 Contractor and all Subcontractors of any tier must comply with the requirements set forth in Education Code section 17407.5, including providing an enforceable commitment that the Contractor and all Subcontractors of any tier will use a "Skilled and Trained Workforce" as defined in Education Code section 17407.5 (b)(3). Contractor and all Subcontractors are to carefully review all requirements set forth in Education Code section 17407.5 before entering into the Contract for the Project.
- 27.2 The Contractor's commitment that a Skilled and Trained Workforce will be used to perform Work on the Project and the Contract shall be established by the following:

- 27.2.1 Contractor shall include in all of its subcontracts, and Subcontractors shall require in its subcontracts of any tier, mandatory compliance with Education Code section 17407.5.
- 27.2.2 Contractor shall provide to the District, on a monthly basis while the Project or Contract is being performed, a written report demonstrating that the Contractor and all Subcontractors of any tier are complying with the requirements set forth in Education Code section 17407.5. If Contractor fails to provide the monthly report, the District shall withhold payment for the portion of the monthly pay application related to the non-compliance of the Contractor or portion of the monthly pay application related to the non-compliance of any subcontractor. Upon notice to the Contractor of withholding for non-compliance, the non-compliant Contractor and/or subcontractor may cure the non-compliance. If Contractor and/or any subcontractor cures the non-compliance or substantially complies with required percentages of Public Contract Code section 2601 any monies withheld by the District will be released no later than the next pay application. If Contractor and/or any subcontractor fails to cure the non-compliance or substantially comply with the requirements within 60 days of notice of the non-compliance, the Contractor and/or non-compliant subcontractor shall meet and confer with the District to demonstrate the Contractor's and/or subcontractor's efforts and plan to achieve substantial compliance with the requirements, on a cumulative basis, by completion of the Project. A meet and confer may be held earlier upon Contractor's written request to the District. The District, after reasonable demonstration by the Contractor and/or subcontractor that good faith and best efforts have been and are being made to substantially comply with the requirements of Section 2601, the District shall release any monies withheld. The Section 2601 percentages shall not apply to punchlist or warranty for a Contractor and/or subcontractor if that Contractor and/or subcontractor has otherwise substantially complied with the requirements of Section 2601 during the project. If Contractor and/or subcontractor is unable to substantially comply with the required percentages, on a cumulative basis, by completion of the project, the District, in its discretion may assess a charge to the non-compliant party of \$1,000.00 per percentage that the Contractor and/or subcontractor fails to meet the graduation percentage requirements, not to exceed \$5,000.00 or 10 percent of the total contract or subcontract value, whichever is less. This shall be the sole and exclusive remedy for Contractor's and/or any subcontractor's non-compliance with this section.
- 27.2.3 The monthly report provided to the District's Governing Board as required above shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), and shall be open to public inspection.
- 27.2.4 Contractor's commitment that a Skilled and Trained Workforce will be used to perform Work on the Project and the Contract may also be established by the Contractor providing evidence and any other information or documents reasonably requested by the District showing that the Contractor has entered into a project labor agreement that includes the requirements of Education Code section 17407.5(c) that will bind the Contractor and all its Subcontractors of any tier performing Work on the Project or Contract.
- 27.3 If the District's Governing Board has entered into a project labor agreement that will bind all contractors and subcontractors performing Work on this Project or Contract that includes the requirements of Education Code section 17407.5(c), the Contractor's agreement that it will become a party to that project labor agreement shall satisfy the requirements under Education Code section 17407.5(c).
- 27.4 If the Contractor or Subcontractor of any tier is not in compliance with all of the requirements set forth in Education Code section 17407.5, the District shall exercise any rights or remedies allowed under Education Code section 17407.5 or other applicable law.



**28. PROTECTION OF PERSONS AND PROPERTY**

- 28.1 **Fingerprinting.** If any portion of the work for the Project is to be performed at an operating school, Contractor shall comply with the applicable requirements of Education Code sections 45125.1 and 45125.2 with respect to fingerprinting of employees who may have contact with District's pupils. Contractor shall also ensure that its Subcontractors on the Project comply with the applicable requirements of Sections 45125.1 and 45125.2. To this end, Contractor and its Subcontractors must provide for the completion of the Fingerprint Certification form attached as Exhibit "F" and incorporated herein by this reference prior to commencing work on the Project. In no event shall any employees of Contractor or its Subcontractors come into contact with District's pupils before the certification is completed. Contractor's failure to comply with this law shall be considered a material breach of the Agreement upon where the Agreement may be terminated, at District's sole discretion, without any further compensation to Contractor. Contractor and Subcontractor personnel on Site shall not have been convicted of any criminal offense which may have a discernible adverse impact on District or its students. Contractor shall advise its employees of these requirements before they enter on the Site and shall immediately remove from the Site any employee in violation of these requirements as determined by Contractor or by District. Contractor shall impose these requirements on its Subcontractors.
- 28.2 Contractor has been advised and is aware that District has adopted a Board Policy which prohibits the use of tobacco products, including smokeless tobacco, anywhere on District property. Contractor shall be responsible for the enforcement of District's tobacco-free policy among all Contractor's employees and Subcontractors while on District property. Contractor understands and agrees that should any employee or Subcontractor of Contractor violate the Board Policy, after having already been warned once for violating District's tobacco-free policy, Contractor shall remove the individual for the duration of the Project. Contractor shall not be entitled to any additional compensation and/or time in completing the Project as a result of such removal.
- 28.3 Contractor shall take all steps necessary to insure that employees of Contractor or any of its Subcontractors' employees do not use, consume, or work under the influence of alcohol or illegal drugs while on the Project. Contractor shall prevent any of its employees or its Subcontractors' employees from playing any recorded music devices or radios or wearing any radio headphone devices for entertainment while working on the Project. Contractor shall also prevent its employees or Subcontractors' employees from bringing any animal onto the Project.
- 28.4 Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by District.
- 28.5 Contractor shall take, and require Subcontractors to take, all necessary precautions for safety of workers on the work and shall comply with all applicable federal, state, local and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where work is being performed and to provide a safe and healthful place of employment. In addition to meeting all requirements of OSHA, Cal-OSHA, state, and local codes, Contractor shall furnish, erect and properly maintain at all times, as directed by District or required by conditions and progress of work, all necessary safety devices, safeguards, construction canopies, signs, audible devices for protection of the blind, safety rails, belts and nets, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction. Contractor shall designate a responsible member of its organization on the work, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety and health of workers. Name and position of person so designated shall be reported to District by Contractor. Contractor shall correct any violations of safety laws, rules, orders,

standards or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, such violation shall be corrected promptly.

- 28.6 In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from District, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury; and Contractor shall so act if so authorized or instructed by District. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.
- 28.7 Contractor shall provide such heat, covering, and enclosures as are necessary to protect all work, materials, equipment, appliances, and tools against damage by weather conditions.
- 28.8 Contractor shall take adequate precautions to protect existing roads, sidewalks, curbs, pavements, utilities, adjoining property and structures (including, without limitation, protection from settlement or loss of lateral support), and to avoid damage thereto, and repair any damage thereto caused by construction operations. All permits, licenses, or inspection fees required for such repair work shall be obtained and paid for by Contractor.
- 28.9 Trenches Five Feet or More in Depth. The Contractor shall submit to the District, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches five feet or more in depth. The Contractor shall also submit a copy of its annual trench/excavation permit approved by CAL-OSHA. The plan shall be prepared by a registered civil or structural engineer. As part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with CAL OSHA Construction Safety Orders, or stating that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the Safety Orders.
  - 28.9.1 All shoring submittal shall include surcharge loads from adjacent embankments, construction loads and spoil bank. Submittal shall indicate minimum horizontal distance from top of trench to edge of all surcharge loads for all cases of shoring and side slopes.
  - 28.9.2 Nothing in this Section shall relieve Contractor of the full responsibility for providing shoring, bracing sloping, or other provisions adequate for worker protection. If such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer and shall be approved by CAL-OSHA. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the District or the person to whom authority to accept has been delegated by the District.
- 28.10 Contractor shall (unless waived by District in writing):
  - 28.10.1 When performing construction on existing sites, become informed and take into specific account the maturity of the students on the site; and when performing work which may interfere with the school routine before, during or after school hours, enclose working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to students and faculty in their regular school activities.
  - 28.10.2 Not allow any person, other than workers on the Project, or individuals authorized by District to come upon any portion of the premises where work is being performed. Contractor shall require all workers on the Project to be conspicuously identified either by a firm logo on their clothing, or by means of a prominent identification badge.
  - 28.10.3 Provide substantial barricades around any shrubs or trees indicated to be preserved.

- 28.10.4 Deliver materials to building area over route designated by District.
- 28.10.5 Take preventive measures to eliminate dust.
- 28.10.6 Confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of District; and shall not interfere with the work or unreasonably encumber premises or overload any structure with materials; and enforce all instructions of District regarding signs, advertising, fires, smoking, the presence of liquor, and the presence of firearms and require that all workers comply with all regulations while on construction site.
- 28.10.7 Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved land surveyor or civil engineer at no cost to District.
- 28.10.8 Not allow personal radios on the work site
- 28.10.9 Where the Project involves work at an operating school, inform and take such preventive measures necessary to insure that all employees, Subcontractors and other individuals authorized on the Project site refrain from any personal contact or conversations with the students on site.
- 28.10.10 Contractor shall not impose structural loading upon any part of the work under construction or upon existing construction on or adjacent to the Site in excess of safe limits, or loading such as to result in damage to the structural, architectural, mechanical, electrical, or other components of the work. The design of all temporary construction equipment and appliances used in construction of the work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring, and temporary bracing of structural steel, is the sole responsibility of Contractor. All such items shall conform with the requirements of governing codes and all laws, ordinances, rules, regulations, and orders of all authorities having jurisdiction. Contractor shall take reasonable and customary precautions, such as shoring of masonry walls and temporary tie bracing of structural steel work, to prevent possible wind damage during construction of the work. The installation of such bracing or shoring shall not damage the work in place or the work installed by others. Any damage which does occur shall be promptly repaired by Contractor at no cost to District.
- 28.10.11 Contractor shall require that Subcontractors participate in, and enforce, the safety and loss prevention programs established by Contractor for the Project, which will cover all work performed by Contractor and its Subcontractors. All Subcontractors and material or equipment suppliers shall cooperate fully with Contractor, District, and all insurance carriers. Subcontractors shall immediately, within twenty four (24) hours, report in writing to Contractor all accidents whatsoever arising out of, or in connection with, the performance of the work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. Contractor shall thereafter immediately, within two (2) days, report the facts in writing to District giving full details of the accident.
- 28.10.12 Contractor and Subcontractors shall use only those ingress and egress routes designated by District, observe the boundaries of the Site designated by District, park only in those areas designated by District, which areas may be on or off the Site, and comply with any parking control program established by District, such as furnishing license plate information and placing identifying stickers on vehicles.

- 28.10.13 Contractor shall be responsible for providing security services for the Site as needed for the protection of the Site and as determined in District's reasonable discretion.
- 28.10.14 Contractor shall, for all contracts involving state funds, submit a "Drug-Free Workplace Certification." Contractor shall take all reasonable steps necessary to ensure that any employees of Contractor or any of its Subcontractors' employees report for work in a manner fit to do their job. Such employees shall not be under the influence of or in possession of any alcoholic beverage or of any controlled substance (except a controlled substance as prescribed by a physician so long as the performance or safety at the Project Site is not affected thereby). Contractor shall advise its employees of these requirements before they enter on the Site and shall immediately remove from the site any employee in violation of these requirements as determined by Contractor or by the District. Contractor shall impose these requirements on its Subcontractors.
- 28.10.15 Contractor and Subcontractors shall at all times enforce strict discipline and good order among their employees and other persons carrying out the Contract and shall not employ on work any unfit person or anyone not skilled in work assigned to such person. It shall be the responsibility of Contractor to ensure compliance with this Article. Any person in the employ of Contractor or Subcontractors whom District may deem incompetent, unfit, intemperate, troublesome or otherwise undesirable shall be excluded from the work Site and shall not again be employed on it except with written consent of District. Contractor must sign and cause all Subcontractors to sign the Conduct Rules for Contractors form attached as Exhibit "I" and incorporated herein by this reference prior to commencing work on the Project.
- 28.11 Contractor shall be at all times during the performance of work hereunder in full compliance with the provisions of the Immigration Reform and Control Act of 1986 ("IRCA") in the hiring of its employees, and Contractor shall indemnify, hold harmless and defend District against any and all actions, proceedings, penalties or claims arising out of Contractor's failure to comply strictly with the IRCA.

## **29. PAYMENTS AND RETENTION**

The Construction Cost of each Project shall not exceed the GMP identified in Exhibit J as may be amended from time to time, except as otherwise provided in this Construction Services Agreement and Sublease. During the progress of construction, Contractor will provide monthly progress payment applications for the total scheduled value of the work completed under the GMP set forth in Article 3. District shall pay to Contractor a monthly progress payment comprising a sum equal to ninety-five percent (95%) of the scheduled value of the work approved and completed up to the last day of the previous month, less aggregate of previous payments ("Progress Payment"). If all of the necessary information is submitted and accurate (including the schedule of values), District shall approve the Progress Payments within fifteen (15) days after District's receipt of the periodic estimate for partial payment and District shall pay such payments within fifteen (15) days after the District's approval of the periodic estimate for partial payment. Progress Payments shall be made on the basis of monthly estimates which shall be prepared by Contractor on a form approved by District and certified by Architect and Project Inspector, or any other approved representative of the District, and filed before the fifth day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall release Contractor or any bondsman from such work or from enforcing each and every provision of this document and District shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment made for work performed so long as any lawful or proper direction concerning non-complying work or any portion thereof given by the District lacks correction by Contractor. District shall withhold from the Progress Payments 150% of the estimated value of non-complying work unless satisfactorily corrected or remedied. Contractor shall, at a minimum, provide the

following documents as part of its request for a Progress Payment: (1) Schedule of Values, (2) Project Contingency Trackers, (3) Project Allowance Trackers, (4) Project Savings Reports (Refer to the Project Savings Section for the Project Savings Items) including the budget versus actual costs of Project Management and General Condition Expenses, (5) Project Daily Reports (Contractor and Subcontractor), (6) Project Safety Reports, (7) Monthly Lien Releases Unconditional and Conditional Waivers (all contractors), and (8) Monthly Schedule Update and Narratives (with Recovery Schedules as needed).

29.1 The District shall retain five percent (5%) "Retention" from Progress Payments and release Retention as required in this CSA and specifically, not until after Close-Out under Article 13.16.

29.2 In no event shall the cumulative total of the Progress Payments/ Sublease Payments and Retention ever exceed the GMP as defined herein, unless specifically allowed under Article 5.

29.2.1 Title to new materials and/or equipment for the work of this contract, on a continuous basis while the Project is being completed, shall vest in the District. However, responsibility for such new material and/or work of this contract shall remain with the Contractor until incorporated into the work and accepted by District; no part of said materials and/or equipment shall be removed from its place of storage except for immediate installation in the work of this contract; and Contractor shall keep an accurate inventory of all said materials and/or equipment in a manner satisfactory to the owner or his authorized representative.

Notwithstanding anything to the contrary stated above, the Contractor may include in its request for payment the value of any structural steel, glue laminated beams, trusses, bleachers and other such custom-made materials prepared specifically for the Project and unique to the Project so long as all of the following requirements are satisfied:

29.2.1.1 The aggregate cost of materials stored off-site shall not exceed Twenty Five Thousand Dollars (\$25,000) at any time or as otherwise agreed to be District in writing;

29.2.1.2 Title to such materials shall be vested in the District as evidenced by documentation satisfactory in form and substance to the District, including, without limitation, recorded financing statements, UCC filings and UCC searches;

29.2.1.3 With each request for payment, the Contractor shall submit to the District a written list identifying each location where materials are stored off-site (which must be a bonded warehouse) and the value of the materials at each location. The Contractor shall procure insurance satisfactory to the District (in its reasonable discretion) for materials stored off-site in an amount not less than the total value thereof;

29.2.1.4 The consent of any Surety shall be obtained to the extent required prior to payment for any materials stored off-site;

29.2.1.5 Representatives of the District shall have the right to make inspections of the storage areas at any time; and

29.2.1.6 Such materials shall be (1) protected from diversion, destruction, theft and damage to the reasonable satisfaction of the District; (2) specifically marked for use on the Project; and (3) segregated from other materials at the storage facility.

- 29.3 Reasons to Withhold Payment. The District may withhold any payment, in whole, or in part, to such extent as may be necessary to protect the District from loss because of, but not limited to:
1. Defective Work not remedied;
  2. Stop Notices served upon the District;
  3. Liquidated damages assessed against the Contractor;
  4. The cost of completion of the Contract if there exists reasonable doubt that the Work can be Completed for the unpaid balance of any Contract Price or by the completion date;
  5. Damage to the District or other contractor;
  6. Unsatisfactory prosecution of the Work by the Contractor;
  7. Failure to store and properly secure materials;
  8. Failure of the Contractor to submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including, without limitation, acceptable monthly progress schedules, Shop Drawings, Submittal schedules, schedule of values, product data and samples, proposed product lists, executed Change Order, Construction Change Documents, and verified reports;
  9. Failure of the Contractor to provide an approvable schedule in compliance with this Master Construction Services Agreement or to provide an approved updated monthly schedule for any project under this Master Construction Services Agreement.
  10. Failure of the Contractor to maintain As-Built drawings;
  11. If, in the District's opinion, the representations to the District required pursuant to Article 9.4 cannot be made;
  12. Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an application for payment;
  13. Unauthorized deviations from the Contract Documents (including but not limited to Unresolved Notices of Deviations (DSA Form 154));
  14. Failure of the Contractor to prosecute the Work in a timely manner in compliance with established progress schedules and completion dates;
  15. Failure to properly pay prevailing wages as defined in Labor Code section 1720, et seq.;
  16. Failure to properly maintain or clean up the Site;
  17. Payments to indemnify, defend, or hold harmless the District;
  18. Any payments due to the District including, but not limited to, payments for failed tests, or utilities changes or permits;
  19. Failure to submit an acceptable schedule in accordance with Article 9;
  20. Failure to pay Subcontractor or suppliers;
  21. Failure to secure warranties, including the cost to pay for warranties

- 22. Failure to provide release from material suppliers or Subcontractors when requested to do so
  - 23. Items deducted pursuant to Article 17.6
  - 24. Incomplete Punch List items under Article 13.6 which have gone through the Article 12.2 process
  - 25. Allowances that have not been used
- 29.4 Reallocation of Withheld Amounts. District may, in its discretion, apply any withheld amount to payment of outstanding claims or obligations. In so doing, District shall make such payments on behalf of Contractor. If any payment is so made by District, then such amount shall be considered as a payment made under this CSA to Contractor and District shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligation. District will render Contractor an accounting of such funds disbursed on behalf of Contractor.
- If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision thereof, District may, after ten (10) calendar days written notice to the Contractor and without prejudice to any other remedy make good such deficiencies. The District shall adjust the total Contract price by reducing the amount thereof by the cost of making good such deficiencies. If District deems it inexpedient to correct Work which is damaged, defective, or not done in accordance with Contract provisions, an equitable reduction in the Contract price (of at least 150% of the estimated reasonable value of the nonconforming Work) shall be made therefor.
- 29.5 Payment After Cure. When the grounds for declining approval are removed, payment shall be made for amounts withheld because of them. No interest shall be paid on any retention or amounts withheld due to the failure of the Contractor to perform in accordance with the terms and conditions of the Contract Documents.

### 30. NONCONFORMING WORK

Contractor shall promptly remove from premises all Work identified by District as failing to conform to the Contract whether incorporated or not. Contractor shall promptly replace and re-execute its own Work to comply with the Contract without additional expense to District and shall bear the expense of making good all Work of other contractors destroyed or damaged by such removal or replacement.

If Contractor does not remove such Work which has been identified by District as failing to conform to the Contract Documents within a reasonable time, fixed by written notice, District may remove it and may store the material at Contractor's expense. If Contractor does not pay expenses of such removal within ten (10) calendar days' time thereafter, District may, upon ten (10) calendar days' written notice, sell such materials at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by Contractor.

### 31. SUBCONTRACTOR PAYMENTS

- 31.1 Payments to Subcontractors. No later than ten (10) days after receipt, or pursuant to Business and Professions Code section 7108.5, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.
- 31.2 No Obligation of District for Subcontractor Payment. The District shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

31.3 Payment Not Constituting Approval or Acceptance. An approved request for a Progress Payment, a Certificate of Substantial Completion, or partial or entire use or occupancy of the Project by the District shall not constitute acceptance of Work that is not in accordance with the Contract Documents.

31.4 Joint Checks. District shall have the right, if necessary for the protection of the District, to issue joint checks made payable to the Contractor and Subcontractors and material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the District and a Subcontractor of any tier, any obligation from the District to such Subcontractor, or rights in such Subcontractor against the District. The District may choose to issue joint checks at District's sole discretion and only after all the requirements of that particular school district and county are specifically met. Some school districts cannot issue joint checks, so the ability to issue joint checks will depend on the District and the specific circumstances.

## 32. SEPARATE CONTRACTS

32.1 Reservation of Rights to have other Contractors on Site. District reserves the right to let other contractors enter the Site to perform work as part of its use of the Site. Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate the Project with the work of such Contractors. Such contractors shall comply with all applicable State safety laws and regulations and shall provide a certificate of insurance naming Contractor as additional insured

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

## 33. USE OF PREMISES/SAFETY

Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits and the Construction Documents and shall not unreasonably encumber the Site or existing facilities on the Site with any materials or equipment. Contractor shall not load or permit any part of the work to be loaded with a weight so as to endanger the safety of persons or property at the Site. The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 USC, section 651 et seq.).

## 34. CLEANING UP

34.1 Contractor's Responsibility to Clean Up. Contractor at all times shall keep premises free from debris such as waste, dust, excess water, storm water runoffs, rubbish, and excess materials and equipment. Contractor shall not leave debris under, in, or about the premises, but shall promptly remove same from the premises and dispose of it in a lawful manner. Disposal receipts or dump tickets shall be furnished to the Architect within five (5) days of request.

Contractor shall remove rubbish and debris resulting from the Work on a daily basis. Contractor shall maintain the structures and Site in a clean and orderly condition at all times until acceptance of the Project by the District. Contractor shall keep its access driveways and adjacent streets, sidewalks, gutters and drains free of rubbish, debris and excess water by cleaning and removal each day. All concrete, sidewalks, and paths of travel shall be broom cleaned daily.



34.2 General Final Clean-Up. Upon completion of Work, Contractor shall employ experience workers or professional cleaners for final cleaning. Clean each surface to the condition expected in a normal, commercial, building cleaning and maintenance program.

1. Clean interior and exterior of buildings, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected, so surfaces are free from foreign material or discoloration;
2. Clean the Project site. The grounds should be cleared of any Contractor equipment, raked clean of debris and trash removed. Sweep paved areas broom clean.
3. Repair or replace any damaged materials. Replace any chipped or broken glass.
4. Remove any and all stains.
5. Remove labels that aren't permanent labels.
6. Clean and polish all glass, plumbing fixtures, equipment, finish hardware and similar finish surfaces. Remove any glazing compounds
7. Remove temporary utilities, fencing, barricades, planking, sanitary facilities and similar temporary facilities from Site.
8. Remove temporary film that remains on any hardware, doors or other surfaces.
9. Seal the bottom and tops of all doors
10. Special Clean-Up.
11. In addition to the general cleaning, the following special cleaning shall be done at the completion of the Work in accordance with the specifications including, but not limited to:
  - a. Remove putty stains from glazing, then wash and polish glazing.
  - b. Remove marks, stains, fingerprints and other soil or dirt from painted, stained or decorated work.
  - c. Remove temporary protection and clean and polish floors and waxed surfaces.
  - d. Clean and polish hardware and plumbing trim; remove stains, dust, dirt, plaster and paint
  - e. Wipe surfaces of mechanical and electrical equipment.
  - f. Remove spots, soil, plaster and paint from tile work, and wash tile.
  - g. Clean all fixtures and equipment, remove excess lubrication, clean light fixtures and lamps, polish metal surfaces.
  - h. Vacuum-clean carpeted surfaces.
  - i. Remove debris from roofs, down spout and drainage system.

34.3 Failure to Cleanup. If the Contractor fails to clean up as provided in the Contract Documents, the District may do so, and the cost thereof shall be the responsibility of the Contractor pursuant to Article 12.2 and seek a Deductive Change Order.

### 35. INSURANCE

- 35.1 Insurance Requirements. Before the commencement of the Work, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in California as admitted carriers with a financial rating of at least an A status as rated in the most recent edition of Best's Insurance Reports or as otherwise amended in these Contract Documents, such insurance as will protect the District from claims set forth below, which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations are by the Contractor, by a Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
1. Claims for damages because of bodily injury, sickness, disease, or death of any person District would require indemnification and coverage for employee claim;
  2. Claims for damages insured by usual personal injury liability coverage, which are sustained by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor or by another person;
  3. Claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents;
  4. Claims for damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under their own power and engaged in the Work;
  5. Claims involving contractual liability applicable to the Contractor's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Contractor and the Subcontractors; and
  6. Claims involving Completed Operations, Independent Contractors' coverage, and Broad Form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, and excavating. (XCU)
  7. Claims involving sudden or accidental discharge of contaminants or pollutants.
- 35.2 Subcontractor Insurance Requirements. The Contractor shall require its Subcontractors to take out and maintain similar public liability insurance and property damage insurance required under this Article in like amounts. A "claims made" or modified "occurrence" policy shall not satisfy the requirements of this Article without prior written approval of the District.
- 35.3 Additional Insured Endorsement Requirements. The Contractor shall name, on any policy of insurance required under this Article, the District, Architect, Inspector, the State of California, their officers, employees, agents and independent contractors as additional insureds. Subcontractors shall name the Contractor, the District, Architect, Inspector, the State of California, their officers, employees, agents and independent contractors as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall be an ISO CG 20 33 (04/813), or an ISO CG 20 38 (04/13) and ISO CG 20 37 (04/13) or their equivalent as determined by the District in its sole discretion, and must state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The insurance provided by the Contractor pursuant to this Article must be designated in the policy as primary to any insurance obtained by the District. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.

#### 35.4 Specific Insurance Requirements

35.4.1 Contractor shall take out and maintain and shall require all Subcontractors, if any, whether primary or secondary, to take out and maintain:

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

- |     |  |                |
|-----|--|----------------|
| 8.  | Per occurrence (combined single limit)             | \$1,000,000.00 |
| 9.  | Project Specific Aggregate (for this Project only) | \$2,000,000.00 |
| 10. | Products and Completed Operations                  | \$1,000,000.00 |
| 11. | Personal and Advertising Injury Limit              | \$1,000,000.00 |

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

- |     |  |                |
|-----|--|----------------|
| 12. | Automotive and truck where operated in amounts   | \$1,000,000.00 |
| 13. | Material Hoist where used in amounts   | \$1,000,000.00 |
| 14. | Explosion, Collapse and Underground (XCU coverage)   | \$1,000,000.00 |
| 15. | In addition, provide Excess Liability Insurance coverage in the amount of Five Million Dollars (\$5,000,000.00). |                |

35.5 Workers' Compensation Insurance. During the term of this Contract, the Contractor shall provide workers' compensation insurance (not less than \$1M) for all of the Contractor's employees engaged in Work under this Contract on or at the Site of the Project and, in case any of the Contractor's Work is subcontracted, the Contractor shall require the Subcontractor to provide workers' compensation insurance (not less than \$1M) for all the Subcontractor's employees engaged in Work under the subcontract. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in Work under this Contract on or at the Site of the Project is not protected under the Workers' Compensation laws, the Contractor shall provide or cause a Subcontractor to provide adequate insurance coverage for the protection of those employees not otherwise protected. The Contractor shall file with the District certificates of insurance and in comply with Labor Code § 3700.

#### 35.6 Builder's Risk/All Risk

35.6.1 *Course-of-Construction Insurance Requirements.* The Contractor, during the progress of the Work and until final acceptance of the Work by District upon completion of the entire Contract, shall maintain Builder's Risk, Course of Construction or similar first party property coverage issued on a replacement value basis consistent with the total replacement cost of the structures where work is being performed inclusive of all Work for the Project included within the Contract Documents. Coverage is to insure against all risks of accidental direct physical loss, and must include, by the basic grant of coverage or by endorsement, the perils of vandalism, malicious mischief (both without any limitation regarding vacancy or occupancy), fire, sprinkler leakage, civil authority, sonic boom, earthquake, flood, collapse, wind, lightning, smoke and riot. The coverage must include debris removal, demolition, increased costs due to enforcement of building ordinance and law in the repair and replacement of damage and undamaged portions of the property, and reasonable costs for the Architect's and engineering services and

expenses required as a result of any insured loss upon the Work and Project which is the subject of the Contract Documents, including the underlying structure where Work is being performed, completed Work and Work in progress, to the full insurable value thereof. Such insurance shall include the District and the Architect as additional named insureds, and any other person with an insurable interest as designated by the District.

The Contractor shall submit to the District for its approval all items deemed to be uninsurable. The risk of the damage to the Work due to the perils covered by the "Builder's Risk/All Risk" Insurance, as well as any other hazard which might result in damage to the Work, is that of the Contractor and the surety, and no claims for such loss or damage shall be recognized by the District nor will such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.

- 35.7 Fire Insurance. Before the commencement of the Work, the Contractor shall procure, maintain, and cause to be maintained at the Contractor's expense, fire insurance on all Work subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project against loss or damage in full until the Work is accepted by the District.
- 35.8 Other Insurance. The Contractor shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.
- 35.9 Proof of Insurance. The Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract until all required insurance and certificates have been obtained and delivered in duplicate to the District for approval subject to the following requirements:
- 35.9.1 Certificates and insurance policies shall include the following clause:
1. "This policy shall not be non-renewed, canceled, or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice."
  2. Certificates of insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices.
  3. Certificates of insurance shall clearly state that the District and the Architect are named as additional insureds under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by District.
  4. The Contractor and its Subcontractors shall produce a certified copy of any insurance policy required under this Article upon written request of the District.
- 35.10 Compliance. In the event of the failure of Contractor to furnish and maintain any insurance required by this Article 34, the Contractor shall be in default under the Contract. Compliance by Contractor with the requirement to carry insurance and furnish certificates or policies evidencing the same shall not relieve the Contractor from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify the District and the Architect.
- 35.11 No Waiver Created through Payments. The making of any payments under this CSA or the Sublease shall not be construed as creating an insurable risk interest by or for the District or be construed as relieving the Contractor or his Subcontractors of responsibility for loss from any direct physical loss, damage, or destruction occurring prior to Completion of the Project.

- 35.12 Waiver of Subrogation. Contractor waives (to the extent permitted by law) any right to recover against the District for damages to the Work, any part thereof, or any and all claims arising by reason of any of the foregoing, but only to the extent that such damages and/or claims are covered by property insurance and only to the extent of such coverage (which shall exclude deductible amounts) by insurance actually carried by the District.

The provisions of this section are intended to restrict each party to recovery against insurance carriers only to the extent of such coverage and waive fully and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier. The District and the Contractor shall each obtain in all policies of insurance carried by either of them, a waiver by the insurance companies thereunder of all rights of recovery by way of subrogation for any damages or claims covered by the insurance.

35.13 Performance and Payment Bonds

- 35.13.1 *Bond Requirements.* Prior to commencing any portion of the Work, the Contractor shall furnish separate payment and performance bonds for its portion of the Work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the Work. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California as sureties.

To the extent, if any, that the Contract Price is increased in accordance with the Contract Documents, the Contractor shall, upon request of the District, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the District. To the extent available, the bonds shall further provide that no change or alteration of the Contract Documents (including, without limitation, an increase in the Contract Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor will release the surety. If the Contractor fails to furnish the required bonds, the District may terminate the Contract for cause.

- 35.13.2 *Surety Qualification.* Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure § 995.120 shall be accepted. Surety must be a California-admitted surety and listed by the U.S. Treasury with a bonding capacity in excess of the Project cost.
- 35.13.3 *Alternate Surety Qualifications.* If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with § 995.660 of the California Code of Civil Procedure and proof of such is provided to the District.
- 35.13.4 Contractor is hereby authorized to obtain a performance and payment bond from any Subcontractors selected by Contractor at its discretion and cost. Any bonds required by this subsection shall comply with the requirements set forth above.

36. HOLD HARMLESS AND INDEMNITY

Contractor shall defend, indemnify and hold harmless District, Construction Manager, and their officers, employees, and agents (excluding the Inspector, Architect, and any other design or engineering professionals retained by District or Architect) from all liabilities, claims, actions, liens, judgments, demands, damages, losses, costs or expenses of any kind arising from death, personal injury, property damage or other cause based or asserted upon any act, omission, or breach connected with or arising from the progress of Work or performance of service under this Agreement or the Contract Documents. As part of this indemnity, Contractor shall protect and defend, at its own expense, District, Construction Manager, and their officers, employees, and agents (excluding the Inspector, Architect, and any other

design or engineering professionals retained by District or Architect) from any legal action including attorney's fees or other proceeding based upon such act, omission, breach or as otherwise required by this Article.

Furthermore, Contractor agrees to and does hereby defend, indemnify and hold harmless District, Construction Manager, and their officers, employees, and agents (excluding the Inspector, Architect, and any other design or engineering professionals retained by District or Architect) from every claim or demand made, and every liability, loss, damage, expense or attorney's fees of any nature whatsoever, which may be incurred by reason of:

- 36.1.1 Liability for (1) death or bodily injury to persons; (2) damage or injury to, loss (including theft), or loss of use of, any property; (3) any failure or alleged failure to comply with any provision of law or the Contract Documents; or (4) any other loss, damage or expense, sustained by any person, firm or corporation or in connection with the Work called for in this Agreement or the Contract Documents, except for liability resulting from the sole or active negligence, or the willful misconduct of the District.
- 36.1.2 Any bodily injury to or death of persons or damage to property caused by any act, omission or breach of Contractor or any person, firm or corporation employed by Contractor, either directly or by independent contract, including all damages or injury to, loss (including theft), or loss of use of, any property, sustained by any person, firm or corporation, including District, arising out of or in any way connected with Work covered by this Agreement or the Contract Documents, whether said injury or damage occurs either on or off District property, but not for any loss, injury, death or damages caused by the sole or active negligence or willful misconduct of the District.
- 36.1.3 Any dispute between Contractor and Contractor's Subcontractors/supplies/sureties, including, but not limited to, any failure or alleged failure of the Contractor (or any person hired or employed directly or indirectly by the Contractor) to pay any Subcontractor or Materialman of any tier or any other person employed in connection with the Work and/or filing of any stop notice or mechanic's lien claims.

Contractor, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the District, its officers, agents, CM, or employees (excluding the Inspector, Architect, and any other design or engineering professionals retained by District or Architect) on account of or founded upon any cause, damage, or injury identified herein and shall pay or satisfy any judgment that may be rendered against the District, its officers, agents or employees (excluding the Inspector, Architect, and any other design or engineering professionals retained by District or Architect) in any action, suit or other proceedings as a result thereof.

Contractor shall ensure that its contract with each of its Subcontractors contains provisions requiring the Subcontractors to defend, indemnify and hold harmless the District, Architect, Inspector, the State of California to a minimum level as set forth in this Article and consistent with the language of this Article.

The Contractor's and Subcontractors' obligation to defend, indemnify and hold harmless the District, Architect, and their officers, employees, and agents (excluding the Inspector, Architect, and any other design or engineering professionals retained by District or Architect) hereunder shall include, without limitation, any and all claims, damages, and costs for the following: (1) any damages or injury to or death of any person, and damage or injury to, loss (including theft), or loss of use of, any property; (2) breach of any warranty, express or implied; (3) failure of the Contractor or Subcontractors to comply with any applicable governmental law, rule, regulation, or other requirement; (4) products installed in or used in connection with the Work; and (5) any claims of violation of the Americans with Disabilities Act ("ADA") claims arising from failure to comply with the Construction Documents.

### **37. SUBSTITUTION OF SECURITY**

In accordance with Public Contract Code section 22300, the District will permit the substitution of securities for any moneys withheld by the District to ensure performance under the Construction Services Agreement. At the request and expense of the Contractors, securities equivalent to the amount withheld shall be deposited with the District, or

with a state or federally chartered bank as the escrow agent, who shall then pay such moneys to the Contractor. Upon satisfactory completion of the Construction Services Agreement the securities shall be returned to the Contractor.

**38. TITLE TO WORK**

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

**39. COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION**

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

Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. Contractor shall provide copies of all reports and monitoring information to the District, Architect and the District's third party SWPPP consultant.

The Contractor shall comply with the lawful requirements of any applicable municipality, the County, drainage district, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

Failure to comply with the Permit is in violation of federal and state law. The Contractor hereby agrees to indemnify and hold harmless the District, its Board members, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the District, its Board members, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole negligence, willful misconduct or active negligence of the District, its Board members, officers, agents, employees or authorized volunteers. District may seek damages from the Contractor for delay in completing the Project caused by the Contractor's failure to comply with the Permit.

**40. EQUAL OPPORTUNITY CLAUSE**

The Contractor herein agrees not to discriminate in its recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age or physical handicap in the performance of this Construction Services Agreement and to comply with the provisions of the following laws:

- 40.1 California Fair Employment and Housing Act (Gov. Code 12900 et seq., prohibiting discrimination in employment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex, and prohibiting harassment of an employee or applicant because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age);

- 40.2 Federal Civil Rights Act of 1964 (42 USC '2000e et seq., prohibiting discrimination in employment on the basis of race, color, national origin, religion, or sex); Title I of the Americans With Disabilities Act of 1990 (42 USC 12101 et seq., prohibiting discrimination against qualified individuals with a disability in hiring and employment practices);
- 40.3 The Age Discrimination in Employment Act (29 USC 621 et seq., prohibiting age discrimination in employment against individuals who are at least forty years of age);
- 40.4 California Labor Code section 1102.1 (prohibiting discrimination in any aspect of employment or opportunity for employment based on actual or perceived sexual orientation);
- 40.5 Sexual orientation;
- 40.6 American with Disabilities Act (ADA) (See Article 41); and
- 40.7 Any other laws or regulations prohibiting discrimination as may be applicable to Contractor.

**41. SPECIAL NOTICE OF AMERICAN'S WITH DISABILITIES ACT**

Some of the requirements in the Construction Documents are meant to comply with the American's with Disabilities Act ("ADA"). The requirements of the ADA are technical in nature and may appear to be minor in nature (i.e. whether a walkway or ramp has a 2% cross-slope). Contractor is warned that even the slightest deviation from the specific requirements from the ADA is considered a Civil Rights Violation and subjects the District to fines of three times actual damages sustained by a handicap individual or up to \$4,000 per violation and attorney's fees required to enforce the ADA violation. As a result of the significant liability and exposure associated with ADA aspects of the Contract, Contractor shall take special care to meet all ADA requirements detailed in the Construction Documents. Failure to comply with ADA rules that results in a Notice of Non-Compliance shall be repaired to meet ADA requirements promptly. In addition, any ADA violations that are not identified by Inspector or Architect that are later identified shall be repaired and charged back to the Contractor through a Deductive Change Order.

- 41.1 Indemnification of ADA Claims. ADA claims arising from failure to comply with Construction Documents shall be indemnified, held harmless and defended by Contractor. Further, any withholdings for ADA violations in Article 29.4 shall include potential redesign costs and an accelerated repair costs due to the potential for ADA claims arising from DSA posting of ADA violations on the Project.

**42. PATENTS, ROYALTIES, AND INDEMNITIES**

The Contractor shall hold and save the District and its officers, agents, and employees harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of this Construction Services Agreement, including its use by the District, except to the extent a method or means was specifically required by the Contract Documents.

**43. EXCISE TAX**

If under federal excise tax law any transaction hereunder constitutes a sale on which a federal excise tax is imposed and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the District, upon request, will execute a certificate of exemption which will certify (1) that the District is a political subdivision of the state for the purposes of such exemption and (2) that the sale is for the exclusive use of the District. No excise tax for such materials shall be included in the GMP.

**44. PROHIBITED INTERESTS**

No official of District and no District representative who is authorized in such capacity and on behalf of District to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with construction



of Project, shall be or become directly or indirectly interested financially in this Construction Services Agreement or any part thereof. No officer, employee, architect, attorney, engineer or inspector of or for District who is authorized in such capacity and on behalf of District to exercise any executive, supervisory or other similar functions in connection with construction of Project, shall become directly or indirectly interested financially in this Construction Services Agreement or in any part thereof.

**45. COMPLIANCE WITH DTSC GUIDELINES – IMPORTED SOIL/SOILS INSPECTION**

- 45.1 If the Project requires the use of imported soils, the Contractor shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with California Law and the California Health and Safety Code. The District reserves the right to reject any imported material that has come from agricultural or commercial land uses. Contractor must notify the District of the source of material and comply with the applicable Regional Water Quality Control Board Resolution and when applicable, with the guidelines of the Department of Toxic Substances Control (DTSC).
- 45.2 Unless otherwise provided, when a soils investigation report obtained from test holes at the site is available, such report shall not be a part of this contract. Nevertheless, with respect to any such soils investigation and/or geotechnical report regarding the site, it shall be the responsibility of the Contractor to review and be familiar with such report. Any information obtained from such report or any information given on drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, and does not form a part of the contract, unless otherwise specifically provided. Contractor is required to make a visual examination of site and must make whatever tests it deems appropriate to determine the underground condition of the soil. Limited soil tests and subsurface investigations, if any, are available for review and consideration by Contractor and were conducted for the purpose of design only. Subsurface investigation information is made available by District solely as a matter of convenience and general information for Contractor and Contractor is expected to review and be familiar with such information. No representation is made by District or Architect that information provided is completely representative of all conditions and materials which may be encountered. If such a report is referenced in the Contract Documents for performance of the Project, such reference shall be to establish minimum requirements only. Further, no representation is made by District or Architect that information provided is solely adequate for purposes of construction. District disclaims responsibility for interpretations by Contractor of soil and subsurface investigation information, such as in protecting soil-bearing values, rock profiles, presence and scope of boulders and cobbles, soil stability and the presence, level and extent of underground water. Contractor shall determine means, methods, techniques and sequences necessary to achieve required characteristics of completed Work. Conditions found after execution of the Construction Services Agreement to be materially different from those reported and which are not customarily encountered in the geographic area of the Project shall be governed by provisions of this Construction Services Agreement for unforeseen conditions.

**46. HAZARDOUS WASTE AND UNKNOWN PHYSICAL CONDITIONS**

Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:

1. Material that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
2. Subsurface or latent physical conditions at the Site differing from those indicated, including geological, soils, and or water table issues which impede construction or increase Construction Costs.
3. Unknown physical conditions at the Site (not including structures or improvements) of any unusual nature, different materially from those ordinarily encountered and generally

recognized as inherent in work of the character provided for in the Construction Services Agreement.

- 46.1 District shall promptly investigate the conditions, and if it finds that the conditions materially so differ, and the materials that are not on reports or documents supplied or reviewed as part of Contractor's Due Diligence shall be submitted as a Change Order under Article 18 and, upon approval, shall be allocated to the Unforeseen Allowance.
- 46.2 In the event that a dispute arises between District and Contractor whether the conditions materially differ from Due Diligence Documents reviewed for hazardous substances, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by this Construction Services Agreement but shall proceed with all work to be performed under the Construction Services Agreement.

**47. NO ASBESTOS CERTIFICATION**

- 47.1 Asbestos Free Installation Certification: Contractor shall execute and submit an "Asbestos Free Materials Certification," and further, is aware of the following
  - 47.1.1 Should asbestos containing materials be installed by the Contractor in violation of this certification, or if removal of asbestos containing materials is part of the Project, decontaminations and removals will be performed in accordance with the requirements of all applicable laws and will meet the following criteria:
    - 47.1.1.1 Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency (EPA).
    - 47.1.1.2 The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.
    - 47.1.1.3 The asbestos consultant shall be chosen and approved by the District which shall have sole discretion and final determination in this matter.
    - 47.1.1.4 The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.
  - 47.1.2 If removal of asbestos containing materials is part of the Project, the cost of all asbestos removal, including, but not necessarily limited to the cost of the asbestos removal contractor, the cost of the asbestos consultant, analytical and laboratory fees, time delays and additional costs that may be incurred by the District shall be borne entirely by the Contractor.
  - 47.1.3 Hold Harmless: Interface of work for the Project with work containing asbestos shall be executed by the Contractor at his/her risk and at his/her discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of the Construction Services Agreement the Contractor acknowledges the above and agrees to the fullest extent permitted by law to hold harmless the District, its Board and each member of the Board, its officers, employees, agents, representatives, including its Architect and assigns, for all asbestos liability which may be associated with this work. The

Contractor further agrees to instruct his/her employees with respect to the above mentioned standards, hazards, risk and liabilities.

**48. LAWS AND REGULATIONS**

Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on conduct of work as indicated and specified. If Contractor observes that drawings and specifications are at variance therewith, it shall promptly notify Architect in writing and any necessary changes shall be adjusted as provided in this Construction Services Agreement for changes in work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the District's Architect, it shall bear all costs arising therefrom.

**49. AGREEMENT MODIFICATIONS**

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

**50. NOTICES**

All communications in writing between District and Contractor, including without limitation, applications for payment, shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by telex, telegram, or fax followed by regular mail, addressed pursuant to the Notice Section of Article 3.

**51. THIRD-PARTY CLAIMS**

Pursuant to Public Contract Code section 9201(b) and (c), District shall provide Contractor with timely notification of the receipt of any third-party claim, relating to the Contract. District is entitled to recover its reasonable costs incurred in providing such notification.

**52. ASSIGNMENT**

Except Contractor's responsibility to assign Subcontractors and material suppliers to District upon Project Completion and the running of the Warranty Period, Contractor shall not assign or sublet the Lease, Sublease or this Construction Services Agreement, nor shall Contractor assign any monies due or to become due to it hereunder. Contractor has unique abilities and understanding of the Project from negotiations and the Due Diligence that has been undertaken and, thus, any assignment will not transfer to the assignee the specific understanding associated with Contractor on this Project.

**53. HEADINGS**

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

**54. INTEGRATION/MODIFICATION**

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

**55. APPLICABLE LAW/ PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

The terms and provisions of this Construction Services Agreement shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Construction Services

Agreement the action shall be brought in a state court situated in the County where the District is located, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county. In the event of any such litigation between the parties, the parties shall pay for their respective costs incurred, including attorneys' fees.

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

**56. SUCCESSION OF RIGHTS AND OBLIGATIONS**

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

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

CONTRACTOR

DISTRICT:

NEFF CONSTRUCTION, INC.

SIMI VALLEY UNIFIED SCHOOL DISTRICT

By: Ed Mierau  
Ed Mierau  
President

By: R. J. Todo  
Ron Todo  
Assistant Superintendent Business and Facilities

DATE: 2/10/2022 | 12:42 PM PST

DATE: 2/17/2022 | 3:21 PM PST

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**EXHIBIT "A"**

**SCOPE OF WORK / CONSTRUCTION DOCUMENTS**

*[TO BE INSERTED]*

**EXHIBIT "B"**  
**MASTER BUDGET**  
*[TO BE INSERTED]*

**SIMI VALLEY UNIFIED SCHOOL DISTRICT**

**CERTIFICATION OF COMPLIANCE WITH PREVAILING WAGE AND  
RELATED LABOR REQUIREMENTS  
(SUBMIT WITH BID PROPOSAL)**

**Project Simi Valley High School Modernization Projects; BID #R22-02902**

CONTRACTOR: Neff Constructions

(Contractor Name)

[SimiLAB1771]

I hereby certify that the firm identified above will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours' notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project including, without limitation, labor compliance monitoring and enforcement by the Department of Industrial Relations.

I hereby certify that I will also conform to the Federal Labor Standards Provisions regarding minimum wages, withholding, payrolls and basic records, apprentice and trainee employment requirements, equal employment opportunity requirements, Copeland Act requirements, Davis-Bacon and Related Act requirements, Contract Work Hours and Safety Standards Act requirements, and any and all other applicable requirements for federal funding for all Work on the above Project.

2/10/2022 | 12:42 PM PST

Date:

Company Name: Neff Construction

Contractor Signature: Ed Mierau

Printed Name: Ed Mierau

Title: President

**NON-COLLUSION DECLARATION  
(SUBMIT WITH BID PROPOSAL)**

**PROJECT: Simi Valley High School Modernization Projects**

**BID # R22-02902**

**STATE OF CALIFORNIA**  
**COUNTY OF** San Bernardino

I, Ed Mierau, being first duly sworn, deposes and says that I am  
(Typed or Printed Name) [SimiPCC7106]  
the President of Neff Construction, the party submitting  
(Title) (Bidder Name)

the foregoing Bid Proposal ("the Bidder"). In connection with the foregoing Bid Proposal, the undersigned declares, states and certifies that:

1. The Bid Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization or corporation.
2. The Bid Proposal is genuine and not collusive or sham.
3. The Bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any other bidder or anyone else to put in sham bid, or to refrain from bidding.
4. The Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price, or that of any other bidder, or to fix any overhead, profit or cost element of the bid price or that of any other bidder, or to secure any advantage against the public body awarding the contract or of anyone interested in the proposed contract.
5. All statements contained in the Bid Proposal and related documents are true.
6. The Bidder has not, directly or indirectly, submitted the bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any person, corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Executed this 27 day of February, 2022 at Ontario, San Bernardino Cty., CA.  
2/10/2022 | 12:42 PM PST (City, County and State)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Ed Mierau

(Signature)  
Ed Mierau

(Name Printed or Typed)



### CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

I, Ed Mierau the President of  
Neff Construction (Name) [SimiLAB3700] (Title)  
\_\_\_\_\_, declare, state and certify that:  
(Contractor Name)

1. I am aware that California Labor Code §3700(a) and (b) provides:

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

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees."

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

Neff Construction

\_\_\_\_\_  
(Contractor Name)

By: Ed Mierau

\_\_\_\_\_  
(Signature)

Ed Mierau

\_\_\_\_\_  
(Typed or printed name)

## DRUG-FREE WORKPLACE CERTIFICATION

I, Ed Mierau, am the President of Neff Construction  
(Print Name) [SimiGOV8350] (Title)  
(Contractor Name)

I declare, state and certify to all of the following:

1. I am aware of the provisions and requirements of California Government Code §8350 et seq., the Drug Free Workplace Act of 1990.
2. I am authorized to certify, and do certify, on behalf of Contractor that a drug free workplace will be provided by Contractor by doing all of the following:
  - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in Contractor's workplace and specifying actions which will be taken against employees for violation of the prohibition;
  - B. Establishing a drug-free awareness program to inform employees about all of the following:
    - i. The dangers of drug abuse in the workplace;
    - ii. Contractor's policy of maintaining a drug-free workplace;
    - iii. The availability of drug counseling, rehabilitation and employee-assistance programs; and
    - iv. The penalties that may be imposed upon employees for drug abuse violations;
  - C. Requiring that each employee engaged in the performance of the Contract be given a copy of the statement required by subdivision (A), above, and that as a condition of employment by Contractor in connection with the Work of the Contract, the employee agrees to abide by the terms of the statement.
  - D. Contractor agrees to fulfill and discharge all of Contractor's obligations under the terms and requirements of California Government Code §8355 by, inter alia, publishing a statement notifying employees concerning: (i) the prohibition of any controlled substance in the workplace, (ii) establishing a drug-free awareness program, and (iii) requiring that each employee engaged in the performance of the Work of the Contract be given a copy of the statement required by California Government Code §8355(a) and requiring that the employee agree to abide by the terms of that statement.
3. Contractor and I understand that if the District determines that Contractor has either: (i) made a false certification herein, or (ii) violated this certification by failing to carry out and to implement the requirements of California Government Code §§8355, the Contract awarded herein is subject to termination, suspension of payments, or both. Contractor and I further understand that, should Contractor violate the terms of the Drug-Free Workplace Act of 1990, Contractor may be subject to debarment in accordance with the provisions of California Government Code §8350, et seq.
4. Contractor and I acknowledge that Contractor and I are aware of the provisions of California Government Code §8350, et seq. and hereby certify that Contractor and I will adhere to, fulfill, satisfy and discharge all provisions of and obligations under the Drug-Free Workplace Act of 1990.

I declare under penalty of perjury under the laws of the State of California that all of the foregoing is true and correct.

Executed at Ontario, CA this 2/10/2022 day of February, 2022.  
(City and State)

Ed Mierau  
(Signature)  
Ed Mierau

(Printed or Typed Name)

## TOBACCO-FREE ENVIRONMENT CERTIFICATION

**PROJECT:** Simi Valley High School Modernization Projects; BID # R22-02902

**This Tobacco-Free Environment Certification form is required from the successful Bidder.**

The contract between SIMI VALLEY UNIFIED SCHOOL DISTRICT ("District") and Neff Construction ("Contractor" or "Bidder") includes the following provisions: [SimiLAB6400]

Pursuant to, without limitation, 20 U.S.C. section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq. and District Board Policies, all District sites, including the Project site, are tobacco-free environments. Smoking, vaping, and the use of tobacco products by all persons is prohibited on or in District property. District property includes school buildings, school grounds, school owned vehicles and vehicles owned by others while on District property.

I acknowledge that I am aware of the District's policy regarding tobacco-free environments at District sites, including the Project site and hereby certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, subcontractors, or my firm's subcontractors' employees or agents to use tobacco and/or smoke/vape on any District site.

Date: 2/10/2022 | 12:42 PM PST

Contractor: Neff Construction

Signature: Ed Mierau

Print Name: Ed Mierau

Title: President

## **DISABLED VETERAN BUSINESS ENTERPRISE ("DVBE") PARTICIPATION GOAL PROGRAM POLICY**

1. DVBE Participation Goal Program Policy. SIMI VALLEY UNIFIED SCHOOL DISTRICT ("the District") is committed to achieving the legislatively and administratively established Participation Goal for Disabled Business Enterprises ("DVBEs"). Through the DVBE Participation Goal Program, the District encourages contractors to ensure maximum opportunities for the participation of DVBEs in the Work of the Contract. The District's commitment to the achievement of DVBE Participation Goal for the Work of the Contract shall not, however, result in the District's discrimination in the award of the Contract on the basis of ethnic group identification, ancestry, religion, age, sex, race, color, or physical or mental disability.
2. Definitions.
  - 2.1. Disabled Veteran. A "Disabled Veteran" means a veteran of the military, naval, or air service of the United States with at least ten percent (10%) service-connected disability who is a resident of the State of California.
  - 2.2. Disabled Veteran Business Enterprise. A "Disabled Veteran Business Enterprise" ("DVBE") means a business enterprise certified by the Office of Small and Minority Business, State of California, Department of General Services, as a "Disabled Veteran Business Enterprise".
  - 2.3. Good Faith Efforts. As use herein, the term "Good Faith Efforts" shall be deemed to mean demonstrable and effective efforts of the Bidder to seek out, consider and secure DVBEs as potential Subcontractors or Material Suppliers, or both, in order to meet the Participation Goal; the Good Faith Efforts must be an active and aggressive effort to meet the Participation Goal, as more particularly set forth herein.
3. Participation Goal.
  - 3.1. Participation Goal Defined. The term "Participation Goal" is a numerically expressed objective for DVBE participation in performing the Work of the Contract. The DVBE Participation Goal is not a quota, set-aside, or rigid proportion.
  - 3.2. DVBE Participation Goal. The DVBE Participation Goal is Three Percent (3%) of total amount of Bidder's Bid Proposal, inclusive of the value of additive Alternate Bid Items, if any.
4. Good Faith Efforts to Meet Participation Goal.
  - 4.1. Good Faith Efforts. The Bid Proposal submitted by any Bidder who has not met the DVBE Participation Goal shall be considered responsive only if the Bidder represents that it made Good Faith Efforts to meet the DVBE Participation Goal.
  - 4.2. Good Faith Efforts to Meet DVBE Participation Goal. A Bidder must secure the participation of DVBEs in a timely manner to ensure that potential DVBE Subcontractors or Material Suppliers have an adequate opportunity to respond to the Bidder's solicitation of sub-bids and be given serious consideration by the Bidder prior to the closing time for the receipt of Bid Proposals. Such Good Faith Efforts shall include, without limitation:
    - 4.2.1. DVBE Work and Active Solicitation of DVBEs. The Bidder's identification of portions of the Work which may be provided or performed by DVBE Subcontractors and/or Material Suppliers and the Bidder's active and sincere solicitation of DVBEs for those identified portions of the Work.
    - 4.2.2. Contact Agencies for DVBEs. Contact local, state and/or federal agencies, and local DVBE organizations to identify potential DVBEs for performing portions of the Work;

- 4.2.3. Advertisements. Advertise (with sufficient time for submission of sub-bids and the Bidder's good faith consideration of the same) prior to the last date for submittal of Bid Proposals in: (i) one or more daily or weekly newspapers of general circulation published in the locality of the Work, and (ii) one or more construction trade publications, and (iii) one or more construction trade publications, journals or papers focusing on DVBEs. Each of the advertisements pursuant to the preceding, must state the following: (i) identification of the general description of the Work and an identification of the District; (ii) state the closing date and time for the District's receipt of Bid Proposals; (iii) state the last date and time for submission of sub-bids from DVBEs to the Bidder; (iv) request sub-bids from DVBE Subcontractors or Material Suppliers; (v) identify the type of Work of the Contract available for sub-bids by DVBEs; and (vi) unequivocally state the requirement of bonds, if any, of a DVBE sub-Bidder and who is to bear the expense of obtaining any required bonds.
- 4.2.4. Direct Solicitation of DVBEs. Solicit by direct mail, telephone or personal contact a sufficient number of DVBEs who offer work or services appropriate for the Work identified by the Bidder under Paragraph 4.2.1 above. Solicitations shall be made in a timely manner and contain sufficient information for a sub-Bidder to make a reasonable sub-bid and the Bidder's good faith consideration of the same, including, without limitation, the following: (i) identification of the general description of the Work and an identification of the District; (ii) state the closing date and time for the District's receipt of Bid Proposals; (iii) state the last date and time for submission of bids from DVBEs to the Bidder; (iv) request sub-bids from Subcontractors or Material Suppliers; (v) identify the type of Work of the Contract available for sub-bids by DVBEs; and (vi) unequivocally state the requirement of bonds of a DVBE sub-Bidder and who is to bear the expense of obtaining any required bonds.
- 4.2.5. Bidder Follow-Up To DVBE Interest. The Bidder shall follow-up initial expressions of interest of DVBEs in performing a portion of the Work by contacting such DVBEs to determine with certainty whether such DVBEs are interested in performing specific items of the Work of the Contract and submitting a sub-bid for a portion of the Work.
- 4.2.6. Good Faith Negotiations With Potential DVBE Subcontractors. The Bidder shall negotiate in good faith with potential DVBEs Subcontractors or Material Suppliers and shall not unjustifiably reject, as unsatisfactory, bids prepared by any DVBE for a portion of the Work of the Project. In the event that the District shall reasonably determine that the Bidder has failed to engage in good faith negotiations with a potential DVBE participant or rejects the sub-bid of a DVBE without justification, the District may deem the Bid Proposal of such Bidder to be non-responsive.
5. Documentation of Achievement of Participation Goal or Good Faith Efforts. Each Bidder shall note, where indicated, in the form of Bid Proposal whether the DVBE Participation Goal was achieved and if not, that Good Faith Efforts were made to achieve the DVBE Participation Goal. **The Bidders submitting the three lowest priced Bid Proposals (as determined at the time of the District's public opening and reading of Bid Proposals), shall submit to the District documentation and supporting evidence of achievement of the DVBE Participation Goal or Good Faith efforts to achieve the DVBE Participation Goal.** Such documentation and supporting evidence shall be in the form of duly completed forms of the DVBE Participation Worksheets issued by the District; unless modified by the District, completed DVBE Worksheets must be submitted to the District Purchasing Department no later than 5:00 p.m. of the third (3<sup>rd</sup>) working day after the date of the opening of Bid Proposals. The District may, at its discretion, request that Bidders, other than the Bidders submitting the three lowest priced Bid Proposals, submit documentation of compliance with the DVBE Participation Goal Program at any time after the District's opening of Bid Proposals and

prior to the District's award of the Contract. If a Bidder is required or requested by the District to submit DVBE Participation Goal Program documentation, the failure of any Bidder to timely submit complete and accurate documentation on DVBE Participation Worksheets issued by the District at or prior to the time established herein will render the Bidder's Bid Proposal non-responsive and rejected.

6. Counting of DVBE Participation.

- 6.1. Certification. DVBEs must be certified in the category identified prior to the closing time for the District's receipt of Bid Proposals; any DVBE who is not so certified will result in such DVBE not counting towards the DVBE Participation Goal.
  - 6.2. Bidder Acceptance of Sub-Bid. Sub-bids of DVBEs shall be accepted by the Bidder prior to the closing time for the District's receipt of Bid Proposals, with such acceptance subject only to the District's award of the Contract to the Bidder.
  - 6.3. Value of Participation Goal. The total dollar value of a contract between the Bidder and a certified DVBE will count towards the DVBE Participation Goal.
  - 6.4. Joint Ventures. If a DVBE is a member of a joint venture, only the dollar value of the Work actually performed by the DVBE member of the joint venture will count towards the DVBE Participation Goal, unless the joint venture entity itself is certified as a DVBE.
  - 6.5. Bidder as DVBE. A Bidder certified as a DVBE may count towards the Participation Goal the dollar value of the Work actually performed by the Bidder's own forces. A Bidder certified as a DVBE is not relieved from meeting the DVBE Participation Goal or making Good Faith Efforts to achieve the Participation Goal if the value of its Work is less than the DVBE Participation Goal.
  - 6.6. Lower Tier Subcontractors; Material Suppliers. The Bidder may count towards the DVBE Participation Goal the total dollar value of contracts let by its Subcontractors or Material Suppliers to lower tier Subcontractors or Material Suppliers certified as DVBEs provided that such lower tier Subcontractors or Material Suppliers actually assume the contractual responsibility and obligation for the total dollar value of the Work or materials to be supplied by such lower tier Subcontractors or Material Suppliers.
  - 6.7. Commercially Useful Functions. DVBEs used by the Bidder to establish achievement of the Participation Goal shall be considered as meeting the Participation Goal only if the DVBE is responsible for execution of a distinct element of the Work of the Contract, carry out its obligations by actually performing, managing, or supervising the Work for which the DVBE is responsible for executing. Such DVBEs must be responsible for the portion of the Work which is normal for its business services and functions. A DVBE Subcontractor who subcontracts a significantly greater portion of the Work assumed by the DVBE Subcontractor than would be considered normal and usual under industry standards and practices will not be presumed to be performing a commercially useful function, and such DVBE Subcontractor will not count or be considered for purposes of achieving the Participation Goal.
7. Substitution of DVBEs. If the Bidder awarded the Contract deems it necessary to substitute a DVBE Subcontractor or Material Supplier identified in the Subcontractor's List submitted with the Bidder's Bid Proposal, all provisions of the Contract Documents relating to the substitution of Subcontractors shall be applicable and complied with by the successful Bidder. In addition to the provisions of the Contract Documents relating to the substitution of listed Subcontractors, if a DVBE under a direct contract with the Bidder is to be substituted, the successful Bidder is strongly encouraged to substitute the listed DVBE with an equivalent and certified DVBE.
8. Monitoring of DVBE Participation.
- 8.1. DVBE Participation Worksheets. If the Bidder awarded the Contract is required by the District to complete and submit DVBE Participation Worksheets, the completed forms of DVBE

Participation Worksheets submitted by the Bidder shall be deemed a part of the Contract Documents.

- 8.2. Continuing Responsibilities. Efforts of the successful Bidder to include the participation of DVBEs in the performance of the Work of the Contract shall not terminate with the award of the Contract to such Bidder. The successful Bidder's efforts to secure the participation of DVBEs shall continue for the duration of the Work of the Contract, including when the successful Bidder is purchasing materials, equipment, supplies, and/or needs additional Subcontractors (including substitution of listed Subcontractors).
- 8.3. DVBE Participation Reports and Data. During performance of the Work of the Contract, the successful Bidder shall maintain complete and accurate records of DVBE Participation in executing the Work. From time-to-time, upon the request of the District the Bidder awarded the Contract shall submit reports, in form and content satisfactory to the District, regarding DVBE Participation in the Work of the Contract, including the participation of DVBEs in the performance of approved Changes to the Work. The failure or refusal of the successful Bidder to submit reports of DVBE Participation during performance of the Work within ten (10) days of the District's request for such reports may be deemed by the District to be the successful Bidder's default of a material obligation of the Contract and thereupon, the District may exercise any right or remedy provided for under the Contract Documents or at law, including without limitation termination of the Contract for default or the withholding of payments otherwise due under the Contract Documents until such report(s) is/are received. If requested by the District, upon completion of the Work of the Contract, the successful Bidder shall submit a final report identifying all DVBEs utilized in the performance of the Work, the type or classification of the Work performed by each such DVBE and the dollar value of the Work performed by each such DVBE. In the event that the District shall request a report of DVBE utilization upon completion of the Work of the Contract, the submission of such report in form and content satisfactory to the District shall be deemed a condition precedent to the District's obligation to make payment of the Final Payment under the Contract Documents. In such event, the submission of such final report shall be in addition to, and not in lieu of any other conditions precedent set forth in the Contract Documents for the District's obligation to make payment of the Final Payment. The Bidder awarded the Contract shall maintain books and records of DVBE Participation in the Work for at least three (3) years following completion of the Project; during such time, the District shall have access, upon reasonable advance notice, to such books and records for inspection or reproduction.
- 8.4. Contract Audit. The successful Bidder awarded the Contract agrees that the District, or its designee, shall have the right to review, obtain and/or copy any and all writings, materials, documents and other records pertaining to utilization of DVBEs in performance of the Contract. The successful Bidder awarded the Contract agrees that the District, or its designee, shall have access to any of the successful Bidder's premises upon reasonable notice, during usual business hours for the purpose of interviewing employees and inspecting and/or copying such writings, materials, documents and other documents which may be relevant to a matter under investigation for the purpose of determining compliance with the DVBE Participation Goal Program Policy.
9. Capitalized Terms. Capitalized terms used herein shall be as defined herein or elsewhere in the Contract Documents.

[END OF SECTION]

**DVBE PARTICIPATION WORKSHEETS  
ATTACHMENT A  
BIDDER'S DVBE STATEMENT**

**1. General Information.**

1.1. Bidder Name: \_\_\_\_\_.

1.2. Total Amount of Bidder's Bid Proposal (inclusive of additive Alternate Bid Items, if any and Allowance Amount):

\_\_\_\_\_ Dollars (\$\_\_\_\_\_).

**2. Bidder's Compliance With DVBE Participation Program. (Check the appropriate statement).**

- ☐ The Bidder has achieved or exceeded the DVBE Participation Goal and all DVBEs counting towards the DVBE Participation Goal are set forth and identified in DVBE Attachments A, B, C and D.
- ☐ The Bidder did not achieve the Participation Goal for DVBEs, but has made the required Good Faith Efforts to secure the participation of DVBEs in accordance with guidelines established in the District's DVBE Participation Goal Program. Return Attachments A, E, F, G, and H.

**3. DVBE Participation Achieved.** The Bidder achieved a DVBE Participation Goal of % of the amount of the Bidder's Bid Proposal.

**4. Submittal of Documentation.** Concurrently with the submittal of this Bidder's DVBE Statement, the Bidder has also submitted duly completed, and executed if required, forms of DVBE Attachments B, C, D, E, F, G and H of these DVBE Participation Worksheets to the extent required by the District's DVBE Participation Goal Program Policy. All of the information provided by the Bidder in its responses to DVBE Attachments B, C, E, F, G and H are true, correct and accurate; there are no omissions in the responses of the Bidder to the foregoing Attachments which render any of the Bidder's statements or information provided therein to be false or misleading. Incomplete, inaccurate, false, misleading responses or omissions rendering responses to be false or misleading will render the Bid Proposal non-responsive and rejected.

**5. Certification of DVBE Status.** The Bidder certifies, warrants and represents to the District that the Bidder has exercised due diligence in ascertaining the status of each proposed DVBE identified in DVBE Attachment C as a DVBE in compliance with the applicable provisions of the District's DVBE Participation Program Policy and applicable law. By executing and submitting this Bidder's DVBE Statement, the Bidder represents to the District that each DVBE identified in DVBE Attachment C is duly and properly certified as a DVBE in conformity with the District's DVBE Program Goal Policy and applicable law. The Bidder acknowledges that in the event that the District shall reasonably determine that any DVBE identified in the Bidder's responses to DVBE Attachment C is not a duly and properly certified DVBE, the Bid Proposal may be rejected by the District as being non-responsive. For each DVBE identified in DVBE Attachment C, the Bidder has submitted forms of DVBE Certification (DVBE Attachment D) duly completed and executed by each such DVBE.



- 6. Authority to Execute.** The individual executing this Bidder's DVBE Statement on behalf of the Bidder warrants and represents to the District that she/he is duly authorized to execute this Bidder's DVBE Statement on behalf of the Bidder.

Executed this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_.  
(City and State)

I declare under penalty of perjury under the laws of the State of California that all of the foregoing is true and correct.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)



**INSTRUCTIONS FOR COMPLETION OF  
ATTACHMENT C  
DVBE PARTICIPATION SUMMARY**

1. **Submittal of Attachment C.** The Bidder shall complete and submit Attachment C regardless of whether or not such Bidder has achieved some or all of the Participation Goal. Failure of the Bidder to submit completed form of Attachment C as and when required by the DVBE Participation Goal Program Policy will result in the District rejecting the Bid Proposal of such Bidder as being non-responsive.
2. **Firm Name.** State name of the enterprise proposed by the Bidder for meeting DVBE Participation Goal; the full name of each enterprise identified must be listed and if the enterprise conducts business under a fictitious business name, the same shall be stated. If the Bidder is a certified DVBE and wishes to be counted in the category certified for purposes of meeting the Participation Goal, the Bidder must be identified in Attachment C.
3. **Item or Description of Work.** Identify, with specificity, the item or portion of the Work of the Contract to be provided or performed by the proposed DVBEs identified.
4. **Contracting With.** Identify the name of the company or firm with whom the proposed DVBE will be contracting with in connection with the Work of the Contract.
5. **Tier.** Identify the tier of contracting for each proposed DVBE with the following designations:
  - 0 = Bidder.
  - 1 = First Tier Subcontractor or Material Supplier under a direct contract with the Bidder.
  - 2 = Second Tier Subcontractor or Material Supplier under a direct contract with a First Tier Subcontractor or Material Supplier, regardless of whether or not the First Tier Subcontractor or Material Supplier is a DVBE.
  - 3 = Third Tier Subcontractor or Material Supplier under a direct contract with a Second Tier Subcontractor or Material Supplier, regardless of whether or not the Second Tier Subcontractor or Material Supplier is a DVBE.
6. **Claimed Value.** Set forth the total dollar value of the Work to be provided or performed by the proposed DVBE. The dollar value set forth in the responses to Attachments C must conform with the applicable provisions of the District's DVBE Participation Program Goal Policy.
7. **Certification.** For each DVBE identified in Attachment C, the Bidder shall indicate in this column whether such DVBE is self-certified or certified by a public agency as a DVBE. The Bidder's completion of this portion of Attachment C with respect to each DVBE identified therein is in addition to and not in lieu of the Bidder's submittal of duly completed and executed forms of DVBE Certification (Attachment D) from each proposed DVBE identified in Attachment C.

**[END OF SECTION]**

DVBE PARTICIPATION WORKSHEETS  
ATTACHMENT C  
DVBE PARTICIPATION SUMMARY

**DVBE PARTICIPATION WORKSHEETS  
INSTRUCTIONS FOR COMPLETION OF ATTACHMENT D  
DVBE CERTIFICATION**

1. DVBEs Completion of Attachment D. The Bidder submitting a Bid Proposal to the District shall make available to each DVBE identified by the Bidder in its responses to Attachment C a copy of the DVBE Certification (Attachment D) for completion and execution by each such DVBE.
2. Bidder Submittal of Completed Attachment D. The Bidder required by the DVBE Participation Goal Program Policy to submit documentation of compliance with the DVBE Participation Goal Program shall submit duly completed and executed forms of the DVBE Certification of each DVBE identified in the Bidder's responses to Attachment C. The failure or refusal, for any reason, of the Bidder to submit such completed and executed DVBE Certification(s) of each DVBE identified in the Bidder's responses to Attachment C as and when required by the DVBE Participation Goal Program Policy will result in the District rejecting the Bid Proposal of such Bidder as being nonresponsive.
3. Complete and Accurate Attachment D. Each DVBE identified in the Bidder's responses to Attachment C shall complete and execute, under penalty of perjury, a DVBE Certification. Each such DVBE and the Bidder acknowledge that if the District reasonably determines that any response in the DVBE Certification(s) submitted to the District which are incomplete, false or misleading or which omit facts rendering responses therein to be false or misleading, the District may reject the Bid Proposal of such Bidder as being non-responsive.

**[END OF SECTION]**

**DVBE PARTICIPATION WORKSHEETS  
ATTACHMENT D  
DVBE CERTIFICATION**

1. DVBE Information.

DVBE Firm Name	
DVBE Address	
DVBE Firm Contact Person	
DVBE Firm Contact Person Phone, Fax and Email	
Services or Goods Generally Provided by DVBE	
Services or Goods to be Provided by DVBE to Bidder	

2. Certification of DVBE Status. The above-identified DVBE is certified as such by California Department of General Services Office of Small Business and Disabled Veteran Business Enterprise Services and a true and correct copy of such certification is attached hereto. The Bidder and the above-identified DVBE acknowledge that if the certification of the above-identified DVBE's status is not attached, the above-identified DVBE will not be counted or considered for purposes of the Bidder's achievement of the Participation Goal.
3. Authority to Execute. The undersigned individual executing this DVBE Certification warrants and represents to the District that she/he has made diligent inquiry to ascertain that all of the information provided herein is true, correct and complete, that there are no omissions of fact in any of the responses herein which would render such responses false or misleading and that she/he is duly authorized to execute this DVBE Certification on behalf of the above-identified DVBE.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_  
(City and State)

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name of Individual Executing DVBE Certification)  
[Printed or Typed]

**DVBE PARTICIPATION WORKSHEETS  
ATTACHMENT E  
DVBEs CONTACTED**

For each Subcontractible Item of the Work identified in the Bidder's response to Attachment B (Subcontractible Items of the Work), provide the following:

1. List all the DVBEs you solicited sub-bids from and how you obtained each firm's name.
2. Indicate method and date of solicitation (all written solicitations must conform with Public Contract Code § 4108 with respect to bonding requirements, if any).
3. List the method and date of follow-up and the person you contacted.

USE ONE SHEET FOR EACH SUBCONTRACTIBLE ITEM OF WORK IDENTIFIED IN ATTACHMENT B. (Photocopy as many sheets of this Attachment E as necessary.)

**Bidder Name:**

**PROJECT: Simi Valley High School Modernization Projects; BID# R22-02902**

[illegible]

**DVBE PARTICIPATION WORKSHEETS  
ATTACHMENT F  
DVBE SUB-BIDS NOT ACCEPTED BY BIDDER**

List all DVBEs who submitted bids or quotations to the Bidder which were not accepted. Indicate if the sub-Bidder is a DVBE, identify the item of Work or materials, list the Subcontractor/Material Supplier the Bidder intends to use in lieu of the DVBE submitting a sub-bid for the identified portion of the Work, and the amount of such other sub-Bidder's bid. Give the reason the Bidder did not use the DVBE firm. (Photocopy if additional sheets are needed.)

**Bidder Name:** \_\_\_\_\_

**PROJECT:** Simi Valley High School Modernization Projects; BID# R22-02902

DVBEs Who Submitted Bids	Item of Work or Materials	Subcontractor/ Material Supplier to be Used	Reason DVBE Bid Not Accepted



**Bidder Name:** \_\_\_\_\_

Identify ALL DVBE firms contacted by the Bidder for purposes of meeting the DVBE Participation Goal. If a DVBE was solicited in writing, the Bidder shall attach hereto a true and correct copy of such written solicitation; failure of the Bidder to do so may result in the District's rejection of the Bidder's Bid Proposal as being non-responsive.

[illegible]

**DVBE PARTICIPATION WORKSHEETS  
ATTACHMENT H  
AGENCY CONTACTS**

**Bidder Name:** \_\_\_\_\_

**PROJECT:** Simi Valley High School Modernization Projects; BID# R22-02902

Identify all local, state or federal public agencies and DVBE organizations contacted by the Bidder for the purpose of identifying potential DVBEs to meet the Participation Goal. If the Bidder received any list or other writing identifying potential DVBEs from any agency or organization set forth in this Attachment H, the Bidder shall attach hereto a true and correct copy of each such list or other writing; failure of the Bidder to so attach such list(s) or other writing(s) may result in the District rejecting the Bid Proposal of such Bidder as being non-responsive. (Photocopy if additional sheets are necessary.)

**LOCAL, STATE OR FEDERAL AGENCIES.**

Agency Name & Address	Date of Bidder's Contact with Agency	Name & Telephone Number of Individual Contacted	DVBE List Received by Bidder (Indicate Yes or No & if Yes, the date of Bidder's receipt of list)

**DVBE ORGANIZATIONS CONTACTED.**

Organization Name & Address	Date of Bidder's Contact with Organization	Name & Telephone Number of Individual Contacted	DVBE List Received by Bidder (Indicate Yes or No & if Yes, the date of Bidder's receipt of list)

**FINGERPRINT CERTIFICATE**

I, Ed Mierau, am the President of Neff Construction (Print Name) [SimiEDU45125-1] (Title). I declare, state, and certify all of the following:  
(Entity/Contractor Name)

1. I am aware of the provisions and requirements of California Education Code §45125.1 and §45125.2, regarding fingerprinting of persons providing services to school districts. As such, I understand that as a public works contractor, California Education Code §45125.2 details three (3) methods for ensuring the safety of pupils as described below.

- 1.1. Installation of a physical barrier.
- 1.2. **Continual supervision and monitoring of all of contractor's employees by an employee of the contractor whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.**
- 1.3. Surveillance of contractor's employees by school personnel.

**The District requires Entity/Contractor to be able to comply with method (1.2) above. As such, Entity/Contractor must have a California Department of Justice issued ORI number under which Entity's/Contractor's employees have been fingerprinted, allowing the California Department of Justice to notify Entity/Contractor upon ascertaining that an individual whose fingerprints were submitted to it has been convicted of a violent or serious felony. Upon such notification, Entity/Contractor shall immediately remove individual identified from District sites.**

**Additional Fingerprint Certificates shall be provided to District as Entity's/Contractor's supervisory staff changes.**

Entity/Contractor  
DOJ issued ORI

AE071

If your entity does not have an ORI #, STOP and contact the District's Purchasing Director at 805-306-4500 x4601.

**As an alternative to Entity/Contractor having an ORI number, the District may allow Entity's/Contractor's supervisory employees to be fingerprinted under the District's ORI number. Contact the District's Purchasing Director at 805-306-4500 x4601.**

2. I have personal knowledge of and/or have made due and diligent inquiry with respect to the following, and based on said knowledge and/or inquiry I certify that:
  - 2.1. The fingerprints of each person identified on Attachment B-1, providing continual supervision and monitoring of all of Entity's/Contractor's staff, including subcontractors of all tiers, while Entity/Contractor/subcontractor(s) are on District Sites, have been submitted to the California Department of Justice under the ORI number provided above pursuant to Education Code §45125.1 and §45125.2; and
  - 2.2. The California Department of Justice has issued written or electronic verification that each person identified on Attachment B-1 has not been convicted of a felony, as defined in Education Code §45122.1, and has no criminal felony proceedings, as defined in Education Code §45122.1, pending against him or her.
3. Entity/Contractor and I understand that if the District determines that Entity/Contractor has either: (a) made a false certification herein, or (b) violates this certification by failing to carry out and to implement the requirements of California Education Code §45125.1, the Contract is subject to termination, suspension of payments, or both.
4. I am authorized to execute this Fingerprint Certificate on behalf of the Entity/Contractor. All of the statements set forth above and all of the information provided in Attachment B-1 are true, correct, complete, and accurate. Further, there are no omissions or misstatements of material fact in the foregoing statements or in the information set forth in Attachment B-1 which would render such statements and/or information to be false or misleading.
5. Unsupervised Contact with students means contact that provides the person opportunity and probability for personal communication or touch with students when not under direct District supervision. Entity/Contractor shall ensure that Entity/Contractor, any subcontractors of all tiers, and their officers, employees, and agents will have no Unsupervised Contact with students while on District property. Entity/Contractor will work with the District and with Entity's/Contractor's subcontractors to ensure compliance with this requirement and shall take all measures necessary to ensure compliance with this requirement, without compromising the day-to-day educational operations at each school site where Entity/Contractor is performing work. If Entity/Contractor is unable to ensure through a security plan (which includes but is not limited to provision of an on-site Superintendent who has passed DOJ fingerprinting, and is present at the work areas whenever work is being performed, installation of temporary barriers and fencing, isolation of the work areas or rooms from the rest of the campus or building, provision of separate sanitation and break areas for the workers, and provision of a separate path or supervised escort to and from the work for construction employees) that prevention of unsupervised contact with students in a particular circumstance, cannot be achieved, then Entity/Contractor shall immediately notify the District before commencing or continuing any work that could result in

Unsupervised Contact, and shall refrain from commencing or continuing the work until Entity/Contractor has remedied the issues which may lead to Unsupervised Contact with students.

I declare under penalty of perjury under the laws of the State of California that all of the foregoing is true and correct.

Executed at Ontario, CA this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.  
(City and State) [SimiEDU45125-1b] 2/10/2022 | 12:42 PM PST

Ed Mierau

(Signature)  
Ed Mierau

(Handwritten or Typed Name)

**\* ATTACHMENT B-1 MUST BE COMPLETED IN ACCORDANCE WITH THE ABOVE \***

## **FINGERPRINT CERTIFICATE**

### **ATTACHMENT B-1**

[SimiEDU45125-2]

The fingerprints of each person identified below, providing continual supervision and monitoring of all of Entity's/Contractor's staff, including subcontractors of all tiers, while Entity/Contractor/subcontractor(s) are on District Sites, have been submitted to the California Department of Justice under the Entity's/Contractor's ORI number pursuant to Education Code §45125.1 and §45125.2; and,

The California Department of Justice has issued written or electronic verification that each person identified has not been convicted of a felony, as defined in Education Code §45122.1, and has no criminal felony proceedings, as defined in Education Code §45122.1, pending against him or her.

See Comprehensive List Provided Separately

Full Name of Fingerprinted Supervisor

Full Name of Fingerprinted Supervisor

Full Name of Fingerprinted Supervisor

Full Name of Fingerprinted Supervisor

**GUARANTEE AND CERTIFICATION OF NON-ASBESTOS; NON-LEAD**

**PROJECT: Simi Valley High School Modernization Projects; BID# R22-02902**

Guarantee for ALL painting and installations for the above-referenced project. We hereby guarantee that the MATERIALS, PRODUCTS, COATINGS and IMPROVEMENTS we have installed at the above-mentioned Project ARE FREE OF LEAD AND ASBESTOS.

Contractor

Subcontractor

\_\_\_\_\_  
(Contractor Name)

\_\_\_\_\_  
(Subcontractor Name)

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

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

\_\_\_\_\_  
(Signature of General Contractor)

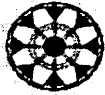
\_\_\_\_\_  
(Signature of General Contractor If for Subcontractor)

Representatives to be contacted for service:

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

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

Phone Number: \_\_\_\_\_



**SimiValleySchools**  
SIMI VALLEY UNIFIED SCHOOL DISTRICT

# SIMI VALLEY UNIFIED SCHOOL DISTRICT

## REQUEST FOR INFORMATION (RFI)

School Name:	
Project Name:	
To: (Architect)	
From:	

RFI Number:	
Date:	
Project No.:	
Bid Number:	

\_\_\_\_\_  
Drawing Number Detail

\_\_\_\_\_  
Specification Section

\_\_\_\_\_  
Page

### Request:

--

Request Issued by:

\_\_\_\_\_  
*Contractor's Signature*

\_\_\_\_\_  
*Name (Printed)*

\_\_\_\_\_  
*Date*

### Response:

--

Response Issued by:

\_\_\_\_\_  
*Architect's Signature*

\_\_\_\_\_  
*Name (Printed)*

\_\_\_\_\_  
*Date*

Response Reviewed by:

\_\_\_\_\_  
*Project Coordinator's Signature*

\_\_\_\_\_  
*Name (Printed)*

\_\_\_\_\_  
*Date*

**This Form Cannot Modify Contract Amount or Milestones and/or Contract Time.**

**IMPORTED SOILS/FILL MATERIALS CERTIFICATION**

**PROJECT:** Simi Valley High School Modernization Projects; Bid #R22-02902,

This form shall be executed by all entities that, in any way, provide or deliver and/or supply any soils, aggregate, or related materials ("Fill") to the Project Site. All Fill shall satisfy all requirements of any environmental review of the Project performed pursuant to the statutes and guidelines of the California Environmental Quality Act, section 21000 et seq. of the Public Resources Code ("CEQA"), and all requirements of section 17210 et seq. of the Education Code, including requirements for a Phase I environmental assessment acceptable to the State of California Department of Education and Department of Toxic Substances Control.

<b>Certification of:</b>	<input type="checkbox"/>	Delivery Firm/Transporter	<input type="checkbox"/>	Supplier
	<input type="checkbox"/>	Manufacturer	<input type="checkbox"/>	Wholesaler
	<input type="checkbox"/>	Broker	<input type="checkbox"/>	Retailer
	<input type="checkbox"/>	Distributor	<input type="checkbox"/>	Other: _____
<b>Type of Entity:</b>	<input type="checkbox"/>	Corporation	<input type="checkbox"/>	General Partnership
	<input type="checkbox"/>	Limited Partnership	<input type="checkbox"/>	Limited Liability Company
	<input type="checkbox"/>	Sole Proprietorship	<input type="checkbox"/>	Other: _____

Name of firm ("Firm"): \_\_\_\_\_ Mailing address: \_\_\_\_\_

\_\_\_\_\_ Addresses of branch office used for this Project: \_\_\_\_\_

If subsidiary, name and address of parent company: \_\_\_\_\_

By my signature below, I hereby certify that I am aware of section 25260 of the Health and Safety Code and the sections referenced therein regarding the definition of hazardous material. I further certify on behalf of the Firm that all soils, aggregates, or related materials provided, delivered, and/or supplied or that will be provided, delivered, and/or supplied by this Firm to the Project Site are free of any and all hazardous material as defined in section 25260 of the Health and Safety Code. I further certify that I am authorized to make this certification on behalf of the Firm.

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

Proper Name of Firm: \_\_\_\_\_

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

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

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

**[END OF DOCUMENT]**



**IRAN CONTRACTING ACT**  
**(Public Contract Code sections 2202-2208)**  
**(SUBMIT WITH BID PROPOSAL IF BID PROPOSAL PRICE EXCEEDS \$1,000,000)**

**PROJECT: Simi Valley High School Modernization Projects; BID# R22-02902**

Prior to bidding on, submitting a proposal or executing a contract or renewal for a State of California contract for goods or services of \$1,000,000 or more, a vendor must either: a) certify it is **not** on the current list of persons engaged in investment activities in Iran created by the California Department of General Services ("DGS") pursuant to Public Contract Code section 2203(b) and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS; or b) demonstrate it has been exempted from the certification requirement for that solicitation or contract pursuant to Public Contract Code section 2203(c) or (d).

To comply with this requirement, please insert your vendor or financial institution name and Federal ID Number (if available) and complete **one** of the options below. Please note: California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Public Contract Code section 2205.)

**OPTION #1 - CERTIFICATION**

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person/vendor, for 45 days or more, if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

<i>Vendor Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in</i>

**OPTION #2 – EXEMPTION**

Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enters into or renews, a contract for goods and services.

If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

<i>Vendor Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in</i>

**SIMI VALLEY UNIFIED SCHOOL DISTRICT  
CERTIFICATION OF FINANCIAL RELATIONSHIPS DISCLOSURES  
(Public Contract Code §3000 et seq.)**

*This form must be executed and returned with the executed Agreement if the Work is a project for the replacement or repair of a roof, excluding repairs of less than 25% of the roof or roof repairs valued at less than \$21,000.*

Certification of:

- |  |                                   |   |
|--|-----------------------------------|---|
| <input type="checkbox"/> Architect             | <input type="checkbox"/> Engineer | <input type="checkbox"/> Roofing Consultant     |
| <input checked="" type="checkbox"/> Contractor | <input type="checkbox"/> Vendor   | <input type="checkbox"/> Materials Manufacturer |
| <input type="checkbox"/> Other: _____          |                                   |   |

I am the President of the Neff Construction  
(Title) [SimiPCC3000] (Contractor)

I Certify:

1. I have not offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with the roof project contract.
2. As used in this certification, "person" means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.
3. Throughout the duration of the contract, I will not have, any financial relationship in connection with the performance of this contract with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.
4. I have the following financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roof project contract:  
  
\_\_\_\_\_  
  
\_\_\_\_\_

I certify that to the best of my knowledge, the contents of this disclosure are true, or are believed to be true.

Date: 2/10/2022 | 12:42 PM PST

By: Ed Mierau  
(Signature)  
Ed Mierau  
(Name, typed or printed)  
Neff Construction  
(Contractor Name)



**Bid Number:**

## Date \_\_\_\_\_



**SIMI VALLEY UNIFIED SCHOOL DISTRICT**  
**DAILY EXTRA WORK REPORT**  
for Construction Directive(s) Issued by the District

To Owner:  
From Contractor:  
School:  
Project:  
SUBJECT:

SIMI VALLEY UNIFIED SCHOOL DISTRICT

CCD Number:	
Report No:	
Date:	
Bid No:	
Page	of

**Description of Work in Progress:**

--

**Building / Area of Work:**

--

**Personnel; By Name, Trade, Classification and Hours:**

--

**Equipment and Operator; By Name, Type, Model, Number and Hours:**

--

**Materials; By Type and Quantities:**

--

Bond Program Manager:

LORI RUBENSTEIN

Dated: Dated

Project Coordinator:

NAME



**SimiValleySchools**  
SIMI VALLEY UNIFIED SCHOOL DISTRICT

## **Rules of Conduct**

**Project: Simi Valley High School**

**Each contractor and subcontractor performing work on this project shall adhere to the following rules of conduct:**

- 1. All construction personnel will wear masks and appropriate protective gear to prevent transmission of COVID-19. If any worker has symptoms associated with COVID-19, the worker shall not continue working at the site. Continuously ensure that all workers are at least 6 feet away from each other at all times except for when essential assistance is required. Workers to be at least 6 feet apart during lunch and other breaks.**
- 2. Professional and courteous behavior is expected and will be used at all times.**
- 3. Interaction with students, staff, and/or other visitors is prohibited with the exception of designated administrators.**
- 4. The use of profanity and/or disparaging language will not be tolerated.**
- 5. All contractors, subcontractors, architects, engineers or consultants will be required to wear a badge issued by their company as a means of identification. The badge is to be worn at all times while on the Owner's property. The badge will be visibly noticeable and located on the front of the individual's shirt. All badges are required to be returned to the Owner or designee at the completion of the project as part of the final pay application requirements.**
- 6. All contractors and subcontractors:**
  - a. Shall remain in the immediate vicinity of his/her work and will not stray to other areas of the property that do not involve their company's scope of work. All restroom facilities, including student and staff, are not to be used. The contractor is responsible for mobilizing to the construction site, their own portable restroom. Specific rules regarding the portable restroom are indicated in the General Conditions.**
  - b. During the regular school year, each school holds classes during daytime hours. Students and staff shall be given unimpeded access to and from the classrooms and administrative areas at all times when classes are being held. Contractors and subcontractors shall not disrupt the existing utilities, which serve the classrooms and administrative offices during the course of the work. Any outages shall be scheduled with the District Project Coordinator at least 1-month in advance of the planned outage.**
  - c. Vehicles must be parked each day in the designated area(s). When vehicles need to be removed during school hours, the vehicles shall have lights and flashers engaged, and a "spotter," provided by the contractor and/or subcontractor, leading the vehicle off the District's property. At no time will the vehicle exceed 5 mph.**
- 7. Simi Valley Unified School District properties are drug free workplaces. This policy shall be strictly enforced.**

8. Alcoholic beverages are prohibited from being brought on or consumed on any portion of the Owner's property.
9. The use of any tobacco products on the Owner's property is strictly prohibited.
10. Any lewd, obscene or otherwise indecent acts, words, or behavior by any contractor, subcontractor, architect, engineer or consultant shall not be tolerated.
11. All contractors, subcontractors, architects, engineers or consultants shall conform to a dress code whereby:
  - a. No clothing that contains violent, suggestive, derogatory, obscene or racially based material may be worn. This interpretation will be made by the Owner or designee.
  - b. Garments, accessories or personal grooming artifacts with slogans, graphics or pictures promoting drugs, alcohol, tobacco or any other controlled substances that are prohibited to minors will not be allowed.
  - c. Tank top/mid-drift shirts and shorts of any kind are not allowed while on the Owners property.
12. All contractors, subcontractors, architects, engineers or consultants are responsible for their own means of communication including, but not limited to, telephone, cell phone, fax machine. At no time are the Owner's communication systems to be used.
13. All contractors, subcontractors, architects, engineers or consultants personal vehicles, as well as work vehicles and equipment, are the responsibility of the individual and/or company. Any damage that occurs to the vehicles and/or equipment while on the Owner's property is not the responsibility of the Owner and, therefore, any said claims for damages will not be acknowledged.

**Non-compliance with any of the above-stated rules of conduct by any contractor, or subcontractor may be sufficient grounds for immediate removal from the job site and termination of the contract.**

I acknowledge that I am aware of the above-stated rules of conduct and hereby certify that all of my Company's employees, consultants, suppliers, and/or any subcontractors will adhere to these provisions. I further acknowledge that any delays to the schedule perceived or otherwise, as a result of the Owner/designee removing my employee from the job site, are my company's responsibility.

Ed Mierau

Authorized Signature [SimiROC]  
Ed Mierau

Print Name  
Neff Construction  
Company

President

Title  
2/10/2022 | 12:42 PM PST

Date

## PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that we, \_\_\_\_\_, as Surety and \_\_\_\_\_, as Principal, are jointly and severally, along with their respective heirs, executors, administrators, successors and assigns, held and firmly bound unto **SIMI VALLEY UNIFIED SCHOOL DISTRICT** ("the Oblige") for payment of the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

### THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Oblige, by resolution of its Board of Trustees has awarded to the Principal a Contract for the Work described as **Simi Valley High School Modernization Projects; BID# R22-02902**.

WHEREAS, the Principal, has entered into an agreement with the Oblige for performance of the Work; the Agreement and all other Contract Documents set forth therein are incorporated herein and made a part hereof by this reference.

WHEREAS, by the terms of the Contract Documents, the Principal is required to furnish a bond ensuring the Principal's prompt, full and faithful performance of the Work of the Contract Documents.

NOW THEREFORE, if the Principal shall promptly, fully and faithfully perform each and all of the obligations and things to be done and performed by the Principal in strict accordance with the terms of the Contract Documents as they may be modified or amended from time to time; and if the Principal shall indemnify and save harmless the Oblige and all of its officers, agents and employees from any and all losses, liability and damages, claims, judgments, liens, costs, and fees of every description, which may be incurred by the Oblige by reason of the failure or default on the part of the Principal in the performance of any or all of the terms or the obligations of the Contract Documents, including all modifications, and amendments, thereto, and any warranties or guarantees required thereunder; then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

The Surety, for value received, hereby stipulates and agrees that no change, adjustment of the Contract Time, adjustment of the Contract Price, alterations, deletions, additions, or any other modifications to the terms of the Contract Documents, the Work to be performed thereunder, or to the Specifications or the Drawings shall limit, restrict or otherwise impair Surety's obligations or Oblige's rights hereunder; Surety hereby waives notice from the Oblige of any such changes, adjustments of Contract Time, adjustments of Contract Price, alterations, deletions, additions or other modifications to the Contract Documents, the Work to be performed under the Contract Documents, or the Drawings or the Specifications.

In the event of the Oblige's termination of the Contract due to the Principal's breach or default of the Principal's obligations thereunder, within twenty (20) days after written notice from the Oblige to the Surety of the Principal's breach or default of the Contract Documents and Oblige's termination of the Contract, the Surety shall notify Oblige in writing of Surety's assumption of obligations hereunder by its election to either remedy the default or breach of the Principal or to take charge of the Work of the Contract Documents and complete the Work at its own expense ("the Notice of Election"); provided, however, that the procedure by which the Surety undertakes to discharge its obligations under this Bond shall be subject to the advance written approval of the Oblige, which approval shall not be unreasonably withheld, limited or restricted. The insolvency of the Principal or the Principal's denial of a failure of performance or default under the Contract Documents shall not by itself, without the Surety's prompt, diligent inquiry and investigation of such denial, be justification for Surety's failure to give the Notice of Election or for its failure to promptly remedy the failure of performance or default of the Principal or to complete the Work.

In the event the Surety fails to issue its Notice of Election to Oblige within the time provided for

hereinabove, the Oblige may thereafter cause the cure or remedy of the Principal's failure of performance or default or to complete the Work. The Principal and the Surety shall be jointly and severally liable to the Oblige for all damages and costs sustained by the Oblige as a result of the Principal's failure of performance under the Contract Documents or default in its performance of obligations thereunder, including without limitation the costs of cure or completion of the Work exceeding the then remaining balance of the Contract Price; provided that the Surety's liability hereunder for the costs of performance, damages and other costs sustained by the Oblige upon the Principal's failure of performance or default under the Contract Documents shall be limited to the penalsum hereof, which shall be deemed to include the costs or value of any Changes to the Work which increases the Contract Price. If suit or other proceeding is brought upon this Bond by the Oblige, the Surety and Principal shall be jointly and severally liable for payment to the Oblige of all costs, expenses and fees incurred by the Oblige therewith, including without limitation, attorneys' fees.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by their duly authorized agent or representative

<p>_____</p> <p>(Contractor-Principal Name)</p> <p>By: _____</p> <p>(Signature)</p> <p>_____</p> <p>(Typed or Printed Name)</p> <p>Title: _____</p> <p>(Attach Notary Public Acknowledgement of Principal's Signature)</p>
--

<p>_____</p> <p>(Surety Name)</p> <p>By: _____</p> <p>(Signature of Attorney-In-Fact for Surety)</p> <p>_____</p> <p>(Typed or Printed Name of Attorney-In-Fact)</p> <p>(Attach: (i) Attorney-In-Fact Certification; (ii) Notary Public Acknowledgment of Authorizing Signature on Attorney-Fact Certification; and (iii) Notary Public Acknowledgement of Attorney-In-Fact's Signature.)</p>	<p><b>Contact name, address, telephone number and email address for notices to the Surety</b></p> <p>_____</p> <p>(Contact Name)</p> <p>_____</p> <p>(Street Address)</p> <p>_____</p> <p>(City, State &amp; Zip Code)</p> <p>(_____) (_____) _____</p> <p>Telephone Fax</p> <p>_____</p> <p>(Email address)</p>
---	--



## LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that we, \_\_\_\_\_, as Surety and \_\_\_\_\_, as Principal, are jointly and severally, along with their respective heirs, executors, administrators, successors and assigns, held and firmly bound unto **SIMI VALLEY UNIFIED SCHOOL DISTRICT** ("the Oblige") for payment of the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

### THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Oblige, by resolution of its Board of Trustees has awarded to the Principal a Contract for the Work described as **Simi Valley High School Modernization Projects; BID# R22-02902**.

WHEREAS, the Principal, has entered into an Agreement with the Oblige for performance of the Work, the Agreement and all other Contract Documents set forth therein are incorporated herein by this reference and made a part hereof.

WHEREAS, by the terms of the Contract Documents, the Principal is required to furnish a bond for the prompt, full and faithful payment to any Claimant, as hereinafter defined, for all labor materials or services used, or reasonably required for use, in the performance of the Work.

NOW THEREFORE, if the Principal shall promptly, fully and faithfully make payment: (i) to any Claimant for all labor, materials or services used or reasonably required for use in the performance of the Work; (ii) of amounts due under the Unemployment Insurance Code for work or labor performed under the Contract; and (iii) of amounts required to be deducted, withheld and paid to the Employment Development Department from wages of the employees of the Principal and its Subcontractors under Section 13020 of the Unemployment Insurance Code with respect to work and labor under the Contract then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

The term "Claimant" shall refer to any person, corporation, partnership, proprietorship or other entity including without limitation, all persons and entities described in California Civil Code §9100, providing or furnishing labor, materials or services used or reasonably required for use in the performance of the Work under the Contract Documents, without regard for whether such labor, materials or services were sold, leased or rented. This Bond shall inure to the benefit of all Claimants so as to give them, or their assigns and successors, a right of action upon this Bond.

In the event that suit is brought on this Bond by any Claimant for amounts due such Claimant for labor, materials or services provided or furnished by such Claimant, the Surety shall pay for the same and reasonable attorneys' fees pursuant to California Civil Code §9554.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, deletion, addition, or any other modification to the terms of the Contract Documents, the Work to be performed thereunder, the Specifications or the Drawings, or any other portion of the Contract Documents, shall in any way limit, restrict or otherwise affect its obligations under this Bond; the Surety hereby waives notice from the Oblige of any such change, extension of time, alteration,

[CONTINUED NEXT PAGE]

deletion, addition or other modification to the Contract Documents, the Work to be performed under the Contract Documents, the Drawings or the Specifications of any other portion of the Contract Documents.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by their duly authorized agent or representative.

_____ (Contractor-Principal Name)	
By:	_____ (Signature)
	_____ (Typed or Printed Name)
Title:	_____
(Attach Notary Public Acknowledgement of Principal's Signature)	

_____ (Surety Name)	
By:	_____ (Signature of Attorney-In-Fact for Surety)
	_____ (Typed or Printed Name of Attorney-In-Fact)
(Attach: (i) Attorney-In-Fact Certification; (ii) Notary Public Acknowledgment of Authorizing Signature on Attorney-Fact Certification; and (iii) Notary Public Acknowledgement of Attorney-In-Fact's Signature)	

<b>Contact name, address, telephone number and email address for notices to the Surety</b>	
_____ (Contact Name)	
_____ (Street Address)	
_____ (City, State & Zip Code)	
(_____) _____ Telephone	(_____) _____ Fax
_____ (Email address)	

## CONTRACTOR CERTIFICATION OF SUBCONTRACTOR CLAIM

**PROJECT: Simi Valley High School Modernization Projects; BID# R22-02902**

Pursuant to Article 16.11.2.7.2 of the General Conditions, I certify as follows:

1. The portion of the Claim made on behalf of the Subcontractor to which this certification is attached is made in good faith.
2. I have reviewed the attached Subcontractor Claim and certify that to the best of my knowledge and belief, the amounts claimed for costs, expenses and damages incurred and supporting data submitted to CM/Contractor by the Subcontractor on behalf of any and all subcontractors or suppliers to Subcontractor, of all tiers, or any person or entity under Subcontractor, are accurate and complete. Subcontractor will not submit, after the date of execution of this certification, any such supporting data, including any such new amounts that, to the best of my knowledge and belief, that are not accurate and complete.
3. The amount requested accurately reflects the amount for which the Subcontractor believes the District is liable to Contractor.
4. The Subcontractor Claim does not incorporate any request constituting a False Claim under applicable law, including the California False Claim Act (Government Code §12650 et seq).
5. I am duly authorized to certify the Subcontractor Claim on behalf of the Contractor.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at \_\_\_\_\_, on \_\_\_\_\_, 20\_\_\_\_.  
(City and State)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

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

\_\_\_\_\_  
(Name of Contractor)

## VERIFICATION OF CERTIFIED PAYROLL RECORDS SUBMITTAL TO LABOR COMMISSIONER

I am the \_\_\_\_\_ for \_\_\_\_\_ in \_\_\_\_\_  
(Title) (Contractor)

connection with **Simi Valley High School Modernization Projects; BID# R22-02902**

This Verification is submitted to Simi Valley Unified School District concurrently with the Contractor's submittal of an Application for Progress Payment to the District, identified as Application For Progress Payment No. \_\_\_\_\_ ("the Pay Application").

1. The Pay Application requests the District's disbursement of a Progress Payment for the value of Work performed between \_\_\_\_\_, 20\_\_ and \_\_\_\_\_, 20\_\_.
2. The Contractor has submitted Certified Payroll Records ("CPR") to the Labor Commissioner for all employees of the Contractor engaged in performance of Work subject to prevailing wage rate requirements for the period of time covered by the Pay Application.
3. All Subcontractors who are entitled to any portion of payment to be disbursed pursuant to the Pay Application have submitted their CPRs to the Labor Commissioner for all of their employees performing Work subject to prevailing wage rate requirements for the period of time covered by the Pay Application.
4. I have reviewed the Contractor's CPRs submitted to the Labor Commissioner. The CPRs submitted to the Labor Commissioner by the Contractor are complete and accurate for the period of time covered by the Pay Application.
5. I have reviewed the Subcontractors' CPRs submitted to the Labor Commissioner. The CPRs submitted to the Labor Commissioner by the Subcontractors are complete and accurate for the period of time covered by the Pay Application.
6. I declare under penalty of perjury under California law that the foregoing is true and correct. I executed this Certification on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at

(City and State)

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

(Typed or Printed Name

---

## SUBSTITUTION REQUEST

Project: Simi Valley High School Modernization  
Projects

Bid No.: R22-02902

To: \_\_\_\_\_

Re: \_\_\_\_\_

Substitution Request Number: \_\_\_\_\_

From: \_\_\_\_\_

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

A/E Project Number: \_\_\_\_\_

Contract For: Simi Valley Unified School District

---

Specification Title: \_\_\_\_\_ Description: \_\_\_\_\_

Section: \_\_\_\_\_ Page: \_\_\_\_\_

---

Proposed Substitution: \_\_\_\_\_

Manufacturer: \_\_\_\_\_ Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Trade Name: \_\_\_\_\_ Model No.: \_\_\_\_\_

Attached data includes product description, specifications, drawings, photographs, and performance and test data adequate for evaluation of the request; applicable portions of the data are clearly identified.

Attached data also includes a description of changes to the Contract Documents that the proposed substitution will require for its proper installation.

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The Undersigned certifies:

- Proposed substitution has been fully investigated and determined to be equal or superior in all respects to specified product.
- Same warranty will be furnished for proposed substitution as for specified product.
- Same maintenance service and source of replacement parts, as applicable, is available.
- Proposed substitution will have no adverse effect on other trades and will not affect or delay progress schedule.
- Proposed substitution does not affect dimensions and functional clearances.
- Contractor will be responsible for payment of charges and construction costs caused by the substitution for changes to building design, including A/E design, furnishings and detailing.

---

Submitted by: \_\_\_\_\_

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

Firm: \_\_\_\_\_

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

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

---

### A/E's REVIEW AND ACTION

- ☐ Substitution approved – Make submittals in accordance with Specification Substitution procedures.
- ☐ Substitution approved as noted – Make submittals in accordance with Substitution procedures.
- ☐ Substitution rejected – Use specified materials.
- ☐ Substitution Request received too late – Use specified materials.

---

Signed by: \_\_\_\_\_ Date: \_\_\_\_\_

Supporting Data Attached: ☐ Drawings ☐ Product Data ☐ Samples ☐ Tests ☐ Reports ☐ \_\_\_\_\_

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## SIMI VALLEY UNIFIED SCHOOL DISTRICT

### CHANGE ORDER PROPOSAL (COP)

School Name: **Simi Valley High School**

Project Name: **Simi Valley HS Modernization Projects**

To: *CMI/ Project Coordinator*

From: *Contractor* **Neff Construction, Inc.**

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

COP Number: \_\_\_\_\_

Project Number: \_\_\_\_\_

Bid Number: **R22-02902**

#### Description of Work:

1) List each item here.

#### A. Subcontractor Cost of the Work:

<u>A.1 Field Labor</u>	\$	-
<u>A.2 Materials and Equipment Incorporated Into the Work</u>	\$	-
<u>A.3 Construction Equipment</u>	\$	-
		Subtotal A (Lines A.1 + A.2 + A.3): \$ -
		Subcontractor Direct Cost Mark-up (15% of Subtotal A): \$ -
Subcontractor Labor Adjustment for fringe benefits, payroll taxes and labor burdens, totaling no more than 15% of Line A.1 which shall be based on the applicable prevailing wage rates for the COP work, per General Conditions 9.5.1.3.1.2:		\$ -
Contractor markup on Subcontractor Field Labor and Materials and Equipment incorporated into the Work (5% of Lines A.1 + A.2).		\$ -

#### B. Contractor Cost of the Work:

<u>B.1 Field Labor</u>	\$	-
<u>B.2 Materials and Equipment Incorporated Into the Work</u>	\$	-
<u>B.3 Construction Equipment</u>	\$	-
		Subtotal B (Lines B.1 + B.2 + B.3): \$ -
		Contractor Direct Cost Mark-up (15% of Subtotal B): \$ -
Contractor Labor Adjustment for fringe benefits, payroll taxes and labor burdens, totaling no more than 15% of Line B.1 which shall be based on the applicable prevailing wage rates for the COP work, per General Conditions 9.5.1.3.1.2:		\$ -
		Bond Premium (1% of A.1 + A.2 + B.1 + B.2): \$ -
<b>Total Proposed Cost (Add each amount shown in the far right column):</b>		<b>\$ -</b>

☐ The proposal would ☐ Increase ☐ Decrease the Contract Time by   Calendar Days.

☐ The proposal does NOT affect the Contract Time.

Contractor's Signature: \_\_\_\_\_

Printed Name & Title \_\_\_\_\_

Date \_\_\_\_\_

Provide all supporting documentation as required by the Contract Documents



Simi Valley Unified School District  
101 W. Cochran Street  
Simi Valley, CA 93065

# APPLICATION FOR PAYMENT

\*Submit UNSIGNED to District as PDF. Signatures collected via DocuSign.\*

TO: **LORI RUBENSTEIN**

(Bond Program Manager)

SCHOOL NAME:

**Simi Valley High School**

APPLICATION NO:

APPLICATION DATE:

FROM: **Neff Construction, Inc.**

PROJECT NAME:

**Simi Valley HS Modernization  
Projects**

PERIOD TO:

PROJECT NO:

CONTRACT START DATE:

ARCHITECT:

BID NUMBER: **R22-02902**

(Remittance Address)

## CONTRACTOR'S APPLICATION FOR PAYMENT

1. ORIGINAL CONTRACT AMOUNT .....	\$	0.00
2. Net Change by Change Orders .....	\$	0.00
3. CONTRACT AMOUNT TO DATE (Line 1 + Line 2) .....	\$	0.00
4. TOTAL COMPLETED & STORED TO DATE .....	\$	0.00
(Column G on Continuation Sheet)		
5. RETAINAGE:		
a.5% of Completed Work (Line 4)	\$	-
TOTAL RETAINAGE .....	\$	0.00
6. TOTAL EARNED LESS RETAINAGE .....	\$	0.00
(Line 4 less Line 5 Total)		
7. LESS PREVIOUSLY APPROVED CERTIFICATES FOR PAYMENT .....	\$	
(Line 6 from prior Application for Payment)		
8. CURRENT PAYMENT DUE (Line 6 less Line 7) .....	\$	0.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 8) .....	\$	0.00

## CERTIFICATION

Under penalty of perjury under the Laws of California, I certify that all items, units, quantities and prices for work shown on this payment request are correct; that all work has been performed and materials supplied in full accordance with the terms and conditions of the construction contract on this project; that all of the information set forth herein or attached hereto is a true and correct statement of the Contract Amount and the Contract Time up to and including the last day of the period covered by this invoice, and that no part of the "Current Payment Due" has been received.

Contractor:

**Neff Construction, Inc.**

(Please print name of company)

(Name and title)

(Contractor's Signature)

(Date)

## Owner Use Only:

TOTAL WITHHOLDS (from Owner Assessment Summary): .....	\$
TOTAL RELEASES (from Owner Assessment Summary): .....	\$
ADJUSTED PAYMENT AMOUNT: .....	\$

## REVIEWED AND APPROVED AS PER TERMS OF CONTRACT

Architect

(Signature)

(Date)

Inspector of Record

(Signature)

(Date)

Project Coordinator

(Signature)

(Date)

JEFF KIPP

Construction Project Manager

(Signature)

(Date)

LORI RUBENSTEIN

Bond Program Manager

(Signature)

(Date)

RON TODO

Associate Superintendent, Business &  
Facilities

(Signature)

(Date)

☐ Allowance Being Invoiced ☐ Change Order Being Invoiced

IF SO, PROVIDE:

- ☐ COP Included  
☐ RFI Included  
☐ CCD Included (Construction Change Directive)  
☐ Drawing Changes Included  
☐ Sub-contractor Proposal Included

**Continuation Sheet- APPLICATION FOR PAYMENT**

Simi Valley HS Modernization Projects

APPLICATION FOR PAYMENT containing Contractor's signed Certification must be attached. Use Column I on Contracts where variable retainage for line items may apply.

SCHOOL NAME:

APPLICATION NO.:

PROJECT NO.:

APPLICATION DATE:

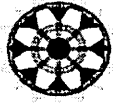
BID NO.:

PERIOD FROM:

PERIOD TO:

A	B	C	D	E	F	G		H	I
Item No.	SUMMARY	Scheduled Value	WORK COMPLETED			Total Completed & Stored To Date	%	Balance To Finish	Retainage (5%)
	Description of Work Note: (SOV must be itemized in further detail by building and area)		Previous Applications	This Application					
				Work in Place	Stored Mtls.				
1	General Conditions					0.00	#DIV/0!	0.00	0.000
2	Site Work					0.00	#DIV/0!	0.00	0.000
3	Concrete					0.00	#DIV/0!	0.00	0.000
4	Masonry					0.00	#DIV/0!	0.00	0.000
5	Metals					0.00	#DIV/0!	0.00	0.000
6	Carpentry					0.00	#DIV/0!	0.00	0.000
7	Thermal/Moisture					0.00	#DIV/0!	0.00	0.000
8	Doors &Windows					0.00	#DIV/0!	0.00	0.000
9	Finishes					0.00	#DIV/0!	0.00	0.000
10	Specialties					0.00	#DIV/0!	0.00	0.000
11	Equipment					0.00	#DIV/0!	0.00	0.000
12	Furnishings					0.00	#DIV/0!	0.00	0.000
14	Conveyance					0.00	#DIV/0!	0.00	0.000
15	Mechanical					0.00	#DIV/0!	0.00	0.000
16	Electrical					0.00	#DIV/0!	0.00	0.000
	ALLOWANCES:					0.00	#DIV/0!	0.00	0.000
						0.00	#DIV/0!	0.00	0.000
						0.00	#DIV/0!	0.00	0.000
	SUBTOTAL	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	\$ -	\$ -
	APPROVED CHANGE ORDERS TO DATE						#DIV/0!		
	Change Order #1					0.00	#DIV/0!	0.00	0.00
						0.00	#DIV/0!	0.00	0.00
						0.00	#DIV/0!	0.00	0.00
						0.00	#DIV/0!	0.00	0.00
						0.00	#DIV/0!	0.00	0.00
	NET CHANGE ORDER SUBTOTAL	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	\$ -	\$ -
	TOTALS	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	\$ -	\$ -





SimiValleySchools  
SIMI VALLEY UNIFIED SCHOOL DISTRICT

## SIMI VALLEY UNIFIED SCHOOL DISTRICT

Bid No. \_\_\_\_\_

### Simi Valley HS Modernization Projects

(Project Name)

## CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

California Civil Code Section 8136

**NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.**

#### Identifying Information

Name of Claimant: Neff Construction, Inc.  
Name of Customer: Simi Valley Unified School District  
Job Location: Simi Valley HS: 5400 Cochran Street, Simi Valley, CA 93063  
Owner: Simi Valley Unified School District

#### Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: Simi Valley Unified School District  
Amount of Check: \$ \_\_\_\_\_  
Check Payable to: Neff Construction, Inc.

#### Exceptions:

This document does not affect any of the following:

Disputed claims for extras in the amount of: \$ \_\_\_\_\_

#### Signature

Claimant's Signature: \_\_\_\_\_ Date of Signature: \_\_\_\_\_  
Claimant's Printed Name: \_\_\_\_\_ Claimant's Title: \_\_\_\_\_



SimiValleySchools  
SIMI VALLEY UNIFIED SCHOOL DISTRICT

**SIMI VALLEY UNIFIED SCHOOL DISTRICT**

Bid No. \_\_\_\_\_

**Simi Valley HS Modernization Projects**

(Project Name)

**CONDITIONAL WAIVER AND RELEASE ON  
PROGRESS PAYMENT**

California Civil Code Section 8132

**NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.**

**Identifying Information**

Name of Claimant: Neff Construction, Inc.  
Name of Customer: Simi Valley Unified School District  
Job Location: Simi Valley HS: 5400 Cochran Street, Simi Valley, CA 93063  
Owner: Simi Valley Unified School District  
Through Date: \_\_\_\_\_

**Conditional Waiver and Release**

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: Simi Valley Unified School District  
Amount of Check: \$ \_\_\_\_\_  
Check Payable to: Neff Construction, Inc.

**Exceptions:**

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:

Date(s) of waiver and release: \_\_\_\_\_

Amount(s) of unpaid progress payment(s): \$ \_\_\_\_\_

- (4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

**Signature**

Claimant's Signature: \_\_\_\_\_ Date of Signature: \_\_\_\_\_

Claimant's Printed Name: \_\_\_\_\_ Claimant's Title: \_\_\_\_\_



## SIMI VALLEY UNIFIED SCHOOL DISTRICT

Bid No. \_\_\_\_\_

Simi Valley HS Modernization Projects

(Project Name)

### UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

California Civil Code Section 8138

**NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.**

#### Identifying Information

Name of Claimant: Neff Construction, Inc.  
Name of Customer: Simi Valley Unified School District  
Job Location: 5400 Cochran St. Simi Valley, CA 93063  
Owner: Simi Valley Unified School District

#### Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full.

#### Exceptions:

This document does not affect any of the following:

Disputed claims for extras in the amount of: \$ \_\_\_\_\_

#### Signature

Claimant's Signature: \_\_\_\_\_ Date of Signature: \_\_\_\_\_

Claimant's Printed Name: \_\_\_\_\_ Claimant's Title: \_\_\_\_\_



## SIMI VALLEY UNIFIED SCHOOL DISTRICT

Bid No.:

Simi Valley HS Modernization Projects  
(Project Name)

### UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

California Civil Code Section 8134

**NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.**

#### Identifying Information

Name of Claimant:

Neff Construction, Inc.

Name of Customer:

Simi Valley Unified School District

Job Location:

Simi Valley HS: 5400 Cochran St. Simi Valley, CA 93063

Owner:

Simi Valley Unified School District

Through Date:

#### Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment: \$

#### Exceptions:

This document does not affect any of the following:

(1) Retentions.

(2) Extras for which the claimant has not received payment.

(3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

#### Signature

Claimant's Signature:

Date of Signature:

Claimant's Printed Name:

Claimant's Title:

**GUARANTEE****Project: Simi Valley HS Modernization Projects****Bid No.:**

The Contractor hereby warrants and guarantees to the District that all work, materials, equipment and workmanship provided, furnished or installed by or on behalf of Contractor in connection with the above referenced Project (the "Work") have been provided, furnished and installed in strict conformity with the Contract Documents for the Work, including without limitation, the Drawings and the Specifications. Contractor further warrants and guarantees that all work, materials, equipment and workmanship as provided, furnished and/or installed are fit for use as specified and fulfill all applicable requirements of the Contract Documents including without limitation, the Drawings and the Specifications. Contractor shall, at its sole cost and expense, repair, correct and/or replace any or all of the work, materials, equipment and/or workmanship of the Work, together with any other items which may be affected by any such repairs, corrections or replacement, that may be unfit for use as specified or defective within a period of two (2) years from the date of the District's Final Acceptance of the Work, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of the Contractor's failure and/or refusal to comply with the provisions of this Guarantee, within the period of time set forth in the Contract Documents after the District's issuance of the Notice to the Contractor of any defect(s) in the Work, materials, equipment or workmanship, Contractor authorizes the District, without further notice to Contractor, to repair, correct and/or replace any such defective item at the expense of the Contractor. The Contractor shall reimburse the District for all costs, expenses or fees incurred by the District in providing or performing such repairs, corrections or replacements within ten (10) days of the District's presentation of a demand to the Contractor for the same.

The provisions of this Guarantee and the provisions of the Contract Documents for the Work relating to the Contractor's Guarantee(s) and warranty(ies) relating to the Work shall be binding upon the Contractor's Performance Bond Surety and all successors or assigns of Contractor and/or Contractor's Performance Bond Surety.

The provisions of this Guarantee are in addition to, and not in lieu of, any provisions of the Contract Documents for the Work relating to the Contractor's guarantee(s) and warranty(ies) or any guarantee(s) or warranty(ies) provided by any material supplier or manufacturer of any equipment, materials or other items forming a part of, or incorporated into the Work, or any other guarantee or warranty obligation of the Contractor, prescribed, implied or imposed by law.

The undersigned individual executing this Guarantee on behalf of Contractor warrants and represents that he/she is duly authorized to execute this Guarantee on behalf of Contractor and to bind Contractor to each and every provision hereof.

**Contractor****Neff Construction, Inc.**

(Contractor Name)

(Signature of Contractor's Authorized Employee, Officer  
Or Representative)

(Printed Name and Title)

(Date)

**EXHIBIT "Z"**

**PROJECT CONTRACT INFORMATION**

Project Name:

Description of the Project:

Description of the Site:

Scope of Work/Construction Documents:

DSA Application Number:

DSA File No.:

Master Budget: See Attached

Section 3.5 Contract Time is completion by \_\_\_\_\_.

Section 3.6 Liquidated Damages for overstaying lease (Art. 18) is \$ \_\_\_\_\_ per calendar day.

Section 3.7 Guaranteed Maximum Price (Art. 5) is \$ \_\_\_\_\_

3.7.1 Construction Contingency (within GMP) is \$ \_\_\_\_\_

3.7.2 Errors and Omissions Contingency (within GMP) is \$ \_\_\_\_\_

Section 3.8 The only exception to the GMP is Unforeseen Underground Conditions, and District Contingency for Owner requested extras as follows:

3.8.1 District's Contingency (Art. 8) is \$ \_\_\_\_\_  
District Contingency is carried outside of the GMP.

3.8.2 Unforeseen Allowance is \$ \_\_\_\_\_  
Unforeseen Allowance is carried outside of the GMP.

Section 3.9 The Contractor's fee for this \_\_\_\_\_ Project is 3.5% percent and is included in the GMP.

Division 1 Forms

IMMEDIATE CONSTRUCTION CHANGE DIRECTIVE NO.

PROJECT: \_\_\_\_\_

TO: \_\_\_\_\_

You are hereby directed to provide the extra work necessary to comply with this ICD.

DESCRIPTION OF CHANGE: \_\_\_\_\_

\_\_\_\_\_

COST (This cost shall not be exceeded): \_\_\_\_\_

TIME FOR COMPLETION: \_\_\_\_\_

NOTE:

Pursuant to Article 17.4.1.2 An Immediate Change Directive is a written order to the Contractor prepared by the Architect and signed by the District (and CM if there is a CM on the Project) and the Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The District may by ICD, without invalidating the Contract, direct immediate changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions within. If applicable, the Contract Sum and Contract Time will be adjusted accordingly. CONTRACTOR SHALL PROCEED WITH WORK SET FORTH IN THIS ICD IMMEDIATELY UPON RECEIPT OR THE DISTRICT MAY EITHER HOLD THE CONTRACTOR IN EITHER PARTIAL DEFAULT PURSUANT TO ARTICLE 12.2 OR TOTAL DEFAULT PURSUANT TO ARTICLE 19.

\_\_\_\_\_  
Architect

\_\_\_\_\_  
District

**SIMI VALLEY HIGH SCHOOL MODERNIZATION PROJECTS**  
**MASTER SITE LEASE**

Between

**SIMI VALLEY UNIFIED SCHOOL DISTRICT**

and

**NEFF CONSTRUCTION, INC.**

Dated as of February 15, 2022



## SIMI VALLEY HIGH SCHOOL MODERNIZATION PROJECTS

### MASTER SITE LEASE

This MASTER SITE LEASE is dated as of February 15, 2022, and is by and between the Simi Valley Unified School District, a school district duly organized and existing under the laws of the State of California (the "District") as lessor and Neff Construction, Inc., a California corporation operating under the laws of the State of California (the "Lessee").

WHEREAS, the District desires to provide for the construction of certain public improvements at Simi Valley High School under Bond Measure X (the "Projects"); and

WHEREAS, the District's governing board has determined that it is in the best interests of the District and for the common benefit of the citizens it serves to construct the Projects by leasing to the Lessee land and existing buildings at the various District school sites at which the public improvements are to be constructed, as more specifically described in Exhibit "A," (the "Sites"), and subleasing from the Lessee the Sites and the Projects under a Master Sublease Agreement (the "Master Sublease") attached hereto as Exhibit "B" and by this reference incorporated herein; and

WHEREAS, the Lessee has conducted Due Diligence of the Sites and the Projects to determine the suitability of the sites, site conditions, utilities, hazardous substances, and other conditions for the construction of the Projects (more fully detailed at Article 5 of the Master Construction Services Agreement); and

WHEREAS, the District is authorized under Section 17406 of the California Education Code to lease the Site and its governing body has duly authorized the execution of this Master Site Lease; and

WHEREAS, pursuant to this Master Site Lease, the District and Lessee have agreed to the terms of the Sublease, which is incorporated and attached hereto as Exhibit "B," by which the District will sublease the Sites and retain beneficial use and occupancy of the Sites during which term, improvements will be constructed by Lessee. As the constructed improvements are completed, the District shall receive full beneficial use and occupancy of the constructed improvements upon payment for such improvements by the District to the Lessee. As part of this Master Site Lease, the District and the Lessee have agreed to terms by which the Lessee will perform construction improvements on the Sites during the term of the Master Sublease according to the terms of the Master Construction Services Agreement ("Master CSA"), which is incorporated and attached to the Master Site Lease as Exhibit "C," to ensure that the improvements will meet the District's expectations and comply with applicable law.

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

1. **DEFINITIONS.** Unless the context otherwise requires, the terms defined in this Article shall, for all purposes of this lease, have the meanings as herein specified.
  - A. **"Commencement Date"** shall mean the Project commencement date found in the Notice to Proceed for each Measure X Project in accordance with the Master Construction Services Agreement.
  - B. **"Master Construction Services Agreement" (CSA)** means the Master Construction Services Agreement, together with any duly authorized and executed amendments hereto.
  - C. **"Construction Documents"** consist of the Plans and Specifications approved by DSA for each Project, Allowances stipulated in the Contract Documents, and all Addendas, if any, issued prior to the entry into this Agreement. The Construction Documents shall include all

Modifications generated after the Effective Date in accordance with the Contract Documents, including, without limitation, a written amendment to the Contract signed by the Contractor and duly executed and approved by the District, a Change Order, a Construction Change Document, or a written order for a minor change in the Work issued by the Architect.

- D. **“Contract Documents”** means those documents which form the entire Contract by and between District and Contractor. As of the effective date of the Master Site Lease and Master Sublease, the Contract Documents consist of the Lease, the Sublease, any General, Supplementary and other Conditions, the Master Construction Services Agreement, including all exhibits and attachments hereto, and the Construction Documents. The Contract Documents collectively form the Contract. The Contract represents the entire and integrated Agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall be binding solely upon the District and Contractor, do not create a contractual relationship of any kind between the Architect and Contractor, between the District and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the District and the Contractor, and are not intended to and do not create any third party beneficiary. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect’s duties. (See Article 14 of the Master CSA).
- E. **“Day”** means a calendar day unless specifically designated as a business day.
- F. **“District”** means the Simi Valley Unified School District, a school district duly organized and existing under the laws of the State of California.
- G. **“Effective Date”** is the latter of the date upon which the District Board approves the Master Site Lease and the Master Sublease and Contractor has executed the Master Site Lease and Master Sublease.
- H. **“Lessee”** shall mean Neff Construction, Inc., and its successors and assigns.
- I. **“Project”** means the improvements and related work to be constructed and installed by the Contractor, as part of this Master Site Lease and in accordance with the Master Construction Services Agreement attached hereto as Exhibit “C”.
- J. **“Site”** refers to the grounds of the Projects or in some cases may refer to multiple sites as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work, more particularly described in Exhibit “A” attached hereto.
- K. **“Master Site Lease” or “Lease”** means this Master Site Lease together with any duly authorized and executed amendment hereto under which the District leases the Sites to the Lessee.
- L. **“Master Sublease”** means the Sublease attached hereto and incorporated as Exhibit “B”, together with any duly authorized and executed amendment thereto.
- M. **“Sublease Payment”** means any payment required to be made by the District pursuant to Article 8 of the Sublease.
- N. **“Term of this Lease” or “Term”** means the time during which this Lease is in effect, as provided for in Article 3 of this Master Site Lease.

2. **SITE LEASE.**

The District leases to the Lessee, and the Lessee leases from the District, on the terms and conditions set forth herein, the various Sites situated in Simi Valley, County of Ventura, State of California, more specifically described in Exhibit "A" attached hereto, including any improvements now or hereafter affixed thereto. The term of each Site Lease shall commence upon the completion of Lessee's Due Diligence with regard to the sites and the issuance of the Notice to Proceed for each Measure X Project.

3. **TERM.**

4. The Term of this Master Site Lease shall become effective upon the authorized execution of this Master Site Lease and shall terminate as of the last day of the Master Sublease, unless sooner terminated as provided thereby. If on the scheduled date of termination of this Master Site Lease, any Sublease Payments for any of the various phases of the Project shall have therefore been abated at any time and for any reason, then the term of this Master Site Lease shall be subject to a Liquidated Damages cost as set forth in Article 3.7 of the Master Construction Services Agreement and the Master Site Lease shall be extended until the date upon which all such Sublease Payments shall be fully paid. Without limiting any other term or provision of the Master Sublease Agreement or Master Construction Services Agreement between the parties, at the termination of this Master Site Lease, natural or otherwise, title to the Site, and any improvements constructed thereon by the Lessee, shall vest in the District in accordance with Education Code section 17406.

5. **REPRESENTATIONS, COVENANTS, AND WARRANTIES OF THE DISTRICT.** The District represents, covenants and warrants to the Lessee that:

- A. The District has good and merchantable fee title to the Sites and has authority to enter into and perform its obligations under this Master Site Lease;
- B. There are no liens on the Sites other than Permitted Encumbrances;
- C. All taxes, assessments or impositions of any kind with respect to the Sites, if applicable, except current taxes, have been paid in full;
- D. The Sites are properly zoned (or subject to an exception from zoning) for the intended purpose and utilization of the Site ;
- E. The District is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to the Sites;
- F. Except for Validation Actions concerning the Projects, there is no litigation of any kind currently pending or threatened regarding the Sites or the District's use of the Sites for the purposes contemplated by this Master Site Lease;
- G. To the best of the District's knowledge, except for that which shall be disclosed by the District prior to the Project commencement date in the Notice to Proceed:
  - (1) no dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by the provisions of any State or Federal Law relating thereto (hereinafter collectively called "Environmental Regulations", and also including, but not limited to, urea-formaldehyde, polychlorinated biphenyls, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant

or contaminant which would subject the owner of the Site or the Lessee or the Lessee's subcontractors to any damages, penalties or liabilities under any applicable Environmental Regulation (hereinafter collectively called "Hazardous Substances", are now or have been stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited or disposed of in, upon, under, over or from the Sites;

- (2) no threat exists of a discharge, release or emission of a Hazardous Substance upon or from the Sites into the environment;
  - (3) the Sites have not been used as or for a mine, a landfill, a dump or other disposal facility, industrial or manufacturing facility, or a gasoline service station;
  - (4) no underground storage tank is now located in the Sites or has previously been located therein;
  - (5) no violation of any Environmental Regulation now exists relating to the Sites, no notice of any such violation or any alleged violation thereof has been issued or given by any governmental entity or agency, and there is not now any investigation or report involving the Sites by any governmental entity or agency which in any way relates to Hazardous Substances;
  - (6) no person, party or private or governmental agency or entity has given any notice of or asserted any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment or natural resources, resulting or allegedly resulting from any activity or event described in (1) above;
  - (7) there are not now any actions, suits, proceedings or damage settlements relating in any way to Hazardous Substances, in, upon, under over or from the Sites;
  - (8) the Sites are not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of Hazardous Substance sites maintained by any federal, state or local governmental agency; and
  - (9) the Sites are not subject to any lien or claim for lien or threat of a lien in favor of any governmental entity or agency as a result of any release or threatened release-of any Hazardous Substance.
- H. To the extent permitted by law, the District shall not abandon the Sites for the use for which it is currently required by the District and further, shall not seek to substitute or acquire property to be used as a substitute for the uses for which the Sites and Projects are to be maintained under the Master Site Lease.
- I. The term "Permitted Encumbrances" as used herein shall mean, as of any particular time:
- (1) liens for general ad valorem taxes and assessments, if any, not then delinquent;
  - (2) this Master Site Lease; the Master Sublease; any right or claim of any mechanic, laborer, materialman, supplier, or vendor, if applicable, not filed or perfected in the manner prescribed by law; easements, rights of way, mineral rights, drilling rights, and other rights, reservations, covenants, conditions, or restrictions which exist of record

as of the date of this Master Site Lease and which will not materially impair the use of the Sites;

- (3) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions, or restrictions established following the date of recordation of this Master Site Lease and to which the Lessee and the District consent in writing which will not impair or impede the operation of the Sites.

6. **REPRESENTATIONS AND WARRANTIES OF THE LESSEE.** The Lessee represents and warrants to the District that:

- A. The Lessee is duly organized in the State of California, and in good standing under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;
- B. The Lessee has full power, authority and legal right to enter into and perform its obligations under this Master Site Lease, and the execution, delivery and performance of this Master Site Lease has been duly authorized by all necessary corporate actions on the part of the Lessee and does not require any further approvals or consents;
- C. Execution, delivery and performance of this Master Site Lease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which the Lessee is a party or by which it or its property is bound;
- D. There is no pending or, to the best knowledge of the Lessee, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of the Lessee to perform its obligations under this Master Site Lease; and

7. **RENTAL.**

The Lessee shall pay to the District as and for advance rental hereunder \$1.00 per year or part thereof, on or before the date of commencement of the Term of this Master Site Lease. The Lessee shall have no obligation to make rental payments hereunder in the event the Commencement Date of this Master Site Lease does not occur as a result of the District's inability to issue a Notice to Proceed for the each Phase of the Project pursuant to the provisions of the Master Construction Services Agreement.

8. **PURPOSE.**

The Lessee shall use the Sites solely for the purpose of constructing the two phases of the Projects thereon and for subleasing the Sites and the improvements of the Projects to the District; provided, that upon the occurrence of an Event of Default by the District under the Master Sublease, the Lessee may exercise the remedies provided for in the Master Construction Services Agreement or the Master Sublease.

9. **TERMINATION.** The Lessee agrees, upon termination of this Master Site Lease or the end of the Term of this Master Site Lease:

- A. To quit and surrender the Sites in the same good order and condition as it was in at the time of commencement of the Term hereunder, reasonable wear and tear excepted;
- B. To release and re-convey to the District any liens and encumbrances created or caused by the Lessee; and

- C. That any permanent improvements and structures existing upon the Sites at the time of the termination of this Master Site Lease shall remain thereon and title thereto shall vest in the District.

Notwithstanding the District's foregoing rights in the event of termination, the Lessee shall retain the right to full compensation for all services rendered prior to the termination, including all rights they have under the Master Construction Services Agreement and the Master Sublease as well as all recourse provided by California law including common law, for the value of the work performed on the Site and/or the Project.

In the event the Master Construction Services Agreement is terminated pursuant to the provisions therein, this Master Site Lease shall immediately terminate.

10. **QUIET ENJOYMENT.**

Subject to the terms of the Master Sublease attached hereto as Exhibit "B", the District covenants and agrees that it will not take any action to prevent the Lessee's quiet enjoyment of the Sites during the Term hereof; and, that in the event District's fee title to the Sites is ever challenged so as to interfere with the Lessee's right to occupy, use and enjoy the Sites, the District will use all governmental powers at its disposal, including the power of eminent domain, to obtain unencumbered fee title to the Sites and to defend the Lessee's right to occupy, use, and enjoy the Sites. The District, however, retains the right, throughout the Master Site Lease Term, to use the Sites for District purposes, pursuant to the terms of the Master Sublease.

11. **NO LIENS.**

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

12. **RIGHT OF ENTRY.**

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

13. **ASSIGNMENT AND SUBLEASING.**

The Lessee will not assign or otherwise dispose of or encumber any of the Sites or this Master Site Lease without the written consent of the District.

14. **NO WASTE.**

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

15. **DEFAULT.**

In the event the Lessee shall be in default in the performance of any obligation on its part to be performed under the terms of the Master Construction Services Agreement and this Master Site Lease, which default

continues for thirty (30) days following notice and demand for correction thereof to the Lessee, the District may exercise any and all remedies granted by law, except that no merger of this Master Site Lease and of the Master Sublease shall be deemed to occur as a result thereof.

16. **TITLE.**

During the Term of this Master Site Lease, the District shall hold title to the Sites and obtain title to the Project from the Lessee, including any and all additions which comprise improvements, fixtures, repairs, replacements or modifications, as such improvements are built and paid for pursuant to the Master Construction Services Agreement with full title vesting in the District to all improvements upon the end of the Term of this Master Site Lease.

17. **TAXES.**

The terms of this Master Site Lease may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this document, the private party may be subjected to the payment of personal property taxes levied on such interest. Pursuant to Section 107.6 of the California Revenue and Taxation Code, District hereby notifies Lessee that: (i) the property interest obtained by Lessee pursuant to the Master Site Lease may be subject to property taxation; and (ii) Lessee may be subject to the payment of property taxes levied on the property interest obtained by Lessee.

18. **EMINENT DOMAIN.**

In the event the whole or any part of the Sites or the improvements thereon, including but not limited to the Project, is taken by eminent domain, the financial interest of the Lessee shall be recognized and is hereby determined to be the amount of all Sublease Payments and Retention Payment, as applicable, then due or past due, less any allowed withholdings or offsets, and unearned interest as of the date the Lessee receives payment in full. The balance of the award in such eminent domain action, if any, shall be paid to the District.

19. **LIQUIDATED DAMAGES.**

Pursuant to Lessee's Due Diligence, as further described in Article 5 of the Master Construction Services Agreement, Lessee has determined the Term of this Master Site Lease which shall extend at least until the Punch List is completed under Article 13 of the Master Construction Services Agreement. Pursuant to the Master Construction Services Agreement, Liquidated Damages shall apply if the Contract Time is exceeded.

20. **PARTIAL INVALIDITY.**

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

21. **NOTICES.**

Any notices or filings required to be given or made under this Master Site Lease shall be served, given or made in writing upon the District or the Lessee, as the case may be, by personal delivery or registered mail to the respective addresses given below. Any change in the addresses noted shall not be binding upon the other party unless preceded by no less than thirty (30) days prior written notice. Any such notices shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if

sent by registered mail, return receipt requested, or by email, or fax followed by regular mail, addressed as follows:

If to Lessee: Neff Construction, Inc.  
1701 S. Bon View Avenue  
Ontario, CA 91761  
Attn: Ed Mierau, President  
Email: ed@neffcon.com

If to District: Simi Valley Unified School District  
101 West Cochran Street  
Simi Valley, CA 93065  
Attn: Lori Rubenstein  
Email: lori.rubenstein@simivalleyusd.org

22. **BINDING EFFECT.**

This Master Site Lease shall inure to the benefit of and shall be binding upon the District, the Lessee and its respective successors in interest and assigns.

23. **AMENDMENTS AND MODIFICATIONS.**

This Master Site Lease shall not be effectively amended, changed, modified, altered or terminated without the written agreement of the District and the Lessee.

24. **EXECUTION IN COUNTERPARTS.**

This Master Site Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

25. **LAWS, VENUE AND ATTORNEYS' FEES.**

The terms and provisions of this Master Site Lease shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Master Site Lease, the action shall be brought in a state court situated in the County of Ventura, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county. In the event of any such litigation between the parties, the parties shall pay for their respective costs incurred, including attorneys' fees.

26. **INTEGRATION/MODIFICATION.**

This Master Site Lease represents the entire understanding of the District and Lessee as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered herein and shall not be amended, altered, or changed except by a written agreement signed by the parties hereto.

27. **HEADINGS.**

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

28. **TIME.**

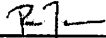


Time is of the essence in this Master Site Lease and each and all of its provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Master Site Lease by their authorized officers as of the day and year first written above.


“DISTRICT”

SIMI VALLEY UNIFIED SCHOOL DISTRICT

BY:   
Ron Todo  
Assistant Superintendent Business and Facilities

“LESSEE”

NEFF CONSTRUCTION, INC.

BY:   
Ed Mierau  
Executive Vice President

**EXHIBIT "A"**

**DESCRIPTION OF SITES**

**SIMI VALLEY HIGH SCHOOL IS LOCATED AT 5400 COCHRAN STREET, SIMI VALLEY, CA 93063.**

**EXHIBIT "B"**  
**MASTER SUBLEASE**

**EXHIBIT "C"**

**MASTER CONSTRUCTION SERVICES AGREEMENT**

**SIMI VALLEY HIGH SCHOOL MODERNIZATION PROJECTS**

**MASTER SUBLEASE AGREEMENT**

Between

**SIMI VALLEY UNIFIED SCHOOL DISTRICT**

and

**NEFF CONSTRUCTION, INC.**

Dated as of February 15, 2022

## SIMI VALLEY HIGH SCHOOL MODERNIZATION PROJECTS

### MASTER SUBLEASE AGREEMENT

This MASTER SUBLEASE AGREEMENT ("Master Sublease") is dated as of February 15, 2022, and is by and between the Simi Valley Unified School District, a school district duly organized and existing under the laws of the State of California ("District"), and Neff Construction, Inc., a California corporation and operating under the laws of the State of California ("Lessor" or "Contractor").

#### RECITALS:

WHEREAS, the District deems it essential for its own governmental purpose, to finance the construction of certain improvements as described in Measure X in Exhibit "A" attached hereto (the "Projects") and situated on the Simi Valley High School site described in Exhibit "B" attached hereto (the "Site"); and

WHEREAS, pursuant to Section 17400 *et seq.* of the Education Code, the District may enter into leases and agreements relating to real property and buildings used by the District; and

WHEREAS, pursuant to Section 17406 of the Education Code, the District is leasing the Sites to Lessor under a lease agreement dated the date hereof (the "Master Site Lease") for the purpose of Lessor constructing improvements on the Sites during the Term of the Master Site Lease on the terms and conditions the District finds to be in its best interest and set forth in this Master Sublease and the Master Construction Services Agreement attached as Exhibit "C" to the Master Site Lease; and

WHEREAS, the District owns the Sites, and pursuant to the Master Construction Services Agreement, will prepare and adopt plans and specifications for the completion of improvements, which will be approved pursuant to law as required by Section 17402 of the Education Code prior to the start of any construction for any phase of the project; and

WHEREAS, the District and Lessor agree to mutually cooperate now or hereafter, to the extent possible, in order to sustain the intent of this Master Sublease and the bargain of both parties hereto, and to provide Sublease Payments to be made on the dates and in the amount set forth herein.

#### WITNESSETH:

In consideration of the mutual covenants hereinafter set forth, the District and Lessor parties hereto agree as follows:

1. **DEFINITIONS.** Unless the context otherwise requires, the terms defined in this Article shall, for all purposes of this Master Sublease, have the meanings as herein specified.

- A. **"Commencement Date"** shall mean the Project commencement date found in the Notice to Proceed for each phase of the Project in accordance with the Master Construction Services Agreement.

- B. **“Construction Costs”** means any and all costs incurred by the Lessor with respect to the construction and equipping, as the case may be, of the Project, whether paid or incurred prior to or after the date hereof, including, without limitation, costs for Site preparation, the removal or demolition of existing structures, the construction of the Project and related facilities and improvements, and all other work in connection therewith, security of the Site and Project, Lessor’s overhead and supervision at the Project Site, all costs and expenses including any taxes or insurance premiums paid by the Lessor with respect to the Property, and administrative and other expenses necessary or incident to the Project, excluding Lessor’s and Developer’s home office overhead and profit. The term “Construction Costs” includes all Lessor’s costs associated with preparing or generating additional copies of any Construction Documents, as defined below, related to or required for the Project, including preparation or generation of additional plans and specifications for Lessor’s subcontractors. In no event shall Construction Costs exceed the Guaranteed Maximum Price.
- C. **“Master Construction Services Agreement”** (CSA) means the Master Construction Services Agreement attached hereto, together with any duly authorized and executed amendments hereto.
- D. **“Construction Documents”** consist of the Plans and Specifications approved by DSA for each phase of the project, Allowances stipulated in the Contract Documents, and all Addendas, if any, issued prior to the entry into this Agreement. The Construction Documents shall include all Modifications generated after the Effective Date in accordance with the Contract Documents, including, without limitation, a written amendment to the Contract signed by the Contractor and duly executed and approved by the District, a Change Order, a Construction Change Document, or a written order for a minor change in the Work issued by the Architect.
- E. **“Contract Documents”** means those documents which form the entire Contract by and between District and Contractor. As of the effective date of the Master Site Lease and Master Sublease, the Contract Documents consist of the Master Site Lease, the Master Sublease, any General, Supplementary and other Conditions, the Master Construction Services Agreement, including all exhibits and attachments hereto, and the Construction Documents. The Contract Documents collectively form the Contract. The Contract represents the entire and integrated Agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall be binding solely upon the District and Contractor, do not create a contractual relationship of any kind between the Architect and Contractor, between the District and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the District and the Contractor, and are not intended to and do not create any third party beneficiary. The Architect shall, however, be entitled to performance and enforcement of

obligations under the Contract intended to facilitate performance of the Architect's duties. (See Article 14 of the CSA).

- F. **"Day"** means a calendar day unless specifically designated as a business day.
- G. **"District"** means the Simi Valley Unified School District, a school district duly organized and existing under the laws of the State of California.
- H. **"Effective Date"** is the latter of the date upon which the District Board approves the Master Site Lease and the Master Sublease and Contractor has executed the Master Site Lease and Master Sublease.
- I. **"Event of Default"** means one or more events of default as defined in Article 16 of this Master Sublease.
- J. **"Guaranteed Maximum Price" or "GMP"** means the Guaranteed Maximum Price established pursuant to Article 5 of the CSA to be paid to Lessor for Lessor's construction of the Project hereunder, subject to any adjustments for Extra Work/Modifications as provided in Article 17 of the CSA.
- K. **"Lessor"** shall mean Neff Construction, Inc., and its successors and assigns.
- L. **"Project"** means the improvements and related work to be constructed and installed by the Lessor, as more particularly described and/or referenced in Exhibit "A" attached hereto.
- M. **"Site"** refers to the grounds of the Projects or in some cases may refer to multiple sites as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work, particularly described in Exhibit "B" attached hereto.
- N. **"Master Site Lease" or "Lease"** means the Master Site Lease of even date herewith, by and between the District and the Lessor together with any duly authorized and executed amendment thereto under which the District leases the Sites to the Lessor.
- O. **"Master Sublease"** means this Master Sublease together with any duly authorized and executed amendment hereto.
- P. **"Sublease Payment"** means any payment required to be made by the District pursuant to Article 7 of this Sublease.
- Q. **"Term of this Master Sublease" or "Term"** means the time during which this Master Sublease is in effect, as provided for in Article 3 of this Master Sublease.
- R. **"Term of this Master Sublease" or "Term"** means the time during which this Master Sublease is in effect, as provided for in Article 3 of this Master Sublease.



2. **MASTER SUBLEASE.**

Lessor hereby leases and subleases to District, and District hereby leases and subleases from Lessor the Projects and the Sites, including any real property improvements now or hereafter affixed thereto in accordance with the provisions herein for the full Term of this Master Sublease. The leasing by the Lessor to the District of the Sites shall not effect or result in a merger of the District's leasehold estate pursuant to this Master Sublease and its fee estate as lessor under the Master Site Lease, and the Lessor shall continue to have and hold a leasehold estate in said Sites pursuant to the Master Site Lease throughout the Term thereof and the Term of this Master Sublease.

3. **TERM OF THE MASTER SUBLEASE.**

- A. The Term of this Master Sublease shall become effective upon the authorized execution of this Master Sublease and issuance of a Notice to Proceed for any phase of the Project under the terms of the CSA and payment of the last Sublease Payment, unless otherwise terminated pursuant to this Master Sublease, the Master Site Lease, or the CSA.
- B. Termination of Term. Except as otherwise provided, the Term of this Master Sublease shall terminate upon the earliest of any of the following events:
  - (1) An Event of Default and the Lessor's election to terminate this Master Sublease pursuant to the provisions of Articles 16 and 17, hereof;
  - (2) The arrival of the last day of the Term of this Master Sublease and payment of all Sublease Payments hereunder; or
  - (3) The exercise of the District's option under Article 21 hereof.

4. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF DISTRICT.** The District represents and warrants to Lessor that:

- A. District is a public school district, duly organized and existing under the Constitution and laws of the State of California with authority to enter into this Master Sublease and to perform all of its obligations hereunder;
- B. District's governing body has duly authorized the execution and delivery of this Master Sublease and further represents and warrants that all requirements have been met and procedures followed to ensure its enforceability;
- C. The execution, delivery and performance of this Master Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which District is a party by which it or its property is bound;
- D. There is no pending or, to the knowledge of District, threatened action or proceeding before any court or administrative agency which will materially

adversely affect the ability of District to perform its obligations under this Master Sublease;

- E. The Projects and the Sites are essential to District in the performance of its governmental functions and their estimated useful life to the District exceeds the Term of this Master Sublease;
- F. District shall take such action as may be necessary to include all Sublease Payments in its annual budget and annually to appropriate an amount necessary to make such Sublease Payments;
- G. District shall not abandon the Sites for the use for which it is currently required by District and, to the extent permitted by law, District shall not seek to substitute or acquire property to be used as a substitute for the uses for which the site is maintained under the Master Sublease; and
- H. District shall not allow any Hazardous Substances (as such term is defined in the Site Lease and limited by that which shall be disclosed by the District prior to the Project commencement date in the Notice to Proceed) to be used or stored on, under or about the Sites.

5. **REPRESENTATIONS AND WARRANTIES OF LESSOR.** Lessor represents and warrants to District that:

- A. Lessor is duly organized in the State of California, and in good standing as a corporation under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;
- B. Lessor has full power, authority and legal right to enter into and perform its obligations under this Master Sublease, and the execution, delivery and performance of this Master Sublease has been duly authorized by all necessary corporate actions on the part of Lessor and does not require any further approvals or consents;
- C. The execution, delivery and performance of this Master Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which Lessor is a party by which they or their property is bound;
- D. There is no pending or, to the knowledge of Lessor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Lessor to perform their obligations under this Master Sublease; and
- E. Lessor will not mortgage or encumber the Sites or the Master Sublease or assign this Master Sublease or their rights to receive Sublease Payments hereunder, except as permitted herein.

6. **APPROPRIATION OF FUNDS.**

- A. In order to ensure that moneys sufficient to pay all costs will be available for this purpose when required, District shall maintain on deposit, and shall annually appropriate funds sufficient to make all Sublease Payments which become due to Lessor under this Master Sublease Agreement.

7. **SUBLEASE PAYMENTS.**

- A. District shall pay Lessor sublease payments (the "Sublease Payments") for the improvements, use and occupancy of the various Projects and Sites. The obligation of the District to pay Sublease Payments hereunder shall constitute a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District. The Sublease Payments, which the parties acknowledge and agree, are good and sufficient consideration for the improvements and the District's use and occupancy of the Project and the Site.
- B. The District shall pay Lessor the portion of the GMP in accordance with the CSA, as the Sublease Tenant Improvement Payments. No Sublease Tenant Improvement Payment shall be made by the District in an amount that exceeds the aggregate cost approved in accordance with the CSA to the Lessor of the work on the Project completed to the date the Lessor submits an application for payment, less the aggregate amount of all Sublease Tenant Improvement Payments previously made by the District to the Lessor. The District shall also make Sublease Finance Payments for each Measure X Project commencing the date of Substantial Completion and payable monthly thereafter as set forth in Exhibit C to this Master Sublease. Each Measure X Project shall have its own Exhibit C. There is no prepayment penalty, as set forth in Article 21, for early payment of the Sublease Finance Payments at the option of the District. However, the District may not prepay the Sublease Finance Payments unless the following conditions are met: (1) District is not in default of any of the provision the Master Sublease or the Construction Services Agreement, and (2) the Project has reach substantial completion in accordance with the terms of the Construction Services Agreement.
- C. In the event the District elects to exercise its option under Article 21.B below, the District's obligations under this Sublease including, but not limited to, the District's obligations to make Sublease Payments under this Article, shall thereupon cease and terminate.
- D. Except as specifically provided in this Article and in Article 9 hereof or as otherwise provided by law, the obligation of the District to make Sublease Payments when due and payable hereunder will be absolute and unconditional

in all events and will not be subject to any set-off, defense, counterclaim, abatement or recoupment for any reason whatsoever.

8. **FAIR RENTAL VALUE.**

Sublease Payments shall be paid by District in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Projects and the Sites during the Term, as well as payment for any tenant improvements made by the Lessor which title to the tenant improvements shall vest progressively in the District as such tenant improvements are built and paid for pursuant to the Master Construction Services Agreement. Full ownership of each phase of the Project shall occur at the end of the Term of this Master Sublease and payment of any amounts owed under this Master Sublease, unless this Master Sublease, the Master Site Lease or Master Construction Services Agreement is terminated in accordance with their respective terms and conditions. The parties hereto have agreed and determined that such total rental is not in excess of the fair rental value of the Projects and the Sites. In making such determination, consideration has been given to the fair market value of the Projects and the Sites, that title to the improvements completed and paid for by District as to which the District shall have the right to possess, occupy and use, the uses and purposes which may be served by the Projects and the Sites and the benefits therefrom which will accrue to the District and the general public, the ability of the District to make additions, and modifications and improvements to the Projects and the Sites which are not inconsistent with the Master Construction Services Agreement (Exhibit "C" to Master Site Lease) and which do not interfere with the Lessor's work on the Projects and the Sites.

9. **SUBLEASE ABATEMENT.**

In addition to delay of Sublease Payments provided in Article 7, above, Sublease Payments due hereunder with respect to the Projects and the Sites shall be subject to abatement prior to the commencement of the use of the Projects and the Sites by the District or during any period in which, by reason of material damage to or destruction of the Projects or the Sites, there is substantial interference with the use and right of possession by the District of the Projects and the Sites or any substantial portion thereof. For each potential incident of substantial interference, decisions to be made on i) whether or not abatement shall apply; ii) the date upon which abatement shall commence; iii) the applicable portion of Sublease Payments to be abated and; iv) the concluding date of the particular abatement shall all be subject to determinations by the District. The amount of Sublease abatement shall be such that the Sublease Payments paid by the District during the period of Projects and Sites restoration do not exceed the fair rental value of the usable portions of the Projects and Sites. In the event of any damage or destruction to the Projects or the Sites, this Master Sublease shall continue in full force and effect.

10. **USE OF SITES AND PROJECTS.**

Subject to reasonable interference from construction operations by the Lessor under the terms of the Master Construction Services Agreement during the Term of this Master Sublease, Lessor shall provide the District with quiet use and enjoyment of the Sites

without suit, or hindrance from Lessor or their assigns, provided District is in compliance with its duties under this Master Sublease. District will not use, operate or maintain the Sites or Projects improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Master Sublease. District shall provide all permits and licenses, if any, necessary for the operation of the Projects and Sites. In addition, the District agrees to comply in all respects (including, without limitation, with respect to the time, maintenance and operation of the Projects and Sites) with laws of all jurisdictions in which its operations involving the Projects and Sites may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Sites or the Projects; provided, however, that District may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Lessor, adversely affect the estate of Lessor in and to the Sites or the Projects or its interest or rights under this Master Sublease. Lessor acknowledges that at any time during the Term of this Master Sublease, District may access the Site to conduct District business. Lessor acknowledges and agrees to the District's use or occupation of the Sites, so long as such use or occupation does not unreasonably interfere with construction of the Projects. Upon substantial completion of the Projects or severable portions hereof, the Lessor shall provide the District with quiet use and enjoyment of the Sites without suit or hindrance from the Lessor or its assigns, subject to reasonable interference from ongoing construction operations on any remaining portion of the Sites under construction by the Lessor. Notwithstanding any provision to the contrary in this Master Sublease or the Master Construction Services Agreement, the District shall, concurrent with any occupancy, use or possession of any portion of the Projects, furnish property and loss liability insurance to cover any such portion of the Projects or Sites it occupies, uses or possesses. District shall provide certificates of insurance and additional insured endorsement naming Lessor.

11. **LESSOR'S INSPECTION/ACCESS TO THE SITE.**

District agrees that Lessor and any of Lessor's representatives shall have the right at all reasonable times to enter upon the Sites or any portion thereof to construct and improve the Project, to examine and inspect the Sites or Projects, to make repairs or service warranty obligations, and to exercise its remedies pursuant to the section in this Master Sublease entitled "Remedies on Default." District further agrees that Lessor and any of Lessor's representatives shall have such rights of access to the Sites as may be reasonably necessary to cause the proper maintenance of the Sites and the Projects in the event of failure by District to perform its obligations hereunder.

12. **PROJECT ACCEPTANCE.**

District shall acknowledge final inspection and completion of the Projects by executing and recording a Notice of Completion. The validity of this Master Sublease will not be affected by any delay in or failure of completion of the Projects.

13. **ALTERATIONS AND ATTACHMENTS.**

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

14. **MAINTENANCE AND UTILITIES.**

Until the date of beneficial occupancy by the District of each Measure X Project and Substantial Completion of each Measure X Project as defined in the CSA, Lessor shall, in its own name, contract for and pay the expenses of all utility services required for each Measure X Project. Upon beneficial occupancy of each Measure X Project and Substantial Completion of each Measure X Project, the District shall, in its own name, contract for and pay the expenses of all utility services including, but not limited to, all air conditioning, heating, electrical, gas, refuse collection, water, and sewer units. The District shall be responsible for all utilities and maintenance of only the portion of the Sites occupied solely or beneficially by the District during construction of the Projects by Lessor. Once the Projects are accepted by the District as finally complete, the District shall have responsibility for maintenance and repair of each Measure X Project and the Sites, except for warranty or other obligations of Lessor relating to the improvements as set forth in the Master Construction Services Agreement.

15. **TAXES.**

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

16. **EVENTS OF DEFAULT.** The term "Event of Default," as used in this Master Sublease means the occurrence of any one or more of the following events:

- A. The District fails to make any unexcused Sublease Payment (or any other payment) within thirty (30) days after the due date thereof or the District fails to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder and such failure to either make the payment or perform the covenant, condition or agreement is not cured within thirty (30) days after written notice thereof by Lessor;
- B. The Lessor discovers that any statement, representation or warranty made by the District in this Master Sublease, or in any document ever delivered by the District pursuant hereto or in connection herewith is misleading or erroneous in any material respect;

- C. The District becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the benefit of creditors, applies or consents to the appointment of a receiver, trustee, conservator or liquidator of the District or of all or a substantial part of its assets, or a petition for relief is filed by the District under federal bankruptcy, insolvency or similar laws.

17. **REMEDIES ON DEFAULT.** Upon the happening of any Event of Default, Lessor may exercise remedies set forth below; provided, however, that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Sublease Payments or otherwise declare any Sublease Payments not then in default to be immediately due and payable. The District shall continue to remain liable for the payment of Sublease Payments and damages for breach of this Master Sublease and the performance of all conditions herein such Sublease Payments and damages shall be payable to Lessor at the time and in the manner set forth in subsections (A) and (B) of this Article:

- A. In the event that Lessor does not elect to terminate this Sublease pursuant to subsection (B) below, the District agrees to and shall remain liable for the payment of Sublease Payments and the performance of all conditions herein and shall reimburse Lessor for the full amount of the Sublease Payments to the end of the Sublease Term.
- B. In the event of termination of this Sublease by Lessor at its option and in the manner hereinafter provided on account of default by the District, the District shall pay Lessor Sublease Payments then owing for past Sublease Payments due and not paid, not to exceed the approved costs for all labor, materials and services provided up to the date of Lessor's termination of the Master Sublease. Neither notice to pay Sublease Payments, nor to deliver up possession of the Project and the Site given pursuant to law, nor any proceeding in unlawful detainer taken by Lessor shall of itself operate to terminate this Master Sublease. In the event of any litigation between the parties, the parties shall pay for their respective costs incurred, including attorneys' fees.
- C. No right or remedy herein conferred upon or reserved to Lessor is exclusive of any other right or remedy herein, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time; provided, however, that notwithstanding any provisions to the contrary herein, Lessor shall not under any circumstances have the right to accelerate the Sublease Payments that fall due in future Sublease periods or otherwise declare any Sublease Payments not then in default to be immediately due and payable.

18. **NON-WAIVER.**

No covenant or condition to be performed by District or Lessor under this Master Sublease can be waived except by the written consent of the other party. Forbearance or indulgence by District or Lessor in any regard whatsoever shall not constitute a waiver of

the covenant or condition in question. Until complete performance by the District or Lessor of said covenant or condition, the other party shall be entitled to invoke any remedy available to it under this Master Sublease or by law or in equity despite said forbearance or indulgence.

19. **ASSIGNMENT.**

Without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, the District shall not (a) assign, transfer, pledge, or hypothecate this Master Sublease, the Project and the Site, or any part thereof, or any interest therein, or (b) sublet or lend the use of the Project or any part thereof, except as authorized by the provisions of the California Civic Center Act, Education Code section 38130 *et seq.* However, District may lease, license or otherwise allow use or occupation of the Sites for third party use so long as such use or occupation does not unreasonably interfere with construction of the Project. Consent to any of the foregoing prohibited acts applies only in the given instance and is not a consent to any subsequent like act by the District or any other person. The Lessor shall not assign its obligations under this Master Sublease with the exception of their obligation to issue default notices and to convey or re-convey their interest in the Project and Site to the District upon full satisfaction of the District's obligations hereunder; however, the Lessor may assign their right, title and interest in this Master Sublease, the Sublease Payments and other amounts due hereunder and the Project in whole or in part to one or more assignees or sub-assignees at any time upon written notice to the District. No assignment shall be effective as against the District unless and until the District is so notified in writing. The District shall pay all Sublease Payments due hereunder pursuant to the direction of Lessor or the assignee named in the most recent assignment or notice of assignment. During the Sublease Term, the District shall keep a complete and accurate record of all such assignments. Subject always to the foregoing, this Master Sublease inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors, and assigns of the parties hereto.



20. **OWNERSHIP.**

During the Term of this Master Sublease, the District shall hold title to the Sites and progressively obtain title to the Projects from the Lessor, and any and all additions which comprise fixtures, repairs, replacements or modifications thereof, as Sublease Payments are made to Lessor. During the Term of this Master Sublease, the Lessor shall have a leasehold interest in the Sites pursuant to the Master Site Lease. If the District prepays the Sublease Payments in full pursuant to Article 21 hereof or otherwise pays all required Sublease Payments, all remaining rights, title and interests of the Lessor, if any, in and to the Project and Sites, shall be fully transferred to and vested in the District. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer. At the termination of this Master Sublease, title to the Site, and any improvements constructed thereon shall vest in the District.

21. **SUBLEASE PREPAYMENT/ PURCHASE OPTION.**

A. **Sublease Prepayments.** At any time during the term of this Master Sublease, the District may in its sole discretion, upon the request of the Lessor or on upon its own initiative, make Sublease Prepayments to the Lessor. No Sublease Prepayments requested by the Lessor may be made by the District in an amount exceeding the aggregate true cost to the Lessor of the work on the phases of the Project completed to the date the Lessor submits the request for a Sublease Prepayment less the aggregate amount of: (1) all Sublease Payments previously made by the District to the Lessor; (2) all Sublease Prepayments previously made by the District to the Lessor; (3) all amounts previously retained pursuant to Article 21(A)(3), below, from Sublease Prepayments previously made by the District to the Lessor; and (4) the retention for such Sublease Prepayment. Lessor must submit evidence that the conditions precedent set forth in Article 21(A)(1) below, have been met. In the event District elects to make Sublease Prepayments, the Prepayment Price, contemplated in Article 21(B), below, shall be adjusted accordingly.

(1) The following are conditions precedent to any Sublease Prepayments made to the Lessor pursuant to a request of the Lessor and exercised by the District in its sole discretion:

- a. Satisfactory progress of the work and construction pursuant to the approved schedule and "Contract Time" pursuant to Article 9 of the Master Construction Services Agreement shall have been made as determined in Article 21(A)(2), below.
- b. Lessor shall also submit to the District (i) duly executed conditional lien releases and waivers (in the form provided in California Civil Code section 8132) from the Lessor and all subcontractors, consultants and other persons retained by the Lessor in connection with the Project, whereby such persons conditionally waive all lien and stop notice rights against the

District, the Project and the Project site with respect to the pending Sublease Prepayment to be made by the District, (ii) duly executed unconditional lien releases and waivers (in the form provided in California Civil Code section 8134) from the Lessor and all subcontractors, consultants and other persons retained by the Lessor in connection with the Project, whereby such persons unconditionally and irrevocably waive all lien and stop notice rights against the District, the Project and the Project site with respect to all previous Sublease Prepayments made by the District, and (iii) any other items that the Lessor may be required to collect and distribute to the District pursuant to the terms and provisions of the CSA. Lessor shall promptly pay all amounts due to each subcontractor, consultant and other person retained by Lessor in connection with the Project no later than ten (10) days after Lessor's receipt of a Sublease Prepayment from the District.

- (2) The determination of whether satisfactory progress of the Construction pursuant to the approved schedule and "Contract Time" has occurred shall be made by the Project Inspector hired by the District pursuant to Article 10 of the CSA. If the Project Inspector determines that pursuant to the approved schedule and "Contract Time", the work required to be performed, as stated in the Lessor's Sublease Prepayment request has not been completed and approved, the Lessor shall not be eligible to receive the requested Sublease Prepayment.

- B. Purchase Option. If the District is not in default hereunder, the District shall be granted options to purchase not less than all of the Project in as-is condition. The Prepayment Price at any given time shall be an amount equal to the GMP, as it may be revised from time to time, less the sum of any Sublease Payments and/or Sublease Prepayments made by the District prior to the date on which the District elects to exercise its option under this Article.

## 22. RELEASE OF LIENS.

- A. Notwithstanding Article 21 above, upon Substantial Completion of the various improvements of the Projects as defined in the CSA and the recording of a Notice of Completion for the various phases of the Projects, Lessor or its assignee and the District shall release Lessor's leasehold interest in Projects and the Sites. However, District shall retain any and all claims and or warranties it may have under the CSA.
- B. Lessor shall authorize, execute and deliver to the District all documents reasonably requested by the District to evidence (i) the release of any and all liens created pursuant to the provisions of this Master Sublease and the Master Site Lease, and (ii) any other documents required to terminate the Master Site Lease and this Master Sublease.

23. **TERMINATION OF CONSTRUCTION SERVICES AGREEMENT.**

In the event the Master Construction Services Agreement is terminated pursuant to the provisions contained therein, this Master Sublease shall immediately terminate.

24. **SEVERABILITY.**

If any provision of this Master Sublease shall be held invalid or unenforceable by a court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provision of this Master Sublease, unless elimination of such provision materially alters the rights and obligations embodied in this Master Sublease.

25. **INTEGRATION/MODIFICATION.**

This Master Sublease constitutes the entire agreement between Lessor and the District as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered herein, and it shall not be amended, altered, or changed except by a written agreement signed by the parties hereto.

26. **NOTICES.**

Services of all notices under this Master Sublease shall be sufficient if given personally or mailed to the party involved at its respective address hereinafter set forth or at such address as such party may provide in writing from time to time. Any change in the addresses noted shall not be binding upon the other party unless preceded by no less than thirty (30) days prior written notice. Any such notices shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by email, or fax followed by regular mail, addressed as follows:

If to Lessor: Neff Construction, Inc.  
1701 S. Bon View Avenue  
Ontario, CA 91761  
Attn: Ed Mierau, President  
Email: ed@neffcon.com

If to District: Simi Valley Unified School District  
101 West Cochran Street  
Simi Valley, CA 93065  
Attn: Lori Rubenstein  
Email: lori.rubenstein@simivalleyusd.org

27. **TITLES.**

The titles to the Articles or sections of this Master Sublease are solely for the convenience of the parties and are not an aid in the interpretation thereof.

28. **TIME.**

Time is of the essence in this Master Sublease and each and all of its provisions.

29. **LAWS, VENUE AND ATTORNEYS' FEES.**

The terms and provisions of this Master Sublease shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Master Sublease, the action shall be brought in a state court situated in the County of Ventura, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county. In the event of any such litigation between the parties, each party shall bear its own attorney's fees.

IN WITNESS WHEREOF, the parties hereto have executed this Master Sublease by their authorized officers as of the day and year first written above.

DISTRICT

"LESSOR"

SIMI VALLEY UNIFIED SCHOOL  
DISTRICT

NEFF CONSTRUCTION, INC.

BY: R. J. Todo  
Ron Todo  
Assistant Superintendent Business and  
Facilities

BY: Ed Mierau  
Ed Mierau  
President

**EXHIBIT A**  
**DESCRIPTION OF PROJECT**

**EXHIBIT B**  
**DESCRIPTION OF SITE**

**EXHIBIT C****SUBLEASE PAYMENT SCHEDULE**

The Sublease Payments shall consist of the Sublease Tenant Improvement Payments and the Sublease Finance Payments as follows:

I. Sublease Tenant Improvement Payments to be paid in accordance with the provisions of the Master Construction Services Agreement Not to Exceed: \$\_\_\_\_\_.

II. Sublease Finance Payment of \$\_\_\_\_\_ (excluding finance charge) to be paid in accordance with the following Sublease Finance Payment Schedule which shall begin the date of Substantial Completion as defined in the Master Construction Services Agreement:

Monthly Payment No.	(a) Beginning Balance*	(b) Payment	(c) Interest at 5% per year	(d) Principal Paid	(e) Ending Balance [(a)-(d)]
1	\$	\$	\$	\$	\$
2	\$	\$	\$	\$	\$
3	\$	\$	\$	\$	\$
4	\$	\$	\$	\$	\$
5	\$	\$	\$	\$	\$
6	\$	\$	\$	\$	\$
<b>TOTAL</b>		\$	\$	\$	

\* The Prepayment Price shall be the Beginning Balance as of the date the Purchase Option is exercised pursuant to Section 7 of the Sublease Agreement.

**Certificate Of Completion**

Envelope Id: 3AD281235D364081BEF5D03A960048DE

Subject: Please DocuSign: Simi Valley HS Lease-Leaseback Agreement

Source Envelope:

Document Pages: 171

Certificate Pages: 5

AutoNav: Enabled

Envelopeld Stamping: Enabled

Time Zone: (UTC-08:00) Pacific Time (US &amp; Canada)

Status: Completed

Envelope Originator:

Public Works

publicworks@simivalleyusd.org

IP Address: 207.157.143.39

**Record Tracking**

Status: Original

2/8/2022 4:23:16 PM

Security Appliance Status: Connected

Storage Appliance Status: Connected

Holder: Public Works

publicworks@simivalleyusd.org

Pool: StateLocal

Pool: Simi Valley Unified School District - Facilities

Location: DocuSign

Location: DocuSign

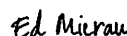
**Signer Events**

Ed Mierau

ed@neffcon.com

President

Neff Construction

Security Level: Email, Account Authentication  
(None)**Signature**

Signature Adoption: Pre-selected Style

Using IP Address: 24.43.59.170

**Timestamp**

Sent: 2/8/2022 4:39:22 PM

Viewed: 2/9/2022 12:46:48 PM

Signed: 2/10/2022 12:42:16 PM

**Electronic Record and Signature Disclosure:**

Accepted: 2/9/2022 12:46:48 PM

ID: be8fce14-2b8e-492b-97e9-929b6ad164bd

Pamela Jewell

pamela.jewell@simivalleyusd.org

Administrative Services Assistant II

Simi Valley USD

Security Level: Email, Account Authentication  
(None)

Signature Adoption: Pre-selected Style

Using IP Address: 207.157.143.39

Sent: 2/10/2022 12:42:22 PM

Viewed: 2/17/2022 1:53:03 PM

Signed: 2/17/2022 1:53:22 PM

**Electronic Record and Signature Disclosure:**

Accepted: 10/20/2021 10:27:18 AM

ID: 77a719ba-8cfa-478c-ab01-d769f2eee4d0

Ron Todo

ron.todo@simivalleyusd.org

Simi Valley Unified School District - Facilities

Security Level: Email, Account Authentication  
(None)

Signature Adoption: Uploaded Signature Image

Using IP Address: 207.157.143.41

Sent: 2/17/2022 1:53:29 PM

Viewed: 2/17/2022 3:20:32 PM

Signed: 2/17/2022 3:21:28 PM

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

**In Person Signer Events****Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp**



<b>Carbon Copy Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Witness Events</b>	<b>Signature</b>	<b>Timestamp</b>
<b>Notary Events</b>	<b>Signature</b>	<b>Timestamp</b>
<b>Envelope Summary Events</b>	<b>Status</b>	<b>Timestamps</b>
Envelope Sent	Hashed/Encrypted	2/8/2022 4:39:22 PM
Certified Delivered	Security Checked	2/17/2022 3:20:32 PM
Signing Complete	Security Checked	2/17/2022 3:21:28 PM
Completed	Security Checked	2/17/2022 3:21:28 PM
<b>Payment Events</b>	<b>Status</b>	<b>Timestamps</b>
<b>Electronic Record and Signature Disclosure</b>		

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, Simi Valley Unified School District - Facilities (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

#### **How to contact Simi Valley Unified School District - Facilities:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [ron.todo@simivalleyusd.org](mailto:ron.todo@simivalleyusd.org)

#### **To advise Simi Valley Unified School District - Facilities of your new email address**

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at [ron.todo@simivalleyusd.org](mailto:ron.todo@simivalleyusd.org) and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

#### **To request paper copies from Simi Valley Unified School District - Facilities**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to [ron.todo@simivalleyusd.org](mailto:ron.todo@simivalleyusd.org) and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

#### **To withdraw your consent with Simi Valley Unified School District - Facilities**

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to [ron.todo@simivalleyusd.org](mailto:ron.todo@simivalleyusd.org) and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

### **Required hardware and software**

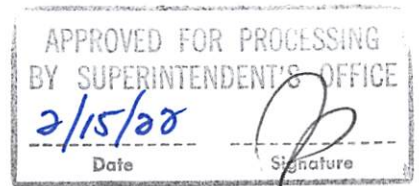
The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

### **Acknowledging your access and consent to receive and sign documents electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Simi Valley Unified School District - Facilities as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Simi Valley Unified School District - Facilities during the course of your relationship with Simi Valley Unified School District - Facilities.



**TITLE: APPROVAL OF AGREEMENT NO R22-02935 BETWEEN SIMI VALLEY UNIFIED SCHOOL DISTRICT AND TBP ARCHITECTURE FOR THE DOCUMENTATION, PLAN APPROVAL THROUGH CLOSEOUT OF THE NEW SHADE STRUCTURE, AT THE SIMI VALLEY HIGH SCHOOL QUAD RENOVATION PROJECT**

Business & Facilities  
Consent #11

February 15, 2022  
Page 1 of 1

Prepared by: Ron Todo, Associate Superintendent  
Business & Facilities

### Background Information

tBP will be providing the documentation and phases plan approval through close out, for the new shade structure at Simi Valley High School, for the Quad Renovation project.

A proposal from tBP Architecture was received and negotiated by staff.

### Fiscal Analysis

\$8,800.00 Total Contract, funded by Measure X

### Recommendation

It is recommended that the Board of Education approve to Agreement R22-02935.

On a motion # 121 by Trustee LaBelle, seconded by Trustee Bagdasaryan and carried by a vote of 5/0, the Board of Education approved, by roll-call-vote, Agreement R22-02935 with the firm of tBP Architecture.

Ayes: Jubran  
Smellon  
LaBelle  
Bagdasaryan  
Blough Noes: 0 Absent: 0 Abstained: 0

**PROJECT ASSIGNMENT AMENDMENT (PAA)  
AGREEMENT R22-02935**

This Project Assignment Amendment ("PAA") is entered by and between Simi Valley Unified School District and tBP Architecture ("Architect") on February 15, 2022.

Whereas, the District entered into a written Agreement entitled Agreement for On-Going Architectural Services, Agreement A17.428 ("Agreement") generally establishing terms and conditions for the Architect's design professional services for Projects assigned by the District to the Architect.

Whereas, this PAA sets forth the specific terms and conditions applicable to the District assignment of the Assigned Project to the Architect for completion of design professional services.

NOW THEREFORE, the District and Architect and agree as follows:

**1. Assigned Project Description.** The Assigned Project is described as follows: **Architectural and Engineering services for the new shade structure in the Quad area at Simi Valley High School. The scope is including, but not limited to:**

- Coordinate with USA Shade regarding the DSA PC Approved shade structure.
- Provide site specific site plans and specifications for the DSA Application. Design Development through DSA Closeout
- Coordinate the DSA application and arrange for DSA project approval.
- Conduct site visits, as required
- Submit forms to DSA and coordinate/assist to obtain DSA certification.

**2. Assigned Project Construction Budget.** The Construction Budget for the Assigned Project is not applicable to these fixed-fee Design Services.

**3. Assigned Project Basic Services.** The Basic Services for the Assigned Project are:

Phase	Basic Services
1	Design Development
2	Construction Documents.
3	DSA and Agency Approvals
4	Construction Administration
5	Provide project / DSA closeout services including punch list development, project completion verification and warranties

**4. Assigned Project Design Disciplines and Design Consultants.** The Architectural and Engineering Disciplines included within the scope of the Assigned Project include the following; the Architect shall complete all services noted below with its own employees or by Consultants to the Architect.

Design Disciplines; Design Consultants
None at this time

**5. Assigned Project Schedule.** The Architect's Completion of Basic Services for the Assigned Project shall be in accordance with the following:

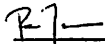
Basic Services - Schedule	Completion Date
Design Development	Tuesday, March 15, 2022
Construction Documents	Friday, April 29, 2022
Agency Approval	June 15, 2022
Construction	Sept 2, 2022

6. **Assigned Project Contract Price.** The Contract Price for the Assigned Project is a lump sum fixed fee of **Eight Thousand, Eight Hundred Dollars (\$8,800.00)** as described on the attached Proposal from Architect dated February 2022 (Exhibit A- For Fee Only). Billings shall be based on percentage of Basic Services completed.
7. **Agreement Terms.** All terms of Agreement A17.428 for Ongoing Architectural Services are incorporated herein and applicable to the Assigned Project, except as modified by the terms of this PAA.

IN WITNESS HEREOF, the District and the Architect have executed this Project Assignment Amendment as of the date set forth above.

**District**  
**Simi Valley Unified School District**

By:

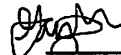


Ron Todo  
Associate Superintendent,  
Business & Facilities

*DN*

**Architect**  
**tBP Architecture**

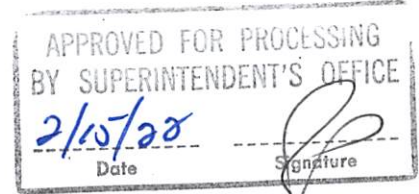
By:



Gary P. Moon, AIA  
CEO/ Managing Principal







**TITLE:        RATIFICATION OF INCREASE IN PRICING OF SIMI VALLEY HIGH SCHOOL MPR ROOF MATERIALS**

Business & Facilities  
Consent #12

February 15, 2022  
Page 1 of 2

Prepared by: Ron Todo, Associate Superintendent  
Business & Facilities

**Background Information**

On September 21, 2021, the Board of Education designated Sika Sarnafil brand as the specific roof material product for the Simi Valley High School MPR. At that time, anticipating a long production lead-time, purchase order P22-01280 was placed with Sika Corporation to avoid a delay in completion of the MPR project. Staff understood at the time that providing purchase order P22-01280 was to secure the District's place in the production schedule at Sika Corporation, knowing that the ongoing supply-chain issues as well as increases in the cost of raw materials could potentially result in a cost increase. As previously presented to Board, the original cost of the roof materials was \$199,688.23. Sika Corporation has notified the District that the ongoing supply-chain issues, as well as increases in the cost of raw materials, have resulted in an updated cost of \$232,104.10 as shown in "Exhibit A".

Staff has concluded that the price increase is justifiable given the supply-chain issues and increase in the cost of raw materials. Staff does not believe it is in the best interest of the District to delay receipt of the materials, and therefore delay the MPR project.

On February 1, 2022, the Associate Superintendent of Business & Facilities directed staff to proceed with an increase to purchase order P22-01280 to avoid any delay of the MPR project. With the increased purchase order amount, Sika Corporation has a tentative delivery date of April 29, 2022, and there are no further price increases anticipated.

**Fiscal Impact**

The new total for the roof material in the amount of \$232,104.10 will be paid for with Measure X Bond funds.

On motion # 121 by Trustee LaBelle, seconded by Trustee Bagdasaryan and carried by a vote of 5/0, the Board of Education ratified, by roll-call vote, the increase in pricing of Simi Valley High School MPR roof materials.

AYES: Subran  
Smythen NOES: 0 Absent: 0 Abstained: 0  
LaBelle  
Bagdasaryan  
Blough

**TITLE:        RATIFICATION OF INCREASE IN PRICING OF SIMI VALLEY HIGH  
                 SCHOOL MPR ROOF MATERIALS**

Business & Facilities  
Consent #12

February 15, 2022  
Page 2 of 2

**Recommendation**

It is recommended that the Board of Education ratify the increase in pricing of Simi Valley High School MPR roof materials.

ReqPay99a

## Requisition Snapshot

VENDOR - PO with Receiving				Fiscal Year 2021/22		
Requisition Number <b>R22-01328</b>				Requisition Date <b>09/10/2021</b>		
<b>Summary</b>						
Created by	621RKINGPATE, 9/10/2021	PO #	P22-01280	Goods & Services		
Department	PURCH	Responsibility	X000-64-17	Academic Dept		
Status	Submitted					
On Hold	No	Attachments	Yes			
Requisitioner	XBOND/HOFFMAN	Board Date		Non Taxable	.00	
Order Site	0667 - X Bond Management Office			Taxable	211,309.18	
Delivery Site	0030 - Simi Valley High			Tax (7.2500)	15,319.92	
Delivery Date		Room		Shipping (0.00)	5,475.00	
Project	AUDIT			Adjustment	.00	
Info	9/21 ACT#5 SVHS MPR REPLACE ROOF MATERIALS			Requisition Total	<b>232,104.10</b>	
<b>Requisition Vendor Information</b>						
033090/1	SIKA CORPORATION 100 DAN ROAD , CANTON, MA 02021					
<b>Purchasing</b>						
PO Date	10/05/2021	PO Printed Date	10/05/2021	Buyer	621DHOFFMAN -	
Quote		Quote Date			DERRICK 805-306-4500	
					X4601	
<b>Line Items</b> <span style="float: right;">Change Level 1</span>						
Description	Stores Item #	Unit	Order Qty	Rcvd Qty	Unit Price	Extended
AS QUOTED BY PAT HOFFMAN - SEE ATTACHED						
1 G410 60 MIL 10'X100' ROLLS		ROLLS	24		1,170.0000	28,080.00 TX
2 Sarnacol 2121 Memb. Adhesive		PAILS	48		134.7500	6,468.00 TX
3 Sarnacol 2163 Board Adhesive		CTNS	11		292.5000	3,217.50 TX
4 AD Board Adhesive 5-Gal Part A		CTNS	22		536.2500	11,797.50 TX
5 AD Board Adhesive 5-Gal Part B		CTNS	22		536.2500	11,797.50 TX
6 1/4" DensDeck Prime (4'x8', 42 pcs/unit)		UNITS	16		776.8300	12,429.28 TX
7 Sarnatherm ISO -2.6"x4'x4' - 282.24 SQ.		EACH	1		30,792.3800	30,792.38 TX
8 Sarnatherm Tapered ISO Pckg 1 Package		PACKAGE	1		68,515.0000	68,515.00 TX
9 5/8" DensDeck Prime (4'x8'-30 pcs/unit)		UNIT	1		645.6000	645.60 TX
10 G459 60 mil Membran 6.56'x65.6' roll		ROLLS	11		821.9500	9,041.45 TX
11 G410 8" Strip		ROLLS	6		107.8700	647.22 TX
12 Detail Membrane 24"x50'		ROLL	1		221.0000	221.00 TX
13 Sarnastop (attachment bar-250'/tube)		TUBES	6		374.7800	2,248.68 TX
14 Sarnaclad (4'x10'/sheet)		SHEETS	24		217.8800	5,229.12 TX
15 Stabond U148-A Adhesive		PAIL	14		297.0000	4,158.00 TX
16 Stabond C148-B Adhesive		EACH	4		444.5000	1,778.00 TX
17 Sarnafastener #12 x 1-5/8"		BOXES	3		82.6000	247.80 TX
18 Sarnafastener #12 x 3"		BOXES	2		134.4000	268.80 TX
19 Sarnafastener #12 x 4"		BOXES	8		177.8000	1,422.40 TX
20 Sarnafastener #15 XP x 2"		BOX	1		140.0000	140.00 TX
21 Sarnafastener CD-10 x 2"		BOX	1		289.8000	289.80 TX
22 Sarnaplate 3"square		BOXES	10		243.6000	2,436.00 TX
23 Sarna Disc XPN (500/box)		BOX	1		296.8000	296.80 TX
24 Sarnacomer Inside (10/box)		BOXES	2		108.5200	217.04 TX
25 Sarnacomer Outside (20/box)		BOXES	6		160.5100	963.06 TX
26 Sarnastack Split Boot-A (8/box)		BOXES	6		280.7000	1,684.20 TX
27 ALUMINUM TAPE		ROLLS	2		36.9500	73.90 TX
28 Sikalastomer-65		CTN	1		215.4000	215.40 TX
29 Sikaflex 1a (25 tubes/ctn)		CARTON	1		181.3000	181.30 TX

[ESCAPE](#) [ONLINE](#)  
 Page 1 of 3

VENDOR - PO with Receiving				Fiscal Year 2021/22		
Requisition Number R22-01328				Requisition Date 09/10/2021		
<b>Summary</b>						
Created by	621RKINGPATE, 9/10/2021	PO #	P22-01280	Goods & Services		
Department	PURCH	Responsibility	X000-64-17	Academic Dept		
Status	Submitted					
On Hold	No	Attachments	Yes			
Requisitioner	XBOND/HOFFMAN	Board Date		Non Taxable	.00	
Order Site	0667 - X Bond Management Office			Taxable	211,309.18	
Delivery Site	0030 - Simi Valley High			Tax (7.2500)	15,319.92	
Delivery Date		Room		Shipping (0.00)	5,475.00	
Project	AUDIT			Adjustment	.00	
Info	9/21 ACT#5 SVHS MPR REPLACE ROOF MATERIALS			Requisition Total	232,104.10	
<b>Requisition Vendor Information</b>						
033090/1	SIKA CORPORATION 100 DAN ROAD , CANTON, MA 02021					
<b>Purchasing</b>						
PO Date	10/05/2021	PO Printed Date	10/05/2021	Buyer	621DHOFFMAN -	
Quote		Quote Date		DERRICK 805-306-4500 X4601		
<b>Line Items</b>						
Description	Stores Item #	Unit	Order Qty	Rcvd Qty	Unit Price	Extended
30 SEAM CLEANER - ACETONE BASE		GALLONS	2		41.0000	82.00 TX
31 Sikaplan Walkway-20 (39"x32.8'/roll)		ROLLS	15		381.6300	5,724.45 TX
32 SVHS MPR PROJECT		EACH	1		.0000	
**** Will create Asset when received						
PLEASE COORDINATE DELIVERY WITH						
MARC CUNNINGHAM						
CELL 1-805-570-6321						
<b>Changed Line Items</b>						
Description	Stores Item #	Unit	Order Qty	Change Lvl	Unit Price	Extended
1 G410 60 MIL 10'X100' ROLLS		ROLLS	24	0	940.0000	22,560.00
2 Sarnacol 2121 Memb. Adhesive		PAILS	48	0	144.1800	6,920.64
3 Sarnacol 2163 Board Adhesive		CTNS	11	0	260.0000	2,860.00
4 AD Board Adhesive 5-Gal Part A		CTNS	22	0	352.5000	7,755.00
5 AD Board Adhesive 5-Gal Part B		CTNS	22	0	352.5000	7,755.00
6 1/4" DensDeck Prime (4'x8', 42 pcs/unit)		UNITS	16	0	732.4800	11,719.68
7 Sarnatherm ISO -2.6"x4'x4' - 282.24 SQ.		EACH	1	0	29,352.9600	29,352.96
8 Sarnatherm Tapered ISO Pckg 1 Package		PACKAGE	1	0	58,920.0000	58,920.00
9 5/8" DensDeck Prime (4'x8'-30 pcs/unit)		UNIT	1	0	609.6000	609.60
10 G459 60 mil Membran 6.56'x65.6' roll		ROLLS	11	0	647.7700	7,125.47
11 G410 8" Strip		ROLLS	6	0	95.8100	574.86
12 Detail Membrane 24"x50'		ROLL	1	0	212.0000	212.00
13 Sarnastop (attachment bar-250'/tube)		TUBES	6	0	270.7900	1,624.74
14 Sarnaclad (4'x10'/sheet)		SHEETS	24	0	217.8000	5,227.20
15 Stabond U148-A Adhesive		PAIL	14	0	256.0000	3,584.00
16 Stabond C148-B Adhesive		EACH	4	0	360.9300	1,443.72
17 Sarnafastener #12 x 1-5/8"		BOXES	3	0	91.9000	275.70
18 Sarnafastener #12 x 3"		BOXES	2	0	150.0700	300.14
19 Sarnafastener #12 x 4"		BOXES	8	0	198.3100	1,586.48
20 Sarnafastener #15 XP x 2"		BOX	1	0	152.9700	152.97
21 Sarnafastener CD-10 x 2"		BOX	1	0	289.8600	289.86

ESCAPE
ONLINE

Page 2 of 3

**VENDOR -****Fiscal Year 2021/22**Requisition Number **R22-01328**Requisition Date **09/10/2021****Changed Line Items**

Description	Stores Item #	Unit	Order Qty	Change Lvl	Unit Price	Extended
22 Sarnaplate 3"square		BOXES	10	0	227.2300	2,272.30
23 Sarna Disc XPN (500/box)		BOX	1	0	231.6900	231.69
24 Sarnacomer Inside (10/box)		BOXES	2	0	86.5400	173.08
25 Sarnacomer Outside (20/box)		BOXES	6	0	173.0900	1,038.54
26 Sarnastack Split Boot-A (8/box)		BOXES	6	0	287.6500	1,725.90
27 ALUMINUM TAPE		ROLLS	2	0	26.4100	52.82
28 Sikalastomer-65		CTN	1	0	245.5200	245.52
29 Sikaflex 1a (25 tubes/ctn)		CARTON	1	0	199.8800	199.88
30 SEAM CLEANER - ACETONE BASE		GALLONS	2	0	36.4600	72.92
31 Sikaplan Walkway-20 (39"x32.8'/roll)		ROLLS	15	0	315.6500	4,734.75

**Accounts**

	Amount	Encumbered	Expensed	Outstanding
( 181481) 212- 6274- 9010- 0- 6417- 8500- 030- 878- 0XMD- 0	232,104.10	232,104.10		.00
(2022) OTHCONSTRUCTION,MULT P 5 YR 17,FACILITIES ACQ,OthrLo				

## SIKA SARNAFIL - SVHS MPR

Description	Qty	Original Quote		Updated Quote		Increase
		Unit Price	Extended Price	Unit Price	Extended Price	
1. G410 60 MIL 10'X100' ROLLS	24 ROLLS	\$ 940.00/EA	\$22,560.00	\$1, 170.00/EA	\$28,080.00	24.5%
2. Sarnacol 2121 Memb. Adhesive	48 pails	\$ 144.18/pail	\$6,920.64	\$ 134.75/pail	\$ 6,468.00	-6.5%
3. Sarnacol 2163 Board Adhesive	11 ctns	\$ 260.00/ctn	\$2,860.00	\$ 292.50/ctn	\$ 3,217.50	12.5%
4. AD Board Adhesive 5-Gal Part A	22 ctns	\$ 352.50/ctn	\$7,755.00	\$ 536.25/ctn	\$11,797.50	52.1%
5. AD Board Adhesive 5-Gal Part B	22 ctns	\$ 352.50/ctn	\$7,755.00	\$ 536.25/ctn	\$11,797.50	52.1%
6. ¼" DensDeck Prime (4'x8', 42 pcs/unit)	16 units	\$ 732.48/unit (\$54.50/SQ)	\$11,719.68	\$ 776.83/unit (\$57.80/SQ)	\$12,429.28	6.1%
7. Sarnatherm ISO – 2.6"x4'x4'	282.24 SQ	\$ 104.00/SQ	\$29,352.96	\$109.10/SQ	\$30,792.38	4.9%
8. Sarnatherm Tapered ISO Pckg	1 Package	\$58,920.00/Pckg	\$58,920.00	\$68,515.00/Pckg	\$68,515.00	16.3%
9. 5/8" DensDeck Prime (4'x8'-30 pcs/unit)	1 unit	\$ 609.60/unit (\$63.50/SQ)	\$609.60	\$ 645.60/unit (\$67.25/SQ)	645.60	5.9%
10. G459 60 mil Membran 6.56'x65.6' roll	11 rolls	\$ 647.77/roll	\$7,125.47	\$ 821.95/roll	\$ 9,041.45	26.9%
11. G410 8" Strip	6 rolls	\$ 95.81/roll	\$574.86	\$ 107.87/roll	\$ 647.22	12.6%
12. Detail Membrane 24"x50'	1 roll	\$ 212.00/roll	\$212.00	\$ 221.00/roll	\$ 221.00	4.2%
13. Sarnastop (attachment bar-250'/tube)	6 tubes	\$ 270.79/tube	\$1,624.74	\$ 374.78/tube	\$ 2,248.68	38.4%
14. Sarnaclad (4'x10'/sheet)	24 sheets	\$ 217.80/sheet	\$5,227.20	\$ 217.88/sheet	\$ 5,229.12	0.0%
15. Stabond U148-A Adhesive	14 pails	\$ 256.00/pail	\$3,584.00	\$ 297.00/pail	\$ 4,158.00	16.0%
16. Stabond C148-B Adhesive	4 pails	\$ 360.93/pail	\$1,443.72	\$ 444.50/pail	\$ 1,778.00	23.2%
17. Sarnafastener #12 x 1-5/8"	3 boxes	\$ 91.90/box	\$275.70	\$ 82.60/box	\$ 247.80	-10.1%
18. Sarnafastener #12 x 3"	2 boxes	\$ 150.07/box	\$300.14	\$ 134.40/box	\$ 268.80	-10.4%
19. Sarnafastener #12 x 4"	8 boxes	\$ 198.31/box	\$1,586.48	\$ 177.80/box	\$ 1,422.40	-10.3%
20. Sarnafastener #15 XP x 2"	1 box	\$ 152.97/box	\$152.97	\$ 140.00/box	\$ 140.00	-8.5%
21. Sarnafastener CD-10 x 2"	1 box	\$ 289.86/box	\$289.86	\$ 289.80/box	\$ 289.80	0.0%
22. Sarnaplate 3"square	10 box	\$ 227.23/box	\$2,272.30	\$ 243.60/box	\$ 2,436.00	7.2%
23. SarnaDisc XPN (500/box)	1 box	\$ 231.69/box (500)	\$231.69	\$ 296.80/box (500)	\$ 296.80	28.1%
24. Sarnacorn Inside (10/box)	2 boxes	\$ 86.54/box	\$173.08	\$ 108.52/box	\$ 217.04	25.4%
25. Sarnacorn Outside (20/box)	6 boxes	\$ 173.09/box	\$1,038.54	\$ 160.51/box	\$ 963.06	-7.3%
26. Sarnastack Split Boot-A (8/box)	6 boxes	\$ 287.65/box	\$1,725.90	\$ 280.70/box	\$ 1,684.20	-2.4%
27. Aluminum Tape	2 rolls	\$ 26.41/roll	\$52.82	\$ 36.95/roll	\$ 73.90	39.9%
28. Sikalastomer-65	1 ctn	\$ 245.52/ctn	\$245.52	\$ 215.40/ctn	\$ 215.40	-12.3%
29. Sikaflex 1a (25 tubes/ctn)	1 ctn	\$ 199.88/ctn	\$199.88	\$ 181.30/ctn	\$ 181.30	-9.3%
30. Seam Cleaner – Acetone Base	2 Gallons	\$ 36.46/Gallon	\$72.92	\$ 41.00/Gallon	\$ 82.00	12.5%
31. Sikaplan Walkway-20 (39"x32.8'/roll)	15 rolls	\$ 315.65/roll	\$4,734.75	\$ 381.63/roll	\$5,724.45	20.9%
<b>Material Subtotal</b>			<b>\$181,597.42</b>		<b>\$211,309.18</b>	<b>16.4%</b>
Freight/Surcharges:						
Sika Sarnafil	(\$775.00 + \$250.00)		\$1,025.00		1075	
Georgia Pacific (DensDeck 1-TL)			\$300.00		300	
Atlas Roofing (Polyiso Roof			\$3,600.00		4100	
Insulation 5-TL plus 28 units)						
HB Fuller (low-rise adhesive)			TBD		TBD	
			<b>\$4,925.00</b>		<b>\$5,475.00</b>	<b>11.2%</b>