San Ysidro School District
Governing Board

BOARD MEETING MATERIALS

Thursday,
August 8, 2024
5:00 p.m.

San Ysidro School District
Education Center/Board Room
4350 Otay Mesa Road
San Ysidro, CA 92173

GENERAL ADMINISTRATION

SAN YSIDRO SCHOOL DISTRICT
4350 Otay Mesa Road San Ysidro, CA 92173
Phone Number: (619) 428-4476 Fax Number: (619) 428-1505

REGULAR MEETING OF THE GOVERNING BOARD
THURSDAY, JULY 11, 2024
5:00 p.m.

Pursuant to Government Code Sections 54954 and 54954.2 and Education Code Section 35140, the Regular Meeting of the Governing Board held on Thursday, July 11, 2024, and conducted its business meeting at **San Ysidro School District - Education Center/Board Room, 4350 Otay Mesa Road, San Ysidro, CA 92173.** This meeting was audio recorded. The public can view this meeting by accessing the following link: https://www.youtube.com/channel/UCGyF01068pwbhe-B5xnyl-A/videos.

Pursuant to Board Bylaw 9323 and Government Code 54953.5, members of the public may record an open Board meeting using an audio or video recorder, camera, cell phone, or other device, provided that the noise or obstruction of view does not disrupt the meeting or members of the audience. If a member of the public or media wishes to stand and record the meeting or set up a tripod, such recording must be done so on the left or right side of the public seating area. The Superintendent or an assigned employee may designate recording locations. If the Board determines that noise or obstruction of view disrupts proceedings, the activities shall be discontinued as determined by the Board.

Any meeting participant who engages in disorderly conduct which disturbs the peace and good order of the meeting, or refuses to comply with the lawful orders of the Board may be ordered removed from the meeting, and may be guilty of a misdemeanor (Cal. Penal Code Sec. 403).

Closed Session will be conducted in accordance with applicable sections of California Law. Open session will begin immediately following closed session at approximately 6:00 p.m.

For certain agenda items, the Governing Board acted as the Legislative Body for San Ysidro School District Community Facilities Districts Nos. 1, 2, and 3.

MINUTES

1. CALL TO ORDER Who: Rosario Time: 5:00 p.m.

2. ROLL CALL by Gina A. Potter, Ed.D., Superintendent & Secretary to the Board
Mrs. Irene Lopez, Board President - *Absent due to illness*
Mrs. Zenaida Rosario, Board Vice-President
Mr. Antonio Martinez, Board Clerk
Mr. Rudy Lopez, Board Member
Mrs. Rosaleah Pallasigue, Board Member

3. AGENDA

The Board approved the agenda with the following corrections:

- Corrected Consent Calendar Agenda Item 14D.14 language to say: AGREEMENT WITH COLBI TECHNOLOGIES, INC. FOR FACILITIES PROGRAM AND PROJECT MANAGEMENT SUPPORT and Approve the agreement with COLBI Technologies, Inc. for $600,000.00 to provide program management support services for the capital facilities and maintenance projects by the Facilities Assistance Services Team (FAST) for FY 2024-2025. Cost implications will be paid from General Obligation Bonds, Developer Fees, 2021 Certificates of Participation (COPs) Refunding, and General - Routine Restricted Maintenance Account funds.

Motion: Martinez Second: Pallasigue Vote: 4-0

4. PUBLIC COMMENT/COMMUNICATIONS ON CLOSED SESSION ITEMS

The Board of Trustees has established protocols that will allow the Board to conduct the business of the District while also achieving the type of open communication that we all want in our community. The Board values the input of parents, students, employees and other members of the public. Our goal is to allow the free exchange of views among Board members and its staff and between members of the public and the Board while maintaining a respectful and orderly atmosphere. It is the Board's policy to encourage all interested individuals to contribute constructive ideas and perspectives during the meetings, while respecting the right of others to express their ideas and perspectives. The Board welcomes disagreement, but it is important that disagreement be expressed in a meaningful and respectful manner. Speakers should not make personal attacks on other individuals. To promote these goals, we ask that everyone be courteous, patient and respectful while others are speaking. Each speaker should feel free to express his or her viewpoint freely, but in a courteous and respectful way, speaking concisely and within the allotted time limits. Members of the public will not speak unless first recognized by the Board President/Chairperson and will speak only from the podium, not directly from the audience at any time.

> Please submit public comment forms prior to start of meeting at 5:00 p.m. Per Board Policy #9323, three (3) minutes may be allotted to each speaker and five (5) minutes for organizations to address **Closed Session Items Only.** (Closed Session Items may be continued to the end of meeting if necessary.)

There were no public comments.

Board Clerk Martinez made a motion to recess to Closed Session, seconded by Board Member Pallasigue. The vote was 4-0.

5. GOVERNING BOARD – RECESSED to CLOSED SESSION at 5:03 p.m. in accordance with section 54954.5 regarding:

5.1 GOVERNMENT CODE SECTION 54957.6
CONFERENCE WITH LABOR NEGOTIATORS
Agency Negotiators: District Legal Counsel Joseph Sanchez and Director of Human Resources Manuel Bojorquez
Employee Organizations:
San Ysidro Education Association/CTA
California School Employees Association, Chapter 154
Unrepresented:
Administrators, Certificated Management, Classified Management & Confidential

5.2 GOVERNMENT CODE SECTION 54957
PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE/REASSIGNMENT

5.3 CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION
Pursuant to Government Code Section 54956.9(d)(1)
No. of cases: 2

5.4 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9:
No. of cases: 2

5.5 GOVERNMENT CODE SECTION 54957.6
CONFERENCE WITH LABOR NEGOTIATORS
Agency Negotiators: Board President Irene Lopez and Legal Counsel Joseph Sanchez
Unrepresented Employee: Superintendent

RECONVENED into OPEN SESSION at 6:07 p.m.to take action on items discussed in closed session, or to make disclosures of action taken in closed session, if any, as required by Government Code section 54957.7 and section 54957.1.

The Board had nothing to report from Closed Session.

6. CALL TO ORDER Who: Rosario Time: 6:07 p.m.

7. ROLL CALL by Gina A. Potter, Ed.D., Superintendent & Secretary to the Board
Board Members present:
Mrs. Irene Lopez, Board President - *Absent due to illness*
Mrs. Zenaida Rosario, Board Vice-President
Mr. Antonio Martinez, Board Clerk
Mr. Rudy Lopez, Board Member
Mrs. Rosaleah Pallasigue, Board Member

8. FLAG SALUTE by Board Vice-President Zenaida Rosario

9. BOARD RECOGNITION/DISTINGUISHED CHAMPIONS (Inzunza)

9.1 Liana Davis (Lead Sci Phy Teacher) & Sci Phy Team for receiving the Classroom of the Future DREAMS Team Award - Presented by Assistant Superintendent of Educational Leadership and Pupil Services, Russell Little, and Director of Educational Services, Luis Ramos

- ❖ Liana Davis (Lead Sci Phy Teacher), Melissa Hasemyer, Janell Wright, Allison Reik, Rudy Constantino, Veronica Hernandez, Eugene Yepis, Leticia Lemos. Thelma Sotelo. Vanesa Murphy. Juanita Nunez, Jon Ritchison, Diego Pena, Socorro Santos, and Elva DeBaca (Retired & Former Lead Sci Phy Teacher)

9.2 Ocean View Hills Elementary Staff Recognitions - Presented by Ocean View Hills Elementary School Principal, Erika Meza

- School Administrative Assistant - Elizabeth Moreno; Administrative Clerk I - Juanita Murillo and Guillermina Rodriguez
- Custodians: Xochitl Campillo, Silvia Ramos, Raul Palomera, Christian Cruz and Georgina Ibarra

9.3 Technology Department Team - Presented by Chief Business Official, Marilyn Adrianzen and Director of Education Technology, Todd Lewis

- Jose Mejia (Information Systems Analyst), Fernando Martinez (Network and Systems Specialist), Jose Garcia (Information Computer Specialist), Efrain Ivan Manriquez (Information Computer Specialist), Gianfranco Fimbres-Mejia (Information Computer Specialist) and Carolina Jaime (Data Reporting Analyst)

10. PUBLIC COMMENT/COMMUNICATIONS ON OPEN SESSION ITEMS

The Board of Trustees has established protocols that will allow the Board to conduct the business of the District while also achieving the type of open communication that we all want in our community. The Board values the input of parents, students, employees and other members of the public. Our goal is to allow the free exchange of views among Board members and its staff and between members of the public and the Board while maintaining a respectful and orderly atmosphere. It is the Board's policy to encourage all interested individuals to contribute constructive ideas and perspectives during the meetings, while respecting the right of others to express their ideas and perspectives. The Board welcomes disagreement, but it is important that disagreement be expressed in a meaningful and respectful manner. Speakers should not make personal attacks on other individuals. To promote these goals, we ask that everyone be courteous, patient and respectful while others are speaking. Each speaker should feel free to express his or her viewpoint freely, but in a courteous and respectful way, speaking concisely and within the allotted time limits. Members of the public will not speak unless first recognized by the Board President/Chairperson and will speak only from the podium, not directly from the audience at any time.

PLEASE SUBMIT PUBLIC COMMENT FORMS PRIOR TO START OF MEETING
Per Board Policy #9323, three (3) minutes may be allotted to each speaker and five (5) minutes for organizations to address **all of their items**. **Approach the lectern and give your name.**

The public has the opportunity to address the Board on any item appearing on the agenda or not on the agenda. Persons wishing to address the Board are asked to fill out a ***Public Comment Form*** located at the sign-in area, and submit the completed form to the administrative assistant prior to the start of the meeting.

Those who have a group concern are encouraged to select a spokesperson to address the Board. A copy of the full agenda is available for view at the Superintendent's Office located at 4350 Otay Mesa Road, San Ysidro, California. Also, at the district website: www.sysdschools.org.

There were no public comments.

11. ITEMS FROM THE BOARD & SUPERINTENDENT

Board Member R. Lopez Commented: 1) Keep enjoying your summer.

Board Member Pallasigue, Commented: 1) Praised the hard work everyone does within the community and in our district. 2) Keep enjoying your summer.

Board Clerk Martinez, Commented: 1) Wished everyone a great summer. 2) Congratulated distinguished champions who were recognized. 3) Praised the hard work of the district technology team. 4) Commended staff who worked together to livestream the board meeting. 5) Congratulated the Sci Phy Team for winning the DREAMS Team award. 6) Congratulated the Ocean View Hills staff that was recognized.

Board Vice-President Rosario, Commented: 1) Congratulated distinguished champions who were recognized. 2) Participated in reading the San Ysidro Women's Club scholarships and shared that students wrote about the Sci Phy program being one of the best experiences they had in school. 3) Praised the district's technology team for all of their support. 4) Shared a story about her former kindergarten students' path to college. 5) Keep enjoying your summer.

Superintendent Potter, Commented: 1) Hoped everyone had a wonderful summer and had an opportunity to rest. 2) Congratulated Lead Sci Phy Teacher Liana Davis and the entire Sci Phy team for winning the first DREAMS Team award by the Classrooms of the Future. 3) Congratulated the district's technology department for their dedication to staff, students, families, and the community. 4) Congratulated Ocean View Hills office and custodial staff, who were recognized for their hard work day in and day out doing the heavy lifting to keep the school running. 4) The district will welcome back 650 staff at San Ysidro Middle School on Wednesday, July 24th. 5) Students' first day of school will be Monday, July 29th.

12. CONFERENCE SESSION
Reports/Presentations

12.1 PARS 115 Trust - OPEB Prefunding Program - Presented by Ms. Rachael Sanders of Public Agency Retirement Services

13. GENERAL ADMINISTRATION

13.1 MINUTES (Potter)
The Board approved the minutes of the Regular Board Meeting of June 20, 2024, and the Special Board Meeting of June 20, 2024.

Motion: Martinez Second: Pallasigue Vote: 4-0

13.2 APPROVE/RATIFY TEMPORARY CERTIFICATED MANAGEMENT CONTRACT/OFFER OF EMPLOYMENT FOR MANUELA COLOM (Bojorquez)
The Board approved/ratified the temporary offer of employment for Manuela Colom as a Substitute/Coach for various Certificated Management positions, effective as early as July 1, 2024.

Motion: Pallasigue Second: Martinez Vote: 4-0

13.3 APPROVE TEMPORARY MANAGEMENT/ADMINISTRATIVE CONTRACT/OFFER OF EMPLOYMENT FOR GLORIA MENA (Bojorquez)
The Board approved the temporary offer of employment for Gloria Mena as Substitute Administrator for various Administrative positions including, but not limited to, Assistant Principal or Principal, effective as early as July 12, 2024.

Motion: Rosario Second: Martinez Vote: 4-0

13.4 OPEN PUBLIC HEARING – CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION'S INITIAL PROPOSAL TO SAN YSIDRO SCHOOL DISTRICT FOR SUCCESSOR CONTRACT NEGOTIATIONS (Bojorquez)
The Board opened the Public Hearing - California School Employees Association's Initial Contract Proposal to San Ysidro School District for Successor Contract Negotiations: Article 7 - Transfer, Reassignment and Promotion and Article 11 - Vacation Plan.

Motion: Martinez Second: Pallasigue Vote: 4-0

There were no public comments.

13.5 CLOSE PUBLIC HEARING – CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION'S INITIAL PROPOSAL TO SAN YSIDRO SCHOOL DISTRICT FOR SUCCESSOR CONTRACT NEGOTIATIONS (Bojorquez)
The Board closed the Public Hearing - California School Employees Association's Initial Contract Proposal to San Ysidro School District for Successor Contract Negotiations: Article 7 - Transfer, Reassignment and Promotion and Article 11 - Vacation Plan.

Motion: Martinez Second: Rosario Vote: 4-0

13.6 OPEN PUBLIC HEARING – SAN YSIDRO SCHOOL DISTRICT'S INITIAL PROPOSAL TO CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION FOR SUCCESSOR CONTRACT NEGOTIATIONS (Bojorquez)
The Board opened the Public Hearing - San Ysidro School District's Initial Proposal to California School Employees Association for Success Contract Negotiations: Article 6 - Leaves.

Motion: Martinez Second: Pallasigue Vote: 4-0

There were no public comments.

13.7 CLOSE PUBLIC HEARING – SAN YSIDRO SCHOOL DISTRICT'S INITIAL PROPOSAL TO CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION FOR SUCCESSOR CONTRACT NEGOTIATIONS (Bojorquez)
The Board closed the Public Hearing - San Ysidro School District's Initial Proposal to California School Employees Association for Success Contract Negotiations: Article 6 - Leaves.

Motion: Pallasigue Second: Martinez Vote: 4-0

13.8 RESOLUTION NO. 24/25-0009 ESTABLISHING ANNUAL SPECIAL TAX RATES FOR COMMUNITY FACILITIES DISTRICTS NO. 1, NO. 2, AND NO. 3 FOR 2024-25 FISCAL YEAR (Adrianzen)
The Governing Board, acting as the Legislative Body for Community Facilities District Nos. 1, 2, and 3 of the San Ysidro School District, approved and adopted Resolution No. 24/25-0009 establishing Annual Special Tax Rates for Community Facilities Districts No. 1, No. 2, and No. 3 for 2024-25 fiscal year. *(A representative from KeyAnalytics will be present to answer questions from the Governing Board.)*

Motion: Martinez Second: R. Lopez Vote: 4-0

13.9 RESOLUTION NO. 24/25-0010 AUTHORIZING THE ESTABLISHMENT OF THE PUBLIC AGENCIES POST-EMPLOYMENT BENEFITS TRUST ADMINISTERED BY PUBLIC AGENCY RETIREMENT SERVICES (PARS) (Adrianzen)
The Board approved and adopted Resolution No. 24/25-0010 authorizing the establishment of the PARS Post Employment Benefit Trust to be administered by Public Agency Retirement Services (PARS). Appoint the Chief Business Official or his/her successor or his/her designee to serve as the District's Plan Administrator and to execute the documents necessary to implement the Trust. *(A representative from PARS will be present to answer questions from the Governing Board.)*

Motion: R. Lopez Second: Pallasigue Vote: 4-0

13.10 AB1200 MANAGEMENT AND CLASSIFIED CONFIDENTIAL (Adrianzen)
The Board approved the submittal of AB1200 to the San Diego County Office of Education to provide an equivalent salary schedule increase and health & welfare benefits to certificated/classified management and classified confidential groups, and possible Superintendent salary increase.

Motion: Rosario Second: R. Lopez Vote: 4-0

14. CONSENT CALENDAR
The Board approved the Consent Calendar.

Motion: Martinez Second: Pallasigue Vote: 4-0

14A. PERSONNEL – CLASSIFIED

EMPLOYMENT (Bojorquez)
The Board approved/ratified the employment for the following as recommended by staff:

14A.1 Substitute Custodian
a. Lars Quintero, All Sites

14A.2 Substitute Instructional Aides
- a. Cristina Angga, All Sites
- b. Ayde Borraz, All Sites
- c. Samanta Gonzalez Herrejon, All Sites
- d. Airam Grijalva, All Sites
- e. Laura Tames, All Sites

RECRUITMENT (Bojorquez)
The Board approved/ratified to establish recruitment for the following as recommended by staff:
14A.3 Instructional Aides

14B. PERSONNEL – CERTIFICATED

EMPLOYMENT (Bojorquez)
The Board approved/ratified the employment for the following as recommended by staff:
14B.1 Social Workers
- a. Banely Arevalo Robles, Smythe
- b. Jedzida Herron, La Mirada

14B.2 Special Day Class Teachers
- a. Delton Lowery, San Ysidro Middle School
- b. Karla Ramirez, Smythe
- c. Uriel Roldan Hernandez, Willow

14B.3 Temporary Preschool Permit Teachers
- a. Laura Lizardi, Child Development Center
- b. Yadira Martinez, Child Development Center
- c. Alexandra Nunez, Child Development Center
- d. Lirio Ruffo, Child Development Center

RECRUITMENT (Bojorquez)
The Board approved/ratified to establish recruitment for the following as recommended by staff:
14B.4 Classroom Teacher (TK)

14C. CURRICULUM & INSTRUCTION

14C.1 9th ANNUAL FAMILIES FIRST RESOURCE FAIR (Little)
The Board approved the 9th Annual Families First Resource Fair to be held on August 3, 2024, at the San Ysidro Middle School at the cost of $5,000.00 from the McKinney-Vento fund.

14D.2 LICENSE AGREEMENT WITH NEWSELA INC. FOR THE FORMATIVE GOLD PROGRAM (Little/Burciaga)
The Board approved the license agreement with Newsela Inc. for the implementation of the Formative Gold Program as supplemental resources for Sunset Elementary during the 2024-25 school year at the total cost of $4,750.00 from the Title I fund.

14C.3 LICENSE AGREEMENT WITH PROJECT WAYFINDER, INC. FOR SOCIAL-EMOTIONAL SUPPLEMENTAL CURRICULUM (Little/Meza)
The Board approved the license agreement with Project Wayfinder, Inc. for the implementation of the Wayfinder SEL Program at Ocean View Hills School during the 2024-25 school year, at the total cost of $13,118.00 from the Title I fund.

14C.4 ANNUAL LICENSE SUBSCRIPTIONS FOR WILLOW ELEMENTARY SCHOOL (Little/Cerda)
The Board approved/ratified the renewal of different license subscriptions for Willow Elementary School at the total cost of $4,543.95 from the Title I fund.

14C.5 LICENSE SUBSCRIPTION WITH IXL LEARNING FOR THE IXL MATH PROGRAM AT WILLOW SCHOOL (Little/Cerda)
The Board approved the license subscription with IXL Learning for the implementation of the IXL Math program at Willow Elementary School at the total cost of $11,295.00 from Title I Fund.

14C.6 PROFESSIONAL DEVELOPMENTS (Little)
The Board approved/ratified the attendance and participation of District staff to the different professional developments as attached.

14D. BUSINESS

14D.1 PURCHASING REPORT (Adrianzen)
The Board approved/ratified the following purchase orders incurred by the District during the month of June 2024. This includes all agreements and those with cost implications that fall within the authorized delegation of authority limits of up to $15,000 for public project contracts and up to $30,000 for all other contracts from the various funding sources.

14D.2 EXPENDITURE REPORT (Adrianzen)
The Board approved/ratified the expenditures incurred by the District during the month of June 2024. This includes all agreements and those with cost implications that fall within the authorized delegation of authority limits of up to $15,000 for public project contracts and up to $30,000 for all other contracts from the various funding sources.

14D.3 APPROVE/RATIFY AGREEMENTS WITHIN DELEGATION OF AUTHORITY LIMITS (Adrianzen)
The Board approved/ratified the agreements on the attached list with cost implications within the authorized delegation of authority limits of up to $15,000 for public project contracts and up to $30,000 for all other contracts from the various funding sources or at no cost to the district.

14D.4 FOURTH QUARTERLY COMPLAINT REPORT FOR WILLIAM'S SETTLEMENT-RELATED ISSUES FOR SCHOOL YEAR 2023-2024 (Adrianzen)
The Board accepted the Report of William's Settlement-related complaints for the fourth quarter from April 1, 2024, to June 30, 2024, of the 2023-24 school year for submission to the San Diego County Office of Education. The District has not received any written complaints pertaining to teacher misassignments, instructional materials deficiencies, or facility disrepair.

14D.5 AGREEMENT WITH STRADLING YOCCA CARLSON & RAUTH, P.C., ATTORNEYS AT LAW (Adrianzen)
The Board approved/ratified the Bond Counsel Agreement with Stradling Yocca Carlson & Rauth, P.C. for services related to the General Obligation Bonds. Cost implications will be paid from the General Obligations Bonds.

14D.6 AGREEMENT WITH BEST BEST & KRIEGER LLP, ATTORNEYS AT LAW (Adrianzen)
The Board approved/ratified the 3-year legal services agreement with Best Best & Krieger, LLP.

14D.7 AGREEMENT WITH ATKINSON, ANDELSON, LOYA, RUUD & ROMO (Adrianzen)
The Board approved the agreement with Atkinson, Andelson, Loya, Ruud & Romo to provide legal and consulting services from July 1, 2024 through June 30, 2026.

14D.8 AGREEMENT WITH WINET PATRICK GAYER CREIGHTON & HANES (Adrianzen)
The Board approved/ratified the agreement with Winet Patrick Gayer Creighton & Hanes for legal services during 2024-25 as needed.

14D.9 CHANGE ORDER TO TASK ORDER NO. 2 WITH B.R. BUILDING RESOURCES COMPANY FOR THE CALSHAPE GRANT ENERGY PROGRAM IMPLEMENTATION SERVICES (Adrianzen)
The Board approved Change Order No. 1 to Task Order No. 2 with B.R. Building Resources for a CalSHAPE plumbing reconciliation for all work completed, reducing the original estimate by $31,722.02. The new contract total is $275,280.73.

14D.10 CASBO ORGANIZATIONAL MEMBERSHIP FOR 2024-2027 (Adrianzen)
The Board approved the District's Organizational Membership to the California Association of School Business Officials (CASBO) for fiscal year 2024-27 at an annual cost of $3,500.00 from the General fund.

14D.11 AMENDMENT NO. 1 TO THE KEENAN & ASSOCIATES AGREEMENT FOR PROPERTY AND CASUALTY CLAIMS ADMINISTRATION SERVICES (Adrianzen)
The Board approved Amendment No. 1 to the Keenan & Associates Agreement for the Property and Casualty Claims Administration Services, increasing the compensation rates for the fiscal year 2024-25.

14D.12 APPROVAL AND RATIFICATION OF PROFESSIONAL SERVICES WORK AUTHORIZATION(S) PURSUANT TO EXISTING MASTER AGREEMENT(S) (Iniguez)
The Board approved/ratified the Work Authorization(s) set forth above for the total amount of $17,567.60.

14D.13 AMENDMENT NO. 1 TO THE SOFTWARE SERVICES AGREEMENT FOR SECURE BIDS℠ SOFTWARE SERVICES WITH COLBI TECHNOLOGIES, INC. (Iniguez)
The Board approved Amendment No. 1 to the Software Services Agreement for Secure Bids℠ Software Services with COLBI Technologies, Inc. in the amount of $3,500.00 to continue providing software services for the online submission of bids, proposals, or other responses for the 2024-2025 fiscal year. Cost implications will be paid from the General Obligation Bonds.

14D.14 ~~AGREEMENT WITH COLBI TECHNOLOGIES~~ AGREEMENT WITH COLBI TECHNOLOGIES, INC. FOR FACILITIES PROGRAM AND PROJECT MANAGEMENT SUPPORT(Iniguez)
~~Approve the agreement with COLBI Technologies, Inc. in the amount of $635,000.00 to provide program management support services for the capital facilities and maintenance projects by the Facilities Assistance Services Team (FAST) and renew software licenses for FY 2024-2025. Cost implications will be paid from General Obligation Bonds, Developer Fees, and 2021 Certificates of Participation (COPs) Refunding.~~
The Board approved the agreement with COLBI Technologies, Inc. for $600,000.00 to provide program management support services for the capital facilities and maintenance projects by the Facilities Assistance Services Team (FAST) for FY 2024-2025. Cost implications will be paid from General Obligation Bonds, Developer Fees, 2021 Certificates of Participation (COPs) Refunding, and General - Routine Restricted Maintenance Account funds.

14D.15 AGREEMENT WITH VITAL INSPECTION SERVICES, INC. (Iniguez)
The Board approved the agreement with Vital Inspection Services Inc. to provide Project Inspector Services for $15,400.00 for the Two (2) Relocatables Project and $6,160.00 for the TK Classroom Remodel Project at Ocean View Hills School on a Time-and-Materials, Not-To-Exceed basis through July 26, 2024. Developer Fee funds will be used for these projects.

14D.16 AGREEMENT WITH VITAL INSPECTION SERVICES, INC.(Iniguez)
The Board approved the agreement with Vital Inspection Services Inc. to provide Project Inspector Services for $64,680.00 for the Security Fence and Entry Project at Willow Elementary School on a Time-and-Materials, Not-To-Exceed basis through October 31, 2024. Cost implications will be paid from General Obligation Bonds.

14D.17 AGREEMENT WITH TWINING CONSULTING, INC. (Iniguez)
The Board approved the agreement with Twining Consulting, Inc. to provide Materials Testing Services for the Security Fence and Entry Project at Willow Elementary School for $25,950.00 on a Time-and-Materials, Not-To-Exceed basis through October 31, 2024. Cost implications will be paid from General Obligation Bonds.

14D.18 AGREEMENT WITH AARDVARK ANT AND PEST CONTROL (Iniguez)
The Board approved the agreement with Aardvark Ant & Pest Control services for fiscal year 2022-23 at a not to exceed $20,000.00 from the General fund.

14D.19 AGREEMENT WITH SAN JOAQUIN COUNTY OFFICE OF EDUCATION – CENTER FOR EDUCATIONAL DEVELOPMENT AND RESEARCH FOR 2024-2025 EDJOIN WEBSITE SERVICES (Bojorquez)
The Board approved/ratified the agreement with San Joaquin County Office of Education – Center for Educational Development and Research for the 2024-2025 EDJOIN website services subscription at a cost of $1,050.75 from the General fund.

14D.20 AGREEMENT WITH CALIFORNIA STATE UNIVERSITY SAN MARCOS (Bojorquez)
The Board approved the 5-year agreement with California State University San Marcos to provide students with clinical experiences and observational opportunities.

14D.21 MEMORANDUM OF UNDERSTANDING (B) WITH SBCS CORPORATION FOR MENTAL HEALTH SERVICES FOR THE 2024-25 SCHOOL YEAR (Little/Villezcas)
The Board approved the Memorandum of Understanding with SBCS Corporation to provide Mental Health Services during school year 2024-25 at the estimated cost of $520,000.00 from the Community Schools Grant.

14D.22 AMENDMENT NO. 1 TO THE EDUCATION FOR HOMELESS CHILDREN AND YOUTH PROGRAM GRANT AWARD FOR 2023-24 FISCAL YEAR (Little/Medina)
The Board approved the amended Grant Award for the Education for Homeless Children and Youth Program, extending the 2023-24 award end date and implementing the amended conditions related to homeless children and youth.

14D.23 SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT-INTERIM WRITTEN APPROVAL WITH KYO AUTISM THERAPY, LLC (Little/Madera)
The Board approved/ratified the Interim San Diego County Nonpublic Master Contract with Kyo Autism Therapy, LLC to provide consulting services for behavior intervention for the 2024-2025 school year. Cost implications will be paid from the Special Education fund.

14D.24 SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT-INTERIM WRITTEN APPROVAL WITH THE SPEECH PATHOLOGY GROUP, INC DBA SPG THERAPY & EDUCATION (Little/Madera)
The Board approved the Interim San Diego County Nonpublic Master Contract with The Speech Pathology Group, Inc. dba SPG Therapy & Education for the school year 2024-25 to provide speech services for students with special needs. Cost implications will be paid from the Special Education fund.

14D.25 SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT-INTERIM WRITTEN APPROVAL WITH SUNBELT STAFFING, LLC (Little/Madera)
The Board approved the Interim San Diego County Nonpublic Master Contract with Sunbelt Staffing, LLC to provide several special education services for students with special needs during school year 2024-2025. Cost implications will be paid from the Special Education fund.

14D.26 SAN DIEGO COUNTY NONPUBLIC AGENCY MASTER CONTRACT – INTERIM WRITTEN APPROVAL WITH BRIDGE THE GAP SPED, LLC (Little/Madera)
The Board approved the Interim San Diego County Nonpublic Agency Master Contract with Bridge The Gap Sped, LLC for school year 2024-2025, to provide speech services for students with special needs. Cost implications will be paid from the Special Education fund.

14D.27 SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT - INTERIM WRITTEN APPROVAL WITH AMN ALLIED SERVICES, LLC. (Little/Madera)
The Board approved the Interim San Diego County Nonpublic Master Contract with AMN Allied Services, LLC for the school year 2024-2025 to provide speech services for students with special needs. Cost implications will be paid from the Special Education Fund.

14D.28 SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT WITH EDTHEORY, LLC (Little/Madera)
The Board approved the San Diego County Nonpublic Master Contract with Ed Theory, LLC to provide several special education services for students with special needs during the 2024-2025 school year. Cost implications will be paid from the Special Education fund.

14D.29 AGREEMENT WITH NEW DIRECTION SOLUTIONS, LLC (Little/Madera)
The Board approved/ratified the agreement with New Direction Solutions, LLC to provide services for students with special needs during the 2024-2025 school year. Cost implications will be paid from the Special Education Fund.

14D.30 AGREEMENT WITH ORANGE COUNTY SUPERINTENDENT OF SCHOOLS FOR SCHOOL-BASED MEDI-CAL ADMINISTRATIVE ACTIVITIES (SMAA) PARTICIPATION (Little/Madera)
The Board approved/ratified the agreement with Orange County Superintendent for School-Based Medi-Cal Administrative Activities (SMAA) Participation for the 2024-2025 school year. Cost implications will be paid from the School-Based Medi-Cal Administrative Activities (SMAA) fund.

14D.31 AGREEMENT WITH SAN DIEGO CENTER FOR VISION CARE OPTOMETRY (Little/Madera)
The Board approved the agreement with San Diego Center for Vision Care Optometry for the 2024-2025 school year to provide independent vision therapy for a student with special needs. Cost implication will be paid from the Special Education fund.

14D.32 AGREEMENT WITH PROFESSIONAL TUTORS OF AMERICA, INC. (Little/Madera)
The Board approved the agreement with Professional Tutors of America, Inc. for the 2024-25 school year to provide one-on-one academic home tutoring for students with special needs. The cost will be paid from the Special Education fund.

14D.33 LICENSE AGREEMENT WITH IMAGINE LEARNING, LLC (Little)
The Board approved the renewal license agreement with Imagine Learning, LLC for supplemental resources for students at Sunset Elementary during the 2024-25 school year for a total cost of $30,695.00 from the Title I fund.

14D.34 SAN DIEGO COUNTY NONPUBLIC AGENCY MASTER CONTRACT – INTERIM WRITTEN APPROVAL WITH THE STEPPING STONE GROUP (Little/Madera)
The Board approved the Interim San Diego County Nonpublic Agency Master Contract with The Stepping Stone Group for school year 2024-2025, to provide speech services for students with special needs. Cost implications will be paid from the Special Education fund.

14D.35 SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT WITH PRISTINE REHAB CARE, LLC (Little/Madera)
The Board approved the San Diego County Nonpublic Master Contract with Pristine Rehab Care, LLC to provide with several special education services for students with special needs during the 2024-2025 school year. Cost implications will be paid from the Special Education Fund.

14D.36 DISPOSAL OF OBSOLETE FURNITURE FROM THE PRESCHOOL AND CHILD DEVELOPMENT CENTER (Little/Pretzer)
The Board approved the disposal of obsolete furniture from Child Development Center and Sunset Preschool as per California Education Code Sec. 17546 (a)(b)(c).

15. ADJOURNMENT Time: 7:07 p.m.

Board Member Pallasigue made a motion to adjourn the meeting, seconded by Board Clerk Martinez. The vote was 4-0.

Respectfully Submitted,

Gina A. Potter, Ed.D., Superintendent

SAN YSIDRO SCHOOL DISTRICT

GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Gina Potter, Ed.D.,
Superintendent

☐ Informational
☒ Action

AGENDA ITEM: ADOPT RESOLUTION No. 24/25-0011 AMENDING THE DISTRICT'S CONFLICT OF INTEREST CODE

BACKGROUND INFORMATION:

The Political Reform Act (the "Act") requires all public agencies to adopt and maintain a Conflict of Interest Code containing the rules for disclosure of personal assets and the prohibition from making or participating in making governmental decisions that may affect any personal assets. The Conflict of Interest Code must specifically designate all agency positions that make or participate in the making of decisions and assign specific types of personal assets to be disclosed that may be affected by the exercise of powers and duties of that position.

The Act further requires that an agency amend and update its Code as necessary when change is necessitated by changed circumstances (Sections 87306 and 87306.5).

Pursuant to the Act the District adopted a Conflict of Interest Code which was approved by the San Diego County Board of Supervisors in 2023. However, the Code must be amended to revise titles of existing positions and deletes titles of positions that have been abolished and/or positions that no longer make or participate in making governmental decisions.

The following positions were deleted and revised:

- Delete Coordinator, Human Resources & Credentialing
- Delete Director Maintenance, Operations, Transportation and Facilities
- Delete Program Specialist
- Revised the following title to be Assistant Superintendent, Educational Leadership & Pupil Services

RECOMMENDATION:

Adopt Resolution No. 24/25-0011 amending the Conflict of Interest Code of San Ysidro School District and directing that such amendment be submitted to the San Diego County Board of Supervisors as the District's code-reviewing body (Gov. Code § 82011) requesting approval of the amendment as required under Government Code section 87303.

LCAP GOAL AND ACTION/SERVICE (please indicate):

☐ **Renewal** ☒ **New** ☒ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☐ Yes ☐ No	☐ Yes ☐ No	

N/A	N/A
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

NOTICE OF INTENTION TO AMEND THE CONFLICT OF INTEREST CODE OF THE SAN YSIDRO SCHOOL DISTRICT

NOTICE IS HEREBY GIVEN that the Governing Board of the San Ysidro School District (the "District") intends to amend the District's Conflict of Interest Code (the "Code") pursuant to Government Code Section 87306.

The Code designates those employees, members, officers, and consultants who make or participate in the making of decisions which may affect personal financial interests and are subject to the disclosure requirements of the District's Code. The District's proposed amendment is to revise titles to existing positions and deletes titles of positions that have been abolished and/or positions that no longer make or participate in making governmental decisions.

The proposed amended Code will be considered by the Governing Board on August 8, 2024 at 6:00 p.m., at the San Ysidro School District - Educational Center/Board Room, 4350 Otay Mesa Road, San Ysidro, CA 92173. Any interested person may be present and comment at the public meeting or may submit written comments concerning the proposed amendment. Any comments or inquiries should be directed to the attention of Miguel Ortega, Senior Executive Secretary, San Ysidro School District, 4350 Otay Mesa Road, San Ysidro, CA 92173; (619) 428-4476. Written comments must be submitted no later than August 8, 2024 at 6:00 p.m.

Copies of the proposed amended Code may be obtained from Mr. Ortega.

RESOLUTION NO. 24/25-0011

RESOLUTION OF THE GOVERNING BOARD OF THE SAN YSIDRO SCHOOL DISTRICT AMENDING THE CONFLICT OF INTEREST CODE PURSUANT TO THE POLITICAL REFORM ACT OF 1974

WHEREAS, the State of California enacted the Political Reform Act of 1974, Government Code section 81000 et seq. (the "Act"), which contains provisions relating to conflicts of interest which potentially affect all officers, employees and consultants of the San Ysidro School District (the "District") and requires all public agencies to adopt and promulgate a conflict of interest code; and

WHEREAS, the Governing Board adopted a Conflict of Interest Code (the "Code") which was amended on November 9, 2023, in compliance with the Act; and

WHEREAS, subsequent changed circumstances within the District have made it advisable and necessary pursuant to Sections 87306 and 87307 of the Act to amend and update the District's Code; and

WHEREAS, the potential penalties for violation of the provisions of the Act are substantial and may include criminal and civil liability, as well as equitable relief which could result in the District being restrained or prevented from acting in cases where the provisions of the Act may have been violated; and

WHEREAS, notice of the time and place of a public meeting on, and of consideration by the Governing Board of, the proposed amended Code was provided each affected designated employee and publicly posted for review at the offices of the District; and

WHEREAS, a public meeting was held upon the proposed amended Code at a regular meeting of the Governing Board on August 8, 2024, at which all present were given an opportunity to be heard on the proposed amended Code.

NOW, THEREFORE, BE IT RESOLVED by the Governing Board of the San Ysidro School District that the Governing Board does hereby adopt the proposed amended Conflict of Interest Code, a copy of which is attached hereto and shall be on file with the Senior Executive Secretary to the Superintendent and available to the public for inspection and copying during regular business hours;

BE IT FURTHER RESOLVED that the said amended Code shall be submitted to the Board of Supervisors of the County of San Diego for approval and said Code shall become effective immediately upon approval by the Board of Supervisors.

APPROVED, SIGNED AND ADOPTED this 8th day of August, 2024.

_____
President, Governing Board
San Ysidro School District
ATTEST:

_____
Secretary, Governing Board
San Ysidro School District

CONFLICT OF INTEREST CODE

OF THE

SAN YSIDRO SCHOOL DISTRICT

CONFLICT OF INTEREST CODE
OF THE
SAN YSIDRO SCHOOL DISTRICT

(Amended August 8, 2024)

The Political Reform Act (Gov. Code § 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. § 18730) which contains the terms of a standard conflict of interest code which can be incorporated by reference in an agency's code. After public notice and hearing Section 18730 may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This incorporation page, Regulation 18730 and, the attached Appendix designating positions and establishing disclosure categories, shall constitute the conflict of interest code of the **San Ysidro School District (the "District").**

All officials and designated positions required to submit a statement of economic interests shall file their statements with the **Senior Executive Secretary** as the District's filing officer. The **Senior Executive Secretary** shall make and retain a copy of all statements filed by Members of the Governing Board and the Superintendent, and forward the originals of such statements to the Clerk of the Board of Supervisors. The **Senior Executive Secretary** shall retain the originals of all other designated positions and make all retained statements available for public inspection and reproduction during regular business hours. (Gov. Code § 81008.)

APPENDIX
CONFLICT OF INTEREST CODE

OF THE

SAN YSIDRO SCHOOL DISTRICT

(Amended August 8, 2024)

PART "A"

OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

District Officials who manage public investments, as defined by 2 Cal. Code of Regs. § 18700.3, are NOT subject to the District's Code, but must file disclosure statements under Government Code section 87200 et seq. [Regs. § 18730(b)(3)] These positions are listed here for informational purposes only.

It has been determined that the positions listed below are officials who manage public investments[1]:

Members of the Governing Board

Chief Business Official

Investment Consultants

[1] Individuals holding one of the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by § 87200.

DESIGNATED POSITIONS
GOVERNED BY THE CONFLICT OF INTEREST CODE

DESIGNATED POSITIONS' TITLE OR FUNCTION	DISCLOSURE CATEGORIES ASSIGNED
Assistant Principals (ALL)	5
Assistant Superintendent, Educational Leadership & Pupil Services	4
Assistant Superintendent of Administrative Leadership, School Support and Safety	3, 4 ,6
Child Nutrition Services Production Coordinator	5
Coordinator of Pupil Services	5, 6
Coordinator of Student Services	5, 6
Coordinator, Federal and State Programs and Language Acquisition	5
Director of Child Nutrition Services	5
Director of Early Childhood Education	5
Director of Educational Services	5
Director of Education Technology	5
Director of Human Resources	5
Director Maintenance, Operations, Transportation and Facilities	2, 3, 5
Director of Special Education	5
Financial Services Analyst	1, 2
General Counsel	1, 2
Principals (ALL)	5
Superintendent of Schools	1, 2

Consultant and New Positions[2]

[2] Individuals serving as a consultant as defined in FPPC Reg 18700.3 or in a new position created since this Code was last approved that make or participate in making decisions must file under the broadest disclosure requirements set forth in this Code subject to the following limitation:

The Superintendent may determine that, due to the range of duties or contractual obligations, it is more appropriate to assign a limited disclosure requirement. A clear explanation of the duties and a statement of the extent of the disclosure requirements must be in a written document. (Gov. Code § 82019; FPPC Regs 18219 and 18734.) The Superintendent's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code. (Gov. Code § 81008.)

PART B

DISCLOSURE CATEGORIES

The disclosure categories listed below identify the types of economic interests that the designated position must disclose for each disclosure category to which the designated is assigned.[3] "Investment" means financial interest in any business entity (including a consulting business or other independent contracting business) and are reportable if they are either located in or doing business in the jurisdiction, are planning to do business in the jurisdiction, or have done business during the previous two years in the jurisdiction of the District.

Category 1: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are located in, do business in or own real property within the jurisdiction of the District.

Category 2: All Interests in real property which is located in whole or in part within, or not more than two (2) miles outside, the jurisdiction of the District, including any leasehold, beneficial or ownership interest or option to acquire property.

Category 3: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are engaged in land development, construction or the acquisition or sale of real property within the jurisdiction of the District.

Category 4: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by the District.

Category 5: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by the designated position's department, unit or division.

Category 6: All investments and business positions in business entities and source of income (including receipt of gifts, loans and travel payments) if the business entity or source is of the type to receive grants or other funding from or through the District.

[3] This Conflict of Interest Code does not require the reporting of gifts from outside this agency's jurisdiction if the source does not have some connection with or bearing upon the functions or duties of the position. (Reg. 18730.1)

LAW OFFICES OF
BEST BEST & KRIEGER LLP

CONFLICT OF INTEREST CODE

OF THE

SAN YSIDRO SCHOOL DISTRICT

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LAW OFFICES OF
BEST BEST & KRIEGER LLP

CONFLICT OF INTEREST CODE
OF THE
SAN YSIDRO SCHOOL DISTRICT

(Amended August 8, 2024)

Deleted: November 9, 2023

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Deleted: *October 2023*

BBK – July 2024

APPENDIX
CONFLICT OF INTEREST CODE

OF THE

SAN YSIDRO SCHOOL DISTRICT

(Amended August 8, 2024)

Deleted: November 9, 2023

PART "A"

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Deleted: *October 2023*

BBK – July 2024

DESIGNATED POSITIONS
GOVERNED BY THE CONFLICT OF INTEREST CODE

DESIGNATED POSITIONS' TITLE OR FUNCTION	DISCLOSURE CATEGORIES ASSIGNED
Assistant Principals (ALL)	5
Assistant Superintendent, Educational Leadership & Pupil Services	4
Assistant Superintendent of Administrative Leadership, School Support and Safety	3, 4 ,6
Child Nutrition Services Production Coordinator	5
Coordinator of Pupil Services	5, 6
Coordinator of Student Services	5, 6
Coordinator, Federal and State Programs and Language Acquisition	5
Director of Early Childhood Education	5
Director of Child Nutrition Services	5
Director of Educational Services	5
Director of Education Technology	5
Director of Special Education	5
Director of Human Resources	5
Financial Services Analyst	1, 2
General Counsel	1, 2
Director Maintenance, Operations, Transportation and Facilities	2, 3, 5
Principals (ALL)	5
Superintendent of Schools	1, 2

Deleted: Coordinator, Human Resources & Credentialing

Deleted: 5

Deleted: Program Specialist

Deleted: 5

Deleted: *October 2023*

BBK – July 2024

Consultant and New Positions[2]

[2] Individuals serving as a consultant as defined in FPPC Reg 18700.3 or in a new position created since this Code was last approved that make or participate in making decisions must file under the broadest disclosure requirements set forth in this Code subject to the following limitation:

The Superintendent may determine that, due to the range of duties or contractual obligations, it is more appropriate to assign a limited disclosure requirement. A clear explanation of the duties and a statement of the extent of the disclosure requirements must be in a written document. (Gov. Code § 82019; FPPC Regs 18219 and 18734.) The Superintendent's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code. (Gov. Code § 81008.)

BBK – July 2024

Deleted: *October 2023*

PART B

DISCLOSURE CATEGORIES

The disclosure categories listed below identify the types of economic interests that the designated position must disclose for each disclosure category to which the designated is assigned.[3] "Investment" means financial interest in any business entity (including a consulting business or other independent contracting business) and are reportable if they are either located in or doing business in the jurisdiction, are planning to do business in the jurisdiction, or have done business during the previous two years in the jurisdiction of the District.

Category 1: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are located in, do business in or own real property within the jurisdiction of the District.

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Category 3: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are engaged in land development, construction or the acquisition or sale of real property within the jurisdiction of the District.

Category 4: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by the District.

Category 5: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by the designated position's department, unit or division.

Category 6: All investments and business positions in business entities and source of income (including receipt of gifts, loans and travel payments) if the business entity or source is of the type to receive grants or other funding from or through the District.

[3] This Conflict of Interest Code does not require the reporting of gifts from outside this agency's jurisdiction if the source does not have some connection with or bearing upon the functions or duties of the position. (Reg. 18730.1)

Deleted: *October 2023*

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Business Services
Marilyn Adrianzen, Chief Business Official

☐ Informational
☒ Action

AGENDA ITEM: ANNUAL FINANCIAL AUDIT REPORT FOR GENERAL OBLIGATION BOND MEASURE T FOR FISCAL YEAR 2022-23

BACKGROUND INFORMATION:
On March 3, 2020, the voters within the District authorized Measure T general obligation bonds not to exceed $52,985,000.

Measure T bonds are Proposition 39 bonds, issued by the San Ysidro School District. The passage of Proposition 39 in November 2000 amended the California Constitution to include accountability provisions. Specifically, the District must conduct an annual independent performance audit to ensure that funds have been expended only on specific projects listed as well as annual, independent financial audit of the proceeds from the sale of the bonds until all the proceeds have been expended for facilities projects.

The General Obligation Bond Measure T audit for fiscal year 2022-23 was recently completed by the auditing firm of Wilkinson, Hadley, King & Co., LLP. The audit report is being submitted to the Governing Board for review and approval. A representative from Wilkinson, Hadley, King & Co., LLP will be present to answer questions from the Board on this item.

RECOMMENDATION:
Approve the 2022-23 Annual Financial Audit Report for General Obligation Bond Measure T.

LCAP GOAL AND ACTION/SERVICE (please indicate):

☐ **Renewal** ☒ **New** ☐ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☐ Yes ☒ No	☐ Yes ☐ No	

N/A	N/A
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

San Ysidro School District

Measure T Building Fund General Obligation Bond

Financial Statements & Supplementary Information

June 30, 2023

WILKINSON HADLEY KING & CO. LLP
CPAs AND ADVISORS

San Ysidro School District
Measure T Building Fund (21-39)
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June 30, 2023

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San Ysidro School District
Measure T Building Fund (21-39)
Introduction & Citizens' Oversight Committee Member Listing

The San Ysidro School District, a political subdivision of the State of California is located in San Diego County, and currently provides educational programs to 4,419 preschool to eighth grade students.

On March 3, 2020, the voters within the District authorized Measure T general obligation bonds not to exceed $52,985,000.

Measure T bonds are Proposition 39 bonds, issued by the San Ysidro School District. The passage of Proposition 39 in November 2000 amended the California Constitution to include accountability provisions. Specifically, the District must conduct an annual independent performance audit to ensure that funds have been expended only on specific projects listed as well as an annual, independent financial audit of the proceeds from the sale of the bonds until all the proceeds have been expended for facilities projects.

Upon the passage of Proposition 39, an accompanying piece of legislation, AB 1908 (Chapter 44, Statues of 2000), was enacted, which amended the Education Code to establish additional procedures which must be followed if a District seeks approval of a bond proposition pursuant to the 55% majority authorized in Proposition 39 including the formation, composition and purpose of the Citizens' Bond Oversight Committee, and authorization for injunctive relief against the improper expenditure of bond revenues.

The San Ysidro School District Citizens' Oversight Committee consisted of the following members for the fiscal year ended June 30, 2023:

Name	Position	Representative	Term Expiration
Ricardo Macedo	Chair	Business Community Representative	September 2025
Gloria McKearney	Vice-Chair	Taxpayer Association Representative	September 2025
Hilario Rodriguez	Member	At- Large Community	September 2025
Kenneth Johnson	Member	At- Large Community	January 2026
Juan Morales	Member	Parent Representative - Active	May 2025
Daniela Armstrong	Member	Parent Representative	May 2025
Vacant	Member	Senior Citizen Organization	

WILKINSON HADLEY KING & CO. LLP
CPAS AND ADVISORS
El Cajon, CA | Berkeley, CA

Brian K. Hadley, CPA
Aubrey W. Mann, CPA
Kevin A. Sproul, CPA

Independent Auditor's Report

To the Citizens' Oversight Committee
San Ysidro School District
Measure T Building Fund (21-39)
San Ysidro, California

Report on the Audit of the Financial Statements

Opinion

We have audited the accompanying financial statements of the San Ysidro School District's Measure T Building Fund (Fund 21-39), which comprise the balance sheet as of June 30, 2023, and the related statement of revenues, expenditures, and changes in fund balance for the year then ended, and the related notes to the financial statements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the assets, liabilities, and fund balance of the Bond Fund as of June 30, 2023, and the revenues it received and expenditures it paid for the year then ended, in accordance with the financial reporting provisions of Proposition 39 described in Note A.

Basis for Opinion

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the San Ysidro School District, including the Measure T Citizens' Oversight Committee, and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Emphasis of Matter – Basis of Accounting

We draw attention to Note A of the financial statements, which describes the basis of accounting. The financial statements are prepared by the San Ysidro School District using the modified accrual basis of accounting for the fund, which is a basis of accounting other than accounting principles generally accepted in the United States of America, to meet the financial reporting requirements under Proposition 39. Additionally, the financial statements present only the Bond Fund which is specific to Measure T and is not intended to present fairly the financial position and results of operations of the San Ysidro School District as a whole. As a result, the financial statements may not be suitable for another purpose. Our opinion is not modified with respect to this matter.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with the financial reporting provisions for fund accounting under the modified accrual basis of accounting, as described in Note A. Management is also responsible for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Bond Fund's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.

- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Bond Fund's internal control. Accordingly, no such opinion is expressed.

- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.

- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Bond Fund's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquires, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Reporting Required by *Government Auditing Standards*

In accordance with *Government Auditing Standards*, we have also issued our report dated August 2, 2024, on our consideration of the Bond Fund's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Bond Fund's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Bond Fund's internal control over financial reporting and compliance.

Report on Other Legal and Regulatory Requirements

In accordance with the requirements of Proposition 39, as incorporated in California Constitution Article 13A, we have also issued our performance audit report dated August 2, 2024, on our consideration of the Bond Fund's compliance with the requirements of Proposition 39 with regards to the Measure T Building Fund (Fund 21-39). That report is an integral part of our audit of the Measure T Building Fund (Fund 21-39) for the fiscal year ended June 30, 2023, and should be considered in assessing the results of our financial audit.

Other Information

Management is responsible for the other information included in the introductory section of this report. The other information comprises the introductory section but does not include the basic financial statements and our auditor's report thereon. Our opinions on the basic financial statements do not cover the other information, and we do not express an opinion or any form of assurance thereon.

In connection with our audit of the basic financial statements, our responsibility is to read the other information and consider whether a material inconsistency exists between the other information and the basic financial statements, or the other information otherwise appears to be materially misstated. If, based on the work performed, we conclude that an uncorrected material misstatement of the other information exists, we are required to describe it in our report.

Restriction on Use

This report is intended solely for the information and use of management, the Citizens' Oversight Committee, the Board of Education, and others within the San Ysidro School District, and is not intended to be and should not be used by anyone other than these specified parties.

El Cajon, California
August 2, 2024

SAN YSIDRO SCHOOL DISTRICT
MEASURE T BUILDING FUND (21-39)
MANAGEMENT'S DISCUSSION AND ANALYSIS
JUNE 30, 2023
(Unaudited)

This section of the San Ysidro School Districts'(SYSD) Measure T Building Fund annual financial and performance report presents the discussion and analysis of the Measure T bond program during the fiscal year that ended June 30, 2023. This Management Discussion and Analysis (MD&A) should be read in conjunction with the Bond Fund's financial statements that immediately follow this section.

FINANCIAL HIGHLIGHTS

- On September 17, 2020 SYSD issued 2020 Election Series A bonds in the amount of $15,830,000.

OVERVIEW OF THE FINANCIAL STATEMENTS

This annual report consists of three parts – management discussion and analysis (this section), the financial statements, and the performance audit required by state law.

The District accounts for Measure T bond activity in the District's Building Fund. The Building Fund is a governmental fund type accounted for on a modified accrual basis of accounting.

FINANCIAL ANALYSIS OF MEASURE T BUILDING FUND

Balance Sheet

The District's Measure T Building Fund balance as of June 30, 2023 was $0 (see Table A-1).

Table A-1
Measure T Building Fund
Balance Sheet

	June 30, 2023	June 30, 2022	Change	Percentage Change
Assets				
Cash	$ -	$ -	$ -	0%
Other Current Assets	-	-	-	0%
Total Assets	$ -	$ -	$ -	0%
Liabilities				
Accounts payable	$ -	$ -	$ -	0%
Due to other funds	-	-	-	0%
Total Liabilities	-	-	-	0%
Fund Balance				
Restricted for capital projects	-	-	-	0%
Total Fund Balance	-	-	-	0%
Total Liabilities & Fund Balance	$ -	$ -	$ -	0%

Fund Balance (or Change in Fund Balance)

The District's total Measure T Building Fund had no activity for the year 2021-2023.

Table A-2
Measure T Building Fund
Changes in Fund Balance

	Year Ended June 30, 2023	Year Ended June 30, 2022	Change	Percentage Change
Revenues & Other Sources				
Interest and investment income	$ -	$ -	$ -	0%
FMV adjustment	-	-	-	0%
Total Revenues & Other Sources	-	-	-	0%
Expenditures & Other Uses				
Plant services	-	-	-	0%
Capital outlay	-	-	-	0%
Total Expenditures & Other Uses	-	-	-	0%
Change in Fund Balance	-	-	-	0%
Fund Balance - Beginning	-	-	-	0%
Fund Balance - Ending	$ -	$ -	$ -	0%

CAPITAL ASSETS

During the fiscal year ended June 30, 2023, SYSD expended no capital expenditures from Measure T funds. These expenditures are part of the SYSD total capital assets as reflected in the District's separate financial audit.

LONG TERM DEBT

The following table presents a comparison of long-term debt associated with Measure T Building Fund:

Table A-3
Measure T Building Fund
Long Term Debt

	Year Ended June 30, 2023	Year Ended June 30, 2022	Change	Percentage Change
General Obligation Bonds				
Principal Balance	$ 13,260,000	$ 14,595,000	$ (1,335,000)	-9.1%
Total Measure T GO Bonds	$ 13,260,000	$ 14,595,000	$ (1,335,000)	-9.1%

FACTORS BEARING ON THE BOND PROGRAM'S FUTURE

At the time these financial statements were prepared and audited, the District was aware of the existing circumstances that could affect its financial health in the future:

- Possible increases in building costs during construction

CONTACTING THE DISTRICT'S FINANCIAL MANAGEMENT

This financial report is designed to provide citizens, taxpayers, customers, investors, and creditors with a general overview of the Bond Fund's finances and to determine the Bond Fund's accountability for the money it receives. Additional financial information can be obtained by contacting the following:

Business Office
San Ysidro School District
4350 Otay Mesa Rd.
San Ysidro, CA 92173

Financial Statements

San Ysidro School District
Measure T Building Fund (21-39)
Balance Sheet
June 30, 2023

ASSETS	
Current Assets	
Cash in county treasury	$ -
Accounts receivable	-
Total Current Assets	-
TOTAL ASSETS	$ -
LIABILITIES AND FUND BALANCE	
Current Liabilities	
Accounts payable	$ -
Total Liabilities	-
Fund Balance	
Restricted for capital projects	-
Total Fund Balance	-
TOTAL LIABILITIES AND FUND BALANCE	$ -

The accompanying notes to the financial statements are an integral part of this statement.

San Ysidro School District
Measure T Building Fund (21-39)
Statement of Revenues, Expenditures, and Changes in Fund Balance
For the Year Ended June 30, 2023

REVENUES		
Interest income	$	-
FMV adjustment		-
TOTAL REVENUES		-
EXPENDITURES		
Current operating expenses:		
Supplies		-
Other construction services		-
Capital outlay:		
Architect plans		-
Tests and exams		-
Construction management		-
Other reimbursables		-
Building construction		-
TOTAL EXPENDITURES		-
NET CHANGE IN FUND BALANCE		-
FUND BALANCE, BEGINNING OF YEAR		-
FUND BALANCE, END OF YEAR	$	-

The accompanying notes to the financial statements are an integral part of this statement.

A. Summary of Significant Accounting Policies

San Ysidro School District Measure T Building Fund (21-39), hereinafter referred to as the "Bond Fund", accounts for its financial transactions in accordance with the policies and procedures of the California Department of Education's *California School Accounting Manual*. The accounting policies of the District conform to accounting principles generally accepted in the United States of America (GAAP) as prescribed by the Governmental Accounting Standards Board (GASB) and the American Institute of Certified Public Accountants (AICPA).

1. Reporting Entity

The Bond Fund was formed to account for renovation of schools for San Ysidro School District (District), through expenditures of general obligation bonds issued under Measure T, authorized by registered voters on March 3, 2020.

The Bond Fund operates under a locally selected Citizens' Oversight Committee comprised of seven members formed in accordance with the Local School Construction Bonds Act of 2000, at Section 15264 *et seq.* of the Education Code, Proposition 39. The reporting entity consists only of the Bond Fund of the District. These financial statements are intended to present only the financial position and results of operations of the Bond Fund in conformity with accounting principles generally accepted in the United States of America, and accordingly do not present the financial position and results of operations of the District.

2. Basis of Accounting – Measurement Focus

Bond Fund. The bond fund is reported using the current financial resources measurement focus and the modified accrual basis of accounting. Under this method, revenues are recognized when measurable and available. The Bond Fund considers all revenues reported in the fund to be available if the revenues are collected within sixty days after year-end. Revenues from local sources consist primarily of interest earned. Investment earnings are recorded as earned, since they are both measurable and available. Expenditures are recorded when the related fund liability is incurred, except for principal and interest on general long-term debt, claims and judgments, and compensated absences, which are recognized as expenditures to the extent they have matured. General capital asset acquisitions are reported as expenditures in governmental funds. Proceeds from general long-term debt and acquisitions under capital leases are reported as other financing sources.

When the Bond Fund incurs an expenditure or expense for which both restricted and unrestricted resources may be used, it is the Bond Fund's policy to use restricted resources first, then unrestricted resources.

3. Encumbrances

Encumbrance accounting is used in the Bond Fund to reserve portions of applicable appropriations for which commitments have been made. Encumbrances are recorded for purchase orders, contracts, and other commitments when they are written. Encumbrances are liquidated when the commitments are paid or at year end, whichever is sooner.

4. Budgets and Budgetary Accounting

Annual budgets are adopted on a basis consistent with generally accepted accounting principles for the Bond Fund. By state law, the District's governing board must adopt a final budget no later than July 1st. A public hearing must be conducted to receive comments prior to adoption. The District's governing board has satisfied these requirements.

These budgets are revised by the District's governing board and district superintendent during the year to give consideration to unanticipated income and expenditures.

Formal budgetary integration was used as a management control device during the year for all budgeted funds. The District employs budget control by minor object and by individual appropriation accounts.

5. Revenues and Expenses

a. Revenues – Exchange and Non-Exchange

On a modified accrual basis, revenue is recorded in the fiscal year in which the resources are measurable and become available. Available means that the resources will be collected within the current year or expected to be collected soon enough thereafter, to be used to pay liabilities of the current fiscal year. Generally, available is defined as collectible within 60 days. However, to achieve comparability of reporting among California districts and so as to not distort normal revenue patterns, with specific respect to reimbursement grants and corrections to State-aid apportionments, the California Department of Education has defined available for districts as collectible within one year. The following revenue sources are considered to be both measurable and available at fiscal year-end: State apportionments, property taxes, interest, certain grants, and other local sources.

Non-exchange transactions are transactions in which the District receives value without directly giving equal value in return, including property taxes, certain grants, entitlements, and donations. Revenue from property taxes is recognized in the fiscal year in which the taxes are received. Revenue from certain grants, entitlements, and donations are recognized in the fiscal year in which all eligibility requirements have been satisfied. Eligibility requirements include time and purpose restrictions. On a modified accrual basis, revenue from non-exchange transactions must also be available before it can be recognized.

b. Expenditures

The measurement focus of governmental fund accounting is on decreases in net financial resources (expenditures) rather than expenses. Expenditures are generally recognized in the accounting period in which the related fund liability is incurred, if measurable, and typically paid within 90 days. Principal and interest on long-term obligations, which has not matured, are recognized when paid in the bond fund as expenditures. Allocations of costs, such as depreciation and amortization, are not recognized in the Bond Fund.

6. Assets, Deferred Outflows of Resources, Liabilities, Deferred Inflows of Resources, Fund Balance and Net Position

a. Deposits and Investments

Cash balances held in banks and in revolving funds are insured to $250,000 by the Federal Depository Insurance Corporation (FDIC). The Bond Fund does not have any cash held in banks or revolving fund. Highly liquid investments are considered to be cash equivalents if they have a maturity of three months or less when purchased.

In accordance with Education Code §42701, the Bond Fund maintains substantially all its cash in the San Diego County Treasury. The county pools these funds with those of other districts in the county and invests the cash. These pooled funds are carried at cost, which approximates market value. Interest earned is deposited quarterly into participating funds. Any investment losses are proportionately shared by all funds in the pool.

The county is authorized to deposit cash and invest excess funds by California Government Code §53648 et seq. The funds maintained by the county are either secured by federal depository insurance or are collateralized.

Information regarding the amount of dollars invested in derivatives with San Diego County Treasury was not available.

b. Interfund Activity

Interfund activity results from loans, services provided, reimbursements or transfers between funds of the District. Loans are reported as interfund receivables and payables as appropriate and are subject to elimination upon consolidation. Services provided, deemed to be at market or near market rates, are treated as revenues and expenditures or expenses. Reimbursements occur when one fund incurs a cost, charges the appropriate benefiting fund and reduces its related cost as a reimbursement. All other interfund transactions are treated as transfers.

c. Fund Balances – Governmental Funds

Fund balances of the Bond Fund are classified as follows:

Nonspendable Fund Balance represents amounts that cannot be spent because they are either not in spendable form (such as inventory or prepaid items) or legally required to remain intact (such as revolving cash accounts or principal of a permanent fund).

Restricted Fund Balance represents amounts that are subject to externally imposed and legally enforceable constraints. Such constraints may be imposed by creditors, grantors, contributors, or laws or regulations, or may be imposed by law through constitutional provisions or enabling legislation.

Committed Fund Balance represents amounts that can only be used for a specific purpose because of a formal action by the District's governing board. Committed amounts cannot be used for any other purpose unless the governing board removes those constraints by taking the same type of formal action. Committed fund balance amounts may be used for other purposes with appropriate due process by the governing board. Commitments are typically done through adoption and amendment of the budget or resolution. Committed fund balance amounts differ from restricted balances in that the constraints on their use do not come from outside parties, constitutional provisions, or enabling legislation.

Assigned Fund Balance represents amounts which the District intends to use for a specific purpose, but that do not meet the criteria to be classified as restricted or committed. Intent may be stipulated by the governing board or by an official or body to which the governing board delegates the authority. Specific amounts that are not restricted or committed in a special revenue, capital projects, debt service, or permanent fund are assigned for purposes in accordance with the nature of their fund type or the fund's primary purpose. Assignments within the general fund convey that the intended use of those amounts is for a specific purpose that is narrower than the general purposes of the District itself.

Unassigned Fund Balance represents amounts which are unconstrained in that they may be spent for any purpose. Only the general fund reports a positive unassigned fund balance. Other governmental funds might report a negative balance in this classification because of overspending for specific purposes for which amounts had been restricted, committed or assigned.

When an expenditure is incurred for a purpose for which both restricted and unrestricted fund balance is available, the District considers restricted funds to have been spent first. When an expenditure is incurred for which committed, assigned, or unassigned fund balances are available, the District considers amounts to have been spent first out of committed funds, then assigned funds, and finally unassigned funds.

7. Use of Estimates

The preparation of the financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results may differ from those estimates.

8. Fair Value Measurements

The Bond Fund categorizes its fair value measurements within the fair value hierarchy established by generally accepted accounting principles as defined by Governmental Accounting Standards Board (GASB) Statement No. 72. The hierarchy is based on the valuation inputs used to measure the fair value of the asset. The hierarchy is detailed as follows:

Level 1 Inputs:	Quoted prices (unadjusted) in active markets for identical assets or liabilities that a government can access at the measurement date.
Level 2 Inputs:	Inputs other than quoted prices included within Level 1 that are observable for an asset or liability, either directly or indirectly.
Level 3 Inputs:	Unobservable inputs to an asset or liability.

9. New Accounting Pronouncements

The Bond Fund has adopted accounting policies compliant with new pronouncements issued by the Government Accounting Standards Board (GASB) that are effective for the fiscal year ended June 30, 2023. Those newly implemented pronouncements are as follows:

Description	Date Issued
GASB Statement 91, Conduit Debt Obligations	05/2019
GASB Statement 94, Public-Private and Public-Public Partnerships and Availability Payment Arrangements	03/2020
GASB Statement 96, Subscription Based Information Technology Arrangements	05/2020
GASB Statement 99, Omnibus 2022 (Portions related to leases, PPPs, and SBITAs)	04/2022
GASB Implementation Guide 2021-1, Implementation Guidance Update - 2021 (Except Question 5.1)	05/2021

Implementation of these standards did not result in any changes to financial accounting or reporting for the Bond Fund.

B. Compliance and Accountability

1. Finance Related Legal and Contractual Provisions

In accordance with GASB Statement No. 38, "Certain Financial Statement Note Disclosures", violations of finance-related legal and contractual provisions, if any are reported below, along with actions taken to address such violations:

Violation	Action Taken
None Reported	Not Applicable

2. Deficit Fund Balance or Fund Net Position of Individual Funds

The following funds are funds having deficit fund balances or fund net position at year end, if any, along with remarks which address such deficits:

Fund Name	Deficit Amount	Remarks
None	Not Applicable	Not Applicable

C. Fair Value Measurements

The Bond Fund's investments at June 30, 2023, categorized within the fair value hierarchy established by generally accepted accounting principles, were as follows:

		Fair Value Measurement Using		
	Amount	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
External investment pools measured at fair value				
San Diego County Treasury	$ -	$ -	$ -	$ -
Total investments by fair value level	$ -	$ -	$ -	$ -

The Bond Fund is considered to be an involuntary participant in an external investment pool as the Bond Fund is required to deposit all receipts and collections of monies with their County Treasurer (Education Code §41001). The fair value of the Bond Fund's investments in the pool is reported in the accounting financial statements as amounts based upon the District's pro-rata share of the fair value provided by the County Treasurer for the entire portfolio (in relation to the amortized cost of the portfolio). The balance available for withdrawal is based on the accounting records maintained by the County Treasurer, which is recorded on the amortized cost basis.

The San Diego County Treasury is not registered with the Securities and Exchange Commission (SEC) as an investment company; however, the County Treasury acts in accordance with investment policies monitored by a Treasury Oversight Committee consisting of members appointed by participants in the investment pool and up to five members of the public having expertise, or an academic background in, public finance. In addition, the County Treasury is audited annually by an independent auditor.

D. Cash and Investments

1. Cash in County Treasury

In accordance with Education Code §41001, the Bond Fund maintains substantially all of its cash in the San Diego County Treasury as part of the common investment pool ($0 as of June 30, 2023). The fair value of the Bond Fund's portion of this pool as of that date, as provided by the pool sponsor, was $0. Assumptions made in determining the fair value of the pooled investment portfolios are available from the County Treasurer.

2. Investments Authorized by the California Government Code and the District's Investment Policy

The table below identifies the investment types that are authorized for the Bond Fund by the California Government Code (or the Bond Fund's investment policy, where more restrictive). The table also identifies certain provisions of the California Government Code (or the Bond Fund's investment policy where more restrictive) that address interest rate risk, credit risk, and concentration of credit risk. This table does not address investments of debt proceeds held by bond trustee that are governed by the provisions of debt agreements of the Bond Fund, rather than the general provisions of the California Government Code or the District's investment policy.

Authorized Investment Type	Maximum Remaining Maturity	Maximum Percentage of Portfolio	Maximum Investment in One Issuer
Local Agency Bonds, Notes, Warrants	5 Years	None	None
Registered State Bonds, Notes, Warrants	5 Years	None	None
U.S. Treasury Obligations	5 Years	None	None
U.S. Agency Securities	5 Years	None	None
Banker's Acceptance	180 Days	40%	30%
Commercial Paper	270 Days	25%	10%
Negotiable Certificates of Deposit	5 Years	30%	None
Repurchase Agreements	1 Year	None	None
Reverse Repurchase Agreements	92 Days	20% of Base	None
Medium-Term Corporate notes	5 Years	30%	None
Mutual Funds	N/A	20%	10%
Money Market Mutual Funds	N/A	20%	10%
Mortgage Pass-Through Securities	5 Years	20%	None
County Pooled Investment Funds	N/A	None	None
Local Agency Investment Fund	N/A	None	None
Joint Powers Authority Pools	N/A	None	None

3. Analysis of Specific Deposit and Investment Risks

GASB Statement No. 40 requires a determination as to whether the Bond Fund was exposed to the following specific investment risks at year end and if so, the reporting of certain related disclosures:

a. Credit Risk

Credit risk is the risk that an issuer or other counterparty to an investment will not fulfill its obligations. The county treasury is restricted by Government Code §53635 pursuant to §53601 to invest only in time deposits, U.S. government securities, state registered warrants, notes or bonds, State Treasurer's investment pool, bankers' acceptances, commercial paper, negotiable certificates of deposit, and repurchase or reverse repurchase agreements. The ratings of securities by nationally recognized rating agencies are designed to give an indication of risk.

At June 30, 2023, credit risk for the Bond Fund's investments was as follows:

Investment Type	Rating	Rating Agency	Amount
County Treasurer's Investment Pool	Unrated	Not Applicable	$ -

b. Custodial Credit Risk

Deposits are exposed to custodial credit risk if they are not covered by depository insurance and the deposits are uncollateralized, collateralized with securities held by the pledging financial institution, or collateralized with securities held by the pledging financial institution's trust department or agent but not in the Bond Fund's name. The California Government Code and the Bond Fund's investment policy do not contain legal or policy requirements that would limit the exposure to custodial credit risk for deposits, other than the following provision for deposits: The California Government Code requires that a financial institution secure deposits made by state or local governmental units by pledging securities in an undivided collateral pool held by a depository regulated under state law (unless so waived by the governmental unit). The market value of the pledged securities in the collateral pool must equal at least 110% of the total amount deposited by the public agencies. California law also allows financial institutions to secure deposits by pledging first trust deed mortgage notes having a value of 150% of the secured public deposits.

Investment securities are exposed to custodial credit risk if the securities are uninsured, are not registered in the name of the government, and are held by either the counterparty or the counterparty's trust department or agent but not in the Bond Fund's name.

At June 30, 2023, the Bond Fund was not exposed to custodial credit risk.

c. Concentration of Credit Risk

This risk is the risk of loss attributed to the magnitude of a government's investment in a single issuer. The investment policy of the Bond Fund contains no limitations on the amount that can be invested in any one issuer beyond the amount stipulated by the California Government Code. Investments in any one issuer that represent five percent or more of the total investments are either an external investment pool and are therefore exempt. As such, the Bond Fund was not exposed to concentration of credit risk.

d. Interest Rate Risk

This is the risk that changes in interest rates will adversely affect the fair value of an investment. Generally, the longer the maturity of an investment, the greater the sensitivity of its fair value to changes in market interest rates. The Bond Fund maintains pooled investments with the San Diego County Treasury with a fair value of $0. The average weighted maturity for this pool was 438 days at June 30, 2023.

e. Foreign Currency Risk

This is the risk that exchange rates will adversely affect the fair value of an investment. At year end, the Bond Fund was not exposed to foreign currency risk.

4. Investment Accounting Policy

The Bond Fund is required by GASB Statement No. 31 to disclose its policy for determining which investments, if any, are reported at amortized cost. The Bond Fund's general policy is to report money market investments and short-term participating interest-earning investment contracts at amortized cost and to report nonparticipating interest-earning investment contracts using a cost-based measure. However, if the fair value of an investment is significantly affected by the impairment of the credit standing of the issuer or by other factors, it is reported at fair value. All other investments are reported at fair value unless a legal contract exists which guarantees a higher value. The term "short-term" refers to investments which have a remaining term of one year or less at time of purchase. The term "nonparticipating" means that the investment's value does not vary with market interest rate changes. Nonnegotiable certificates of deposit are examples of nonparticipating interest-earning investment contracts.

The Bond Fund's investments in external investment pools are reported at an amount determined by the fair value per share of the pool's underlying portfolio, unless the pool is a 2a7-like, in which case they are reported at share value. A 2a7-like pool is one which is not registered with the Securities and Exchange Commission (SEC) as an investment company, but nevertheless has a policy that it will, and does, operate in a manner consistent with the SEC's Rule 2a7 of the Investment Company Act of 1940.

E. Short Term Debt Activity

The Bond Fund accounts for short-term debts for maintenance purposes through the General Fund. The proceeds from loans are shown in the financial statements as other financing sources. The Bond Fund did not issue any short-term debt during the fiscal year ended June 30, 2023.

F. General Obligation Bonds

The District's bonded debt consists of various issues of general obligation bonds that are generally callable with interest payable semiannually. Bond proceeds pay primarily for acquiring or constructing capital facilities. The District repays general obligation bonds from voter-approved property taxes.

In March 2020 registered voters authorized the issuance of $52,985,000 principal amount of general obligation bonds. As of June 30, 2023, $37,155,000 of the authorized amount remains available for issue.

	Date of Issue	Interest Rate	Maturity Date	Amount of Original Issue
2020 Measure T, Series A	09/03/20	0.37-2.97%	08/01/45	$ 15,830,000
Total General Obligation Bonds				$ 15,830,000

	Beginning Balance	Increases	Decreases	Ending Balance	Amounts Due Within One Year
2020 Measure T, Series A					
Principal	$ 14,595,000	$ -	$ 1,335,000	$ 13,260,000	$ 200,000
Total General Obligation Bonds	$ 14,595,000	$ -	$ 1,335,000	$ 13,260,000	$ 200,000

The annual requirements to amortize the bonds outstanding at June 30, 2023 are as follows:

Year Ended June 30,	Principal	Interest	Total
2024	$ 200,000	$ 346,833	$ 546,833
2025	225,000	344,932	569,932
2026	245,000	342,492	587,492
2027	270,000	339,306	609,306
2028	295,000	335,127	630,127
2029-2033	1,905,000	1,573,909	3,478,909
2034-2038	2,830,000	1,292,485	4,122,485
2039-2043	4,085,000	796,988	4,881,988
2044-2048	3,205,000	147,088	3,352,088
Total	$ 13,260,000	$ 5,519,160	$ 18,779,160

Premium/Discount

Bond premium arises when the market rate of interest is higher than the stated interest rate on the bond. Bond discount arises when the market rate of interest is lower than the stated interest rate on the bond. Generally Accepted Accounting Principles (GAAP) require that the premium increase the face value of the bond and the discount decrease the face value of the bond. The premium and discount are then amortized over the life of the bond using the economic interest method.

Effective interest on general obligation bonds issued at a premium/discount are as follows:

	2020 Election Series A
Total Interest Payments	$ 6,228,183
Less Bond Premium	-
Net Interest Payments	6,228,183
Par Amount of Bonds	15,830,000
Periods	25
Effective Interest Rate	1.57%

G. Commitments and Contingencies

1. Litigation

The District is involved in various litigation arising from the normal course of business. In the opinion of management and legal counsel, the disposition of all litigation pending is not expected to have a material adverse effect on the overall financial position of the Bond Fund as of June 30, 2023.

2. Construction Commitments

As of June 30, 2023, the Bond Fund had no outstanding construction commitments.

	Remaining Commitment	Expected Date of Completion*
Construction in Process:		
La Mirada CDC Move, Front Entry/UTK	$ 13,761,000	August 2025
Multi-Site Interactive White Boards	3,950,000	July 2025
Multi-Site Universal TK - Portables	7,040,000	August 2025
Beyer Community Resource Center	12,050,000	December 2026
Total	$ 37,001,000	

*Expected date of completion is subject to change.

H. Upcoming Accounting Guidance

The Governmental Accounting Standards Board (GASB) issues pronouncements and additional guidance for governmental agencies to establish consistent accounting across all governments in the United States. The following table represents items that have been issued by GASB that will become effective in future periods:

Description	Date Issued	Fiscal Year Effective
GASB Statement 99, Omnibus 2022 (Portions related to financial guarantees and derivative instruments)	04/2022	2024-25
GASB Statement 100, Accounting Changes for Error Corrections	06/2022	2024-25
GASB Statement 101, Compensated Absences	06/2022	2024-25
GASB Implementation Guide 2021-1, Implementation Guidance Update - 2021 (Question 5.1)	05/2021	2024-25
GASB Implementation Guide 2023-1, Implementation Guidance Update - 2023	06/2023	2024-25

The effects of the upcoming guidance and pronouncements on the District's financial statements has not yet been determined.

Other Independent Auditors' Reports

WILKINSON HADLEY KING & CO. LLP
CPAS AND ADVISORS
El Cajon, CA | Berkeley, CA

Brian K. Hadley, CPA
Aubrey W. Mann, CPA
Kevin A. Sproul, CPA

Independent Auditor's Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*

To the Citizens' Oversight Committee
San Ysidro School District
Measure T Building Fund (21-39)
San Ysidro, California

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the San Ysidro School District Measure T Building Fund (Bond Fund), which comprise the Balance Sheet and Statement of Revenues, Expenditures, and Changes in Fund Balance as of and for the year ended June 30, 2023, and the related notes to the financial statements, which collectively comprise San Ysidro School District Measure T Building Fund's basic financial statements, and have issued our report thereon dated August 2, 2024.

Internal Control over Financial Reporting

In planning and performing our audit of the financial statements, we considered San Ysidro School District Measure T Building Fund's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of San Ysidro School District Measure T Building Fund's internal control. Accordingly, we do not express an opinion on the effectiveness of San Ysidro School District Measure T Building Fund's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been detected.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether San Ysidro School District Measure T Building Fund's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Bond Fund's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Bond Fund's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

El Cajon, California
August 2, 2024

WILKINSON HADLEY KING & CO. LLP
CPAS AND ADVISORS
El Cajon, CA | Berkeley, CA

Brian K. Hadley, CPA
Aubrey W. Mann, CPA
Kevin A. Sproul, CPA

Independent Auditor's Report on Performance

To the Citizens' Oversight Committee
San Ysidro School District
Measure T Building Fund (21-39)
San Ysidro, California

Performance Results

We were engaged to conduct a performance audit of the San Ysidro School District Measure T Building Fund (21-39), herein after referred to as the Bond Fund, for the year ended June 30, 2023. Our audit was limited to the objectives listed with the report which includes the District's compliance with the performance requirements as referred to in Proposition 39 and outlined in Article XIIIA, Section 1(b)(3)(C) of the California Constitution.

The results of our tests, delineated below, showed an instance of noncompliance with the requirements as set forth in Measure V, approved by voters on November 8, 2016, in accordance with Proposition 39 as outlined in Article XIIIA, Section 1(b)(3)(c) of the California Constitution.

Responsibilities of Management for Performance

Management is responsible for compliance with the requirements referred to above and for the design, implementation, and maintenance of effective internal control over compliance with the requirements of laws, statutes, regulations, rules, and provisions of contracts or grant agreements applicable to the Bond Fund.

Auditor's Responsibility for the Performance Audit

Our responsibility is to prepare a report that contains (1) the objectives, scope, and methodology of the audit; (2) the audit results, including findings, conclusions, and recommendations as appropriate; (3) summary reviews of responsible officials; and (4) if applicable, the nature of any confidential or sensitive information omitted.

We conducted this performance audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States and the *Appendix A of the 2022-23 Guide for Annual Audits of K-12 Local Education Agencies* (the Audit Guide). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our conclusions based on our audit objectives.

In planning and performing our performance audit, we obtained an understanding of the District's internal controls over the Bond Fund and related construction projects in order to determine if the internal controls were adequate to help ensure the District's compliance with the requirements of Proposition 39, but not for the purpose of expressing an opinion on the effectiveness of the Bond Fund's internal control. Accordingly, we do not express an opinion on the effectiveness of the Bond Fund's internal control.

We believe the audit evidence we have obtained is sufficient and appropriate to provide a reasonable basis for our findings and conclusions based upon the audit objectives.

Our audit was designed to obtain reasonable assurance about whether material noncompliance with the compliance requirements referred to above have occurred, whether due to fraud or error, and to express the findings and conclusions based on our audit. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards, *Government Auditing Standards,* and the Audit Guide will always detect material noncompliance when it exists.

The risk of not detecting material noncompliance resulting from fraud is higher than for that resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Noncompliance with the compliance requirements referred to above is considered material if there is a substantial likelihood that, individually or in the aggregate, it would influence the judgment made by a reasonable user of the report on compliance about the District's compliance with the requirements of Measure T as a whole.

In performing an audit in accordance with generally accepted auditing standards, *Government Auditing Standards*, and the Audit Guide, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.

- Identify and assess the risks of material noncompliance, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the District's compliance with the requirements referred to above and performing such other procedures as we considered necessary in the circumstances.

- Obtain an understanding of the District's internal control over the Bond Fund relevant to the audit in order to design audit procedures that are appropriate in the circumstances and to test and report on internal control over compliance in accordance with the Audit Guide, but not for the purpose of expressing an opinion on the effectiveness of the District's internal control over compliance. Accordingly, no such opinion is expressed.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and any significant deficiencies and material weaknesses in internal control over compliance that we identified during the audit.

Objectives, Scope, & Methodology of the Audit

In connection with our performance audit, we performed an audit for compliance as required in the performance requirements set forth in Measure T as approved by registered voters for the fiscal year ended June 30, 2023. The objective of the audit of compliance applicable to the Bond Fund is to determine with reasonable assurance that:

- The proceeds from the sale of Measure T General Obligation Bonds were only used for the purposes set forth in the ballot Measure T and not for any other purpose, such as teacher and administrative salaries.

- The Governing Board of the San Ysidro School District (District), in establishing approved projects set forth in the ballot Measure To modernize, replace, renovate, construct, acquire, equip, furnish and otherwise improve facilities of the District as noted in the bond project list.

Performance Audit Procedures Performed & Results:

1. **Internal Control Evaluation**

Procedure Performed

Inquiries were made of management regarding internal controls to:

- Prevent fraud, waste, or abuse regarding project resources
- Prevent material misstatement in the project funds
- Ensure all expenditures are properly allocated
- Ensure adequate separation of duties exists in the accounting of project funds. All purchase requisitions are reviewed for proper supporting documentation. The Facilities Director or appropriate District employee submits back up information to the business office to initiate a purchase requisition. The Facilities Director, Assistant Superintendent of Business Services, and Finance Director verifies that the requested purchase is an allowable project cost in accordance with the bond language.

Results of Procedure Performed

The results of our audit determined the internal control procedures as designed are sufficient to meet the financial and compliance objectives required by generally accepted accounting principles and applicable laws and regulations.

Procedure Performed

Tests of controls were performed based on identified controls from procedures above, utilizing samples of expenditures with a sample size sufficient for a high level of assurance, to determine if internal controls as designed are properly implemented and in place over the Bond Fund expenditures.

Results of Procedure Performed

The results of our audit determined that the internal controls as designed were properly implemented during the 2022-23 fiscal year.

2. **Tests of Expenditures**

Procedures Performed

We tested expenditures to determine whether Measure T proceeds were spent solely on voter and board approved school facilities projects as set forth in the Bond Project List and language of the Measure T ballot measure language. Our testing was performed using a sample size sufficient to meet a high level of assurance.

Results of Procedures Performed

There were no expenditures during the fiscal year ended June 30, 2023.

3. **Tests of Contracts and Bid Procedures**

Procedures Performed

We tested expenditures under Measure T to determine if the expenditures were part of a valid contract, that the contract was properly approved by the District's Governing Board, and that the contract was established in compliance with Public Contract Code provisions, including bid procedures. Our testing was performed using a sample size sufficient to meet a high level of assurance.

Results of Procedures Performed

There were no expenditures during the fiscal year ended June 30, 2023.

4. **Facilities Site Review**

Procedures Performed

We reviewed the Independent Citizens' Oversight Committee minutes and agendas along with other pertinent information on Measure T designated projects to determine whether the funds expended for the year ended June 30, 2023, were for valid facilities acquisition and construction purposes as stated in the Bond Project List. Additionally, we reviewed photographs of significant bond projects to determine projects were being completed as identified in the Bond Project List.

Results of Procedures Performed

Based on review of expenditure documentation, review of project photographs, and other pertinent information provided, it appears no construction work was performed in 2022-2023.

5. **Review of Citizens' Oversight Committee Compliance**

Procedures Performed

We reviewed the minutes of the Citizens' Oversight Committee meetings to verify compliance with Education Code Section 15278 which requires the Citizens' Oversight Committee to:

- Actively review and report on the proper expenditure of taxpayers' money for school construction.
- Advise the public as to whether the District is in compliance with paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.
- Ensure that bond revenues are expended only for purposes described in paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.
- Ensure that no funds are used for any teacher or administrative salaries or other school operating expenses.

Additionally, Education Code Section 15278 authorizes the Citizens' Oversight Committee to:

- Receive and review copies of the annual, independent performance audit.
- Inspect school facilities and grounds to ensure that bond revenues are expended in compliance with the requirements described in paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.
- Receive and review copies of any deferred maintenance proposals or plans developed by the District.
- Review efforts by the District to maximize bond revenues by implementing cost saving measures.

Results of Procedures Performed

The Citizens' Oversight Committee appears to have complied with the requirements of Education Code Section 15278.

Procedure Performed

We reviewed composition of the Citizens' Oversight Committee to verify compliance with Education Code Section 15282 which requires the following:

- The Citizens' Oversight Committee shall consist of at least seven members who shall serve for a minimum term of two years without compensation and for no more than three consecutive terms.
- One member shall be active in a business organization representing the business community located within the school district boundaries.
- One member shall be active in a senior citizens' organization.
- One member shall be active in a bona fide taxpayers' organization.
- One member shall be the parent or guardian of a child enrolled in the school district.
- One member shall be both a parent or guardian of a child enrolled in the school district and active in a parent-teacher organization.
- An employee or official of the school district shall not be appointed to the citizens' oversight committee.
- A vendor, contractor, or consultant of the school district shall not be appointed to the citizens' oversight committee.

Results of Procedures Performed

The Citizens' Oversight Committee appears to have not complied with the requirements of Education Code Section 15282. They do not have a Senior Citizen organization member, will be finding 2023-001.

Nature of any Confidential or Sensitive Information Omitted

There was no confidential or sensitive information omitted from this report.

Purpose of the Report

This report is intended solely for the information and use of the District's Governing Board, the Measure T Citizens' Oversight Committee, management, and others within the District and is not intended to be and should not be used by anyone other than these specified parties.

El Cajon, California
August 2, 2024

Auditor’s Results, Findings & Recommendations

San Ysidro School District
Measure T Building Fund (21-39)
Schedule of Auditor's Results
Year Ended June 30, 2023

FINANCIAL STATEMENTS

Type of auditor's report issued:	Unmodified			
Internal control over financial reporting:				
One or more material weakness(es) identified?		Yes	X	No
One or more significant deficiencies identified that are not considered material weakness(es)?		Yes	X	No
Noncompliance material to financial statements noted?		Yes	X	No

PERFORMANCE AUDIT

Any audit findings disclosed that are reported as a result of performance audit and in accordance with *2022-23 Guide for for Annual Audits of California K-12 Local Education Agencies, Appendix A Local Construction Bond Audits?*	X	Yes		No
Type of auditor's report issued on compliance for state programs:	Unmodified			

Findings represent significant deficiencies, material weaknesses, and/or instances of noncompliance related to the financial statements or performance audit that are required to be reported in accordance with *Government Auditing Standards,* or *Appendix A of the 2022-23 Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting*.

Internal Control Findings

None

Compliance Findings

As stated in our *Independent Auditor's Report on Performance*, our tests resulted in Finding 2023-001 related to the performance audit of the Measure T Building Fund for the year ended June 30, 2023.

Finding 2023-001

We are bringing to management's attention the following exceptions and procedural requirements relating to the composition of the Citizens' Bond Oversight Committee:

Criteria or Specific Requirement: Proposition 39 Bond Law requires the Citizens Bond Oversight Committee to be comprised of at least seven members who meet the following criteria:

- One member must be active in a business organization within the District's boundaries that represents the business community as a whole
- One member must be active in a senior citizens association
- One member must be a parent/guardian of a child enrolled in the District
- One member must be a parent/guardian of a child enrolled in the District and is an active participant in the Parent Teachers Organization
- One member must be active in a bona fide taxpayer's organization

Proposition 39 Bond Law also requires the Citizens Bond Oversight Committee to have at least one annual meeting with quorum and to approve an annual report summarizing activity.

Condition: During our review of the Citizens' Bond Oversight Committee member listing, we noted there was not a committee member that was active in a senior citizen association.

Questioned Costs: The finding relates to an aspect of non-compliance and there is no associated questioned costs.

Cause: The District has been unable to locate a member that is active in a senior citizens association willing to participate in the Citizens' Bond Oversight Committee.

Effect: The District is out of compliance with Proposition 39 Bond Law and regulations.

Recommendation: We recommend the District attempt to obtain the required number of members with required positions. Continue to advertise and attempt to recruit a community member that is active in a senior citizen association.

Corrective Action Plan: The District is aware of and agrees with the finding. The District is actively searching for candidates through various local publications and conducting interviews for qualified individuals. The District will continue to pursue potential members fitting the criteria as established by Proposition 39 Bond Law.

San Ysidro School District
Measure T Building Fund (21-39)

Schedule of Prior Year Audit Findings
Year Ended June 30, 2023

There were no audit findings in the prior year audit.

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Business Services
Marilyn Adrianzen, Chief Business Official

☐ Informational
☒ Action

AGENDA ITEM: ANNUAL FINANCIAL AUDIT REPORT FOR GENERAL OBLIGATION BOND MEASURE U FOR FISCAL YEAR 2022-23

BACKGROUND INFORMATION:
On March 3, 2020, the voters within the District authorized Measure U general obligation bonds not to exceed $55,500.00.

Measure U bonds are Proposition 39 bonds issued by the San Ysidro School District. The passage of Proposition 39 in November 2000 amended the California Constitution to include accountability provisions. Specifically, the District must conduct an annual independent performance audit to ensure that funds have been expended only on specific projects listed and an annual, independent financial audit of the proceeds from the sale of the bonds until all the proceeds have been expended for facilities projects.

The General Obligation Bond Measure U audit for fiscal year 2022-23 was recently completed by the auditing firm of Wilkinson, Hadley, King & Co., LLP. The audit report is being submitted to the Governing Board for review and approval. A representative from Wilkinson, Hadley, King & Co., LLP will be present to answer questions from the Board on this item.

RECOMMENDATION:
Approve the 2022-23 Annual Financial Audit Report for General Obligation Bond Measure U.

LCAP GOAL AND ACTION/SERVICE (please indicate):

☐ **Renewal** ☒ **New** ☐ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☐ Yes ☒ No	☐ Yes ☐ No	

N/A	N/A
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

San Ysidro School District

Measure U Building Fund General Obligation Bond

Financial Statements & Supplementary Information

June 30, 2023

WILKINSON HADLEY KING & CO. LLP
CPAs AND ADVISORS

San Ysidro School District
Measure U Building Fund (21-33)
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June 30, 2023

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San Ysidro School District
Measure U Building Fund (21-33)
Introduction & Citizens' Oversight Committee Member Listing

The San Ysidro School District, a political subdivision of the State of California is located in San Diego County, and currently provides educational programs to about 4,419 preschools through eighth grade students.

On March 3, 2020, the voters within the District authorized Measure U general obligation bonds not to exceed $55,500,000.

Measure U bonds are Proposition 39 bonds, issued by the County of San Diego on behalf of San Ysidro School District. The passage of Proposition 39 in November 2000 amended the California Constitution to include accountability provisions. Specifically, the District must conduct an annual independent performance audit to ensure that funds have been expended only on specific projects listed as well as an annual, independent financial audit of the proceeds from the sale of the bonds until all the proceeds have been expended for facilities projects.

Upon the passage of Proposition 39, an accompanying piece of legislation, AB 1908 (Chapter 44, Statues of 2000), was enacted, which amended the Education Code to establish additional procedures which must be followed if a District seeks approval of a bond proposition pursuant to the 55% majority authorized in Proposition 39 including the formation, composition and purpose of the Citizens' Bond Oversight Committee, and authorization for injunctive relief against the improper expenditure of bond revenues.

The San Ysidro School District Citizens' Oversight Committee consisted of the following members for the fiscal year ended June 30, 2023:

Name	Position	Representative	Term Expiration
Ricardo Macedo	Chair	Business Community Representative	September 2025
Gloria McKearney	Vice-Chair	Taxpayer Association Representative	September 2025
Hilario Rodriguez	Member	At- Large Community	September 2025
Kenneth Johnson	Member	At- Large Community	January 2026
Juan Morales	Member	Parent Representative - Active	May 2025
Daniela Armstrong	Member	Parent Representative	May 2025
Vacant	Member	Senior Citizen Organization	

WILKINSON HADLEY KING & CO. LLP
CPAS AND ADVISORS
El Cajon, CA | Berkeley, CA

Brian K. Hadley, CPA
Aubrey W. Mann, CPA
Kevin A. Sproul, CPA

Independent Auditor's Report

To the Citizens' Oversight Committee
San Ysidro School District
Measure U Building Fund (21-33)
San Ysidro, California

Report on the Audit of the Financial Statements

Opinion

We have audited the accompanying financial statements of the San Ysidro School District's Measure U Building Fund (Fund 21-33), which comprise the balance sheet as of June 30, 2023, and the related statement of revenues, expenditures, and changes in fund balance for the year then ended, and the related notes to the financial statements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the assets, liabilities, and fund balance of the Bond Fund as of June 30, 2023, and the revenues it received and expenditures it paid for the year then ended, in accordance with the financial reporting provisions of Proposition 39 described in Note A.

Basis for Opinion

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the San Ysidro School District, including the Measure U Citizens' Oversight Committee, and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Emphasis of Matter – Basis of Accounting

We draw attention to Note A of the financial statements, which describes the basis of accounting. The financial statements are prepared by the San Ysidro School District using the modified accrual basis of accounting for the fund, which is a basis of accounting other than accounting principles generally accepted in the United States of America, to meet the financial reporting requirements under Proposition 39. Additionally, the financial statements present only the Bond Fund which is specific to Measure U and is not intended to present fairly the financial position and results of operations of the San Ysidro School District as a whole. As a result, the financial statements may not be suitable for another purpose. Our opinion is not modified with respect to this matter.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with the financial reporting provisions for fund accounting under the modified accrual basis of accounting, as described in Note A. Management is also responsible for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Bond Fund's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.

- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Bond Fund's internal control. Accordingly, no such opinion is expressed.

- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.

- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Bond Fund's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquires, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Reporting Required by *Government Auditing Standards*

In accordance with *Government Auditing Standards*, we have also issued our report dated August 2, 2024, on our consideration of the Bond Fund's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Bond Fund's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Bond Fund's internal control over financial reporting and compliance.

Report on Other Legal and Regulatory Requirements

In accordance with the requirements of Proposition 39, as incorporated in California Constitution Article 13A, we have also issued our performance audit report dated August 2, 2024, on our consideration of the Bond Fund's compliance with the requirements of Proposition 39 with regards to the Measure U Building Fund (Fund 21-33). That report is an integral part of our audit of the Measure U Building Fund (Fund 21-33) for the fiscal year ended June 30, 2023, and should be considered in assessing the results of our financial audit.

Other Information

Management is responsible for the other information included in the introductory section of this report. The other information comprises the introductory section but does not include the basic financial statements and our auditor's report thereon. Our opinions on the basic financial statements do not cover the other information, and we do not express an opinion or any form of assurance thereon.

In connection with our audit of the basic financial statements, our responsibility is to read the other information and consider whether a material inconsistency exists between the other information and the basic financial statements, or the other information otherwise appears to be materially misstated. If, based on the work performed, we conclude that an uncorrected material misstatement of the other information exists, we are required to describe it in our report.

Restriction on Use

This report is intended solely for the information and use of management, the Citizens' Oversight Committee, the Board of Education, and others within the San Ysidro School District, and is not intended to be and should not be used by anyone other than these specified parties.

El Cajon, California
August 2, 2024

SAN YSIDRO SCHOOL DISTRICT
MEASURE U BUILDING FUND (21-33)
MANAGEMENT'S DISCUSSION AND ANALYSIS
JUNE 30, 2023
(Unaudited)

This section of the San Ysidro School Districts'(SYSD) Measure U Building Fund annual financial and performance report presents the discussion and analysis of the Measure U bond program during the fiscal year that ended June 30, 2023. This Management Discussion and Analysis (MD&A) should be read in conjunction with the Bond Fund's financial statements that immediately follow this section.

FINANCIAL HIGHLIGHTS

- The Measure U Building Fund expended $2,903,204 in capital expenditures and bond issuance costs during the year ended June 30, 2023.

OVERVIEW OF THE FINANCIAL STATEMENTS

This annual report consists of three parts – management discussion and analysis (this section), the financial statements, and the performance audit required by state law.

The District accounts for Measure U bond activity in the District's Building Fund. The Building Fund is a governmental fund type accounted for on a modified accrual basis of accounting.

FINANCIAL ANALYSIS OF MEASURE U BUILDING FUND

Balance Sheet

The District's Measure U Building Fund balance as of June 30, 2023, was $18,916,190 (see Table A-1). The funds are used to finance the modernization and construction of school sites.

Table A-1
Measure U Building Fund
Balance Sheet

	June 30, 2023	June 30, 2022	Change	Percentage Change
Assets				
Cash	$ 18,902,332	$ 19,477,110	$ (574,778)	-3%
Accounts receivable	-	45,233	(45,233)	100%
Due from other Fund	13,858	-	13,858	100%
Total Assets	$ 18,916,190	$ 19,522,343	$ (606,153)	-3%
Liabilities				
Accounts Payable	$ 1,971,064	$ -	$ 1,971,064	100%
Due to other funds	13,871	-	13,871	100%
Total Liabilities	1,984,935	-	1,984,935	100%
Fund Balance				
Restricted for capital projects	16,931,255	19,522,343	(2,591,088)	-13%
Total Fund Balance	16,931,255	19,522,343	(2,591,088)	-13%
Total Liabilities & Fund Balance	$ 18,916,190	$ 19,522,343	$ (606,153)	-3%

Fund Balance (or Change in Fund Balance)

The District's total Measure U Building Fund revenue and other sources increased by $312,128). The total expenditures and other uses were $2,903,204.

Table A-2
Measure U Building Fund
Changes in Fund Balance

	Year Ended June 30, 2023	Year Ended June 30, 2022	Change	Percentage Change
Revenues & Other Sources				
Interest Income	$ 348,711	$ 178,247	170,464	96%
Fair Market Value Adjustment	(36,583)	(576,659)	540,076	-94%
Total Revenues & Other Sources	312,128	(398,412)	710,540	-178%
Expenditures & Other Uses				
Capital Outlay	2,835,120	24,321	2,810,799	11557%
Plan check fees	68,084	67,500	584	1%
Total Expenditures & Other Uses	2,903,204	91,821	2,811,383	3062%
Change in Fund Balance	(2,591,075)	(490,233)	3,521,923	-718%
Fund Balance - Beginning	19,522,330	20,012,563	(490,233)	100%
Fund Balance - Ending	$ 16,931,255	$ 19,522,343	$ (2,591,089)	-13%

CAPITAL ASSETS

During the fiscal year ended June 30, 2023, SYSD expended $2,800,801 in capital expenditures from Measure U funds. These expenditures are part of the SYSD total capital assets as reflected in the District's separate financial audit.

LONG TERM DEBT

The following table presents a comparison of long-term debt associated with Measure U Building Fund:

	Year Ended June 30, 2023	Year Ended June 30, 2022	Change	Percentage Change
General Obligation Bonds				
Principal Balance	$ 16,805,000	$ 18,495,000	$ (1,690,000)	-9%
Bond Premium	2,170,400	2,269,808	(99,408)	-4%
Total Measure U GO Bonds	$ 18,975,400	$ 20,764,808	$ (1,789,408)	-9%

FACTORS BEARING ON THE BOND PROGRAM'S FUTURE

At the time these financial statements were prepared and audited, the District was aware of the existing circumstances that could affect its financial health in the future:

- Possible increases in building costs during construction

CONTACTING THE DISTRICT'S FINANCIAL MANAGEMENT

This financial report is designed to provide citizens, taxpayers, customers, investors, and creditors with a general overview of the Bond Fund's finances and to determine the Bond Fund's accountability for the money it receives. Additional financial information can be obtained by contacting the following:

Business Office
San Ysidro School District
4350 Otay Mesa Rd.
San Ysidro, CA 92173

Financial Statements

San Ysidro School District
Measure U Building Fund (21-33)
Balance Sheet
June 30, 2023

ASSETS		
Current Assets		
Cash in county treasury	$	18,902,332
Due from other fund		13,858
Total Current Assets		18,916,190
TOTAL ASSETS	$	18,916,190
LIABILITIES AND FUND BALANCE		
Current Liabilities		
Accounts payable	$	1,971,064
Due to other funds		13,871
Total Current Liabilities		1,984,935
Total Liabilities		1,984,935
Fund Balance		
Restricted for capital projects		16,931,255
Total Fund Balance		16,931,255
TOTAL LIABILITIES AND FUND BALANCE	$	18,916,190

The accompanying notes to the financial statements are an integral part of this statement.

San Ysidro School District
Measure U Building Fund (21-33)
Statement of Revenues, Expenditures, and Changes in Fund Balance
For the Year Ended June 30, 2023

REVENUES		
Interest income	$	348,711
FMV adjustment		(36,583)
TOTAL REVENUES		312,128
EXPENDITURES		
Plan check fees		68,084
Building & improvement		2,427,370
Equipment		407,750
TOTAL EXPENDITURES		2,903,204
NET CHANGE IN FUND BALANCE		(2,591,075)
FUND BALANCE, BEGINNING OF YEAR		19,522,330
FUND BALANCE, END OF YEAR	$	16,931,255

The accompanying notes to the financial statements are an integral part of this statement.

A. Summary of Significant Accounting Policies

San Ysidro School District Measure U Building Fund (21-33), hereinafter referred to as the "Bond Fund", accounts for its financial transactions in accordance with the policies and procedures of the California Department of Education's *California School Accounting Manual*. The accounting policies of the District conform to accounting principles generally accepted in the United States of America (GTP) as prescribed by the Governmental Accounting Standards Board (GASB) and the American Institute of Certified Public Accountants (AICPA).

1. Reporting Entity

The Bond Fund was formed to account for renovation of schools for San Ysidro School District (District), through expenditures of general obligation bonds issued under Measure U, authorized by registered voters on March 3, 2020.

The Bond Fund operates under a locally selected Citizens' Oversight Committee comprised of seven members formed in accordance with the Local School Construction Bonds Act of 2000, at Section 15264 *et seq.* of the Education Code, Proposition 39. The reporting entity consists only of the Bond Fund of the District. These financial statements are intended to present only the financial position and results of operations of the Bond Fund in conformity with accounting principles generally accepted in the United States of America, and accordingly do not present the financial position and results of operations of the District.

2. Basis of Accounting – Measurement Focus

Bond Fund. The bond fund is reported using the current financial resources measurement focus and the modified accrual basis of accounting. Under this method, revenues are recognized when measurable and available. The Bond Fund considers all revenues reported in the fund to be available if the revenues are collected within sixty days after year-end. Revenues from local sources consist primarily of interest earned. Investment earnings are recorded as earned, since they are both measurable and available. Expenditures are recorded when the related fund liability is incurred, except for principal and interest on general long-term debt, claims and judgments, and compensated absences, which are recognized as expenditures to the extent they have matured. General capital asset acquisitions are reported as expenditures in governmental funds. Proceeds from general long-term debt and acquisitions under capital leases are reported as other financing sources.

When the Bond Fund incurs an expenditure or expense for which both restricted and unrestricted resources may be used, it is the Bond Fund's policy to use restricted resources first, then unrestricted resources.

3. Encumbrances

Encumbrance accounting is used in the Bond Fund to reserve portions of applicable appropriations for which commitments have been made. Encumbrances are recorded for purchase orders, contracts, and other commitments when they are written. Encumbrances are liquidated when the commitments are paid or at year end, whichever is sooner.

4. Budgets and Budgetary Accounting

Annual budgets are adopted on a basis consistent with generally accepted accounting principles for the Bond Fund. By state law, the District's governing board must adopt a final budget no later than July 1st. A public hearing must be conducted to receive comments prior to adoption. The District's governing board has satisfied these requirements.

These budgets are revised by the District's governing board and district superintendent during the year to give consideration to unanticipated income and expenditures.

Formal budgetary integration was used as a management control device during the year for all budgeted funds. The District employs budget control by minor object and by individual appropriation accounts.

5. Revenues and Expenses

a. Revenues – Exchange and Non-Exchange

On a modified accrual basis, revenue is recorded in the fiscal year in which the resources are measurable and become available. Available means that the resources will be collected within the current year or expected to be collected soon enough thereafter, to be used to pay liabilities of the current fiscal year. Generally, available is defined as collectible within 60 days. However, to achieve comparability of reporting among California districts and so as to not distort normal revenue patterns, with specific respect to reimbursement grants and corrections to State-aid apportionments, the California Department of Education has defined available for districts as collectible within one year. The following revenue sources are considered to be both measurable and available at fiscal year-end: State apportionments, property taxes, interest, certain grants, and other local sources.

Non-exchange transactions are transactions in which the District receives value without directly giving equal value in return, including property taxes, certain grants, entitlements, and donations. Revenue from property taxes is recognized in the fiscal year in which the taxes are received. Revenue from certain grants, entitlements, and donations are recognized in the fiscal year in which all eligibility requirements have been satisfied. Eligibility requirements include time and purpose restrictions. On a modified accrual basis, revenue from non-exchange transactions must also be available before it can be recognized.

b. Expenditures

The measurement focus of governmental fund accounting is on decreases in net financial resources (expenditures) rather than expenses. Expenditures are generally recognized in the accounting period in which the related fund liability is incurred, if measurable, and typically paid within 90 days. Principal and interest on long-term obligations, which has not matured, are recognized when paid in the bond fund as expenditures. Allocations of costs, such as depreciation and amortization, are not recognized in the Bond Fund.

6. Assets, Deferred Outflows of Resources, Liabilities, Deferred Inflows of Resources, Fund Balance and Net Position

a. Deposits and Investments

Cash balances held in banks and in revolving funds are insured to $250,000 by the Federal Depository Insurance Corporation (FDIC). The Bond Fund does not have any cash held in banks or revolving fund. Highly liquid investments are considered to be cash equivalents if they have a maturity of three months or less when purchased.

In accordance with Education Code §42701, the Bond Fund maintains substantially all its cash in the San Diego County Treasury. The county pools these funds with those of other districts in the county and invests the cash. These pooled funds are carried at cost, which approximates market value. Interest earned is deposited quarterly into participating funds. Any investment losses are proportionately shared by all funds in the pool.

The county is authorized to deposit cash and invest excess funds by California Government Code §53648 et seq. The funds maintained by the county are either secured by federal depository insurance or are collateralized.

Information regarding the amount of dollars invested in derivatives with San Diego County Treasury was not available.

b. Interfund Activity

Interfund activity results from loans, services provided, reimbursements or transfers between funds of the District. Loans are reported as interfund receivables and payables as appropriate and are subject to elimination upon consolidation. Services provided, deemed to be at market or near market rates, are treated as revenues and expenditures or expenses. Reimbursements occur when one fund incurs a cost, charges the appropriate benefiting fund and reduces its related cost as a reimbursement. All other interfund transactions are treated as transfers.

c. Fund Balances – Governmental Funds

Fund balances of the Bond Fund are classified as follows:

Nonspendable Fund Balance represents amounts that cannot be spent because they are either not in spendable form (such as inventory or prepaid items) or legally required to remain intact (such as revolving cash accounts or principal of a permanent fund).

Restricted Fund Balance represents amounts that are subject to externally imposed and legally enforceable constraints. Such constraints may be imposed by creditors, grantors, contributors, or laws or regulations, or may be imposed by law through constitutional provisions or enabling legislation.

Committed Fund Balance represents amounts that can only be used for a specific purpose because of a formal action by the District's governing board. Committed amounts cannot be used for any other purpose unless the governing board removes those constraints by taking the same type of formal action. Committed fund balance amounts may be used for other purposes with appropriate due process by the governing board. Commitments are typically done through adoption and amendment of the budget or resolution. Committed fund balance amounts differ from restricted balances in that the constraints on their use do not come from outside parties, constitutional provisions, or enabling legislation.

Assigned Fund Balance represents amounts which the District intends to use for a specific purpose, but that do not meet the criteria to be classified as restricted or committed. Intent may be stipulated by the governing board or by an official or body to which the governing board delegates the authority. Specific amounts that are not restricted or committed in a special revenue, capital projects, debt service, or permanent fund are assigned for purposes in accordance with the nature of their fund type or the fund's primary purpose. Assignments within the general fund convey that the intended use of those amounts is for a specific purpose that is narrower than the general purposes of the District itself.

Unassigned Fund Balance represents amounts which are unconstrained in that they may be spent for any purpose. Only the general fund reports a positive unassigned fund balance. Other governmental funds might report a negative balance in this classification because of overspending for specific purposes for which amounts had been restricted, committed or assigned.

When an expenditure is incurred for a purpose for which both restricted and unrestricted fund balance is available, the District considers restricted funds to have been spent first. When an expenditure is incurred for which committed, assigned, or unassigned fund balances are available, the District considers amounts to have been spent first out of committed funds, then assigned funds, and finally unassigned funds.

7. Use of Estimates

The preparation of the financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results may differ from those estimates.

8. Fair Value Measurements

The Bond Fund categorizes its fair value measurements within the fair value hierarchy established by generally accepted accounting principles as defined by Governmental Accounting Standards Board (GASB) Statement No. 72. The hierarchy is based on the valuation inputs used to Measure Uhe fair value of the asset. The hierarchy is detailed as follows:

Level 1 Inputs:	Quoted prices (unadjusted) in active markets for identical assets or liabilities that a government can access at the measurement date.
Level 2 Inputs:	Inputs other than quoted prices included within Level 1 that are observable for an asset or liability, either directly or indirectly.
Level 3 Inputs:	Unobservable inputs to an asset or liability.

9. New Accounting Pronouncements

The Bond Fund has adopted accounting policies compliant with new pronouncements issued by the Government Accounting Standards Board (GASB) that are effective for the fiscal year ended June 30, 2023. Those newly implemented pronouncements are as follows:

Description	Date Issued
GASB Statement 91, Conduit Debt Obligations	05/2019
GASB Statement 94, Public-Private and Public-Public Partnerships and Availability Payment Arrangements	03/2020
GASB Statement 96, Subscription Based Information Technology Arrangements	05/2020
GASB Statement 99, Omnibus 2022 (Portions related to leases, PPPs, and SBITAs)	04/2022
GASB Implementation Guide 2021-1, Implementation Guidance Update - 2021 (Except Question 5.1)	05/2021

Implementation of these standards did not result in any changes to financial accounting or reporting for the Bond Fund.

B. Compliance and Accountability

1. Finance Related Legal and Contractual Provisions

In accordance with GASB Statement No. 38, "Certain Financial Statement Note Disclosures", violations of finance-related legal and contractual provisions, if any are reported below, along with actions taken to address such violations:

Violation	Action Taken
None Reported	Not Applicable

2. Deficit Fund Balance or Fund Net Position of Individual Funds

The following funds are funds having deficit fund balances or fund net position at year end, if any, along with remarks which address such deficits:

Fund Name	Deficit Amount	Remarks
None	Not Applicable	Not Applicable

C. Fair Value Measurements

The Bond Fund's investments at June 30, 2023, categorized within the fair value hierarchy established by generally accepted accounting principles, were as follows:

		Fair Value Measurement Using		
	Amount	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
External investment pools measured at fair value				
San Diego County Treasury	$ 18,902,332	$ -	$ 18,902,332	$ -
Total investments by fair value level	$ 18,902,332	$ -	$ 18,902,332	$ -

The Bond Fund is considered to be an involuntary participant in an external investment pool as the Bond Fund is required to deposit all receipts and collections of monies with their County Treasurer (Education Code §41001). The fair value of the Bond Fund's investments in the pool is reported in the accounting financial statements as amounts based upon the District's pro-rata share of the fair value provided by the County Treasurer for the entire portfolio (in relation to the amortized cost of the portfolio). The balance available for withdrawal is based on the accounting records maintained by the County Treasurer, which is recorded on the amortized cost basis.

The San Diego County Treasury is not registered with the Securities and Exchange Commission (SEC) as an investment company; however, the County Treasury acts in accordance with investment policies monitored by a Treasury Oversight Committee consisting of members appointed by participants in the investment pool and up to five members of the public having expertise, or an academic background in, public finance. In addition, the County Treasury is audited annually by an independent auditor.

D. Cash and Investments

1. Cash in County Treasury

In accordance with Education Code §41001, the Bond Fund maintains substantially all of its cash in the San Diego County Treasury as part of the common investment pool ($18,902,332 as of June 30, 2023). The fair value of the Bond Fund's portion of this pool as of that date, as provided by the pool sponsor, was $18,938,915. Assumptions made in determining the fair value of the pooled investment portfolios are available from the County Treasurer.

2. Investments Authorized by the California Government Code and the District's Investment Policy

The table below identifies the investment types that are authorized for the Bond Fund by the California Government Code (or the Bond Fund's investment policy, where more restrictive). The table also identifies certain provisions of the California Government Code (or the Bond Fund's investment policy where more restrictive) that address interest rate risk, credit risk, and concentration of credit risk. This table does not address investments of debt proceeds held by bond trustee that are governed by the provisions of debt agreements of the Bond Fund, rather than the general provisions of the California Government Code or the District's investment policy.

Authorized Investment Type	Maximum Remaining Maturity	Maximum Percentage of Portfolio	Maximum Investment in One Issuer
Local Agency Bonds, Notes, Warrants	5 Years	None	None
Registered State Bonds, Notes, Warrants	5 Years	None	None
U.S. Treasury Obligations	5 Years	None	None
U.S. Agency Securities	5 Years	None	None
Banker's Acceptance	180 Days	40%	30%
Commercial Paper	270 Days	25%	10%
Negotiable Certificates of Deposit	5 Years	30%	None
Repurchase Agreements	1 Year	None	None
Reverse Repurchase Agreements	92 Days	20% of Base	None
Medium-Term Corporate notes	5 Years	30%	None
Mutual Funds	N/A	20%	10%
Money Market Mutual Funds	N/A	20%	10%
Mortgage Pass-Through Securities	5 Years	20%	None
County Pooled Investment Funds	N/A	None	None
Local Agency Investment Fund	N/A	None	None
Joint Powers Authority Pools	N/A	None	None

3. Analysis of Specific Deposit and Investment Risks

GASB Statement No. 40 requires a determination as to whether the Bond Fund was exposed to the following specific investment risks at year end and if so, the reporting of certain related disclosures:

a. Credit Risk

Credit risk is the risk that an issuer or other counterparty to an investment will not fulfill its obligations. The county treasury is restricted by Government Code §53635 pursuant to §53601 to invest only in time deposits, U.S. government securities, state registered warrants, notes or bonds, State Treasurer's investment pool, bankers' acceptances, commercial paper, negotiable certificates of deposit, and repurchase or reverse repurchase agreements. The ratings of securities by nationally recognized rating agencies are designed to give an indication of risk.

At June 30, 2023, credit risk for the Bond Fund's investments was as follows:

Investment Type	Rating	Rating Agency	Amount
County Treasurer's Investment Pool	Unrated	Not Aplicable	$ 18,902,332

b. Custodial Credit Risk

Deposits are exposed to custodial credit risk if they are not covered by depository insurance and the deposits are uncollateralized, collateralized with securities held by the pledging financial institution, or collateralized with securities held by the pledging financial institution's trust department or agent but not in the Bond Fund's name. The California Government Code and the Bond Fund's investment policy do not contain legal or policy requirements that would limit the exposure to custodial credit risk for deposits, other than the following provision for deposits: The California Government Code requires that a financial institution secure deposits made by state or local governmental units by pledging securities in an undivided collateral pool held by a depository regulated under state law (unless so waived by the governmental unit). The market value of the pledged securities in the collateral pool must equal at least 110% of the total amount deposited by the public agencies. California law also allows financial institutions to secure deposits by pledging first trust deed mortgage notes having a value of 150% of the secured public deposits.

Investment securities are exposed to custodial credit risk if the securities are uninsured, are not registered in the name of the government, and are held by either the counterparty or the counterparty's trust department or agent but not in the Bond Fund's name.

At June 30, 2023, the Bond Fund was not exposed to custodial credit risk.

c. Concentration of Credit Risk

This risk is the risk of loss attributed to the magnitude of a government's investment in a single issuer. The investment policy of the Bond Fund contains no limitations on the amount that can be invested in any one issuer beyond the amount stipulated by the California Government Code. Investments in any one issuer that represent five percent or more of the total investments are either an external investment pool and are therefore exempt. As such, the Bond Fund was not exposed to concentration of credit risk.

d. Interest Rate Risk

This is the risk that changes in interest rates will adversely affect the fair value of an investment. Generally, the longer the maturity of an investment, the greater the sensitivity of its fair value to changes in market interest rates. The Bond Fund maintains pooled investments with the San Diego County Treasury with a fair value of $18,902,332. The average weighted maturity for this pool was 438 days at June 30, 2023.

e. Foreign Currency Risk

This is the risk that exchange rates will adversely affect the fair value of an investment. At year end, the Bond Fund was not exposed to foreign currency risk.

4. Investment Accounting Policy

The Bond Fund is required by GASB Statement No. 31 to disclose its policy for determining which investments, if any, are reported at amortized cost. The Bond Fund's general policy is to report money market investments and short-term participating interest-earning investment contracts at amortized cost and to report nonparticipating interest-earning investment contracts using a cost-based measure. However, if the fair value of an investment is significantly affected by the impairment of the credit standing of the issuer or by other factors, it is reported at fair value. All other investments are reported at fair value unless a legal contract exists which guarantees a higher value. The term "short-term" refers to investments which have a remaining term of one year or less at time of purchase. The term "nonparticipating" means that the investment's value does not vary with market interest rate changes. Nonnegotiable certificates of deposit are examples of nonparticipating interest-earning investment contracts.

The Bond Fund's investments in external investment pools are reported at an amount determined by the fair value per share of the pool's underlying portfolio, unless the pool is a 2a7-like, in which case they are reported at share value. A 2a7-like pool is one which is not registered with the Securities and Exchange Commission (SEC) as an investment company, but nevertheless has a policy that it will, and does, operate in a manner consistent with the SEC's Rule 2a7 of the Investment Company Act of 1940.

E. Accounts Receivable

As of June 30, 2023, there was no activity involving accounts receivable.

F. Accounts Payable

Accounts payable balances as of June 30, 2023, consisted of:

	Accounts Payable
Vendor payables	$ 1,971,064
Total Accounts Payable	$ 1,971,064

G. Interfund Balances and Activities

Interfund Receivable (Due From Other Funds)	Interfund Payable (Due To Other Funds)		Amount	Purpose
General Fund	Building Fund		$ 13,871	Reimburse expenditures
Building Fund	General Fund		13,858	Reimburse expenditures
		Total	$ 27,729	

As of June 30, 2023, there was interfund activities involving the Bond Fund Measure U.

H. Short Term Debt Activity

The Bond Fund accounts for short-term debts for maintenance purposes through the General Fund. The proceeds from loans are shown in the financial statements as other financing sources. The Bond Fund did not issue any short-term debt during the fiscal year ended June 30, 2023.

I. General Obligation Bonds

The District's bonded debt consists of various issues of general obligation bonds that are generally callable with interest payable semiannually. Bond proceeds pay primarily for acquiring or constructing capital facilities. The District repays general obligation bonds from voter-approved property taxes.

In March 2020 registered voters authorized the issuance of $55,500,000 principal amount of general obligation bonds. As of June 30, 2023, $35,500,000 of the authorized remains available for issue.

General obligation bonds at June 30, 2023 consisted of the following:

	Date of Issue	Interest Rate	Maturity Date	Amount of Original Issue
2020 Election Series A	09/03/20	2.140-4.00%	08/01/45	$ 20,000,000
Total General Obligation Bonds				$ 20,000,000

	Beginning Balance	Increases	Decreases	Ending Balance	Amounts Due Within One Year
2020 Election Series A					
Principal	$ 18,495,000	$ -	$ 1,690,000	$ 16,805,000	$ 810,000
Premium	2,269,808	-	99,408	2,170,400	19,022
Total General Obligation Bonds	$ 20,764,808	$ -	$ 1,789,408	$ 18,975,400	$ 829,022

The annual requirements to amortize the bonds outstanding at June 30, 2023 are as follows:

Year Ended June 30,	Principal	Interest	Total
2024	810,000	656,000	1,466,000
2025	155,000	636,700	791,700
2026	190,000	629,800	819,800
2027	225,000	621,500	846,500
2028	265,000	611,700	876,700
2029-2033	2,000,000	2,851,600	4,851,600
2034-2038	3,420,000	2,316,600	5,736,600
2039-2043	5,350,000	1,448,000	6,798,000
2044-2048	4,390,000	272,200	4,662,200
Total	$ 16,805,000	$ 10,044,100	$ 26,849,100

Premium/Discount

Bond premium arises when the market rate of interest is higher than the stated interest rate on the bond. Bond discount arises when the market rate of interest is lower than the stated interest rate on the bond. Generally Accepted Accounting Principles (GTP) require that the premium increase the face value of the bond and the discount decrease the face value of the bond. The premium and discount are then amortized over the life of the bond using the economic interest method.

Effective interest on general obligation bonds issued at a premium/discount are as follows:

	2020 Election Series A
Total Interest Payments	$ 11,487,125
Less Bond Premium	(2,454,509)
Net Interest Payments	9,032,616
Par Amount of Bonds	20,000,000
Periods	25
Effective Interest Rate	1.81%

J. Commitments and Contingencies

1. Litigation

The District is involved in various litigation arising from the normal course of business. In the opinion of management and legal counsel, the disposition of all litigation pending is not expected to have a material adverse effect on the overall financial position of the Bond Fund as of June 30, 2023.

2. Construction Commitments

As of June 30, 2023, the Bond Fund had no outstanding construction commitments.

	Remaining Commitment	Expected Date of Completion*
Construction in Process:		
Beyer Property Community Center	$ 12,050,000	December 2026
San Ysidro Middle School Modernization	49,790,433	December 2026
Total	$ 61,840,433	

*Expected date of completion is subject to change.

K. Upcoming Accounting Guidance

The Governmental Accounting Standards Board (GASB) issues pronouncements and additional guidance for governmental agencies to establish consistent accounting across all governments in the United States. The following table represents items that have been issued by GASB that will become effective in future periods:

Description	Date Issued	Fiscal Year Effective
GASB Statement 99, Omnibus 2022 (Portions related to financial guarantees and derivative instruments)	04/2022	2024-25
GASB Statement 100, Accounting Changes for Error Corrections	06/2022	2024-25
GASB Statement 101, Compensated Absences	06/2022	2024-25
GASB Implementation Guide 2021-1, Implementation Guidance Update - 2021 (Question 5.1)	05/2021	2024-25
GASB Implementation Guide 2023-1, Implementation Guidance Update - 2023	06/2023	2024-25

The effects of the upcoming guidance and pronouncements on the District's financial statements has not yet been determined.

Other Independent Auditors' Reports

WILKINSON HADLEY KING & CO. LLP
CPAS AND ADVISORS
El Cajon, CA | Berkeley, CA

Brian K. Hadley, CPA
Aubrey W. Mann, CPA
Kevin A. Sproul, CPA

Independent Auditor's Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*

To the Citizens' Oversight Committee
San Ysidro School District
Measure U Building Fund (21-33)
San Ysidro, California

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the San Ysidro School District Measure U Building Fund (Bond Fund), which comprise the Balance Sheet and Statement of Revenues, Expenditures, and Changes in Fund Balance as of and for the year ended June 30, 2023, and the related notes to the financial statements, which collectively comprise San Ysidro School District Measure U Building Fund's basic financial statements, and have issued our report thereon dated August 2, 2024.

Internal Control over Financial Reporting

In planning and performing our audit of the financial statements, we considered San Ysidro School District Measure U Building Fund's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of San Ysidro School District Measure U Building Fund's internal control. Accordingly, we do not express an opinion on the effectiveness of San Ysidro School District Measure U Building Fund's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been detected.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether San Ysidro School District Measure U Building Fund's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Bond Fund's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Bond Fund's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

El Cajon, California
August 2, 2024

WILKINSON HADLEY KING & CO. LLP
CPAS AND ADVISORS
El Cajon, CA | Berkeley, CA

Brian K. Hadley, CPA
Aubrey W. Mann, CPA
Kevin A. Sproul, CPA

Independent Auditor's Report on Performance

To the Citizens' Oversight Committee
San Ysidro School District
Measure U Building Fund (21-33)
San Ysidro, California

Performance Results

We were engaged to conduct a performance audit of the San Ysidro School District Measure U Building Fund (Fund 21-33), herein after referred to as the Bond Fund, for the year ended June 30, 2023. Our audit was limited to the objectives listed with the report which includes the District's compliance with the performance requirements as referred to in Proposition 39 and outlined in Article XIIIA, Section 1(b)(3)(C) of the California Constitution.

The results of our tests, delineated below, showed an instance of noncompliance with the requirements as set forth in Measure U, approved by voters on November 6, 2018 in accordance with Proposition 39 as outlined in Article XIIIA, Section 1(b)(3)(c) of the California Constitution, as noted in the Schedule of Findings and Questioned Costs.

Responsibilities of Management for Performance

Management is responsible for compliance with the requirements referred to above and for the design, implementation, and maintenance of effective internal control over compliance with the requirements of laws, statutes, regulations, rules, and provisions of contracts or grant agreements applicable to the Bond Fund.

Auditor's Responsibility for the Performance Audit

Our responsibility is to prepare a report that contains (1) the objectives, scope, and methodology of the audit; (2) the audit results, including findings, conclusions, and recommendations as appropriate; (3) summary reviews of responsible officials; and (4) if applicable, the nature of any confidential or sensitive information omitted.

We conducted this performance audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to performance audits contained in Government Auditing Standards, issued by the Comptroller General of the United States and the *Appendix A of the 2022-23 Guide for Annual Audits of K-12 Local Education Agencies* (the Audit Guide). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our conclusions based on our audit objectives.

In planning and performing our performance audit, we obtained an understanding of the District's internal controls over the Bond Fund and related construction projects in order to determine if the internal controls were adequate to help ensure the District's compliance with the requirements of Proposition 39, but not for the purpose of expressing an opinion on the effectiveness of the Bond Fund's internal control. Accordingly, we do not express an opinion on the effectiveness of the Bond Fund's internal control.

We believe the audit evidence we have obtained is sufficient and appropriate to provide a reasonable basis for our findings and conclusions based upon the audit objectives.

Our audit was designed to obtain reasonable assurance about whether material noncompliance with the compliance requirements referred to above have occurred, whether due to fraud or error, and to express the findings and conclusions based on our audit. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards, Government Auditing Standards, and the Audit Guide will always detect material noncompliance when it exists.

The risk of not detecting material noncompliance resulting from fraud is higher than for that resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Noncompliance with the compliance requirements referred to above is considered material if there is a substantial likelihood that, individually or in the aggregate, it would influence the judgment made by a reasonable user of the report on compliance about the District's compliance with the requirements of Measure A as a whole.

In performing an audit in accordance with generally accepted auditing standards, *Government Auditing Standards*, and the Audit Guide, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.

- Identify and assess the risks of material noncompliance, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the District's compliance with the requirements referred to above and performing such other procedures as we considered necessary in the circumstances.

- Obtain an understanding of the District's internal control over the Bond Fund relevant to the audit in order to design audit procedures that are appropriate in the circumstances and to test and report on internal control over compliance in accordance with the Audit Guide, but not for the purpose of expressing an opinion on the effectiveness of the District's internal control over compliance. Accordingly, no such opinion is expressed.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and any significant deficiencies and material weaknesses in internal control over compliance that we identified during the audit.

Objectives, Scope, & Methodology of the Audit

In connection with our performance audit, we performed an audit for compliance as required in the performance requirements set forth in Measure A as approved by registered voters for the fiscal year ended June 30, 2023. The objective of the audit of compliance applicable to the Bond Fund is to determine with reasonable assurance that:

- The proceeds from the sale of Measure A General Obligation Bonds were only used for the purposes set forth in the ballot Measure A and not for any other purpose, such as teacher and administrative salaries.

- The Governing Board of the Heber Elementary School District (District), in establishing approved projects set forth in the ballot measure to modernize, replace, renovate, construct, acquire, equip, furnish and otherwise improve facilities of the District as noted in the bond project list.

Performance Audit Procedures Performed & Results:

1. **Internal Control Evaluation**

   Procedure Performed

   Inquiries were made of management regarding internal controls to:

   - Prevent fraud, waste, or abuse regarding project resources
   - Prevent material misstatement in the project funds
   - Ensure all expenditures are properly allocated
   - Ensure adequate separation of duties exists in the accounting of project funds. All purchase requisitions are reviewed for proper supporting documentation. The Facilities Director or appropriate District employee submits back up information to the business office to initiate a purchase requisition. The Project Manager, Deputy Superintendent, and Accounting Manager verifies that the requested purchase is an allowable project cost in accordance with the grant agreement.

   Results of Procedure Performed

   The results of our audit determined the internal control procedures as designed are sufficient to meet the financial and compliance objectives required by generally accepted accounting principles and applicable laws and regulations.

   Procedure Performed

   Tests of controls were performed based on identified controls from procedures above, utilizing samples of expenditures with a sample size sufficient for a high level of assurance, to determine if internal controls as designed are properly implemented and in place over the Bond Fund expenditures.

   Results of Procedure Performed

   The results of our audit determined that the internal controls as designed were properly implemented during the 2022-23 fiscal year.

2. **Tests of Expenditures**

   Procedures Performed

   We tested expenditures to determine whether Measure U proceeds were spent solely on voter and board approved school facilities projects as set forth in the Bond Project List and language of the Measure U ballot measure language. Our testing was performed using a sample size sufficient to meet a high level of assurance.

   Results of Procedures Performed

   Expenditures tested were found to be in compliance with the terms of the Measure U ballot measure as well as applicable state laws and regulations.

3. Tests of Contracts and Bid Procedures

Procedures Performed

We tested expenditures under Measure A to determine if the expenditure was part of a valid contract, that the contract was properly approved by the District's Governing Board, and that the contract was established in compliance with Public Contract Code provisions, including bid procedures. Our testing was performed using a sample size sufficient to meet a high level of assurance.

Results of Procedures Performed

Expenditures tested were found to have valid contracts which were issued through proper approval of the District's Governing Board in compliance with Public Contract Code, including bid procedures.

4. Facilities Site Review

Procedures Performed

We reviewed the Independent Citizens' Oversight Committee minutes and agendas along with other pertinent information on Measure A designated projects to determine whether the funds expended for the year ended June 30, 2023, were for valid facilities acquisition and construction purposes as stated in the Bond Project List. Additionally, we reviewed photographs of significant bond projects to determine whether projects were being completed as identified in the Bond Project List.

Results of Procedures Performed

Based on review of expenditure documentation, review of project photographs, and other pertinent information provided, it appears the construction work performed was consistent with the Bond Project List as well as the allowable projects as identified in Measure A ballot measures.

5. Review of Citizens' Oversight Committee Compliance

Procedures Performed

We reviewed the minutes of the Citizens' Oversight Committee meetings to verify compliance with Education Code Section 15278 which requires the Citizens' Oversight Committee to:

- Actively review and report on the proper expenditure of taxpayers' money for school construction.
- Advise the public as to whether the District is in compliance with paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.
- Ensure that bond revenues are expended only for purposes described in paragraph (3) of subdivision
  (b) of Section 1 of Article XIII A of the California Constitution.
- Ensure that no funds are used for any teacher or administrative salaries or other school operating expenses.

Additionally, Education Code Section 15278 authorizes the Citizens' Oversight Committee to:

- Receive and review copies of the annual, independent performance audit.
- Inspect school facilities and grounds to ensure that bond revenues are expended in compliance with the requirements described in paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.
- Receive and review copies of any deferred maintenance proposals or plans developed by the District.
- Review efforts by the District to maximize bond revenues by implementing cost saving measures.

Results of Procedures Performed

The Citizens' Oversight Committee appears to have complied with the requirements of Education Code Section 15278.

Procedure Performed

We reviewed composition of the Citizens' Oversight Committee to verify compliance with Education Code Section 15282 which requires the following:

- The Citizens' Oversight Committee shall consist of at least seven members who shall serve for a minimum term of two years without compensation and for no more than three consecutive terms.
- One member shall be active in a business organization representing the business community located within the school district boundaries.
- One member shall be active in a senior citizens' organization.
- One member shall be active in a bona fide taxpayers' organization.
- One member shall be the parent or guardian of a child enrolled in the school district.
- One member shall be both a parent or guardian of a child enrolled in the school district and active in a parent-teacher organization.
- An employee or official of the school district shall not be appointed to the citizens' oversight committee.
- A vendor, contractor, or consultant of the school district shall not be appointed to the citizens' oversight committee.

Results of Procedures Performed

The Citizens' Oversight Committee did not comply with the requirements of Education Code Section 15282, stated in Finding 2023-001.

Nature of any Confidential or Sensitive Information Omitted

There was no confidential or sensitive information omitted from this report.

Purpose of the Report

This report is intended solely for the information and use of the District's Governing Board, the Measure A Citizens' Oversight Committee, management, and others within the District and is not intended to be and should not be used by anyone other than these specified parties.

El Cajon, California
August 2, 2024

Auditor’s Results, Findings & Recommendations

San Ysidro School District
Measure U Building Fund (21-33)
Schedule of Auditor's Results
Year Ended June 30, 2023

FINANCIAL STATEMENTS

Type of auditor's report issued:	Unmodified	
Internal control over financial reporting:		
One or more material weakness(es) identified?	____ Yes	X No
One or more significant deficiencies identified that are not considered material weakness(es)?	____ Yes	X No
Noncompliance material to financial statements noted?	____ Yes	X No

PERFORMANCE AUDIT

Any audit findings disclosed that are reported as a result of performance audit and in accordance with *2022-23 Guide for for Annual Audits of California K-12 Local Education Agencies, Appendix A Local Construction Bond Audits?*	X Yes	____ No
Type of auditor's report issued on compliance for state programs:	Unmodified	

Findings represent significant deficiencies, material weaknesses, and/or instances of noncompliance related to the financial statements or performance audit that are required to be reported in accordance with *Government Auditing Standards,* or *Appendix A of the 2022-23 Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting*.

Internal Control Findings

None

Compliance Findings

As stated in our *Independent Auditor's Report on Performance*, our tests resulted in Finding 2023-001 related to the performance audit of the Measure U Building Fund for the year ended June 30, 2023.

Finding 2023-001

We are bringing to management's attention the following exceptions and procedural requirements relating to the composition of the Citizens' Bond Oversight Committee:

Criteria or Specific Requirement: Proposition 39 Bond Law requires the Citizens Bond Oversight Committee to be comprised of at least seven members who meet the following criteria:

- One member must be active in a business organization within the District's boundaries that represents the business community as a whole
- One member must be active in a senior citizens association
- One member must be a parent/guardian of a child enrolled in the District
- One member must be a parent/guardian of a child enrolled in the District and is an active participant in the Parent Teachers Organization
- One member must be active in a bona fide taxpayer's organization

Proposition 39 Bond Law also requires the Citizens Bond Oversight Committee to have at least one annual meeting with quorum and to approve an annual report summarizing activity.

Condition: During our review of the Citizens' Bond Oversight Committee member listing, we noted there was not a committee member that was active in a senior citizen association.

Questioned Costs: The finding relates to an aspect of non-compliance and there is no associated questioned costs.

Cause: The District has been unable to locate a member that is active in a senior citizens association willing to participate in the Citizens' Bond Oversight Committee.

Effect: The District is out of compliance with Proposition 39 Bond Law and regulations.

Recommendation: We recommend the District attempt to obtain the required number of members with required positions. Continue to advertise and attempt to recruit a community member that is active in a senior citizen association.

Corrective Action Plan: The District is aware of and agrees with the finding. The District is actively searching for candidates through various local publications and conducting interviews for qualified individuals. The District will continue to pursue potential members fitting the criteria as established by Proposition 39 Bond Law.

San Ysidro School District
Measure U Building Fund (21-33)

Schedule of Prior Year Audit Findings
Year Ended June 30, 2023

There were no audit findings identified in the prior year audit.

SAN YSIDRO SCHOOL DISTRICT

GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Governing Board President,
Irene Lopez

☐ Informational
☒ Action

AGENDA ITEM: EIGHTH AMENDMENT TO EMPLOYMENT AGREEMENT WITH SUPERINTENDENT

BACKGROUND INFORMATION:

On May 10, 2018, the Board approved the Employment Agreement with Superintendent Gina A. Potter, Ed.D., effective May 14, 2018. The Board evaluated Dr. Potter at the Special Board Meetings of May 9, 2019, June 6, 2019, May 12, 2020, June 18, 2020, and April 15, 2021, and the Regular Board Meeting of May 13, 2021.

- The Board approved Amendment No. 1 at the July 11, 2019, Regular Board Meeting.
- The Board approved Amendment No. 2 at the March 12, 2020, Regular Board Meeting.
- The Board approved Amendment No. 3 at the June 25, 2020, Regular Board Meeting.
- The Board approved Amendment No. 4 at the June 10, 2021, Regular Board Meeting.
- The Board approved Amendment No. 5 at the May 19, 2022, Regular Board Meeting.
- The Board approved Amendment No. 6 at the August 11, 2022, Regular Board Meeting.
- The Board approved Amendment No. 7 at the September 7, 2023, Regular Board Meeting.

The Board will consider approving amendments to the Superintendent's Employment Agreement as outlined below:

1. Section 1 (TERM)
2. Section 2 (SALARY)

RECOMMENDATION:

The Board will take action on the eighth amendment to the Superintendent's employment agreement.

LCAP GOAL AND ACTION/SERVICE (please indicate):

☐ **Renewal** ☐ **New** ☒ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications? ☒ Yes ☐ No

Are funds for this item available in the 2024-2025 Budget? ☒ Yes ☐ No

Requisition #

As outlined in the Constract	General Fund
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

AMENDMENT NO. 8

SUPERINTENDENT EMPLOYMENT AGREEMENT BETWEEN THE SAN YSIDRO SCHOOL DISTRICT AND GINA ACOSTA POTTER

THE SUPERINTENDENT EMPLOYMENT AGREEMENT BETWEEN THE SAN YSIDRO SCHOOL DISTRICT ("DISTRICT") AND GINA ACOSTA POTTER ("SUPERINTENDENT") DATED MAY 10, 2018 AND AMENDED ON JULY 11, 2019, MARCH 12, 2020, JUNE 25, 2020, JUNE 10, 2021, MAY 19, 2022, August 11, 2022, and September 7, 2023 IS HEREBY AMENDED AS FOLLOWS*:*

1. **Section 1 (TERM):** The end date of the Agreement shall be extended to June 30, 2028.

   Section 2 (SALARY): The SUPERINTENDENT'S annual base salary shall be increased by 4% to $231,417.34, retroactive to January 1, 2024. The SUPERINTENDENT'S annual base salary shall be increased by 2% to $236,045.68 effective January 1, 2025.
2. Except as expressly amended herein, all other terms and conditions of the Agreement shall remain in full force and effect.

These amendments have been mutually agreed upon by the parties.

SAN YSIDRO SCHOOL DISTRICT

_____ _____

Irene Lopez, Board President Date

SUPERINTENDENT

_____ _____

Gina Acosta Potter Date

CURRICULUM AND INSTRUCTION

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Educational Services
Russell Little, Assistant Superintendent

☐ Informational
☒ Action

AGENDA ITEM: APPROVAL OF SAN YSIDRO SCHOOL DISTRICT INSTRUCTIONAL MATERIALS LIST FOR THE 2024-2025 SCHOOL YEAR

BACKGROUND INFORMATION:
In 2000, a lawsuit against the State of California, State Board of Education and California Department of Education claimed that the State failed to provide poor and under privileged students with equal educational opportunities. All California schools are now impacted by the result of the Williams Lawsuit Settlement, enacted into law in September 2004. The law seeks to ensure that all students have equal access to the basics of a quality education, including textbooks and instructional materials, safe and decent school facilities, and qualified teachers. Each year during the first 2 weeks of school, selected schools are visited to ensure that the sites meet all the requirements of Williams Settlement.

San Ysidro Middle School will have William's visit at the beginning of the 2024-2025 school year. It is a state requirement that the Governing Board approves the list of instructional materials for our District.

RECOMMENDATION:
Approve the San Ysidro School District Instructional Materials/Textbook List for the 2024-2025 school year.

LCAP GOAL AND ACTION/SERVICE:
Goal 1: Student Achievement - Improve student achievement for all students and accelerate student learning increases for English Learners and students with disabilities.

☐ **Renewal** ☒ **New** ☐ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☐ Yes ☒ No	☐ Yes ☐ No	

N/A	N/A
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

Superintendent's Office Certification:

San Ysidro School District Instructional Materials 2024-2025

Board approved 08/08/2024

Grade	Program	Instructional Materials/Textbooks and Copyright Dates	
TK (Transitional Kinder)	English Mainstream and SEI	English Language Arts Mathematics Science History/Social Science ELD	Benchmark Advance - 2018 or e-book McGraw-Hill My Math - 2016 or e-book TWIG Science - 2023 or e-book Scholastic Big Day--2010 Benchmark Advance English Language Development – 2018 or e-book
Kinder	English Mainstream, SEI, and SDC	English Language Arts Mathematics Science History/Social Science ELD	Benchmark Advance 2022 or e-book McGraw-Hill My Math - 2016 or e-book TWIG Science - 2023 or e-book Savvas, History Social Science CA myWorld Interactive 2019 or e-book Benchmark Advance-2022: Asset-Based Access to English-Express or e-book
	Dual Language	Language Arts Mathematics Science History/Social Science ELD	Benchmark Advance 2022, Benchmark Adelante (Spanish) - 2023 or e-book McGraw-Hill My Math - 2016 or e-book TWIG Science (Spanish) - 2023 or e-book Savvas, History Social Science CA myWorld Interactive 2019 or e-book Benchmark Advance-2022: Asset-Based Access to English-Express or e-book
First Grade	English Mainstream, SEI, and SDC	English Language Arts Mathematics Science History/Social Science ELD	Benchmark Advance 2022 or e-book McGraw-Hill My Math - 2016 or e-book TWIG Science (Spanish) - 2023 or e-book Savvas, History Social Science CA myWorld Interactive 2019 or e-book Benchmark Advance-2022: Asset-Based Access to English-Express or e-book
	Dual Language	Language Arts Mathematics Science History/Social Science ELD	Benchmark Advance 2022, Benchmark Adelante (Spanish) - 2023 or e-book McGraw-Hill My Math - 2016 or e-book TWIG Science (Spanish) - 2023 or e-book Savvas, History Social Science CA myWorld Interactive 2019 or e-book Benchmark Advance-2022: Asset-Based Access to English-Express or e-book

Grade	Program	Instructional Materials/Textbooks and Copyright Dates	
Second Grade	English Mainstream, SEI, and SDC	English Language Arts Mathematics Science History/Social Science ELD	Benchmark Advance 2022 or e-book, Benchmark Steps to Advance-2023(SDC) or e-book McGraw-Hill My Math - 2016 or e-book TWIG Science - 2023 or e-book Savvas, History Social Science CA myWorld Interactive 2019 or e-book Benchmark Advance-2022: Asset-Based Access to English-Express or e-book
	Dual Language	Language Arts Mathematics Science History/Social Science	Benchmark Advance 2022, Benchmark Adelante (Spanish) - 2023 or e-book McGraw-Hill My Math - 2016 or e-book TWIG Science (Spanish) - 2023 or e-book Savvas, History Social Science CA myWorld Interactive 2019 or e-book ELD Benchmark Advance-2022: Asset-Based Access to English-Express or e-book
Third Grade	English Mainstream, SEI, and SDC	English Language Arts Mathematics Science History/Social Science ELD	Benchmark Advance 2022 or e-book, Benchmark Steps to Advance-2023(SDC) or e-book McGraw-Hill My Math - 2016 or e-book TWIG Science - 2023 or e-book Savvas, History Social Science CA myWorld Interactive 2019 or e-book Benchmark Advance-2022: Asset-Based Access to English-Express or e-book
	Dual Language	Language Arts Mathematics Science History/Social Science ELD	Benchmark Advance 2022, Benchmark Adelante (Spanish) - 2023 or e-book McGraw-Hill My Math - 2016 or e-book TWIG Science (Spanish) - 2023 or e-book Savvas, History Social Science CA myWorld Interactive 2019 or e-book Benchmark Advance-2022: Asset-Based Access to English-Express or e-book
Fourth Grade	English Mainstream, SEI, and SDC	English Language Arts Mathematics Science History/Social Science ELD	Benchmark Advance 2022 or e-book, Benchmark Steps to Advance-2023(SDC) or e-book McGraw-Hill My Math - 2016 or e-book TWIG Science - 2023 or e-book Savvas, History Social Science CA myWorld Interactive 2019 or e-book Benchmark Advance-2022: Asset-Based Access to English-Express or e-book
	Dual Language	Language Arts Mathematics Science History/Social Science ELD	Benchmark Advance 2022, Benchmark Adelante (Spanish) - 2023 or e-book McGraw-Hill My Math - 2016 or e-book TWIG Science - 2023 or e-book Savvas, History Social Science CA (Spanish) myWorld Interactive 2019 or e-book Benchmark Advance-2022: Asset-Based Access to English-Express or e-book

Grade	Program	Instructional Materials/Textbooks and Copyright Dates	
Fifth Grade	English Mainstream, SEI, and SDC	English Language Arts Mathematics Science History/Social Science ELD	Benchmark Advance 2022 or e-book, Benchmark Steps to Advance-2023(SDC) or e-book McGraw-Hill My Math - 2016 or e-book TWIG Science - 2023 or e-book Savvas, History Social Science CA myWorld Interactive 2019 or e-book Benchmark Advance-2022: Asset-Based Access to English-Express or e-book
	Dual Language	Language Arts Mathematics Science History/Social Science ELD	Benchmark Advance 2022, Benchmark Adelante (Spanish) - 2023 or e-book McGraw-Hill My Math - 2016 or e-book TWIG Science - 2023 or e-book Savvas, History Social Science CA (Spanish) myWorld Interactive 2019 or e-book Benchmark Advance-2022: Asset-Based Access to English-Express or e-book
Sixth Grade	English Mainstream and SEI	English Language Arts Mathematics Science History/Social Science ELD	Benchmark Advance 2022 or e-book, Benchmark Steps to Advance-2023(SDC) or e-book College Board Springboard – 2017 or e-book McGraw Hill: California Inspire Science - *2023 – Earth and Space* or e-book Savvas/Pearson, CA History Social Science myWorld Interactive Secondary 2019 or e-book Benchmark Advance-2022: Asset-Based Access to English-Express or e-book
	Dual Language	Language Arts Mathematics Science History/Social Science ELD	Benchmark Advance 2022, Benchmark Adelante (Spanish) - 2023 or e-book College Board Springboard - 2017 or e-book McGraw Hill: California Inspire Science - *2023 – Earth and Space* or e-book Savvas/Pearson, CA History Social Science (Spanish) myWorld Interactive Secondary 2019 or e-book Benchmark Advance-2022: Asset-Based Access to English-Express or e-book

Grade	Program	Instructional Materials/Textbooks and Copyright Dates
Seventh Grade	English Language Arts *English Mainstream, SEI, and SDC*	Amplify ELA -2018 or e-book
	ELD	ELD Amplify Interactive Reader & Study Teacher Guide - 2018 or e-book
	Mathematics	College Board SpringBoard - 2017 or e-book
	History/Social Science	*McGrawHill Impact CA* - 2023 *– World History & Geography: Medieval and Early Modern Times* or e-book
	Science	McGraw Hill: California Inspire Science - *2023 – Life Science* or e-book
	Elective	Spanish — Vista Higher Learning - Senderos 2023 or e-book
Eighth Grade	English Language Arts *English Mainstream, SEI, and SDC*	Amplify ELA -2018 or e-book
	ELD	ELD Amplify Interactive Reader & Study Teacher Guide - 2018 or e-book
	Mathematics	College Board SpringBoard - 2017 or e-book
	History/Social Science	*McGrawHill Impact CA* - 2023 *– United States History & Geography: Growth and Conflict* or e-book
	Science	McGraw Hill: California Inspire Science - *2023 – Physical Science* or e-book
	Elective	Spanish — Vista Higher Learning - Senderos 2023 or e-book

Revised August 2016 per Williams team suggestions – Revised July 2017 per Math adoption – Revised July 2020 per ELA/ELD adoption – Revised July 2021 per Science Pilot, Revised July 2022 per Science & HHS pilot – Revised 2023: Science and HSS adoption and Benchmark's new version.
Revised 2024: History Social Studies adoption TK-6 & New Spanish materials for 7th & 8th grade.

NOTE: The following comprehensive ELA instructional materials will be used to instruct grade-level ELA Common Core standards as specified by the San Ysidro School District matrices:

1. Benchmark Advance (including ELD component)
2. Benchmark Adelante
3. Benchmark Steps to Advance
4. Amplify ELA + ELD
5. Dual Language classes will indicate language for curriculum

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Educational Services
Russell Little, Assistant Superintendent

☐ Informational
☒ Action

AGENDA ITEM: SERVICES FROM EDUPOINT EDUCATIONAL SYSTEMS, LLC

BACKGROUND INFORMATION:
Edupoint Educational Systems provides enterprise software solutions for K-12 data management, built on the most advanced technology in the industry. For more than thirty years, the founders of Edupoint have set the standard for student information and instructional management solutions, with market-leading products designed to optimize district and student performance.

Educational Services is requesting approval to purchase the following services from Edupoint Educational Systems, LLC:

- SSIS Package to export data files to Educlimber including: ▪ Attendance, ▪ Rosters, ▪ TermGrades Elementary, ▪ TermGrades Secondary, and ▪ Behavior Incidents.

RECOMMENDATION:
Approve the services from Edupoint Educational Systems, LLC for Educational Services at the total cost of $1,500.00 from the General fund.

LCAP GOAL AND ACTION/SERVICE:
Goal 1: Student Achievement and Goal 2: School Culture, Climate and Student Well-Being

☐ **Renewal** ☒ **New** ☐ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

$1,500.00	General Fund
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

1955 South Val Vista Drive, Suite 200
Mesa, Arizona 85204
Price Quote

Date:	7/31/2024
Quote Number:	715634-1
School District:	San Ysidro School District
	Carolina Jaime
	4350 Otay Mesa Rd.
	San Ysidro, CA 92173
	(619) 428-4476 ext 3054
	Carolina.jaime@sysdschools.org

Statement of Work: Create a SSIS package to export nightly the following 5 files to Educlimber as csv files.

- Attendance.csv
- Rosters.csv
- TermGradesElem.csv
- TermGradesSec.csv
- BehaviorIncident.csv

Services Delivery Method:	Remote
Date(s):	To be completed by September 30, 2024
Specialist:	Mike Halgren

Fee:	1 Day at $1,500 per day	$1,500
		$1,500

Estimated completion date is dependent upon receipt of the signed quote no later than August 30, 2024.
If applicable, Sales Tax will be applied.
The District will be invoiced as services are performed.
The District will be responsible for all travel expenses incurred for service days. Travel services will be billed as incurred.
If a travel day is required the day before or the day after services are performed, the travel day will be charged at $400/day.
A Purchase Order is needed along with this signed quote to proceed.

Acceptance

District Representative — Date: August 1, 2024

Edupoint Representative — Date

This quotation is valid for thirty (30) days, unless otherwise extended in writing by an authorized representative of Edupoint Educational Systems, LLC.

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Educational Services,
Russell Little, Assistant Superintendent

☐ Informational
☒ Action

AGENDA ITEM: PROFESSIONAL DEVELOPMENTS

BACKGROUND INFORMATION:

In order to stay in compliance with State, Federal and local laws, our staff at the different sites and/or departments will participate in diverse professional developments throughout the year. These trainings/conferences and/or workshops will give our staff the opportunity to be better prepared and will reflect in the academic success of our students.

The following is a list of professional developments up for the August 8, 2024, Board meeting:

- An Introduction to the What's & Not's of Attention Deficit Hyperactivity Disorder (ADHD) and Implications
- CABE English Language Development Teacher Academy Virtual Series
- Developing and Strengthening Programs and Services for LTELS
- Developing and Strengthening Programs and Services for Newcomers
- Evidence-Based Practices for Students with Autism Spectrum Disorder and Extensive Support Needs (ESN)
- Interpreters and Translators Conference
- LCAP – From Accountability to Compliance
- LCFF 101 – For Beginners
- Project GLAD Part 1: Research and Theory Foundations
- Reading Between the Lines
- School Services of California (SSC) - Human Resources Leadership
- School Services of California (SSC) - Advanced Collective Bargaining
- School Services of California (SSC) - Effective Supervision and Evaluation
- School Services of California (SSC) - Attendance Recovery Roundtable
- The Essential 10: Essential Components of Behavior Intervention Plans (BIPs)
- The Local Allocation Policy – Considerations for SELPAs and LEAs

Cost implications might include registration fees, lodging, parking, meals, mileage, and substitute teacher compensation, as needed.

RECOMMENDATION:

Approve/Ratify the attendance and participation of District staff to the different professional developments, as attached.

LCAP GOAL AND ACTION/SERVICE:

Goal 1: Student Achievement – Actions: 1.15, 1.16 and 1.25 ~ Goal 2: English Language and Academic Language Development – Action: 2.4 ~ Goal 4: Social Emotional Well-being and Mental Health – Action 4.7

☐ **Renewal** ☒ **New** ☐ **Amendment** ☒ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

APPROXIMATE COST	
$15,055.00	General, Title I, Title II and ELOP Funds
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

Professional Development Backup Information – August 8, 2024

PARTICIPANT(S)	EVENT	PLACE	FROM/TO	COST	FUNDING
Kristine Hernandez, Diana Jacquez, Emily Talbott, Martha Murillo, Rayna Leonor, Dianna Flores	An Introduction to the What's & Not's of Attention Deficit Hyperactivity Disorder (ADHD) and Implications	SCREC	October 22, 2024	$0	N/A
Maria Rodriguez, Up to 15 teachers (TBD)	CABE English Language Development Teacher Academy (ELDTA) Virtual Series	Online	8 sessions from September 2024 – May 2025		Title II & Title III Funds
Luis Ramos, Principals and Assistant Principals (TBD) Resource Teachers (TBD)	Developing and Strengthening Programs and Services for LTELS	San Diego	Sept. 26, 2024	$4,500.00 (Tchr. Compensation and mileage)	Title II Fund
Luis Ramos, Principals and Assistant Principals (TBD) Resource Teachers (TBD)	Developing and Strengthening Programs and Services for Newcomers	San Diego	Sept. 24, 2024	$4,500.00 (Tchr. Compensation and mileage)	Title II Fund
Kristine Hernandez, Diana Jacquez, Emily Talbott, Martha Murillo, Aleyda Santoyo, Yuridia Marin	Evidence-Based Practices for Students with Autism Spectrum Disorder and Extensive Support Needs (ESN)	SCREC	March 11, 2025	$0	N/A

PARTICIPANT(S)	EVENT	PLACE	FROM/TO	COST	FUNDING
Elmy Flores, Pablo Sainz	Interpreters and Translators Conference	Costa Mesa, CA	October 3-5, 2024	$2,500.00	General Fund
Maria Rodriguez	LCAP – From Accountability to Compliance	Online	December 10, 2024	$275.00	Title II Fund
Maria Rodriguez	LCFF 101 – For Beginners	Online	August 3, 2024	$275.00	Title II Fund
Daysi Martinez	Project GLAD Part 1: Research and Theory Foundations	SDCOE	August 12-13, 2024	$1,400.00	Title I Fund
Kristine Hernandez, Emily Talbott, Martha Murillo, Josefina Villegas, Rayna Leonor, Dianna Flores, Benjamin Wayne	Reading Between the Lines	SCREC	November 19, 2024	$0	N/A
Manuel Bojorquez	School Services of California (SSC) - Human Resources Leadership	Online	August 6, 2024	$195.00	General Fund
Manuel Bojorquez	School Services of California (SSC) - Advanced Collective Bargaining	Online	September 10, 2024	$275.00	General Fund

PARTICIPANT(S)	EVENT	PLACE	FROM/TO	COST	FUNDING
Manuel Bojorquez, Luis Ramos, Alma English, Denise Villezcas, Efrain Burciaga, Erika Meza, Irene Herrera-Cevallos, Mairen Ruiz, Matthew Bandy, Myrna Cerda, Rebecca Bravo, Todd Lewis, Vikki Viramontes-Castorena	School Services of California (SSC) - Effective Supervision and Evaluation	Online	November 12, 2024	$550.00	Title II and/or General Fund
Luis Ramos, Mairen Ruiz	School Services of California (SSC) - Attendance Recovery Roundtable	Online	May 29, 2025	$310.00	Title II and/or ELOP Fund
Kristine Hernandez, Diana Jacquez, Emily Talbott, Mary Jo Mullins, Martha Murillo	The Essential 10: Essential Components of Behavior Intervention Plans (BIPs)	SCREC	October 8, 2024	$0	N/A
Maria Rodriguez	The Local Allocation Policy – Considerations for SELPAs and LEAs	Online	August 20, 2024	$275.00	Title II Fund

BUSINESS

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Business Services
Marilyn Adrianzen, Chief Business Official

☐ Informational
☒ Action

AGENDA ITEM: PURCHASING REPORT

BACKGROUND INFORMATION:
In order for the District to conduct the educational programs, expenditures are necessary. The function of a purchase order is to receive pre-approval for expenditures and set aside funds before services are performed and goods are received. When possible, purchase orders are made estimating the amount to be used over the course of the school year. Purchase orders are created and approved in the Business Services Department in addition to requisitions created by sites and other departments.

Report #1 (July 1, 2024 through July 31, 2024): ▪ General Fund: 0000011666-0000011671, 0000011673-0000011706, 0000011708-0000011772, 0000011774-0000011782, 0000011783-0000011784, 0000011792-00000111803, 0000011810-0000011822, 0000011834-0000011839, 0000011841-0000011865, 0000011867-0000011883, 0000011886-0000011888, 0000011890-0000011904, 0000011906, 0000011908-0000011925 ▪ Child Development Fund 0000011707, 0000011866, 0000011885, 0000011925 ▪ Child Nutrition Fund – 0000011785-0000011791, 0000011804-0000011808, 0000011818, 0000011823-0000011833, 0000011840, 0000011907 ▪ Building Measure U Fund: 0000011884, 0000011905 ▪ Capital Facilities Fund: 0000011782, 0000011889.

RECOMMENDATION:
Approve/Ratify purchase orders incurred by the District during the month of July 2024.

LCAP GOAL AND ACTION/SERVICE (please indicate):

☐ **Renewal** ☒ **New** ☐ **Amendment** ☒ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

$13,556,406.54	As listed above
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

PURCHASE ORDER REPORT (07/01/24 - 07/31/24)

PO No.	PO Date	Supplier	Supplier	PO Ref	Fund	Resource	Object	Site	Total by Account
0000011666	7/1/2024	004778	U.S. BANK - PARS 6746050200	CONTRACTED SERVICES	0100	0425000	5800025	010	897,443.38
0000011667	7/1/2024	004601	SIR SPEEDY PRINTING 02890	OFFICE MATERIALS	0100	0000000	4300011	064	624.95
0000011668	7/1/2024	002355	I B TROPHIES & AWARDS	OFFICE MATERIALS	0100	0000000	4300011	064	1,451.03
0000011669	7/1/2024	001161	HOME DEPOT	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	20,000.00
0000011670	7/1/2024	001161	HOME DEPOT	TECHNOLOGY SUPPLIES	0100	0000000	4300002	067	3,000.00
0000011671	7/1/2024	001795	WILLYS ELECTRONIC SUPPLY CO.	TECHNOLOGY SUPPLIES	0100	0000000	4300002	067	3,000.00
0000011673	7/2/2024	00069A	CITY TREASURER	MAINTENANCE AGREEMENT	0100	0000000	5800010	050	285.00
0000011674	7/3/2024	004084	RUSSELL SIGLER, INC	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	10,000.00
0000011675	7/3/2024	003143	HD SUPPLY FACILITIES	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	20,000.00
0000011676	7/3/2024	000356	GRAINGER	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	10,000.00
0000011677	7/3/2024	000039	DIXIELINE LUMBER CO	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	5,000.00
0000011678	7/3/2024	001161	HOME DEPOT	GROUNDS SUPPLIES	0100	8150000	4300014	068	10,000.00
0000011679	7/3/2024	004678	AMAZON CAPITAL SERVICES	OFFICE SUPPLIES	0100	0000000	4300000	050	123.91
0000011680	7/5/2024	0000000650	PATHWAY COMMUNICATIONS LTD	TECHNOLOGY SUPPLIES	0100	0000000	4300002	067	548.52
0000011680	7/5/2024	0000000650	PATHWAY COMMUNICATIONS LTD	TECHNOLOGY SUPPLIES	0100	0000000	4400000	067	5,472.60
0000011681	7/5/2024	004678	AMAZON CAPITAL SERVICES	OFFICE MATERIALS	0100	0000000	4300011	064	5,000.00
0000011682	7/5/2024	0000000933	NAPA AUTO PARTS	MAINTENANCE	0100	8150000	4300007	070	3,000.00
0000011683	7/5/2024	001947	BELLAMA	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	2,000.00
0000011684	7/5/2024	001527	RANCHO SAN DIEGO NURSERY INC	GROUNDS SUPPLIES	0100	8150000	4300014	068	8,000.00
0000011685	7/8/2024	004765	PLATINUM PARTY RENTALS	CONTRACTED SERVICES	0100	0000002	5600000	064	2,668.38
0000011686	7/8/2024	004762	WHOLESALE SCHOOLWEAR, INC.	UNIFORMS	0100	3010005	4300019	050	25,000.00
0000011687	7/8/2024	001023	WIRELESS PROS	CONTRACTED SERVICES	0100	8150000	4300007	070	500.00
0000011688	7/8/2024	004459	BEST PLUMBING SPECIALTIES INC	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	5,000.00
0000011689	7/8/2024	002721	CALIFORNIA ELECTRIC SUPPLY	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	10,000.00
0000011690	7/8/2024	003145	VALLEY INDUSTRIAL SPECIALTIES	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	10,000.00
0000011691	7/8/2024	0000000829	FOUNDATION BUILDING MATERIALS LLC	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	5,000.00
0000011692	7/8/2024	0000000827	C&C GLASS	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	5,000.00
0000011693	7/8/2024	002981	TIFCO INDUSTRIES	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	5,000.00
0000011694	7/8/2024	004678	AMAZON CAPITAL SERVICES	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	541.86
0000011695	7/8/2024	0000000791	TRAFFIC SAFETY STORE.COM	MAINTENANCE MATERIALS	0100	8150000	4300007	070	1,701.13
0000011696	7/8/2024	000548	NEXT DAY PRINTED TEES	OFFICE MATERIALS	0100	0000002	4300000	064	10,043.83
0000011697	7/8/2024	0000000076	SOUTHERN CALIFORNIA RELIEF	PROFESSIONAL SERVICES	0100	0000000	5450000	071	702,757.00
0000011698	7/8/2024	0000000068	P.I.P.S.	PROFESSIONAL SERVICES	0100	0000000	5450000	071	1,027,606.00
0000011699	7/8/2024	0000000884	CATAPULK12	CONTRACTED SERVICES	0100	0000000	5450000	071	600.00

PO No.	PO Date	Supplier	Supplier	PO Ref	Fund	Resource	Object	Site	Total by Account
0000011700	7/8/2024	004426	TRANE U.S. INC	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	5,000.00
0000011701	7/9/2024	001845	FERGUSON ENTERPRISES	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	3,000.00
0000011702	7/9/2024	003859	BATTERY SYSTEMS	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	2,000.00
0000011703	7/9/2024	003934	ANYTIME SIGN SOLUTION, INC	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	3,000.00
0000011704	7/9/2024	001164	MATERIAL SALES INC	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	2,000.00
0000011705	7/9/2024	000775	REFRIGERATION SUPPLIES	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	10,000.00
0000011706	7/9/2024	002153	HARBOR FREIGHT TOOLS	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	3,000.00
0000011708	7/9/2024	000370	DUNN-EDWARDS CORP.	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	5,000.00
0000011709	7/9/2024	001795	WILLYS ELECTRONIC SUPPLY CO.	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	3,000.00
0000011710	7/9/2024	0000000622	ANIXTER INC.	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	10,000.00
0000011711	7/9/2024	001931	UNITED RENTALS	CONTRACTED SERVICES	0100	8150000	5600001	070	10,000.00
0000011712	7/9/2024	0000000085	SUNBELT RENTALS, INC.	CONTRACTED SERVICES	0100	8150000	5600001	070	10,000.00
0000011713	7/9/2024	004401	OTAY MESA SALES INC.	CONTRACTED SERVICES	0100	8150000	5600001	070	5,000.00
0000011714	7/9/2024	002836	WESTAIR GASES & EQUIPMENT INC	CONTRACTED SERVICES	0100	8150000	5600001	070	3,000.00
0000011715	7/9/2024	003598	BJ'S RENTALS, INC.	CONTRACTED SERVICES	0100	8150000	5600001	070	5,000.00
0000011716	7/9/2024	001079	PENSKE TRUCK LEASING	CONTRACTED SERVICES	0100	8150000	5600001	070	5,000.00
0000011717	7/9/2024	003573	R&L PERFORMANCE AUTO SERVICE	CONTRACTED SERVICES	0100	8150000	5600005	070	10,000.00
0000011718	7/9/2024	002858	CORTES TOWING	CONTRACTED SERVICES	0100	8150000	5600005	070	3,000.00
0000011719	7/9/2024	003524	ACE COOLERS INC	CONTRACTED SERVICES	0100	8150000	5600005	070	10,000.00
0000011720	7/9/2024	003410	ALPHA SMOG STATION	CONTRACTED SERVICES	0100	8150000	5600005	070	1,000.00
0000011721	7/9/2024	000279	COURTNEY TIRE SERVICE	CONTRACTED SERVICES	0100	8150000	5600005	070	5,000.00
0000011722	7/9/2024	004548	MONTGOMERY HARDWARE CO.	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	2,000.00
0000011723	7/9/2024	001510	EWING IRRIGATION	GROUNDS SUPPLIES	0100	8150000	4300014	068	20,000.00
0000011724	7/9/2024	002650	IMPERIAL SPRINKLER SUPPLY	GROUNDS SUPPLIES	0100	8150000	4300014	068	5,000.00
0000011725	7/9/2024	0000000397	HORIZON DISTRIBUTORS	GROUNDS SUPPLIES	0100	8150000	4300014	068	10,000.00
0000011726	7/9/2024	001763	RCP BLOCK & BRICK	GROUNDS SUPPLIES	0100	8150000	4300014	068	10,000.00
0000011727	7/9/2024	001161	HOME DEPOT	CUSTODIAL SUPPLIES	0100	0000000	4300020	069	5,000.00
0000011728	7/9/2024	000356	GRAINGER	GROUNDS SUPPLIES	0100	8150000	4300014	068	2,000.00
0000011729	7/9/2024	003019	VALLEY TRACTOR & EQUIPMENT	GROUNDS SUPPLIES	0100	8150000	4300014	068	5,000.00
0000011730	7/9/2024	002151	NAPA AUTO PARTS	TRANSPORTATION SUPPLIES	0100	0982000	4300023	074	3,232.50
0000011731	7/9/2024	001383	BUS WEST	TRANSPORTATION SUPPLIES	0100	0982000	4300023	074	3,000.00
0000011732	7/9/2024	0000000224	WESTERN PUMP INC.	CONTRACTED SERVICES	0100	0982000	5600005	074	5,000.00
0000011733	7/9/2024	0000000370	AGRI-TURF DISTRIBUTING, LLC	GROUNDS SUPPLIES	0100	8150000	4300014	068	5,000.00
0000011734	7/9/2024	0000000876	ABIGAIL MIRAMONTES	CONTRACTED SERVICES	0100	0000002	4300000	064	2,000.00

PO No.	PO Date	Supplier	Supplier	PO Ref	Fund	Resource	Object	Site	Total by Account
0000011735	7/9/2024	002981	TIFCO INDUSTRIES	GROUNDS SUPPLIES	0100	8150000	4300014	068	3,000.00
0000011736	7/9/2024	003144	HOTSY EQUIPMENT COMPANY	GROUNDS SUPPLIES	0100	8150000	4300014	068	5,000.00
0000011737	7/9/2024	001980	VELOCITY TRUCK CENTERS	CONTRACTED SERVICES	0100	0982000	5600005	074	2,571.77
0000011738	7/9/2024	002768	ROMAINE ELECTRICT CORPORATION	TRANSPORTATION SUPPLIES	0100	0982000	5600005	074	3,000.00
0000011739	7/9/2024	001161	HOME DEPOT	TRANSPORTATION SUPPLIES	0100	0982000	4300023	074	2,000.00
0000011740	7/9/2024	004678	AMAZON CAPITAL SERVICES	MAINTENANCE SUPPLIES	0100	0982000	4300011	074	94.82
0000011740	7/9/2024	004678	AMAZON CAPITAL SERVICES	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	344.30
0000011741	7/9/2024	0000000659	RELATIONSHIPS AT WORK, INC.	PROFESSIONAL SERVICES	0100	0000000	5800010	062	1,200.00
0000011742	7/9/2024	004542	MPC ELECTRONICS INC	TECHNOLOGY SUPPLIES	0100	0000000	4300002	067	4,000.00
0000011743	7/9/2024	0000000187	STEVEN V. BERRY	OFFICE MATERIALS	0100	3010000	4300000	050	5,389.20
0000011744	7/9/2024	000146	LAKESHORE	INSTRUCTIONAL MATERIALS	0100	6053000	4300000	076	16,559.20
0000011744	7/9/2024	000146	LAKESHORE	INSTRUCTIONAL MATERIALS	0100	6053000	4400000	076	8,323.09
0000011745	7/9/2024	004056	OPTIMUM FLOORCARE	GROUNDS SUPPLIES	0100	8150000	4300014	068	3,000.00
0000011746	7/9/2024	003859	BATTERY SYSTEMS	GROUND SUPPLIES	0100	8150000	4300014	068	2,000.00
0000011747	7/9/2024	03146A	STOTZ EQUIPMENT	GROUNDS SUPPLIES	0100	8150000	4300014	068	10,000.00
0000011748	7/9/2024	000146	LAKESHORE	INSTRUCTIONAL MATERIALS	0100	6053000	4300001	076	21,106.55
0000011748	7/9/2024	000146	LAKESHORE	INSTRUCTIONAL MATERIALS	0100	6053000	4400000	076	4,479.38
0000011749	7/9/2024	003192	WALMART	GROUNDS SUPPLIES	0100	8150000	4300014	068	500.00
0000011750	7/9/2024	0000000194	BEE BEST BEE REMOVAL, INC	CONTRACTED SERVICES	0100	8150000	5600005	068	2,000.00
0000011751	7/9/2024	000136	WAXIE SANITARY SUPPLY	CUSTODIAL SUPPLIES	0100	0000000	4300020	069	20,000.00
0000011752	7/9/2024	001238	GOPHER SPORT	INSTRUCTIONAL MATERIALS	0100	4127000	4300000	061	987.65
0000011753	7/9/2024	003192	WALMART	INSTRUCTIONAL MATERIALS	0100	4127000	4300000	061	2,000.00
0000011754	7/9/2024	004678	AMAZON CAPITAL SERVICES	INSTRUCTIONAL MATERIALS	0100	4127000	4300000	061	555.92
0000011755	7/9/2024	001238	GOPHER SPORT	INSTRUCTIONAL MATERIALS	0100	4127000	4300000	061	840.52
0000011756	7/10/2024	001981	SAN DIEGO COUNTY SUPERINDENT	CONTRACTED SERVICES	0100	4035000	5800010	061	4,500.00
0000011757	7/10/2024	002622	CODESP	CONTRACTED SERVICES	0100	0000000	5800010	062	2,675.00
0000011758	7/10/2024	004678	AMAZON CAPITAL SERVICES	INSTRUCTIONAL MATERIALS	0100	4127000	4300000	061	933.99
0000011759	7/10/2024	003313	BEST BUY	TECHNOLOGY SUPPLIES	0100	0000000	4300002	067	3,000.00
0000011760	7/10/2024	002958	MIRAMAR BOBCAT INC	GROUNDS SUPPLIES	0100	8150000	4300014	068	10,000.00
0000011761	7/10/2024	004858	FLYERS ENERGY	TRANSPORTATION DIESEL	0100	0982000	4300022	074	60,000.00
0000011762	7/10/2024	000146	LAKESHORE	INSTRUCTIONAL MATERIALS	0100	6053000	4300001	076	12,431.44
0000011762	7/10/2024	000146	LAKESHORE	INSTRUCTIONAL MATERIALS	0100	6053000	4400000	076	3,179.38
0000011763	7/10/2024	0000001052	SIGNA DIGITAL SOLUTIONS, INC	CONTRACTED SERVICES	0100	0000000	5600020	010	87,140.00
0000011764	7/10/2024	002102	A-Z BUS SALES, INC.	CONTRACTED SERVICES	0100	0982000	4300023	074	10,000.00

PO No.	PO Date	Supplier	Supplier	PO Ref	Fund	Resource	Object	Site	Total by Account
0000011765	7/10/2024	001238	GOPHER SPORT	INSTRUCTIONAL MATERIALS	0100	4127000	4300000	061	1,174.06
0000011766	7/10/2024	001981	SAN DIEGO COUNTY SUPERINDENT	CONTRACTED SERVICES	0100	0000000	5800006	061	2,087.40
0000011767	7/10/2024	000146	LAKESHORE	INSTRUCTIONAL MATERIALS	0100	6053000	4300001	076	19,109.80
0000011767	7/10/2024	000146	LAKESHORE	INSTRUCTIONAL MATERIALS	0100	6053000	4400000	076	6,707.82
0000011768	7/10/2024	000809	OFFICE DEPOT	OFFICE SUPPLIES	0100	0000000	4300001	016	1,565.50
0000011769	7/10/2024	0000001053	CANON FINANCIAL SERVICES, INC	CONTRACTED SERVICES	0100	0000000	5600020	010	84,440.00
0000011770	7/10/2024	004231	PRO POWER	GROUNDS SUPPLIES	0100	8150000	4300014	068	5,000.00
0000011771	7/11/2024	004678	AMAZON CAPITAL SERVICES	INSTRUCTIONAL MATERIALS	0100	2600000	4300001	061	178.11
0000011772	7/11/2024	001238	GOPHER SPORT	INSTRUCTIONAL MATERIALS	0100	4127000	4300000	061	1,047.87
0000011774	7/11/2024	001749	TURF STAR INC.	GROUNDS SUPPLIES	0100	8150000	4300014	068	5,000.00
0000011775	7/11/2024	0000001099	SO-CAL RATTLESNAKE REMOVAL	CONTRACTED SERVICES	0100	8150000	5600005	068	21,000.00
0000011776	7/11/2024	0000000336	PROJECT LEAD THE WAY INC	INSTRUCTIONAL MATERIALS	0100	4127000	4300000	061	10,505.63
0000011777	7/11/2024	004784	TIME AND ALARM SYSTEMS	CONTRACTED SERVICES	0100	8150000	5600005	070	410.50
0000011778	7/11/2024	004784	TIME AND ALARM SYSTEMS	CONTRACTED SERVICES	0100	8150000	5600005	070	493.00
0000011779	7/11/2024	0000001056	POLAR ELECTRICAL COMPANY	CONTRACTED SERVICES	0100	8150000	5600005	070	12,300.70
0000011780	7/11/2024	0000001056	POLAR ELECTRICAL COMPANY	CONTRACTED SERVICES	0100	8150000	5600005	070	1,424.15
0000011781	7/11/2024	003192	WALMART	INSTRUCTIONAL MATERIALS	0100	0490000	4300001	054	1,500.00
0000011781	7/11/2024	003192	WALMART	INSTRUCTIONAL MATERIALS	0100	0490000	4300015	054	1,000.00
0000011783	7/11/2024	0000000980	TWIG EDUCATION, INC.	PROFESSIONAL SERVICES	0100	4035000	5800010	061	10,000.00
0000011784	7/11/2024	004603	THE BATTERY PLACE	GROUNDS SUPPLIES	0100	8150000	4300014	068	2,000.00
0000011792	7/11/2024	004742	ALBERTO CARLOS HERRERA	CONTRACTED SERVICES	0100	2600000	4300001	061	7,000.00
0000011793	7/11/2024	003192	WALMART	INSTRUCTIONAL MATERIALS	0100	2600000	4300001	061	1,000.00
0000011794	7/11/2024	002771	SMART & FINAL	REFRESHMENTS	0100	2600000	4300001	061	1,000.00
0000011795	7/11/2024	004603	THE BATTERY PLACE	TRANSPORTATION SUPPLIES	0100	0982000	4300023	074	2,000.00
0000011796	7/11/2024	0000000760	CAL PACIFIC TRUCK CENTER ,LLC	CONTRACTED SERVICES	0100	0982000	5600005	074	50,000.00
0000011797	7/11/2024	01641A	XEROX CORPORATION	CONTRACTED SERVICES	0100	0000000	5600020	073	51,000.00
0000011798	7/11/2024	002913	GYM CLOSET	INSTRUCTIONAL MATERIALS	0100	0000000	4300013	025	1,308.78
0000011799	7/11/2024	001502	CALIFORNIA DEPT. OF JUSTICE	CONTRACTED SERVICES	0100	0000000	5800010	062	5,000.00
0000011800	7/11/2024	003192	WALMART	REFRESHMENTS	0100	0000000	4300015	061	1,500.00
0000011801	7/11/2024	004678	AMAZON CAPITAL SERVICES	INSTRUCTIONAL MATERIALS	0100	4127000	4300000	061	1,974.64
0000011802	7/12/2024	000279	COURTNEY TIRE SERVICE	TRANSPORTATION SUPPLIES	0100	0982000	5600005	074	10,000.00
0000011803	7/12/2024	000379	HAWTHORNE MACHINERY	CONTRACTED SERVICES	0100	0982000	5600005	074	20,000.00
0000011810	7/12/2024	004678	AMAZON CAPITAL SERVICES	INSTRUCTIONAL MATERIALS	0100	0000000	4300001	025	1,309.70
0000011811	7/12/2024	004678	AMAZON CAPITAL SERVICES	OFFICE MATERIALS	0100	0000000	4300000	025	1,308.47

PO No.	PO Date	Supplier	Supplier	PO Ref	Fund	Resource	Object	Site	Total by Account
0000011812	7/12/2024	000809	OFFICE DEPOT	INSTRUCTIONAL SUPPLIES	0100	0000000	4300001	018	5,820.32
0000011813	7/12/2024	003377	SOUTHWEST SCHOOL & OFFICE	INSTRUCTIONAL SUPPLIES	0100	0000000	4300001	018	2,888.57
0000011814	7/12/2024	004627	SAFETY-KLEEN SYSTEMS, INC.	CONTRACTED SERVICES	0100	0982000	5600005	074	2,000.00
0000011815	7/12/2024	000809	OFFICE DEPOT	PUBLICATION SUPPLIES	0100	0000000	4300050	073	2,139.48
0000011816	7/12/2024	01641A	XEROX CORPORATION	CONTRACTED SERVICES	0100	0000000	5600020	071	30,000.00
0000011817	7/12/2024	000067	SAN DIEGO GAS & ELECTRIC	UTILITIES	0100	0000000	5500001	069	950,000.00
0000011817	7/12/2024	000067	SAN DIEGO GAS & ELECTRIC	UTILITIES	0100	0000000	5500002	069	50,000.00
0000011818	7/12/2024	0000000633	WEX BANK	CONTRACTED SERVICES	0100	0000000	4300022	067	2,500.00
0000011818	7/12/2024	0000000633	WEX BANK	CONTRACTED SERVICES	0100	0982000	4300022	074	20,000.00
0000011818	7/12/2024	0000000633	WEX BANK	CONTRACTED SERVICES	0100	8150000	4300022	070	20,000.00
0000011818	7/12/2024	0000000633	WEX BANK	CONTRACTED SERVICES	0100	8150000	4300022	068	20,000.00
0000011819	7/12/2024	004678	AMAZON CAPITAL SERVICES	INSTRUCTIONAL MATERIALS	0100	0000000	4300001	012	2,495.58
0000011820	7/12/2024	000069	CITY TREASURER	UTILITIES	0100	0000000	5500004	069	200,000.00
0000011821	7/12/2024	002682	BENCHMARK EDUCATION COMPANY	INSTRUCTIONAL MATERIALS	0100	3010000	4300001	012	698.22
0000011822	7/12/2024	0000001130	EPS OPERATIONS LLC	INSTRUCTIONAL MATERIALS	0100	3010000	4300001	012	1,399.47
0000011834	7/12/2024	004899	THE COLLEGE BOARD	INSTRUCTIONAL MATERIALS	0100	6300000	4100000	061	8,934.50
0000011835	7/12/2024	000146	LAKESHORE	INSTRUCTIONAL MATERIAL	0100	6547000	4300001	054	8,227.87
0000011836	7/14/2024	002858	CORTES TOWING	CONTRACTED SERVICES	0100	0982000	5600005	074	5,000.00
0000011837	7/14/2024	004131	HYDROTEX PARTNERS, LTD	CONTRACTED SERVICES	0100	0982000	5600005	074	5,000.00
0000011838	7/14/2024	000809	OFFICE DEPOT	OFFICE SUPPLIES	0100	0000000	4300001	012	2,470.55
0000011839	7/14/2024	0000000491	PANERA BREAD COMPANY	REFRESHMENTS	0100	0000000	4300015	064	15,000.00
0000011841	7/14/2024	004678	AMAZON CAPITAL SERVICES	INSTRUCTIONAL MATERIALS	0100	0000000	4300001	025	937.68
0000011842	7/14/2024	004056	OPTIMUM FLOORCARE	CUSTODIAL MATERIALS	0100	0000000	5600005	069	5,000.00
0000011843	7/14/2024	004678	AMAZON CAPITAL SERVICES	INSTRUCTIONAL MATERIALS	0100	0000000	4300001	025	631.92
0000011844	7/14/2024	003309	PRINT TO MAIL DOCUMENT SYSTEM	OFFICE SUPPLIES	0100	0000000	4300000	025	547.37
0000011845	7/14/2024	004678	AMAZON CAPITAL SERVICES	INSTRUCTIONAL MATERIALS	0100	0000000	4300001	016	1,301.48
0000011846	7/14/2024	004048	BROADWAY AUTO GLASS	TRANSPORTATION SUPPLIES	0100	0982000	5600005	074	2,000.00
0000011847	7/14/2024	0000000621	PARKHOUSE TIRE INC	TRANSPORTATION SUPPLIES	0100	0982000	5600005	074	15,000.00
0000011848	7/14/2024	003909	TEAMTALK NETWORK	CONTRACTED SERVICES	0100	0982000	5600005	074	6,000.00
0000011849	7/14/2024	004678	AMAZON CAPITAL SERVICES	INSTRUCTIONAL MATERIALS	0100	2600000	4300001	061	532.22
0000011850	7/14/2024	0000000872	E-W TRUCK & EQUIMENT CO., INC	TRANSPORTATION MATERIALS	0100	0982000	5600005	074	10,000.00
0000011851	7/14/2024	000356	GRAINGER	TRANSPORTATION SUPPLIES	0100	0982000	4300023	074	3,000.00
0000011852	7/14/2024	004678	AMAZON CAPITAL SERVICES	INSTRUCTIONAL MATERIALS	0100	2600000	4300001	061	879.69
0000011853	7/15/2024	002227	FRONTLINE TECHNOLOGIES GROUP	PROFESSIONAL SERVICES	0100	0000000	5800010	062	20,358.27

PO No.	PO Date	Supplier	Supplier	PO Ref	Fund	Resource	Object	Site	Total by Account
0000011854	7/15/2024	0000000051	ACTIVE INTERNET TECHNOLOGIES	SOFTWARE	0100	0000000	5800006	067	19,943.91
0000011855	7/16/2024	002386	RENAISSANCE LEARNING INC.	SOFTWARE	0100	6762000	5800006	061	36,931.89
0000011856	7/16/2024	0000001056	POLAR ELECTRICAL COMPANY	CONTRTACTED SERVICES	0100	8150000	5600005	070	6,327.63
0000011857	7/16/2024	0000000371	U.S. BANK	PROFESSIONAL SERVICES	0100	9010075	5800010	080	11,500.00
0000011858	7/16/2024	0000000903	LEADERSHIP ASSOCIATES	PROFESSIONAL SERVICES	0100	0000000	5800010	064	10,000.00
0000011859	7/16/2024	0000000929	NATIONAL CITY TROPHY	OFFICE SUPPLIES	0100	0000000	4300011	064	5,000.00
0000011860	7/16/2024	000778	SAFEWAY INC. -VONS DIVISION	REFRESHMENTS	0100	0000000	4300015	064	2,000.00
0000011861	7/16/2024	003192	WALMART	OFFICE SUPPLIES	0100	0000000	4300011	064	2,000.00
0000011862	7/16/2024	004678	AMAZON CAPITAL SERVICES	OFFICE SUPPLIES	0100	0000000	4300011	064	5,000.00
0000011863	7/16/2024	002771	SMART & FINAL	REFRESHMENTS	0100	0000000	4300015	064	5,000.00
0000011864	7/16/2024	0000000692	NADIA BRAUN	PROFESSIONAL SERVICES	0100	6500000	5800010	054	10,000.00
0000011865	7/16/2024	004678	AMAZON CAPITAL SERVICES	INSTRUCTIONAL MATERIALS	0100	0000000	4300001	025	711.29
0000011867	7/16/2024	004678	AMAZON CAPITAL SERVICES	INSTRUCTIONAL MATERIALS	0100	2600000	4300001	061	878.90
0000011868	7/17/2024	001755	WILLIAM V. MAC GILL & CO.	MEDICAL SUPPLIES	0100	0000000	4300010	012	534.80
0000011869	7/17/2024	000778	SAFEWAY INC. -VONS DIVISION	RESFRESHMENTS	0100	0000000	4300015	025	1,000.00
0000011870	7/17/2024	0000000699	EL POLLO GRILL INC	CONTRACTED SERVICES	0100	0300020	4300015	020	842.00
0000011871	7/17/2024	0000000292	WINET PATRICK GAYER CREIGHTON	LEGAL SERVICES	0100	0000000	5800002	063	75,000.00
0000011872	7/17/2024	000983	CASBO	MEMBERSHIP	0100	0000000	5300000	071	3,500.00
0000011873	7/17/2024	0000001003	COCINA 35	CONTRACTED SERVICES	0100	0000000	5800030	064	10,831.46
0000011874	7/17/2024	000651	CSBA	ANNUAL MEMBERSHIP	0100	0000000	5300000	063	24,624.00
0000011875	7/17/2024	003102	SAN DIEGO COUNTY SCHOOL BOARDS	ANNUAL MEMBERSHIP	0100	0000000	5300000	063	346.72
0000011876	7/17/2024	0000000032	CORODATA RECORDS MANAGEMENT, INC.	CONTRACTED SERVICES	0100	0000000	5600005	071	3,000.00
0000011877	7/17/2024	002976	FEDEX	CONTRACTED SERVICES	0100	0000000	5900012	071	1,000.00
0000011878	7/17/2024	004309	BEST BEST & KRIEGER LLP	LEGAL SERVICES	0100	0000000	5800002	063	4,962.70
0000011878	7/17/2024	004309	BEST BEST & KRIEGER LLP	LEGAL SERVICES	0100	0000000	5800002	071	3,290.80
0000011879	7/18/2024	001093	KONE INC	CONTRACTED SERVICES	0100	8150000	5600005	070	684.44
0000011880	7/18/2024	0000000501	CAPITOL ADVISORS GROUP, LLC	PRFESSIONAL SERVICES	0100	0000000	5800010	064	25,000.00
0000011881	7/18/2024	001980	VELOCITY TRUCK CENTERS	CONTRACTED SERVICES	0100	0982000	5600005	074	20,000.00
0000011882	7/22/2024	001374	SAN JOAQUIN COUNTY OF	CONTRACTED SERVICES	0100	0000000	5800010	062	967.00
0000011883	7/23/2024	0000001122	JAMEY CLARK INC	PROFESSIONAL SERVICES	0100	8150000	5600005	070	1,450.00
0000011886	7/23/2024	0000001133	STRADLING YOCCA CARLSON	PROFESSIONAL SERVICES	0100	0000000	5800010	071	15,000.00
0000011887	7/23/2024	000146	LAKESHORE	INSTRUCTIONAL MATERIALS	0100	6300000	4300001	061	5,000.00
0000011888	7/24/2024	001093	KONE INC	CONTRACTED SERVICES	0100	8150000	5600005	070	16,826.71
0000011890	7/24/2024	000809	OFFICE DEPOT	INSTRUCTIONAL MATERIALS	0100	0000000	4300001	024	700.38

PO No.	PO Date	Supplier	Supplier	PO Ref	Fund	Resource	Object	Site	Total by Account
0000011891	7/25/2024	000146	LAKESHORE	INSTRUCTIONAL MATERIALS	0100	6053000	4300001	076	498.51
0000011891	7/25/2024	000146	LAKESHORE	INSTRUCTIONAL MATERIALS	0100	6053000	4400000	076	4,190.72
0000011892	7/25/2024	004678	AMAZON CAPITAL SERVICES	INSTRUCTIONAL MATERIALS	0100	0000000	4300001	020	688.94
0000011893	7/25/2024	000146	LAKESHORE	INSTRUCTIONAL MATERIALS	0100	6053000	4300001	076	22,554.43
0000011893	7/25/2024	000146	LAKESHORE	INSTRUCTIONAL MATERIALS	0100	6053000	4400000	076	3,608.28
0000011894	7/25/2024	004678	AMAZON CAPITAL SERVICES	PUBLICATION SUPPLIES	0100	0000000	4300050	073	222.62
0000011895	7/26/2024	000809	OFFICE DEPOT	INSTRUCTIONAL MATERIALS	0100	0000000	4300001	022	1,054.33
0000011896	7/26/2024	0000001134	HARMONY HOME MEDICAL, INC	TRANSPORTATION EQUIPMENT	0100	0982000	4400000	074	3,624.78
0000011897	7/26/2024	003192	WALMART	INSTRUCTIONAL MATERIALS	0100	0000000	4300001	024	1,000.00
0000011898	7/26/2024	004917	TEACHER SYNERGY LLC	CONTRACTED SERVICES	0100	3010000	5800006	025	4,125.00
0000011899	7/26/2024	002771	SMART & FINAL	REFRESHMENTS	0100	0000000	4300015	024	1,000.00
0000011900	7/26/2024	001980	VELOCITY TRUCK CENTERS	CONTRACTED SERVICES	0100	0982000	5600005	074	3,620.23
0000011901	7/29/2024	001093	KONE INC	CONTRACTED SERVICES	0100	8150000	5600005	070	47,000.00
0000011902	7/29/2024	0000000829	FOUNDATION BUILDING MATERIALS LLC	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	7,000.00
0000011903	7/29/2024	004678	AMAZON CAPITAL SERVICES	MEDICAL SUPPLIES	0100	5640000	4400000	054	634.70
0000011904	7/29/2024	0000001135	SOFT SKILLS AHA	LICENSING FEES	0100	3010000	5800006	025	300.00
0000011906	7/29/2024	0000000541	AARDVARK ANT & PEST CONTROL INC.	CONTRACTED SERVICES	0100	8150000	5500007	068	26,000.00
0000011908	7/30/2024	001438	REPUBLIC SERVICES	UTILITIES	0100	0000000	5500005	069	300,000.00
0000011909	7/30/2024	002909	AT&T	UTILITIES	0100	0000000	5900003	069	100,000.00
0000011910	7/30/2024	0000000886	T-MOBILE	CONTRACTED SERVICES	0100	0000000	5900001	069	40,000.00
0000011911	7/30/2024	004678	AMAZON CAPITAL SERVICES	OFFICE SUPPLIES	0100	0000000	4300001	012	200.85
0000011912	7/30/2024	001339	PITNEY BOWES	CONTRACTED SERVICES	0100	0000000	5600005	071	1,799.80
0000011913	7/30/2024	004833	SPARKLETTS	CONTRACTED SERVICES	0100	0000000	5800010	071	7,000.00
0000011914	7/30/2024	004678	AMAZON CAPITAL SERVICES	OFFICE SUPPLIES	0100	0000000	4300011	062	448.97
0000011915	7/30/2024	0000001032	RADIANT KIDS THERAPY	PROFESSIONAL SERVICES	0100	6500000	5800010	054	10,000.00
0000011916	7/30/2024	0000000397	HORIZON DISTRIBUTORS	CUSTODIAL SUPPLIES	0100	0000000	4300020	069	2,000.00
0000011917	7/30/2024	002722	YMCA OF SAN DIEGO COUNTY	CONTRACTED SERVICES	0100	2600000	5800010	061	3,714,972.00
0000011917	7/30/2024	002722	YMCA OF SAN DIEGO COUNTY	CONTRACTED SERVICES	0100	9065005	5800010	061	1,002,543.54
0000011918	7/30/2024	0000001138	3RD MILLENNIUM CLASSROOMS	CONTRACTED SERVICES	0100	3010000	5800006	025	2,500.00
0000011919	7/30/2024	0000000790	FRANK VILLALVA JR.	PROFESSIONAL SERVICES	0100	0982000	5800010	074	10,000.00
0000011920	7/30/2024	002754	EL TAPATIO CATERING	CONTRACTED SERVICES	0100	0000000	4300015	018	582.75
0000011921	7/31/2024	004852	PROCARE THERAPY, INC	PROFESSIONAL SERVICES	0100	6500000	5800010	054	500,000.00
0000011922	7/31/2024	003377	SOUTHWEST SCHOOL & OFFICE	CUSTODIAL SUPPLIES	0100	0000000	4300020	069	466.34
0000011923	7/31/2024	000762	SOUTH BAY FENCE, INC.	MAINTENANCE SUPPLIES	0100	8150000	4300007	070	5,000.00

PO No.	PO Date	Supplier	Supplier	PO Ref	Fund	Resource	Object	Site	Total by Account
0000011924	7/31/2024	001785	CHULA VISTA PHOTO STUDIO	CONTRACTED SERVICES	0100	0000000	5800010	064	3,242.87
0000011925	7/31/2024	001178	SAN DIEGO COUNTY	OFFICE MATERIALS	0100	0000000	4300001	012	178.54
0000011925	7/31/2024	001178	SAN DIEGO COUNTY	OFFICE MATERIALS	0100	0000000	4300001	016	267.81
0000011925	7/31/2024	001178	SAN DIEGO COUNTY	OFFICE MATERIALS	0100	0000000	4300001	018	178.54
0000011925	7/31/2024	001178	SAN DIEGO COUNTY	OFFICE MATERIALS	0100	0000000	4300001	020	178.54
0000011925	7/31/2024	001178	SAN DIEGO COUNTY	OFFICE MATERIALS	0100	0000000	4300001	022	178.54
0000011925	7/31/2024	001178	SAN DIEGO COUNTY	OFFICE MATERIALS	0100	0000000	4300001	024	446.35
0000011925	7/31/2024	001178	SAN DIEGO COUNTY	OFFICE MATERIALS	0100	0000000	4300001	025	267.81
							Total for 0100		**11,240,952.04**
0000011707	7/9/2024	004678	AMAZON CAPITAL SERVICES	INSTRUCTIONAL MATERIALS	1200	5210000	4300001	076	1,402.13
0000011866	7/16/2024	004678	AMAZON CAPITAL SERVICES	INSTRUCTIONAL MATERIALS	1200	5210000	4300001	076	365.58
0000011885	7/23/2024	004678	AMAZON CAPITAL SERVICES	INSTRUCTIONAL MATERIALS	1200	5210000	4300001	076	633.53
0000011925	7/31/2024	001178	SAN DIEGO COUNTY	OFFICE MATERIALS	1200	6105000	4300001	076	178.54
							Total for 1200		**2,579.78**
0000011785	7/11/2024	000901	COUNTY OF SAN DIEGO	CONTRACTED SERVICES	1300	5310000	5800000	085	4,000.00
0000011786	7/11/2024	0000000665	JOHNSON CONTROLS	CONTRACTED SERVICES	1300	5310000	5600005	085	8,000.00
0000011787	7/11/2024	004775	AFFORDABLE GREASE PUMPING	CONTRACTED SERVICES	1300	5310000	5600005	085	4,500.00
0000011788	7/11/2024	0000000491	PANERA BREAD COMPANY	CATERING REFRESHMENTS	1300	5310000	4700991	085	45,000.00
0000011789	7/11/2024	0000000699	EL POLLO GRILL INC	CATERING REFRESHMENTS	1300	5310000	4700991	085	8,000.00
0000011790	7/11/2024	004203	MEXAM ENTERPRISES, INC.	CAFETERIA SUPPLIES	1300	5310000	4700011	085	3,000.00
0000011791	7/11/2024	002754	EL TAPATIO CATERING	CATERING REFRESHMENTS	1300	5310000	4700991	085	10,000.00
0000011804	7/12/2024	0000000227	GOLD STAR FOODS	CAFETERIA FOODS	1300	5310000	4700001	085	1,250,000.00
0000011805	7/12/2024	0000000637	SYSCO SAN DIEGO INC.	CAFETERIA FOODS	1300	5310000	4700001	085	45,000.00
0000011806	7/12/2024	000717	HOLLANDIA DAIRY INC.	CAFETERIA FOODS	1300	5310000	4700001	085	350,000.00
0000011807	7/12/2024	003192	WALMART	CAFETERIA SUPPLIES	1300	5310000	4300026	085	2,000.00
0000011808	7/12/2024	004398	AMERICAN PRODUCE DISTRIBUTORS	CAFETERIA FOODS	1300	5310000	4700001	085	105,000.00
0000011818	7/12/2024	0000000633	WEX BANK	CONTRACTED SERVICES	1300	5310000	4300022	085	2,500.00
0000011823	7/12/2024	0000000010	SELECTA INTERNATIONAL	CAFETERIA FOODS	1300	5310000	4700001	085	30,000.00
0000011824	7/12/2024	004731	DOMINOS PIZZA	CAFETERIA FOODS	1300	5310000	4700001	085	48,000.00
0000011825	7/12/2024	000778	SAFEWAY INC. -VONS DIVISION	CAFETERIA CATERINGS	1300	5310000	4300028	085	3,000.00

PURCHASE ORDER REPORT (07/01/24 - 07/31/24)

PO No.	PO Date	Supplier	Supplier	PO Ref	Fund	Resource	Object	Site	Total by Account
0000011826	7/12/2024	0000000314	CHEF'S TOYS & STAR RESTUARANT	CAFETERIA SUPPLIES	1300	5310000	4300026	085	6,000.00
0000011827	7/12/2024	002771	SMART & FINAL	CAFETERIA REFRESHMENTS	1300	5310000	4300028	085	2,000.00
0000011828	7/12/2024	001161	HOME DEPOT	CAFETERIA SUPPLIES	1300	5310000	4300026	085	2,500.00
0000011829	7/12/2024	003147	CALIFORNIA DEPARTMENT OF	CONTRACTED SERVICES	1300	5310000	4300026	085	6,000.00
0000011830	7/12/2024	0000000088	TECH-24	CONTRACTED SERVICES	1300	7032000	5600000	085	10,000.00
0000011831	7/12/2024	0000001132	IMPERIAL DADE WEST COAST	CAFETERIA FOODS	1300	5310000	4300011	085	120,000.00
0000011832	7/12/2024	004678	AMAZON CAPITAL SERVICES	CAFETERIA SUPPLIES	1300	5310000	4300011	085	303.03
0000011832	7/12/2024	004678	AMAZON CAPITAL SERVICES	CAFETERIA SUPPLIES	1300	5310000	4300026	085	390.01
0000011833	7/12/2024	000809	OFFICE DEPOT	OFFICE SUPPLIES	1300	5310000	4300011	085	1,145.50
0000011840	7/14/2024	0000000544	HEARTLAND SCHOOL SOLUTIONS	CONTRACTED SERVICES	1300	5310000	5600005	085	545.00
0000011907	7/30/2024	000809	OFFICE DEPOT	OFFICE SUPPLIES	1300	5310000	4300011	085	849.75
							Total for 1300		**2,067,733.29**
0000011884	7/23/2024	0000001065	SCHOOL FACILITY CONSULTANTS	PROFESSIONAL SERVICES	2133	9010300	6200030	399	210,000.00
0000011905	7/29/2024	000124	WILKINSON HADLEY KING &	PROFESSIONAL SERVICES	2133	9010300	5800002	300	10,200.00
							Total for 2133		**220,200.00**
0000011782	7/11/2024	000583	VIRCO INC	SCHOOL FURNITURE	2518	9010501	6200000	324	14,941.43
0000011889	7/24/2024	0000000390	DANNIS WOLIVER KELLEY	LEGAL FEES	2518	9010000	5800002	071	10,000.00
							Total for 2518		**24,941.43**
							Grand Total		**13,556,406.54**

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board **BOARD MEETING DATE:** August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Business Services
Marilyn Adrianzen, Chief Business Official

☐ Informational
☒ Action

AGENDA ITEM: EXPENDITURE REPORT

BACKGROUND INFORMATION:
The District is required to pay for goods and services it uses to conduct the educational and support programs. Prior to payment, supporting documents such as contracts with the appropriate approvals and proof of receipt for the goods or services are collected. Invoices to be paid are submitted to the Business Services Department for payment processing. Warrants are printed at San Diego County Office of Education then returned to the Business Services Department for signature.

The following are expenditures incurred by the District during the period of July 1, 2024 through July 31, 2024 with checks #14-174213 through #14-182833 for a total expenditure of $3,264,830.43 from the following sources:

General Fund - $3,167,503.07
Child Development Fund- $7.50
Child Nutrition Fund -$14,369.86
Building Fund Prop -$74,381.00
Capital Facilities Fund- $8,569.00

RECOMMENDATION:
Approve/Ratify the expenditures incurred by the District during the month of July 2024.

2LCAP GOAL AND ACTION/SERVICE (please indicate):
Goal No.: Base Services and Safety
2.1 Maintain basic operating services of the district, including MOT personnel, transportation, contracted services, and utilities.

☐ **Renewal** ☒ **New** ☐ **Amendment** ☒ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

$3,264,830.43	Various (see above)
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

Expenditure Report

7/1/2024-7/31/2024

Warrant ID	Payee	Date	Warrant Amount	Fund	Description
14174213	GREGORY SHERMAN	7/5/2024	550.26	0100	REIMBURSEMENT
14174214	U.S. BANK - PARS 6746050200	7/5/2024	897443.38	0100	CONTRACTED SERVICES
14175133	AVID CENTER	7/8/2024	12896.00	0100	CONTRACTED SERVICES
14175134	6CRICKETS INC	7/8/2024	34500.00	0100	CONTRACTED SERVICES
14175135	SCHOLASTIC , INC	7/8/2024	2556.54	0100	INSTRUCTIONAL MATERIALS
14175834	P.I.P.S.	7/11/2024	85633.83	0100	PROFESSIONAL SERVICES
14175835	SOUTHERN CALIFORNIA RELIEF	7/11/2024	702757.00	0100	PROFESSIONAL SERVICES
14175836	806 TECHNOLOGIES, INC.	7/11/2024	6700.00	0100	CONTRACTED SERVICES
14175837	MYSTERY SCIENCE INC.	7/11/2024	1495.00	0100	INSTRUCTIONAL MATERIALS
14175838	CITY TREASURER	7/11/2024	285.00	0100	MAINTENANCE AGREEMENT
14177239	POLAR ELECTRICAL COMPANY	7/15/2024	19049.88	0100	CONTRACTED SERVICES
14177240	PARADIGM HEALTHCARE SERVICES	7/15/2024	8278.31	0100	PROFESSIONAL SERVICES
14177241	SOUTHWEST SCHOOL & OFFICE	7/15/2024	2684.74	0100	INSTRUCTIONAL MATERIALS
14179211	ORODATA RECORDS MANAGEMENT, IN	7/18/2024	274.84	0100	CONTRACTED SERVICES
14179212	ACTIVE INTERNET TECHNOLOGIES	7/18/2024	19943.91	0100	SOFTWARE
14179213	VECTOR USA	7/18/2024	8097.24	0100	PROFESSIONAL SERVICES
14179214	BMR HEALTH SERVICES, INC	7/18/2024	13200.00	0100	PROFESSIONAL SERVICES
14179215	SAN DIEGO CENTER FOR VISION	7/18/2024	845.00	0100	PROFESSIONAL SERVICES
14179216	MAXIM HEALTHCARE SERVICES INC	7/18/2024	10190.50	0100	PROFESSIONAL SERVICES
14179218	RELATIONSHIPS AT WORK, INC.	7/18/2024	1200.00	0100	PROFESSIONAL SERVICES
14179219	DALE SCOTT & COMPANY, INC.	7/18/2024	37500.00	0100	PROFESSIONAL SERVICES
14179220	EL POLLO GRILL INC	7/18/2024	841.82	0100	CONTRACTED SERVICES
14179221	SDSU RESEARCH FOUNDATION NCUST	7/18/2024	118000.00	0100	PROFESSIONAL SERVICES
14179222	EDTHEORY LLC	7/18/2024	4917.25	0100	PROFESSIONAL SERVICES
14179223	SUN DIEGO CHARTER	7/18/2024	3000.00	0100	CONTRACTED SERVICES
14179224	CLUB XCITE	7/18/2024	800.00	0100	SOFTWARE
14179225	CATAPULK12	7/18/2024	600.00	0100	CONTRACTED SERVICES
14179226	T-MOBILE	7/18/2024	3150.63	0100	UTILITIES
14179227	KYO AUTISM THERAPY, LLC	7/18/2024	963.46	0100	PROFESSIONAL SERVICES
14179228	PACIFIC PURE WATER SYSTEMS LLC	7/18/2024	64.65	0100	CONTRACTED SERVICES
14179229	PROCARE THERAPY	7/18/2024	8368.75	0100	PROFESSIONAL SERVICES
14179230	OPTUM FINANCIAL, INC	7/18/2024	289.85	0100	PROFESSIONAL SERVICES

Expenditure Report

7/1/2024-7/31/2024

Warrant ID	Payee	Date	Warrant Amount	Fund	Description
14179231	SIGNA DIGITAL SOLUTIONS, INC	7/18/2024	7441.93	0100	MAINTENACE AGREEMENT
14179232	CANON FINANCIAL SERVICES, INC	7/18/2024	7600.43	0100	MAINTENACE AGREEMENT
14179233	CYNTHIA M FRAZEE	7/18/2024	1500.00	0100	PROFESSIONAL SERVICES
14179235	INSURANCE ARCHAELOGY SERVICES	7/18/2024	3000.00	0100	PROFESSIONAL SERVICES
14179236	VISTA HIGHER LEARNING INC.	7/18/2024	35539.43	0100	INSTRUCTIONAL MATERIALS
14179237	SAN DIEGO GAS & ELECTRIC	7/18/2024	73462.43	0100	UTILITIES
14179238	CITY TREASURER	7/18/2024	28257.60	0100	UTILITIES
14179239	SAM & ROSE STEIN EDUCATION	7/18/2024	6315.47	0100	NON PUBLIC
14179240	CSBA	7/18/2024	24624.00	0100	ANNUAL MEMBERSHIP
14179241	THE INSTITUTE FOR EFFECTIVE	7/18/2024	29142.14	0100	NON PUBLIC
14179242	SOUTH BAY FENCE, INC.	7/18/2024	12160.00	0100	CONTRACTED SERVICES
14179243	CASBO	7/18/2024	3500.00	0100	MEMBERSHIP
14179244	HOME DEPOT	7/18/2024	1647.48	0100	MAINTENANCE SUPPLIES
14179245	REPUBLIC SERVICES	7/18/2024	30351.62	0100	UTILITIES
14179246	WILLIAM V. MAC GILL & CO.	7/18/2024	763.95	0100	INSTRUCTIONAL MATERIALS
14179247	VELOCITY TRUCK CENTERS	7/18/2024	3473.31	0100	CONTRACTED SERVICES
14179248	RENAISSANCE LEARNING INC.	7/18/2024	142333.50	0100	CONTRACTED SERVICES
14179249	COOLE SCHOOL	7/18/2024	1986.20	0100	INSTRUCTIONAL MATERIALS
14179250	YMCA OF SAN DIEGO COUNTY	7/18/2024	448779.95	0100	PROFESSIONAL SERVICES
14179251	AT&T	7/18/2024	7782.05	0100	UTILITIES
14179252	FEDEX	7/18/2024	81.22	0100	CONTRACTED SERVICES
14179253	SAN DIEGO COUNTY SCHOOL BOARDS	7/18/2024	346.72	0100	ANNUAL MEMBERSHIP
14179254	HD SUPPLY FACILITIES	7/18/2024	2064.76	0100	MAINTENACE SUPPLIES
14179255	SOUTHWEST SCHOOL & OFFICE	7/18/2024	1536.52	0100	INSTRUCTIONAL MATERIALS
14179256	SOUTHWESTERN COLLEGE	7/18/2024	44904.19	0100	PROFESSIONAL SERVICES
14179257	SAN YSIDRO SCHOOL DISTRICT	7/18/2024	276.99	0100	PCARD REPLENISH
14179258	BEST BEST & KRIEGER LLP	7/18/2024	8253.50	0100	LEGAL SERVICES
14179259	FOLLETT SCHOOL SOLUTIONS,INC	7/18/2024	18093.65	0100	SOFTWARE
14179260	AMAZON CAPITAL SERVICES	7/18/2024	107.70	0100	INSTRUCTIONAL MATERIALS
14179261	TIME AND ALARM SYSTEMS	7/18/2024	17560.50	0100	CONTRACTED SERVICES
14179262	FLYERS ENERGY	7/18/2024	1052.51	0100	TRANSPORTATION SUPPLIES
14179263	XEROX CORPORATION	7/18/2024	6327.41	0100	MAINTENACE AGREEMENT

Warrant ID	Payee	Date	Warrant Amount	Fund	Description
14180450	WINET PATRICK GAYER CREIGHTON	7/22/2024	42258.68	0100	LEGAL SERVICES
14180452	ACCO ENGINEERED SYSTEMS, INC.	7/22/2024	392.00	0100	CONTRACTED SERVICES
14180453	SDSU RESEARCH FOUNDATION NCUST	7/22/2024	8750.00	0100	PROFESSIONAL SERVICES
14180454	ASSESS-APE LLC	7/22/2024	2080.00	0100	PROFESSIONAL SERVICES
14180457	COCINA 35	7/22/2024	10831.46	0100	CONTRACTED SERVICES
14180459	FRONTLINE TECHNOLOGIES GROUP	7/22/2024	20358.27	0100	PROFESSIONAL SERVICES
14180460	FEDEX	7/22/2024	74.61	0100	CONTRACTED SERVICES
14180461	MICHAEL BAKER INTERNATIONAL	7/22/2024	397.50	0100	PROFESSIONAL SERVICES
14181606	EDTHEORY LLC	7/25/2024	5874.00	0100	PROFESSIONAL SERVICES
14181607	CANON FINANCIAL SERVICES, INC	7/25/2024	614.69	0100	MAINTENACE AGREEMENT
14181609	MARIA C.RODRIGUEZ	7/25/2024	130.26	0100	REIMBURSEMENT
14182812	U.S. BANK	7/29/2024	6000.00	0100	PROFESSIONAL SERVICES
14182813	WEX BANK	7/29/2024	4898.94	0100	CONTRACTED SERVICES
14182815	CANON FINANCIAL SERVICES, INC	7/29/2024	25.00	0100	CONTRACTED SERVICES
14182816	INSURANCE ARCHAELOGY SERVICES	7/29/2024	3000.00	0100	PROFESSIONAL SERVICES
14182817	SO-CAL RATTLESNAKE REMOVAL	7/29/2024	1750.00	0100	CONTRACTED SERVICES
14182818	JAMEY CLARK INC	7/29/2024	1450.00	0100	PROFESSIONAL SERVICES
14182819	EDUCATIONAL EPIPHANY, LLC	7/29/2024	999.00	0100	CONTRACTED SERVICES
14182820	STRADLING YOCCA CARLSON	7/29/2024	12637.29	0100	PROFESSIONAL SERVICES
14182821	GRAINGER	7/29/2024	663.81	0100	MAINTENANCE SUPPLIES
14182823	KONE INC	7/29/2024	684.44	0100	CONTRACTED SERVICES
14182824	SAN JOAQUIN COUNTY OF	7/29/2024	967.22	0100	CONTRACTED SERVICES
14182825	RANCHO SAN DIEGO NURSERY INC	7/29/2024	2890.73	0100	GROUNDS SUPPLIES
14182827	RENAISSANCE LEARNING INC.	7/29/2024	36931.89	0100	SOFTWARE
14182828	CODESP	7/29/2024	2675.00	0100	CONTRACTED SERVICES
14182829	CALIFORNIA ELECTRIC SUPPLY	7/29/2024	3745.48	0100	MAINTENANCE SUPPLIES
14179217	DANNIS WOLIVER KELLEY	7/18/2024	11152.00	2518	LEGAL SERVICES
14180451	DANNIS WOLIVER KELLEY	7/22/2024	7257.00	2518	LEGAL SERVICES
14182833	ALBERTO CARLOS HERRERA	7/29/2024	668.80	0100	CONTRACTED SERVICES
Total Fund 01			**$ 3,167,503.07**		
14179234	CLARITZA LIMON	7/18/2024	7.50	1200	MILEAGE
Total Fund 12			**$ 7.50**		

Expenditure Report

7/1/2024-7/31/2024

Warrant ID	Payee	Date	Warrant Amount	Fund	Description
14182810	SELECTA INTERNATIONAL	7/29/2024	37.07	1300	CAFETERIA FOODS
14182811	GOLD STAR FOODS	7/29/2024	5856.47	1300	CAFETERIA FOODS
14182814	SYSCO SAN DIEGO INC.	7/29/2024	361.74	1300	CAFETERIA FOODS
14182822	HOLLANDIA DAIRY INC.	7/29/2024	5051.99	1300	CAFETERIA FOODS
14182826	LLOYD PEST CONTROL CO.	7/29/2024	273.00	1300	CONTRACTED SERVICES
14182830	ACE COOLERS INC	7/29/2024	520.00	1300	CONTRACTED SERVICES
14182831	AMERICAN PRODUCE DISTRIBUTORS	7/29/2024	2193.59	1300	CAFETERIA FOODS
14182832	DOMINOS PIZZA	7/29/2024	76.00	1300	CAFETERIA FOODS
Total Fund 13			**$ 14,369.86**		
14180449	NINYO & MOORE	7/22/2024	54178.50	2133	PROFESSIONAL SERVICES
14180455	PBK ARCHITECTS INC	7/22/2024	6500.00	2133	PROFESSIONAL SERVICES
14180458	SCHOOL FACILITY CONSULTANTS	7/22/2024	375.00	2133	PROFESSIONAL SERVICES
14181608	SCHOOL FACILITY CONSULTANTS	7/25/2024	3327.50	2133	PROFESSIONAL SERVICES
14180456	DAVY ARCHITECTURE INC	7/22/2024	10000.00	2139	PROFESSIONAL SERVICES
Total Fund 21			**$ 74,381.00**		
14179217	DANNIS WOLIVER KELLEY	7/18/2024	6064.00	2518	LEGAL SERVICES
14180451	DANNIS WOLIVER KELLEY	7/22/2024	2505.00	2518	LEGAL SERVICES
Total Fund 25			**$ 8,569.00**		
Grand Total			$ 3,264,830.43		

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Business Services
Marilyn Adrianzen, Chief Business Official

☐ Informational
☒ Action

AGENDA ITEM: ACCEPTANCE OF DONATIONS

BACKGROUND INFORMATION:
The San Ysidro School District appreciates the support of individuals and organizations that contribute to the enhancement of the District's educational programs. These grants/donations are in keeping with the criteria of Board Policy 3290.

The District would like to accept and thank the organization and/or individuals on the attached list for their generous contributions to education, students and staff.

RECOMMENDATION:
Accept donations and grants valued at $100.00 to help support and enrich our educational programs.

LCAP GOAL AND ACTION/SERVICE (please indicate):

☐ **Renewal** ☒ **New** ☐ **Amendment** ☒ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2023-2024 Budget?	Requisition #
☐ Yes ☒ No	☐ Yes ☐ No	

DONATIONS/GRANTS	Cash/Checks Only Donations Account ot Grant Accounts
$100.00	
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

BOARD MEETING: 08-08-24		Donation / Grant		
From	To	Cash/Check Amount	Estimated Value of items/supplies	Purpose / Description
Office Depot	District	N/A	$100.00	4 - $25 Gift Cards for staff incentives

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Business Services
Marilyn Adrianzen, Chief Business Official

☐ Informational
☒ Action

AGENDA ITEM: APPROVE/RATIFY AGREEMENTS WITHIN DELEGATION OF AUTHORITY LIMITS

BACKGROUND INFORMATION:
Pursuant to Education Code Section 17604 and Resolution No. 24/25-0006, the power to contract on behalf of the Governing Board of the San Ysidro School District was delegated to the Superintendent and the Chief Business Official during the 2024-25 fiscal year, in the maximum amounts of $15,000 for public project contracts and $30,000 for all other contracts, respectively; provided that no contract made pursuant to such delegation and authorization shall be valid or constitute an enforceable obligation against the District unless and until same shall have been approved or ratified by the Governing Board, said approval or ratification to be evidenced by a motion duly passed and adopted.

The various district departments submitted the agreements on the attached list for Governing Board approval and/or ratification.

RECOMMENDATION:
Approve/Ratify the agreements on the attached list with cost implications that fall within the authorized delegation of authority limits of up to $15,000 for public project contracts and up to $30,000 for all other contracts from the various funding sources or at no cost to the district.

LCAP GOAL AND ACTION/SERVICE (please indicate):

☐ **Renewal** ☒ **New** ☐ **Amendment** ☒ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

See attached	Various Funding Sources
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

AGREEMENTS UNDER $30,000 FOR APPROVAL / RATIFICATION

August 8, 2024

	Vendor	Description	Estimated Amount	Funding Source	Administrator
1	Southwestern Community College	Facilities Use Agreement for the purpose of offering parents continuing education classes at the District Office Parent Center. (2024-25)	N/A	N/A	Potter
2	Image One	For RocketScan software, technical support and maintenance of equipment used to process, track and generate Infome Survey Forms for LCFF submittal. (2024-25)	$5,970.14	General	Adrianzen
3	SWANK Movie Licensing USA	For legal use of movies within the District's school facilities. (2024-2027)	$7,894.00	General	Adrianzen
4	ASSESS APPE, LLC	To provide independent physical therapy assessment for a student with special needs. (2023-24)	$2,080.00	Sp.Ed.	Little/Madera
5	SBCS Corporation	To continue providing school-based Prevention and Early Intervention (PEI) Services. (2024-25)	N/A	N/A	Little/Madera
6	Placer County SELPA	To provide professional learning services regarding Universal Design for Learning. (2024-25)	N/A	N/A	Little
7	Susan McGraw dba Early Childhood Assessment Professionals Inc.	To provide professional learning services and instructional coaching for Preschool staff. (2024-25)	$28,170.00	Preschool & CDC	Little/Pretzer
8	Supersonic Detailing	To provide washing of vehicles. (2024-25)	$10,000.00	General	Iniguez
9	Sardina Educational Consulting	To participate in interactive process meetings on an "as needed" basis. (2024-25)	TBD	General	Bojorquez

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Special Education Department
Oscar Madera, Director

☐ Informational
☒ Action

AGENDA ITEM: AGREEMENT WITH ASSESS APE, LLC

BACKGROUND INFORMATION:
Federal law section 34 C.F.R. 300.503 defines an Independent Educational Evaluation (IEE) as "an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question."

The parents selected ASSESS APE, LLC, an independent agency, to perform independent Adopted Physical Education (APE) evaluation for their child with special needs.

Cost implications: $2,080.00, including IEP attendance for presentation of report.

RECOMMENDATION:
Approve/Ratify the agreement with ASSESS APE, LLC for the 2023-24 school year to provide independent physical therapy assessment for a student with special needs at a cost of $2,080.00 from the Special Education fund.

LCAP GOAL AND ACTION/SERVICE:
Goal 1: Student Achievement, Action 1.18: Continue to provide site and/or district based academic intervention programs to serve the districts unduplicated student groups (i.e., English Learners, Socio-Economically Disadvantaged, Students with Disabilities, etc.) and educationally disadvantaged students in Comprehensive Support and Improvements Schools. Personnel (e.g., instructional aides) may be hired to support in-class interventions for all student groups including unduplicated students at all school sites.

☐ **Renewal** ☒ **New** ☐ **Amendment** ☒ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2023-2024 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

$2,080.00	Special Education Fund
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

SAN YSIDRO SCHOOL DISTRICT

4350 Otay Mesa Road, San Ysidro, CA 92173

PROFESSIONAL SERVICES AGREEMENT

This agreement is made and entered into this 12th day of July, 2024, by and between the San Ysidro School District, hereinafter called the "District", and

ASSESS-APE LLC	619-246-5044
Company/Consultant	Telephone Number
2931 Orange Place, Lemon Grove, CA 91945	abazer@assess-ape.com
Address	Website

hereinafter referred to as "Consultant."

1 SCOPE AND TERMS

1.1 SCOPE OF SERVICES

Scope of Services. In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the Consultant Services Documentation ("attached documents") attached hereto as ***Exhibit "A"*** and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the District entering into this Agreement, Consultant represents and warrants that Consultant is a provider of first class work and services and Consultant is experienced in performing the work and services contemplated herein and, in light of such status and experience, Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials shall be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

Compliance with Law. All services rendered hereunder shall be provided in accordance with any and all applicable ordinances, resolutions, statutes, rules, and regulations of the District, City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered. Each and every provision required by law to be included in this Agreement shall be deemed to be included by this reference, and this Agreement shall be read and enforced as though they were included.

Licenses, Permits, Fees and Assessments. Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless District against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against District hereunder.

1.2 TERM

From: September 1, 2023 To June 30, 2024

The Term of this Agreement as noted, unless earlier terminated as provided herein. The Parties may mutually agree to extend this term only by written amendment. Should the Parties agree to extend the term of this Agreement; the Agreement can only be extended on a year-to-year basis with written approval unless otherwise indicated in writing and in accordance with the law. Agreements are limited to a total of 5 years at which point a new Agreement will be needed.

2 FEES AND PAYMENTS

2.1 FEES
District shall pay Consultant for the specified services as reflected on ***Exhibit A*** during this contract term.

2.2 PAYMENTS
Consultant shall submit to District an itemized invoice which indicates work completed by Consultant. District shall review each invoice and/or receipts submitted to determine that the work performed, and expenses incurred are in compliance with the provisions of this Agreement. District shall pay Consultant within 30-days of receipt of an acceptable invoice from Consultant.

3. ADDITIONAL SERVICES.

District shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work as described herein. No such extra work may be undertaken unless a written order is first given by the District Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval or ratification of the Contract Officer. However, any increase in compensation beyond the Contract Sum, for services beyond what is contemplated in the Contract, must be approved or ratified by the Board of Education in a signed writing prior to any payment. Additionally, any other increases, extensions or renewals must be approved in writing by the Board of Education. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefore unless specifically authorized pursuant to the terms of this section.

4 RESPONSIBLIITIES OF CONSULTANT

4.1 ORGANIZATION
Consultant shall assign a Company Contact as Project Manager. The Project manager shall not be removed from the Project or reassigned without the prior written consent of District, which consent shall not be unreasonably withheld. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Agreement.

4.2 COORDINATION OF SERVICES
Consultant agrees to work closely with the District staff in the performance of Services and shall be available to the District staff, consultants and other staff at all reasonable times.

4.3 STANDARD OF CARE:
Consultant shall perform all Services under this Agreement in a skillful, competent and timely manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all of Consultant's employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant further represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any of Consultant's employees who are determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any of Consultant's employees who fail or refuse to perform the Services in a manner acceptable to District, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

4.4 INDEPENDENT CONSULTANT & ADDITIONAL PERSONNEL
Consultant is retained as an independent consultant and is not an agent or employee of the District. No employee or agent of Consultant shall by this Agreement become an agent or employee of the District. The work to be performed shall be in accordance with the work described herein, subject to such direction and amendments from District as herein provided. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind District to any obligation whatsoever, except as specifically provided in writing by District. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's

exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law.

4.5 LAWS AND REGULATIONS
The Contractor shall be subject to, and shall comply with, all federal, state, and local laws and regulations applicable to its performance under this Agreement including, but not limited to: licensing, employment, purchasing practices, wages, hours, and conditions of employment, including non-discrimination. Consultant shall be liable for all violations of such laws and regulations in connection with Services.

4.6 MAINTENANCE OF ACCOUNTING RECORDS
Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of the District during normal business hours with reasonable notice to examine, audit and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

4.7 INSURANCE – Consultant shall comply with the following insurance provisions, unless one or more paragraphs are specifically waived by the District in writing.

(1) Time for Compliance. Consultant shall not commence Services under this Agreement until it has provided evidence satisfactory to District that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subconsultant or employee to commence work until it has provided evidence satisfactory to the District.

(2) Minimum Requirements and Limits. Consultant shall, at its expense, procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the consultant, its agents, representatives, and employees. Such insurance shall survive after this agreement as permitted by law.

MINIMUM SCOPE OF INSURANCE - Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, sexual misconduct and personal & advertising injury with limits no less than **$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be **$2,000,000** the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation (Employer's Insurance if applicable):** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease. Coverage shall include waiver of subrogation endorsement in favor of San Ysidro School District.
4. **Professional Liability (Errors and Omissions):** Insurance appropriates to the Consultant's profession, with limit no less than $1,000,000 per occurrence or claim, $2,000,000 aggregate. *(If applicable – see footnote next page)* **District waives** _____
5. **Improper Sexual Conduct:** $1,000,000 per occurrence with an aggregate of not less than $2,000,000 for damages because of bodily injury by reason of negligent hiring and supervision. May be included under General Liability. **District waives** _____
6. **Cyber Security Liability:** Coverage for both electronic and non-electronic data breach of $2,000,000 per occurrence with an aggregate limit of not less than $5,000,000 and shall cover all of Consultant's employees, officials and agents. Coverage shall apply to any dishonest, fraudulent, malicious or criminal use of Consultants or computer system or to obtain financial benefit for any party; to steal, take or provide unauthorized access of electronic data, including publicizing confidential electronic data or causing confidential electronic data to be accessible to unauthorized persons; transfer and for Third-Party Liability encompassing judgements or settlement and defense costs arising out of litigation due to a data breach and data breach response costs for customer notification and credit monitoring service fees. **District waives** _____

If the Consultant maintains higher limits than the minimums shown above, the District requires and shall be entitled to coverage for the higher limits maintained by the Consultant.

Additional Insured Status - Endorsement

The San Ysidro School District, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy and Professional Liability (Errors & Omissions) with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. The additional insured coverage must be provided in the form of an **Additional Insured Endorsement** to the Consultant's/SubConsultant's/Subcontractors' insurance. If Blanket Endorsement, it must include policy number and insured's name.

Primary Coverage

For any claims related to this contract, the **Consultant's insurance coverage shall be primary** insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Notice of Cancellation

The Provider shall file, with the District, Certificates of Insurance indicating a thirty-day (30) cancellation notice. If not stated on the Certificates of Insurance, it is understood that a 30-day cancellation notice will be provided and failure to mail such notice shall impose obligation and liability upon the company/insured, its agents or representative.

Waiver of Subrogation

Consultant/SubConsultant/Subcontractor hereby grants to the San Ysidro School District a waiver of any right to subrogation which any insurer of said Consultant may acquire against the District by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the District. The District may require the Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to the District.

Claims Made Policies (note – should be applicable only to professional liability, see below)

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not replaced ***with another claims-made policy form with a Retroactive Date prior to*** the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of work.

Verification of Coverage

Consultant/SubConsultant/Subcontractor shall furnish the District with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. **All certificates and endorsements are to be received and approved by the District before work/services commences**. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

5 GENERAL PROVISIONS

5.1 DELAYS IN PERFORMANCE

(1) Neither District nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other disturbances; sabotage or judicial restraint.

(2) Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

5.2 SUSPENSION OF SERVICES

The District may, in its sole discretion, suspend all or any part of Services provided hereunder with cost to date of suspension. Consultant may not suspend its services without District's express written consent.

5.3 TERMINATION OF AGREEMENT

(1) Termination. District may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to District to date of the notice of termination and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

(2) Consultant's Termination for Cause. This Agreement may be terminated by the Consultant upon thirty (30) days written notice to the District only when the District has substantially failed to perform its obligations under this Agreement. The written notice shall include a detailed description of the District's failure to perform, status of the work completed as of the date of termination together with a description and a cost estimate of the effort necessary to complete work in progress. In such event, the Consultant shall be compensated for services completed to the date of termination, together with compensation for such approved Additional Services performed after termination which are authorized by the District to conclude the work performed to the date of termination. Upon the District's request and authorization, Consultant shall perform any and all Additional Services necessary to wind up the work performed to the date of termination.

(3) Effect of Termination. If this Agreement is terminated as provided in this Section, District may require Consultant to provide all finished or unfinished documents, date, programming source code, reports or any other items prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

(4) Terminated Services. In the event this Agreement is terminated in whole or in part as provided herein, District may procure, upon such terms and in such manner as it may determine appropriate, services similar or identical to those terminated.

5.4 OWNERSHIP OF MATERIALS AND CONFIDENTIALITY

(1) All materials and data, including but not limited to, data on electronic or magnetic media and any materials, documents and data required to be made or kept pursuant to federal, state or local laws, rules or regulations, prepared or collected by Consultant pursuant to this Agreement, shall be the sole property of the District, except that Consultant shall have the right to retain copies of all such documents and data for its records. District shall not be limited in any way in its use of such materials and data at any time, provided that any such use not within the purposes intended by this Agreement shall be at District's sole risk and provided that Consultant shall be indemnified against any damages resulting from such use, including the release of this material to third parties for a use not intended by this Agreement.

(2) All such materials and data shall be provided to the District, or such other agency or District as directed by District or required by law, rule or regulation, as they become due during the term of this Agreement as direct by District.

(3) The District is a California public entity subject to all state and federal laws governing education, including but not limited to California Assembly Bill 1584 (AB 1584), the California Education Code, the Children's Online Privacy and

Protection Act (COPPA), the Family Educational Rights and Privacy Act (FERPA), and HIPAA Privacy regulations and any other privacy laws, policies and regulations that may apply such as American Recovery and Reinvestment Act of 2009 ("ARRA") and the Health Information Technology and Economic Clinical Health Act of 2009 ("HITECH").

AB1584 requires, in part, that any agreement entered into, renewed or amended after January 1, 2015 between a local education agency (LEA) and a third-party service provider must include certain terms; and the LEA and the Service Provider desire to have this Agreement and the services provided comply with AB1584. This includes to all forms of protected health information, including paper, oral, and electronic, etc. Furthermore, only the minimum health information necessary to conduct business is to be used or shared.

- Pupil records obtained by the Consultant/Service Provider from LEA/District continue to be the property of and under the control of the District. The Consultant will obtain information regarding disciplinary and/or behavioral events for the purpose of allowing District personnel to improve and provide services to pupils. The Consultant will not be obtaining pupil-generated content.
- In the event of an unauthorized disclosure of a pupil's records, the Consultant shall report to an affected parent, legal guardian, or eligible pupil pursuant to the following procedure; written communication to the District's Superintendent, Deputy Superintendent and/or designee.
- The Consultant shall not use any information in a pupil record for any purpose other than those required or specifically permitted by this Professional Services Agreement.
- Consultant certifies that a pupil's records shall not be retained or available to the Consultant upon completion of the terms of this Professional Services Agreement.
- District agrees to work with Consultant to ensure compliance with FERPA.
- Consultant shall not use personally identifiable information in pupil records to engage in targeted advertising.
- Pupil records include any information directly related to a pupil that is maintained by the District or acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other District employees. Pupil records does not include/not mean de-identified information (information that cannot be used to identify an individual pupil) used by the third party to (1) improve educational products for adaptive learning purposes and for customized pupil learning; De-identified information, including aggregated de-identified information. (2) Demonstrate the effectiveness of the operator's products in the marketing of those products; or for the development and improvement of educational sites, services, or applications.

5.5 SAFETY

Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

5.6 PROJECT STAFFING

Consultant shall provide adequate staff and resources to facilitate all Consultant activity. Should Consultant fail to adequately staff a project, the District may, at its sole discretion, retain third party consulting services and back charge Consultant for all third-party fees.

5.7 INDEMNIFICATION

Indemnification: To the fullest extent permitted by law, Consultant shall defend (with counsel of District's choosing), indemnify and hold the District, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the District, its officials, officers, employees, agents, or volunteers.

5.8 AMENDMENTS

This Agreement may not be amended except in writing signed by both Parties.

5.9 SEVERABILITY

If any section, subsection, sentence, clause or phrases of this Agreement, or the application thereof to any of the Parties, is for any reason held invalid or unenforceable, the validity of the remainder of the Agreement shall not be affected thereby and may be enforced by the Parties to this Agreement.

5.10 GOVERNING LAW

This Agreement shall be governed by the laws of the State of California. Any action brought to enforce the terms of this Agreement shall be brought in a state or federal court located in the County of San Diego, State of California, but only after dispute resolution as provided herein.

5.11 CONFLICT OF INTEREST

For the term of this Agreement, no member, officer, or employee of District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

5.12 SCHOOL SAFETY, FINGERPRINTING AND BACKGROUND INVESTIGATION REQUIREMENTS:

As a Contractor/Vendor of the District, you are responsible for ensuring that your agents and employees are complying with applicable state, county and District guidelines whenever services are performed on all District operated facilities.

Consultant agrees with the provisions of Education Code Section 45125.1 regarding the submission of fingerprints to the California Department of Justice. Consultant shall not be permitted to have any contact with District pupils until such time as Consultant has verified in writing to the District that they have complied with Educational Code Section 45125.1. (**Please complete attached School Safety Certification Form. Attachment 1)**

Per Ed Code 49406 and Assembly Bill 1667, the District requires Tuberculosis (TB) Clearances to be in place by anyone coming in contact with pupils. Please submit TB Clearance to the Business Services Office. This section may be waived if the District determines that the Consultant and/or its employees will have limited contact with District pupils or if Consultant and/or its employees will be supervised at all times by District staff. **District is waiving this requirement _____ .**

5.13 DRUG/ALCOHOL/TOBACCO-FREE FACILITIES:

ALL DISTRICT FACILITIES ARE DRUG AND TOBACCO-FREE FACILITIES. ANY DRUG, ALCOHOL AND/OR TOBACCO USE (SMOKED OR SMOKELESS) IS PROHIBITED AT ALL TIMES ON ALL AREAS OF THE DISTRICT FACILITIES.

5.14 NOTICES / CONTACT INFORMATION

All notices or demands to be given under this Agreement by either party to the other shall be in writing and given either by: (a) personal service, (b) email or (c) by U.S. Mail, mailed certified mail with return receipt requested, addressed to the following entities.

CONSULTANT:	ASSESS-APE LLC
Name:	Andrea M. Bazer, M.Ed.
Title:	
Address:	2931 Orange Place
City/State/Zip Code:	Lemon Grove, CA 91945-2966
Telephone:	619-246-5044
Email:	abazer@assess-ape.com

DISTRICT:	**San Ysidro School District**	
Name:	Marilyn Adrianzen	Oscar Madera
Title:	Chief Business Official	Director of Special Education
Address:	4350 Otay Mesa Road	4350 Otay Mesa Road
City/State/Zip code:	San Ysidro, CA 92173	San Ysidro, CA 92173
Telephone:	(619) 428-4476	(619) 428-4476
Email:	Marilyn.adrianzen@sysdschools.org	Oscar.madera@sysdschools.org

6 ENTIRE AGREEMENT

This Agreement represents the entire understanding of District and Consultant 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 hereunder. To the extent that any provision or clause contained in an attachment or Exhibit to this Agreement conflicts with a provision or clause in the Agreement, the provision or clause in this Agreement shall control. This Agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated Agreement.

7 WARRANTY OF AUTHORITY:

Each of the parties signing this Agreement warrants to the other that he or she has the full authority to enter into agreement on behalf of the Party for which his or her signature is made.//

CONSULTANT

ASSESS-APE LLC
Firm Name

Andrea M. Bazer
Signature of Authorized Agent

Andrea M. Bazer, M.Ed.
Print Name, Title

July 16, 2024
Date:

DISTRICT

San Ysidro School District
Firm Name

Signature

Marilyn Adrianzen, Chief Business Official
Print Name, Title

Date

Board Approved:

Revised 2024

SAN YSIDRO SCHOOL DISTRICT

4350 Otay Mesa Road, San Ysidro, CA 92173

SCHOOL SAFETY CERTIFICATION FORM

CERTIFICATION PURSUANT TO EDUCATION CODE ECTION 45125.1 and
Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c)
Fingerprinting and Criminal Background Investigation Requirements

The San Ysidro School District (District) has determined under Education Code Section 45125.1, subdivision (c) that in performing services under this contract, **Contractor/Consultant's employees and/or subconsultants/subcontractors may have potential contact with pupils, minors and/or persons in an incapacitated state**.

__AMB_____(*Initial*) As required under Education Code Section 45125.1, subdivision (a), Consultant shall require their employees, including the employees of any sub-consultant and/or subcontractor, who will provide services pursuant to this contract to submit their fingerprints in a manner authorized by the Department of Justice in order to conduct a criminal background check to determine whether such employees have been convicted of or have charges pending for a felony as defined under Education Code Section 45122.1.

__AMB_____(*Initial*) Consultant shall not permit any employee to perform services that may come in contact with pupils under this contract until the Department of Justice has determined that the employee has not been convicted of a felony or has no criminal charges pending for a felony as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

___AMB_____(*Initial*) Consultant certifies that all of its employees who may come in contact with pupils have not been convicted of or have no criminal charges pending for a felony, as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

__*AMB*_____*(Initial)* Consultant certifies and agrees that services provided during the term of this agreement will be supervised by school certificated staff and/or a parent or legal guardian must be present during each contact with pupils (visit, treatment, evaluation, therapy, etc.)

__AMB_____(*Initial*) Consultant shall defend, indemnify, protect and hold the District and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property which arise from or are connected with or are caused or claimed to be caused by Consultant's failure to comply with all of the requirements contained in Education Code Section 45125.1, including, but not limited to, the requirements prohibiting Consultant from using employees who may have contact with pupils who have been convicted or have charges pending for a felony in Education Code Section 45122.1.

___AMB_____(*Initial*) Per Ed Code 49406 and Assembly Bill 1667, the District requires for Tuberculosis (TB) Clearances to be in place by anyone coming in contact with pupils.

__AMB_____(*Initial*) Consultant's individuals/employees and/or Subconsultants/Subcontractors who may come in contact with pupils in the performance of services in this contract agree to provide fingerprint (DOJ/FBI) and TB Clearances (at their own expense) to be in compliance with the above-mentioned Ed Codes before commencement of any services under this contract. The District will provide LiveScan form if necessary.

- I certify to the District's Governing Board that I have read and understand the above terms and conditions and will report any changes that may affect the performance services of this contract.
- I certify to the District's Governing Board that none of the Consultant's employees/individuals and/or Subconsultants/subcontractors performing services under this agreement have been convicted of a felony as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).
- I certify to the District's Governing Board that all of the Consultant's and Subconsultant's/Subcontractor's employees-individuals performing services under this agreement are clear of tuberculosis (TB) as defined on Education Code Section 49406 and Assembly Bill 1667.

Company Name: ASSESS-APE LLC

Name/title of authorized representative *(Print)* Andrea M. Bazer, M.Ed.

Signature Andrea M. Bazer Date July 16, 2024

EXHIBIT A

SCOPE OF WORK AND FEES

ASSESS APE LLC will be providing the following services to a student with special needs:

- Individual Education Evaluation (IEE) - Adopted Physical Education that includes collecting data for testing;
- Attending an IEP meeting to present the results of evaluation.

Cost implications: not to exceed **$2,080.00**

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Information Technology
Todd Lewis, Director

☐ Informational
☒ Action

AGENDA ITEM: AGREEMENT WITH IMAGE ONE FOR 2024-25

BACKGROUND INFORMATION:
The Local Control Funding Formula (LCFF) in California uses household income data to calculate supplemental grants for students who are considered "high-need". High-need students include those who are English learners, from low-income families, or in the foster system. Local educational agencies (LEAs) use alternative income forms to determine if a student's household income is below the federal poverty level. These forms can be used in place of, or in addition to, federal meal applications.

Rocketscan software is a solution for public school districts that automates the processing of household incomes and free and reduced meal applications. School districts can scan the LCFF income forms into the software system for automated processing, or families can directly enter their information online for increased accuracy.

The District wants to renew the agreement for online services, equipment, license, and maintenance used to process, track, and generate Income Survey Forms for LCFF submittal.

RECOMMENDATION:
Approve/Ratify the agreement with Image One for the RocketScan software, technical support, and maintenance of the equipment used to process, track, and generate Income Survey Forms for LCFF submittal in an amount up to $5,970.14 from the General fund.

LCAP GOAL AND ACTION/SERVICE (please indicate):
Goal No. 2: Base Services and Safety
2.1 Maintain basic operating services of the district.

☐ **Renewal** ☒ **New** ☐ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	
Up to $5,970.14 (Amount)	General Fund (Name of funding source and/or location)	

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

Image One

CONTRACT INVOICE

Invoice Number: 345462
Invoice Date: 07/24/2024

6202 BENJAMIN ROAD
SUITE 103 TAMPA, FL 33634-5184
P: 800-956-9000 F: 813-887-5359

Bill To: SAN YSIDRO SCHOOL DISTRICT
SADEER SAHIB
4350 OTAY MESA ROAD
SAN YSIDRO, CA 92173

Customer: SAN YSIDRO SCHOOL DISTRICT
4350 OTAY MESA ROAD
SAN YSIDRO, CA 92173

Account No	Payment Terms	Due Date	Invoice Total	Balance Due
SANYSI	5/15 Net 75	10/07/2024	$5,970.14	**$5,970.14**

Invoice Remarks

Contract Number	Contact	Contract Amount	P.O. Number	Start Date	Exp. Date
SO3113-11	**Evelyn Zarzosa (619) 428-4476 x 3011	$5,970.14		07/01/2024	06/30/2025

Contract Remarks

Summary:

Contract base rate charge for the 07/01/2024 to 06/30/2025 billing period	$5,970.14 *
*Sum of equipment base charges	$5,970.14

Detail:

Equipment included under this contract

ROCKETSCAN/ADD ON LICENSE FOR ONLINE

Number	Serial Number	Base Charge	Location
04904		$94.21	SAN YSIDRO SCHOOL DISTRICT 4350 OTAY MESA ROAD SAN YSIDRO, CA 92173

ROCKETSCAN/LCFF 1K ADD-ON LICENSE

Number	Serial Number	Base Charge	Location
04903		$292.87	SAN YSIDRO SCHOOL DISTRICT 4350 OTAY MESA ROAD SAN YSIDRO, CA 92173

ROCKETSCAN/ROCKETSCAN CLOUD

Number	Serial Number	Base Charge	Location
06051		$2,675.00	SAN YSIDRO SCHOOL DISTRICT 4350 OTAY MESA ROAD SAN YSIDRO, CA 92173

ROCKETSCAN/RS FOR LCFF 2.5K LICENSE

Number	Serial Number	Base Charge	Location
03028		$1,538.15	SAN YSIDRO SCHOOL DISTRICT 4350 OTAY MESA ROAD SAN YSIDRO, CA 92173

IO/RS FOR LCFF ONLINE MODULE

Number	Serial Number	Base Charge	Location
04836		$682.20	SAN YSIDRO SCHOOL DISTRICT 4350 OTAY MESA ROAD SAN YSIDRO, CA 92173

ROCKETSCAN/WEB HOSTING

Number	Serial Number	Base Charge	Location
04837		$687.71	SAN YSIDRO SCHOOL DISTRICT 4350 OTAY MESA ROAD SAN YSIDRO, CA 92173

Image One

CONTRACT INVOICE

Invoice Number: 345462
Invoice Date: 07/24/2024

6202 BENJAMIN ROAD
SUITE 103 TAMPA, FL 33634-5184
P: 800-956-9000 F: 813-887-5359

Bill To: SAN YSIDRO SCHOOL DISTRICT
SADEER SAHIB
4350 OTAY MESA ROAD
SAN YSIDRO, CA 92173

Customer: SAN YSIDRO SCHOOL DISTRICT
4350 OTAY MESA ROAD
SAN YSIDRO, CA 92173

For all payments made by credit card a 3.5% fee will be added at the time of payment. To avoid this fee please remit payment via Debit Card, ACH, or Check. ACH instructions are below. To make payment via credit card, please visit https://paywithcardx.com/bpl/imageone1

PLEASE REMIT TO: 6202 BENJAMIN ROAD SUITE 103
TAMPA, FL 33634

FEIN: 59-3281176

ACH Instructions:
Bank Name: The Bank of Tampa 5401 W. Waters Avenue Tampa, Florida 33634 (813) 872-1350
Account Name: Image One Corporation
Account Number: 61006874
Routing (ABA) # - ACH: 063108680

Invoice SubTotal	$5,970.14
Tax:	$0.00
Invoice Total	$5,970.14
Balance Due:	**$5,970.14**

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Human Resources
Manuel Bojorquez, Director

☐ Informational
☒ Action

AGENDA ITEM: AGREEMENT WITH SARDINA EDUCATIONAL CONSULTING

BACKGROUND INFORMATION:
The San Ysidro School District will enter into an agreement with Sardina Educational Consulting to provide special services for facilitating the Interactive Process for employees with medical conditions, including summary reports and correspondence to medical providers, training, and consultation/coordination.

Term: August 9, 2024 to June 30, 2025

RECOMMENDATION:
Approve/Ratify the agreement with Sardina Educational Consulting to participate in interactive process meetings during 2024-25 on an "as needed" basis. Cost implications will be paid from the General fund.

LCAP GOAL AND ACTION/SERVICE (please indicate):
Goal #1: Student Achievement – 1.5 Staffing

☐ **Renewal** ☒ **New** ☐ **Amendment** ☒ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	--

TBD	General
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☒ Yes ☐ No

SAN YSIDRO SCHOOL DISTRICT

4350 Otay Mesa Road, San Ysidro, CA 92173

PROFESSIONAL SERVICES AGREEMENT

This agreement is made and entered into this 9th day of August, 2024, by and between the San Ysidro School District, hereinafter called the "District", and

Tina Lynn Sardina dba Sardina Educational Consulting	619-928-8854
Company/Consultant	Telephone Number
10001 ½ Blossom Valley Road, El Cajon, CA 92021	
Address	Website

hereinafter referred to as "Consultant."

1 SCOPE AND TERMS

1.1 SCOPE OF SERVICES

Scope of Services. In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the Consultant Services Documentation ("attached documents") attached hereto as ***Exhibit "A"*** and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the District entering into this Agreement, Consultant represents and warrants that Consultant is a provider of first class work and services and Consultant is experienced in performing the work and services contemplated herein and, in light of such status and experience, Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials shall be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

Compliance with Law. All services rendered hereunder shall be provided in accordance with any and all applicable ordinances, resolutions, statutes, rules, and regulations of the District, City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered. Each and every provision required by law to be included in this Agreement shall be deemed to be included by this reference, and this Agreement shall be read and enforced as though they were included.

Licenses, Permits, Fees and Assessments. Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless District against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against District hereunder.

1.2 TERM

From: August 9, 2024 To June 30, 2025

The Term of this Agreement as noted, unless earlier terminated as provided herein. The Parties may mutually agree to extend this term only by written amendment. Should the Parties agree to extend the term of this Agreement; the Agreement can only be extended on a year-to-year basis with written approval unless otherwise indicated in writing and in accordance with the law. Agreements are limited to a total of 5 years at which point a new Agreement will be needed.

2 FEES AND PAYMENTS

2.1 FEES

District shall pay Consultant for the specified services as reflected on ***Exhibit A*** during this contract term.

2.2 PAYMENTS

Consultant shall submit to District an itemized invoice which indicates work completed by Consultant. District shall review each invoice and/or receipts submitted to determine that the work performed, and expenses incurred are in compliance with the provisions of this Agreement. District shall pay Consultant within 30-days of receipt of an acceptable invoice from Consultant.

3. ADDITIONAL SERVICES.

District shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work as described herein. No such extra work may be undertaken unless a written order is first given by the District Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval or ratification of the Contract Officer. However, any increase in compensation beyond the Contract Sum, for services beyond what is contemplated in the Contract, must be approved or ratified by the Board of Education in a signed writing prior to any payment. Additionally, any other increases, extensions or renewals must be approved in writing by the Board of Education. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefore unless specifically authorized pursuant to the terms of this section.

4 RESPONSIBLIITIES OF CONSULTANT

4.1 ORGANIZATION

Consultant shall assign a Company Contact as Project Manager. The Project manager shall not be removed from the Project or reassigned without the prior written consent of District, which consent shall not be unreasonably withheld. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Agreement.

4.2 COORDINATION OF SERVICES

Consultant agrees to work closely with the District staff in the performance of Services and shall be available to the District staff, consultants and other staff at all reasonable times.

4.3 STANDARD OF CARE:

Consultant shall perform all Services under this Agreement in a skillful, competent and timely manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all of Consultant's employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant further represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any of Consultant's employees who are determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any of Consultant's employees who fail or refuse to perform the Services in a manner acceptable to District, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

4.4 INDEPENDENT CONSULTANT & ADDITIONAL PERSONNEL

Consultant is retained as an independent consultant and is not an agent or employee of the District. No employee or agent of Consultant shall by this Agreement become an agent or employee of the District. The work to be performed shall be in accordance with the work described herein, subject to such direction and amendments from District as herein provided. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind District to any obligation whatsoever, except as specifically provided in writing by District. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law.

4.5 LAWS AND REGULATIONS

The Contractor shall be subject to, and shall comply with, all federal, state, and local laws and regulations applicable to its performance under this Agreement including, but not limited to: licensing, employment, purchasing practices, wages, hours, and conditions of employment, including non-discrimination. Consultant shall be liable for all violations of such laws and regulations in connection with Services.

4.6 MAINTENANCE OF ACCOUNTING RECORDS

Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of the District during normal business hours with reasonable notice to examine, audit and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

4.7 INSURANCE – Consultant shall comply with the following insurance provisions, unless one or more paragraphs are specifically waived by the District in writing.

(1) Time for Compliance. Consultant shall not commence Services under this Agreement until it has provided evidence satisfactory to District that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subconsultant or employee to commence work until it has provided evidence satisfactory to the District.

(2) Minimum Requirements and Limits. Consultant shall, at its expense, procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the consultant, its agents, representatives, and employees. Such insurance shall survive after this agreement as permitted by law.

MINIMUM SCOPE OF INSURANCE - Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, sexual misconduct and personal & advertising injury with limits no less than **$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be **$2,000,000** the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation (Employer's Insurance if applicable):** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease. Coverage shall include waiver of subrogation endorsement in favor of San Ysidro School District.
4. **Professional Liability (Errors and Omissions):** Insurance appropriates to the Consultant's profession, with limit no less than $1,000,000 per occurrence or claim, $2,000,000 aggregate. *(If applicable – see footnote next page)* **District waives _____**
5. **Improper Sexual Conduct:** $1,000,000 per occurrence with an aggregate of not less than $2,000,000 for damages because of bodily injury by reason of negligent hiring and supervision. May be included under General Liability. **District waives _____**
6. **Cyber Security Liability:** Coverage for both electronic and non-electronic data breach of $2,000,000 per occurrence with an aggregate limit of not less than $5,000,000 and shall cover all of Consultant's employees, officials and agents. Coverage shall apply to any dishonest, fraudulent, malicious or criminal use of Consultants or computer system or to obtain financial benefit for any party; to steal, take or provide unauthorized access of electronic data, including publicizing confidential electronic data or causing confidential electronic data to be accessible to unauthorized persons; transfer and for Third-Party Liability encompassing judgements or settlement and defense costs arising out of litigation due to a data breach and data breach response costs for customer notification and credit monitoring service fees. **District waives _____**

If the Consultant maintains higher limits than the minimums shown above, the District requires and shall be entitled to coverage for the higher limits maintained by the Consultant.

Additional Insured Status - Endorsement

The San Ysidro School District, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy and Professional Liability (Errors & Omissions) with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. The additional insured coverage must be provided in the form of an **Additional Insured Endorsement** to the Consultant's/SubConsultant's/Subcontractors' insurance. If Blanket Endorsement, it must include policy number and insured's name.

Primary Coverage

For any claims related to this contract, the **Consultant's insurance coverage shall be primary** insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Notice of Cancellation

The Provider shall file, with the District, Certificates of Insurance indicating a thirty-day (30) cancellation notice. If not stated on the Certificates of Insurance, it is understood that a 30-day cancellation notice will be provided and failure to mail such notice shall impose obligation and liability upon the company/insured, its agents or representative.

Waiver of Subrogation

Consultant/SubConsultant/Subcontractor hereby grants to the San Ysidro School District a waiver of any right to subrogation which any insurer of said Consultant may acquire against the District by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the District. The District may require the Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to the District.

Claims Made Policies (note – should be applicable only to professional liability, see below)

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not replaced ***with another claims-made policy form with a Retroactive Date prior to*** the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of work.

Verification of Coverage

Consultant/SubConsultant/Subcontractor shall furnish the District with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. **All certificates and endorsements are to be received and approved by the District before work/services commences**. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

5 GENERAL PROVISIONS

5.1 DELAYS IN PERFORMANCE

(1) Neither District nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other disturbances; sabotage or judicial restraint.

(2) Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

5.2 SUSPENSION OF SERVICES

The District may, in its sole discretion, suspend all or any part of Services provided hereunder with cost to date of suspension. Consultant may not suspend its services without District's express written consent.

5.3 TERMINATION OF AGREEMENT

(1) Termination. District may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to District to date of the notice of termination and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

(2) Consultant's Termination for Cause. This Agreement may be terminated by the Consultant upon thirty (30) days written notice to the District only when the District has substantially failed to perform its obligations under this Agreement. The written notice shall include a detailed description of the District's failure to perform, status of the work completed as of the date of termination together with a description and a cost estimate of the effort necessary to complete work in progress. In such event, the Consultant shall be compensated for services completed to the date of termination, together with compensation for such approved Additional Services performed after termination which are authorized by the District to conclude the work performed to the date of termination. Upon the District's request and authorization, Consultant shall perform any and all Additional Services necessary to wind up the work performed to the date of termination.

(3) Effect of Termination. If this Agreement is terminated as provided in this Section, District may require Consultant to provide all finished or unfinished documents, date, programming source code, reports or any other items prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

(4) Terminated Services. In the event this Agreement is terminated in whole or in part as provided herein, District may procure, upon such terms and in such manner as it may determine appropriate, services similar or identical to those terminated.

5.4 OWNERSHIP OF MATERIALS AND CONFIDENTIALITY

(1) All materials and data, including but not limited to, data on electronic or magnetic media and any materials, documents and data required to be made or kept pursuant to federal, state or local laws, rules or regulations, prepared or collected by Consultant pursuant to this Agreement, shall be the sole property of the District, except that Consultant shall have the right to retain copies of all such documents and data for its records. District shall not be limited in any way in its use of such materials and data at any time, provided that any such use not within the purposes intended by this Agreement shall be at District's sole risk and provided that Consultant shall be indemnified against any damages resulting from such use, including the release of this material to third parties for a use not intended by this Agreement.

(2) All such materials and data shall be provided to the District, or such other agency or District as directed by District or required by law, rule or regulation, as they become due during the term of this Agreement as direct by District.

(3) The District is a California public entity subject to all state and federal laws governing education, including but not limited to California Assembly Bill 1584 (AB 1584), the California Education Code, the Children's Online Privacy and

Protection Act (COPPA), the Family Educational Rights and Privacy Act (FERPA), and HIPAA Privacy regulations and any other privacy laws, policies and regulations that may apply such as American Recovery and Reinvestment Act of 2009 ("ARRA") and the Health Information Technology and Economic Clinical Health Act of 2009 ("HITECH").

AB1584 requires, in part, that any agreement entered into, renewed or amended after January 1, 2015 between a local education agency (LEA) and a third-party service provider must include certain terms; and the LEA and the Service Provider desire to have this Agreement and the services provided comply with AB1584. This includes to all forms of protected health information, including paper, oral, and electronic, etc. Furthermore, only the minimum health information necessary to conduct business is to be used or shared.

- Pupil records obtained by the Consultant/Service Provider from LEA/District continue to be the property of and under the control of the District. The Consultant will obtain information regarding disciplinary and/or behavioral events for the purpose of allowing District personnel to improve and provide services to pupils. The Consultant will not be obtaining pupil-generated content.
- In the event of an unauthorized disclosure of a pupil's records, the Consultant shall report to an affected parent, legal guardian, or eligible pupil pursuant to the following procedure; written communication to the District's Superintendent, Deputy Superintendent and/or designee.
- The Consultant shall not use any information in a pupil record for any purpose other than those required or specifically permitted by this Professional Services Agreement.
- Consultant certifies that a pupil's records shall not be retained or available to the Consultant upon completion of the terms of this Professional Services Agreement.
- District agrees to work with Consultant to ensure compliance with FERPA.
- Consultant shall not use personally identifiable information in pupil records to engage in targeted advertising.
- Pupil records include any information directly related to a pupil that is maintained by the District or acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other District employees. Pupil records does not include/not mean de-identified information (information that cannot be used to identify an individual pupil) used by the third party to (1) improve educational products for adaptive learning purposes and for customized pupil learning; De-identified information, including aggregated de-identified information. (2) Demonstrate the effectiveness of the operator's products in the marketing of those products; or for the development and improvement of educational sites, services, or applications.

5.5 SAFETY

Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

5.6 PROJECT STAFFING

Consultant shall provide adequate staff and resources to facilitate all Consultant activity. Should Consultant fail to adequately staff a project, the District may, at its sole discretion, retain third party consulting services and back charge Consultant for all third-party fees.

5.7 INDEMNIFICATION

Indemnification: To the fullest extent permitted by law, Consultant shall defend (with counsel of District's choosing), indemnify and hold the District, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the District, its officials, officers, employees, agents, or volunteers.

5.8 AMENDMENTS

This Agreement may not be amended except in writing signed by both Parties.

5.9 SEVERABILITY

If any section, subsection, sentence, clause or phrases of this Agreement, or the application thereof to any of the Parties, is for any reason held invalid or unenforceable, the validity of the remainder of the Agreement shall not be affected thereby and may be enforced by the Parties to this Agreement.

5.10 GOVERNING LAW

This Agreement shall be governed by the laws of the State of California. Any action brought to enforce the terms of this Agreement shall be brought in a state or federal court located in the County of San Diego, State of California, but only after dispute resolution as provided herein.

5.11 CONFLICT OF INTEREST

For the term of this Agreement, no member, officer, or employee of District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

5.12 SCHOOL SAFETY, FINGERPRINTING AND BACKGROUND INVESTIGATION REQUIREMENTS:

As a Contractor/Vendor of the District, you are responsible for ensuring that your agents and employees are complying with applicable state, county and District guidelines whenever services are performed on all District operated facilities.

Consultant agrees with the provisions of Education Code Section 45125.1 regarding the submission of fingerprints to the California Department of Justice. Consultant shall not be permitted to have any contact with District pupils until such time as Consultant has verified in writing to the District that they have complied with Educational Code Section 45125.1. (**Please complete attached School Safety Certification Form. Attachment 1)**

Per Ed Code 49406 and Assembly Bill 1667, the District requires Tuberculosis (TB) Clearances to be in place by anyone coming in contact with pupils. Please submit TB Clearance to the Business Services Office. This section may be waived if the District determines that the Consultant and/or its employees will have limited contact with District pupils or if Consultant and/or its employees will be supervised at all times by District staff. **District is waiving this requirement _____ .**

5.13 DRUG/ALCOHOL/TOBACCO-FREE FACILITIES:

ALL DISTRICT FACILITIES ARE DRUG AND TOBACCO-FREE FACILITIES. ANY DRUG, ALCOHOL AND/OR TOBACCO USE (SMOKED OR SMOKELESS) IS PROHIBITED AT ALL TIMES ON ALL AREAS OF THE DISTRICT FACILITIES.

5.14 NOTICES / CONTACT INFORMATION

All notices or demands to be given under this Agreement by either party to the other shall be in writing and given either by: (a) personal service, (b) email or (c) by U.S. Mail, mailed certified mail with return receipt requested, addressed to the following entities.

CONSULTANT:	**Sardina Educational Consulting**	
Name:	Tina Lynn Sardina	
Title:	President	
Address:	10001 ½ Blossom Valley Road	
City/State/Zip Code:	El Cajon, CA 92021	
Telephone:	619-928-8854	
Email:	tinalsardina@gmail.com	

DISTRICT:	San Ysidro School District	
Name:	Marilyn Adrianzen	**Manuel Bojorquez**
Title:	Chief Business Official	Director of Human Resources
Address:	4350 Otay Mesa Road	4350 Otay Mesa Road
City/State/Zip code:	San Ysidro, CA 92173	San Ysidro, CA 92173
Telephone:	(619) 428-4476	(619) 428-4476 x3012
Email:	Marilyn.adrianzen@sysdschools.org	Manuel.bojorquez@sysdschools.org

6 ENTIRE AGREEMENT

This Agreement represents the entire understanding of District and Consultant 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 hereunder. To the extent that any provision or clause contained in an attachment or Exhibit to this Agreement conflicts with a provision or clause in the Agreement, the provision or clause in this Agreement shall control. This Agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated Agreement.

7 WARRANTY OF AUTHORITY:

Each of the parties signing this Agreement warrants to the other that he or she has the full authority to enter into agreement on behalf of the Party for which his or her signature is made.//

CONSULTANT	**DISTRICT**
Sardina Educational Consulting	**San Ysidro School District**
Firm Name	Firm Name
Signature of Authorized Agent	Signature
	Marilyn Adrianzen, Chief Business Official
Print Name, Title	Print Name, Title
Date:	Date
	Board Approved:

Revised 2024

SAN YSIDRO SCHOOL DISTRICT

4350 Otay Mesa Road, San Ysidro, CA 92173

SCHOOL SAFETY CERTIFICATION FORM

CERTIFICATION PURSUANT TO EDUCATION CODE ECTION 45125.1 and
Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c)
Fingerprinting and Criminal Background Investigation Requirements

The San Ysidro School District (District) has determined under Education Code Section 45125.1, subdivision (c) that in performing services under this contract, **Contractor/Consultant's employees and/or subconsultants/subcontractors may have potential contact with pupils, minors and/or persons in an incapacitated state**.

_____(*Initial*) As required under Education Code Section 45125.1, subdivision (a), Consultant shall require their employees, including the employees of any sub-consultant and/or subcontractor, who will provide services pursuant to this contract to submit their fingerprints in a manner authorized by the Department of Justice in order to conduct a criminal background check to determine whether such employees have been convicted of or have charges pending for a felony as defined under Education Code Section 45122.1.

_____(*Initial*) Consultant shall not permit any employee to perform services that may come in contact with pupils under this contract until the Department of Justice has determined that the employee has not been convicted of a felony or has no criminal charges pending for a felony as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

_____(*Initial*) Consultant certifies that all of its employees who may come in contact with pupils have not been convicted of or have no criminal charges pending for a felony, as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

_____*(Initial)* Consultant certifies and agrees that services provided during the term of this agreement will be supervised by school certificated staff and/or a parent or legal guardian must be present during each contact with pupils (visit, treatment, evaluation, therapy, etc.)

_____(*Initial*) Consultant shall defend, indemnify, protect and hold the District and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property which arise from or are connected with or are caused or claimed to be caused by Consultant's failure to comply with all of the requirements contained in Education Code Section 45125.1, including, but not limited to, the requirements prohibiting Consultant from using employees who may have contact with pupils who have been convicted or have charges pending for a felony in Education Code Section 45122.1.

_____(*Initial*) Per Ed Code 49406 and Assembly Bill 1667, the District requires for Tuberculosis (TB) Clearances to be in place by anyone coming in contact with pupils.

_____(*Initial*) Consultant's individuals/employees and/or Subconsultants/Subcontractors who may come in contact with pupils in the performance of services in this contract agree to provide fingerprint (DOJ/FBI) and TB Clearances (at their own expense) to be in compliance with the above-mentioned Ed Codes before commencement of any services under this contract. The District will provide LiveScan form if necessary.

- I certify to the District's Governing Board that I have read and understand the above terms and conditions and will report any changes that may affect the performance services of this contract.
- I certify to the District's Governing Board that none of the Consultant's employees/individuals and/or Subconsultants/subcontractors performing services under this agreement have been convicted of a felony as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).
- I certify to the District's Governing Board that all of the Consultant's and Subconsultant's/Subcontractor's employees-individuals performing services under this agreement are clear of tuberculosis (TB) as defined on Education Code Section 49406 and Assembly Bill 1667.

Company Name:_____

Name/title of authorized representative *(Print)* _____

Signature _____Date _____

EXHIBIT A

SCOPE OF WORK AND FEES

Consultant will provide educational consulting, assessments, investigations, and professional coaching to include Interactive Process Meetings (IPM), at an hourly rate of $190.00. The fee includes a written report and consultation. IPM Meetings are approximately 2 hours from start to finish.

The scope of services is outlined in the attached document.

Exhibit A
Scope of Services

SARDINA
Educational Consulting

ASSESSMENT
INVESTIGATIONS
PROFESSIONAL COACHING

Confidential Independent Trusted

Tina L. Sardina utilizes her 32 years of experience to offer today's finest collaborative services in educational consulting. She has held positions from Teacher, Principal, Director of Curriculum & Instruction to Assistant Superintendent of Human Resources, and has also served as an Instructor for the Credentials Program with National University.

Assessment: Employs a confidential process to identify issues, measure effectiveness, and facilitate development of an action plan with buy-in from staff.

HR Investigations: Conducts timely, fair, and efficient interviews to quantify and analyze complaints for districts and legal firms.

Professional Coaching: Improves leadership effectiveness and maximizes performance as measured by specified professional goals.

619.928.8854
10001 1/2 Blossom Valley Road ◆ El Cajon, CA 92021

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board **BOARD MEETING DATE:** August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Educational Services
Russell Little, Assistant Superintendent

☐ Informational
☒ Action

AGENDA ITEM: AMENDMENT NO. 2 TO THE SBCS CORPORATION, IN SCHOOL-BASED PREVENTION AND EARLY INTERVENTION (PEI) PROGRAM AGREEMENT

BACKGROUND INFORMATION:
On November 10, 2022, the Governing Board approved the MOU with SBCS Corporation to continue PEI services at La Mirada, Smythe and Willow Elementary Schools at no cost to the district. The term of this agreement is from July 1, 2022, through June 30, 2023 with up to 4 one-year renewals (FY 2026-27). The Parties would like to exercise the option to extend the agreement for 2024-25.

SBCS Corporation and San Ysidro School District will continue to work together to provide School-Based Prevention and Early Intervention (PEI) services for children in preschool through 3rd grade residing in the South Region of San Diego County under the School Age Prevention and Early Intervention Services Program funded by the County of San Diego.

This Amendment extends the services to 2024-25 (Year 2 of 4).

RECOMMENDATION:
Approve/Ratify the Amendment to the Memorandum of Understanding with SBCS Corporation to continue providing School-Based Prevention and Early Intervention (PEI) services during the 2024-25 school year at no cost to the District.

LCAP GOAL AND ACTION/SERVICE:
Goal 2: Safety, Climate and Student Engagement – All students will be educated in positive academic environment that are welcoming, safe, and drug-free.

☒ **Renewal** ☐ **New** ☐ **Amendment** ☒ **Ratify** ☒ **Other – Extend the term**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☐ Yes ☒ No	☐ Yes ☐ No	
N/A (Amount)	N/A (Name of funding source and/or location)	

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT
BETWEEN
San Ysidro School District
AND
SBCS CORPORATION

Pursuant to the terms of that certain agreement entitled PEI ("Agreement"), entered into effective July 1, 2022, between SBCS Corporation ("SBCS) and San Ysidro School District ("Subrecipient"), SBCS hereby exercises its option to extend term of the Agreement as follows:

OPTION NO.	2 of 4
OPTION TERM	July 1, 2024
	June 30, 2025

MAXIMUM COMPENSATION FOR OPTION TERM:	No money or other consideration shall be transferred between the parties.

All other terms and conditions of the Agreement shall remain in full force and effect.

SBCS CORPORATION
California non-profit, public benefit corporation

By: _____ Date: _____
Kathryn Lembo
President and Chief Executive Officer
430 F Street Chula Vista, CA 91910

SUBRECIPIENT: San Ysidro School District

By: _____ Date: _____

Marilyn Adrianzen
Chief Business Official

Board approved/ratified:

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Educational Services
Russell Little, Assistant Superintendent

☐ Informational
☒ Action

AGENDA ITEM: AGREEMENT WITH THE PLACER COUNTY SPECIAL EDUCATION LOCAL PLAN AREA (SELPA) OPEN ACCESS PROJECT

BACKGROUND INFORMATION:

The Placer County SELPA Open Access Project currently works in partnership with 31 SELPAs, County Offices of Education, and Local Education Agencies to increase access to inclusive environments and to increase access to and engagement with quality curriculum and instruction for students with disabilities through the Universal Design for Learning (UDL) framework utilizing evidence-based practices and best practices.

The Placer County SELPA Open Access Project and its collaborative partners to provide training sessions on the Introduction to Universal Design for Learning. Contracted services include the following:
▪ Professional development, coaching and support for UDL implementation, ▪ A dynamic introduction of UDL Foundational Concepts, ▪ Training, coaching and facilitation on protocols, ▪ Facilitation and coaching of 2-3 instructional rounds per year, ▪ UDL training and coaching, ▪ Access to curated resources to support UDL implementation, ▪ Assist with developing a 3-5 Year UDL Implementation Plan, ▪ Access and support using the UDL Roadmap and UDL Site Readiness Assessment, and ▪ UDL Networking Opportunities

Term: July 1, 2024, through June 30, 2025.

RECOMMENDATION:

Approve/Ratify the Agreement with the Placer County Special Education Local Plan Area Open Access Project to provide professional learning services regarding Universal Design for Learning during the 2024-25 school year at no cost to the District.

LCAP GOAL AND ACTION/SERVICE:

Goal 1: Student Achievement – Action 1.15: Provide professional learning opportunities to improve teaching and learning in the areas of English Language Arts (ELA), English Language Development (ELD), Mathematics (including Standards of Mathematical Practice (SMPs), Science, and Social Studies. Professional learning includes training specifically designed to address the achievement gap for unduplicated students and students with disabilities.

☐ **Renewal** ☒ **New** ☐ **Amendment** ☒ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☐ Yes ☒ No	☐ Yes ☐ No	
N/A (Amount)	N/A (Name of funding source and/or location)	

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

MEMORANDUM OF UNDERSTANDING

Placer County SELPA (SELPA)
and San Ysidro School District (DISTRICT), mutually agree to the following:

1. Purpose:

SELPA and its collaborative partners will be providing the Open Access Learning & Participation for ALL Project. The project's primary goal is to support the development and dissemination of content and resources and to facilitate the implementation of evidence-based practices through the Universal Design for Learning framework.

2. Scope of Services:

SELPA will provide staff trainings during 2024-25 school year as described in **Exhibit C**.

3. Compensation:

Trainings are at no cost to the DISTRICT. The District is not responsible for any expenses.

4. Indemnification and Hold Harmless:

Each party hereby agrees to indemnify, defend and hold the other party, including its officers, agents and employees, harmless from any claim, demand, loss, claim or damage (including attorney fees) to the indemnified party, or to other persons or property arising out of this Agreement, or the services to be performed hereunder to the extent that the claim or damage is caused by the indemnifying party's breach of any obligation contained in this Agreement or the intentional or negligent act of the indemnifying party or its officers, agents, and/or employees. This indemnity shall survive termination of this Agreement.

5. School Safety Certification Forms – Refer to Exhibit A

6. Release of Liability Waiver – Refer to Exhibit B

7. Termination:

This contract may be terminated at no cost to either party upon 10 days advance written notice prior to the date of event stated in Section 2, above.

8. Independent Contractors:

This is a joint venture. The parties understand that each of the parties and its employees, agents, officers, and associates are independent contractors and not an employee, agent officers, or associates of the other party. Funds will be used for administrative costs. Neither party will provide fringe benefits, including health insurance, holidays, paid vacation, workers' compensation or any other employee benefit, for the benefit of the other party of its employees, agents, officers, and associates.

9. Governing Law/Venue:

This Agreement shall be governed by the laws of the State of California. Any dispute arising hereunder shall be resolved exclusively in the courts of the State of California located in San Diego, California.

10. Final Approval:

Each party signing this Agreement warrants to the other that he or she has the full authority to enter into an agreement on behalf of the Party for which his or her signature is made.

This Agreement represents the entire Agreement and understanding of the parties hereto, and no prior writings, conversations, or representations of any nature shall be deemed to vary the provisions hereof. This Agreement may not be amended in any way except by a writing duly executed by both parties hereto.

PLACER COUNTY SPECIAL EDUCATION LOCAL PLAN AREA
SELPA

Signature: _____Date: _____
Name/Title:
Address:
Telephone:
Email:

SAN YSIDRO SCHOOL DISTRICT

Signature: _____ Date: _____
Marilyn Adrianzen, Chief Business Official
4350 Otay Mesa Road, San Ysidro, CA 92173 Board approved: _____
(619) 428-4476

SYSD CONTACT PERSONS:

Luis Ramos
Director of Educational Services
(619) 428-4476 ext. 3071
luis.ramos@sysdschools.org

Denise Villezcas
Coordinator of Student Services
(619) 428-4476 ext. 3088
Denise.villezcas@sysdschools.org

EXHIBIT A

SCHOOL SAFETY CERTIFICATION FORM

CERTIFICATION PURSUANT TO EDUCATION CODE ECTION 45125.1 and
Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c)
Fingerprinting and Criminal Background Investigation Requirements

The San Ysidro School District (District) has determined under Education Code Section 45125.1, subdivision (c) that in performing services under this contract, **SELPA and/or collaborators and subcontractors may have contact with pupils.**

_____(*Initial*) As required under Education Code Section 45125.1, subdivision (a), SELPA shall require their employees and/or agents and students, who will provide services pursuant to this contract to submit their fingerprints in a manner authorized by the Department of Justice in order to conduct a criminal background check to determine whether such SELPA employees, agents or other have been convicted of or have charges pending for a felony as defined under Education Code Section 45122.1.

_____(*Initial*) SELPA shall not permit any employee, agent or other to perform services that may come in contact with pupils under this contract until the Department of Justice has determined that the employee has not been convicted of a felony or has no criminal charges pending for a felony as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

_____(*Initial*) SELPA certifies that all of its employees who may come in contact with pupils have not been convicted of or have no criminal charges pending for a felony, as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

_____(*Initial*) SELPA shall defend, indemnify, protect and hold the District and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property which arise from or are connected with or are caused or claimed to be caused by SELPA's failure to comply with all of the requirements contained in Education Code Section 45125.1, including, but not limited to, the requirements prohibiting SELPA from using employees, agents or other who may have contact with pupils who have been convicted or have charges pending for a felony in Education Code Section 45122.1.

_____(*Initial*) Per Ed Code 49406 and Assembly Bill 1667, the District requires for Tuberculosis (TB) Clearances to be in place by anyone coming in contact with pupils.

_____(*Initial*) SELPA's individuals/employees and/or others who may come in contact with pupils in the performance of services in this contract agree to provide fingerprint (DOJ/FBI) and TB Clearances (at their own expense) to be in compliance with the above-mentioned Ed Codes before commencement of any services under this contract. The District will provide LiveScan form if necessary.

- I certify to the District's Governing Board that I have read and understand the above terms and conditions and will report any changes that may affect the performance services of this contract.
- I certify to the District's Governing Board that none of the SELPA's employees/individuals and/or others performing services under this agreement have been convicted of a felony as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).
- I certify to the District's Governing Board that all of the SELPA's employees-individuals and/or others performing services under this agreement are clear of tuberculosis (TB) as defined on Education Code Section 49406 and Assembly Bill 1667.

Company/Organization Name: _____

Name/Title of Authorized Representative (Print): _____

Signature: _____ Date: _____

EXHIBIT B

SAN YSIDRO SCHOOL DISTRICT
INDIVIDUAL RELEASE, WAIVER OF LIABILITY
AND
INDEMNITY AGREEMENT

In consideration of being permitted to use the San Ysidro School District's facilities (collectively referred to herein as "District Facilities"), other than during the normal duty day, I,_____(Print - Name of participant) the undersigned, agree to the following:

_____*(initials)* 1. The undersigned hereby releases, waives, discharges and covenants not to sue the San Ysidro School District, its officers, agents, employees, volunteers and representatives (collectively "District"), for any and all claims for loss or damage, including, without limitation, any claims or demands on account of personal injury, loss, theft or damage of personal property, presence during or participation in the use of the District Facilities, even though that injury or damage may arise out of negligence of the District or out of a dangerous or defective condition of property or equipment of the District. However, this release will not apply where it is determined by a court of competent jurisdiction that such claim was caused by the gross negligence or willful misconduct of District.

_____*(initials)* 2. The undersigned hereby agrees to indemnify, save and hold harmless the District, and each of its officers, agents, employees, volunteers and representatives from any loss, liability, damage or cost they may incur, including attorneys' fees, whether caused by the negligence of the District or otherwise, relating to the presence of the Participant during or participation by the Participant in the use of the District Facilities. Participant shall have no obligation, however, to defend or indemnify District if it is determined by a court of competent jurisdiction that such claim was caused by the gross negligence or willful misconduct of District.

_____*(initials)* 3. The undersigned hereby assumes full responsibility for and risk of bodily injury, death or property damage while the Participant is present during or participating in the use of the District Facilities. The undersigned expressly acknowledges and understands that accidents and injuries can occur while present during or participating in the in the use of the District Facilities, including serious and permanent personal injuries or death, and that the undersigned hereby expressly assumes any and all of the risks of participating in the above-mentioned activity, whether or not a particular risk is known or unknown, and regardless of whether any such risks are due to the ordinary negligence of the District or due to a dangerous or defective condition of public property.

_____*(initials)* 4. The undersigned expressly agrees and hereby gives permission for, and expressly assumes the risk of, any emergency medical treatment that may be rendered to the Participant if the Participant is injured while present at or participating in the in the use of the District Facilities. The undersigned agrees to expressly release and indemnify the District against any liability for providing, or failing to provide, any emergency medical treatment as set forth herein. The undersigned further agrees to pay all costs incurred because of said treatment.

_____*(initials)* 5. The undersigned expressly agrees that the foregoing Release and Waiver of Liability and Indemnity Agreement is intended to be as broad and inclusive as is permitted by the law of the State of California and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

The undersigned has read and voluntarily signs this Release, Waiver of Liability and Indemnity Agreement, and further agrees that no representations, statements, or inducements of any kind, apart from the foregoing written Agreement, have been made.

I Have Read And Understand This Release: (*All sections must be completed.)*

Participant:

Signature	Date
Print Name	Phone

Organization: _____

Note: Please include Business Card if available.

Participant's Address: _____

_____

Telephone/Mobile: (_____)_____

Event Description/Purpose: _____

Date of Event: _____ Time: From_____To: _____

Location of Event: _____

IF A PARTICIPANT IS UNDER AGE 18,
A PARENT (OR LEGAL GUARDIAN) MUST SIGN BELOW.

I am the parent or legal guardian of the above stated Participant. I have read and agree to the terms stated above and hereby give permission for my child to participate at the event indicated above.

Signature	Date
Parent/Guardian Name	Phone

Please return completed forms to the Business Services Office at least one week before the event.
~ Thank you

OPEN ACCESS
Learning & Participation for ALL

PLACER COUNTY SELPA
SPECIAL EDUCATION LOCAL PLAN AREA

Gayle Garbolino-Mojica, County Superintendent of Schools
Troy Tickle, Assistant Superintendent, SELPA

UDL Implementation

Laurie Balsano Wright lbalsano-wright@placercoe.org
Leah Padilla lpadilla@placercoe.org

Project Description:
The Placer County Special Education Local Plan Area (SELPA) Open Access Project and its collaborative partners (Antelope Valley SELPA, Humboldt COE, North Inland SELPA, Placer COE) believe that all students in the state of California should be afforded the opportunity to develop knowledge and skills necessary to achieve their future goals and that California school districts should be supported in learning and implementing Evidence-Based Practices (EBPs) and Best Practices (BPs) that support learning and achievement for all students. The Placer County SELPA Open Access Project currently works in partnership with 31 SELPAs, County Offices of Education, and Local Education Agencies to increase access to inclusive environments and to increase access to and engagement with quality curriculum and instruction for students with disabilities through the Universal Design for Learning (UDL) framework utilizing evidence-based practices and best practices.

Project Goals:
The project's primary goal is to support the development and dissemination of content and resources and to facilitate the implementation of evidence-based practices through the UDL framework.

Roles and Responsibilities:

Open Access will provide:	**SYSD will:**
● Professional development, coaching and support for UDL implementation. A range of topics may include but are not limited to: ○ Mindset ○ UDL Foundational Concepts ○ Expert Learning ○ Barriers ○ Goal Setting ○ Self-Reflection ○ Variability ○ Options ○ UDL Roadmap ○ UDL Site Readiness Assessment ○ UDL Showcase Sites ● A dynamic introduction of UDL Foundational	● Commit to dedicating the necessary time and resources to actively engage in the collaborative work ● Have a committed team of participants throughout the project. ● Provide meeting time and space ● Work collectively with the Open Access Content Lead Specialist to complete the UDL Site Readiness Assessment ● Create a UDL implementation plan with the support of Open Access team ● COE/District/Site leader will meet with Open Access Coordinators/Content Lead Specialist prior to planned meetings to provide input and collaborate on content

Concepts ● Training, coaching and facilitation on protocols: ○ Instructional Rounds (2-3 per year) ○ Journey Mapping ○ Problem of Practice ○ UDL Lesson Design Study ○ UDL Implementation Plan ● Facilitation and coaching of 2-3 instructional rounds per year ● UDL training and coaching ○ Dates TBD ● Access to curated resources to support UDL implementation ● Assist with developing a 3-5 Year UDL Implementation Plan ● Access and support using the UDL Roadmap and UDL Site Readiness Assessment ● UDL Networking Opportunities	● Commit to: ○ UDL Immersion Training (12 hours of training-in-person or virtual) ○ 2 Instructional Rounds per year ○ 1 Lesson Design Study ○ 1 Journey Mapping Protocol ● Provide subs and/or release time for participants to engage in the work ● Complete surveys and feedback forms ● Data sharing, when applicable, to gauge the effectiveness of implementation, and identify next steps

Dates and order of Topics:

- **Six trainings throughout the 24-25 school year with an average number of total participants would be over 200 (average of 30 per site). Training will be offered to teachers across seven schools.**
- **The trainings will focus on an Introduction to Universal Design for Learning. For most participants, this would be the first training they've received on the topic.**
- **July 24: The training scheduled for July 24th will have teachers from two schools attending, leaving five schools that would need to be scheduled in the future months.**

Date	Time	Training	Audience	Trainer
July 24, 2024	**1:00-3:00 PM**	**UDL Immersion - Session 1 (virtual)**	**Teachers from 2 sites**	**Laurie Balsano Wright and Leah Padilla**
5 additional trainings TBD				

Total Cost of Proposal: Covered by Open Access State Resource Lead Grant
Additional Costs: Covered by Open Access State Resource Lead Grant

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Administration
Gina A. Potter, Ed.D.,
Superintendent

☐ Informational
☒ Action

AGENDA ITEM: FACILITIES USE AGREEMENT WITH SOUTHWESTERN COMMUNITY COLLEGE

BACKGROUND INFORMATION:
The San Ysidro School District (SYSD), in continued collaboration with the Southwestern Community College, brings parents the opportunity to participate in Continuing Education classes/programs such as English as a second language. Southwestern College will provide a teacher to instruct classes, and the District will provide a room. Both parties agree to meet as often as required to run this collaboration, thus providing the participating families with the benefits of an excellent education.

The Facilities Use Agreement is from July 1, 2024 to June 30, 2025. These classes will be offered at the Parent Resource Center located at the District Office at no cost to the District and Southwestern Community College.

RECOMMENDATION:
Approve/Ratify the Use of Facilities Agreement with Southwestern Community College for the purpose of offering parents continuing education classes during the 2024-25 school year at no cost to the District.

LCAP GOAL AND ACTION/SERVICE (please indicate):

☐ **Renewal** ☒ **New** ☐ **Amendment** ☒ **Ratify** ☐ **Other**

Financial Implications? ☐ Yes ☒ No

Are funds for this item available in the 2024-2025 Budget? ☐ Yes ☐ No

Requisition #

N/A	N/A
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

AGREEMENT BETWEEN
Southwestern Community College District AND
San Ysidro School District

USE OF FACILITIES

Southwestern Community College District (hereafter referred to as the "District") and San Ysidro School District (hereafter referred to as "Facility") hereby enter into this Agreement for Use of Facilities and agree as follows:

1. **Name and Address of Facilities:**

   - San Ysidro Elementary School District – Parent Resource Center
     4350 Otay Mesa Road, San Ysidro, CA 92173

2. **Facility:**

   - Will provide the above-referenced facilities to District to use for purposes of offering Continuing Education classes/program(s) to adults.
   - Will make facilities available on a semester-to-semester basis as agreed upon by both parties.
   - Will not charge the District rent for use of these facilities.
   - Will follow District and Facility's COVID-19 Protocols for students, faculty and staff.
   - Will not be responsible for any items left in the Facilities. Facilities are not to be used for storage of any District materials/equipment or other items.

3. **District:**

   - Will use the facilities for instructional purposes only.
   - Will not sublet or assign use of the facilities to any third party.
   - Access will be allowed only to the areas that have been authorized by this agreement.
   - Is responsible for persons participating in the Continuing Education classes/program(s). Will provide a class schedule and plan ahead with the Facility designated representative.
     - See Exhibit A for class schedule(s).
   - Accepts the present condition of the facilities as "good" and agrees no alterations of a permanent nature will be made to the facilities.
   - Will upon termination of this Agreement, surrender the facilities in good condition, as defined above.
   - Will follow District and Facility's COVID-19 Protocols for students, faculty and staff.
   - Will not use Facilities for storage of any District materials/equipment or other items if facility will be used during Facility's school hours a School Safety Certification Form is required. (Attached)

4. **Term of Agreement:** The period covered by this Agreement begins July 1, 2024 and terminates June 30, 2025. The agreement can be extended by mutual written agreement on a year-to-year basis (July-June).

5. **Contact Persons:**

Southwestern Community College District
Crystal Robinson
Director of Continuing Education
619-216-6631
crobinson@swccd.edu

San Ysidro School District
Cristina Inzunza
Coordinator, PR & Community Services
619-428-4476 ext. 3033
cristina.inzunza@sysdschools.org

6. **Insurance:** District agrees to take out and keep in force during the term of this agreement at District's expense, insurance naming the San Ysidro School District as an additional insured against any liability to the public or damage to the property resulting from any accident occurring in or about the Facility in an amount of not less than One Million ($1,000,000.00) Dollars per occurrence and Two million ($2,000,000) aggregate for bodily injury and property damage. If student are present during the use of facilities, Sexual Abuse/Molestation Insurance in an amount not less than One Million ($1,000,000.00) Dollars per occurrence and Two million ($2,000,000) aggregate A certificate of Liability insurance with endorsements shall be provided to the Facilities prior to District's use of the Facilities. All coverages must be included in the certificate.

7. **Indemnification:** This agreement is made on the express covenant and condition that SYSD/Facility is to be free from all liability to the extent caused by any act or omission of SWC/District, or its contractors, licenses, employees or agents, or to the extent arising from any injury or damage caused to any person or property occurring in or about the Facilities, including but not limited to any claim of liability for losses due to the theft or vandalism, water damage, however occurring, or any other such claim arising out of, or connected with, loss or damage to the business or property of District or any other property located on the Facility.

   SWC/District shall indemnify and hold SYSD/Facility harmless from claims, legal proceedings, liabilities, costs, expenses, including attorney's fees and costs, to the extent caused by District's negligence use of the Facilities.

8. **Termination:** Either party to this Agreement may terminate the Agreement with thirty (30) days written notice to the other party.

DISTRICT: Southwestern Community College **FACILITY: San Ysidro School District**

By: _____
Linda Hernandez
Director of Procurement, Central Services & Risk Management

Dated: _____

By: _____
Gina Potter, Ed.D
Superintendent

Dated: _____

Board approved: _____

EXHIBIT A

FALL SCHEDULE - 2024

Course	Sec	Hours	Start Date	End Date	Days	Start Time	End Time
NC-108	E1	36	08/26/24	10/07/24	MW	9:00 AM	11:50 AM
NC-108	E4	36	10/29/24	12/12/24	TTh	9:00 AM	11:50 AM
NC-109	E1	36	10/15/24	11/21/24	TTh	12:00 PM	2:50 PM
NC-110	E3	35.1	10/21/24	12/11/24	MW	9:00 AM	11:25 AM

SPRING SCHEDULE - 2025

Course	Sec	Hours	Start Tome	End Time	Days	Start Time	End Time
NC-108	E3	36	02/03/25	03/17/25	MW	9:00 AM	11:50 AM
NC-108	E4	36	04/08/25	05/15/25	TTh	9:00 AM	11:50 AM
NC-109	E3	36	04/08/25	05/15/25	TTh	12:00 PM	2:50 PM
NC-110	E3	36	04/14/25	05/21/25	MW	9:00 AM	11:50 AM
NC-222	E1	36	02/07/25	05/16/25	F	9:00 AM	11:50 AM

San Ysidro School District

SCHOOL SAFETY CERTIFICATION FORM

CERTIFICATION PURSUANT TO EDUCATION CODE ECTION 45125.1 and
Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c)
Fingerprinting and Criminal Background Investigation Requirements

The San Ysidro School District (District) has determined under Education Code Section 45125.1, subdivision (c) that in performing services under this contract, **Contractor/Consultant's employees and/or subconsultants/subcontractors may have potential contact with pupils, minors or persons in an incapacitated state**.

_____(*Initial*) As required under Education Code Section 45125.1, subdivision (a), Consultant shall require their employees, including the employees of any sub-consultant and/or subcontractor, who will provide services pursuant to this contract to submit their fingerprints in a manner authorized by the Department of Justice in order to conduct a criminal background check to determine whether such employees have been convicted of or have charges pending for a felony as defined under Education Code Section 45122.1.

_____(*Initial*) Consultant shall not permit any employee to perform services that may come in contact with pupils under this contract until the Department of Justice has determined that the employee has not been convicted of a felony or has no criminal charges pending for a felony as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

_____(*Initial*) Consultant certifies that all of its employees who may come in contact with pupils have not been convicted of or have no criminal charges pending for a felony, as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

_____*(Initial)* Consultant certifies and agrees that services provided during the term of this agreement will be supervised by school certificated staff and/or a parent or legal guardian must be present during each contact with pupils (visit, treatment, evaluation, therapy, etc.)

_____(*Initial*) Consultant shall defend, indemnify, protect and hold the District and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property which arise from or are connected with or are caused or claimed to be caused by Consultant's failure to comply with all of the requirements contained in Education Code Section 45125.1, including, but not limited to, the requirements prohibiting Consultant from using employees who may have contact with pupils who have been convicted or have charges pending for a felony in Education Code Section 45122.1.

_____(*Initial*) Per Ed Code 49406 and Assembly Bill 1667, the District requires for Tuberculosis (TB) Clearances to be in place by anyone coming in contact with pupils.

_____(*Initial*) Consultant's individuals/employees and/or Subconsultants/Subcontractors who may come in contact with pupils in the performance of services in this contract agree to provide fingerprint (DOJ/FBI) and TB Clearances (at their own expense) to be in compliance with the above-mentioned Ed Codes before commencement of any services under this contract. The District will provide LiveScan form if necessary.

- I certify to the District's Governing Board that I have read and understand the above terms and conditions and will report any changes that may affect the performance services of this contract.
- I certify to the District's Governing Board that none of the Consultant's employees/individuals and/or Subconsultants/subcontractors performing services under this agreement have been convicted of a felony as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).
- I certify to the District's Governing Board that all of the Consultant's and Subconsultant's/Subcontractor's employees-individuals performing services under this agreement are clear of tuberculosis (TB) as defined on Education Code Section 49406 and Assembly Bill 1667.

Company Name:_____

Name/title of authorized representative *(Print)* _____

Signature _____Date _____

REVISED 05-26-2

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Dr. Jose Iniguez, Assistant Superintendent of Admin. Leadership, School Support & Safety

☐ Informational
☒ Action

AGENDA ITEM: AMENDMENT NO. 2 TO THE SUPERSONIC DETAILING INC. AGREEMENT

BACKGROUND INFORMATION:
The Transportation Department provides services to our most important customers, our students. It is important to have our bus and van fleet clean and sanitized not only in the inside of the units but also the external appearance is important.

Supersonic Detailing Inc. provides low-cost washing of vehicles and uses a special water recovery system that complies with environmental regulations. Supersonic comes to a designated facility with their mobile wash system. They bring all materials, supplies and equipment needed to wash the District's vehicles used to transport students.

On September 8, 2022, the Governing Board approved the agreement with Supersonic Detailing Inc. for 2022-23. Amendment No. 1 is to extend the term of the agreement to 2023-24 fiscal year. All other terms and conditions (including rates) will remain the same. Amendment No. 2 extended the term to 2023-24.

Amendment No. 2 is to extend the term of the agreement to 2024-25. All other terms and conditions remain the same. There are no changes to the prices/rates.

RECOMMENDATION:
Approve/Ratify Amendment No. 2 to the Supersonic Detailing Inc. Agreement to provide washing of vehicles for fiscal year 2024-25 at an estimated cost of $10,000.00 from the Transportation Budget.

LCAP GOAL AND ACTION/SERVICE (please indicate):
2.1 Maintain basic operating services of the district including MOT personnel, transportation, contracted services, and utilities.

☒ **Renewal** ☐ **New** ☐ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

ESTIMATED $10,000.00 (Amount)	Transportation Budget (Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

SAN YSIDRO SCHOOL DISTRICT

4350 Otay Mesa Road, San Ysidro, CA 92173

AMENDMENT NO. 2

The Independent Contractor Agreement between San Ysidro School District (District) and Supersonic Detailing Inc. was entered on September 9, 2022, to provide washing of vehicles for fiscal year 2022-23.

Amendment No. 2 - The following sections are being amended.

- SECTION NO. 1.2 TERM:

  Extend the Term to Fiscal Year 2024-25 (July-June) on an "as needed" basis.

All other Terms and Conditions (including rates) of the Agreement dated September 9, 2022 remain the same.

The District and Supersonic Detailing Inc., each of the parties signing this Amendment warrants to the other that he or she has the full authority to sign on behalf of the Party which his or her signature is made.

Supersonic Detailing Inc.	**San Ysidro School District**
Firm Name	Firm Name
Signature of Authorized Agent	Signature
Print Name, Title	Marilyn Adrianzen, Chief Business Official Print Name, Title
Date:	Date
	Board Approved

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Julie Pretzer, Director of Early Childhood Development

☐ Informational
☒ Action

AGENDA ITEM: AGREEMENT WITH SUSAN MCGRAW – EARLY CHILDHOOD ASSESSMENT PROFESSIONALS, INC.

BACKGROUND INFORMATION:

The Preschool Program is requesting approval to enter into a services agreement with Susan McGraw, Director of Early Childhood Assessment Professionals, Inc., to provide professional learning sessions, face-to-face classroom support, and mock CLASS assessments for Preschool teachers and instructional aides during the 2023-24 school year.

The topics of each collaboration will be based on CLASS results and each teaching team will have a chance to present to the cohort a strategy or lesson plan that they have developed that enhances or improves a CLASS dimension (Concept Development, Language Modeling, Quality of Feedback).

All preschool sites will benefit from the professional learning sessions and an informal "mock" assessment, as each school district will be required to have some of its classrooms assessed each year through an outside agency.

Term: August 1, 2024 – June 30, 2025

RECOMMENDATION:

Approve/Ratify the service agreement with Susan McGraw dba Early Childhood Assessment Professionals, Inc. for professional learning services and instructional coaching for Preschool staff during the 2024-25 school year at the total cost of $28,170.00 from the Preschool & Child Development funds.

LCAP GOAL AND ACTION/SERVICE:

Goal 1, Item 1.1: Update technology plan to improve services district-wide (i.e., Maintain 1:1 device at all school sites and equipment, software, & digital literacy/digital citizenship, etc.) to increase digital access for all students, including unduplicated students. Continue to provide professional learning opportunities and support in the area of technology and digital literacy/digital citizenship and support implementation of 21st century skills for all student including unduplicated students

☐ **Renewal** ☒ **New** ☐ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

$28,170.00	Preschool & Child Development
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

SAN YSIDRO SCHOOL DISTRICT

4350 Otay Mesa Road, San Ysidro, CA 92173

PROFESSIONAL SERVICES AGREEMENT

This agreement is made and entered into this 12th day of July, 2024, by and between the San Ysidro School District, hereinafter called the "District", and

Susan McGraw dba Early Childhood Assessment Professional	619-962-7973
Company/Consultant	Telephone Number
2149 N. Slope Ter, Spring Valley, CA 91977	Progressiveearlyassessments.com
Address	Website

hereinafter referred to as "Consultant."

1 SCOPE AND TERMS

1.1 SCOPE OF SERVICES

Scope of Services. In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the Consultant Services Documentation ("attached documents") attached hereto as ***Exhibit "A"*** and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the District entering into this Agreement, Consultant represents and warrants that Consultant is a provider of first class work and services and Consultant is experienced in performing the work and services contemplated herein and, in light of such status and experience, Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials shall be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

Compliance with Law. All services rendered hereunder shall be provided in accordance with any and all applicable ordinances, resolutions, statutes, rules, and regulations of the District, City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered. Each and every provision required by law to be included in this Agreement shall be deemed to be included by this reference, and this Agreement shall be read and enforced as though they were included.

Licenses, Permits, Fees and Assessments. Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless District against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against District hereunder.

1.2 TERM

From: August 1, 2024 To June 30, 2025

The Term of this Agreement as noted, unless earlier terminated as provided herein. The Parties may mutually agree to extend this term only by written amendment. Should the Parties agree to extend the term of this Agreement; the Agreement can only be extended on a year-to-year basis with written approval unless otherwise indicated in writing and in accordance with the law. Agreements are limited to a total of 5 years at which point a new Agreement will be needed.

2 FEES AND PAYMENTS

2.1 FEES

District shall pay Consultant for the specified services as reflected on ***Exhibit A*** during this contract term.

2.2 PAYMENTS

Consultant shall submit to District an itemized invoice which indicates work completed by Consultant. District shall review each invoice and/or receipts submitted to determine that the work performed, and expenses incurred are in compliance with the provisions of this Agreement. District shall pay Consultant within 30-days of receipt of an acceptable invoice from Consultant.

3. ADDITIONAL SERVICES.

District shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work as described herein. No such extra work may be undertaken unless a written order is first given by the District Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval or ratification of the Contract Officer. However, any increase in compensation beyond the Contract Sum, for services beyond what is contemplated in the Contract, must be approved or ratified by the Board of Education in a signed writing prior to any payment. Additionally, any other increases, extensions or renewals must be approved in writing by the Board of Education. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefore unless specifically authorized pursuant to the terms of this section.

4 RESPONSIBLIITIES OF CONSULTANT

4.1 ORGANIZATION

Consultant shall assign a Company Contact as Project Manager. The Project manager shall not be removed from the Project or reassigned without the prior written consent of District, which consent shall not be unreasonably withheld. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Agreement.

4.2 COORDINATION OF SERVICES

Consultant agrees to work closely with the District staff in the performance of Services and shall be available to the District staff, consultants and other staff at all reasonable times.

4.3 STANDARD OF CARE:

Consultant shall perform all Services under this Agreement in a skillful, competent and timely manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all of Consultant's employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant further represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any of Consultant's employees who are determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any of Consultant's employees who fail or refuse to perform the Services in a manner acceptable to District, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

4.4 INDEPENDENT CONSULTANT & ADDITIONAL PERSONNEL

Consultant is retained as an independent consultant and is not an agent or employee of the District. No employee or agent of Consultant shall by this Agreement become an agent or employee of the District. The work to be performed shall be in accordance with the work described herein, subject to such direction and amendments from District as herein provided. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind District to any obligation whatsoever, except as specifically provided in writing by District. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law.

4.5 LAWS AND REGULATIONS

The Contractor shall be subject to, and shall comply with, all federal, state, and local laws and regulations applicable to its performance under this Agreement including, but not limited to: licensing, employment, purchasing practices, wages, hours, and conditions of employment, including non-discrimination. Consultant shall be liable for all violations of such laws and regulations in connection with Services.

4.6 MAINTENANCE OF ACCOUNTING RECORDS

Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of the District during normal business hours with reasonable notice to examine, audit and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

4.7 INSURANCE – Consultant shall comply with the following insurance provisions, unless one or more paragraphs are specifically waived by the District in writing.

(1) Time for Compliance. Consultant shall not commence Services under this Agreement until it has provided evidence satisfactory to District that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subconsultant or employee to commence work until it has provided evidence satisfactory to the District.

(2) Minimum Requirements and Limits. Consultant shall, at its expense, procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the consultant, its agents, representatives, and employees. Such insurance shall survive after this agreement as permitted by law.

MINIMUM SCOPE OF INSURANCE - Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, sexual misconduct and personal & advertising injury with limits no less than **$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be **$2,000,000** the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation (Employer's Insurance if applicable):** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease. Coverage shall include waiver of subrogation endorsement in favor of San Ysidro School District.
4. **Professional Liability (Errors and Omissions):** Insurance appropriates to the Consultant's profession, with limit no less than $1,000,000 per occurrence or claim, $2,000,000 aggregate. *(If applicable – see footnote next page)* **District waives _____**
5. **Improper Sexual Conduct (Sexual Abuse/Molestation):** $1,000,000 per occurrence with an aggregate of not less than $2,000,000 for damages because of bodily injury by reason of negligent hiring and supervision. May be included under General Liability. **District waives _____**
6. **Cyber Security Liability:** Coverage for both electronic and non-electronic data breach of $2,000,000 per occurrence with an aggregate limit of not less than $5,000,000 and shall cover all of Consultant's employees, officials and agents. Coverage shall apply to any dishonest, fraudulent, malicious or criminal use of Consultants or computer system or to obtain financial benefit for any party; to steal, take or provide unauthorized access of electronic data, including publicizing confidential electronic data or causing confidential electronic data to be accessible to unauthorized persons; transfer and for Third-Party Liability encompassing judgements or settlement and defense costs arising out of litigation due to a data breach and data breach response costs for customer notification and credit monitoring service fees.
   District waives _____

If the Consultant maintains higher limits than the minimums shown above, the District requires and shall be entitled to coverage for the higher limits maintained by the Consultant.

Additional Insured Status - Endorsement

The San Ysidro School District, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy and Professional Liability (Errors & Omissions) with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. The additional insured coverage must be provided in the form of an **Additional Insured Endorsement** to the Consultant's/SubConsultant's/Subcontractors' insurance. If Blanket Endorsement, it must include policy number and insured's name.

Primary Coverage

For any claims related to this contract, the **Consultant's insurance coverage shall be primary** insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Notice of Cancellation

The Provider shall file, with the District, Certificates of Insurance indicating a thirty-day (30) cancellation notice. If not stated on the Certificates of Insurance, it is understood that a 30-day cancellation notice will be provided and failure to mail such notice shall impose obligation and liability upon the company/insured, its agents or representative.

Waiver of Subrogation

Consultant/SubConsultant/Subcontractor hereby grants to the San Ysidro School District a waiver of any right to subrogation which any insurer of said Consultant may acquire against the District by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the District. The District may require the Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to the District.

Claims Made Policies (note – should be applicable only to professional liability, see below)

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not replaced ***with another claims-made policy form with a Retroactive Date prior to*** the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of work.

Verification of Coverage

Consultant/SubConsultant/Subcontractor shall furnish the District with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. **All certificates and endorsements are to be received and approved by the District before work/services commences**. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

5 GENERAL PROVISIONS

5.1 DELAYS IN PERFORMANCE

(1) Neither District nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other disturbances; sabotage or judicial restraint.

(2) Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

5.2 SUSPENSION OF SERVICES

The District may, in its sole discretion, suspend all or any part of Services provided hereunder with cost to date of suspension. Consultant may not suspend its services without District's express written consent.

5.3 TERMINATION OF AGREEMENT

(1) Termination. District may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to District to date of the notice of termination and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

(2) Consultant's Termination for Cause. This Agreement may be terminated by the Consultant upon thirty (30) days written notice to the District only when the District has substantially failed to perform its obligations under this Agreement. The written notice shall include a detailed description of the District's failure to perform, status of the work completed as of the date of termination together with a description and a cost estimate of the effort necessary to complete work in progress. In such event, the Consultant shall be compensated for services completed to the date of termination, together with compensation for such approved Additional Services performed after termination which are authorized by the District to conclude the work performed to the date of termination. Upon the District's request and authorization, Consultant shall perform any and all Additional Services necessary to wind up the work performed to the date of termination.

(3) Effect of Termination. If this Agreement is terminated as provided in this Section, District may require Consultant to provide all finished or unfinished documents, date, programming source code, reports or any other items prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

(4) Terminated Services. In the event this Agreement is terminated in whole or in part as provided herein, District may procure, upon such terms and in such manner as it may determine appropriate, services similar or identical to those terminated.

5.4 OWNERSHIP OF MATERIALS AND CONFIDENTIALITY

(1) All materials and data, including but not limited to, data on electronic or magnetic media and any materials, documents and data required to be made or kept pursuant to federal, state or local laws, rules or regulations, prepared or collected by Consultant pursuant to this Agreement, shall be the sole property of the District, except that Consultant shall have the right to retain copies of all such documents and data for its records. District shall not be limited in any way in its use of such materials and data at any time, provided that any such use not within the purposes intended by this Agreement shall be at District's sole risk and provided that Consultant shall be indemnified against any damages resulting from such use, including the release of this material to third parties for a use not intended by this Agreement.

(2) All such materials and data shall be provided to the District, or such other agency or District as directed by District or required by law, rule or regulation, as they become due during the term of this Agreement as direct by District.

(3) The District is a California public entity subject to all state and federal laws governing education, including but not limited to California Assembly Bill 1584 (AB 1584), the California Education Code, the Children's Online Privacy and

Protection Act (COPPA), the Family Educational Rights and Privacy Act (FERPA), and HIPAA Privacy regulations and any other privacy laws, policies and regulations that may apply such as American Recovery and Reinvestment Act of 2009 ("ARRA") and the Health Information Technology and Economic Clinical Health Act of 2009 ("HITECH").

AB1584 requires, in part, that any agreement entered into, renewed or amended after January 1, 2015 between a local education agency (LEA) and a third-party service provider must include certain terms; and the LEA and the Service Provider desire to have this Agreement and the services provided comply with AB1584. This includes to all forms of protected health information, including paper, oral, and electronic, etc. Furthermore, only the minimum health information necessary to conduct business is to be used or shared.

- Pupil records obtained by the Consultant/Service Provider from LEA/District continue to be the property of and under the control of the District. The Consultant will obtain information regarding disciplinary and/or behavioral events for the purpose of allowing District personnel to improve and provide services to pupils. The Consultant will not be obtaining pupil-generated content.
- In the event of an unauthorized disclosure of a pupil's records, the Consultant shall report to an affected parent, legal guardian, or eligible pupil pursuant to the following procedure; written communication to the District's Superintendent, Deputy Superintendent and/or designee.
- The Consultant shall not use any information in a pupil record for any purpose other than those required or specifically permitted by this Professional Services Agreement.
- Consultant certifies that a pupil's records shall not be retained or available to the Consultant upon completion of the terms of this Professional Services Agreement.
- District agrees to work with Consultant to ensure compliance with FERPA.
- Consultant shall not use personally identifiable information in pupil records to engage in targeted advertising.
- Pupil records include any information directly related to a pupil that is maintained by the District or acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other District employees. Pupil records does not include/not mean de-identified information (information that cannot be used to identify an individual pupil) used by the third party to (1) improve educational products for adaptive learning purposes and for customized pupil learning; De-identified information, including aggregated de-identified information. (2) Demonstrate the effectiveness of the operator's products in the marketing of those products; or for the development and improvement of educational sites, services, or applications.

5.5 SAFETY

Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

5.6 PROJECT STAFFING

Consultant shall provide adequate staff and resources to facilitate all Consultant activity. Should Consultant fail to adequately staff a project, the District may, at its sole discretion, retain third party consulting services and back charge Consultant for all third-party fees.

5.7 INDEMNIFICATION

Indemnification: To the fullest extent permitted by law, Consultant shall defend (with counsel of District's choosing), indemnify and hold the District, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the District, its officials, officers, employees, agents, or volunteers.

5.8 AMENDMENTS

This Agreement may not be amended except in writing signed by both Parties.

5.9 SEVERABILITY

If any section, subsection, sentence, clause or phrases of this Agreement, or the application thereof to any of the Parties, is for any reason held invalid or unenforceable, the validity of the remainder of the Agreement shall not be affected thereby and may be enforced by the Parties to this Agreement.

5.10 GOVERNING LAW

This Agreement shall be governed by the laws of the State of California. Any action brought to enforce the terms of this Agreement shall be brought in a state or federal court located in the County of San Diego, State of California, but only after dispute resolution as provided herein.

5.11 CONFLICT OF INTEREST

For the term of this Agreement, no member, officer, or employee of District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

5.12 SCHOOL SAFETY, FINGERPRINTING AND BACKGROUND INVESTIGATION REQUIREMENTS:

As a Contractor/Vendor of the District, you are responsible for ensuring that your agents and employees are complying with applicable state, county and District guidelines whenever services are performed on all District operated facilities.

Consultant agrees with the provisions of Education Code Section 45125.1 regarding the submission of fingerprints to the California Department of Justice. Consultant shall not be permitted to have any contact with District pupils until such time as Consultant has verified in writing to the District that they have complied with Educational Code Section 45125.1. (**Please complete attached School Safety Certification Form. Attachment 1)**

Per Ed Code 49406 and Assembly Bill 1667, the District requires Tuberculosis (TB) Clearances to be in place by anyone coming in contact with pupils. Please submit TB Clearance to the Business Services Office. This section may be waived if the District determines that the Consultant and/or its employees will have limited contact with District pupils or if Consultant and/or its employees will be supervised at all times by District staff. **District is waiving this requirement _____ .**

5.13 DRUG/ALCOHOL/TOBACCO-FREE FACILITIES:

ALL DISTRICT FACILITIES ARE DRUG AND TOBACCO-FREE FACILITIES. ANY DRUG, ALCOHOL AND/OR TOBACCO USE (SMOKED OR SMOKELESS) IS PROHIBITED AT ALL TIMES ON ALL AREAS OF THE DISTRICT FACILITIES.

5.14 NOTICES / CONTACT INFORMATION

All notices or demands to be given under this Agreement by either party to the other shall be in writing and given either by: (a) personal service, (b) email or (c) by U.S. Mail, mailed certified mail with return receipt requested, addressed to the following entities.

CONSULTANT:	**Early Childhood Assessment Professionals**	
Name:	Susan McGraw	
Title:	Founder, Owner	
Address:	2149 N. Slope Ter	
City/State/Zip Code:	Spring Valley, CA 91977	
Telephone:	619-962-7973	
Email:	susan@ecapinfo.com	

DISTRICT:	San Ysidro School District	
Name:	Marilyn Adrianzen	**Julie Pretzer**
Title:	Chief Business Official	Director of Early Childhood Education
Address:	4350 Otay Mesa Road	4350 Otay Mesa Road
City/State/Zip code:	San Ysidro, CA 92173	San Ysidro, CA 92173
Telephone:	(619) 428-4476	(619) 428-4476 x3583
Email:	Marilyn.adrianzen@sysdschools.org	Julie.pretzer@sysdschools.org

6 ENTIRE AGREEMENT

This Agreement represents the entire understanding of District and Consultant 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 hereunder. To the extent that any provision or clause contained in an attachment or Exhibit to this Agreement conflicts with a provision or clause in the Agreement, the provision or clause in this Agreement shall control. This Agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated Agreement.

7 WARRANTY OF AUTHORITY:

Each of the parties signing this Agreement warrants to the other that he or she has the full authority to enter into agreement on behalf of the Party for which his or her signature is made.//

CONSULTANT

Early Childhood Assessment Professionals
Firm Name

Signature of Authorized Agent

Susan McGraw, Owner
Print Name, Title

Date:

DISTRICT

San Ysidro School District
Firm Name

Signature

Marilyn Adrianzen, Chief Business Official
Print Name, Title

Date

Board Approved:

Revised 2024

SAN YSIDRO SCHOOL DISTRICT

4350 Otay Mesa Road, San Ysidro, CA 92173

SCHOOL SAFETY CERTIFICATION FORM

CERTIFICATION PURSUANT TO EDUCATION CODE ECTION 45125.1 and
Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c)
Fingerprinting and Criminal Background Investigation Requirements

The San Ysidro School District (District) has determined under Education Code Section 45125.1, subdivision (c) that in performing services under this contract, **Contractor/Consultant's employees and/or subconsultants/subcontractors may have potential contact with pupils, minors and/or persons in an incapacitated state**.

_____(*Initial*) As required under Education Code Section 45125.1, subdivision (a), Consultant shall require their employees, including the employees of any sub-consultant and/or subcontractor, who will provide services pursuant to this contract to submit their fingerprints in a manner authorized by the Department of Justice in order to conduct a criminal background check to determine whether such employees have been convicted of or have charges pending for a felony as defined under Education Code Section 45122.1.

_____(*Initial*) Consultant shall not permit any employee to perform services that may come in contact with pupils under this contract until the Department of Justice has determined that the employee has not been convicted of a felony or has no criminal charges pending for a felony as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

_____(*Initial*) Consultant certifies that all of its employees who may come in contact with pupils have not been convicted of or have no criminal charges pending for a felony, as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

_____*(Initial)* Consultant certifies and agrees that services provided during the term of this agreement will be supervised by school certificated staff and/or a parent or legal guardian must be present during each contact with pupils (visit, treatment, evaluation, therapy, etc.)

_____(*Initial*) Consultant shall defend, indemnify, protect and hold the District and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property which arise from or are connected with or are caused or claimed to be caused by Consultant's failure to comply with all of the requirements contained in Education Code Section 45125.1, including, but not limited to, the requirements prohibiting Consultant from using employees who may have contact with pupils who have been convicted or have charges pending for a felony in Education Code Section 45122.1.

_____(*Initial*) Per Ed Code 49406 and Assembly Bill 1667, the District requires for Tuberculosis (TB) Clearances to be in place by anyone coming in contact with pupils.

_____(*Initial*) Consultant's individuals/employees and/or Subconsultants/Subcontractors who may come in contact with pupils in the performance of services in this contract agree to provide fingerprint (DOJ/FBI) and TB Clearances (at their own expense) to be in compliance with the above-mentioned Ed Codes before commencement of any services under this contract. The District will provide LiveScan form if necessary.

- I certify to the District's Governing Board that I have read and understand the above terms and conditions and will report any changes that may affect the performance services of this contract.
- I certify to the District's Governing Board that none of the Consultant's employees/individuals and/or Subconsultants/subcontractors performing services under this agreement have been convicted of a felony as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).
- I certify to the District's Governing Board that all of the Consultant's and Subconsultant's/Subcontractor's employees-individuals performing services under this agreement are clear of tuberculosis (TB) as defined on Education Code Section 49406 and Assembly Bill 1667.

Company Name:_____

Name/title of authorized representative *(Print)* _____

Signature _____Date _____

Proposal for San Ysidro School District

Ms. McGraw has a Master of Education with an emphasis on Early Learning and Curriculum from the University of Missouri. Most of the curriculum studies emphasized the needs of all children including children with disabilities. In addition, Ms. McGraw is the founder of a successful assessment and professional development company which provides assessments across California. Ms. McGraw is a former Child Development instructor for Southwestern College and operated four childcare centers in San Diego for over 10 years. She has a deep understanding of Child Development and the importance of high-quality Early Childhood Education in a child's life. She is a strong advocate for all children, families, and teaching staff in their desires for high quality preschool experiences.

Costs Associated with Proposed Workshops, face to face classroom support, and mock CLASS assessments provided by Susan McGraw, Director of Early Childhood Assessment Professionals.

Collaborations across the 3 sites with the 12 lead teachers.
Through discussions and observations, the teaching teams will benefit from forming smaller cohorts which will allow for scaffolding amongst teachers and allow for more strategic coaching based on the knowledge base of each teacher.
In an article published by PDG "Promising Partnerships in Preschool Classrooms" (October 2019) it was stated that teacher benefited from collaborating in the following ways

1. **Quality Improvement**: When preschool teachers collaborate, they can share best practices, exchange ideas, and learn from each other. This collaboration leads to improved teaching methods, curriculum development, and overall program quality[1].
2. **Holistic Learning Environment**: Collaboration involves working as a team, combining the expertise, interests, and strengths of everyone involved. By acknowledging that each individual has something meaningful to offer, collaboration creates opportunities to set goals, make plans, monitor progress, and solve problems jointly[2].

We will form teams of 2; each team will meet twice a month for one hour at a different school site. The teams will meet for twelve sessions. The topics of each collaboration will be based on CLASS results and each teaching team will have a chance to present to the cohort a strategy or lesson plan that they have developed that enhances or improves a CLASS dimension (Concept Development, Language Modeling, Quality of Feedback).
Cost for collaboration: 6 meetings at $230 an hour for six teams of 2 =
$8280

Shadowing with Susan McGraw and the Classroom Environment:
The beginning of the school year is the optimum time to set up and build the classroom environment to support high quality interactions and relationships. Ms. McGraw will work

alongside and with each teacher to ensure that the classroom environment is set up to its' full potential and with the standards set forth in the CLASS Environment. Teachers will gain knowledge and understanding to sustain the classroom environment through the school year.
Cost for 2 hours of shadowing with 12 classrooms= $5520

CLASS 2nd Edition and Environment Observation:
A new version of the CLASS will be used in all preschool classrooms starting 2024/25. Included in the new version is an environmental rating that is an additional supplement. All preschool sites will benefit from having an informal or "mock" assessment as each school district will be required to have some of its' classrooms assessed each year through an outside agency. The teachers and administrators will gain valuable data to support ongoing efforts to improve child teacher interactions.
Cost per assessment $450 x 12 sessions= $5400

Each teacher will receive a one-hour coaching or advising session 2 times a year:
Ms. McGraw will meet to review results and develop an improvement plan based on the assessment results in **August 2024**. **In April and May of 2025,** Ms. McGraw will visit each teacher and observe for 20 minutes and then meet with each teacher for the remaining 40 minutes to discuss how things have improved.
Cost for 2 hours of coaching ($230 an hour) x 12= $5520

Three in-person workshops presented by Ms. McGraw.
Ms. McGraw will present three workshops throughout the year.
Topics will include:

- Introduction to the CLASS Environment
- Instructional Support Domain- Strategies for Improvement
- How to Structure Your Day for Higher Interactions in Concept Development, Language Modeling, and Quality of Feedback

Cost for three workshops ($1150 per workshop) = $3450

Total for Proposal $28170

Quote for Training on CLASS 2.0 by Susan McGraw

Ms. McGraw has been an affiliate trainer for Teachstone since 2010. She is a certified trainer on CLASS 2.0. To become a reliable and certified observer of CLASS 2.0, each person must attend a three-day training course and take a test to obtain a certificate. Ms. McGraw has trained many observers over the past 14 years and has a success rate of over 95% of trainees obtaining certification.
Cost per participant $500 which includes all materials and access to the testing portal.

Workshop #1: Introduction to the CLASS Environment: The two-hour workshop will cover the key elements and components of the CLASS Environment rating scale. Participants will have the opportunity to explore and gain a deep understanding of how a high-quality classroom environment impacts interactions and relationships. The workshop is geared for all Early Childhood Educators including Special Education staff with all levels of knowledge of the CLASS.

Presenter: Susan McGraw, Director of Early Childhood Assessment Professionals with over 18 years of experience using the ECERS and CLASS to improve quality in Early Childhood classrooms across California.

Workshop #2: Instructional Support -Strategies for Improvement – During the two-hour workshop participants will learn strategies on how to improve interactions in the CLASS Inspire Domain (Insructional Support) Participants will have leave the workshop with lesson plan templates to enhance their curriculum planning. The workshop is geared for all Early Childhood Educators including Special Education staff with all levels of knowledge of the CLASS.

Presenter: Susan McGraw, Director of Early Childhood Assessment Professionals with over 18 years of experience using the ECERS and CLASS to improve quality in Early Childhood classrooms across California.

Workshop #3 How to Structure Your Day for Higher Interactions in Concept Development, Language Modeling, and Quality of Feedback- In this 2-hour workshop participants will first examine the typical daily classroom schedule found in most preschool classrooms and then discuss how best to plan the schedule to maximize interactions throughout the day. Participants will build knowledge on how to enhance their day using their schedules.

Presenter: Susan McGraw, Director of Early Childhood Assessment Professionals with over 18 years of experience using the ECERS and CLASS to improve quality in Early Childhood classrooms across California.

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Business Services
Marilyn Adrianzen, Chief Business Official

☐ Informational
☒ Action

AGENDA ITEM: AGREEMENT WITH SWANK MOVIE LICENSING USA

BACKGROUND INFORMATION:
The Public Performance Site License allows the District to show movies to a group of students during non-instructional periods such as rainy days (indoor recess), Parent/Teacher Association (PTA) sponsored events and/or during the before/after school program. If the District does not obtain a Public Performance Site License, the risk of breaking copyright infringement laws exist each time a movie is shown and would have to pay a fine in excess of the annual fee.

The District would like to renew the Public Performance Site License provided by SWANK Movie Licensing USA, effective from November 16, 2024, to November 15, 2027, for all school sites.

RECOMMENDATION:
Approve the 3-year Public Performance Site Licenses provided by SWANK Movie Licensing USA for the legal use of movies within the District's school facilities at a cost not to exceed $7,894.00 from the General fund.

LCAP GOAL AND ACTION/SERVICE (please indicate):

☒ **Renewal** ☐ **New** ☐ **Amendment** ☒ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

NOT TO EXCEED
$7,894.00
(Amount)

General Fund
(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

SWANK
MOVIE LICENSING USA
10795 Watson Road • St Louis, MO 63127
Phone: 877-321-1300 • Fax: 877-876-9873

Order Number: BO 1704901
Order Date:

Bill-To Customer: 0164368-001

Ms. Pat Caro
Business Services
San Ysidro Elementary District
4350 Otay Mesa Rd
San Ysidro, CA 92173

Ship-To Customer: 0164368-001

Ms. Pat Caro
Business Services
San Ysidro Elementary District
4350 Otay Mesa Rd
San Ysidro, CA 92173

Order:1704901 Terms: DUE UPON RECEIPT

--Line-- #	Typ	Qty	Bill_Date	Product #	Product Description	Unit Price	Total Price
1	BO	1	10/16/24	0054009	PUBLIC PERFORMANCE SITE LICENSE	7,894.00	7,894.00
					Planned Usage From: 11/16/24 to 11/15/27		

					Website Login for Promotional Materials: 164368-1		

					La Mirada Elementary School		1,126.00
					Ocean View Hills School		1,126.00
					Vista Del Mar Elementary		1,061.00
					Smythe Elementary		1,126.00
					Sunset Elementary		1,126.00
					Willow Elementary School		1,203.00
					San Ysidro Middle		1,126.00

Item Subtotal: 7,894.00

BALANCE DUE: $7,894.00

Please remit payment to: 2844 Paysphere Circle, Chicago, Illinois 60674

Annual Public Performance Site License
Terms & Conditions

INSTRUCTIONS AND GUIDELINES

This form must be completed before the license coverage can be processed. The start date for the license is yours to select. The agreement will run consecutively from the chosen date for the time period selected. Swank Movie Licensing USA does not provide a copy of the physical movie content; however, you may buy, borrow or rent physical copies of the movie or stream movies from any legal source. This license authorizes unlimited movie showings by anyone in the school buildings, regardless of whether or not they are affiliated with the school. The invoice and all licenses are sent directly to the billing/renewal contact listed on this agreement.

LICENSE AND COPYRIGHT RESTRICTIONS

This license is for K-12 schools only. Refunds are not granted after the license has been processed; however, you may request cancellation any time after the initial term of agreement. Movie showings must take place on school property and cannot be open to the general public. In addition, the movies may not be altered, duplicated, digitized or transmitted electronically in any form without specific permission from the copyright owner. Swank Movie Licensing USA has the right to add or delete any studio throughout the course of the license period. A current list of available studios can be found on our website.

ADVERTISING GUIDELINES

We encourage you to print publicity materials from **swank.com/k-12-schools** to advertise the movie in your facility or to pass out directly to students and staff. You are permitted to use the studio approved images provided by Swank. Please note that these images may not be edited or altered and must include the © symbol and the studio name. Advertising movie showings via on-premises signage, the school specific website, email targeted to families of students, school specific social media accounts or direct mail to enrolled student's families is acceptable.

FUNDRAISING AND DONATIONS

When fundraising at movie events, an unlimited amount of funds can be raised for the school. These funds can come from suggested donations, concessions, giveaways, and more. Some popular event ideas are Dinner and a Movie (charging for dinner), Parent's Night Out (charging for childcare), or Book to Movie themed showings (bringing a book to donate to the library).

RENEWAL OF YOUR LICENSE

This Public Performance Site License is scheduled to renew at the end of your selected initial agreement. You may, however, request cancellation any time after the initial term of the agreement. Approximately one month prior to expiration, the renewal packet will be mailed. Requests for cancellation may be made by calling toll-free **1.877.321.1300** or emailing: **movielicensing@swankmp.com**

MLU59831

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM: Jose F. Iniguez, Ed.D.
Assistant Superintendent of Admin.
Leadership, School Support & Safety

☐ Informational
☒ Action

AGENDA ITEM: APPROVAL OF CONSTRUCTION CONTRACTS AUTHORIZED/AWARDED PURSUANT TO THE CUPCCAA PROCESS

BACKGROUND INFORMATION:
This agenda item is intended to allow the Board to consider the potential approval and/or ratification of construction contracts in accordance with applicable law and District policy. The District previously adopted the California Uniform Public Construction Cost Accounting Act ("CUPCCAA") procedure for one of its approved procurement and award processes of public works construction project contracts as authorized by Public Contract Code section 22000 et. seq. The CUPCCAA process sets forth the statutorily-required procedures for soliciting and procuring such construction contracts with projects under $60k requiring only informal solicitation/quote process, contracts from $60K to $200K to be awarded via an informal competitive bid process, and contracts in excess of $200K to be awarded via a formal competitive bid process.

I. Contracts for Approval:

1. Contract with **KYA Services, LLC.** for $18,000.00 (including $1,362.89 of Owner's allowance), from the Routine Restricted Maintenance Account for the flooring replacement of Room 49 from carpet to vinyl tile at Ocean View Hills School, for sanitation purposes, and to be awarded based on quotes informally solicited pursuant to CUPCCAA (Under $60K).

2. Contract with **KYA Services, LLC.** for $30,000.00 (including a $2,262.64 Owner's allowance), from the Routine Restricted Maintenance Account for the installation of 850 square feet of artificial turf at the Child Development Center playground to be awarded based on quotes informally solicited pursuant to CUPCCAA (Under $60K).

3. Contract with **Vandert Construction, Inc.** for $60,000.00 for future, general repairs, maintenance and construction projects from the Routine Restricted Maintenance Account; of which the first project is for $20,760.00, for the repair and replacement of four (4) decayed ramps at the Child Development Center and Smythe Elementary School, to be awarded based on quotes informally solicited pursuant to CUPCAA (Under $60K).

RECOMMENDATION:
Approval of the CUPCCAA construction contracts set forth above for the total amount of $108,000.00 from Routine Restricted Maintenance Account funding sources.

LCAP GOAL AND ACTION/SERVICE:
Goal 7.0 – Provide sufficient, safe, well-maintained, and visually appealing facilities that create an environment for improving student achievement.

☐ **Renewal** ☒ **New** ☐ **Amendment** ☒ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

$108,000.00	Routine Restricted Maintenance Account
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

NO. 1

CONTRACT FOR REPAIRS, MAINTENANCE OR CONSTRUCTION SERVICES UNDER $60,000 AWARDED PURSUANT TO CUPCCAA

THIS CONTRACT is made and entered into as of the last date of signature hereto ("**Contract**"), by and between **KYA Services, LLC** ("**Contractor**") and **San Ysidro School District** ("District"). Contractor and District may be referred to herein individually as a "**Party**" or collectively as the "**Parties**."

1. **Contract Price & Services.**

   a. After the District has issued a Notice to Proceed, the Contractor shall furnish to the District the repairs, maintenance or construction services identified below and as more fully described in **Exhibit A** attached hereto ("**Services**" or "**Work**") subject to the conditions below and for the price indicated below ("**Contract Price**"):

Project: **2024 ROOM 49 FLOORING REPLACEMENT PROJECT @ OVH – Remove existing carpet and replace with vinyl flooring for sanitary purposes of a preschool program.**

BASE CONTRACT (In Dollars$):

1	6	,	6	3	7	.	1	1
Dollars							Cents	

OWNER'S ALLOWANCE (In Dollars$) FOR UNFORESEEN CONDITIONS AND ADDITIONS:

0	1	,	3	6	2	.	8	9
Dollars							Cents	

TOTAL CONTRACT (In Dollars$):

1	8	,	0	0	0	.	0	0
Dollars							Cents	

   b. **Allowances**: If this Contract includes allowances, an allowance is a value added to the Base Contract amount for

scope items defined by the District. Allowance items shall only be used by Contractor with the District's prior written permission. Contractor shall use the change order provisions of this Contract to apply for the use of an Allowance item. All unused allowance values at the end of the Project shall be retained by the District.

2. **Payment.** Payment for the Work shall be made in accordance with the Terms and Conditions to Contract ("**Terms and Conditions**") attached hereto.

Site. Contractor shall perform the Work at **OCEAN VIEW HILLS ELEMENTARY – ROOM 49 at 4919 Del Sol Blvd., San Diego, CA 92154** ("**Premises**" or "**Site**"). The "**Project**" is the scope of Work performed at the Site.

3. **Contract Time & Liquidated Damages.** Work shall be completed by **October 7, 2024**. ("**Contract Time**"). Contractor agrees that if the Work is not completed within the Contract Time and/or pursuant to the completion schedule, construction schedule, or project milestones developed pursuant to provisions of the Contract, it is understood, acknowledged, and agreed that the District will suffer damage which is not capable of being calculated. Pursuant to Government Code section 53069.85, Contractor shall pay to the District, as fixed and liquidated damages for these incalculable damages, the sum of **$500.00** per day for each and every calendar day of delay beyond the Contract Time or beyond any completion schedule, construction schedule, or Project milestones established pursuant to the Contract.

4. **Bonds & Insurance.**

   a. **Payment Bond & Performance Bond:**

   ☒ **IS NOT REQUIRED – PROJECT SIZE IS DETERMINED TO BE BELOW $25K**

   ☐ **IS REQUIRED:** Contractor shall not commence the Work until it has provided to the District, a Payment (Labor and Material) Bond and a Performance Bond, in the forms attached hereto, each in an amount equivalent to one hundred percent (100%) of the Contract Price issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the District. The District reserves to waive this requirement in writing at its sole discretion and negotiate a deduction of the cost from the base proposal in the event the Contract Price is below $25,000.

   b. **Insurance:** Contractor shall have and maintain in force during the term of this Contract, with the minimum indicated limits, the following insurance:

Commercial General Liability, with Products and Completed Operations Coverage	$1,000,000 each occurrence $2,000,000 aggregate
Automobile Liability, Any Auto, Combined Single Limit	$1,000,000 each occurrence $2,000,000 aggregate
Workers Compensation	Statutory limits pursuant to State law
Employers' Liability	$1,000,000 each incident, disease $2,000,000 policy limit
Sexual Abuse / Molestation	$1,000,000 each incident $2,000,000 policy limit
Builder's Risk (Course of Construction)	Issued for the value and scope of work.

DISTRICT MAY ADJUST THESE LIMITS, IN WRITING, AT THE DISTRICT'S SOLE DISCRETION BASED ON SIZE AND SCOPE OF THE CONTRACT.

Contractor shall provide to the District certificate(s) of insurance and endorsements satisfactory to the District. The policy(ies) shall not be amended or modified, and the coverage amounts shall not be reduced without thirty (30) days written notice to the District prior to cancellation. Except for worker's compensation insurance, the District, the Architect, and the Project Manager shall be named as an additional insured on all policies. Contractor's policy(ies) shall

be primary; any insurance carried by the District shall only be secondary and supplemental. Contractor shall not allow any subcontractor, employee, or agent to commence Work on this Contract or any subcontract until the insurance required of Contractor, subcontractor, or agent has been obtained, and the certificate(s) of insurance and endorsements have been provided to the District; provided, however, that the District reserves the right to reject an insurance policy(ies) if they do not conform with the above insurance requirements.

Project Oversight. The District representative for the Project is: **Jose F. Iniguez, Ed.D., Assistant Superintendent of Administrative Leadership, School Support & Safety. Phone: (619) 428-4476 ext. 3065.**

5. **INFECTIOUS DISEASE/COVID-19.** Contractor shall comply with all provisions related to infectious diseases as set forth in **Exhibit B**.

6. ☐ **This box will be checked if Federal Funding requirements apply.** If the Project is funded in whole or part by federal funding, including, without limitation, any funds from any component or iteration of the Elementary and Secondary School Emergency Relief ("**ESSER**") programs, Contractor acknowledges that this Project is subject to federal procurement/contracting requirements. Contractor agrees to fully comply with all federal requirements, including, without limitation, the federally required contract provisions attached hereto as **Exhibit C**.

7. **Terms & Conditions.** The Contractor agrees to comply with the Terms and Conditions attached hereto.

8. **Contract Documents.** The Contract Documents include only the following documents, as indicated:

____ Proposal Form	____ Performance Bond
____ Notice to Proceed	____ Payment Bond
__X__ Terms and Conditions to Contract	__X__ **Exhibit A** (Scope of Work)
____ Noncollusion Declaration	____ Plans
__X_ Certifications to be Completed by Contractor	____ Work Specifications
__X__ Criminal Background Investigation Certification	____ _____ [Other]
__X__ Insurance Certificates and Endorsements	__X__ **Exhibit B** (Infectious Disease Provisions)
	____ **Exhibit C** (Federal Procurement Provisions)

9. **Notice**. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or sent by overnight delivery service addressed as follows:

District:	**Contractor:**
San Ysidro School District	KYA Services, LLC
4350 Otay Mesa Rd.,	1800 East McFadden
San Ysidro, CA 92173	Attn: Shane Collins
Attn: Dr. Jose Iniguez, Assistant Superintendent of Admin.	Phone: 619-936-3111
Leadership, School Support & Safety	Email: contracts@thekyagroup.com

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service.

ACCEPTED AND AGREED on the date indicated below. By signing this Contract, Contractor certifies, under penalty of perjury, that all the information provided in the Contract Documents is true, complete, and correct:

Dated: _____, 2024

San Ysidro School District

Signature: _____

Print Name: Marilyn Adrianzen

Print Title: Chief Business Official

License# 984827

Dated: July 24, 2024

KYA Services, LLC

Signature: _____

Print Name: Brooks Berry

Print Title: Chief Financial Officer

DIR Registration # 1000003379

Information regarding Contractor:

Type of Business Entity:
____ Individual
____ Sole Proprietorship
____ Partnership
____ Limited Partnership
____ Corporation
X Limited Liability Company
____ Other: _____

Employer Identification Number or Social Security Number: 46-2267568

NOTE: United States Code, title 26, sections 6041 and 6109 require non-corporate recipients of $600 or more to furnish their taxpayer identification number to the payer. The United States Code also provides that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these rules, the District requires your federal tax identification number or Social Security number, whichever is applicable.

Contractor representative for onsite work:

Name:	Title:	Mobile:
Ahmed Alaziz	Project Manager	657-650-5538

Email:

ahmed.alaziz@thekyagroup.com

TERMS AND CONDITIONS TO CONTRACT

1. NOTICE TO PROCEED: Receipt of this contract signed by the District shall be the Notice to Proceed.

2. SITE EXAMINATION: Contractor has examined the Site and certifies that it accepts all measurements, specifications and conditions affecting the Work to be performed at the Site. By submitting its bid/proposal and signing this Contract, Contractor warrants that it has made all Site examination(s) that it deems necessary as to the condition of the Site, its accessibility for materials, workers and utilities, and Contractor's ability to protect existing surface and subsurface improvements. No claim for allowance of time or money will be allowed as to any other undiscovered condition on the Site.

3. CONSTRUCTION SCHEDULE / SUBCONTRACTOR LIST: Contractor shall provide the District a Construction Schedule for the Work and a Subcontractor List as indicated in this Contract. Both the Construction Schedule and Subcontractor List are subject to the District's approval.

4. EQUIPMENT AND LABOR: The Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the Services, the Services to be performed at such times and places as directed by and subject to the approval of the authorized District representative indicated in the Work specifications attached hereto.

5. SUBCONTRACTORS: Contractor shall comply with the Subletting and Subcontracting Fair Practices Act (Public Contract Code, section 4100 et. seq.) Contractor shall identify by name and location of the place of business of each subcontractor who will perform work or labor or render service in or about the construction of the Project in an amount in excess of one-half of 1 percent of the Contractor's contract price or ten thousand dollars ($10,000) whichever is greater. Subcontractors, if any, engaged by the Contractor for any Service or Work under this Contract shall be subject to the approval of the District. Contractor agrees to bind every subcontractor by the terms of the Contract as far as such terms are applicable to subcontractor's work, including, without limitation, all indemnification, insurance, bond, and warranty requirements. If Contractor subcontracts any part of this Contract, Contractor shall be fully responsible to the District for acts and omissions of its subcontractor and of persons either directly or indirectly employed by itself. Nothing contained in the Contract Documents shall create any contractual relations between any subcontractor and the District.

6. TERMINATION: If Contractor fails to perform the Services and Contractor's duties to the satisfaction of the District, or if Contractor fails to fulfill in a timely and professional manner Contractor's obligations under this Contract, or if Contractor violates or otherwise breaches any of the Terms or Provisions of this Contract, the District shall have the right to terminate this Contract effective immediately upon the District giving written notice thereof to the Contractor. District shall also have the right in its sole discretion to terminate the Contract for its own convenience. Termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of termination. Upon termination, Contractor shall provide the District with all documents produced maintained or collected by Contractor pursuant to this Contract, whether or not such documents are final or draft documents.

7. SAFETY AND SECURITY: Contractor is responsible for maintaining safety in the performance of this Contract. Contractor shall be responsible for complying with the District's rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.

8. CHANGE IN SCOPE OF WORK:

8.1. No Change Without Authorization: Any change in the scope of the Work, method of performance, nature of materials or price thereof, the time for performance, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted by the District unless that change, addition, or deletion is approved in advance and in writing by a valid change order executed by the District.

8.2. District Right to Request Changes: Contractor specifically understands, acknowledges, and agrees that the District shall have the right to request any alterations, deviations, reductions, or additions to the Project or Work, and the cost thereof shall be added to or deducted from the amount of the Contract Price by fair and reasonable valuations. The District may accomplish any of the foregoing, in its discretion, by issuing a unilateral change order.

8.3. Proposed Change Order:

8.3.1. **Submission / Time to Submit**: Contractor may seek an adjustment to the Contract Time or Contract Price only by submitting a proposed change order to the District within five (5) days of the date Contractor discovers, or reasonably should discover, the circumstances giving rise to the proposed change order, unless additional time to submit a proposed change order is granted in writing by the District.

8.3.2. **Content of Proposed Change Order**: Contractor and subcontractors shall include the following in any proposed change order:

8.3.2.1. Labor: Labor breakdown by trade classification, wage rates, and estimated hours. Wages shall not exceed current prevailing wages in the locality for performance of the changes. The Contractor's or subcontractors' (including second-tier subcontractors') labor burden and Workers' Compensation premium shall only be charged at 20% of the total charge for labor costs. In no event shall Contractor include any other charges than as indicated herein without the District's prior written approval.

8.3.2.2. Material: Material quantities, and types of products, and transportation costs, if applicable.

8.3.2.3. Equipment: Equipment breakdown by make, type, size, rental rates (if not owned), equipment hours and transportation costs, if applicable. The equipment costs shall not exceed one hundred percent (100%) of the Association of Equipment Distributors (AED) rental rates and delay factors or Caltrans rates and delay factors, whichever is less. Hourly, daily, or weekly rates shall be used, whichever is lower. Hourly rates including operator shall not be used. The time to be paid for equipment shall be the actual time that the equipment is in (1) productive operation on the Work or (2) idled because of the event or circumstance giving rise to the proposed change order.

8.3.2.4. Mark-Up for Overhead and Profit: Mark-up for overhead and profit in a proposed change order shall be calculated as follows:

8.3.2.4.1. **Subcontractor-Performed Work**: Subcontractors shall be entitled to a total cumulative mark-up for overhead and profit of 8% on the total of Labor (including labor burden and Workers' Compensation premium), Material, and Equipment **only** for for both the subcontractor and the subcontractor's subcontractor(s) (e.g., all "lower-tier" subcontractors) performed Work. Contractor shall be entitled to a 6% mark-up on the same items, **excluding subcontractor's mark-up for overhead and profit**.

8.3.2.4.2. **Contractor-Performed Work**: Contractor shall be entitled to a mark-up for overhead and profit of 6% of the total of the Labor (including labor burden and Workers' Compensation premium), Material, and Equipment for Contractor performed Work.

8.3.3. **Contract Time**: Any request for an adjustment to the Contract Time must be supported by a time impact analysis identifying critical schedule activities delayed by an event beyond the Contractor's reasonable control.

8.4. Determination of Change Order Cost: The District shall use any reasonable means to calculate the cost of a change order in its sole discretion, including, without limitation: the acceptance of a proposed change order; agreement between the District and Contractor; and, the actual and necessary costs incurred by Contractor based on cost records produced to the District and based on the District's reasonable evaluation of the Work and market research.

8.5. Contractor Obligation to Substantiate: Contractor agrees to provide the District with all information requested to substantiate the cost of any change order and to inform the District whether the Work will be done by the Contractor or a subcontractor. If Contractor fails to reasonably substantiate any requested change in the scope of work, or Contractor fails to timely cooperate with the District to provide substantiation for the costs of any change order, Contractor waives any claim for additional compensation. In addition to any other information requested, Contractor shall submit, prior to approval of any change order, its request for a time extension (if any), as well as all information necessary to substantiate Contractor's belief that such change will delay the completion of the Work.

8.6. Waiver: If Contractor fails to submit its request for a time extension or the necessary supporting information, it shall be deemed to have waived its right to request such extension. Contractor waives any claim for additional compensation for any change in the scope of work if Contractor performs the work without written approval of the District.

9. TRENCH SHORING: If this Contract is in excess of $25,000 and is for the excavation of any trench deeper than five (5) feet, Contractor must submit and obtain District's approval and acceptance, in advance of excavation, of 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 such trench or trenches. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

10. EXCAVATIONS OVER FOUR FEET: If this Contract includes excavations over four (4) feet, Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any: (1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, 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; or (3) Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. The District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work shall issue a change order under the procedures described in the Contract. In the event that a dispute arises between the District and the Contractor regarding whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work. 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.

11. LEAD-BASED PAINT: Pursuant to the Lead-Safe Schools Protection Act (Education Code Section 32240 et seq.) and other applicable law, no lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall be utilized on this Project, and only trained and state-certified contractors, inspectors and workers shall undertake any action to abate existing risk factors for lead. Contractor must execute the Lead-Based Paint Certification, if applicable.

12. WORKERS: Contractor shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of the Contractor or a subcontractor whom the District may deem incompetent or unfit shall be dismissed from the Site and shall not again be employed at the Site without written consent from the District.

13. DRUG-FREE / TOBACCO FREE / SMOKE FREE POLICY: No drugs, alcohol, tobacco, and/or smoking are allowed at any time in any buildings and/or grounds on District property. No students, staff, visitors, consultants or contractors are to use drugs on these sites.

14. FINGERPRINTING: Contractor shall comply with and provide to the District a fully executed Criminal Background Investigation /Fingerprinting Certification, attached hereto, prior to mobilizing at the Site.

15. CORRECTION OF ERRORS: Contractor shall perform, at its own cost and expense and without reimbursement from the District, any work necessary to correct errors or omissions that are caused by the Contractor's failure to comply with the standard of care required herein. If Contractor fails to correct any those errors, the District reserves the right to deduct the value of the work from any payment(s) owed to Contractor, or to perform the work itself and

deduct from any payment(s) owed to contractor the cost to perform the work.

16. FAILURE TO PERFORM. If the District at any time believes that the Contractor is behind schedule, is failing to construct the Project pursuant to the Contract Documents, or is otherwise failing to perform any provisions of this Contract, the District, after FORTY-EIGHT (48) hours written notice to the Contractor, may take any action necessary or beneficial to the District to complete the Project, takeover the Work of the Contract, terminate or suspend the Contract as indicated herein, or any combination or portion of those actions. The Contractor shall be liable to the District for any cost incurred by the District in those actions and the District has the right to deduct the cost thereof from any payment then or thereafter due the Contractor.

17. SUBSTITUTIONS: No substitutions of material from those specified in the Work Specifications shall be made without the prior written approval of the District.

18. CONTRACTOR SUPERVISION: Contractor shall provide competent supervision of personnel employed on the job Site to monitor the use of equipment and the quality of workmanship.

19. PERSONNEL: Contractor, Contractor's employees, Subcontractors, Subcontractors' employees, or any person associated with the Work shall conduct themselves in a manner appropriate for a school site. The District will not permit any (1) verbal or physical contact with neighbors, students, and faculty; (2) profanity, or inappropriate attire or behavior; (3) photographing, videoing, or audio recording of any neighbors, students, and faculty or any posting of any photographs, videos, or audio recordings of any neighbors, students, and faculty on any internet site, social media platform of any kind, regardless of source of any photograph, video, or audio recording. District may require Contractor to permanently remove noncomplying persons from Project Site

20. CLEAN UP: Debris shall be removed from the Premises. The Site shall be in order at all times when work is not actually being performed and shall be maintained in a reasonably clean condition. Onsite trash bins shall not be used.

21. ACCESS TO WORK: District representatives shall at all times have access to the Work wherever it is in preparation or in progress. Contractor shall provide safe and proper facilities for such access.

22. PROTECTION OF WORK AND PROPERTY: Contractor shall erect and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of life or of Work or of adjoining property, Contractor, without special instruction or authorization from District, is permitted to act at his discretion to prevent such threatened loss or injury.

23. ASSIGNMENT OF CONTRACT: Contractor shall not assign or transfer in any way any or all of its rights, burdens, duties, or obligations under this Contract without the prior written consent of the District.

24. TIME IS OF THE ESSENCE: Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Contract.

25. OCCUPANCY: There is no "Substantial Completion" or "Beneficial Occupancy" for this Project, although the District reserves the right to occupy buildings at any time before formal Contract completion and that occupancy shall not constitute final acceptance or approval of any part of the Work covered by this Contract, nor shall that occupancy extend the date specified for completion of the Work.

26. FORCE MAJEURE CLAUSE: Contractor shall be excused from performance hereunder during the time and to the extent that it is prevented from obtaining delivery, or performing by act of God, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, pandemic, product, plant, or facilities by the government, when satisfactory evidence thereof is presented to the District, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of Contractor. Any delay associated with Covid-19, or any derivative or similar strain thereof, or any federal, state, or local order relating thereto, shall not be considered a Force Majeure Event unless it renders Contractor's performance of the Work impossible, and that event was not reasonably foreseeable at the time of the execution of the Contract.

27. INDEMNIFICATION / HOLD HARMLESS CLAUSE: To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, Contractors, employees, trustees, and volunteers ("**the indemnified parties**") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, including without limitation the payment of all consequential damages, arising out of, pertaining to or relating to, in whole or in part, the negligence, recklessness, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, Contractors, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services or from any activity, work, or thing done, permitted, or suffered by the Contractor in conjunction with this Contract, unless the claims are caused wholly by the sole negligence or willful misconduct of the indemnified parties. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the indemnified parties.

28. PAYMENT: On a monthly basis, Contractor shall submit an application for payment based upon the estimated value for materials delivered or Services performed under the Contract as of the date of submission ("**Application for Payment**"). Within thirty (30) days after District's approval of the Application for Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as verified by Architect and Inspector and certified by Contractor) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. The District may deduct from any payment an amount necessary to protect the District from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the District in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the total Contract Price or by the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the

Contract; (8) failure of the Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by District during the prosecution of the Work; (9) erroneous or false estimates by the Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages, as determined by the District, incurred by the District for which Contractor is liable under the Contract; and (11) any other sums which the District is entitled to recover or withhold from Contractor under the terms of the Contract or pursuant to state law, including section 1727 of the California Labor Code. The failure by the District to deduct any of these sums from a progress payment shall not constitute a waiver of the District's right to recover those sums. The District shall retain five percent (5%) from all amounts owing as retention. Retention shall be paid pursuant to Public Contract Code sections 7107 and 7200.

29. PERMITS AND LICENSES: Contractor and all of its employees, agents, and subcontractors shall secure and maintain in force, at Contractor's sole cost and expense, all licenses and permits as are required by law, in connection with the furnishing of materials, supplies, or Services herein listed.

30. INDEPENDENT CONTRACTOR STATUS: While engaged in carrying out the Services of this Contract, the Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the District. Contractor shall be solely responsible for its own Worker's Compensation insurance, taxes, and other similar charges or obligations. Contractor shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its agents or employees.

31. ANTI-DISCRIMINATION: It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, or religious creed, and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment Practice Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).

32. DISABLED VETERAN BUSINESS ENTERPRISES: Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building (SFP Funds) to have a participation of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). If this Contract uses School Facilities Program Funds, Contractor must submit, with its executed Contract, appropriate documentation to the District identifying the steps Contractor has taken to solicit DVBE participation in conjunction with this Contract.

33. WARRANTY/QUALITY: Unless a longer warranty is called for elsewhere in the Contract, Contractor, manufacturer, or their assigned agents shall guarantee the workmanship, product or Services performed against defective workmanship, defects or failures of materials for a minimum period of one (1) year from District's written acceptance of the Work. All workmanship and merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards.

34. CONFIDENTIALITY: Contractor shall maintain the confidentiality of all information, documents, programs, procedures, and all other items that Contractor encounters while performing the Contractor's Services to the extent allowed by law. This requirement shall be ongoing and shall survive the expiration or termination of this Contract and specifically includes all student, parent, and disciplinary information.

35. COMPLIANCE WITH LAWS: Contractor shall give all notices and comply with all laws, ordinance, rules and regulations bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.

36. DISPUTES/CLAIMS: Public Contract Code § 9204. Claims between the District and the Contractor shall be resolved in accordance with the procedures established in Public Contract Code § 9204.

36.1. Claim. The term "**Claim**" means a written demand by the Contractor sent by registered mail or certified mail with return receipt requested for:

36.1.1. An extension of the Contract Time, including relief from damages or penalties assessed by the District for delay;

36.1.2. Payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment that is not otherwise expressly provided for in the Contract Documents or to which the Contractor is not otherwise entitled; or

36.1.3. Payment of an amount that is disputed by the District.

36.2. Submission of Claim. A Claim arises upon the District's rejection of a request by the Contractor for a change order. The Contractor shall submit the Claim by registered mail or certified mail with return receipt requested to the District's Director of construction and Modernization, with a copy to the Project Manager/Construction Manager. The Contractor shall submit its Claim in writing, together with all Supporting Documentation no later than the earlier of either: (1) thirty (30) days after the date the Claim arises; or (2) sixty (60) days after the date of completion. It is the intent of the District to evaluate and resolve Claims with the Contractor as close to the events giving rise to such Claims as possible and to avoid stale or late Claims, including late notice and documenting of Claims, and to timely mitigate the issue, event, condition, circumstance and/or cause of the Claim and any adverse impacts or damages related thereto.

36.3. Contents of Claim. A Claim must include all Supporting Documentation and a statement identifying it as a Claim signed by an authorized agent or officer of the Contractor under penalty of perjury and including the following language immediately above or before the Contractor's signature: "I declare under penalty of perjury under the laws of the State of California that the

information provided and statements made in this Claim are true and correct, substantiated and of merit." The Contractor recognizes and acknowledges that this requirement is not a mere formality but is intended to ensure that the Contractor only submits Claims that it believes are true and correct, substantiated and have merit.

36.4. Subcontractor Claims. Pursuant to Public Contract Code § 9204(d)(5), a Subcontractor may request in writing, either on its own behalf or on behalf of a lower tier Subcontractor, that the Contractor submit to the District 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 submitted to the District shall furnish reasonable documentation to support the claim. Regardless of whether or not the Contractor decides to submit the Subcontractor's claim to the District, Contractor shall provide a copy of the Subcontractor's written request, including all supporting documentation, to the Project Manager/Construction Manager within ten (10) days of Contractor's receipt of the request. In the event the Contractor agrees to submit a Subcontractor's claim to the District, the Contractor shall submit such claim as a request for a change order, unless such claim was previously submitted to the District as a request for a change order. Within forty-five (45) days of receipt of the Subcontractor's written request, the Contractor shall notify the Subcontractor in writing as to whether the Contractor submitted the claim to the District and, if the Contractor did not submit the claim, the Contractor shall provide the Subcontractor with a written statement of the reasons for not having done so and shall concurrently provide a copy of such written statement to the Project Manager/Construction Manager. In the event the Contractor includes supporting documentation with such written statement, the Contractor shall concurrently provide a copy of such supporting documentation to the Project Manager/Construction Manager. If the Contractor submits a Claim on behalf of a Subcontractor, the Claim shall include a statement in writing and signed by an authorized agent or officer of the Contractor under penalty of perjury that includes the following language immediately above or before the Contractor's signature: "I declare under penalty of perjury under the laws of the State of California that [insert name of Contractor] has thoroughly evaluated the claim of [insert name of Subcontractor] and determined that the information provided and statements made in the claim are true and correct, substantiated and of merit."

36.5. District Review of Claim. Upon receipt of a Claim, the District shall review the Claim and, within a period not to exceed forty-five (45) days, shall provide 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 the Contractor may, by mutual written agreement, extend the forty-five (45) day time period. The District shall process and make payment of any undisputed portion of a Claim within sixty (60) days after the District issues its written statement. Failure by the District to provide a written statement in response to a Claim from the Contractor within the forty-five (45) day time period, or within an agreed upon extended time period, shall result in the Claim being deemed rejected in its entirety. A Claim that is rejected by reason of the District's failure to respond, or failure to timely respond, to the Claim shall not constitute an adverse finding regarding the merits of the Claim or the claimant's responsibility or qualifications.

36.6. Meet and Confer Meeting. If the Contractor disputes the District's written response, or if the District fails to respond within the time frame prescribed above, the Contractor, within fifteen (15) days of the District's written response or, if the District fails to respond, within fifteen (15) days after the District's response was due, may demand, in a writing sent to the District's Superintendent by registered mail or certified mail, return receipt requested, with a copy to the District's Director of Construction and Modernization, and Project Manager/Construction Manager, an informal conference to meet and confer for settlement of the issues in dispute. The District shall schedule a meet and confer conference within thirty (30) days of its receipt of the Contractor's written demand.

36.7. Mediation. Within ten (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 sixty (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. The expenses and fees of the mediator and the administrative fees shall be divided among the parties equally. Each party shall pay its own legal fees, witness fees, and other expenses. The District and the Contractor shall mutually agree to a mediator within ten (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. The foregoing notwithstanding, pursuant to Public Contract Code § 9204(f), the parties may mutually agree in writing to waive mediation.

36.8. Pending resolution of the dispute, Contractor agrees it will neither rescind the Contract nor stop the progress of the Work but will allow determination by the court of the State of California, in the county in which the District's administration office is located, having competent jurisdiction of the dispute.

36.9. Nothing in this Article shall prevent the Parties from resolving any disputes or claims pursuant to Public Contract Code section 20104, et seq., if applicable.

36.10. Nothing in this Contract, waives, modifies or tolls the Contractor's obligation to present a timely claim under Government Code § 910, et seq. Therefore, in addition to complying with the contractual Claims procedures, the Contractor is required to present claims to the District pursuant to Government Code § 910, et seq.

37. LABOR CODE REQUIREMENTS: Provided that the Contract Price is more than $1,000, and the Work is a "public works" under the Labor Code, the parties agree as follows:

37.1. The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

37.2. District hereby provides notice of the requirements described in Labor Code § 1771.1(a) that a contractor or subcontractor shall not be qualified to bid or propose on, be listed in a bid or proposal, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code § 1725.5.

37.3. Contractor acknowledges that all or a portion of the Services under this Contract are a public work, and that it and its subcontractors have complied with Labor Code § 1725.5, including, without limitation, the registration requirements thereof.

37.4. Contractor shall post all required job site notices and shall comply with all applicable requirements prescribed thereby, including but not limited to Labor Code § 1771.4.

37.5. Contractor shall comply with all applicable provisions of the Labor Code, Division 3, Part 7, Chapter 1, Articles 1-5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars ($1,000).

37.6. Copies of the prevailing rate of per diem wages are on file with the District.

37.7. Contractor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the Labor Code, beginning with § 1720, and including §§ 1735, 1777.5 and 1777.6, forbidding discrimination, and §§ 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. Contractor shall comply with Labor Code § 1777.5 pertaining to prevailing wage compensation to apprentices for preemployment activities.

38. PAYROLL RECORDS: Contractor and its subcontractor(s) shall keep accurate certified payroll records of employees and make them available to the District immediately upon request.

39. AUDIT: Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Contract. Contractor shall retain these books, records, and systems of account during the Term of this Contract. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Contract. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.

40. ANTI-TRUST CLAIM: Contractor and its subcontractor(s) agree to assign to the District all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. 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 purchases of goods, services, or materials pursuant to the Contract or a subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor, without further acknowledgment by the Parties.

41. GOVERNING LAW: This Contract shall be governed by and construed in accordance with the laws of the State of California with venue of any action in a in the county in which the District's administration office is located.

42. PROVISIONS REQUIRED BY LAW DEEMED INSERTED: Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included therein.

43. BINDING CONTRACT: This Contract shall be binding upon the Parties hereto and upon their successors and assigns, and shall inure to the benefit of the Parties and their successors and assigns.

44. DISTRICT WAIVER: District's waiver of any term, condition, covenant or waiver of a breach of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant or the waiver of a breach of any other term, condition or covenant.

45. INVALID TERM: If any provision of this Contract is declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be a part of this Contract.

46. ENTIRE CONTRACT: This Contract sets forth the entire Contract between the Parties hereto and fully supersedes any and all prior agreements, understanding, written or oral, between the Parties hereto pertaining to the subject matter thereof. This Contract may be modified only by a writing evidencing the Parties' mutual consent.

CERTIFICATIONS TO BE COMPLETED BY CONTRACTOR

THE UNDERSIGNED MUST CHECK EACH BOX AND EXECUTE THIS FORM AND HEREBY CERTIFIES TO THE GOVERNING BOARD OF THE DISTRICT THAT:

- He/she is a representative of the Contractor,
- He/she is familiar with the facts herein certified and acknowledged,
- He/she is authorized and qualified to execute this Agreement and these certifications on behalf of Contractor and that by executing this Agreement he/she is certifying the following items.

☒ **Labor Code Sections 1860-1861 (Workers' Compensation).** In accordance with Labor Code section 3700, every contractor will be required to secure the payment of compensation to his or her employees. I acknowledge and certify under penalty of perjury that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

☒ **Government Code Sections 8355-8357 (Drug-Free Workplace).** I acknowledge and certify under penalty of perjury that I will provide a drug-free workplace by doing all of the following:

(1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.

(2) Establishing a drug-free awareness program to inform employees about all of the following:

(A) The dangers of drug abuse in the workplace.

(B) The person's or organization's policy of maintaining a drug-free workplace.

(C) Any available drug counseling, rehabilitation, and employee assistance programs.

(D) The penalties that may be imposed upon employees for drug abuse violations.

(3) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I also acknowledge that this Contract may be subject to suspension of payments under the contract or grant or termination of the contract or grant, or both, and the contractor or grantee thereunder may be subject to debarment, in accordance with the requirements of the above-referenced statute, if the contracting or granting agency determines that any of the following has occurred:

(1) The contractor or grantee has made a false certification under Section 8355.

(2) The contractor or grantee violates the certification by failing to carry out the requirements of subdivisions (a) to (c), inclusive, of Section 8355.

I also acknowledge that the Department of General Services shall establish and maintain a list of individuals and organizations whose contracts or grants have been canceled due to failure to comply with the above-referenced statute. This list shall be updated monthly and published each month. No state agency shall award a contract or grant to a person or organization on the published list until that person or organization has complied with the above-referenced statute.

☒ **Tobacco-Free Environment**. 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 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 and certify under penalty of perjury that I am aware of the District's policy regarding tobacco-free environments at District sites, including the Project site and acknowledge and 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 on the Project site. The District also prohibits electronic cigarettes, "vaping" or similar product uses on District sites.

☒ **No Hazardous Materials.** I acknowledge and certify under penalty of perjury that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations ("**New Hazardous Material**"), shall be furnished, installed, or incorporated in any way into the Project or in any tools,

devices, clothing, or equipment used to affect any portion of Contractor's work on the Project for District. I have instructed our employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

(i) Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material. Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Contractor if the material is found to be New Hazardous Material.

(i) All Work or materials found to be New Hazardous Material or Work or material installed with equipment containing "New Hazardous Material," will be immediately rejected and this Work will be removed at Contractor's expense at no additional cost to the District.

The Contractor must immediately notify the District within two (2) Business Days, if the Contractor finds and before it disturbs, any material that the Contractor believes may be hazardous waste, as defined in section 25117 of the Health and Safety Code, and requires removal to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law

I acknowledge and certify under penalty of perjury that this certification provides notice to the Contractor that:

(1) The Contractor's work may disturb lead-containing building materials.

(2) The Contractor must notify the District if any work may result in the disturbance of lead-containing building materials.

☒ **Lead as a Health Hazard.** Lead poisoning is recognized as a serious environmental health hazard facing children today. Even at low levels of exposure, much lower than previously believed, lead can impair the development of a child's central nervous system, causing learning disabilities, and leading to serious behavioral problems. Lead enters the environment as tiny lead particles and lead dust disburses when paint chips, chalks, peels, wears away over time, or is otherwise disturbed. Ingestion of lead dust is the most common pathway of childhood poisoning; lead dust gets on a child's hands and toys and then into a child's mouth through common hand-to-mouth activity. Exposures may result from construction or remodeling activities that disturb lead paint, from ordinary wear and tear of windows and doors, or from friction on other surfaces.

Ordinary construction and renovation or repainting activities carried out without lead-safe work practices can disturb lead-based paint and create significant hazards. Improper removal practices, such as dry scraping, sanding, or water blasting painted surfaces, are likely to generate high volumes of lead dust.

Because the Contractor and its employees will be providing services for the District, and because the Contractor's work may disturb lead-containing building materials, **Contractor is hereby notified** of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school buildings built prior to 1993 are presumed to contain some lead-based paint until sampling proves otherwise.

(i) **Overview of California Law**

Education Code section 32240 et seq. is known as the Lead Safe Schools Protection Act. Under this act, the Department of Health Services ("**DHS**") is to conduct a sample survey of schools in the State of California for the purpose of developing risk factors to predict lead contamination in public schools. (Ed. Code, § 32241.)

Any school that undertakes any action to abate existing risk factors for lead is required to utilize trained and state-certified contractors, inspectors, and workers. (Ed. Code, § 32243, subd. (b).) Moreover, lead-based paint, lead plumbing, and solders, or other potential sources of lead contamination, shall not be utilized in the construction of any new school facility or the modernization or renovation of any existing school facility. (Ed. Code, § 32244.)

Both the Federal Occupational Safety and Health Administration ("**OSHA**") and the California Division of Occupational Safety and Health ("**Cal/OSHA**") have implemented safety orders applicable to all construction work where a contractor's employee may be occupationally exposed to lead.

The OSHA Regulations apply to all construction work where a contractor's employee may be occupationally exposed to lead. The OSHA Regulations contain specific and detailed requirements imposed on contractors subject to that regulation. The OSHA Regulations define construction work as work for construction, alteration, and/or repair, including painting and decorating. It includes, but is not limited to, the following:

a. Demolition or salvage of structures where lead or materials containing lead are present;

a. Removal or encapsulation of materials containing lead;
b. New construction, alteration, repair, or renovation of structures, substrates, or portions thereof, that contain lead, or materials containing lead;
c. Installation of products containing lead;
d. Lead contamination/emergency cleanup;
e. Transportation, disposal, storage, or containment of lead or materials containing lead on the site or location at which construction activities are performed; and
f. Maintenance operations associated with the construction activities described in the subsection.

Because it is assumed by the District that all painted surfaces (interior as well as exterior) within the District contain some level of lead, it is imperative that the Contractor, its workers and subcontractors fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials (including title 8, California Code of Regulations, section 1532. 1).

The Contractor must notify the District if any Work may result in the disturbance of lead-containing building materials. Any and all Work that may result in the disturbance of lead-containing building materials must be coordinated through the District. A signed copy of this Certification must be on file prior to beginning Work on the Project, along with all current insurance certificates.

(i) **Renovation, Repair and Painting Rule, Section 402(c)(3) of the Toxic Substances Control Act**
In 2008, the U.S. Environmental Protection Agency, issued a rule pursuant to the authority of Section 402(c)(3) of the Toxic Substances Control Act, requiring lead safe work practices to reduce exposure to lead hazards created by renovation, repair and painting activities that disturb lead-based paint (Renovation, Repair and Painting Rule). Renovations in homes, childcare facilities, and schools built prior to 1978 must be conducted by certified renovations firms, using renovators with accredited training, and following the work practice requirements to reduce human exposures to lead.

Contractor, its workers and subcontractors must fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials, including those rules and regulations appearing within title 40 of the Code of Federal Regulations as part 745 (40 CFR 745).

The requirements apply to all contractors who disturb lead-based paint in a six-square-foot area or greater indoors or a 20-square-foot area outdoors. If a DPH-certified inspector or risk assessor determines that a home constructed before 1978 is lead-free, the federal certification is not required for anyone working on that particular building.

(ii) **Contractor's Liability**
If the Contractor fails to comply with any applicable laws, rules, or regulations, and that failure results in a site or worker contamination, the Contractor will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify, and hold harmless the District, pursuant to the indemnification provisions of the Contract, for all damages and other claims arising therefrom.

If lead disturbance is anticipated in the Work, only persons with appropriate accreditation, registrations, licenses, and training shall conduct this Work.

It shall be the responsibility of the Contractor to properly dispose of any and all waste products, including, but not limited to, paint chips, any collected residue, or any other visual material that may occur from the prepping of any painted surface. It will be the responsibility of the Contractor to provide the proper disposal of any hazardous waste by a certified hazardous waste hauler. This company shall be registered with the Department of Transportation (DOT) and shall be able to issue a current manifest number upon transporting any hazardous material from any school site within the District.

The Contractor shall provide the District with any sample results prior to beginning Work, during the Work, and after the completion of the Work. The District may request to examine, prior to the commencement of the Work, the lead training records of each employee of the Contractor.

I acknowledge and certify under penalty of perjury, that:
1. I have received notification of potential lead-based materials on the District's property;
2. I am knowledgeable regarding and will comply with all applicable laws, rules, and regulations governing work with, and disposal of, lead.

☒ **Imported Materials.** All soils, aggregate, or related materials ("**Fill**") that Contractor, a Subcontractor, agent or supplier, in any way, provides or delivers and/or supplies to the Project Site shall be free of any and all hazardous material as defined in section 25260 of the Health and Safety Code, shall satisfy the requirements of any environmental review of the Project performed pursuant to the statutes and guidelines of the California Environmental Quality Act, sections 21000 et seq. of the Public Resources Code ("**CEQA**"), and shall comply with the requirements of sections 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. I acknowledge that, to the furthest extent permitted by California law, the indemnification provisions in the Contract Documents apply to, without limitation, any claim(s) connected with providing, delivering, and/or supplying Fill.

☐ **Roofing Contract Financial Interest Certification (Public Contract Code § 3006)**

I, _____ [**Your Name**], _____ [**Firm Name**] certify that 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 a roof project contract or subcontract on the Project. As used in this certification, "person" means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

I, _____ [**Your Name**], _____ [**Firm Name**] certify that I do not have, and throughout the duration of the Contract, I will not have, any financial relationship in connection with the performance of the Contract with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.

I, _____ [**Your Name**], _____ [**Firm Name**] 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:

Name of firm ("**Firm**"): _____
Mailing address: _____
Address of branch office used for this Project: _____
If subsidiary, name and address of parent company: _____

For Projects without substantive roofing components, check the following box and execute this certification:

☒ The Work on the Contract (1) does not include the replacement or repair of a roof or (2) is a repair of twenty five percent (25%) or less of the roof, (3) or is a repair project that has a total cost of twenty one thousand dollars ($21,000) or less.

☒ Russian Sanctions Certification

On February 21, 2022, President Biden issued Executive Order 14065 (https://www.whitehouse.gov/briefing-room/presidential-actions/2022/02/21/executive-order-on-blocking-property-of-certain-persons-and-prohibiting-certain-transactions-with-respect-to-continued-russian-efforts-to-undermine-the-sovereignty-and-territorial-integrity-of-ukraine/; "**Federal Order**") imposing economic sanctions and prohibiting many activities including, but not limited to, investing in, importing to, exporting from, and contracting with, areas of Ukraine and in Russia. On March 4, 2022, California Governor Newsom issued Executive Order N-6-22 requiring state agencies to take steps to ensure any agency and entity under contract with state agencies comply with the Federal Order (https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf; "**State Order**").

The District requires the Consultant, as a vendor with the District, to comply with the economic sanctions imposed in response to Russia's actions in Ukraine, including the orders and sanctions identified on the U.S. Department of the Treasury website (https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions).

If your Firm's contract with the District has a cumulative value of $5 million or more, your certification here is

constitutes your written response to the District, indicating:

(1) that your Firm is in compliance with the required economic sanctions of the Federal and State Orders;

(2) the steps your Firm has taken in response to Russia's actions in Ukraine, including, but not limited to, desisting from making new investments in, or engaging in financial transactions with, Russian entities, not transferring technology to Russia or Russian entities, and directly providing support to the government and people of Ukraine.

☒ **Iran Sanctions Certification**

I ACKNOWLEDGE AND CERTIFY UNDER PENALTY OF PERJURY THAT I AM DULY AUTHORIZED TO LEGALLY BIND THE CONTRACTOR TO ALL PROVISIONS AND ITEMS INCLUDED IN THESE CERTIFICATIONS, THAT THE CONTENTS OF THESE CERTIFICATIONS ARE TRUE, AND THAT THESE CERTIFICATIONS ARE MADE UNDER THE LAWS OF THE STATE OF CALIFORNIA.

Date: 07/24/2024

Proper Name of Contractor: KYA Services LLC

Signature:

Print Name: Brooks Berry

Title: Project Manager

I ACKNOWLEDGE AND CERTIFY UNDER PENALTY OF PERJURY THAT I AM DULY AUTHORIZED TO LEGALLY BIND THE CONTRACTOR TO ALL PROVISIONS AND ITEMS INCLUDED IN THESE CERTIFICATIONS, THAT THE CONTENTS OF THESE CERTIFICATIONS ARE TRUE, AND THAT THESE CERTIFICATIONS ARE MADE UNDER THE LAWS OF THE STATE OF CALIFORNIA.

Date: 07/24/2024

Proper Name of Contractor: KYA Services LLC

Signature:

Print Name: Brooks Berry

Title: Chief Financial Officer

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Orange)

On 07/24/2024 before me, Abraham Flores III, Notary Public
(insert name and title of the officer)

personally appeared Brooks Berry,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

ABRAHAM FLORES III
Notary Public - California
Orange County
Commission # 2417905
My Comm. Expires Sep 23, 2026

Signature _____ **(Seal)**

CRIMINAL BACKGROUND INVESTIGATION /FINGERPRINTING CERTIFICATION

The undersigned does hereby certify to the governing board of the District that he/she is a representative of the Contractor, is familiar with the facts herein certified, is authorized and qualified to execute this certificate on behalf of Contractor; and that the information in this Criminal Background Investigation / Fingerprinting Certification is true and correct.

1. **Education Code.** Contractor has taken at least one of the following actions (check all that apply):

☐ **All Workers Fingerprinted.** The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees and all of its subcontractors' employees who interact with pupils, outside of the immediate supervision and control of the pupil's parent or guardian or a school employee, has a valid criminal records summary as described in Education Code Section 44237 (Contractor shall "require each applicant for employment in a position requiring contact with minor pupils to submit two sets of fingerprints prepared for submittal by the employer to the Department of Justice for the purpose of obtaining criminal record summary information from the Department of Justice and the Federal Bureau of Investigation."). A complete and accurate list of Contractor's employees and of all of its subcontractors' employees who may interact with District pupils during the course and scope of the Contract is attached hereto; and/or

☒ **Physical Barrier.** Pursuant to Education Code section 45125.2, Contractor has installed or will install, prior to commencement of work, a physical barrier at the Project site, that will limit contact between Contractor's employees and District pupils at all times; and/or

☐ **Continual Supervision by Fingerprinted Employee.** Pursuant to Education Code section 45125.2, Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Contractor's employees and its subcontractors' employees is:
Name: _____ **Title:** _____

☐ **Unoccupied Site.** The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

2. **Megan's Law (Sex Offenders).** I have verified and will continue to verify that the employees of Contractor that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (http://www.meganslaw.ca.gov/).

Contractor's responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

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

Date: 07/24/2024

Proper Name of Contractor: **KYA Services, LLC**

Signature: _____

Print Name: Brooks Berry

Title: Chief Financial Officer

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Orange)

On 07/24/2024 before me, Abraham Flores III, Notary Public
(insert name and title of the officer)

personally appeared Brooks Berry,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

ABRAHAM FLORES III
Notary Public - California
Orange County
Commission # 2417905
My Comm. Expires Sep 23, 2026

Signature _____ **(Seal)**

EXHIBIT A
SCOPE OF WORK

The scope of work for the Project is as set forth below:

2024 ROOM 49 FLOORING REPLACEMENT PROJECT @ OVH – Remove existing carpet and replace with vinyl flooring for sanitary purposes of a preschool program. Remove and salvage existing rubber base for reuse. Demolish and dispose of existing carpet flooring. Prepare substrate to receive vinyl flooring. Install new luxury vinyl flooring (LVT) and replace existing rubber base.

If scope of work requires subcontractors please complete the following:

DESIGNATION OF SUBCONTRACTORS

Service provider shall set forth below the name and the location of the place of business of each sub-consultant or subcontractor, the DIR registration number and California license number of each sub-consultant or subcontractor who will perform work or labor or render services as part of agreement.

Portion of Work	Name of Sub-consultants and Subcontractor & Phone No.	Location of Sub-consultants and Subcontractor	CA Contractor License Number and License Class	**DIR#&** Classification	Email Address
Flooring	Progressive Surface	15171 Del Amo Ave., Ste.4	929883	1000042517	contracts@progressive
	Solutions LLC	Tustin, CA 92780			surfacesolutions.com

If scope of work requires Off Road Diesel Equipment/Vehicles the following applies:
California Air Resources Board (CARB). Consultant and its sub-consultants and subcontractors acknowledge and will adhere to Off-Road Diesel Certification requirements. In the event off-road diesel vehicles and or equipment is utilized while performing contracted services, consultant will provide CARB Certificates of Reported Compliance ("CRC") to the district.

END OF EXHIBIT A

EXHIBIT B
INFECTIOUS DISEASE PROVISIONS

1. **Compliance with Orders.** Contractor and its Subcontractors, agents and employees thereof, are responsible for complying with all applicable and existing federal, State, and/or local statutes, orders, rules, regulations, ordinances, and/or directives in any way relating to construction site safety, the Work, the Project, and Site, in connection with any infectious and communicable disease in any form, whether bacterial or viral, including, without limitation, TB, MSRA, influenza, COVID-19, and/or any similar virus or derivative strain ("**Infectious Disease**"). Contractor shall ensure it has supervisor employees onsite that are trained and knowledgeable of all these requirements to ensure full compliance on Site and the Work. Contractor's obligations hereunder shall include, without limitation providing personal protective equipment ("**PPE**") to its employees and to ensure that its subcontractors provide PPE equipment to its employees to prevent the spread of an Infectious Disease at the Project Site(s).

2. **Infectious Disease and Contract Time.** Contractor agrees that the Contract Time is based on Contractor's full compliance with all applicable and existing federal, State, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety, the Work, the Project, and the Site in connection with an Infectious Disease. Any dispute concerning the Contract Time in connection with any delay associated with an Infectious Disease shall be resolved pursuant to the Claims procedures in these General Conditions.

3. **Infectious Disease & Extra Work.**

   3.1. Contractor agrees that its Bid/Proposal, the Contract Price and the Contract Time are based on Contractor's full compliance with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety, the Work, the Project, and the Site in relation with an Infectious Disease at the time the parties entered into the Contract. Therefore, any additional costs to Contractor associated with an Infectious Disease, or any federal, state, or local order relating thereto, shall not be considered compensable unless:

      3.1.1. It occurred after the date of the award of the Project to Contractor;

      3.1.2. It materially increases the Contract Price or the Contract Time by imposing different, additional or more stringent requirements; and

      3.1.3. Contractor notifies District within ten (10) Days of notice of any new public health order(s), including the anticipated increase to the Contract Price or Contract Time due to the new public health order(s), and Contractor substantiates those costs with detailed supporting documentation as required these General Conditions, including, without limitation, comply with the proposed change orders and, to the extent applicable, Claims provisions.

   3.2. If, during the Work, the applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety, the Work, the Project, and/or the Site in connection with an Infectious Disease, are changed or rescinded (e.g., by the reduction of potential exposure or risk due to vaccinations), the parties agree to reduce the Contractor price and the Contract Time due to the removal of the required efforts. If the parties cannot mutually agree on the appropriate reduction, District may issue a unilateral change order for an amount of time and money it determines to be both reasonable and appropriate. And dispute concerning the application of this procedure shall be resolved pursuant to the Claims procedures in these General Conditions.

4. **Infectious Disease Release.** Contractor acknowledges that it is voluntarily and freely entering into the Contract for this Project and deciding to perform the Work which will require Contractor to enter upon and into the Site and that Contractor use of the Site includes the possible exposure to and illness from an Infectious Disease. Contractor further acknowledges the dangers involved and with full knowledge of these dangers, voluntarily agrees to assume all risks of bodily injury, death, or property damage, whether those risks are known or unknown. Contractor hereby releases District, its agents, representatives, officers, consultants, employees, trustees, and volunteers from any and all liabilities, causes of action, lawsuits, claims, demands, or damages of any kind whatsoever that Contractor, its staff, participants, relatives, children, spouse, partner, household members, family members, employees, guests, invitees, volunteers, agents, consultants, Subcontractors, and any other person tracing exposure or illness to Contractor, now have, or may have in the future, for injury, trauma, illness, loss, unwanted contact, harassment, disability, death or property damages related to being exposed to or contracting an Infectious Disease while using the Site for the performance of the Work. Contractor shall include this paragraph in all subcontracts with Subcontractors.

5. Contractor shall ensure it has supervisor employees onsite that are trained and knowledgeable of all of these requirements to ensure full compliance on Project Site(s).

6. Any cost to comply with these "Infectious Disease Compliance Provisions" shall be at Contractor's sole expense and expense, but may be included in the Contract Price.

7. **Vaccination Status.**

7.1. Contractor's Applicable Workers will not be allowed to enter the District's school site if they have a fever, cough or other COVID-19 or infectious disease symptom(s). Contractor agrees to implement, comply with, and fulfill the terms and requirements of the Health & Safety Policies. Contractor also acknowledges and hereby certifies that Contractor will require any Applicable Worker comply with the requirements of the Health & Safety Policies on the District's school site, including, but not limited to the requirements set forth here:

7.2. **COVID-19 Vaccination Status:** Contractor is required to ensure that all of its employees who will be working in **any** capacity on District school sites have been either:

7.2.1. Fully vaccinated for COVID-19 or
7.2.2. Tested within 72 hours prior to any initial work on a District site and then tested on a weekly basis.
7.2.2.1. **COVID-19 Testing:** Testing shall be compliant with the CDPH K-12 Order dated August 11, 2021, which must be either:
7.2.2.1.1. Polymerase Chain Reaction (PCR)
7.2.2.1.2. Antigen test
7.2.2.2. Laboratory confirmed results and which has FDA Emergency Use Authorization (EUA) must be provided.

7.3. Any Contractor employee who does not fulfill these requirements will be declared ineligible to provide service on any District school site until they submit the proper documentation.

7.4. Contractor's responsibility for COVID-19 compliance and record keeping extends to all of its employees, subcontractors, and employees of subcontractors who work in any capacity on a school campus, including but not limited to those who come into contact with District students and employees, regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

END OF EXHIBIT B

EXHIBIT C
FEDERAL CONTRACTING PROVISIONS

☒ **RESERVED – NOT APPLICABLE**

END OF EXHIBIT C

C#4516

CONTRACT FOR REPAIRS, MAINTENANCE OR CONSTRUCTION SERVICES UNDER $60,000 AWARDED PURSUANT TO CUPCCAA

THIS CONTRACT is made and entered into as of the last date of signature hereto ("**Contract**"), by and between **KYA Services, LLC** ("**Contractor**") and **San Ysidro School District** ("District"). Contractor and District may be referred to herein individually as a "**Party**" or collectively as the "**Parties**."

1. **Contract Price & Services.**

   a. After the District has issued a Notice to Proceed, the Contractor shall furnish to the District the repairs, maintenance or construction services identified below and as more fully described in **Exhibit A** attached hereto ("**Services**" or "**Work**") subject to the conditions below and for the price indicated below ("**Contract Price**"):

Project: **2024 TURF INSTALLATION PROJECT @ CDC – Prepare existing dirt play area for artificial turf and install 840 square feet of artificial turf.**

BASE CONTRACT (In Dollars$):

2	7	,	7	3	7	.	3	6
Dollars							Cents	

OWNER'S ALLOWANCE (In Dollars$) FOR UNFORESEEN CONDITIONS AND ADDITIONS:

0	2	,	2	6	2	.	6	4
Dollars							Cents	

TOTAL CONTRACT (In Dollars$):

3	0	,	0	0	0	.	0	0
Dollars							Cents	

   b. **Allowances**: If this Contract includes allowances, an allowance is a value added to the Base Contract amount for

scope items defined by the District. Allowance items shall only be used by Contractor with the District's prior written permission. Contractor shall use the change order provisions of this Contract to apply for the use of an Allowance item. All unused allowance values at the end of the Project shall be retained by the District.

2. **Payment.** Payment for the Work shall be made in accordance with the Terms and Conditions to Contract ("**Terms and Conditions**") attached hereto.

Site. Contractor shall perform the Work at **Preschool & Child Development Center (CDC) at 1880 Smythe Avenue, San Ysidro, CA 92173.** ("**Premises**" or "**Site**"). The "**Project**" is the scope of Work performed at the Site.

3. **Contract Time & Liquidated Damages.** Work shall be completed by **October 7, 2024**. ("**Contract Time**"). Contractor agrees that if the Work is not completed within the Contract Time and/or pursuant to the completion schedule, construction schedule, or project milestones developed pursuant to provisions of the Contract, it is understood, acknowledged, and agreed that the District will suffer damage which is not capable of being calculated. Pursuant to Government Code section 53069.85, Contractor shall pay to the District, as fixed and liquidated damages for these incalculable damages, the sum of **$500.00** per day for each and every calendar day of delay beyond the Contract Time or beyond any completion schedule, construction schedule, or Project milestones established pursuant to the Contract.

4. **Bonds & Insurance.**

   a. **Payment Bond & Performance Bond:**

   ☐ **IS NOT REQUIRED – PROJECT SIZE IS DETERMINED TO BE BELOW $25K**

   ☒ **IS REQUIRED:** Contractor shall not commence the Work until it has provided to the District, a Payment (Labor and Material) Bond and a Performance Bond, in the forms attached hereto, each in an amount equivalent to one hundred percent (100%) of the Contract Price issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the District. The District reserves to waive this requirement in writing at its sole discretion and negotiate a deduction of the cost from the base proposal in the event the Contract Price is below $25,000.

   b. **Insurance:** Contractor shall have and maintain in force during the term of this Contract, with the minimum indicated limits, the following insurance:

Commercial General Liability, with Products and Completed Operations Coverage	$1,000,000 each occurrence $2,000,000 aggregate
Automobile Liability, Any Auto, Combined Single Limit	$1,000,000 each occurrence $2,000,000 aggregate
Workers Compensation	Statutory limits pursuant to State law
Employers' Liability	$1,000,000 each incident, disease $2,000,000 policy limit
Sexual Abuse / Molestation	$1,000,000 each incident $2,000,000 policy limit
Builder's Risk (Course of Construction)	Issued for the value and scope of work.

DISTRICT MAY ADJUST THESE LIMITS, IN WRITING, AT THE DISTRICT'S SOLE DISCRETION BASED ON SIZE AND SCOPE OF THE CONTRACT.

Contractor shall provide to the District certificate(s) of insurance and endorsements satisfactory to the District. The policy(ies) shall not be amended or modified, and the coverage amounts shall not be reduced without thirty (30) days written notice to the District prior to cancellation. Except for worker's compensation insurance, the District, the Architect, and the Project Manager shall be named as an additional insured on all policies. Contractor's policy(ies) shall

be primary; any insurance carried by the District shall only be secondary and supplemental. Contractor shall not allow any subcontractor, employee, or agent to commence Work on this Contract or any subcontract until the insurance required of Contractor, subcontractor, or agent has been obtained, and the certificate(s) of insurance and endorsements have been provided to the District; provided, however, that the District reserves the right to reject an insurance policy(ies) if they do not conform with the above insurance requirements.

Project Oversight. The District representative for the Project is: **Jose F. Iniguez, Ed.D., Assistant Superintendent of Administrative Leadership, School Support & Safety. Phone: (619) 428-4476 ext. 3065.**

5. **INFECTIOUS DISEASE/COVID-19.** Contractor shall comply with all provisions related to infectious diseases as set forth in **Exhibit B**.

6. ☐ **This box will be checked if Federal Funding requirements apply.** If the Project is funded in whole or part by federal funding, including, without limitation, any funds from any component or iteration of the Elementary and Secondary School Emergency Relief ("**ESSER**") programs, Contractor acknowledges that this Project is subject to federal procurement/contracting requirements. Contractor agrees to fully comply with all federal requirements, including, without limitation, the federally required contract provisions attached hereto as **Exhibit C**.

7. **Terms & Conditions.** The Contractor agrees to comply with the Terms and Conditions attached hereto.

8. **Contract Documents.** The Contract Documents include only the following documents, as indicated:

____ Proposal Form	____ Performance Bond
____ Notice to Proceed	____ Payment Bond
__X__ Terms and Conditions to Contract	__X__ **Exhibit A** (Scope of Work)
____ Noncollusion Declaration	____ Plans
__X_ Certifications to be Completed by Contractor	____ Work Specifications
__X__ Criminal Background Investigation Certification	____ _____ [Other]
__X__ Insurance Certificates and Endorsements	__X__ **Exhibit B** (Infectious Disease Provisions)
	____ **Exhibit C** (Federal Procurement Provisions)

9. **Notice**. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or sent by overnight delivery service addressed as follows:

District:	**Contractor:**
San Ysidro School District	KYA Services, LLC
4350 Otay Mesa Rd.,	1800 East McFadden
San Ysidro, CA 92173	Attn: Shane Collins
Attn: Dr. Jose Iniguez, Assistant Superintendent of Admin.	Phone: 619-936-3111
Leadership, School Support & Safety	Email: shane.collins@thekyagroup.com

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service.

ACCEPTED AND AGREED on the date indicated below. By signing this Contract, Contractor certifies, under penalty of perjury, that all the information provided in the Contract Documents is true, complete, and correct:

C#4516

Dated: _____, 2024

San Ysidro School District

Signature: _____

Print Name: Marilyn Adrianzen

Print Title: Chief Business Official

License# 984827

Dated: July 25, 2024

KYA Services, LLC

Signature: _____

Print Name: Marvin Fuentes

Print Title: Controller

DIR Registration # 1000003379

Information regarding Contractor:

Type of Business Entity:
____ Individual
____ Sole Proprietorship
____ Partnership
____ Limited Partnership
____ Corporation
__X__ Limited Liability Company
____ Other: _____

Employer Identification Number or Social Security Number: 46-2267568

NOTE: United States Code, title 26, sections 6041 and 6109 require non-corporate recipients of $600 or more to furnish their taxpayer identification number to the payer. The United States Code also provides that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these rules, the District requires your federal tax identification number or Social Security number, whichever is applicable.

Contractor representative for onsite work:

Name:	Title:	Mobile:
Ahmed Alaziz	Project Manager	657-650-5538

Email:

ahmed.alaziz@thekyagroup.com

TERMS AND CONDITIONS TO CONTRACT

1. NOTICE TO PROCEED: Receipt of this contract signed by the District shall be the Notice to Proceed.

2. SITE EXAMINATION: Contractor has examined the Site and certifies that it accepts all measurements, specifications and conditions affecting the Work to be performed at the Site. By submitting its bid/proposal and signing this Contract, Contractor warrants that it has made all Site examination(s) that it deems necessary as to the condition of the Site, its accessibility for materials, workers and utilities, and Contractor's ability to protect existing surface and subsurface improvements. No claim for allowance of time or money will be allowed as to any other undiscovered condition on the Site.

3. CONSTRUCTION SCHEDULE / SUBCONTRACTOR LIST: Contractor shall provide the District a Construction Schedule for the Work and a Subcontractor List as indicated in this Contract. Both the Construction Schedule and Subcontractor List are subject to the District's approval.

4. EQUIPMENT AND LABOR: The Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the Services, the Services to be performed at such times and places as directed by and subject to the approval of the authorized District representative indicated in the Work specifications attached hereto.

5. SUBCONTRACTORS: Contractor shall comply with the Subletting and Subcontracting Fair Practices Act (Public Contract Code, section 4100 et. seq.) Contractor shall identify by name and location of the place of business of each subcontractor who will perform work or labor or render service in or about the construction of the Project in an amount in excess of one-half of 1 percent of the Contractor's contract price or ten thousand dollars ($10,000) whichever is greater. Subcontractors, if any, engaged by the Contractor for any Service or Work under this Contract shall be subject to the approval of the District. Contractor agrees to bind every subcontractor by the terms of the Contract as far as such terms are applicable to subcontractor's work, including, without limitation, all indemnification, insurance, bond, and warranty requirements. If Contractor subcontracts any part of this Contract, Contractor shall be fully responsible to the District for acts and omissions of its subcontractor and of persons either directly or indirectly employed by itself. Nothing contained in the Contract Documents shall create any contractual relations between any subcontractor and the District.

6. TERMINATION: If Contractor fails to perform the Services and Contractor's duties to the satisfaction of the District, or if Contractor fails to fulfill in a timely and professional manner Contractor's obligations under this Contract, or if Contractor violates or otherwise breaches any of the Terms or Provisions of this Contract, the District shall have the right to terminate this Contract effective immediately upon the District giving written notice thereof to the Contractor. District shall also have the right in its sole discretion to terminate the Contract for its own convenience. Termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of termination. Upon termination, Contractor shall provide the District with all documents produced maintained or collected by Contractor pursuant to this Contract, whether or not such documents are final or draft documents.

7. SAFETY AND SECURITY: Contractor is responsible for maintaining safety in the performance of this Contract. Contractor shall be responsible for complying with the District's rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.

8. CHANGE IN SCOPE OF WORK:

8.1. No Change Without Authorization: Any change in the scope of the Work, method of performance, nature of materials or price thereof, the time for performance, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted by the District unless that change, addition, or deletion is approved in advance and in writing by a valid change order executed by the District.

8.2. District Right to Request Changes: Contractor specifically understands, acknowledges, and agrees that the District shall have the right to request any alterations, deviations, reductions, or additions to the Project or Work, and the cost thereof shall be added to or deducted from the amount of the Contract Price by fair and reasonable valuations. The District may accomplish any of the foregoing, in its discretion, by issuing a unilateral change order.

8.3. Proposed Change Order:

8.3.1. **Submission / Time to Submit**: Contractor may seek an adjustment to the Contract Time or Contract Price only by submitting a proposed change order to the District within five (5) days of the date Contractor discovers, or reasonably should discover, the circumstances giving rise to the proposed change order, unless additional time to submit a proposed change order is granted in writing by the District.

8.3.2. **Content of Proposed Change Order**: Contractor and subcontractors shall include the following in any proposed change order:

8.3.2.1. Labor: Labor breakdown by trade classification, wage rates, and estimated hours. Wages shall not exceed current prevailing wages in the locality for performance of the changes. The Contractor's or subcontractors' (including second-tier subcontractors') labor burden and Workers' Compensation premium shall only be charged at 20% of the total charge for labor costs. In no event shall Contractor include any other charges than as indicated herein without the District's prior written approval.

8.3.2.2. Material: Material quantities, and types of products, and transportation costs, if applicable.

8.3.2.3. Equipment: Equipment breakdown by make, type, size, rental rates (if not owned), equipment hours and transportation costs, if applicable. The equipment costs shall not exceed one hundred percent (100%) of the Association of Equipment Distributors (AED) rental rates and delay factors or Caltrans rates and delay factors, whichever is less. Hourly, daily, or weekly rates shall be used, whichever is lower. Hourly rates including operator shall not be used. The time to be paid for equipment shall be the actual time that the equipment is in (1) productive operation on the Work or (2) idled because of the event or circumstance giving rise to the proposed change order.

8.3.2.4. Mark-Up for Overhead and Profit: Mark-up for overhead and profit in a proposed change order shall be calculated as follows:

8.3.2.4.1. **Subcontractor-Performed Work**: Subcontractors shall be entitled to a total cumulative mark-up for overhead and profit of 8% on the total of Labor (including labor burden and Workers' Compensation premium), Material, and Equipment **only** for for both the subcontractor and the subcontractor's subcontractor(s) (e.g., all "lower-tier" subcontractors) performed Work. Contractor shall be entitled to a 6% mark-up on the same items, **excluding subcontractor's mark-up for overhead and profit**.

8.3.2.4.2. **Contractor-Performed Work**: Contractor shall be entitled to a mark-up for overhead and profit of 6% of the total of the Labor (including labor burden and Workers' Compensation premium), Material, and Equipment for Contractor performed Work.

8.3.3. **Contract Time**: Any request for an adjustment to the Contract Time must be supported by a time impact analysis identifying critical schedule activities delayed by an event beyond the Contractor's reasonable control.

8.4. Determination of Change Order Cost: The District shall use any reasonable means to calculate the cost of a change order in its sole discretion, including, without limitation: the acceptance of a proposed change order; agreement between the District and Contractor; and, the actual and necessary costs incurred by Contractor based on cost records produced to the District and based on the District's reasonable evaluation of the Work and market research.

8.5. Contractor Obligation to Substantiate: Contractor agrees to provide the District with all information requested to substantiate the cost of any change order and to inform the District whether the Work will be done by the Contractor or a subcontractor. If Contractor fails to reasonably substantiate any requested change in the scope of work, or Contractor fails to timely cooperate with the District to provide substantiation for the costs of any change order, Contractor waives any claim for additional compensation. In addition to any other information requested, Contractor shall submit, prior to approval of any change order, its request for a time extension (if any), as well as all information necessary to substantiate Contractor's belief that such change will delay the completion of the Work.

8.6. Waiver: If Contractor fails to submit its request for a time extension or the necessary supporting information, it shall be deemed to have waived its right to request such extension. Contractor waives any claim for additional compensation for any change in the scope of work if Contractor performs the work without written approval of the District.

9. TRENCH SHORING: If this Contract is in excess of $25,000 and is for the excavation of any trench deeper than five (5) feet, Contractor must submit and obtain District's approval and acceptance, in advance of excavation, of 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 such trench or trenches. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

10. EXCAVATIONS OVER FOUR FEET: If this Contract includes excavations over four (4) feet, Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any: (1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, 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; or (3) Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. The District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work shall issue a change order under the procedures described in the Contract. In the event that a dispute arises between the District and the Contractor regarding whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work. 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.

11. LEAD-BASED PAINT: Pursuant to the Lead-Safe Schools Protection Act (Education Code Section 32240 et seq.) and other applicable law, no lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall be utilized on this Project, and only trained and state-certified contractors, inspectors and workers shall undertake any action to abate existing risk factors for lead. Contractor must execute the Lead-Based Paint Certification, if applicable.

12. WORKERS: Contractor shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of the Contractor or a subcontractor whom the District may deem incompetent or unfit shall be dismissed from the Site and shall not again be employed at the Site without written consent from the District.

13. DRUG-FREE / TOBACCO FREE / SMOKE FREE POLICY: No drugs, alcohol, tobacco, and/or smoking are allowed at any time in any buildings and/or grounds on District property. No students, staff, visitors, consultants or contractors are to use drugs on these sites.

14. FINGERPRINTING: Contractor shall comply with and provide to the District a fully executed Criminal Background Investigation /Fingerprinting Certification, attached hereto, prior to mobilizing at the Site.

15. CORRECTION OF ERRORS: Contractor shall perform, at its own cost and expense and without reimbursement from the District, any work necessary to correct errors or omissions that are caused by the Contractor's failure to comply with the standard of care required herein. If Contractor fails to correct any those errors, the District reserves the right to deduct the value of the work from any payment(s) owed to Contractor, or to perform the work itself and

deduct from any payment(s) owed to contractor the cost to perform the work.

16. FAILURE TO PERFORM. If the District at any time believes that the Contractor is behind schedule, is failing to construct the Project pursuant to the Contract Documents, or is otherwise failing to perform any provisions of this Contract, the District, after FORTY-EIGHT (48) hours written notice to the Contractor, may take any action necessary or beneficial to the District to complete the Project, takeover the Work of the Contract, terminate or suspend the Contract as indicated herein, or any combination or portion of those actions. The Contractor shall be liable to the District for any cost incurred by the District in those actions and the District has the right to deduct the cost thereof from any payment then or thereafter due the Contractor.

17. SUBSTITUTIONS: No substitutions of material from those specified in the Work Specifications shall be made without the prior written approval of the District.

18. CONTRACTOR SUPERVISION: Contractor shall provide competent supervision of personnel employed on the job Site to monitor the use of equipment and the quality of workmanship.

19. PERSONNEL: Contractor, Contractor's employees, Subcontractors, Subcontractors' employees, or any person associated with the Work shall conduct themselves in a manner appropriate for a school site. The District will not permit any (1) verbal or physical contact with neighbors, students, and faculty; (2) profanity, or inappropriate attire or behavior; (3) photographing, videoing, or audio recording of any neighbors, students, and faculty or any posting of any photographs, videos, or audio recordings of any neighbors, students, and faculty on any internet site, social media platform of any kind, regardless of source of any photograph, video, or audio recording. District may require Contractor to permanently remove noncomplying persons from Project Site

20. CLEAN UP: Debris shall be removed from the Premises. The Site shall be in order at all times when work is not actually being performed and shall be maintained in a reasonably clean condition. Onsite trash bins shall not be used.

21. ACCESS TO WORK: District representatives shall at all times have access to the Work wherever it is in preparation or in progress. Contractor shall provide safe and proper facilities for such access.

22. PROTECTION OF WORK AND PROPERTY: Contractor shall erect and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of life or of Work or of adjoining property, Contractor, without special instruction or authorization from District, is permitted to act at his discretion to prevent such threatened loss or injury.

23. ASSIGNMENT OF CONTRACT: Contractor shall not assign or transfer in any way any or all of its rights, burdens, duties, or obligations under this Contract without the prior written consent of the District.

24. TIME IS OF THE ESSENCE: Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Contract.

25. OCCUPANCY: There is no "Substantial Completion" or "Beneficial Occupancy" for this Project, although the District reserves the right to occupy buildings at any time before formal Contract completion and that occupancy shall not constitute final acceptance or approval of any part of the Work covered by this Contract, nor shall that occupancy extend the date specified for completion of the Work.

26. FORCE MAJEURE CLAUSE: Contractor shall be excused from performance hereunder during the time and to the extent that it is prevented from obtaining delivery, or performing by act of God, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, pandemic, product, plant, or facilities by the government, when satisfactory evidence thereof is presented to the District, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of Contractor. Any delay associated with Covid-19, or any derivative or similar strain thereof, or any federal, state, or local order relating thereto, shall not be considered a Force Majeure Event unless it renders Contractor's performance of the Work impossible, and that event was not reasonably foreseeable at the time of the execution of the Contract.

27. INDEMNIFICATION / HOLD HARMLESS CLAUSE: To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, Contractors, employees, trustees, and volunteers ("**the indemnified parties**") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, including without limitation the payment of all consequential damages, arising out of, pertaining to or relating to, in whole or in part, the negligence, recklessness, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, Contractors, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services or from any activity, work, or thing done, permitted, or suffered by the Contractor in conjunction with this Contract, unless the claims are caused wholly by the sole negligence or willful misconduct of the indemnified parties. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the indemnified parties.

28. PAYMENT: On a monthly basis, Contractor shall submit an application for payment based upon the estimated value for materials delivered or Services performed under the Contract as of the date of submission ("**Application for Payment**"). Within thirty (30) days after District's approval of the Application for Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as verified by Architect and Inspector and certified by Contractor) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. The District may deduct from any payment an amount necessary to protect the District from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the District in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the total Contract Price or by the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the

Contract; (8) failure of the Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by District during the prosecution of the Work; (9) erroneous or false estimates by the Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages, as determined by the District, incurred by the District for which Contractor is liable under the Contract; and (11) any other sums which the District is entitled to recover or withhold from Contractor under the terms of the Contract or pursuant to state law, including section 1727 of the California Labor Code. The failure by the District to deduct any of these sums from a progress payment shall not constitute a waiver of the District's right to recover those sums. The District shall retain five percent (5%) from all amounts owing as retention. Retention shall be paid pursuant to Public Contract Code sections 7107 and 7200.

29. PERMITS AND LICENSES: Contractor and all of its employees, agents, and subcontractors shall secure and maintain in force, at Contractor's sole cost and expense, all licenses and permits as are required by law, in connection with the furnishing of materials, supplies, or Services herein listed.

30. INDEPENDENT CONTRACTOR STATUS: While engaged in carrying out the Services of this Contract, the Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the District. Contractor shall be solely responsible for its own Worker's Compensation insurance, taxes, and other similar charges or obligations. Contractor shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its agents or employees.

31. ANTI-DISCRIMINATION: It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, or religious creed, and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment Practice Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).

32. DISABLED VETERAN BUSINESS ENTERPRISES: Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building (SFP Funds) to have a participation of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). If this Contract uses School Facilities Program Funds, Contractor must submit, with its executed Contract, appropriate documentation to the District identifying the steps Contractor has taken to solicit DVBE participation in conjunction with this Contract.

33. WARRANTY/QUALITY: Unless a longer warranty is called for elsewhere in the Contract, Contractor, manufacturer, or their assigned agents shall guarantee the workmanship, product or Services performed against defective workmanship, defects or failures of materials for a minimum period of one (1) year from District's written acceptance of the Work. All workmanship and merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards.

34. CONFIDENTIALITY: Contractor shall maintain the confidentiality of all information, documents, programs, procedures, and all other items that Contractor encounters while performing the Contractor's Services to the extent allowed by law. This requirement shall be ongoing and shall survive the expiration or termination of this Contract and specifically includes all student, parent, and disciplinary information.

35. COMPLIANCE WITH LAWS: Contractor shall give all notices and comply with all laws, ordinance, rules and regulations bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.

36. DISPUTES/CLAIMS: Public Contract Code § 9204. Claims between the District and the Contractor shall be resolved in accordance with the procedures established in Public Contract Code § 9204.

36.1. Claim. The term "**Claim**" means a written demand by the Contractor sent by registered mail or certified mail with return receipt requested for:

36.1.1. An extension of the Contract Time, including relief from damages or penalties assessed by the District for delay;

36.1.2. Payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment that is not otherwise expressly provided for in the Contract Documents or to which the Contractor is not otherwise entitled; or

36.1.3. Payment of an amount that is disputed by the District.

36.2. Submission of Claim. A Claim arises upon the District's rejection of a request by the Contractor for a change order. The Contractor shall submit the Claim by registered mail or certified mail with return receipt requested to the District's Director of construction and Modernization, with a copy to the Project Manager/Construction Manager. The Contractor shall submit its Claim in writing, together with all Supporting Documentation no later than the earlier of either: (1) thirty (30) days after the date the Claim arises; or (2) sixty (60) days after the date of completion. It is the intent of the District to evaluate and resolve Claims with the Contractor as close to the events giving rise to such Claims as possible and to avoid stale or late Claims, including late notice and documenting of Claims, and to timely mitigate the issue, event, condition, circumstance and/or cause of the Claim and any adverse impacts or damages related thereto.

36.3. Contents of Claim. A Claim must include all Supporting Documentation and a statement identifying it as a Claim signed by an authorized agent or officer of the Contractor under penalty of perjury and including the following language immediately above or before the Contractor's signature: "I declare under penalty of perjury under the laws of the State of California that the

information provided and statements made in this Claim are true and correct, substantiated and of merit." The Contractor recognizes and acknowledges that this requirement is not a mere formality but is intended to ensure that the Contractor only submits Claims that it believes are true and correct, substantiated and have merit.

36.4. Subcontractor Claims. Pursuant to Public Contract Code § 9204(d)(5), a Subcontractor may request in writing, either on its own behalf or on behalf of a lower tier Subcontractor, that the Contractor submit to the District 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 submitted to the District shall furnish reasonable documentation to support the claim. Regardless of whether or not the Contractor decides to submit the Subcontractor's claim to the District, Contractor shall provide a copy of the Subcontractor's written request, including all supporting documentation, to the Project Manager/Construction Manager within ten (10) days of Contractor's receipt of the request. In the event the Contractor agrees to submit a Subcontractor's claim to the District, the Contractor shall submit such claim as a request for a change order, unless such claim was previously submitted to the District as a request for a change order. Within forty-five (45) days of receipt of the Subcontractor's written request, the Contractor shall notify the Subcontractor in writing as to whether the Contractor submitted the claim to the District and, if the Contractor did not submit the claim, the Contractor shall provide the Subcontractor with a written statement of the reasons for not having done so and shall concurrently provide a copy of such written statement to the Project Manager/Construction Manager. In the event the Contractor includes supporting documentation with such written statement, the Contractor shall concurrently provide a copy of such supporting documentation to the Project Manager/Construction Manager. If the Contractor submits a Claim on behalf of a Subcontractor, the Claim shall include a statement in writing and signed by an authorized agent or officer of the Contractor under penalty of perjury that includes the following language immediately above or before the Contractor's signature: "I declare under penalty of perjury under the laws of the State of California that [insert name of Contractor] has thoroughly evaluated the claim of [insert name of Subcontractor] and determined that the information provided and statements made in the claim are true and correct, substantiated and of merit."

36.5. District Review of Claim. Upon receipt of a Claim, the District shall review the Claim and, within a period not to exceed forty-five (45) days, shall provide 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 the Contractor may, by mutual written agreement, extend the forty-five (45) day time period. The District shall process and make payment of any undisputed portion of a Claim within sixty (60) days after the District issues its written statement. Failure by the District to provide a written statement in response to a Claim from the Contractor within the forty-five (45) day time period, or within an agreed upon extended time period, shall result in the Claim being deemed rejected in its entirety. A Claim that is rejected by reason of the District's failure to respond, or failure to timely respond, to the Claim shall not constitute an adverse finding regarding the merits of the Claim or the claimant's responsibility or qualifications.

36.6. Meet and Confer Meeting. If the Contractor disputes the District's written response, or if the District fails to respond within the time frame prescribed above, the Contractor, within fifteen (15) days of the District's written response or, if the District fails to respond, within fifteen (15) days after the District's response was due, may demand, in a writing sent to the District's Superintendent by registered mail or certified mail, return receipt requested, with a copy to the District's Director of Construction and Modernization, and Project Manager/Construction Manager, an informal conference to meet and confer for settlement of the issues in dispute. The District shall schedule a meet and confer conference within thirty (30) days of its receipt of the Contractor's written demand.

36.7. Mediation. Within ten (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 sixty (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. The expenses and fees of the mediator and the administrative fees shall be divided among the parties equally. Each party shall pay its own legal fees, witness fees, and other expenses. The District and the Contractor shall mutually agree to a mediator within ten (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. The foregoing notwithstanding, pursuant to Public Contract Code § 9204(f), the parties may mutually agree in writing to waive mediation.

36.8. Pending resolution of the dispute, Contractor agrees it will neither rescind the Contract nor stop the progress of the Work but will allow determination by the court of the State of California, in the county in which the District's administration office is located, having competent jurisdiction of the dispute.

36.9. Nothing in this Article shall prevent the Parties from resolving any disputes or claims pursuant to Public Contract Code section 20104, et seq., if applicable.

36.10. Nothing in this Contract, waives, modifies or tolls the Contractor's obligation to present a timely claim under Government Code § 910, et seq. Therefore, in addition to complying with the contractual Claims procedures, the Contractor is required to present claims to the District pursuant to Government Code § 910, et seq.

37. LABOR CODE REQUIREMENTS: Provided that the Contract Price is more than $1,000, and the Work is a "public works" under the Labor Code, the parties agree as follows:

37.1. The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

37.2. District hereby provides notice of the requirements described in Labor Code § 1771.1(a) that a contractor or subcontractor shall not be qualified to bid or propose on, be listed in a bid or proposal, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code § 1725.5.

37.3. Contractor acknowledges that all or a portion of the Services under this Contract are a public work, and that it and its subcontractors have complied with Labor Code § 1725.5, including, without limitation, the registration requirements thereof.

37.4. Contractor shall post all required job site notices and shall comply with all applicable requirements prescribed thereby, including but not limited to Labor Code § 1771.4.

37.5. Contractor shall comply with all applicable provisions of the Labor Code, Division 3, Part 7, Chapter 1, Articles 1-5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars ($1,000).

37.6. Copies of the prevailing rate of per diem wages are on file with the District.

37.7. Contractor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the Labor Code, beginning with § 1720, and including §§ 1735, 1777.5 and 1777.6, forbidding discrimination, and §§ 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. Contractor shall comply with Labor Code § 1777.5 pertaining to prevailing wage compensation to apprentices for preemployment activities.

38. PAYROLL RECORDS: Contractor and its subcontractor(s) shall keep accurate certified payroll records of employees and make them available to the District immediately upon request.

39. AUDIT: Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Contract. Contractor shall retain these books, records, and systems of account during the Term of this Contract. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Contract. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.

40. ANTI-TRUST CLAIM: Contractor and its subcontractor(s) agree to assign to the District all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. 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 purchases of goods, services, or materials pursuant to the Contract or a subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor, without further acknowledgment by the Parties.

41. GOVERNING LAW: This Contract shall be governed by and construed in accordance with the laws of the State of California with venue of any action in a in the county in which the District's administration office is located.

42. PROVISIONS REQUIRED BY LAW DEEMED INSERTED: Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included therein.

43. BINDING CONTRACT: This Contract shall be binding upon the Parties hereto and upon their successors and assigns, and shall inure to the benefit of the Parties and their successors and assigns.

44. DISTRICT WAIVER: District's waiver of any term, condition, covenant or waiver of a breach of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant or the waiver of a breach of any other term, condition or covenant.

45. INVALID TERM: If any provision of this Contract is declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be a part of this Contract.

46. ENTIRE CONTRACT: This Contract sets forth the entire Contract between the Parties hereto and fully supersedes any and all prior agreements, understanding, written or oral, between the Parties hereto pertaining to the subject matter thereof. This Contract may be modified only by a writing evidencing the Parties' mutual consent.

CERTIFICATIONS TO BE COMPLETED BY CONTRACTOR

THE UNDERSIGNED MUST CHECK EACH BOX AND EXECUTE THIS FORM AND HEREBY CERTIFIES TO THE GOVERNING BOARD OF THE DISTRICT THAT:

- He/she is a representative of the Contractor,
- He/she is familiar with the facts herein certified and acknowledged,
- He/she is authorized and qualified to execute this Agreement and these certifications on behalf of Contractor and that by executing this Agreement he/she is certifying the following items.

☒ **Labor Code Sections 1860-1861 (Workers' Compensation).** In accordance with Labor Code section 3700, every contractor will be required to secure the payment of compensation to his or her employees. I acknowledge and certify under penalty of perjury that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

☒ **Government Code Sections 8355-8357 (Drug-Free Workplace).** I acknowledge and certify under penalty of perjury that I will provide a drug-free workplace by doing all of the following:

(1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.

(2) Establishing a drug-free awareness program to inform employees about all of the following:

(A) The dangers of drug abuse in the workplace.

(B) The person's or organization's policy of maintaining a drug-free workplace.

(C) Any available drug counseling, rehabilitation, and employee assistance programs.

(D) The penalties that may be imposed upon employees for drug abuse violations.

(3) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I also acknowledge that this Contract may be subject to suspension of payments under the contract or grant or termination of the contract or grant, or both, and the contractor or grantee thereunder may be subject to debarment, in accordance with the requirements of the above-referenced statute, if the contracting or granting agency determines that any of the following has occurred:

(1) The contractor or grantee has made a false certification under Section 8355.

(2) The contractor or grantee violates the certification by failing to carry out the requirements of subdivisions (a) to (c), inclusive, of Section 8355.

I also acknowledge that the Department of General Services shall establish and maintain a list of individuals and organizations whose contracts or grants have been canceled due to failure to comply with the above-referenced statute. This list shall be updated monthly and published each month. No state agency shall award a contract or grant to a person or organization on the published list until that person or organization has complied with the above-referenced statute.

☒ **Tobacco-Free Environment.** 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 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 and certify under penalty of perjury that I am aware of the District's policy regarding tobacco-free environments at District sites, including the Project site and acknowledge and 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 on the Project site. The District also prohibits electronic cigarettes, "vaping" or similar product uses on District sites.

☒ **No Hazardous Materials.** I acknowledge and certify under penalty of perjury that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations (**"New Hazardous Material"**), shall be furnished, installed, or incorporated in any way into the Project or in any tools,

devices, clothing, or equipment used to affect any portion of Contractor's work on the Project for District. I have instructed our employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

(i) Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material. Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Contractor if the material is found to be New Hazardous Material.

(i) All Work or materials found to be New Hazardous Material or Work or material installed with equipment containing "New Hazardous Material," will be immediately rejected and this Work will be removed at Contractor's expense at no additional cost to the District.

The Contractor must immediately notify the District within two (2) Business Days, if the Contractor finds and before it disturbs, any material that the Contractor believes may be hazardous waste, as defined in section 25117 of the Health and Safety Code, and requires removal to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law

I acknowledge and certify under penalty of perjury that this certification provides notice to the Contractor that:

(1) The Contractor's work may disturb lead-containing building materials.

(2) The Contractor must notify the District if any work may result in the disturbance of lead-containing building materials.

☒ **Lead as a Health Hazard.** Lead poisoning is recognized as a serious environmental health hazard facing children today. Even at low levels of exposure, much lower than previously believed, lead can impair the development of a child's central nervous system, causing learning disabilities, and leading to serious behavioral problems. Lead enters the environment as tiny lead particles and lead dust disburses when paint chips, chalks, peels, wears away over time, or is otherwise disturbed. Ingestion of lead dust is the most common pathway of childhood poisoning; lead dust gets on a child's hands and toys and then into a child's mouth through common hand-to-mouth activity. Exposures may result from construction or remodeling activities that disturb lead paint, from ordinary wear and tear of windows and doors, or from friction on other surfaces.

Ordinary construction and renovation or repainting activities carried out without lead-safe work practices can disturb lead-based paint and create significant hazards. Improper removal practices, such as dry scraping, sanding, or water blasting painted surfaces, are likely to generate high volumes of lead dust.

Because the Contractor and its employees will be providing services for the District, and because the Contractor's work may disturb lead-containing building materials, **Contractor is hereby notified** of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school buildings built prior to 1993 are presumed to contain some lead-based paint until sampling proves otherwise.

(i) **Overview of California Law**

Education Code section 32240 et seq. is known as the Lead Safe Schools Protection Act. Under this act, the Department of Health Services ("**DHS**") is to conduct a sample survey of schools in the State of California for the purpose of developing risk factors to predict lead contamination in public schools. (Ed. Code, § 32241.)

Any school that undertakes any action to abate existing risk factors for lead is required to utilize trained and state-certified contractors, inspectors, and workers. (Ed. Code, § 32243, subd. (b).) Moreover, lead-based paint, lead plumbing, and solders, or other potential sources of lead contamination, shall not be utilized in the construction of any new school facility or the modernization or renovation of any existing school facility. (Ed. Code, § 32244.)

Both the Federal Occupational Safety and Health Administration ("**OSHA**") and the California Division of Occupational Safety and Health ("**Cal/OSHA**") have implemented safety orders applicable to all construction work where a contractor's employee may be occupationally exposed to lead.

The OSHA Regulations apply to all construction work where a contractor's employee may be occupationally exposed to lead. The OSHA Regulations contain specific and detailed requirements imposed on contractors subject to that regulation. The OSHA Regulations define construction work as work for construction, alteration, and/or repair, including painting and decorating. It includes, but is not limited to, the following:

a. Demolition or salvage of structures where lead or materials containing lead are present;

a. Removal or encapsulation of materials containing lead;
b. New construction, alteration, repair, or renovation of structures, substrates, or portions thereof, that contain lead, or materials containing lead;
c. Installation of products containing lead;
d. Lead contamination/emergency cleanup;
e. Transportation, disposal, storage, or containment of lead or materials containing lead on the site or location at which construction activities are performed; and
f. Maintenance operations associated with the construction activities described in the subsection.

Because it is assumed by the District that all painted surfaces (interior as well as exterior) within the District contain some level of lead, it is imperative that the Contractor, its workers and subcontractors fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials (including title 8, California Code of Regulations, section 1532. 1).

The Contractor must notify the District if any Work may result in the disturbance of lead-containing building materials. Any and all Work that may result in the disturbance of lead-containing building materials must be coordinated through the District. A signed copy of this Certification must be on file prior to beginning Work on the Project, along with all current insurance certificates.

(i) **Renovation, Repair and Painting Rule, Section 402(c)(3) of the Toxic Substances Control Act**
In 2008, the U.S. Environmental Protection Agency, issued a rule pursuant to the authority of Section 402(c)(3) of the Toxic Substances Control Act, requiring lead safe work practices to reduce exposure to lead hazards created by renovation, repair and painting activities that disturb lead-based paint (Renovation, Repair and Painting Rule). Renovations in homes, childcare facilities, and schools built prior to 1978 must be conducted by certified renovations firms, using renovators with accredited training, and following the work practice requirements to reduce human exposures to lead.

Contractor, its workers and subcontractors must fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials, including those rules and regulations appearing within title 40 of the Code of Federal Regulations as part 745 (40 CFR 745).

The requirements apply to all contractors who disturb lead-based paint in a six-square-foot area or greater indoors or a 20-square-foot area outdoors. If a DPH-certified inspector or risk assessor determines that a home constructed before 1978 is lead-free, the federal certification is not required for anyone working on that particular building.

(ii) **Contractor's Liability**
If the Contractor fails to comply with any applicable laws, rules, or regulations, and that failure results in a site or worker contamination, the Contractor will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify, and hold harmless the District, pursuant to the indemnification provisions of the Contract, for all damages and other claims arising therefrom.

If lead disturbance is anticipated in the Work, only persons with appropriate accreditation, registrations, licenses, and training shall conduct this Work.

It shall be the responsibility of the Contractor to properly dispose of any and all waste products, including, but not limited to, paint chips, any collected residue, or any other visual material that may occur from the prepping of any painted surface. It will be the responsibility of the Contractor to provide the proper disposal of any hazardous waste by a certified hazardous waste hauler. This company shall be registered with the Department of Transportation (DOT) and shall be able to issue a current manifest number upon transporting any hazardous material from any school site within the District.

The Contractor shall provide the District with any sample results prior to beginning Work, during the Work, and after the completion of the Work. The District may request to examine, prior to the commencement of the Work, the lead training records of each employee of the Contractor.

I acknowledge and certify under penalty of perjury, that:
1. I have received notification of potential lead-based materials on the District's property;
2. I am knowledgeable regarding and will comply with all applicable laws, rules, and regulations governing work with, and disposal of, lead.

☒ **Imported Materials.** All soils, aggregate, or related materials ("**Fill**") that Contractor, a Subcontractor, agent or supplier, in any way, provides or delivers and/or supplies to the Project Site shall be free of any and all hazardous material as defined in section 25260 of the Health and Safety Code, shall satisfy the requirements of any environmental review of the Project performed pursuant to the statutes and guidelines of the California Environmental Quality Act, sections 21000 et seq. of the Public Resources Code ("**CEQA**"), and shall comply with the requirements of sections 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. I acknowledge that, to the furthest extent permitted by California law, the indemnification provisions in the Contract Documents apply to, without limitation, any claim(s) connected with providing, delivering, and/or supplying Fill.

☐ **Roofing Contract Financial Interest Certification (Public Contract Code § 3006)**

I, _____ [**Your Name**], _____ [**Firm Name**] certify that 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 a roof project contract or subcontract on the Project. As used in this certification, "person" means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

I, _____ [**Your Name**], _____ [**Firm Name**] certify that I do not have, and throughout the duration of the Contract, I will not have, any financial relationship in connection with the performance of the Contract with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.

I, _____ [**Your Name**], _____ [**Firm Name**] 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:

Name of firm ("**Firm**"): _____
Mailing address: _____
Address of branch office used for this Project: _____
If subsidiary, name and address of parent company: _____

For Projects without substantive roofing components, check the following box and execute this certification:

☒ The Work on the Contract (1) does not include the replacement or repair of a roof or (2) is a repair of twenty five percent (25%) or less of the roof, (3) or is a repair project that has a total cost of twenty one thousand dollars ($21,000) or less.

☒ **Russian Sanctions Certification**

On February 21, 2022, President Biden issued Executive Order 14065 (https://www.whitehouse.gov/briefing-room/presidential-actions/2022/02/21/executive-order-on-blocking-property-of-certain-persons-and-prohibiting-certain-transactions-with-respect-to-continued-russian-efforts-to-undermine-the-sovereignty-and-territorial-integrity-of-ukraine/; "**Federal Order**") imposing economic sanctions and prohibiting many activities including, but not limited to, investing in, importing to, exporting from, and contracting with, areas of Ukraine and in Russia. On March 4, 2022, California Governor Newsom issued Executive Order N-6-22 requiring state agencies to take steps to ensure any agency and entity under contract with state agencies comply with the Federal Order (https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf; "**State Order**").

The District requires the Consultant, as a vendor with the District, to comply with the economic sanctions imposed in response to Russia's actions in Ukraine, including the orders and sanctions identified on the U.S. Department of the Treasury website (https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions).

If your Firm's contract with the District has a cumulative value of $5 million or more, your certification here is

constitutes your written response to the District, indicating:

(1) that your Firm is in compliance with the required economic sanctions of the Federal and State Orders;

(2) the steps your Firm has taken in response to Russia's actions in Ukraine, including, but not limited to, desisting from making new investments in, or engaging in financial transactions with, Russian entities, not transferring technology to Russia or Russian entities, and directly providing support to the government and people of Ukraine.

☒ **Iran Sanctions Certification**

I ACKNOWLEDGE AND CERTIFY UNDER PENALTY OF PERJURY THAT I AM DULY AUTHORIZED TO LEGALLY BIND THE CONTRACTOR TO ALL PROVISIONS AND ITEMS INCLUDED IN THESE CERTIFICATIONS, THAT THE CONTENTS OF THESE CERTIFICATIONS ARE TRUE, AND THAT THESE CERTIFICATIONS ARE MADE UNDER THE LAWS OF THE STATE OF CALIFORNIA.

Date: 7/25/2024

Proper Name of Contractor: KYA Services, LLC

Signature: _____ Print

Name: Marvin Fuentes

Title: Controller

I ACKNOWLEDGE AND CERTIFY UNDER PENALTY OF PERJURY THAT I AM DULY AUTHORIZED TO LEGALLY BIND THE CONTRACTOR TO ALL PROVISIONS AND ITEMS INCLUDED IN THESE CERTIFICATIONS, THAT THE CONTENTS OF THESE CERTIFICATIONS ARE TRUE, AND THAT THESE CERTIFICATIONS ARE MADE UNDER THE LAWS OF THE STATE OF CALIFORNIA.

Date: _____

Proper Name of Contractor: KYA Services, LLC

Signature: _____

Print Name: _____

Title: _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Orange)

On 07/25/2024 before me, Abraham Flores III, Notary Public
(insert name and title of the officer)

personally appeared Marvin Fuentes,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ **(Seal)**

ABRAHAM FLORES III
Notary Public - California
Orange County
Commission # 2417905
My Comm. Expires Sep 23, 2026

C#4516

CRIMINAL BACKGROUND INVESTIGATION /FINGERPRINTING CERTIFICATION

The undersigned does hereby certify to the governing board of the District that he/she is a representative of the Contractor, is familiar with the facts herein certified, is authorized and qualified to execute this certificate on behalf of Contractor; and that the information in this Criminal Background Investigation / Fingerprinting Certification is true and correct.

1. **Education Code.** Contractor has taken at least one of the following actions (check all that apply):

☐ **All Workers Fingerprinted.** The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees and all of its subcontractors' employees who interact with pupils, outside of the immediate supervision and control of the pupil's parent or guardian or a school employee, has a valid criminal records summary as described in Education Code Section 44237 (Contractor shall "require each applicant for employment in a position requiring contact with minor pupils to submit two sets of fingerprints prepared for submittal by the employer to the Department of Justice for the purpose of obtaining criminal record summary information from the Department of Justice and the Federal Bureau of Investigation."). A complete and accurate list of Contractor's employees and of all of its subcontractors' employees who may interact with District pupils during the course and scope of the Contract is attached hereto; and/or

☒ **Physical Barrier.** Pursuant to Education Code section 45125.2, Contractor has installed or will install, prior to commencement of work, a physical barrier at the Project site, that will limit contact between Contractor's employees and District pupils at all times; and/or

☐ **Continual Supervision by Fingerprinted Employee.** Pursuant to Education Code section 45125.2, Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Contractor's employees and its subcontractors' employees is:
Name: _____ **Title:** _____

☐ **Unoccupied Site**. The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

2. **Megan's Law (Sex Offenders).** I have verified and will continue to verify that the employees of Contractor that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (http://www.meganslaw.ca.gov/).

Contractor's responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

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

Date: 7/25/2024

Proper Name of Contractor: **KYA Services, LLC**

Signature: _____

Print Name: Marvin Fuentes

Title: Controller

EXHIBIT A
SCOPE OF WORK

The scope of work for the Project is as set forth below:

2024 TURF INSTALLATION PROJECT @ CDC – Prepare existing dirt play area for artificial turf. Install geofabric, headerboard, 840 square feet of artificial turf, and subsequent sand in 840 SF of artificial turf.

If scope of work requires subcontractors please complete the following:

DESIGNATION OF SUBCONTRACTORS

Service provider shall set forth below the name and the location of the place of business of each sub-consultant or subcontractor, the DIR registration number and California license number of each sub-consultant or subcontractor who will perform work or labor or render services as part of agreement.

Portion of Work	Name of Sub-consultants and Subcontractor & Phone No.	Location of Sub-consultants and Subcontractor	CA Contractor License Number and License Class	**DIR#&** Classification	Email Address
Labor	Progressive Surface Solutions LLC 714-586-5543	Tustin, CA	929883	1000042517	Contracts@progressivesurfacesolutions.com

If scope of work requires Off Road Diesel Equipment/Vehicles the following applies:
California Air Resources Board (CARB). Consultant and its sub-consultants and subcontractors acknowledge and will adhere to Off-Road Diesel Certification requirements. In the event off-road diesel vehicles and or equipment is utilized while performing contracted services, consultant will provide CARB Certificates of Reported Compliance ("CRC") to the district.

C#4516

EMPLOYEE OWNED

SCOPE OF WORK - PRICING

San Ysidro School District - Smythe Elementary - Turf	Quantity	U/M	Price	Value	Taxable
3/4IN CL 2 BASE P - CLASS 2 AGGREGATE BASE- PERMEABLE	20	CY	$101.44	$2,028.80	T
24010620 - COMPOSITE HEADER BOARD 2" X 4" X 20'	140	LF	$3.11	$435.40	T
157R140N15 - MIRAFI HP270 (SQ FT)	840	SF	$0.34	$285.60	T
89240 - ACRYLIC COATED SAND	4032	LB	$0.49	$1,975.68	T
MULTIPLAY - SYNTHETIC TURF - MULTIPLAY	840	SF	$3.56	$2,990.40	T
Turf Application (Standard)	840	SF	$4.60	$3,864.00	
178799 - SYNTETHIC TURF TAPE - SINGLE-LAYER 12"X3	1	EA	$186.52	$186.52	T
233304 - SYNTHETIC TURF ADHESIVE - 1 GAL	5	EA	$73.63	$368.15	T
SUNDRIES - SUNDRIES	3	EA	$654.48	$1,963.44	T
Specialty Equipment Service	2	EA	$1,973.13	$3,946.26	
Dumpster Service	1	EA	$788.17	$788.17	
General Laborer Journeyman	61	HRS	$128.25	$7,823.25	
Bonding Fee	1	EA	$288.56	$288.56	
			Sales Tax	793.13	
			Total Price	$27,737.36	

END OF EXHIBIT A

EXHIBIT B
INFECTIOUS DISEASE PROVISIONS

1. **Compliance with Orders.** Contractor and its Subcontractors, agents and employees thereof, are responsible for complying with all applicable and existing federal, State, and/or local statutes, orders, rules, regulations, ordinances, and/or directives in any way relating to construction site safety, the Work, the Project, and Site, in connection with any infectious and communicable disease in any form, whether bacterial or viral, including, without limitation, TB, MSRA, influenza, COVID-19, and/or any similar virus or derivative strain ("**Infectious Disease**"). Contractor shall ensure it has supervisor employees onsite that are trained and knowledgeable of all these requirements to ensure full compliance on Site and the Work. Contractor's obligations hereunder shall include, without limitation providing personal protective equipment ("**PPE**") to its employees and to ensure that its subcontractors provide PPE equipment to its employees to prevent the spread of an Infectious Disease at the Project Site(s).

2. **Infectious Disease and Contract Time.** Contractor agrees that the Contract Time is based on Contractor's full compliance with all applicable and existing federal, State, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety, the Work, the Project, and the Site in connection with an Infectious Disease. Any dispute concerning the Contract Time in connection with any delay associated with an Infectious Disease shall be resolved pursuant to the Claims procedures in these General Conditions.

3. **Infectious Disease & Extra Work.**

   3.1. Contractor agrees that its Bid/Proposal, the Contract Price and the Contract Time are based on Contractor's full compliance with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety, the Work, the Project, and the Site in relation with an Infectious Disease at the time the parties entered into the Contract. Therefore, any additional costs to Contractor associated with an Infectious Disease, or any federal, state, or local order relating thereto, shall not be considered compensable unless:

      3.1.1. It occurred after the date of the award of the Project to Contractor;

      3.1.2. It materially increases the Contract Price or the Contract Time by imposing different, additional or more stringent requirements; and

      3.1.3. Contractor notifies District within ten (10) Days of notice of any new public health order(s), including the anticipated increase to the Contract Price or Contract Time due to the new public health order(s), and Contractor substantiates those costs with detailed supporting documentation as required these General Conditions, including, without limitation, comply with the proposed change orders and, to the extent applicable, Claims provisions.

   3.2. If, during the Work, the applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety, the Work, the Project, and/or the Site in connection with an Infectious Disease, are changed or rescinded (e.g., by the reduction of potential exposure or risk due to vaccinations), the parties agree to reduce the Contractor price and the Contract Time due to the removal of the required efforts. If the parties cannot mutually agree on the appropriate reduction, District may issue a unilateral change order for an amount of time and money it determines to be both reasonable and appropriate. And dispute concerning the application of this procedure shall be resolved pursuant to the Claims procedures in these General Conditions.

4. **Infectious Disease Release.** Contractor acknowledges that it is voluntarily and freely entering into the Contract for this Project and deciding to perform the Work which will require Contractor to enter upon and into the Site and that Contractor use of the Site includes the possible exposure to and illness from an Infectious Disease. Contractor further acknowledges the dangers involved and with full knowledge of these dangers, voluntarily agrees to assume all risks of bodily injury, death, or property damage, whether those risks are known or unknown. Contractor hereby releases District, its agents, representatives, officers, consultants, employees, trustees, and volunteers from any and all liabilities, causes of action, lawsuits, claims, demands, or damages of any kind whatsoever that Contractor, its staff, participants, relatives, children, spouse, partner, household members, family members, employees, guests, invitees, volunteers, agents, consultants, Subcontractors, and any other person tracing exposure or illness to Contractor, now have, or may have in the future, for injury, trauma, illness, loss, unwanted contact, harassment, disability, death or property damages related to being exposed to or contracting an Infectious Disease while using the Site for the performance of the Work. Contractor shall include this paragraph in all subcontracts with Subcontractors.

5. Contractor shall ensure it has supervisor employees onsite that are trained and knowledgeable of all of these requirements to ensure full compliance on Project Site(s).

6. Any cost to comply with these "Infectious Disease Compliance Provisions" shall be at Contractor's sole expense and expense, but may be included in the Contract Price.

7. **Vaccination Status.**

7.1. Contractor's Applicable Workers will not be allowed to enter the District's school site if they have a fever, cough or other COVID-19 or infectious disease symptom(s). Contractor agrees to implement, comply with, and fulfill the terms and requirements of the Health & Safety Policies. Contractor also acknowledges and hereby certifies that Contractor will require any Applicable Worker comply with the requirements of the Health & Safety Policies on the District's school site, including, but not limited to the requirements set forth here:

7.2. **COVID-19 Vaccination Status:** Contractor is required to ensure that all of its employees who will be working in **any** capacity on District school sites have been either:

7.2.1. Fully vaccinated for COVID-19 or
7.2.2. Tested within 72 hours prior to any initial work on a District site and then tested on a weekly basis.
7.2.2.1. **COVID-19 Testing:** Testing shall be compliant with the CDPH K-12 Order dated August 11, 2021, which must be either:
7.2.2.1.1. Polymerase Chain Reaction (PCR)
7.2.2.1.2. Antigen test
7.2.2.2. Laboratory confirmed results and which has FDA Emergency Use Authorization (EUA) must be provided.

7.3. Any Contractor employee who does not fulfill these requirements will be declared ineligible to provide service on any District school site until they submit the proper documentation.

7.4. Contractor's responsibility for COVID-19 compliance and record keeping extends to all of its employees, subcontractors, and employees of subcontractors who work in any capacity on a school campus, including but not limited to those who come into contact with District students and employees, regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

END OF EXHIBIT B

EXHIBIT C
FEDERAL CONTRACTING PROVISIONS

☒ **RESERVED – NOT APPLICABLE**

END OF EXHIBIT C

CONTRACT FOR REPAIRS, MAINTENANCE OR CONSTRUCTION SERVICES UNDER $60,000 AWARDED PURSUANT TO CUPCCAA

THIS CONTRACT is made and entered into as of the last date of signature hereto ("**Contract**"), by and between **VANDERT CONSTRUCTION, INC.** ("**Contractor**") and **San Ysidro School District** ("District"). Contractor and District may be referred to herein individually as a "**Party**" or collectively as the "**Parties**."

1. **Contract Price & Services.**

   A. After the District has issued a Notice to Proceed, the Contractor shall furnish to the District the repairs, maintenance or construction services identified below and as more fully described in **Exhibit A** attached hereto ("**Services**" or "**Work**") subject to the conditions below and for the price indicated below ("**Contract Price**"):

Project: District-wide General Repairs, Maintenance, and Construction Projects

A. Project 1: Smythe/CDC 2024 Ramps Repair Project – Repair one (1) ramp and replace one (1) ramp at Smythe Elementary School and Repair two (2) ramps at the Child Development Center (CDC) for $20,760.00 with an Owner's Allowance of $1,240.00 for a total of $22,000.00 of the $60,000.00.

BASE CONTRACT (In Dollars$):

6	0	,	0	0	0	.	0	0
Dollars							Cents	

   B. **Allowances**: If this Contract includes allowances, an allowance is a value added to the Base Contract amount for scope items defined by the District. Allowance items shall only be used by Contractor with the District's prior written permission. Contractor shall use the change order provisions of this Contract to apply for the use of an Allowance item. All unused allowance values at the end of the Project shall be retained by the District.

2. **Payment.** Payment for the Work shall be made in accordance with the Terms and Conditions to Contract ("**Terms and Conditions**") attached hereto.

Site. Contractor shall perform the Work at **San Ysidro School District** ("**Premises**" or "**Site**"). The "**Project**" is the scope of Work performed at the Site.

   A. **Project 1: Smythe Elementary School at 1880 Smythe Avenue, San Ysidro, CA 92173** and **Preschool & Child Development Center (CDC) at 1880 Smythe Avenue, San Ysidro, CA 92173.**

3. **Contract Time & Liquidated Damages.** Work shall be completed by **the date specified for each Project or June 30, 2025, whichever is earlier**. ("**Contract Time**"). Contractor agrees that if the Work is not completed within the Contract Time and/or pursuant to the completion schedule, construction schedule, or project milestones developed pursuant to provisions of the Contract, it is understood, acknowledged, and agreed that the District will suffer damage which is not capable of being calculated. Pursuant to Government Code section 53069.85, Contractor shall pay to the District, as fixed and **liquidated damages** for these incalculable damages, the sum of **$500.00** per day for each and every calendar

day of delay beyond the Contract Time or beyond any completion schedule, construction schedule, or Project milestones established pursuant to the Contract.

A. **Project 1: Work shall be completed by October 7, 2024.**

4. **Bonds & Insurance.**

A. **Payment Bond & Performance Bond:**

☐ **IS NOT REQUIRED – PROJECT SIZE IS DETERMINED TO BE BELOW $25K**

☒ **IS REQUIRED:** Contractor shall not commence the Work until it has provided to the District, a Payment (Labor and Material) Bond and a Performance Bond, in the forms attached hereto, each in an amount equivalent to one hundred percent (100%) of the Contract Price issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the District. The District reserves to waive this requirement in writing at its sole discretion and negotiate a deduction of the cost from the base proposal in the event the Contract Price is below $25,000.

B. **Insurance:** Contractor shall have and maintain in force during the term of this Contract, with the minimum indicated limits, the following insurance:

Commercial General Liability, with Products and Completed Operations Coverage	$1,000,000 each occurrence $2,000,000 aggregate
Automobile Liability, Any Auto, Combined Single Limit	$1,000,000 each occurrence $2,000,000 aggregate
Workers Compensation	Statutory limits pursuant to State law
Employers' Liability	$1,000,000 each incident, disease $2,000,000 policy limit
Sexual Abuse / Molestation	$1,000,000 each incident $2,000,000 policy limit
Builder's Risk (Course of Construction)	Issued for the value and scope of work.

DISTRICT MAY ADJUST THESE LIMITS, IN WRITING, AT THE DISTRICT'S SOLE DISCRETION BASED ON SIZE AND SCOPE OF THE CONTRACT.

Contractor shall provide to the District certificate(s) of insurance and endorsements satisfactory to the District. The policy(ies) shall not be amended or modified, and the coverage amounts shall not be reduced without thirty (30) days written notice to the District prior to cancellation. Except for worker's compensation insurance, the District, the Architect, and the Project Manager shall be named as an additional insured on all policies. Contractor's policy(ies) shall be primary; any insurance carried by the District shall only be secondary and supplemental. Contractor shall not allow any subcontractor, employee, or agent to commence Work on this Contract or any subcontract until the insurance required of Contractor, subcontractor, or agent has been obtained, and the certificate(s) of insurance and endorsements have been provided to the District; provided, however, that the District reserves the right to reject an insurance policy(ies) if they do not conform with the above insurance requirements.

Project Oversight. The District representative for the Project is: **Jose F. Iniguez, Ed.D., Assistant Superintendent of Administrative Leadership, School Support & Safety. Phone: (619) 428-4476 ext. 3065.**

5. **INFECTIOUS DISEASE/COVID-19.** Contractor shall comply with all provisions related to infectious diseases as set forth in **Exhibit B**.

6. ☐ **This box will be checked if Federal Funding requirements apply.** If the Project is funded in whole or part by federal funding, including, without limitation, any funds from any component or iteration of the Elementary and

Secondary School Emergency Relief ("**ESSER**") programs, Contractor acknowledges that this Project is subject to federal procurement/contracting requirements. Contractor agrees to fully comply with all federal requirements, including, without limitation, the federally required contract provisions attached hereto as **Exhibit C**.

7. **Terms & Conditions.** The Contractor agrees to comply with the Terms and Conditions attached hereto.

8. **Contract Documents.** The Contract Documents include only the following documents, as indicated:

____ Proposal Form	__X__ Performance Bond
____ Notice to Proceed	__X__ Payment Bond
__X__ Terms and Conditions to Contract	__X__ **Exhibit A** (Scope of Work)
____ Noncollusion Declaration	____ Plans
__X_ Certifications to be Completed by Contractor	____ Work Specifications
__X__ Criminal Background Investigation Certification	____ _____ [Other]
__X__ Insurance Certificates and Endorsements	__X__ **Exhibit B** (Infectious Disease Provisions)
	____ **Exhibit C** (Federal Procurement Provisions)

9. **Notice**. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or sent by overnight delivery service addressed as follows:

District:
San Ysidro School District
4350 Otay Mesa Rd.,
San Ysidro, CA 92173
Attn: Dr. Jose Iniguez, Assistant Superintendent of Admin. Leadership, School Support & Safety

Contractor:
VANDERT CONSTRUCTION, INC.
12261 Barringer Street
South El Monte, CA 91733
Attn: Kenneth Nguyen
Phone: (626) 202-9253
Email: kennethn@vandert.com

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service.

ACCEPTED AND AGREED on the date indicated below. By signing this Contract, Contractor certifies, under penalty of perjury, that all the information provided in the Contract Documents is true, complete, and correct:

Dated: _____, 2024	Dated: July 24th, 2024
San Ysidro School District	**VANDERT CONSTRUCTION, INC.**
Signature: _____	Signature: Kenneth Nguyen
Print Name: Marilyn Adrianzen	Print Name: Kenneth Nguyen
Print Title: Chief Business Official	Print Title: CEO
License# 1109409	DIR Registration # 1001123844

Information regarding Contractor:

Type of Business Entity:	**Employer Identification Number or Social Security Number:** 93-2569727
____ Individual	*NOTE: United States Code, title 26, sections 6041 and 6109 require non-corporate recipients of $600 or more to furnish their taxpayer identification number to the payer. The United States Code also provides that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these rules, the District requires your federal tax identification number or Social Security number, whichever is applicable.*
____ Sole Proprietorship	
____ Partnership	
____ Limited Partnership	
_X__ Corporation	
____ Limited Liability Company	
____ Other: _____	

Contractor representative for onsite work:

Name:	**Title:**	**Mobile:**
William Han	Project Manager	760-519-7198
John Chi		626-512-7209
Kenneth Nguyen		626-202-9253
Email: williamh@vandert.com johnc@vandert.com kennethn@vandert.com		

TERMS AND CONDITIONS TO CONTRACT

1. NOTICE TO PROCEED: Receipt of this contract signed by the District shall be the Notice to Proceed.

2. SITE EXAMINATION: Contractor has examined the Site and certifies that it accepts all measurements, specifications and conditions affecting the Work to be performed at the Site. By submitting its bid/proposal and signing this Contract, Contractor warrants that it has made all Site examination(s) that it deems necessary as to the condition of the Site, its accessibility for materials, workers and utilities, and Contractor's ability to protect existing surface and subsurface improvements. No claim for allowance of time or money will be allowed as to any other undiscovered condition on the Site.

3. CONSTRUCTION SCHEDULE / SUBCONTRACTOR LIST: Contractor shall provide the District a Construction Schedule for the Work and a Subcontractor List as indicated in this Contract. Both the Construction Schedule and Subcontractor List are subject to the District's approval.

4. EQUIPMENT AND LABOR: The Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the Services, the Services to be performed at such times and places as directed by and subject to the approval of the authorized District representative indicated in the Work specifications attached hereto.

5. SUBCONTRACTORS: Contractor shall comply with the Subletting and Subcontracting Fair Practices Act (Public Contract Code, section 4100 et. seq.) Contractor shall identify by name and location of the place of business of each subcontractor who will perform work or labor or render service in or about the construction of the Project in an amount in excess of one-half of 1 percent of the Contractor's contract price or ten thousand dollars ($10,000) whichever is greater. Subcontractors, if any, engaged by the Contractor for any Service or Work under this Contract shall be subject to the approval of the District. Contractor agrees to bind every subcontractor by the terms of the Contract as far as such terms are applicable to subcontractor's work, including, without limitation, all indemnification, insurance, bond, and warranty requirements. If Contractor subcontracts any part of this Contract, Contractor shall be fully responsible to the District for acts and omissions of its subcontractor and of persons either directly or indirectly employed by itself. Nothing contained in the Contract Documents shall create any contractual relations between any subcontractor and the District.

6. TERMINATION: If Contractor fails to perform the Services and Contractor's duties to the satisfaction of the District, or if Contractor fails to fulfill in a timely and professional manner Contractor's obligations under this Contract, or if Contractor violates or otherwise breaches any of the Terms or Provisions of this Contract, the District shall have the right to terminate this Contract effective immediately upon the District giving written notice thereof to the Contractor. District shall also have the right in its sole discretion to terminate the Contract for its own convenience. Termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of termination. Upon termination, Contractor shall provide the District with all documents produced maintained or collected by Contractor pursuant to this Contract, whether or not such documents are final or draft documents.

7. SAFETY AND SECURITY: Contractor is responsible for maintaining safety in the performance of this Contract. Contractor shall be responsible for complying with the District's rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.

8. CHANGE IN SCOPE OF WORK:

8.1. No Change Without Authorization: Any change in the scope of the Work, method of performance, nature of materials or price thereof, the time for performance, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted by the District unless that change, addition, or deletion is approved in advance and in writing by a valid change order executed by the District.

8.2. District Right to Request Changes: Contractor specifically understands, acknowledges, and agrees that the District shall have the right to request any alterations, deviations, reductions, or additions to the Project or Work, and the cost thereof shall be added to or deducted from the amount of the Contract Price by fair and reasonable valuations. The District may accomplish any of the foregoing, in its discretion, by issuing a unilateral change order.

8.3. Proposed Change Order:

8.3.1. **Submission / Time to Submit**: Contractor may seek an adjustment to the Contract Time or Contract Price only by submitting a proposed change order to the District within five (5) days of the date Contractor discovers, or reasonably should discover, the circumstances giving rise to the proposed change order, unless additional time to submit a proposed change order is granted in writing by the District.

8.3.2. **Content of Proposed Change Order**: Contractor and subcontractors shall include the following in any proposed change order:

8.3.2.1. Labor: Labor breakdown by trade classification, wage rates, and estimated hours. Wages shall not exceed current prevailing wages in the locality for performance of the changes. The Contractor's or subcontractors' (including second-tier subcontractors') labor burden and Workers' Compensation premium shall only be charged at 20% of the total charge for labor costs. In no event shall Contractor include any other charges than as indicated herein without the District's prior written approval.

8.3.2.2. Material: Material quantities, and types of products, and transportation costs, if applicable.

8.3.2.3. Equipment: Equipment breakdown by make, type, size, rental rates (if not owned), equipment hours and transportation costs, if applicable. The equipment costs shall not exceed one hundred percent (100%) of the Association of Equipment Distributors (AED) rental rates and delay factors or Caltrans rates and delay factors, whichever is less. Hourly, daily, or weekly rates shall be used, whichever is lower. Hourly rates including operator shall not be used. The time to be paid for equipment shall be the actual time that the equipment is in (1) productive operation on the Work or (2) idled because of the event or circumstance giving rise to the proposed change order.

8.3.2.4. Mark-Up for Overhead and Profit: Mark-up for overhead and profit in a proposed change order shall be calculated as follows:

8.3.2.4.1. **Subcontractor-Performed Work**: Subcontractors shall be entitled to a total cumulative mark-up for overhead and profit of 8% on the total of Labor (including labor burden and Workers' Compensation premium), Material, and Equipment **only** for for both the subcontractor and the subcontractor's subcontractor(s) (e.g., all "lower-tier" subcontractors) performed Work. Contractor shall be entitled to a 6% mark-up on the same items, **excluding subcontractor's mark-up for overhead and profit**.

8.3.2.4.2. **Contractor-Performed Work**: Contractor shall be entitled to a mark-up for overhead and profit of 6% of the total of the Labor (including labor burden and Workers' Compensation premium), Material, and Equipment for Contractor performed Work.

8.3.3. **Contract Time**: Any request for an adjustment to the Contract Time must be supported by a time impact analysis identifying critical schedule activities delayed by an event beyond the Contractor's reasonable control.

8.4. Determination of Change Order Cost: The District shall use any reasonable means to calculate the cost of a change order in its sole discretion, including, without limitation: the acceptance of a proposed change order; agreement between the District and Contractor; and, the actual and necessary costs incurred by Contractor based on cost records produced to the District and based on the District's reasonable evaluation of the Work and market research.

8.5. Contractor Obligation to Substantiate: Contractor agrees to provide the District with all information requested to substantiate the cost of any change order and to inform the District whether the Work will be done by the Contractor or a subcontractor. If Contractor fails to reasonably substantiate any requested change in the scope of work, or Contractor fails to timely cooperate with the District to provide substantiation for the costs of any change order, Contractor waives any claim for additional compensation. In addition to any other information requested, Contractor shall submit, prior to approval of any change order, its request for a time extension (if any), as well as all information necessary to substantiate Contractor's belief that such change will delay the completion of the Work.

8.6. Waiver: If Contractor fails to submit its request for a time extension or the necessary supporting information, it shall be deemed to have waived its right to request such extension. Contractor waives any claim for additional compensation for any change in the scope of work if Contractor performs the work without written approval of the District.

9. TRENCH SHORING: If this Contract is in excess of $25,000 and is for the excavation of any trench deeper than five (5) feet, Contractor must submit and obtain District's approval and acceptance, in advance of excavation, of 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 such trench or trenches. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

10. EXCAVATIONS OVER FOUR FEET: If this Contract includes excavations over four (4) feet, Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any: (1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, 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; or (3) Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. The District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work shall issue a change order under the procedures described in the Contract. In the event that a dispute arises between the District and the Contractor regarding whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work. 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.

11. LEAD-BASED PAINT: Pursuant to the Lead-Safe Schools Protection Act (Education Code Section 32240 et seq.) and other applicable law, no lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall be utilized on this Project, and only trained and state-certified contractors, inspectors and workers shall undertake any action to abate existing risk factors for lead. Contractor must execute the Lead-Based Paint Certification, if applicable.

12. WORKERS: Contractor shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of the Contractor or a subcontractor whom the District may deem incompetent or unfit shall be dismissed from the Site and shall not again be employed at the Site without written consent from the District.

13. DRUG-FREE / TOBACCO FREE / SMOKE FREE POLICY: No drugs, alcohol, tobacco, and/or smoking are allowed at any time in any buildings and/or grounds on District property. No students, staff, visitors, consultants or contractors are to use drugs on these sites.

14. FINGERPRINTING: Contractor shall comply with and provide to the District a fully executed Criminal Background Investigation /Fingerprinting Certification, attached hereto, prior to mobilizing at the Site.

15. CORRECTION OF ERRORS: Contractor shall perform, at its own cost and expense and without reimbursement from the District, any work necessary to correct errors or omissions that are caused by the Contractor's failure to comply with the standard of care required herein. If Contractor fails to correct any those errors, the District reserves the right to deduct the value of the work from any payment(s) owed to Contractor, or to perform the work itself and

deduct from any payment(s) owed to contractor the cost to perform the work.

16. FAILURE TO PERFORM. If the District at any time believes that the Contractor is behind schedule, is failing to construct the Project pursuant to the Contract Documents, or is otherwise failing to perform any provisions of this Contract, the District, after FORTY-EIGHT (48) hours written notice to the Contractor, may take any action necessary or beneficial to the District to complete the Project, takeover the Work of the Contract, terminate or suspend the Contract as indicated herein, or any combination or portion of those actions. The Contractor shall be liable to the District for any cost incurred by the District in those actions and the District has the right to deduct the cost thereof from any payment then or thereafter due the Contractor.

17. SUBSTITUTIONS: No substitutions of material from those specified in the Work Specifications shall be made without the prior written approval of the District.

18. CONTRACTOR SUPERVISION: Contractor shall provide competent supervision of personnel employed on the job Site to monitor the use of equipment and the quality of workmanship.

19. PERSONNEL: Contractor, Contractor's employees, Subcontractors, Subcontractors' employees, or any person associated with the Work shall conduct themselves in a manner appropriate for a school site. The District will not permit any (1) verbal or physical contact with neighbors, students, and faculty; (2) profanity, or inappropriate attire or behavior; (3) photographing, videoing, or audio recording of any neighbors, students, and faculty or any posting of any photographs, videos, or audio recordings of any neighbors, students, and faculty on any internet site, social media platform of any kind, regardless of source of any photograph, video, or audio recording. District may require Contractor to permanently remove noncomplying persons from Project Site

20. CLEAN UP: Debris shall be removed from the Premises. The Site shall be in order at all times when work is not actually being performed and shall be maintained in a reasonably clean condition. Onsite trash bins shall not be used.

21. ACCESS TO WORK: District representatives shall at all times have access to the Work wherever it is in preparation or in progress. Contractor shall provide safe and proper facilities for such access.

22. PROTECTION OF WORK AND PROPERTY: Contractor shall erect and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of life or of Work or of adjoining property, Contractor, without special instruction or authorization from District, is permitted to act at his discretion to prevent such threatened loss or injury.

23. ASSIGNMENT OF CONTRACT: Contractor shall not assign or transfer in any way any or all of its rights, burdens, duties, or obligations under this Contract without the prior written consent of the District.

24. TIME IS OF THE ESSENCE: Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Contract.

25. OCCUPANCY: There is no "Substantial Completion" or "Beneficial Occupancy" for this Project, although the District reserves the right to occupy buildings at any time before formal Contract completion and that occupancy shall not constitute final acceptance or approval of any part of the Work covered by this Contract, nor shall that occupancy extend the date specified for completion of the Work.

26. FORCE MAJEURE CLAUSE: Contractor shall be excused from performance hereunder during the time and to the extent that it is prevented from obtaining delivery, or performing by act of God, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, pandemic, product, plant, or facilities by the government, when satisfactory evidence thereof is presented to the District, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of Contractor. Any delay associated with Covid-19, or any derivative or similar strain thereof, or any federal, state, or local order relating thereto, shall not be considered a Force Majeure Event unless it renders Contractor's performance of the Work impossible, and that event was not reasonably foreseeable at the time of the execution of the Contract.

27. INDEMNIFICATION / HOLD HARMLESS CLAUSE: To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, Contractors, employees, trustees, and volunteers ("**the indemnified parties**") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, including without limitation the payment of all consequential damages, arising out of, pertaining to or relating to, in whole or in part, the negligence, recklessness, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, Contractors, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services or from any activity, work, or thing done, permitted, or suffered by the Contractor in conjunction with this Contract, unless the claims are caused wholly by the sole negligence or willful misconduct of the indemnified parties. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the indemnified parties.

28. PAYMENT: On a monthly basis, Contractor shall submit an application for payment based upon the estimated value for materials delivered or Services performed under the Contract as of the date of submission ("**Application for Payment**"). Within thirty (30) days after District's approval of the Application for Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as verified by Architect and Inspector and certified by Contractor) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. The District may deduct from any payment an amount necessary to protect the District from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the District in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the total Contract Price or by the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the

Contract; (8) failure of the Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by District during the prosecution of the Work; (9) erroneous or false estimates by the Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages, as determined by the District, incurred by the District for which Contractor is liable under the Contract; and (11) any other sums which the District is entitled to recover or withhold from Contractor under the terms of the Contract or pursuant to state law, including section 1727 of the California Labor Code. The failure by the District to deduct any of these sums from a progress payment shall not constitute a waiver of the District's right to recover those sums. The District shall retain five percent (5%) from all amounts owing as retention. Retention shall be paid pursuant to Public Contract Code sections 7107 and 7200.

29. PERMITS AND LICENSES: Contractor and all of its employees, agents, and subcontractors shall secure and maintain in force, at Contractor's sole cost and expense, all licenses and permits as are required by law, in connection with the furnishing of materials, supplies, or Services herein listed.

30. INDEPENDENT CONTRACTOR STATUS: While engaged in carrying out the Services of this Contract, the Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the District. Contractor shall be solely responsible for its own Worker's Compensation insurance, taxes, and other similar charges or obligations. Contractor shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its agents or employees.

31. ANTI-DISCRIMINATION: It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, or religious creed, and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment Practice Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).

32. DISABLED VETERAN BUSINESS ENTERPRISES: Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building (SFP Funds) to have a participation of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). If this Contract uses School Facilities Program Funds, Contractor must submit, with its executed Contract, appropriate documentation to the District identifying the steps Contractor has taken to solicit DVBE participation in conjunction with this Contract.

33. WARRANTY/QUALITY: Unless a longer warranty is called for elsewhere in the Contract, Contractor, manufacturer, or their assigned agents shall guarantee the workmanship, product or Services performed against defective workmanship, defects or failures of materials for a minimum period of one (1) year from District's written acceptance of the Work. All workmanship and merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards.

34. CONFIDENTIALITY: Contractor shall maintain the confidentiality of all information, documents, programs, procedures, and all other items that Contractor encounters while performing the Contractor's Services to the extent allowed by law. This requirement shall be ongoing and shall survive the expiration or termination of this Contract and specifically includes all student, parent, and disciplinary information.

35. COMPLIANCE WITH LAWS: Contractor shall give all notices and comply with all laws, ordinance, rules and regulations bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.

36. DISPUTES/CLAIMS: Public Contract Code § 9204. Claims between the District and the Contractor shall be resolved in accordance with the procedures established in Public Contract Code § 9204.

36.1. Claim. The term "**Claim**" means a written demand by the Contractor sent by registered mail or certified mail with return receipt requested for:

36.1.1. An extension of the Contract Time, including relief from damages or penalties assessed by the District for delay;

36.1.2. Payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment that is not otherwise expressly provided for in the Contract Documents or to which the Contractor is not otherwise entitled; or

36.1.3. Payment of an amount that is disputed by the District.

36.2. Submission of Claim. A Claim arises upon the District's rejection of a request by the Contractor for a change order. The Contractor shall submit the Claim by registered mail or certified mail with return receipt requested to the District's Director of construction and Modernization, with a copy to the Project Manager/Construction Manager. The Contractor shall submit its Claim in writing, together with all Supporting Documentation no later than the earlier of either: (1) thirty (30) days after the date the Claim arises; or (2) sixty (60) days after the date of completion. It is the intent of the District to evaluate and resolve Claims with the Contractor as close to the events giving rise to such Claims as possible and to avoid stale or late Claims, including late notice and documenting of Claims, and to timely mitigate the issue, event, condition, circumstance and/or cause of the Claim and any adverse impacts or damages related thereto.

36.3. Contents of Claim. A Claim must include all Supporting Documentation and a statement identifying it as a Claim signed by an authorized agent or officer of the Contractor under penalty of perjury and including the following language immediately above or before the Contractor's signature: "I declare under penalty of perjury under the laws of the State of California that the

information provided and statements made in this Claim are true and correct, substantiated and of merit." The Contractor recognizes and acknowledges that this requirement is not a mere formality but is intended to ensure that the Contractor only submits Claims that it believes are true and correct, substantiated and have merit.

36.4. Subcontractor Claims. Pursuant to Public Contract Code § 9204(d)(5), a Subcontractor may request in writing, either on its own behalf or on behalf of a lower tier Subcontractor, that the Contractor submit to the District 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 submitted to the District shall furnish reasonable documentation to support the claim. Regardless of whether or not the Contractor decides to submit the Subcontractor's claim to the District, Contractor shall provide a copy of the Subcontractor's written request, including all supporting documentation, to the Project Manager/Construction Manager within ten (10) days of Contractor's receipt of the request. In the event the Contractor agrees to submit a Subcontractor's claim to the District, the Contractor shall submit such claim as a request for a change order, unless such claim was previously submitted to the District as a request for a change order. Within forty-five (45) days of receipt of the Subcontractor's written request, the Contractor shall notify the Subcontractor in writing as to whether the Contractor submitted the claim to the District and, if the Contractor did not submit the claim, the Contractor shall provide the Subcontractor with a written statement of the reasons for not having done so and shall concurrently provide a copy of such written statement to the Project Manager/Construction Manager. In the event the Contractor includes supporting documentation with such written statement, the Contractor shall concurrently provide a copy of such supporting documentation to the Project Manager/Construction Manager. If the Contractor submits a Claim on behalf of a Subcontractor, the Claim shall include a statement in writing and signed by an authorized agent or officer of the Contractor under penalty of perjury that includes the following language immediately above or before the Contractor's signature: "I declare under penalty of perjury under the laws of the State of California that [insert name of Contractor] has thoroughly evaluated the claim of [insert name of Subcontractor] and determined that the information provided and statements made in the claim are true and correct, substantiated and of merit."

36.5. District Review of Claim. Upon receipt of a Claim, the District shall review the Claim and, within a period not to exceed forty-five (45) days, shall provide 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 the Contractor may, by mutual written agreement, extend the forty-five (45) day time period. The District shall process and make payment of any undisputed portion of a Claim within sixty (60) days after the District issues its written statement. Failure by the District to provide a written statement in response to a Claim from the Contractor within the forty-five (45) day time period, or within an agreed upon extended time period, shall result in the Claim being deemed rejected in its entirety. A Claim that is rejected by reason of the District's failure to respond, or failure to timely respond, to the Claim shall not constitute an adverse finding regarding the merits of the Claim or the claimant's responsibility or qualifications.

36.6. Meet and Confer Meeting. If the Contractor disputes the District's written response, or if the District fails to respond within the time frame prescribed above, the Contractor, within fifteen (15) days of the District's written response or, if the District fails to respond, within fifteen (15) days after the District's response was due, may demand, in a writing sent to the District's Superintendent by registered mail or certified mail, return receipt requested, with a copy to the District's Director of Construction and Modernization, and Project Manager/Construction Manager, an informal conference to meet and confer for settlement of the issues in dispute. The District shall schedule a meet and confer conference within thirty (30) days of its receipt of the Contractor's written demand.

36.7. Mediation. Within ten (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 sixty (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. The expenses and fees of the mediator and the administrative fees shall be divided among the parties equally. Each party shall pay its own legal fees, witness fees, and other expenses. The District and the Contractor shall mutually agree to a mediator within ten (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. The foregoing notwithstanding, pursuant to Public Contract Code § 9204(f), the parties may mutually agree in writing to waive mediation.

36.8. Pending resolution of the dispute, Contractor agrees it will neither rescind the Contract nor stop the progress of the Work but will allow determination by the court of the State of California, in the county in which the District's administration office is located, having competent jurisdiction of the dispute.

36.9. Nothing in this Article shall prevent the Parties from resolving any disputes or claims pursuant to Public Contract Code section 20104, et seq., if applicable.

36.10. Nothing in this Contract, waives, modifies or tolls the Contractor's obligation to present a timely claim under Government Code § 910, et seq. Therefore, in addition to complying with the contractual Claims procedures, the Contractor is required to present claims to the District pursuant to Government Code § 910, et seq.

37. LABOR CODE REQUIREMENTS: Provided that the Contract Price is more than $1,000, and the Work is a "public works" under the Labor Code, the parties agree as follows:

37.1. The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

37.2. District hereby provides notice of the requirements described in Labor Code § 1771.1(a) that a contractor or subcontractor shall not be qualified to bid or propose on, be listed in a bid or proposal, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code § 1725.5.

37.3. Contractor acknowledges that all or a portion of the Services under this Contract are a public work, and that it and its subcontractors have complied with Labor Code § 1725.5, including, without limitation, the registration requirements thereof.

37.4. Contractor shall post all required job site notices and shall comply with all applicable requirements prescribed thereby, including but not limited to Labor Code § 1771.4.

37.5. Contractor shall comply with all applicable provisions of the Labor Code, Division 3, Part 7, Chapter 1, Articles 1-5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars ($1,000).

37.6. Copies of the prevailing rate of per diem wages are on file with the District.

37.7. Contractor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the Labor Code, beginning with § 1720, and including §§ 1735, 1777.5 and 1777.6, forbidding discrimination, and §§ 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. Contractor shall comply with Labor Code § 1777.5 pertaining to prevailing wage compensation to apprentices for preemployment activities.

38. PAYROLL RECORDS: Contractor and its subcontractor(s) shall keep accurate certified payroll records of employees and make them available to the District immediately upon request.

39. AUDIT: Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Contract. Contractor shall retain these books, records, and systems of account during the Term of this Contract. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Contract. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.

40. ANTI-TRUST CLAIM: Contractor and its subcontractor(s) agree to assign to the District all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. 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 purchases of goods, services, or materials pursuant to the Contract or a subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor, without further acknowledgment by the Parties.

41. GOVERNING LAW: This Contract shall be governed by and construed in accordance with the laws of the State of California with venue of any action in a in the county in which the District's administration office is located.

42. PROVISIONS REQUIRED BY LAW DEEMED INSERTED: Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included therein.

43. BINDING CONTRACT: This Contract shall be binding upon the Parties hereto and upon their successors and assigns, and shall inure to the benefit of the Parties and their successors and assigns.

44. DISTRICT WAIVER: District's waiver of any term, condition, covenant or waiver of a breach of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant or the waiver of a breach of any other term, condition or covenant.

45. INVALID TERM: If any provision of this Contract is declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be a part of this Contract.

46. ENTIRE CONTRACT: This Contract sets forth the entire Contract between the Parties hereto and fully supersedes any and all prior agreements, understanding, written or oral, between the Parties hereto pertaining to the subject matter thereof. This Contract may be modified only by a writing evidencing the Parties' mutual consent.

CERTIFICATIONS TO BE COMPLETED BY CONTRACTOR

THE UNDERSIGNED MUST CHECK EACH BOX AND EXECUTE THIS FORM AND HEREBY CERTIFIES TO THE GOVERNING BOARD OF THE DISTRICT THAT:

- He/she is a representative of the Contractor,
- He/she is familiar with the facts herein certified and acknowledged,
- He/she is authorized and qualified to execute this Agreement and these certifications on behalf of Contractor and that by executing this Agreement he/she is certifying the following items.

☒ **Labor Code Sections 1860-1861 (Workers' Compensation).** In accordance with Labor Code section 3700, every contractor will be required to secure the payment of compensation to his or her employees. I acknowledge and certify under penalty of perjury that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

☒ **Government Code Sections 8355-8357 (Drug-Free Workplace).** I acknowledge and certify under penalty of perjury that I will provide a drug-free workplace by doing all of the following:

(1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.

(2) Establishing a drug-free awareness program to inform employees about all of the following:

(A) The dangers of drug abuse in the workplace.

(B) The person's or organization's policy of maintaining a drug-free workplace.

(C) Any available drug counseling, rehabilitation, and employee assistance programs.

(D) The penalties that may be imposed upon employees for drug abuse violations.

(3) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I also acknowledge that this Contract may be subject to suspension of payments under the contract or grant or termination of the contract or grant, or both, and the contractor or grantee thereunder may be subject to debarment, in accordance with the requirements of the above-referenced statute, if the contracting or granting agency determines that any of the following has occurred:

(1) The contractor or grantee has made a false certification under Section 8355.

(2) The contractor or grantee violates the certification by failing to carry out the requirements of subdivisions (a) to (c), inclusive, of Section 8355.

I also acknowledge that the Department of General Services shall establish and maintain a list of individuals and organizations whose contracts or grants have been canceled due to failure to comply with the above-referenced statute. This list shall be updated monthly and published each month. No state agency shall award a contract or grant to a person or organization on the published list until that person or organization has complied with the above-referenced statute.

☒ **Tobacco-Free Environment**. 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 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 and certify under penalty of perjury that I am aware of the District's policy regarding tobacco-free environments at District sites, including the Project site and acknowledge and 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 on the Project site. The District also prohibits electronic cigarettes, "vaping" or similar product uses on District sites.

☒ **No Hazardous Materials.** I acknowledge and certify under penalty of perjury that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations ("**New Hazardous Material**"), shall be furnished, installed, or incorporated in any way into the Project or in any tools,

devices, clothing, or equipment used to affect any portion of Contractor's work on the Project for District. I have instructed our employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

(i) Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material. Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Contractor if the material is found to be New Hazardous Material.

(i) All Work or materials found to be New Hazardous Material or Work or material installed with equipment containing "New Hazardous Material," will be immediately rejected and this Work will be removed at Contractor's expense at no additional cost to the District.

The Contractor must immediately notify the District within two (2) Business Days, if the Contractor finds and before it disturbs, any material that the Contractor believes may be hazardous waste, as defined in section 25117 of the Health and Safety Code, and requires removal to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law

I acknowledge and certify under penalty of perjury that this certification provides notice to the Contractor that:

(1) The Contractor's work may disturb lead-containing building materials.

(2) The Contractor must notify the District if any work may result in the disturbance of lead-containing building materials.

☒ **Lead as a Health Hazard.** Lead poisoning is recognized as a serious environmental health hazard facing children today. Even at low levels of exposure, much lower than previously believed, lead can impair the development of a child's central nervous system, causing learning disabilities, and leading to serious behavioral problems. Lead enters the environment as tiny lead particles and lead dust disburses when paint chips, chalks, peels, wears away over time, or is otherwise disturbed. Ingestion of lead dust is the most common pathway of childhood poisoning; lead dust gets on a child's hands and toys and then into a child's mouth through common hand-to-mouth activity. Exposures may result from construction or remodeling activities that disturb lead paint, from ordinary wear and tear of windows and doors, or from friction on other surfaces.

Ordinary construction and renovation or repainting activities carried out without lead-safe work practices can disturb lead-based paint and create significant hazards. Improper removal practices, such as dry scraping, sanding, or water blasting painted surfaces, are likely to generate high volumes of lead dust.

Because the Contractor and its employees will be providing services for the District, and because the Contractor's work may disturb lead-containing building materials, **Contractor is hereby notified** of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school buildings built prior to 1993 are presumed to contain some lead-based paint until sampling proves otherwise.

(i) **Overview of California Law**

Education Code section 32240 et seq. is known as the Lead Safe Schools Protection Act. Under this act, the Department of Health Services ("**DHS**") is to conduct a sample survey of schools in the State of California for the purpose of developing risk factors to predict lead contamination in public schools. (Ed. Code, § 32241.)

Any school that undertakes any action to abate existing risk factors for lead is required to utilize trained and state-certified contractors, inspectors, and workers. (Ed. Code, § 32243, subd. (b).) Moreover, lead-based paint, lead plumbing, and solders, or other potential sources of lead contamination, shall not be utilized in the construction of any new school facility or the modernization or renovation of any existing school facility. (Ed. Code, § 32244.)

Both the Federal Occupational Safety and Health Administration ("**OSHA**") and the California Division of Occupational Safety and Health ("**Cal/OSHA**") have implemented safety orders applicable to all construction work where a contractor's employee may be occupationally exposed to lead.

The OSHA Regulations apply to all construction work where a contractor's employee may be occupationally exposed to lead. The OSHA Regulations contain specific and detailed requirements imposed on contractors subject to that regulation. The OSHA Regulations define construction work as work for construction, alteration, and/or repair, including painting and decorating. It includes, but is not limited to, the following:

a. Demolition or salvage of structures where lead or materials containing lead are present;

a. Removal or encapsulation of materials containing lead;
b. New construction, alteration, repair, or renovation of structures, substrates, or portions thereof, that contain lead, or materials containing lead;
c. Installation of products containing lead;
d. Lead contamination/emergency cleanup;
e. Transportation, disposal, storage, or containment of lead or materials containing lead on the site or location at which construction activities are performed; and
f. Maintenance operations associated with the construction activities described in the subsection.

Because it is assumed by the District that all painted surfaces (interior as well as exterior) within the District contain some level of lead, it is imperative that the Contractor, its workers and subcontractors fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials (including title 8, California Code of Regulations, section 1532. 1).

The Contractor must notify the District if any Work may result in the disturbance of lead-containing building materials. Any and all Work that may result in the disturbance of lead-containing building materials must be coordinated through the District. A signed copy of this Certification must be on file prior to beginning Work on the Project, along with all current insurance certificates.

(i) **Renovation, Repair and Painting Rule, Section 402(c)(3) of the Toxic Substances Control Act**

In 2008, the U.S. Environmental Protection Agency, issued a rule pursuant to the authority of Section 402(c)(3) of the Toxic Substances Control Act, requiring lead safe work practices to reduce exposure to lead hazards created by renovation, repair and painting activities that disturb lead-based paint (Renovation, Repair and Painting Rule). Renovations in homes, childcare facilities, and schools built prior to 1978 must be conducted by certified renovations firms, using renovators with accredited training, and following the work practice requirements to reduce human exposures to lead.

Contractor, its workers and subcontractors must fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials, including those rules and regulations appearing within title 40 of the Code of Federal Regulations as part 745 (40 CFR 745).

The requirements apply to all contractors who disturb lead-based paint in a six-square-foot area or greater indoors or a 20-square-foot area outdoors. If a DPH-certified inspector or risk assessor determines that a home constructed before 1978 is lead-free, the federal certification is not required for anyone working on that particular building.

(ii) **Contractor's Liability**

If the Contractor fails to comply with any applicable laws, rules, or regulations, and that failure results in a site or worker contamination, the Contractor will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify, and hold harmless the District, pursuant to the indemnification provisions of the Contract, for all damages and other claims arising therefrom.

If lead disturbance is anticipated in the Work, only persons with appropriate accreditation, registrations, licenses, and training shall conduct this Work.

It shall be the responsibility of the Contractor to properly dispose of any and all waste products, including, but not limited to, paint chips, any collected residue, or any other visual material that may occur from the prepping of any painted surface. It will be the responsibility of the Contractor to provide the proper disposal of any hazardous waste by a certified hazardous waste hauler. This company shall be registered with the Department of Transportation (DOT) and shall be able to issue a current manifest number upon transporting any hazardous material from any school site within the District.

The Contractor shall provide the District with any sample results prior to beginning Work, during the Work, and after the completion of the Work. The District may request to examine, prior to the commencement of the Work, the lead training records of each employee of the Contractor.

I acknowledge and certify under penalty of perjury, that:

1. I have received notification of potential lead-based materials on the District's property;
2. I am knowledgeable regarding and will comply with all applicable laws, rules, and regulations governing work with, and disposal of, lead.

☒ **Imported Materials.** All soils, aggregate, or related materials ("**Fill**") that Contractor, a Subcontractor, agent or supplier, in any way, provides or delivers and/or supplies to the Project Site shall be free of any and all hazardous material as defined in section 25260 of the Health and Safety Code, shall satisfy the requirements of any environmental review of the Project performed pursuant to the statutes and guidelines of the California Environmental Quality Act, sections 21000 et seq. of the Public Resources Code ("**CEQA**"), and shall comply with the requirements of sections 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. I acknowledge that, to the furthest extent permitted by California law, the indemnification provisions in the Contract Documents apply to, without limitation, any claim(s) connected with providing, delivering, and/or supplying Fill.

☐ **Roofing Contract Financial Interest Certification (Public Contract Code § 3006)**

I, _____ [**Your Name**], _____ [**Firm Name**] certify that 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 a roof project contract or subcontract on the Project. As used in this certification, "person" means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

I, _____ [**Your Name**], _____ [**Firm Name**] certify that I do not have, and throughout the duration of the Contract, I will not have, any financial relationship in connection with the performance of the Contract with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.

I, _____ [**Your Name**], _____ [**Firm Name**] 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:

Name of firm ("**Firm**"): _____
Mailing address: _____
Address of branch office used for this Project: _____
If subsidiary, name and address of parent company: _____

For Projects without substantive roofing components, check the following box and execute this certification:

☒ The Work on the Contract (1) does not include the replacement or repair of a roof or (2) is a repair of twenty five percent (25%) or less of the roof, (3) or is a repair project that has a total cost of twenty-one thousand dollars ($21,000) or less.

☒ Russian Sanctions Certification

On February 21, 2022, President Biden issued Executive Order 14065 (https://www.whitehouse.gov/briefing-room/presidential-actions/2022/02/21/executive-order-on-blocking-property-of-certain-persons-and-prohibiting-certain-transactions-with-respect-to-continued-russian-efforts-to-undermine-the-sovereignty-and-territorial-integrity-of-ukraine/; "**Federal Order**") imposing economic sanctions and prohibiting many activities including, but not limited to, investing in, importing to, exporting from, and contracting with, areas of Ukraine and in Russia. On March 4, 2022, California Governor Newsom issued Executive Order N-6-22 requiring state agencies to take steps to ensure any agency and entity under contract with state agencies comply with the Federal Order (https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf; "**State Order**").

The District requires the Consultant, as a vendor with the District, to comply with the economic sanctions imposed in response to Russia's actions in Ukraine, including the orders and sanctions identified on the U.S. Department of the Treasury website (https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions).

If your Firm's contract with the District has a cumulative value of $5 million or more, your certification here is

constitutes your written response to the District, indicating:

(1) that your Firm is in compliance with the required economic sanctions of the Federal and State Orders;

(2) the steps your Firm has taken in response to Russia's actions in Ukraine, including, but not limited to, desisting from making new investments in, or engaging in financial transactions with, Russian entities, not transferring technology to Russia or Russian entities, and directly providing support to the government and people of Ukraine.

☒ **Iran Sanctions Certification**

I ACKNOWLEDGE AND CERTIFY UNDER PENALTY OF PERJURY THAT I AM DULY AUTHORIZED TO LEGALLY BIND THE CONTRACTOR TO ALL PROVISIONS AND ITEMS INCLUDED IN THESE CERTIFICATIONS, THAT THE CONTENTS OF THESE CERTIFICATIONS ARE TRUE, AND THAT THESE CERTIFICATIONS ARE MADE UNDER THE LAWS OF THE STATE OF CALIFORNIA.

Date: 7/24/24

Proper Name of Contractor: VANDERT CONSTRUCTION INC.

Signature: Kenneth Nguyen

Print Name: Kenneth Nguyen

Title: CEO

I ACKNOWLEDGE AND CERTIFY UNDER PENALTY OF PERJURY THAT I AM DULY AUTHORIZED TO LEGALLY BIND THE CONTRACTOR TO ALL PROVISIONS AND ITEMS INCLUDED IN THESE CERTIFICATIONS, THAT THE CONTENTS OF THESE CERTIFICATIONS ARE TRUE, AND THAT THESE CERTIFICATIONS ARE MADE UNDER THE LAWS OF THE STATE OF CALIFORNIA.

Date: 7/24/24

Proper Name of Contractor: VANDERT CONSTRUCTION INC.

Signature: Kenneth Nguyen

Print Name: Kenneth Nguyen

Title: CEO

CRIMINAL BACKGROUND INVESTIGATION /FINGERPRINTING CERTIFICATION

The undersigned does hereby certify to the governing board of the District that he/she is a representative of the Contractor, is familiar with the facts herein certified, is authorized and qualified to execute this certificate on behalf of Contractor; and that the information in this Criminal Background Investigation / Fingerprinting Certification is true and correct.

1. **Education Code.** Contractor has taken at least one of the following actions (check all that apply):

☐ **All Workers Fingerprinted.** The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees and all of its subcontractors' employees who interact with pupils, outside of the immediate supervision and control of the pupil's parent or guardian or a school employee, has a valid criminal records summary as described in Education Code Section 44237 (Contractor shall "require each applicant for employment in a position requiring contact with minor pupils to submit two sets of fingerprints prepared for submittal by the employer to the Department of Justice for the purpose of obtaining criminal record summary information from the Department of Justice and the Federal Bureau of Investigation."). A complete and accurate list of Contractor's employees and of all of its subcontractors' employees who may interact with District pupils during the course and scope of the Contract is attached hereto; and/or

☐ **Physical Barrier.** Pursuant to Education Code section 45125.2, Contractor has installed or will install, prior to commencement of work, a physical barrier at the Project site, that will limit contact between Contractor's employees and District pupils at all times; and/or

☒ **Continual Supervision by Fingerprinted Employee.** Pursuant to Education Code section 45125.2, Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Contractor's employees and its subcontractors' employees is:
Name: William Han **Title:** Project Manager

☒ **Unoccupied Site**. The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

2. **Megan's Law (Sex Offenders).** I have verified and will continue to verify that the employees of Contractor that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (http://www.meganslaw.ca.gov/).

Contractor's responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

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

Date: 7/24/24

Proper Name of Contractor: VANDERT CONSTRUCTION INC.

Signature: Kenneth Nguyen

Print Name: Kenneth Nguyen

Title: CEO

EXHIBIT A
SCOPE OF WORK

The scope of work for the Project is as set forth below:

SMYTHE/CDC 2024 RAMPS REPAIR PROJECT – REPAIR OR REPLACE FOUR (4) RAMPS

Demo:
- Cut approx 36 sq ft of hard board at Ramp 1
- Cut approx 12 sq ft of hard board at Ramp 2
- Cut approx 28 sq ft of hard board at Ramp 3
- Remove entire ramp 4

Construction:
- Replace approx 36 sq ft of hard board at Ramp 1
- Replace approx 12 sq ft of hard board at Ramp 2
- Replace approx 28 sq ft of hard board at Ramp 3
- Install Ramp 4 (Ramp w/ rail provided by the District)
- Cover (4) ramps with epoxy (Color/Material to be provided by the District)
- Ramp 1 and 2 structure to be reinforced underneath the hard board
- Ramp 3 exterior plywood to be replaced

If scope of work requires subcontractors please complete the following:

DESIGNATION OF SUBCONTRACTORS

Service provider shall set forth below the name and the location of the place of business of each sub-consultant or subcontractor, the DIR registration number and California license number of each sub-consultant or subcontractor who will perform work or labor or render services as part of agreement.

Portion of Work	Name of Sub-consultants and Subcontractor & Phone No.	Location of Sub-consultants and Subcontractor	CA Contractor License Number and License Class	**DIR#&** Classification	Email Address
N/A					

If scope of work requires Off Road Diesel Equipment/Vehicles the following applies:
California Air Resources Board (CARB). Consultant and its sub-consultants and subcontractors acknowledge and will adhere to Off-Road Diesel Certification requirements. In the event off-road diesel vehicles and or equipment is utilized while performing contracted services, consultant will provide CARB Certificates of Reported Compliance ("CRC") to the district.

Vandert Construction

Proposal

Vandert Construction Inc 12261 Barringer St, South El Monte, CA 91733 Kenneth Nguyen (626) 202-9253

B LIC# 1109409 DIR# 1001123844

CUSTOMER
San Ysidro School District

ESTIMATE NO
C#4515

DATE
7/24/24

ADDRESS
4350 Otay Mesa Rd

CITY/STATE/ZIP
San Ysidro, CA 92173

PROJECT
Repairs, Maintenance, or Construction Service

PREPARED BY:
William Han

ATTENTION

Description of Work	AMOUNT
Project Manager Hourly Wage	$155.00
Project Manager Overtime Wage	$215.00
Project Manager Holiday Wage	$215.00
Superintendent Hourly Wage	$120.00
Superintendent Overtime Wage	$180.00
Superintendent Holiday Wage	$180.00
Foreman Hourly Wage	$100.00
Foreman Overtime Wage	$160.00
Foreman Holiday Wage Journeyman	$160.00
Laborer Hourly Wage Journeyman	$138.00
Laborer Overtime Wage Journeyman	$198.00
Laborer Holiday Wage Apprentice	$198.00
Laborer Hourly Wage Apprentice	$108.00
Laborer Overtime Wage Apprentice	$168.00
Laborer Holiday Wage	$168.00
Mark Up on Materials	5%
Mark Up on Equipment Rental	5%

THIS ESTIMATE DOES NOT INCLUDE THE CONDITIONS NOTED:	SUBTOTAL	
	BOND	
THIS ESTIMATE INCLUDES THE CONDITIONS NOTED:	TOTAL	

Sign Below to Accept Quote:

Authorized Rep Date

END OF EXHIBIT A

EXHIBIT B
INFECTIOUS DISEASE PROVISIONS

1. **Compliance with Orders.** Contractor and its Subcontractors, agents and employees thereof, are responsible for complying with all applicable and existing federal, State, and/or local statutes, orders, rules, regulations, ordinances, and/or directives in any way relating to construction site safety, the Work, the Project, and Site, in connection with any infectious and communicable disease in any form, whether bacterial or viral, including, without limitation, TB, MSRA, influenza, COVID-19, and/or any similar virus or derivative strain ("**Infectious Disease**"). Contractor shall ensure it has supervisor employees onsite that are trained and knowledgeable of all these requirements to ensure full compliance on Site and the Work. Contractor's obligations hereunder shall include, without limitation providing personal protective equipment ("**PPE**") to its employees and to ensure that its subcontractors provide PPE equipment to its employees to prevent the spread of an Infectious Disease at the Project Site(s).

2. **Infectious Disease and Contract Time.** Contractor agrees that the Contract Time is based on Contractor's full compliance with all applicable and existing federal, State, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety, the Work, the Project, and the Site in connection with an Infectious Disease. Any dispute concerning the Contract Time in connection with any delay associated with an Infectious Disease shall be resolved pursuant to the Claims procedures in these General Conditions.

3. **Infectious Disease & Extra Work.**

   3.1. Contractor agrees that its Bid/Proposal, the Contract Price and the Contract Time are based on Contractor's full compliance with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety, the Work, the Project, and the Site in relation with an Infectious Disease at the time the parties entered into the Contract. Therefore, any additional costs to Contractor associated with an Infectious Disease, or any federal, state, or local order relating thereto, shall not be considered compensable unless:

      3.1.1. It occurred after the date of the award of the Project to Contractor;

      3.1.2. It materially increases the Contract Price or the Contract Time by imposing different, additional or more stringent requirements; and

      3.1.3. Contractor notifies District within ten (10) Days of notice of any new public health order(s), including the anticipated increase to the Contract Price or Contract Time due to the new public health order(s), and Contractor substantiates those costs with detailed supporting documentation as required these General Conditions, including, without limitation, comply with the proposed change orders and, to the extent applicable, Claims provisions.

   3.2. If, during the Work, the applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety, the Work, the Project, and/or the Site in connection with an Infectious Disease, are changed or rescinded (e.g., by the reduction of potential exposure or risk due to vaccinations), the parties agree to reduce the Contractor price and the Contract Time due to the removal of the required efforts. If the parties cannot mutually agree on the appropriate reduction, District may issue a unilateral change order for an amount of time and money it determines to be both reasonable and appropriate. And dispute concerning the application of this procedure shall be resolved pursuant to the Claims procedures in these General Conditions.

4. **Infectious Disease Release.** Contractor acknowledges that it is voluntarily and freely entering into the Contract for this Project and deciding to perform the Work which will require Contractor to enter upon and into the Site and that Contractor use of the Site includes the possible exposure to and illness from an Infectious Disease. Contractor further acknowledges the dangers involved and with full knowledge of these dangers, voluntarily agrees to assume all risks of bodily injury, death, or property damage, whether those risks are known or unknown. Contractor hereby releases District, its agents, representatives, officers, consultants, employees, trustees, and volunteers from any and all liabilities, causes of action, lawsuits, claims, demands, or damages of any kind whatsoever that Contractor, its staff, participants, relatives, children, spouse, partner, household members, family members, employees, guests, invitees, volunteers, agents, consultants, Subcontractors, and any other person tracing exposure or illness to Contractor, now have, or may have in the future, for injury, trauma, illness, loss, unwanted contact, harassment, disability, death or property damages related to being exposed to or contracting an Infectious Disease while using the Site for the performance of the Work. Contractor shall include this paragraph in all subcontracts with Subcontractors.

5. Contractor shall ensure it has supervisor employees onsite that are trained and knowledgeable of all of these requirements to ensure full compliance on Project Site(s).

6. Any cost to comply with these "Infectious Disease Compliance Provisions" shall be at Contractor's sole expense and expense, but may be included in the Contract Price.

7. Vaccination Status.

7.1. Contractor's Applicable Workers will not be allowed to enter the District's school site if they have a fever, cough or other COVID-19 or infectious disease symptom(s). Contractor agrees to implement, comply with, and fulfill the terms and requirements of the Health & Safety Policies. Contractor also acknowledges and hereby certifies that Contractor will require any Applicable Worker comply with the requirements of the Health & Safety Policies on the District's school site, including, but not limited to the requirements set forth here:

7.2. **COVID-19 Vaccination Status:** Contractor is required to ensure that all of its employees who will be working in **any** capacity on District school sites have been either:

7.2.1. Fully vaccinated for COVID-19 or
7.2.2. Tested within 72 hours prior to any initial work on a District site and then tested on a weekly basis.
7.2.2.1. **COVID-19 Testing:** Testing shall be compliant with the CDPH K-12 Order dated August 11, 2021, which must be either:
7.2.2.1.1. Polymerase Chain Reaction (PCR)
7.2.2.1.2. Antigen test
7.2.2.2. Laboratory confirmed results and which has FDA Emergency Use Authorization (EUA) must be provided.

7.3. Any Contractor employee who does not fulfill these requirements will be declared ineligible to provide service on any District school site until they submit the proper documentation.

7.4. Contractor's responsibility for COVID-19 compliance and record keeping extends to all of its employees, subcontractors, and employees of subcontractors who work in any capacity on a school campus, including but not limited to those who come into contact with District students and employees, regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

END OF EXHIBIT B

EXHIBIT C
FEDERAL CONTRACTING PROVISIONS

☒ **RESERVED – NOT APPLICABLE**

END OF EXHIBIT C

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Maintenance, Operations,
Transportation & Facilities

☐ Informational
☒ Action

AGENDA ITEM: CUPCCAA AGREEMENT WITH KONE

BACKGROUND INFORMATION:
Due to a water leak that flooded the elevator room at Willow School, some equipment must be repaired or replaced, and the water intrusion must be mitigated.

Kone will provide the following:

- Furnish and install the labor, materials, tools, and supervision to perform the following work on the #2 Passenger Elevator at Willow Elementary.
- Kone crew will perform a fluid flush, removing the contaminated water/oil and replacing the damaged motor on the #2 Passenger Elevator.

RECOMMENDATION:
Approve/Ratify the agreement for Kone to provide elevator repair services at Willow School for $16,826.71 from the Routine Restricted Maintenance Account.

LCAP GOAL AND ACTION/SERVICE (please indicate):
2.1 Maintain basic operating services of the district including MOT personnel, transportation, contracted services, and utilities.

☐ **Renewal** ☒ **New** ☐ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	00000111140

$16,826.71	Routine Restricted Maintenance Account
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

CONTRACT FOR REPAIRS, MAINTENANCE OR CONSTRUCTION SERVICES UNDER $60,000 AWARDED PURSUANT TO CUPCCAA

THIS CONTRACT is made and entered into as of the last date of signature hereto ("**Contract**"), by and between **KONE Inc.** ("**Contractor**") and **SAN YSIDRO SCHOOL DISTRICT** ("District"). Contractor and District may be referred to herein individually as a "**Party**" or collectively as the "**Parties**."

1. **Contract Price & Services.**

   a. After the District has issued a Notice to Proceed, the Contractor shall furnish to the District the repairs, maintenance or construction services identified below and as more fully described in Exhibit A attached hereto ("**Services**" or "**Work**") subject to the conditions below and for the price indicated below ("**Contract Price**"):

Willow Elementary Water Damaged Motor & Fluid Flush

Willow Elementary
226 Willow Road
San Ysidro, CA 92173

SCOPE OF WORK:
Furnish and install the labor, materials, tools and supervisions to perform the following work on the #2 PASSENGER ELEVATOR located at WILLOW ELEMENTARY.

KONE Crew to perform a fluid flush removing the contimated water/oil and replace water damaged motor on #2 PASSENGER ELEVATOR located at WILLOW ELEMENTARY 226 Willow Rd San Ysidro, CA 92173-3008.

BASE CONTRACT (In Dollars$):

$	1	6	,	8	2	6	.	7	1
	Dollars							Cents	

   b. **Allowances**: If this Contract includes allowances, an allowance is a value added to the Base Contract amount for scope items defined by the District. Allowance items shall only be used by Contractor with the District's prior written permission. Contractor shall use the change order provisions of this Contract to apply for the use of an Allowance item. All unused allowance values at the end of the Project shall be retained by the District.

2. **Payment.** Payment for the Work shall be made in accordance with the Terms and Conditions to Contract ("**Terms and Conditions**") attached hereto.

Site. Contractor shall perform the Work at **Willow Elementary as reflected under Section 1.a.** The "**Project**" is the scope of Work performed at the Site.

3. **Contract Time & Liquidated Damages.** Work shall be completed **by August 30, 2024 or soon thereafter on a non-school day.** ("**Contract Time**"). Contractor agrees that if the Work is not completed within the Contract Time and/or pursuant to the completion schedule, construction schedule, or project milestones developed pursuant to provisions of the Contract, it is understood, acknowledged, and agreed that the District will suffer damage which is not capable of being

calculated. Pursuant to Government Code section 53069.85, Contractor shall pay to the District, as fixed and liquidated damages for these incalculable damages, the sum of **$100.00** per day for each and every calendar day of delay beyond the Contract Time or beyond any completion schedule, construction schedule, or Project milestones established pursuant to the Contract.

4. **Bonds & Insurance.**

   a. **Payment Bond & Performance Bond:**

   ☒ **IS NOT REQUIRED – PROJECT SIZE IS DETERMINED TO BE BELOW $25K**

   ☐ **IS REQUIRED:** Contractor shall not commence the Work until it has provided to the District, a Payment (Labor and Material) Bond and a Performance Bond, in the forms attached hereto, each in an amount equivalent to one hundred percent (100%) of the Contract Price issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the District. The District reserves to waive this requirement in writing at its sole discretion and negotiate a deduction of the cost from the base proposal in the event the Contract Price is below $25,000.

   b. **Insurance:** Contractor shall have and maintain in force during the term of this Contract, with the minimum indicated limits, the following insurance:

Commercial General Liability, with Products and Completed Operations Coverage	$1,000,000 each occurrence $2,000,000 aggregate
Automobile Liability, Any Auto, Combined Single Limit	$1,000,000 each occurrence $2,000,000 aggregate
Workers Compensation	Statutory limits pursuant to State law
Employers' Liability	$1,000,000 each incident, disease $2,000,000 policy limit

DISTRICT MAY ADJUST THESE LIMITS, IN WRITING, AT THE DISTRICT'S SOLE DISCRETION BASED ON SIZE AND SCOPE OF THE CONTRACT.

Contractor shall provide to the District certificate(s) of insurance and endorsements satisfactory to the District. The policy(ies) shall not be amended or modified, and the coverage amounts shall not be reduced without thirty (30) days written notice to the District prior to cancellation. Except for worker's compensation insurance, the District, the Architect, and the Project Manager shall be named as an additional insured on all policies. Contractor's policy(ies) shall be primary; any insurance carried by the District shall only be secondary and supplemental. Contractor shall not allow any subcontractor, employee, or agent to commence Work on this Contract or any subcontract until the insurance required of Contractor, subcontractor, or agent has been obtained, and the certificate(s) of insurance and endorsements have been provided to the District; provided, however, that the District reserves the right to reject an insurance policy(ies) if they do not conform with the above insurance requirements.

Project Oversight. The District representative for the Project is Dr. Jose Iniguez, Assistant Superintendent of Admin. Leadership, School Support & Safety. Cell# (310) 430-4681.

5. **INFECTIOUS DISEASE/COVID-19.** Contractor shall comply with all provisions related to infectious diseases as set forth in **Exhibit B**.
6. ☐ **This box will be checked if Federal Funding requirements apply.** If the Project is funded in whole or part by federal funding, including, without limitation, any funds from any component or iteration of the Elementary and Secondary School Emergency Relief ("**ESSER**") programs, Contractor acknowledges that this Project is subject to federal procurement/contracting requirements. Contractor agrees to fully comply with all federal requirements, including, without limitation, the federally required contract provisions attached hereto as **Exhibit C**.

7. **Terms & Conditions.** The Contractor agrees to comply with the Terms and Conditions attached hereto.

8. **Contract Documents.** The Contract Documents include only the following documents, as indicated:

☐ Proposal Form	☐ Performance Bond
☐ Notice to Proceed	☐ Payment Bond
☒ Terms and Conditions to Contract	☒ **Exhibit A** (Scope of Work)
☐ Non collusion Declaration	☐ Plans
☒ Certifications to be Completed by Contractor	☐ Work Specifications
☒ Criminal Background Investigation Certification	☐ _____ [Other]
☒ Insurance Certificates and Endorsements	☐ **Exhibit B** (Infectious Disease Provisions)
	☐ **Exhibit C** (Federal Procurement Provisions)

9. **Notice**. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or sent by overnight delivery service addressed as follows:

District:
San Ysidro School District
4350 Otay Mesa Rd.,
San Ysidro, CA 92173
Attn: Dr. Jose Iniguez, Assistant Superintendent of Admin. Leadership, School Support & Safety

Contractor:
KONE Inc
9850 Business Park Ave
San Diego, CA 92131
Attn: Richard Sanchez
(619) 244-8960
Richard.Sanchez@kone.com

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service.

ACCEPTED AND AGREED on the date indicated below. By signing this Contract, Contractor certifies, under penalty of perjury, that all the information provided in the Contract Documents is true, complete, and correct:

Dated: _____

SAN YSIDRO SCHOOL DISTRICT

Signature: _____

Print Name: Marilyn Adrianzen

Print Title: Chief Business Official

Dated: _____

KONE Inc.

Signature: _____

Print Name: _____

Print Title: _____

DIR Registration # 1000003806

License# C0350467

Board approved/ratified: _____

Information regarding Contractor:

Type of Business Entity:	**Employer Identification Number or Social Security Number:**
____ Individual ____ Sole Proprietorship ____ Partnership ____ Limited Partnership ____ Corporation ____ Limited Liability Company ____ Other: _____	_____ *NOTE: United States Code, title 26, sections 6041 and 6109 require non-corporate recipients of $600 or more to furnish their taxpayer identification number to the payer. The United States Code also provides that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these rules, the District requires your federal tax identification number or Social Security number, whichever is applicable.*

Contractor representative for onsite work:

Name:	**Title:**	**Mobile:**

Email:

TERMS AND CONDITIONS TO CONTRACT

1. NOTICE TO PROCEED: Receipt of this contract signed by the District shall be the Notice to Proceed.

2. SITE EXAMINATION: Contractor has examined the Site and certifies that it accepts all measurements, specifications and conditions affecting the Work to be performed at the Site. By submitting its bid/proposal and signing this Contract, Contractor warrants that it has made all Site examination(s) that it deems necessary as to the condition of the Site, its accessibility for materials, workers and utilities, and Contractor's ability to protect existing surface and subsurface improvements. No claim for allowance of time or money will be allowed as to any other undiscovered condition on the Site.

3. CONSTRUCTION SCHEDULE / SUBCONTRACTOR LIST: Contractor shall provide the District a Construction Schedule for the Work and a Subcontractor List as indicated in this Contract. Both the Construction Schedule and Subcontractor List are subject to the District's approval.

4. EQUIPMENT AND LABOR: The Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the Services, the Services to be performed at such times and places as directed by and subject to the approval of the authorized District representative indicated in the Work specifications attached hereto.

5. SUBCONTRACTORS: Contractor shall comply with the Subletting and Subcontracting Fair Practices Act (Public Contract Code, section 4100 et. seq.) Contractor shall identify by name and location of the place of business of each subcontractor who will perform work or labor or render service in or about the construction of the Project in an amount in excess of one-half of 1 percent of the Contractor's contract price or ten thousand dollars ($10,000) whichever is greater. Subcontractors, if any, engaged by the Contractor for any Service or Work under this Contract shall be subject to the approval of the District. Contractor agrees to bind every subcontractor by the terms of the Contract as far as such terms are applicable to subcontractor's work, including, without limitation, all indemnification, insurance, bond, and warranty requirements. If Contractor subcontracts any part of this Contract, Contractor shall be fully responsible to the District for acts and omissions of its subcontractor and of persons either directly or indirectly employed by itself. Nothing contained in the Contract Documents shall create any contractual relations between any subcontractor and the District.

6. TERMINATION: If Contractor fails to perform the Services and Contractor's duties to the satisfaction of the District, or if Contractor fails to fulfill in a timely and professional manner Contractor's obligations under this Contract, or if Contractor violates or otherwise breaches any of the Terms or Provisions of this Contract, the District shall have the right to terminate this Contract effective immediately upon the District giving written notice thereof to the Contractor. District shall also have the right in its sole discretion to terminate the Contract for its own convenience. Termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of termination. Upon termination, Contractor shall provide the District with all documents produced maintained or collected by Contractor pursuant to this Contract, whether or not such documents are final or draft documents.

7. SAFETY AND SECURITY: Contractor is responsible for maintaining safety in the performance of this Contract. Contractor shall be responsible for complying with the District's rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.

8. CHANGE IN SCOPE OF WORK:

8.1. No Change Without Authorization: Any change in the scope of the Work, method of performance, nature of materials or price thereof, the time for performance, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted by the District unless that change, addition, or deletion is approved in advance and in writing by a valid change order executed by the District.

8.2. District Right to Request Changes: Contractor specifically understands, acknowledges, and agrees that the District shall have the right to request any alterations, deviations, reductions, or additions to the Project or Work, and the cost thereof shall be added to or deducted from the amount of the Contract Price by fair and reasonable valuations. The District may accomplish any of the foregoing, in its discretion, by issuing a unilateral change order.

8.3. Proposed Change Order:

8.3.1. **Submission / Time to Submit**: Contractor may seek an adjustment to the Contract Time or Contract Price only by submitting a proposed change order to the District within five (5) days of the date Contractor discovers, or reasonably should discover, the circumstances giving rise to the proposed change order, unless additional time to submit a proposed change order is granted in writing by the District.

8.3.2. **Content of Proposed Change Order**: Contractor and subcontractors shall include the following in any proposed change order:

8.3.2.1. Labor: Labor breakdown by trade classification, wage rates, and estimated hours. Wages shall not exceed current prevailing wages in the locality for performance of the changes. The Contractor's or subcontractors' (including second-tier subcontractors') labor burden and Workers' Compensation premium shall only be charged at 20% of the total charge for labor costs. In no event shall Contractor include any other charges than as indicated herein without the District's prior written approval.

8.3.2.2. Material: Material quantities, and types of products, and transportation costs, if applicable.

8.3.2.3. Equipment: Equipment breakdown by make, type, size, rental rates (if not owned), equipment hours and transportation costs, if applicable. The equipment costs shall not exceed one hundred percent (100%) of the Association of Equipment Distributors (AED) rental rates and delay factors or Caltrans rates and delay factors, whichever is less. Hourly, daily, or weekly rates shall be used, whichever is lower. Hourly rates including operator shall not be used. The time to be paid for equipment shall be the actual time that the equipment is in (1) productive operation on the Work or (2) idled because of the event or circumstance giving rise to the proposed change order.

8.3.2.4. Mark-Up for Overhead and Profit: Mark-up for overhead and profit in a proposed change order shall be calculated as follows:

8.3.2.4.1. **Subcontractor-Performed Work**: Subcontractors shall be entitled to a total cumulative mark-up for overhead and profit of 8% on the total of Labor (including labor burden and Workers' Compensation premium), Material, and Equipment **only** for for both the subcontractor and the subcontractor's subcontractor(s) (e.g., all "lower-tier" subcontractors) performed Work. Contractor shall be entitled to a 6% mark-up on the same items, **excluding subcontractor's mark-up for overhead and profit**.

8.3.2.4.2. **Contractor-Performed Work**: Contractor shall be entitled to a mark-up for overhead and profit of 6% of the total of the Labor (including labor burden and Workers' Compensation premium), Material, and Equipment for Contractor performed Work.

8.3.3. **Contract Time**: Any request for an adjustment to the Contract Time must be supported by a time impact analysis identifying critical schedule activities delayed by an event beyond the Contractor's reasonable control.

8.4. Determination of Change Order Cost: The District shall use any reasonable means to calculate the cost of a change order in its sole discretion, including, without limitation: the acceptance of a proposed change order; agreement between the District and Contractor; and, the actual and necessary costs incurred by Contractor based on cost records produced to the District and based on the District's reasonable evaluation of the Work and market research.

8.5. Contractor Obligation to Substantiate: Contractor agrees to provide the District with all information requested to substantiate the cost of any change order and to inform the District whether the Work will be done by the Contractor or a subcontractor. If Contractor fails to reasonably substantiate any requested change in the scope of work, or Contractor fails to timely cooperate with the District to provide substantiation for the costs of any change order, Contractor waives any claim for additional compensation. In addition to any other information requested, Contractor shall submit, prior to approval of any change order, its request for a time extension (if any), as well as all information necessary to substantiate Contractor's belief that such change will delay the completion of the Work.

8.6. Waiver: If Contractor fails to submit its request for a time extension or the necessary supporting information, it shall be deemed to have waived its right to request such extension. Contractor waives any claim for additional compensation for any change in the scope of work if Contractor performs the work without written approval of the District.

9. TRENCH SHORING: If this Contract is in excess of $25,000 and is for the excavation of any trench deeper than five (5) feet, Contractor must submit and obtain District's approval and acceptance, in advance of excavation, of 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 such trench or trenches. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

10. EXCAVATIONS OVER FOUR FEET: If this Contract includes excavations over four (4) feet, Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any: (1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, 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; or (3) Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. The District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work shall issue a change order under the procedures described in the Contract. In the event that a dispute arises between the District and the Contractor regarding whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work. 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.

11. LEAD-BASED PAINT: Pursuant to the Lead-Safe Schools Protection Act (Education Code Section 32240 et seq.) and other applicable law, no lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall be utilized on this Project, and only trained and state-certified contractors, inspectors and workers shall undertake any action to abate existing risk factors for lead. Contractor must execute the Lead-Based Paint Certification, if applicable.

12. WORKERS: Contractor shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of the Contractor or a subcontractor whom the District may deem incompetent or unfit shall be dismissed from the Site and shall not again be employed at the Site without written consent from the District.

13. DRUG-FREE / TOBACCO FREE / SMOKE FREE POLICY: No drugs, alcohol, tobacco, and/or smoking are allowed at any time in any buildings and/or grounds on District property. No students, staff, visitors, consultants or contractors are to use drugs on these sites.

14. FINGERPRINTING: Contractor shall comply with and provide to the District a fully executed Criminal Background Investigation /Fingerprinting Certification, attached hereto, prior to mobilizing at the Site.

15. CORRECTION OF ERRORS: Contractor shall perform, at its own cost and expense and without reimbursement from the District, any work necessary to correct errors or omissions that are caused by the Contractor's failure to comply with the standard of care required herein. If Contractor fails to correct any those errors, the District reserves the right to deduct the value of the work from any payment(s) owed to Contractor, or to perform the work itself and deduct from any payment(s) owed to contractor the cost to perform the work.

16. FAILURE TO PERFORM. If the District at any time believes that the Contractor is behind schedule, is failing to construct the

Project pursuant to the Contract Documents, or is otherwise failing to perform any provisions of this Contract, the District, after FORTY-EIGHT (48) hours written notice to the Contractor, may take any action necessary or beneficial to the District to complete the Project, takeover the Work of the Contract, terminate or suspend the Contract as indicated herein, or any combination or portion of those actions. The Contractor shall be liable to the District for any cost incurred by the District in those actions and the District has the right to deduct the cost thereof from any payment then or thereafter due the Contractor.

17. SUBSTITUTIONS: No substitutions of material from those specified in the Work Specifications shall be made without the prior written approval of the District.

18. CONTRACTOR SUPERVISION: Contractor shall provide competent supervision of personnel employed on the job Site to monitor the use of equipment and the quality of workmanship.

19. PERSONNEL: Contractor, Contractor's employees, Subcontractors, Subcontractors' employees, or any person associated with the Work shall conduct themselves in a manner appropriate for a school site. The District will not permit any (1) verbal or physical contact with neighbors, students, and faculty; (2) profanity, or inappropriate attire or behavior; (3) photographing, videoing, or audio recording of any neighbors, students, and faculty or any posting of any photographs, videos, or audio recordings of any neighbors, students, and faculty on any internet site, social media platform of any kind, regardless of source of any photograph, video, or audio recording. District may require Contractor to permanently remove noncomplying persons from Project Site

20. CLEAN UP: Debris shall be removed from the Premises. The Site shall be in order at all times when work is not actually being performed and shall be maintained in a reasonably clean condition. Onsite trash bins shall not be used.

21. ACCESS TO WORK: District representatives shall at all times have access to the Work wherever it is in preparation or in progress. Contractor shall provide safe and proper facilities for such access.

22. PROTECTION OF WORK AND PROPERTY: Contractor shall erect and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of life or of Work or of adjoining property, Contractor, without special instruction or authorization from District, is permitted to act at his discretion to prevent such threatened loss or injury.

23. ASSIGNMENT OF CONTRACT: Contractor shall not assign or transfer in any way any or all of its rights, burdens, duties, or obligations under this Contract without the prior written consent of the District.

24. TIME IS OF THE ESSENCE: Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Contract.

25. OCCUPANCY: There is no "Substantial Completion" or "Beneficial Occupancy" for this Project, although the District reserves the right to occupy buildings at any time before formal Contract completion and that occupancy shall not constitute final acceptance or approval of any part of the Work covered by this Contract, nor shall that occupancy extend the date specified for completion of the Work.

26. FORCE MAJEURE CLAUSE: Contractor shall be excused from performance hereunder during the time and to the extent that it is prevented from obtaining delivery, or performing by act of God, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, pandemic, product, plant, or facilities by the government, when satisfactory evidence thereof is presented to the District, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of Contractor. Any delay associated with Covid-19, or any derivative or similar strain thereof, or any federal, state, or local order relating thereto, shall not be considered a Force Majeure Event unless it renders Contractor's performance of the Work impossible, and that event was not reasonably foreseeable at the time of the execution of the Contract.

27. INDEMNIFICATION / HOLD HARMLESS CLAUSE: To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, Contractors, employees, trustees, and volunteers ("**the indemnified parties**") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, including without limitation the payment of all consequential damages, arising out of, pertaining to or relating to, in whole or in part, the negligence, recklessness, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, Contractors, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services or from any activity, work, or thing done, permitted, or suffered by the Contractor in conjunction with this Contract, unless the claims are caused wholly by the sole negligence or willful misconduct of the indemnified parties. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the indemnified parties.

28. PAYMENT: On a monthly basis, Contractor shall submit an application for payment based upon the estimated value for materials delivered or Services performed under the Contract as of the date of submission ("**Application for Payment**"). Within thirty (30) days after District's approval of the Application for Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as verified by Architect and Inspector and certified by Contractor) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. The District may deduct from any payment an amount necessary to protect the District from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the District in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the total Contract Price or by the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of the Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by District during the prosecution of the Work; (9)

erroneous or false estimates by the Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages, as determined by the District, incurred by the District for which Contractor is liable under the Contract; and (11) any other sums which the District is entitled to recover or withhold from Contractor under the terms of the Contract or pursuant to state law, including section 1727 of the California Labor Code. The failure by the District to deduct any of these sums from a progress payment shall not constitute a waiver of the District's right to recover those sums. The District shall retain five percent (5%) from all amounts owing as retention. Retention shall be paid pursuant to Public Contract Code sections 7107 and 7200.

29. PERMITS AND LICENSES: Contractor and all of its employees, agents, and subcontractors shall secure and maintain in force, at Contractor's sole cost and expense, all licenses and permits as are required by law, in connection with the furnishing of materials, supplies, or Services herein listed.

30. INDEPENDENT CONTRACTOR STATUS: While engaged in carrying out the Services of this Contract, the Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the District. Contractor shall be solely responsible for its own Worker's Compensation insurance, taxes, and other similar charges or obligations. Contractor shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its agents or employees.

31. ANTI-DISCRIMINATION: It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, or religious creed, and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment Practice Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).

32. DISABLED VETERAN BUSINESS ENTERPRISES: Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building (SFP Funds) to have a participation of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). If this Contract uses School Facilities Program Funds, Contractor must submit, with its executed Contract, appropriate documentation to the District identifying the steps Contractor has taken to solicit DVBE participation in conjunction with this Contract.

33. WARRANTY/QUALITY: Unless a longer warranty is called for elsewhere in the Contract, Contractor, manufacturer, or their assigned agents shall guarantee the workmanship, product or Services performed against defective workmanship, defects or failures of materials for a minimum period of one (1) year from District's written acceptance of the Work. All workmanship and merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards.

34. CONFIDENTIALITY: Contractor shall maintain the confidentiality of all information, documents, programs, procedures, and all other items that Contractor encounters while performing the Contractor's Services to the extent allowed by law. This requirement shall be ongoing and shall survive the expiration or termination of this Contract and specifically includes all student, parent, and disciplinary information.

35. COMPLIANCE WITH LAWS: Contractor shall give all notices and comply with all laws, ordinance, rules and regulations bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.

36. DISPUTES/CLAIMS: Public Contract Code § 9204. Claims between the District and the Contractor shall be resolved in accordance with the procedures established in Public Contract Code § 9204.

36.1. Claim. The term "**Claim**" means a written demand by the Contractor sent by registered mail or certified mail with return receipt requested for:

36.1.1. An extension of the Contract Time, including relief from damages or penalties assessed by the District for delay;

36.1.2. Payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment that is not otherwise expressly provided for in the Contract Documents or to which the Contractor is not otherwise entitled; or

36.1.3. Payment of an amount that is disputed by the District.

36.2. Submission of Claim. A Claim arises upon the District's rejection of a request by the Contractor for a change order. The Contractor shall submit the Claim by registered mail or certified mail with return receipt requested to the District's Director of construction and Modernization, with a copy to the Project Manager/Construction Manager. The Contractor shall submit its Claim in writing, together with all Supporting Documentation no later than the earlier of either: (1) thirty (30) days after the date the Claim arises; or (2) sixty (60) days after the date of completion. It is the intent of the District to evaluate and resolve Claims with the Contractor as close to the events giving rise to such Claims as possible and to avoid stale or late Claims, including late notice and documenting of Claims, and to timely mitigate the issue, event, condition, circumstance and/or cause of the Claim and any adverse impacts or damages related thereto.

36.3. Contents of Claim. A Claim must include all Supporting Documentation and a statement identifying it as a Claim signed by an authorized agent or officer of the Contractor under penalty of perjury and including the following language immediately above or before the Contractor's signature: "I declare under penalty of perjury under the laws of the State of California that the information provided and statements made in this Claim are true and correct, substantiated and of merit." The Contractor recognizes and acknowledges that this requirement is not a mere

formality but is intended to ensure that the Contractor only submits Claims that it believes are true and correct, substantiated and have merit.

36.4. Subcontractor Claims. Pursuant to Public Contract Code § 9204(d)(5), a Subcontractor may request in writing, either on its own behalf or on behalf of a lower tier Subcontractor, that the Contractor submit to the District 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 submitted to the District shall furnish reasonable documentation to support the claim. Regardless of whether or not the Contractor decides to submit the Subcontractor's claim to the District, Contractor shall provide a copy of the Subcontractor's written request, including all supporting documentation, to the Project Manager/Construction Manager within ten (10) days of Contractor's receipt of the request. In the event the Contractor agrees to submit a Subcontractor's claim to the District, the Contractor shall submit such claim as a request for a change order, unless such claim was previously submitted to the District as a request for a change order. Within forty-five (45) days of receipt of the Subcontractor's written request, the Contractor shall notify the Subcontractor in writing as to whether the Contractor submitted the claim to the District and, if the Contractor did not submit the claim, the Contractor shall provide the Subcontractor with a written statement of the reasons for not having done so and shall concurrently provide a copy of such written statement to the Project Manager/Construction Manager. In the event the Contractor includes supporting documentation with such written statement, the Contractor shall concurrently provide a copy of such supporting documentation to the Project Manager/Construction Manager. If the Contractor submits a Claim on behalf of a Subcontractor, the Claim shall include a statement in writing and signed by an authorized agent or officer of the Contractor under penalty of perjury that includes the following language immediately above or before the Contractor's signature: "I declare under penalty of perjury under the laws of the State of California that [insert name of Contractor] has thoroughly evaluated the claim of [insert name of Subcontractor] and determined that the information provided and statements made in the claim are true and correct, substantiated and of merit."

36.5. District Review of Claim. Upon receipt of a Claim, the District shall review the Claim and, within a period not to exceed forty-five (45) days, shall provide 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 the Contractor may, by mutual written agreement, extend the forty-five (45) day time period. The District shall process and make payment of any undisputed portion of a Claim within sixty (60) days after the District issues its written statement. Failure by the District to provide a written statement in response to a Claim from the Contractor within the forty-five (45) day time period, or within an agreed upon extended time period, shall result in the Claim being deemed rejected in its entirety. A Claim that is rejected by reason of the District's failure to respond, or failure to timely respond, to the Claim shall not constitute an adverse finding regarding the merits of the Claim or the claimant's responsibility or qualifications.

36.6. Meet and Confer Meeting. If the Contractor disputes the District's written response, or if the District fails to respond within the time frame prescribed above, the Contractor, within fifteen (15) days of the District's written response or, if the District fails to respond, within fifteen (15) days after the District's response was due, may demand, in a writing sent to the District's Superintendent by registered mail or certified mail, return receipt requested, with a copy to the District's Director of Construction and Modernization, and Project Manager/Construction Manager, an informal conference to meet and confer for settlement of the issues in dispute. The District shall schedule a meet and confer conference within thirty (30) days of its receipt of the Contractor's written demand.

36.7. Mediation. Within ten (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 sixty (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. The expenses and fees of the mediator and the administrative fees shall be divided among the parties equally. Each party shall pay its own legal fees, witness fees, and other expenses. The District and the Contractor shall mutually agree to a mediator within ten (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. The foregoing notwithstanding, pursuant to Public Contract Code § 9204(f), the parties may mutually agree in writing to waive mediation.

36.8. Pending resolution of the dispute, Contractor agrees it will neither rescind the Contract nor stop the progress of the Work but will allow determination by the court of the State of California, in the county in which the District's administration office is located, having competent jurisdiction of the dispute.

36.9. Nothing in this Article shall prevent the Parties from resolving any disputes or claims pursuant to Public Contract Code section 20104, et seq., if applicable.

36.10. Nothing in this Contract, waives, modifies or tolls the Contractor's obligation to present a timely claim under Government Code § 910, et seq. Therefore, in addition to complying with the contractual Claims procedures, the Contractor is required to present claims to the District pursuant to Government Code § 910, et seq.

37. LABOR CODE REQUIREMENTS: Provided that the Contract Price is more than $1,000, and the Work is a "public works" under the Labor Code, the parties agree as follows:

37.1. The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

37.2. District hereby provides notice of the requirements described in Labor Code § 1771.1(a) that a contractor or subcontractor shall not be qualified to bid or propose on, be listed in a bid or proposal, or engage in the performance of any

contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code § 1725.5.

37.3. Contractor acknowledges that all or a portion of the Services under this Contract are a public work, and that it and its subcontractors have complied with Labor Code § 1725.5, including, without limitation, the registration requirements thereof.

37.4. Contractor shall post all required job site notices and shall comply with all applicable requirements prescribed thereby, including but not limited to Labor Code § 1771.4.

37.5. Contractor shall comply with all applicable provisions of the Labor Code, Division 3, Part 7, Chapter 1, Articles 1-5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars ($1,000).

37.6. Copies of the prevailing rate of per diem wages are on file with the District.

37.7. Contractor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the Labor Code, beginning with § 1720, and including §§ 1735, 1777.5 and 1777.6, forbidding discrimination, and §§ 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. Contractor shall comply with Labor Code § 1777.5 pertaining to prevailing wage compensation to apprentices for preemployment activities.

38. PAYROLL RECORDS: Contractor and its subcontractor(s) shall keep accurate certified payroll records of employees and make them available to the District immediately upon request.

39. AUDIT: Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Contract. Contractor shall retain these books, records, and systems of account during the Term of this Contract. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Contract. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.

40. ANTI-TRUST CLAIM: Contractor and its subcontractor(s) agree to assign to the District all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. 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 purchases of goods, services, or materials pursuant to the Contract or a subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor, without further acknowledgment by the Parties.

41. GOVERNING LAW: This Contract shall be governed by and construed in accordance with the laws of the State of California with venue of any action in a in the county in which the District's administration office is located.

42. PROVISIONS REQUIRED BY LAW DEEMED INSERTED: Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included therein.

43. BINDING CONTRACT: This Contract shall be binding upon the Parties hereto and upon their successors and assigns, and shall inure to the benefit of the Parties and their successors and assigns.

44. DISTRICT WAIVER: District's waiver of any term, condition, covenant or waiver of a breach of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant or the waiver of a breach of any other term, condition or covenant.

45. INVALID TERM: If any provision of this Contract is declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be a part of this Contract.

46. ENTIRE CONTRACT: This Contract sets forth the entire Contract between the Parties hereto and fully supersedes any and all prior agreements, understanding, written or oral, between the Parties hereto pertaining to the subject matter thereof. This Contract may be modified only by a writing evidencing the Parties' mutual consent.

CERTIFICATIONS TO BE COMPLETED BY CONTRACTOR

THE UNDERSIGNED MUST CHECK EACH BOX AND EXECUTE THIS FORM AND HEREBY CERTIFIES TO THE GOVERNING BOARD OF THE DISTRICT THAT:

- He/she is a representative of the Contractor,
- He/she is familiar with the facts herein certified and acknowledged,
- He/she is authorized and qualified to execute this Agreement and these certifications on behalf of Contractor and that by executing this Agreement he/she is certifying the following items.

○ **Labor Code Sections 1860-1861 (Workers' Compensation).** In accordance with Labor Code section 3700, every contractor will be required to secure the payment of compensation to his or her employees. I acknowledge and certify under penalty of perjury that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

○ **Government Code Sections 8355-8357 (Drug-Free Workplace).** I acknowledge and certify under penalty of perjury that I will provide a drug-free workplace by doing all of the following:

(1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.

(2) Establishing a drug-free awareness program to inform employees about all of the following:

(A) The dangers of drug abuse in the workplace.

(B) The person's or organization's policy of maintaining a drug-free workplace.

(C) Any available drug counseling, rehabilitation, and employee assistance programs.

(D) The penalties that may be imposed upon employees for drug abuse violations.

(3) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I also acknowledge that this Contract may be subject to suspension of payments under the contract or grant or termination of the contract or grant, or both, and the contractor or grantee thereunder may be subject to debarment, in accordance with the requirements of the above-referenced statute, if the contracting or granting agency determines that any of the following has occurred:

(1) The contractor or grantee has made a false certification under Section 8355.

(2) The contractor or grantee violates the certification by failing to carry out the requirements of subdivisions (a) to (c), inclusive, of Section 8355.

I also acknowledge that the Department of General Services shall establish and maintain a list of individuals and organizations whose contracts or grants have been canceled due to failure to comply with the above-referenced statute. This list shall be updated monthly and published each month. No state agency shall award a contract or grant to a person or organization on the published list until that person or organization has complied with the above-referenced statute.

○ **Tobacco-Free Environment**. 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 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 and certify under penalty of perjury that I am aware of the District's policy regarding tobacco-free environments at District sites, including the Project site and acknowledge and 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 on the Project site. The District also prohibits electronic cigarettes, "vaping" or similar product uses on District sites.

○ **No Hazardous Materials.** I acknowledge and certify under penalty of perjury that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations ("**New Hazardous Material**"), shall be furnished, installed, or incorporated in any way into the Project or in any tools,

devices, clothing, or equipment used to affect any portion of Contractor's work on the Project for District. I have instructed our employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

(i) Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material. Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Contractor if the material is found to be New Hazardous Material.

(ii) All Work or materials found to be New Hazardous Material or Work or material installed with equipment containing "New Hazardous Material," will be immediately rejected and this Work will be removed at Contractor's expense at no additional cost to the District.

The Contractor must immediately notify the District within two (2) Business Days, if the Contractor finds and before it disturbs, any material that the Contractor believes may be hazardous waste, as defined in section 25117 of the Health and Safety Code, and requires removal to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law

I acknowledge and certify under penalty of perjury that this certification provides notice to the Contractor that:

(1) The Contractor's work may disturb lead-containing building materials.

(2) The Contractor must notify the District if any work may result in the disturbance of lead-containing building materials.

○ **Lead as a Health Hazard.** Lead poisoning is recognized as a serious environmental health hazard facing children today. Even at low levels of exposure, much lower than previously believed, lead can impair the development of a child's central nervous system, causing learning disabilities, and leading to serious behavioral problems. Lead enters the environment as tiny lead particles and lead dust disburses when paint chips, chalks, peels, wears away over time, or is otherwise disturbed. Ingestion of lead dust is the most common pathway of childhood poisoning; lead dust gets on a child's hands and toys and then into a child's mouth through common hand-to-mouth activity. Exposures may result from construction or remodeling activities that disturb lead paint, from ordinary wear and tear of windows and doors, or from friction on other surfaces.

Ordinary construction and renovation or repainting activities carried out without lead-safe work practices can disturb lead-based paint and create significant hazards. Improper removal practices, such as dry scraping, sanding, or water blasting painted surfaces, are likely to generate high volumes of lead dust.

Because the Contractor and its employees will be providing services for the District, and because the Contractor's work may disturb lead-containing building materials, **Contractor is hereby notified** of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school buildings built prior to 1993 are presumed to contain some lead-based paint until sampling proves otherwise.

(i) **Overview of California Law**

Education Code section 32240 et seq. is known as the Lead Safe Schools Protection Act. Under this act, the Department of Health Services ("**DHS**") is to conduct a sample survey of schools in the State of California for the purpose of developing risk factors to predict lead contamination in public schools. (Ed. Code, § 32241.)

Any school that undertakes any action to abate existing risk factors for lead is required to utilize trained and state-certified contractors, inspectors, and workers. (Ed. Code, § 32243, subd. (b).) Moreover, lead-based paint, lead plumbing, and solders, or other potential sources of lead contamination, shall not be utilized in the construction of any new school facility or the modernization or renovation of any existing school facility. (Ed. Code, § 32244.)

Both the Federal Occupational Safety and Health Administration ("**OSHA**") and the California Division of Occupational Safety and Health ("**Cal/OSHA**") have implemented safety orders applicable to all construction work where a contractor's employee may be occupationally exposed to lead.

The OSHA Regulations apply to all construction work where a contractor's employee may be occupationally exposed to lead. The OSHA Regulations contain specific and detailed requirements imposed on contractors subject to that regulation. The OSHA Regulations define construction work as work for construction, alteration, and/or repair, including painting and decorating. It includes, but is not limited to, the following:

a. Demolition or salvage of structures where lead or materials containing lead are present;

b. Removal or encapsulation of materials containing lead;
c. New construction, alteration, repair, or renovation of structures, substrates, or portions thereof, that contain lead, or materials containing lead;
d. Installation of products containing lead;
e. Lead contamination/emergency cleanup;
f. Transportation, disposal, storage, or containment of lead or materials containing lead on the site or location at which construction activities are performed; and
g. Maintenance operations associated with the construction activities described in the subsection.

Because it is assumed by the District that all painted surfaces (interior as well as exterior) within the District contain some level of lead, it is imperative that the Contractor, its workers and subcontractors fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials (including title 8, California Code of Regulations, section 1532. 1).

The Contractor must notify the District if any Work may result in the disturbance of lead-containing building materials. Any and all Work that may result in the disturbance of lead-containing building materials must be coordinated through the District. A signed copy of this Certification must be on file prior to beginning Work on the Project, along with all current insurance certificates.

(ii) **Renovation, Repair and Painting Rule, Section 402(c)(3) of the Toxic Substances Control Act**

In 2008, the U.S. Environmental Protection Agency, issued a rule pursuant to the authority of Section 402(c)(3) of the Toxic Substances Control Act, requiring lead safe work practices to reduce exposure to lead hazards created by renovation, repair and painting activities that disturb lead-based paint (Renovation, Repair and Painting Rule). Renovations in homes, childcare facilities, and schools built prior to 1978 must be conducted by certified renovations firms, using renovators with accredited training, and following the work practice requirements to reduce human exposures to lead.

Contractor, its workers and subcontractors must fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials, including those rules and regulations appearing within title 40 of the Code of Federal Regulations as part 745 (40 CFR 745).

The requirements apply to all contractors who disturb lead-based paint in a six-square-foot area or greater indoors or a 20-square-foot area outdoors. If a DPH-certified inspector or risk assessor determines that a home constructed before 1978 is lead-free, the federal certification is not required for anyone working on that particular building.

(iii) **Contractor's Liability**

If the Contractor fails to comply with any applicable laws, rules, or regulations, and that failure results in a site or worker contamination, the Contractor will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify, and hold harmless the District, pursuant to the indemnification provisions of the Contract, for all damages and other claims arising therefrom.

If lead disturbance is anticipated in the Work, only persons with appropriate accreditation, registrations, licenses, and training shall conduct this Work.

It shall be the responsibility of the Contractor to properly dispose of any and all waste products, including, but not limited to, paint chips, any collected residue, or any other visual material that may occur from the prepping of any painted surface. It will be the responsibility of the Contractor to provide the proper disposal of any hazardous waste by a certified hazardous waste hauler. This company shall be registered with the Department of Transportation (DOT) and shall be able to issue a current manifest number upon transporting any hazardous material from any school site within the District.

The Contractor shall provide the District with any sample results prior to beginning Work, during the Work, and after the completion of the Work. The District may request to examine, prior to the commencement of the Work, the lead training records of each employee of the Contractor.

I acknowledge and certify under penalty of perjury, that:

1. I have received notification of potential lead-based materials on the District's property;
2. I am knowledgeable regarding and will comply with all applicable laws, rules, and regulations governing work with, and disposal of, lead.

○ **Imported Materials.** All soils, aggregate, or related materials ("**Fill**") that Contractor, a Subcontractor, agent or supplier, in any way, provides or delivers and/or supplies to the Project Site shall be free of any and all hazardous material as defined in section 25260 of the Health and Safety Code, shall satisfy the requirements of any environmental review of the Project performed pursuant to the statutes and guidelines of the California Environmental Quality Act, sections 21000 et seq. of the Public Resources Code ("**CEQA**"), and shall comply with the requirements of sections 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. I acknowledge that, to the furthest extent permitted by California law, the indemnification provisions in the Contract Documents apply to, without limitation, any claim(s) connected with providing, delivering, and/or supplying Fill.

○ **Roofing Contract Financial Interest Certification (Public Contract Code § 3006)**

I, _____ [**Your Name**], _____ [**Firm Name**] certify that 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 a roof project contract or subcontract on the Project. As used in this certification, "person" means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

I, _____ [**Your Name**], _____ [**Firm Name**] certify that I do not have, and throughout the duration of the Contract, I will not have, any financial relationship in connection with the performance of the Contract with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.

I, _____ [**Your Name**], _____ [**Firm Name**] 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:

Name of firm ("**Firm**"): _____
Mailing address: _____
Address of branch office used for this Project: _____
If subsidiary, name and address of parent company: _____

For Projects without substantive roofing components, check the following box and execute this certification:

○ The Work on the Contract (1) does not include the replacement or repair of a roof or (2) is a repair of twenty five percent (25%) or less of the roof, (3) or is a repair project that has a total cost of twenty one thousand dollars ($21,000) or less.

○ **Russian Sanctions Certification**

On February 21, 2022, President Biden issued Executive Order 14065 (https://www.whitehouse.gov/briefing-room/presidential-actions/2022/02/21/executive-order-on-blocking-property-of-certain-persons-and-prohibiting-certain-transactions-with-respect-to-continued-russian-efforts-to-undermine-the-sovereignty-and-territorial-integrity-of-ukraine/; "**Federal Order**") imposing economic sanctions and prohibiting many activities including, but not limited to, investing in, importing to, exporting from, and contracting with, areas of Ukraine and in Russia. On March 4, 2022, California Governor Newsom issued Executive Order N-6-22 requiring state agencies to take steps to ensure any agency and entity under contract with state agencies comply with the Federal Order (https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf; "**State Order**").

The District requires the Consultant, as a vendor with the District, to comply with the economic sanctions imposed in response to Russia's actions in Ukraine, including the orders and sanctions identified on the U.S. Department of the Treasury website (https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions).

If your Firm's contract with the District has a cumulative value of $5 million or more, your certification here is constitutes your written response to the District, indicating:

(1) that your Firm is in compliance with the required economic sanctions of the Federal and State Orders;

(2) the steps your Firm has taken in response to Russia's actions in Ukraine, including, but not limited to, desisting from making new investments in, or engaging in financial transactions with, Russian entities, not transferring technology to Russia or Russian entities, and directly providing support to the government and people of Ukraine.

I ACKNOWLEDGE AND CERTIFY UNDER PENALTY OF PERJURY THAT I AM DULY AUTHORIZED TO LEGALLY BIND THE CONTRACTOR TO ALL PROVISIONS AND ITEMS INCLUDED IN THESE CERTIFICATIONS, THAT THE CONTENTS OF THESE CERTIFICATIONS ARE TRUE, AND THAT THESE CERTIFICATIONS ARE MADE UNDER THE LAWS OF THE STATE OF CALIFORNIA.

Date: _____

Proper Name of Contractor: KONE Inc.

Signature: _____

Print Name: _____

Title: _____

CRIMINAL BACKGROUND INVESTIGATION /FINGERPRINTING CERTIFICATION

The undersigned does hereby certify to the governing board of the District that he/she is a representative of the Contractor, is familiar with the facts herein certified, is authorized and qualified to execute this certificate on behalf of Contractor; and that the information in this Criminal Background Investigation / Fingerprinting Certification is true and correct.

1. **Education Code.** Contractor has taken at least one of the following actions (check all that apply):

○ **All Workers Fingerprinted.** The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees and all of its subcontractors' employees who interact with pupils, outside of the immediate supervision and control of the pupil's parent or guardian or a school employee, has a valid criminal records summary as described in Education Code Section 44237 (Contractor shall "require each applicant for employment in a position requiring contact with minor pupils to submit two sets of fingerprints prepared for submittal by the employer to the Department of Justice for the purpose of obtaining criminal record summary information from the Department of Justice and the Federal Bureau of Investigation."). A complete and accurate list of Contractor's employees and of all of its subcontractors' employees who may interact with District pupils during the course and scope of the Contract is attached hereto; and/or

○ **Physical Barrier.** Pursuant to Education Code section 45125.2, Contractor has installed or will install, prior to commencement of work, a physical barrier at the Project site, that will limit contact between Contractor's employees and District pupils at all times; and/or

○ **Continual Supervision by Fingerprinted Employee.** Pursuant to Education Code section 45125.2, Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Contractor's employees and its subcontractors' employees is:

Name: _____ Title: _____

○ **Unoccupied Site**. The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

2. **Megan's Law (Sex Offenders).** I have verified and will continue to verify that the employees of Contractor that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (http://www.meganslaw.ca.gov/).

Contractor's responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

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

Date: _____

Proper Name of Contractor: **KONE Inc.**

Signature: _____

Print Name: _____

Title: _____

EXHIBIT A
SCOPE OF WORK

The scope of work for the Project is as set forth in Section 1.a above

END OF EXHIBIT A

EXHIBIT B
INFECTIOUS DISEASE PROVISIONS – Operational School Sites

1. **Compliance with Orders.** Contractor and its Subcontractors, agents and employees thereof, are responsible for complying with all applicable and existing federal, State, and/or local statutes, orders, rules, regulations, ordinances, and/or directives in any way relating to construction site safety, the Work, the Project, and Site, in connection with any infectious and communicable disease in any form, whether bacterial or viral, including, without limitation, MSRA, influenza, COVID-19, and/or any similar virus or derivative strain ("**Infectious Disease**"). Contractor shall ensure it has supervisor employees onsite that are trained and knowledgeable of all these requirements to ensure full compliance on Site and the Work. Contractor's obligations hereunder shall include, without limitation providing personal protective equipment ("**PPE**") to its employees and to ensure that its subcontractors provide PPE equipment to its employees to prevent the spread of an Infectious Disease at the Project Site(s).

2. **Infectious Disease and Contract Time.** Contractor agrees that the Contract Time is based on Contractor's full compliance with all applicable and existing federal, State, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety, the Work, the Project, and the Site in connection with an Infectious Disease. Any dispute concerning the Contract Time in connection with any delay associated with an Infectious Disease shall be resolved pursuant to the Claims procedures in these General Conditions.

3. **Infectious Disease & Extra Work.**

   3.1. Contractor agrees that its Bid/Proposal, the Contract Price and the Contract Time are based on Contractor's full compliance with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety, the Work, the Project, and the Site in relation with an Infectious Disease at the time the parties entered into the Contract. Therefore, any additional costs to Contractor associated with an Infectious Disease, or any federal, state, or local order relating thereto, shall not be considered compensable unless:

      3.1.1. It occurred after the date of the award of the Project to Contractor;

      3.1.2. It materially increases the Contract Price or the Contract Time by imposing different, additional or more stringent requirements; and

      3.1.3. Contractor notifies District within ten (10) Days of notice of any new public health order(s), including the anticipated increase to the Contract Price or Contract Time due to the new public health order(s), and Contractor substantiates those costs with detailed supporting documentation as required these General Conditions, including, without limitation, comply with the proposed change orders and, to the extent applicable, Claims provisions.

   3.2. If, during the Work, the applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety, the Work, the Project, and/or the Site in connection with an Infectious Disease, are changed or rescinded (e.g., by the reduction of potential exposure or risk due to vaccinations), the parties agree to reduce the Contractor price and the Contract Time due to the removal of the required efforts. If the parties cannot mutually agree on the appropriate reduction, District may issue a unilateral change order for an amount of time and money it determines to be both reasonable and appropriate. And dispute concerning the application of this procedure shall be resolved pursuant to the Claims procedures in these General Conditions.

4. **Infectious Disease Release.** Contractor acknowledges that it is voluntarily and freely entering into the Contract for this Project and deciding to perform the Work which will require Contractor to enter upon and into the Site and that Contractor use of the Site includes the possible exposure to and illness from an Infectious Disease. Contractor further acknowledges the dangers involved and with full knowledge of these dangers, voluntarily agrees to assume all risks of bodily injury, death, or property damage, whether those risks are known or unknown. Contractor hereby releases District, its agents, representatives, officers, consultants, employees, trustees, and volunteers from any and all liabilities, causes of action, lawsuits, claims, demands, or damages of any kind whatsoever that Contractor, its staff, participants, relatives, children, spouse, partner, household members, family members, employees, guests, invitees, volunteers, agents, consultants, Subcontractors, and any other person tracing exposure or illness to Contractor, now have, or may have in the future, for injury, trauma, illness, loss, unwanted contact, harassment, disability, death or property damages related to being exposed to or contracting an Infectious Disease while using the Site for the performance of the Work. Contractor shall include this paragraph in all subcontracts with Subcontractors.

5. Contractor shall ensure it has supervisor employees onsite that are trained and knowledgeable of all of these requirements to ensure full compliance on Project Site(s).

6. Any cost to comply with these "Infectious Disease Compliance Provisions" shall be at Contractor's sole expense and expense, but may be included in the Contract Price.

7. Vaccination Status.

7.1. Contractor's Applicable Workers will not be allowed to enter the District's school site if they have a fever, cough or other COVID-19 or infectious disease symptom(s). Contractor agrees to implement, comply with, and fulfill the terms and requirements of the Health & Safety Policies. Contractor also acknowledges and hereby certifies that Contractor will require any Applicable Worker comply with the requirements of the Health & Safety Policies on the District's school site, including, but not limited to the requirements set forth here:

7.2. **COVID-19 Vaccination Status:** Contractor is required to ensure that all of its employees who will be working in **any** capacity on operational District school sites have been either:

7.2.1. Fully vaccinated for COVID-19 or
7.2.2. Tested within 72 hours prior to any initial work on a District site and then tested on a weekly basis.
7.2.2.1. COVID-19 Testing: Testing shall be compliant with the CDPH K-12 Order dated August 11, 2021, which must be either:
7.2.2.1.1. Polymerase Chain Reaction (PCR)
7.2.2.1.2. Antigen test
7.2.2.2. Laboratory confirmed results and which has FDA Emergency Use Authorization (EUA) must be provided.

7.3. Any Contractor employee who does not fulfill these requirements will be declared ineligible to provide service on any District school site until they submit the proper documentation.

7.4. Contractor's responsibility for COVID-19 compliance and record keeping extends to all of its employees, subcontractors, and employees of subcontractors who work in any capacity on a school campus, including but not limited to those who come into contact with District students and employees, regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

END OF EXHIBIT B

EXHIBIT C
FEDERAL CONTRACTING PROVISIONS

☒ **RESERVED – NOT APPLICABLE**

END OF EXHIBIT C

SAN YSIDRO SCHOOL DISTRICT

GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM: Jose F. Iniguez, Ed.D.
Assistant Superintendent of Admin.
Leadership, School Support & Safety

☐ Informational
☒ Action

AGENDA ITEM: AMENDMENT NO. 4 TO THE COLBI TECHNOLOGIES, INC. ACCOUNT-ABILITY SM SOFTWARE SERVICES AGREEMENT

BACKGROUND INFORMATION:

On April 15, 2022, the Governing Board approved the Software Services Agreement with COLBI Technologies, Inc. ("Agreement") to provide for the Account-Ability SM software services. Additionally, the Governing Board approved Amendment No. 1 on May 31, 2022, to provide ColbiDocs SM Software in support of District business processes. The Governing Board also approved Amendment No. 2 on August 10, 2023, to allow for the Facilities Assistance Services Team (FAST) to provide expertise in support of the capital facilities projects throughout the district. Finally, on May 23, 2024, the Governing Board approved Amendment No. 3 for additional support services within the Facilities and Maintenance Departments in fiscal year 2023-24, as requested by the District.

The District and Colbi agree that the FAST support should be under a separate agreement; therefore, Amendment No. 4 is to terminate the FAST services under this agreement effective June 30, 2024. All other terms and conditions remain unchanged for the Account-Ability SM software and ColbiDocs SM software.

Description	*Total Amount for Fiscal 2024/25*
Account-Ability SM Software	$30,000.00
ColbiDocs SM Software	$5,000.00
TOTAL Not-to-Exceed AMOUNT	**$35,000.00**

RECOMMENDATION:

Approve/Ratify Amendment No. 4 to the Master Agreement for COLBI Technologies, Inc. in the amount of $35,000.00 for the software licenses for Account-Ability SM and ColbiDocs SM for 2024-2025 and remove the Facilities Assistance Services Team (FAST) from this agreement.

LCAP GOAL AND ACTION/SERVICE (please indicate):

Goal 7.0 – Provide sufficient, safe, well-maintained, and visually appealing facilities that create an environment for improving student achievement.

☐ **Renewal** ☐ **New** ☒ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

$35,000.00	G.O. Bond Funds
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

SAN YSIDRO SCHOOL DISTRICT

4350 Otay Mesa Road, San Ysidro, CA 92173

AMENDMENT NO. 4

The Account-Ability Services Agreement between San Ysidro School District (District) and Colbi Technologies, Inc. was entered on April 15, 2022, to provide Account-Ability Software Services.

WHEREAS on May 31, 2022, Amendment No. 1 was approved to include COLBI Docs Software in support of their business processes;

WHEREAS on August 10, 2023, Amendment No. 2 was approved to included the Facility Assistance Service Team (FAST) to provide procurement expertise in support of the capital facility program.

WHEREAS on May 23, 2024, Amendment No. 3 was approved to authorize the procurement of additional and continued FAST services and to authorize payment of such services.

WHERE AS, the District and Colbi agree that the FAST services should be in a separate agreement.

NOW THEREFORE, this Amendment No. 4, upon execution by District and Colbi, will end the FAST Services from the Account-Ability Services Agreement effective June 30, 2024. All other terms and conditions of the original Agreement shall remain in full force and effect.

The District and Colbi Technologies, Inc., each of the parties signing this Amendment warrants to the other that he or she has the full authority to sign on behalf of the Party which his or her signature is made.

Colbi Technologies, Inc.	**San Ysidro School District**
Firm Name	Firm Name
Signature of Authorized Agent	Signature
Print Name, Title	Marilyn Adrianzen, Chief Business Official Print Name, Title
Date:	Date
	Board Approved/Ratified:
	_____

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM: Jose F. Iniguez, Ed.D.
Assistant Superintendent of Admin.
Leadership, School Support & Safety

☐ Informational
☒ Action

AGENDA ITEM: CHANGE ORDER TO "PIGGYBACK" PURCHASING AGREEMENT WITH AMERICAN MODULAR SYSTEMS

BACKGROUND INFORMATION:

On April 24, 2024, the Governing Board approved an agreement with American Modular Systems ("AMS") to provide two 24'x40' relocatable buildings through the existing "Piggyback" agreement between AMS and Santa Cruz City Schools Facility Services for the "2024 New Relocatables Project" at Ocean View Hills School in the amount of $234,760.00.

A Change Order is now being requested in the amount of $3,863.08, to provide additional lighting and security upgrades to the two (2) new relocatable buildings, increasing the total of the contract to $238,623.08.

RECOMMENDATION:

Approve Change Order No. 1 for American Modular Systems to provide additional lighting and security upgrades for the "2024 New Relocatables Project" at Ocean View Hills School in the amount of $3,863.08 for a total contract amount of $238,623.08. Cost implications will be paid from Developer Fees.

LCAP GOAL AND ACTION/SERVICE:

Goal 7.0 – Provide sufficient, safe, well-maintained, and visually appealing facilities that create an environment for improving student achievement.

☐ **Renewal** ☐ **New** ☒ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

$3,863.08	Developer Fees (2518)
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

To: American Modular Systems
787 Spreckels Ave.
Manteca, CA 95336
(209) 825-1921

Proposed Change Order #: 1
Initiation Date: 6/11/2024

AMS Project #: 1885-24

Customer: San Ysidro USD
Site Address:
4919 Del Sol Blvd.
San Diego, CA 92154

Location: Ocean View Hills

Change initiated by: Lord Architecture (AOR) / District

AMS was directed to make the following changes in the contract during the project design development:

ITEM	DESCRIPTION	PRICE	QUANTITY	COST
Data Boxes	Addition of six single data boxes w/3/4" conduit to above ceiling, and two dual data boxes w/1 1/4" conduit to above ceiling.	$135.00	8	$1,080.00
Door Security Conduits	Addition of two 3/4" door security conduits.	$14.60	2	$29.20
Dedicated Outlets	Addition of two 20amp dedicated outlets and two 20amp quad dedicated outlets.	$340.00	4	$1,360.00
Exterior Lights	Addition of one exterior light fixture per building. Total of two.	$445.00	2	$890.00
	Subtotal			$3,359.20
Overhead/Profit	15% Contractor Overhead/Profit			$503.88
	Net Proposed Change Order Total			**$3,863.08**

The contract sum will be **increased** by this change order: **$3,863.08**

The contract time will be **increased/decreased** by: 0 days

New project completion date: Unchanged

American Modular Systems
By: *Suzanne Willis*
Director, Business Dev., Southern CA
Date: 6/11/2024

Owner or Owner Representative
By: J F Iniguez
Title: Assistant Sup.
Date: 6-18-24

Note: All conditions and terms of the contract order will apply except as herein changed.

SYSD Board approved: 08-08-24

_____

Marilyn Adrianzen, CBO

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM: Jose F. Iniguez, Ed.D.
Assistant Superintendent of Admin.
Leadership, School Support & Safety

☐ Informational
☒ Action

AGENDA ITEM: CHANGE ORDER NO.1 TO AGREEMENT WITH DE LA FUENTE CONSTRUCTION, INC.

BACKGROUND INFORMATION:

On September 25, 2023, the Governing Board awarded Bid No. 230801 to De La Fuente Construction, Inc. for the construction of Playgrounds Projects at La Mirada and Smythe Elementary Schools in the amount of $2,380,148.85.

Prime Contract Change Order No. 1 is now being requested primarily for additional asphalt and landscape repairs and construction in the amount of $77,675.73. With the addition of this PCCO #1, the total new contract amount will be $2,457,824.58.

RECOMMENDATION:

Approve Prime Contract Change Order No. 1 for De La Fuente Construction, Inc. for additional asphalt and landscape construction for the Playgrounds Projects at La Mirada and Smythe Elementary Schools in the amount of $77,675.73 and a new total contract amount of $2,457,824.58. Cost implications will be paid from the General Obligation Bonds.

LCAP GOAL AND ACTION/SERVICE:

Goal 7.0 – Provide sufficient, safe, well-maintained, and visually appealing facilities that create an environment for improving student achievement.

☐ **Renewal** ☐ **New** ☒ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

$77,675.73	Measure T, G.O. Bonds (2139)
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

De La Fuente Construction, Inc.

DS LH PM | DS 4H Operations | DS JD | AR

PCCO #001

De La Fuente Construction Inc
3025 Beyer Blvd. Suite E-101
San Diego, California 92154
Phone: (619) 512-5505

Project: 23CA110 - 2 Site Playground Installation La Mirada & Smythe
222 Avenida De La Mirada & 1880 Smythe Ave
San Ysidro, California 92173
Phone: 619-261-8233

Prime Contract Change Order #001:

TO:	**San Ysidro School District** 4350 Otay Mesa Rd San Ysidro, CA 92173	**FROM:**	**De la Fuente Construction, Inc.** 3025 Beyer Blvd Ste E-101 San Diego, CA 92154
DATE CREATED:	7/11/2024	**CREATED BY:**	Luis Hernandez **(De la Fuente Construction, Inc.)**
CONTRACT STATUS:	Pending - In Review	**REVISION:**	0
DESIGNATED REVIEWER:		**REVIEWED BY:**	
DUE DATE:		**REVIEW DATE:**	
INVOICED DATE:		**PAID DATE:**	
SCHEDULE IMPACT:		**EXECUTED:**	No
REVISED SUBSTANTIAL COMPLETION DATE:		**SIGNED CHANGE ORDER RECEIVED DATE:**	
CONTRACT FOR:	3:2 Site Playground Structures Installation at La Mirada E.S. and Smythe E.S.	**TOTAL AMOUNT:**	$77,675.73

DESCRIPTION:
Prime Contract Change Orders
Includes:

$72,115.20 for additional Asphalt work at Smythe ES - PCO # 13
$ 8,974.87 for additional concrete footing, grading work and installation of redwood header boards at both schools - PCO # 14

Total = $81,090.07 of additional work at La Mirada ES and Smythe ES

Deductible Change order of:

$3,414.34 for credit back to District for ASI change at ramp (providing curb instead of railing) at Smythe ES - PCO # 16

Total of change orders work = $77,675.73

ATTACHMENTS:

POTENTIAL CHANGE ORDERS IN THIS CHANGE ORDER:

PCO #	Title	Schedule Impact	Amount
001	CE #038 - Prime Contract Change Orders		$77,675.73
		Total:	$77,675.73

CHANGE ORDER LINE ITEMS:

PCO # 001: CE #038 - Prime Contract Change Orders

#	Budget Code	Description	Amount	Amount
1	Division 32 Exterior Improvemen-32 10 00 S.O Paving.Other	Asphalt Change Order for additional work at Smythe ES	$65,559.28	$65,559.28
2	Division 80 Other Costs-80 00 10 O.O Professional Services.Other	Overhead	$3,277.96	$3,277.96
3	Division 80 Other Costs-80 00 20 O.O Profit.Other	Profit	$3,277.96	$3,277.96

De La Fuente Construction, Inc.

PCCO #001

#	Budget Code	Description	Amount	Amount
4	Division 31 Earthwork-31 00 00 M.O Earthwork.Other	Concrete footing for tether ball at La Mirada ES and grading work for oversaturated soils and redwood header boards at Playground #2 at Smythe ES	$7,804.24	$7,804.24
5	Division 80 Other Costs-80 00 10 O.O Professional Services.Other	Overhead	$780.42	$780.42
6	Division 80 Other Costs-80 00 20 O.O Profit.Other	Profit	$390.21	$390.21
7	Division 31 Earthwork-31 00 00 L.O Earthwork.Other	Deductible change order for ramp railings	$(3,414.34)	$(3,414.34)
			Grand Total:	**$77,675.73**

The original (Contract Sum)	$2,380,148.85
Net change by previously authorized Change Orders	$0.00
The contract sum prior to this Change Order was	$2,380,148.85
The contract sum would be changed by this Change Order in the amount of	$77,675.73
The new contract sum including this Change Order will be	$2,457,824.58
The contract time will not be changed by this Change Order.	

Chuck Forte (PBK Architects)

DS

SIGNATURE DATE

San Ysidro School District
4350 Otay Mesa Rd San Ysidro, CA 92173

DS

SIGNATURE DATE

De la Fuente Construction, Inc.
3025 Beyer Blvd Ste E-101 San Diego, CA 92154

DocuSigned by:
Jorge Diaz
SIGNATURE 43B...

7/15/2024
DATE

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM: Jose F. Iniguez, Ed.D.
Assistant Superintendent of Admin.
Leadership, School Support & Safety

☐ Informational
☒ Action

AGENDA ITEM: CHANGE ORDER NO. 1 TO AGREEMENT WITH GQ BUILDERS, INC.

BACKGROUND INFORMATION:

On June 6, 2024, the Governing Board awarded Bid No. 2024-03 to GQ Builders, Inc. for the installation of two (2) relocatable buildings and the conversion of the Science classroom into a Universal Transitional Kindergarten (UTK) classroom at Ocean View Hills School. An agreement was signed on or around June 7, 2024, in the amount of $615,000.00.

Change order No. 1 is being requested in the amount of $37,726.94 to address unforeseen conditions and additional scopes of work to comprehensively complete the project at Ocean View Hills School. The changes primarily consist of upsizing the existing underground conduits/pipes and relocating the existing electrical outlets to a normal height (from the height above the old science tabletops). Adding this change order will bring the total contract amount to $652,726.94.

RECOMMENDATION:

Approve Change Order No. 1 in the amount of $37,726.94 for GQ Builders, Inc. to finish the Ocean View Hills School Enrollment Growth Summer Projects. This Change Order #1 will bring the total amount of the Agreement to $652,726.94. Cost implications for this change order will be paid from Developer Fees.

LCAP GOAL AND ACTION/SERVICE:

Goal 7.0 – Provide sufficient, safe, well-maintained, and visually appealing facilities that create an environment for improving student achievement.

☐ **Renewal** ☐ **New** ☒ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

$37,726.94	Developer Fees (Fund 2518)
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

Cost Proposal/FO/Bulletin/RFI No. 4 and 7
GQ Builders, Inc. PCO No. 01

GQ BUILDERS, INC.

Remove existing asphalt and dirt. Install 2" diameter pipe. Compaction, dirt filling and asphalt. Replace terminals.

	Material			Labor			Equipment			Total Cost	
	Amt	Unit Cost		Hrs	Labor Rate	Cost	Day/LS	Eq Rate	Cost	Add	Deduct
				16.75	92.54	1550.05	0	0.00	0.00	1550.05	
				7	96.42	674.94			0.00	674.94	
				4	94.76	379.04				379.04	
			1500.00							1500.00	
			250.00							250.00	
			100.00							100.00	
			150.00						0.00	150.00	
			75.00							75.00	
			350.00							350.00	
			2425.00			2604.02			0.00	5029.02	0.00
											5029.02

Zagorodniy
Dmitriy Zagorodniy, CEO

SYSD Board approved: _____

_____
Marilyn Adrianzen, CBO

CHANGE ORDER

Project Name: OCEAN VIEW HILLS SCHOOL CLASROOM REMODEL PROJECT AND OCEAN VIEW HILLS SCHOOL RELOCATABLES (2024) PROJECT

Contractor Name: GQ Builders, Inc.

PCO No. 02

6/17/2024

Demolition, excavation, dirt removal. Install additional piping and electrical duct bank spacers for underground conduit.

PAYMENT - EXTRA, ADDITIONAL, OR DELETED WORK		Allowances
1.	General Contractor Material and Equipment	$ 6,335.00
2.	General Contractor Labor	$ 5,952.00
3.	Extended OBD	$ -
4.	General Contractor's Insurances, worker comp, bond fees and profit	$ 1,105.83
5.	**Subtotal - (Item #1 #2 #3 and #4)**	***$ 13,392.83***
6.	Subcontractor Material and Equipment	$ -
7.	Subcontractor Labor	$ -
8.	**Subtotal - (Items #6 and #7)**	***$ -***
9.	General Contractor's bond fees, Insurance and profit for Subcontractor work	$ -
10.	Subcontractor's Overhead and Profit	$ -
11.	**Subtotal - (Items #9 and #10)**	***$ -***
	TOTAL (Items #5 plus Item#8 plus Item #11)	***$ 13,392.83***

Extension of Days = 8

Submitted By: Dmitiry Zagorodniy — **Contractor PM** **Date** 6/17/2024

SYSD Board approved: _____

_____

Marilyn Adrianzen, CBO

CHANGE ORDER

Project Name: OCEAN VIEW HILLS SCHOOL CLASROOM REMODEL PROJECT AND OCEAN VIEW HILLS SCHOOL RELOCATABLES (2024) PROJECT

Contractor Name: GQ Builders, Inc.

PCO No. 03

7/1/2024

Cost difference to provide 4" PVC sewer line to achieve 1/8" /foot slope instead of original 3" sewer line.

PAYMENT - EXTRA, ADDITIONAL, OR DELETED WORK		Allowances
1.	General Contractor Material and Equipment	$ 180.00
2.	General Contractor Labor	$ 370.08
3.	Extended OBD	$
4.	General Contractor's Insurances, worker comp, bond fees and profit	$ 55.01
5.	**Subtotal - (Item #1 #2 #3 and #4)**	***$ 605.09***
6.	Subcontractor Material and Equipment	$ -
7.	Subcontractor Labor	$ -
8.	**Subtotal - (Items #6 and #7)**	**$ -**
9.	General Contractor's bond fees, Insurance and profit for Subcontractor work	$ -
10.	Subcontractor's Overhead and Profit	$ -
11.	**Subtotal - (Items #9 and #10)**	**$ -**
	TOTAL (Items #5 plus Item#8 plus Item #11)	***$ 605.09***

Extension of Days = 0

Submitted By: Dmitiry Zagorodniy **Date** 7/1/2024

Contractor PM

SYSD Board approved: _____

_____

Marilyn Adrianzen, CBO

PRIME CONTRACTOR

GQ Builders, Inc.
PO Box 1488
Rancho Santa Fe, CA 92067
(858) 756 5001

CHANGE ORDER

CO # 5

DATE 7/10/2024

PROJECT:
Ocean View School Clasroom Remodel Project
and Ocean View Hills School Relocatables

DESCRIPTION	AMOUNT

SCOPE OF WORK: Lower existing outlest and extend wiring

1) Lower existing outlet and extend wiring

2) Install plate cover to cover the hole

TOTAL LABOR & MATERIAL: $ 18,700.00

Note: This Change Order becomes part of and in conformance with the existing contract.

WE AGREE hereby to make the change(s) specified above at this price $ ~~3,360.00~~ $18,700.00

Name, Title Date

Zagorodniy 7/10/2024
Name, Title Date

GQ Builders, Inc.

Accepted - The above prices and specifications of this change order are satisfactory and are hereby accepted. All work to be performed under same terms and conditions as specified in original contract unless otherwise stipulated.

SYSD Board approved: 08-08-24

Marilyn Adrianzen, CBO

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM: Jose F. Iniguez, Ed.D.
Assistant Superintendent of Admin.
Leadership, School Support & Safety

☐ Informational
☒ Action

AGENDA ITEM: CHANGE ORDER(S) TO "CMAS" PURCHASING AGREEMENT WITH WALL 2 WALL COMMERCIAL FLOORCOVERINGS

BACKGROUND INFORMATION:

On April 24, 2024, the Governing Board approved Resolution No. 23/24-0035, which authorized Wall 2 Wall Commercial Floorcoverings to procure artificial turf for the Field Replacement Project at Sunset Elementary School via CMAS Contract No. 4-21-06-1085 for $310,996.00.

On May 23, 2024, the Governing Board further approved Resolution No. 23/24-0039, amending the CMAS Contract with Wall 2 Wall Commercial Floorcoverings to procure installation services for the artificial turf for an additional $399,107.56. Amendment No. 1 increased the total CMAS contract to $710,103.56.

Two change orders are now being requested for the Turf Replacement Project at Sunset Elementary School. The first change order requests $6,000 for additional turf to be installed on top of the aged rubber surfaces of the five (5) playgrounds. The second change order requests $20,000 for a one (1) year turf maintenance package and $1,000 to paint additional game lines for two additional short-sided soccer fields (to accompany the one large soccer field). These change orders increase the total Wall 2 Wall CMAS contract to $737,103.56.

RECOMMENDATION:

Approve Change Orders No. 1 and No. 2 for Wall 2 Wall Commercial Floorcoverings CMAS Contract to provide playground surface upgrades, additional painted soccer field lines, and a one-year maintenance plan for the Field Replacement Project at the Sunset Elementary School in the amount of $27,000.00. Costs implications will be paid from the General Obligation Bonds.

LCAP GOAL AND ACTION/SERVICE:

Goal 7.0 – Provide sufficient, safe, well-maintained, and visually appealing facilities that create an environment for improving student achievement.

☐ **Renewal** ☐ **New** ☒ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

Change Orders 1 & 2

$27,000.00	General Obligation Bond Measure T (Fund 2139)
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

Company Name: Wall 2 Wall Commercial Floor Coverings (DBA W2W Sport)
Address: 350 10th Ave Suite 1000, San Diego, CA 92101
Phone Number: (619) 550-7369

CHANGE ORDER

Project Name	2024 Turf Replacement - Sunset Elementary School
Change Order No.	#1 -- MATERIALS
Requesting Party	San Ysidro School District
Date of Request	6/11/2024

CMAS #	4-21-06-1085
DIR #	1000024035
EIN #	82-043296

Description of Changes	+$6,000- Additional turf for (5) playgrounds
Reasons for Change	
Additional Information	

Price	Original Price	C/O Price	New Total
	$310,966	$6,000	$316,966

Date and Signature	6/19/24
Approved By	Scott Bohrer
	San Ysidro School District
Date and Signature	
Approved By	Marilyn Adrianzen, CBO

Board approved: _____

Company Name: Wall 2 Wall Commercial Floor Coverings (DBA W2W Sport)
Address: 350 10th Ave Suite 1000, San Diego, CA 92101
Phone Number: (619) 550-7369

CHANGE ORDER

Project Name	2024 Turf Replacement - Sunset Elementary School
Change Order No.	#2 -- LABOR
Requesting Party	San Ysidro School District
Date of Request	6/11/2024

CMAS #	4-21-06-1085
DIR #	1000024035
EIN #	82-043296

Description of Changes	+$20,000 - Annual Turf Maintenance Package (x4) +$1,000 - 2 additional short-sided soccer field painted gamelines (yellow)
Reasons for Change	Per district's request
Additional Information	

	Original Price	C/O Price	New Total
Price	$399,107.56	$21,000	$420,107.56

Date and Signature	Scott Bohrer
Approved By	
	San Ysidro School District
Date and Signature	
Approved By	Marilyn Adrianzen, CBO

Board approved: _____

SAN YSIDRO SCHOOL DISTRICT

GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Jose F. Iniguez, Ed.D.
Assistant Superintendent of
Admin. Leadership, School Support & Safety

☐ Informational
☒ Action

AGENDA ITEM: AMENDMENT NO. 1 TO THE TWINING CONSULTING, INC. AGREEMENT FOR WILLOW SCHOOL SECURITY FENCE PROJECT

BACKGROUND INFORMATION:

On July 11, 2024, the Governing Board approved the Professional Services Agreement with TWINING CONSULTING, Inc. ("Agreement") to provide material testing services for the Willow Elementary School Security Fence Project in the amount of $25,950.00.

Pursuant to the Professional Services Agreement, the District is now requesting Amendment No. 1 to add geotechnical engineering services to their scope of work for the Willow Elementary School Security Fence Project in the amount of $16,550.00. This would result in their agreement increasing to $42,500.00.

RECOMMENDATION:

Approve Amendment No. 1 to the Twining Consulting, Inc. Agreement to provide geotechnical engineering services for the Willow Elementary School Security Fence Project for $16,550.00. Cost implications will be paid from General Obligation Bonds.

LCAP GOAL AND ACTION/SERVICE (please indicate):

Goal 7.0 – Provide sufficient, safe, well-maintained, and visually appealing facilities that create an environment for improving student achievement.

☐ **Renewal** ☐ **New** ☒ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

TOTAL CONTRACT	
$42,500.00	Measure U G.O. Bond Funds (Fund 2133)
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

FIRST AMENDMENT TO PROFESSIONAL SERVICES CONTRACT WITH TWINING CONSULTING, INC.

THIS FIRST AMENDMENT ("First Amendment") is made and entered into as of the final signature hereto, by and between the **SAN YSIDRO SCHOOL DISTRICT**, (hereinafter referred to as the "District"), and **Twinging Consulting, Inc.** (hereinafter referred to as "Consultant").

RECITALS

WHEREAS, on or about July 11, 2024, the District and Consultant entered into a Professional Services Agreement in the amount of Not to Exceed, $25,950 for Materials Testing at for the Willow Elementary School Security Fence Project. Work is to be assigned to Consultant upon mutual written amendment to the Agreement as specific Consultant work for specific components of the Project; and

WHEREAS, on or about July 16, 2024 the Parties added Geotechnical engineering services via Amendment 1; and

WHEREAS, the District has now identified the need for Consultant services pursuant to the Agreement for the following component(s) of the services in Exhibit A.

WHEREAS, the Agreement permits the District and Consultant to amend the terms and conditions of the Agreement upon mutual written agreement of the Parties; and

WHEREAS, the District and Consultant now desire to amend the Agreement to explicitly memorialize the mutually agreed upon scope of work and fee for Consultant to provide design services for the component(s) of the Project identified above.

AGREEMENT

NOW, THEREFORE, in good and valuable consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

I. Amendment Terms.

The Agreement is hereby amended as follows:

A. Scope of Project Component Assigned. The Parties have agreed that the scope of work for the professional services for the assigned component(s) of the Project shall be as described in **Exhibit "A"** to this Amendment. Except as expressly detailed and/or set forth in **Exhibit "A,"** all such design services shall at all times be fully compliant with all terms and conditions of the original Agreement, including, but not limited to the standard requirements for design services set forth therein.

B. Compensation. The Consultant's compensation for the work set forth in this Amendment shall be a not-to-exceed fee **$16,550.00**. Bringing the total of the Professional Services Agreement to $42,500.00

C. This First Amendment shall only be effective upon the execution by both the District and Consultant.

D. This First Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

E. This First Amendment shall affect only the items specifically set forth herein, and all other terms and conditions of the original Agreement shall remain in full force and effect.

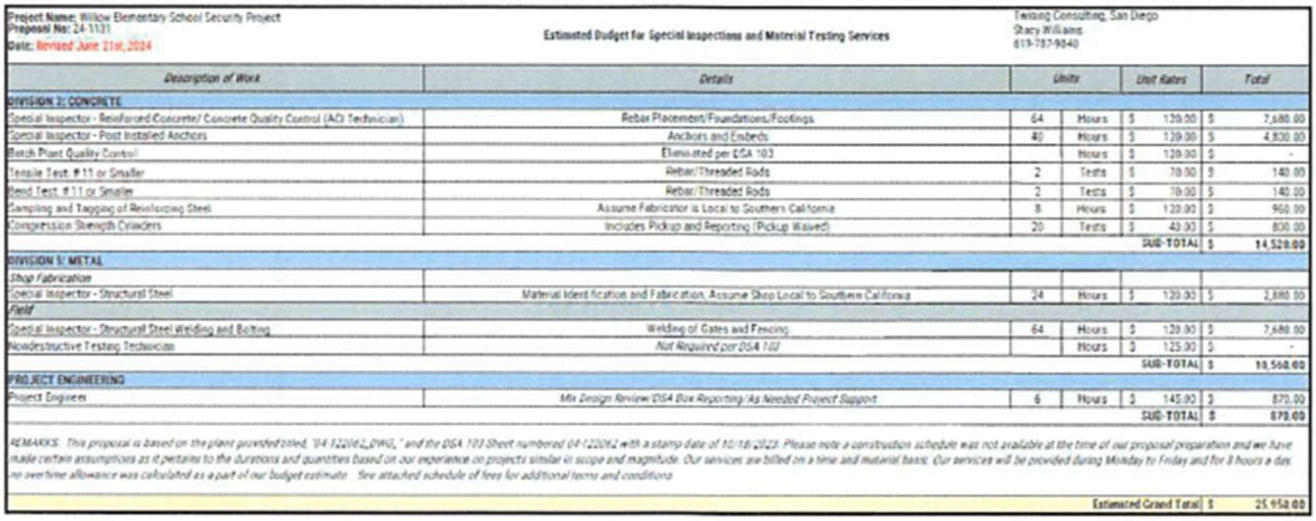
IN WITNESS WHEREOF, the parties hereto have, by their duly authorized representatives, executed this First Amendment to the Agreement for Consultant Services, as of the month, day and year first above written.

SAN YSIDRO SCHOOL DISTRICT	**TWINING CONSULTING, INC.**
Date:_____	Date: July 24, 2024
By:_____	By:_____
Name: Marilyn Adrianzen	Name: Benito Caban
Title: Chief Business Official	Title: President

Board approved:

EXHIBIT A

SCOPE OF SERVICES



Project Name: Willow Elementary School Security Project
Proposal No: 24-1131
Date: Revised June 21st, 2024

Estimated Budget for Special Inspections and Material Testing Services

Twining Consulting, San Diego
Stacy Williams
619-787-9840

Description of Work	Details	Units		Unit Rates	Total
DIVISION 3: CONCRETE					
Special Inspector - Reinforced Concrete/ Concrete Quality Control (ACI Technician)	Rebar Placement/Foundations/Footings	64	Hours	$ 120.00	$ 7,680.00
Special Inspector - Post Installed Anchors	Anchors and Embeds	40	Hours	$ 120.00	$ 4,800.00
Batch Plant Quality Control	Eliminated per DSA 103		Hours	$ 120.00	$ -
Tensile Test: # 11 or Smaller	Rebar/Threaded Rods	2	Tests	$ 70.00	$ 140.00
Bend Test: # 11 or Smaller	Rebar/Threaded Rods	2	Tests	$ 70.00	$ 140.00
Sampling and Tagging of Reinforcing Steel	Assume Fabricator is Local to Southern California	8	Hours	$ 120.00	$ 960.00
Compression Strength Cylinders	Includes Pickup and Reporting (Pickup Waived)	20	Tests	$ 40.00	$ 800.00
				SUB-TOTAL	$ 14,520.00
DIVISION 5: METAL					
Shop Fabrication					
Special Inspector - Structural Steel	Material Identification and Fabrication, Assume Shop Local to Southern California	24	Hours	$ 120.00	$ 2,880.00
Field					
Special Inspector - Structural Steel Welding and Bolting	Welding of Gates and Fencing	64	Hours	$ 120.00	$ 7,680.00
Nondestructive Testing Technician	Not Required per DSA 103		Hours	$ 125.00	$ -
				SUB-TOTAL	$ 10,560.00
PROJECT ENGINEERING					
Project Engineer	Mix Design Review/DSA Box Reporting/As Needed Project Support	6	Hours	$ 145.00	$ 870.00
				SUB-TOTAL	$ 870.00

REMARKS: This proposal is based on the plans provided titled, "04-122062_DWG_", and the DSA 103 Sheet numbered 04-122062 with a stamp date of 10/18/2023. Please note a construction schedule was not available at the time of our proposal preparation and we have made certain assumptions as it pertains to the durations and quantities based on our experience on projects similar in scope and magnitude. Our services are billed on a time and material basis. Our services will be provided during Monday to Friday and for 8 hours a day, no overtime allowance was calculated as a part of our budget estimate. See attached schedule of fees for additional terms and conditions

Estimated Grand Total $ 25,950.00

Project Name: Willow Elementary School Security Project
Proposal No: 24-1131
Date: 7/16/2024

Estimated Budget for Special Inspections and Material Testing Services

Twining Consulting, San Diego
Stacy Williams
619-787-9840

Description of Work	Details	Units		Unit Rates	Total
DIVISION 2: SITE CONSTRUCTION					
Soils Technician	Assume Three Weeks per Conversation with Conan Construction	120	Hours	$ 113.00	$ 13,560.00
Registered Geotechnical Engineer	Project Oversight/RFIs/DSA Form 293	4	Hours	$ 155.00	$ 620.00
Registered Geologist/Certified Engineering Geologist	Document Review/Project Oversight/Final Report	6	Hours	$ 145.00	$ 870.00
Geotechnical Laboratory Testing		1	Allowance	$ 1,500.00	$ 1,500.00
				SUB-TOTAL	**$ 16,550.00**

REMARKS: This proposal is based on the plans provided titled, "04-122062_DWG_", the addendum titles 04-122062_ADD_01_Approved, and 04-122062_ADD_02_A and the DSA 103 Sheet numbered 04-122062 with a stamp date of 10/18/2023. Please note a construction schedule was not available at the time of our proposal preparation and we have made certain assumptions as it pertains to the durations and quantities based on our experience on projects similar in scope and magnitude. Our services are billed on a time and material basis. Our services will be provided during Monday to Friday and for 8 hours a day, no overtime allowance was calculated as a part of our budget estimate. See attached schedule of fees for additional terms and conditions

Estimated Grand Total $ 16,550.00

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM: Jose F. Iniguez, Ed.D.
Assistant Superintendent of
Admin. Leadership, School Support & Safety

☐ Informational
☒ Action

AGENDA ITEM: DESIGN-BUILD AGREEMENT WITH BARNHART-REESE CONSTRUCTION, INC. FOR THE COMMUNITY RESOURCE CENTER AT THE BEYER SITE PROJECT

BACKGROUND INFORMATION:
On May 29, 2024, the District advertised a Request for Qualifications and Proposals ("RFQP") for Design-Build Services ("RFQ/P") to invite firms, partnerships, corporations, associations, persons, or professional organizations to submit their Statement of Qualifications ("SOQ") and proposal as a potential **Design-Build Entity ("DBE")** for the performance of design and construction services for the District's "San Ysidro Middle School Revitalization Project" and/or the **"Community Resource Center (CRC) at the Beyer Site Project"**.

Following a prequalification process, on July 1, 2024, Staff received SOQs and proposals from five (5) prequalified entities based on RFQ/P #2425-01 that submitted on the projects as follows:

Entity Name	San Ysidro Middle School Revitalization	Community Resource Center at Beyer
Barnhart-Reese Construction, Inc. (RNT Architects)	O	X
Core West, Inc. (PBK Architects)	X	X
C.W. Driver (Ruhnau Clarke Architects)	X	X
Soltek Pacific (Sillman Architects)	X	X
Swinerton Builders (Delawie Architects)	X	X

On July 17, 2024, interviews were conducted of all five (5) entities and the following Design-Build Agreement is recommended by Staff for approval by the Board of Education. Please note that Staff and consultant teams evaluated, deliberated, and negotiated in regards to the "economies of scale" of having the same entity design and construct both projects, and found no significant savings lost from having the projects designed and constructed by two (2) different entities. Additionally, the entity that provided the best value for the CRC Project, did not submit on both projects, therefore, two (2) entities remains Staff's recommendation.

As allowed by statute, this design-build entity has been chosen based on the best value for the District.

Firm	**Board Approved Project Budget**	**Design-Build Agreement Value**
Barnhart-Reese Construction, Inc.	$24,100,000.00	**$18,304,611.00**

RECOMMENDATION:
Approve the Design-Build Agreement with Barnhart-Reese Construction, Inc. for $18,304,611.00 based on the RFQ/P# 2425-01 for the construction and design services for the "Community Resource Center at the Beyer Site Project". Cost implications will be paid from the General Obligation Bond Measures T & U.

LCAP GOAL AND ACTION/SERVICE (please indicate):
Goal 7.0 – Provide sufficient, safe, well-maintained, and visually appealing facilities that create an environment for improving student achievement.

☐ **Renewal** ☒ **New** ☐ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No ☐ N/A	N/A

$18,304,611.00	G.O. Bond Measures T & U
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

SAN YSIDRO SCHOOL DISTRICT

BEYER COMMUNITY RESOURCE CENTER
DESIGN-BUILD CONTRACT

1.1 Contract for Design and Construction.

This Design-Build Contract is effective as of the 9th day of August, 2024, by and between San Ysidro School District, a school district organized and existing under the laws of the State of California ("District"), and Barnhart-Reese Construction, Inc. ("Design-Build Entity").

The parties agree as follows:

A. Design-Build Entity, for and in consideration of the payment to be made to Design-Build Entity as hereinafter provided, shall furnish all plant, labor, technical and professional design services, supervision, materials and equipment, other than such materials and equipment as may be specified to be furnished by District, and perform all operations necessary to complete the Work in strict conformance with the Contract Documents (defined below) for the public work of improvement titled:

BEYER COMMUNITY RESOURCE CENTER PROJECT

Design-Build Entity is an independent contractor and not an agent of District. The Design-Build Entity and its surety shall be liable to District for any damages arising as a result of the Design-Build Entity's failure to comply with this obligation.

B. The Design-Build Entity is made up of **ROESLING NAKAMURA TERADA ARCHITECTS** (License No. C10987), which shall function as the designer and Architect/Engineer of Record for the Project and provide all architectural/engineering design services, and **BARNHART-REESE CONSTRUCTION, INC.** (License No. 912130), which shall function as the general contractor for the Project and provide all construction services for the Project together with its chosen subcontractors. For purposes of this Contract, **West Reese** shall execute the Contract on behalf of the Design-Build Entity and shall have the authority to make all decisions necessary on behalf of the Design-Build Entity. Notwithstanding the foregoing, District may accept bonds naming the Design-Build Entity as principal and professional liability insurance naming the member of the Design-Build Entity designated for design/architectural services as named insured.

Design-Build Entity shall perform all services required under the Contract Documents in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform such services in the same discipline in the State of California.

C. Time is of the essence in the performance of the Work. The Work shall be commenced by the date stated in District's Notice to Proceed. The Design-Build Entity shall complete all Work required by the Contract Documents within **EIGHT HUNDRED FIFTY TWO CALENDAR DAYS** from the commencement date stated in the Notice to Proceed, which equates to a Project Completion Date of **December 8, 2026**.

By its signature hereunder, Design-Build Entity agrees the Project Completion Date is adequate and reasonable to complete the Work.

D. District shall pay to the Design-Build Entity as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the **Negotiated Cost established as part of the RFP process which shall be defined for the purposes of this contract as the Target Cost** of **EIGHTEEN MILLION THREE HUNDRED FOUR THOUSAND SIX HUNDRED AND ELEVEN DOLLARS** (**$18,304,611.00**). Payment shall be made as set forth in the General Conditions. Unless otherwise stated in the Contract Documents, the Target Cost shall pay for all costs and expenses required to design and construct the Project, and shall not be exceeded by the Design-Build Entity except as expressly permitted in the Contract.

Specifically included within the Target Cost is a District owned contingency in the amount of **ONE MILLION TWO HUNDRED THOUSAND DOLLARS ($1,200,000.00**) ("District Owned Contingency"). District Owned Contingency shall be for the exclusive use of District as needed to pay for unforeseen conditions and/or District added scope of work for the Project. District must authorize any use of these contingency funds in writing before the Design-Build Entity shall be entitled to any compensation from District Owned Contingency. Design-Build Entity shall be responsible at all times for tracking and accounting for any expenditure of District Owned Contingency. Any District Owned Contingency remaining at Project completion shall remain the sole property of District.

Specifically included within the Target Cost is a Contractor owned contingency in the amount of **SIX HUNDRED THOUSAND DOLLARS ($600,000.00)** ("Contractor Owned Contingency"). Contractor Owned Contingency shall be for the exclusive use of the Contractor. Design-Build Entity shall be responsible at all times for tracking and accounting for any expenditure of Contractor Owned Contingency. Any Contractor Owned Contingency remaining at Project completion shall remain the sole property of District.

Other than District Owned Contingency and Contractor Owned Contingency, the rest of the Target Cost is the sum payable to the Design-Build Entity to design and construct the Project.

1. At the completion of the **100% Design Development phase**, the District and selected DBE will determine a Preliminary Guaranteed Maximum Price ("Preliminary GMP") agreed by both parties which includes all items necessary to perform the Design-Build Contract. If the District accepts the Preliminary GMP as consistent with the Target Cost, the parties will amend the Contract by replacing the Target Cost with the Preliminary GMP. The Preliminary GMP shall not exceed the Target Cost without District written approval.

2. At the completion of the **100% Construction Documents phase**, the District and selected DBE will determine a **Final Guaranteed Maximum Price ("GMP")** agreed by both parties which shall include all items necessary to perform the Design-Build Contract and which shall not exceed the Preliminary GMP without the District's written approval. The DBE shall be responsible to maintain the Final GMP throughout the Construction and Closeout Phase. If

the District accepts the Final GMP, the parties will amend the Contract by replacing the Preliminary GMP with the Final GMP.

E. Design-Build Entity shall provide indemnification and defense as set forth in the General Conditions.

F. No oral agreement or conversation with any representative or employee of District, either before or after the execution of the Contract shall affect or modify any of the terms or obligations herein contained. This Contract constitutes the entire agreement between the parties hereto and no changes, alterations or modifications hereof shall be effective unless in writing and signed by District.

G. The "Contract Documents" include only the following documents, each of which is incorporated into this Contract by reference:

Request for Qualifications ("RFQ") and all addenda, attachments and appendices

Design-Build Entity Statement of Qualifications in response to RFQ

Request for Proposal ("RFP") and all addenda, attachments and appendices

Design-Build Entity Proposal submitted in response to RFP

Design-Build Contract and all addenda

General Conditions

Special Conditions

District approved Change Orders

Attachment 1 to this Contract - Design Professional Rate Schedule for Extra Work

Attachment 2 to this Contract - Performance Bond

Attachment 3 to this Contract - Payment Bond

Attachment 4 to this Contract - Escrow Agreement for Security (optional)

Attachment 5 to this Contract - Enhancements/Additional Scope of Work Terms And Conditions

Attachment 6 to this Contract – Additional Assumptions and Clarifications of Scope by the Design-Build Entity

Completed and approved Construction Documents in accordance with the General Conditions

The Design-Build Entity shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of a conflict, the various Contract Documents will be given effect in the order set forth in the General Conditions.

H. Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Design-Build Entity shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which are applicable to this Work.

I. By my signature hereunder, as Design-Build Entity, I certify that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

J. The parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract. The Design-Build Entity may not either voluntarily or by action of law, assign any obligation assumed by the Design-Build Entity hereunder without the prior written consent of District.

K. All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

District:	DESIGN-BUILD ENTITY:
San Ysidro School District	Barnhart-Reese Construction, Inc,
4350 Otay Mesa Road	10805 Thornmint Road, Suite 200
San Ysidro, CA 92173	San Diego, CA 92127
Attn: Jose F. Iniguez, Ed.D.	Attn: Tamela Barnhart Reese
jose.iniguez@sysdschools.org	treese@debconstruct.com

Any notice so given shall be considered received by the other party three (3) days after deposit in the U.S. Mail, first class postage prepaid, addressed to the party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

L. The persons executing this Contract on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties, on the day and year above written.

SAN YSIDRO SCHOOL DISTRICT

By: _____

Printed Name: Marilyn Adrianzen

Title: Chief Business Official

Dated: _____

Board approved: _____

ATTEST:

_____
District Clerk

BARNHART-REESE CONSTRUCTION, INC.

By: West Reese
(Authorized Representative of Design-Build Entity)

Printed Name: West Reese

Title: Ceo
(Attach Acknowledgment for Authorized Representative of Design-Build Entity)

License No. 912130

Dated: 7-25-24

END OF CONTRACT

ATTACHMENT 1

DESIGN PROFESSIONAL RATE SCHEDULE FOR EXTRA WORK

[TO BE NEGOTIATED WITH THE DESIGN-BUILD ENTITY]

1. **Reimbursable Expenses**.

	HOURLY RATES
Project Executive	$ 195.00
Project Manager	$ 155.00
Project Superintendent	$ 155.00
Project Engineer	$ 115.00
Safety Officer	$ 130.00
Estimator	$ 140.00
Scheduler	$ 140.00
Project Administrator	$ 80.00
Design Principal	$ 245.00
Design Project Manager	$ 205.00
Design Construction Administrator	$ 185.00
Design Job Captain	$ 155.00
Designer	$ 160.00
CADD Operator	$ 145.00

These are the current hourly rates effective August 9, 2024, through Project Completion. Increases in the above hourly rates shall be made only by an authorized amendment to this Agreement.

2. **Reimbursable Expenses**.

[INSERT AUTHORIZED REIMBURSABLE EXPENSES AS NEGOTIATED]

3. **Additional Services**.

Additional Services shall be computed at the actual hourly rates described above.

Design-Build entity shall only apply mark-ups as allowed in the General Conditions for Overhead and Profit on design change directives.

END OF DESIGN PROFESSIONAL RATE SCHEDULE FOR EXTRA WORK

ATTACHMENT 2

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the San Ysidro School District (hereinafter referred to as "District") has awarded to _____, (hereinafter referred to as the "Design-Build Entity") an agreement for _____ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Design-Build Entity is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Design-Build Entity is required by the Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of the Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Design-Build Entity and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto District in the sum of _____ DOLLARS, ($_____), the sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Design-Build Entity, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless District, its officers and agents, as stipulated in the Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Project, unless otherwise provided for in the Contract Documents, the guarantee obligation shall hold good for a period of two (2) years after the acceptance of the work by District, during which time if Design-Build Entity shall fail to make full, complete, and satisfactory repair and replacements and totally protect District from loss or damage resulting from or caused by defective materials or faulty workmanship the above obligation in penal sum thereof shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligations of Surety hereunder shall continue so long as any obligation of Design-Build Entity remains. Nothing herein shall limit District 's rights or the Design-Build Entity or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by District in enforcing such obligation.

Whenever Design-Build Entity shall be, and is declared by District to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at District's option:

1. Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or

2. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and District, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Design-Build Entity by District under the Contract and any modification thereto, less any amount previously paid by District to the Design-Build Entity and any other set offs pursuant to the Contract Documents.

3. Permit District to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Design-Build Entity by District under the Contract and any modification thereto, less any amount previously paid by District to the Design-Build Entity and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that District may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Design-Build Entity.

Surety shall not utilize Design-Build Entity in completing the Project nor shall Surety accept a bid from Design-Build Entity for completion of the Project if District, when declaring the Design-Build Entity in default, notifies Surety of District's objection to Design-Build Entity's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract to be performed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of Contract. including but not limited to the provisions of Sections 2819 and 2845 of the California Civil Code.

[Remainder of Page Left Intentionally Blank.]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 2024.

_____
DESIGN-BUILD ENTITY/PRINCIPAL

_____
Name

By_____

SURETY:

By: _____
Attorney-In-Fact

Signatures of those signing for the Design-Build Entity and Surety must be notarized and evidence of corporate authority attached.

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, $_____.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

_____

_____

(Name and Address of Agent or Representative for service of process in California, if different from above) _____

_____

_____

(Telephone number of Surety and Agent or Representative for service of process in California) _____

ATTACHMENT 2

END OF PERFORMANCE BOND

ATTACHMENT 2

ATTACHMENT 2

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the San Ysidro School District (hereinafter referred to as "District") has awarded to _____, (hereinafter referred to as the "Design-Build Entity") an agreement for _____ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Design-Build Entity is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Design-Build Entity is required by the Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of the Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Design-Build Entity and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto District in the sum of _____ DOLLARS, ($_____), the sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Design-Build Entity, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless District, its officers and agents, as stipulated in the Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Project, unless otherwise provided for in the Contract Documents, the guarantee obligation shall hold good for a period of two (2) years after the acceptance of the work by District, during which time if Design-Build Entity shall fail to make full, complete, and satisfactory repair and replacements and totally protect District from loss or damage resulting from or caused by defective materials or faulty workmanship the above obligation in penal sum thereof shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligations of Surety hereunder shall continue so long as any obligation of Design-Build Entity remains. Nothing herein shall limit District 's rights or the Design-Build Entity or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by District in enforcing such obligation.

Whenever Design-Build Entity shall be, and is declared by District to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at District's option:

1. Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or

2. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and District, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Design-Build Entity by District under the Contract and any modification thereto, less any amount previously paid by District to the Design-Build Entity and any other set offs pursuant to the Contract Documents.

3. Permit District to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Design-Build Entity by District under the Contract and any modification thereto, less any amount previously paid by District to the Design-Build Entity and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that District may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Design-Build Entity.

Surety shall not utilize Design-Build Entity in completing the Project nor shall Surety accept a bid from Design-Build Entity for completion of the Project if District, when declaring the Design-Build Entity in default, notifies Surety of District's objection to Design-Build Entity's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract to be performed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of Contract. including but not limited to the provisions of Sections 2819 and 2845 of the California Civil Code.

[Remainder of Page Left Intentionally Blank.]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 2024.

_____
DESIGN-BUILD ENTITY/PRINCIPAL

_____
Name

By_____

SURETY:

By: _____
Attorney-In-Fact

Signatures of those signing for the Design-Build Entity and Surety must be notarized and evidence of corporate authority attached.

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, $_____.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

_____

_____

(Name and Address of Agent or Representative for service of process in California, if different from above) _____

_____

_____

(Telephone number of Surety and Agent or Representative for service of process in California) _____

ATTACHMENT 2

END OF PERFORMANCE BOND

ATTACHMENT 2

ATTACHMENT 3
PAYMENT (MATERIAL & LABOR) BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the San Ysidro School District (hereinafter referred to as "District ") has awarded to _____, (hereinafter referred to as the "Design-Build Entity") _____ an agreement for _____ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Design-Build Entity is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, Design-Build Entity is required to furnish a bond in connection with the contract described above; providing that if Design-Build Entity or any of its subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Design-Build Entity and its subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Design-Build Entity and _____ as Surety, are held and firmly bound unto District in the penal sum of _____ Dollars ($_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if Design-Build Entity, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by District in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between District and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract to be performed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of Contract, including but not limited to the provisions of Sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Design-Build Entity and Surety above named, on the _____ day of _____ 20_____ the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(Corporate Seal of Design-Build Entity,
if corporation)

_____
Design-Build Entity/Principal

By _____
(Signature of Design-Build Entity)

(Seal of Surety)

_____
Surety

By _____
Attorney in Fact

Signatures of those signing for the Design-Build Entity and Surety must be notarized and evidence of corporate authority attached. A Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

END OF PAYMENT (LABOR AND MATERIALS) BOND
ATTACHMENT 3

ATTACHMENT 4

ESCROW AGREEMENT FOR SECURITY

This Escrow Contract is made and entered into by and between the **SAN YSIDRO SCHOOL DISTRICT**, whose address is **4350 Otay Mesa Road, San Ysidro, CA 92173** (hereinafter called the "District") and **[INSERT DESIGN-BUILD ENTITY NAME]** whose address is **[INSERT ADDRESS]** (hereinafter called "the Design-Build Entity") and _____ whose address is **[INSERT ADDRESS]** (hereinafter called "Escrow Agent").

For the consideration hereinafter set forth, District, the Design-Build Entity, and Escrow Agent agree as follows:

(1) Pursuant to Section 22300 of the Public Contract Code of the State of California, the Design-Build Entity has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by District pursuant to the Construction Contract entered into between District and the Design-Build Entity for the **[INSERT PROJECT NAME]** Project in the amount of $**[INSERT AMOUNT]** dated **[INSERT DATE]** (hereinafter referred to as the "Contract"). Alternatively, on written request of the Design-Build Entity, District shall make payments of the retention earnings directly to the Escrow Agent. When the Design-Build Entity deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify District within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between District and the Design-Build Entity. Securities shall be held in the name of District, and shall designate the Design-Build Entity as the beneficial owner.

(2) District shall make progress payments to the Design-Build Entity for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When District makes payment of retention earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Design-Build Entity until the time that the escrow created under this Escrow Contract is terminated. The Design-Build Entity may direct the investment of the payments into securities. All terms and conditions of this Escrow Contract and the rights and responsibilities of the parties shall be equally applicable and binding when District pays the Escrow Agent directly.

(4) The Design-Build Entity shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of District. These expenses and payment terms shall be determined by District, the Design-Build Entity and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of the Design-Build Entity and shall be subject to withdrawal by the Design-Build Entity at any time and from time to time without notice to District.

(6) The Design-Build Entity shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from District to the Escrow Agent that District consents to the withdrawal of the amount sought to be withdrawn by the Design-Build Entity.

(7) District shall have a right to draw upon the securities in the event of default by the Design-Build Entity. Upon seven days' written notice to the Escrow Agent from District of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by District.

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

(9) Escrow Agent shall rely on the written notifications from District and the Design-Build Entity pursuant to Sections (5) to (8), inclusive, of this Escrow Contract and District and the Design-Build Entity shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of District and on behalf of the Design-Build Entity in connection with the foregoing, and exemplars of their respective signatures are as follows:

ON BEHALF OF THE DESIGN-BUILD ENTITY:

By:_____

Name:_____

Its:_____

ON BEHALF OF DISTRICT:

By:_____

Name:_____

Its:_____

ON BEHALF OF ESCROW AGENT:

By:_____

Name:_____

Its:_____

Address:_____

At the time the Escrow Account is opened, District and the Design-Build Entity shall deliver to the Escrow Agent a fully executed counterpart of this Escrow Contract.

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

ON BEHALF OF THE DESIGN-BUILD ENTITY:	**ON BEHALF OF DISTRICT:**
By:_____	By:_____
Name:_____	Name:_____
Its:_____	Its:_____

END OF ESCROW AGREEMENT FOR SECURITY

ATTACHMENT 5

ENHANCEMENTS/ADDITIONAL SCOPE OF WORK TERMS AND CONDITIONS

[NOT APPLICABLE]

END OF ENHANCEMENTS/ADDITIONAL SCOPE OF WORK TERMS AND CONDITIONS

ATTACHMENT 6

ADDITIONAL ASSUMPTIONS AND CLARIFICATIONS OF SCOPE BY DESIGN-BUILD ENTITY

[ATTACHED SEPARATELY]

END OF ADDITIONAL ASSUMPTIONS AND CLARIFICATIONS OF SCOPE BY DESIGN-BUILD ENTITY

ATTACHMENT 6 DESIGN-BUILD AGREEMENT
ADDITIONAL ASSUMPTIONS AND CLARIFICATIONS OF SCOPE FOR DBE

San Ysidro School District
Beyer Community Resource Center
Clarifications Requested by the District

No.	Item	Description	Phase 1	Phase 2
1	Scope of Work Inclusions & Exclusions	No specific exclusions. All work from back edge of the city sidewalk is included. Public utilities connection from property line to center of road included. No offsite improvements included. Utilize existing driveways.		
2	Schedule	The schedule will be finalized once the design has evolved further. Currently include 12 months for construction and 2 months for closeout, for Phase 1. Phase 2 shall include 2 additional months for construction.		
3	Detailed breakdown of your proposed total Negotiated Cost that notes all deliverables included in your proposal, including but not limited to:			
a	TOTAL AMOUNT			
i	Design (AE) Fees	These are fixed fees and will be included in the Target Cost	$ 1,405,140	$ 315,974
		Pre Design Stage	$ 65,653	$ 15,170
		Schematic Design Documents Completion	$ 156,186	$ 36,089
		50% Design Development Completion	$ 241,134	$ 44,226
		100% Design Development Completion	$ 237,007	$ 54,764
		50% Construction Documents Completion	$ 291,120	$ 67,268
		95% Construction Documents Completion	$ 293,123	$ 67,731
		100% Construction Documents Completion	$ 120,918	$ 30,726
ii	Preconstruction Fees	These are fixed fees and will be in included in the Target Cost	$ 200,000	
		Pre Design Stage	$ 9,390	
		Schematic Design Documents Completion	$ 22,338	
		50% Design Development Completion	$ 31,794	
		100% Design Development Completion	$ 33,898	
		50% Construction Documents Completion	$ 41,637	
		95% Construction Documents Completion	$ 41,924	
		100% Construction Documents Completion	$ 19,019	
iii	Construction Administration Fees	These fees will be included in the Final GMP will be part of the total construction cost.	$ 632,840	$ 115,279
iv	Construction Cost	Barnhart-Reese Estimate based on current market pricing	$ 13,128,724	$ 2,849,000
v	General Conditions	It includes all labor+burden costs to manage the project during the construction phase. The final cost will be determined at GMP establishment and will be driven by the construction duration.	$ 944,076	$ 134,868
vi	General Requirements	It includes all material and equipment costs to manage the project during the construction phase. The final cost will be determined at GMP establishment and will be driven by the construction duration.	$ 416,556	$ 59,508
vii	DBE Fee / Overhead & Profit	This cost is included as a percent of direct cost (direct cost includes all design cost, subcontractor cost, GCs/GRs and any other project related costs paid by Barnhart-Reese).	5%	5%
viii	Bonds GC	This cost is included as a percent of direct cost (direct cost includes all design cost, subcontractor cost, GCs/GRs and any other project related costs paid by Barnhart-Reese).	1%	1%
ix	Sub Bonds / SDI	This cost will be included in the Construction Cost at GMP establishment.	1.5%	1.5%
x	Insurance (not including Builder's Risk)	This cost includes G/L and P/L insurance only	0.6%	0.6%
x.a	Insurance (Builder's Risk)	The actual cost will be determined at Final GMP establishment.	$ 384,000	
x.b	Insurance (SAM)	Based on actual quote.	$ 15,000	
xi	Contingencies (Design & Owner)	Contingencies will be determined at Final GMP establishment.		
xi.a	Owner Contingency	Controlled by Owner. Any remaining funds at project completion stay with the Owner.	10%	10%
xi.b	Contractor Contingency	Controlled by Contractor. Any remainig funds at project completion stay with the Owner.	5%	5%
b	MARK UPS PERCENTAGES			
i	Subcontractor COs	This does not include any general conditions or general requirements cost if the change order result in a time impact to the schedule.	10%	10%
ii	Self-Performed Cos	This does not include any general conditions or general requirements cost if the change order result in a time impact to the schedule.	10%	10%
c	STAFFING COSTS / RATES	These costs are included in the submitted proposal.		

PHASE 1: $17,909,037.00: DESIGN & CONSTRUCTION
PHASE 2: $395,574.00: DESIGN THROUGH AGENCY PERMIT APPROVAL ONLY

TOTAL CONTRACT VALUE: $18,304,611.00

San Ysidro School District

Beyer Community Resource Center

Target Cost - Phase 1

Description	Amount
Design Stage Cost (includes Design Work and Preconstruction Services)	$ 1,605,140
Design Cost	$ 1,405,140
PreConstruction Cost	$ 200,000
Permitting Fees (Owner Reimbursable Cost)	$ 330,900
DSA Plan Check Fees	$ 150,900
Off-site Improvements	$ 100,000
SDG&E	$ 80,000
Water and Sewer Capacity Charges (assuming removed fixture count exceeds added fixture count)	$ -
Design Phase Cost (including Owner Allowance for Permits and Fees)	$ 1,936,040
Estimated Construction Cost	$ 13,128,724
General Conditions (14 months construction duration)	$ 944,076
General Requirements (14 months construction duration)	$ 416,556
Bond Cost (1% of Direct Cost)	$ 144,894
Insurance Cost - G/L and P/L only (0.6% of Direct Cost)	$ 86,936
SAM Insurance	$ 15,000
COC Insurance	$ 384,000
Fee / Overhead & Profit (5% of Direct Costs)	$ 852,811
Initial Proposed Construction Cost	$ 15,972,997
Target Cost	**$ 17,909,037**

Barnhart-Reese CONSTRUCTION, INC. A Company

JOB NAME:	Beyer Community Resource Center (BCRC)
PHASE	Phase 1
OWNER NAME:	San Ysidro School District
ESTIMATE DATE:	07/24/24
PROJECT NAME	Community Resource Center
PROJECT TYPE:	Lobby, Family Resource, Community Ctr.
ARCHITECT:	RNT Architects
CONTRACT	Design-Build Contract
BLDG. AREA TOTAL	7,360
SITE AREA (SF):	435,000
DURATION	14 Months

MAIN LOBBY - ENTRY STRUCTURE						1,085	SF
CSI SPEC #	DESCRIPTION	QTY	Unit	$/Unit	Total	% Costs	NOTES
01000	SURVEY & LAYOUT	1,085	SF	6.00	6,510	0.78%	
02000	BUILDING PAD PREPARATION	1,085	sf	21.00	22,785	2.73%	Grade & recompaction
03000	FOUNDATION ELEMENTS	1,085	sf	52.00	56,420	6.77%	Concrete & Rebar
05000	STRUCTURAL & FRAMING	1,085	sf	115.00	124,775	14.97%	Wood Framed w/ Misc Steel
06000	CASEWORK & FINISH CARPENTRY	1,085	sf	75.00	81,375	9.77%	w/ lobby desk
07000	THERMAL & MOISTURE	1,085	sf	38.00	41,230	4.95%	
08000	WINDOWS & DOORS	1,085	sf	45.00	48,825	5.86%	
90000	EXTERIOR CLADDING	1,085	sf	80.00	86,800	10.42%	Stucco, Decorative elements
95000	INTERIOR FINISHES	1,085	sf	85.00	92,225	11.07%	
10000	SPECIALTIES & EQUIPMENT	1,085	sf	35.00	37,975	4.56%	
23000	MECHANICAL & PLUMBING / SPRINKLERS	1,085	sf	91.00	98,735	11.85%	w/ fire sprinklers
26000	ELECTRICAL / LOW VOLTAGE / SOLAR	1,085	sf	103.00	111,755	13.41%	
28000	FIRE LIFE SAFETY / ACCESS CONTROL	1,085	sf	22.00	23,870	2.86%	
32000	LANDSCAPE & SITE ACCESSORIES				n/a		See Site
	TOTAL HARD COSTS		$/sf	**768**	833,280		
	CONSTRUCTION ADMINISTRATION	5%	%		41,664		
	OWNER CONTINGENCY	10%	%		83,328		
	CONTRACTOR CONTINGENCY	5%	%		41,664		
	ESCALATION	4%	%		39,997		
	MAIN LOBBY TOTAL		$/sf	958	**1,039,933**		

FAMILY RESOURCE CENTER						2,650	SF
CSI SPEC #	DESCRIPTION	QTY	Unit	$/Unit	Total	% Costs	NOTES
01000	SURVEY & LAYOUT	2,650	sf	6.00	15,900	0.82%	
02000	BUILDING PAD PREPARATION	2,650	sf	21.00	55,650	2.86%	Grade & recompaction
03000	FOUNDATION ELEMENTS	2,650	sf	52.00	137,800	7.07%	Concrete & Rebar
05000	STRUCTURAL & FRAMING	2,650	sf	115.00	304,750	15.65%	Wood Framed w/ Misc Steel
06000	CASEWORK & FINISH CARPENTRY	2,650	sf	40.00	106,000	5.44%	
07000	THERMAL & MOISTURE	2,650	sf	38.00	100,700	5.17%	
08000	WINDOWS & DOORS	2,650	sf	45.00	119,250	6.12%	
90000	EXTERIOR CLADDING	2,650	sf	82.00	217,300	11.16%	Stucco, Decorative elements
95000	INTERIOR FINISHES	2,650	sf	85.00	225,250	11.56%	
10000	SPECIALTIES & EQUIPMENT	2,650	sf	35.00	92,750	4.76%	
23000	MECHANICAL & PLUMBING / SPRINKLERS	2,650	sf	91.00	241,150	12.38%	
26000	ELECTRICAL / LOW VOLTAGE / SOLAR	2,650	sf	103.00	272,950	14.01%	
28000	FIRE LIFE SAFETY / ACCESS CONTROL	2,650	sf	22.00	58,300	2.99%	
32000	LANDSCAPE & SITE ACCESSORIES				n/a		See Site
	TOTAL HARD COSTS		$/sf	735	1,947,750		
	CONSTRUCTION ADMINISTRATION	5%	%		97,388		
	OWNER CONTINGENCY	10%	%		194,775		
	CONTRACTOR CONTINGENCY	5%	%		97,388		
	ESCALATION	4%	%		93,492		
TOTAL	**FAMILY RESOURCE CENTER**		$/sf	917	**2,430,792**		

COMMUNITY EVENT CENTER						2,665	SF
CSI SPEC #	DESCRIPTION	QTY	Unit	$/Unit	Total	% Costs	NOTES
01000	SURVEY & LAYOUT	2,665	sf	6.00	15,990	0.79%	
02000	BUILDING PAD PREPARATION	2,665	sf	21.00	55,965	2.75%	Grade & Recompaction
03000	FOUNDATION ELEMENTS	2,665	sf	52.00	138,580	6.81%	Concrete & Rebar
05000	STRUCTURAL & FRAMING	2,665	sf	115.00	306,475	15.07%	Wood Framed w/ Misc Steel
06000	CASEWORK & FINISH CARPENTRY	2,665	sf	40.00	106,600	5.24%	
07000	THERMAL & MOISTURE	2,665	sf	38.00	101,270	4.98%	
08000	WINDOWS & DOORS	2,665	sf	45.00	119,925	5.90%	
90000	EXTERIOR CLADDING	2,665	sf	82.00	218,530	10.75%	Stucco, Decorative elements
95000	INTERIOR FINISHES	2,665	sf	85.00	226,525	11.14%	
10000	SPECIALTIES & EQUIPMENT	2,665	sf	35.00	93,275	4.59%	
12000	KITCHEN EQUIPMENT	1	ls	75,000	75,000	3.69%	Light commercial level
23000	MECHANICAL & PLUMBING / SPRINKLERS	2,665	sf	91.00	242,515	11.92%	
26000	ELECTRICAL / LOW VOLTAGE / SOLAR	2,665	sf	103.00	274,495	13.50%	
28000	FIRE LIFE SAFETY / ACCESS CONTROL	2,665	sf	22.00	58,630	2.88%	
32000	LANDSCAPE & SITE ACCESSORIES				n/a		See Site
	TOTAL HARD COSTS		$/sf	763	2,033,775		
	CONSTRUCTION ADMINISTRATION	5%	%		101,689		
	OWNER CONTINGENCY	10%	%		203,378		
	CONTRACTOR CONTINGENCY	5%	%		101,689		
	ESCALATION	4%	%		101,689		
TOTAL	**COMMUNITY EVENT CENTER**		$/sf	952	**2,538,151**		

SITE WORK						435,000	SF
CSI SPEC # / #	DESCRIPTION	QTY	Unit	$/Unit	Total	% Costs	NOTES
1	STORMWATER & SWPPP	435,000	sf	0.67	293,400	5.15%	Contained site
2	DEMOLITION & GRADING	435,000	sf	0.72	313,200	5.49%	Rough grading complete
3	SITE PAVING - HARDSCAPE / PARKING	52,000	sf	11.50	598,000	10.49%	*Reduced scope asphalt & concrete & DG*
4	SITE UTILITIES / BIO BASINS	435,000	sf	2.25	978,750	17.17%	Sewer, storm, water
5	UTILITIES CONNECTIONS	1	ls	175,000	175,000	3.07%	At property line
6	OFF SITE REMEDIATION	1	ls	200,000	200,000	3.51%	Street / sidewalk patch
7	SITE FENCING & GATES / ACCESS CNTL.	2,800	lf	72.32	202,488	3.55%	*Keep perimeter, Add wrought iron to front entry w/ gates*
8	BASKETBALL & PICKLE BALL COURTS	3	ea	45,000	135,000	2.37%	*AC pave w/ court stripes*
9	OUTDOOR EVENT CENTER - GRADING/DG	52,000	sf	3.77	195,909	3.44%	Level area w/ DG for events
10	LANDSCAPE & SITE ACCESSORIES	435,000	sf	4.10	1,783,500	31.28%	*Reduced Site & Scope*
11	ELECTRICAL & LOW VOLTAGE	435,000	sf	1.90	826,500	14.50%	*Site power, minor site lighting. Future conduit only*
	TOTAL HARD COSTS - SITE		$/sf	13	5,701,747		
	CONSTRUCTION ADMINISTRATION	5%	%		285,087		
	OWNER CONTINGENCY	10%	%		570,175		
	CONTRACTOR CONTINGENCY	5%	%		285,087		
	ESCALATION	4%	%		273,684		
TOTAL	**SITE WORK**		$/sf	16	**7,115,780**		
OVERALL SITE & BUILDING COSTS					**13,128,724**		

San Ysidro School District

Beyer Community Resource Center

Target Cost - Phase 2

Description	Amount
Design Stage Cost (includes Design Work and Preconstruction Services)	$ 315,974
Design Cost	$ 315,974
PreConstruction Cost	$ -
Permitting Fees (Owner Reimbursable Cost)	$ 79,600
DSA Plan Check Fees	$ 45,600
Off-site Improvements	$ -
SDG&E	$ 34,000
Water and Sewer Capacity Charges (assuming removed fixture count exceeds added fixture count)	$ -
Design Phase Cost (including Owner Allowance for Permits and Fees)	$ 395,574
Estimated Construction Cost	$ 2,849,000
General Conditiions (2 months construction duration)	$ 134,868
General Requirements (2 months construction duration)	$ 59,508
Fee / Overhead & Profit (5% of Direct Costs)	
Bond Cost (1% of Direct Cost)	$ 30,434
Insurance Cost - G/L and P/L only (0.6% of Direct Cost)	$ 18,260
SAM Insurance	$ -
COC Insurance	$ 160,174
Fee / Overhead & Profit (5% of Direct Costs)	$ 182,391
Initial Proposed Construction Cost	$ 3,434,635
Target Cost	**$ 3,830,209**

Barnhart-Reese CONSTRUCTION, INC. A JA Company

JOB NAME:	Beyer Community Resource Center (BCRC)
PHASE	Phase 2 (Alternate Add)
OWNER NAME:	San Ysidro School District
ESTIMATE DATE:	07/24/24
PROJECT NAME	Community Resource Center - *Phase 2*
PROJECT TYPE:	Offices Special Education & Education Office
ARCHITECT:	RNT Architects
CONTRACT	Design-Build Contract
BLDG. AREA TOTAL	3,070
SITE AREA (SF):	n/a
DURATION	2 Months

San Ysidro School District
BEYER COMMUNITY RESOURCE CENTER

SCOPE OF IMPROVEMENTS:
1. MAIN LOBBY
2. FAMILY RESOURCE CENTER
3. COMMUNITY EVENT CENTER (INCLUDES ASSEMBLY ROOM, SMALL KITCHEN AND STORAGE)
3a. OUTDOOR EVENT SPACE/PATIO
4. PUBLIC ENTRANCE
5. VEHICULAR ROUNDABOUT AND DROP-OFF
6. DELIVERIES/SECONDARY ENTRANCE
7. PLAYGROUND/BALL COURTS/SOCCER FIELD
8. LARGE OUTDOOR EVENT SPACE
9. LANDSCAPE IMPROVEMENTS (INCLUDING CHERRY BLOSSOM TREES)
10. FUTURE DEVELOPMENT
11. PARKING

INSPIRATION IMAGES:

Offices Special Education & Education Office						3,070	SF
CSI SPEC #	DESCRIPTION	QTY	Unit	$/Unit	Total	% Costs	NOTES
01000	SURVEY & LAYOUT	3,070	sf	6.00	18,420	0.81%	
02000	BUILDING PAD PREPARATION	3,070	sf	19.00	58,330	2.56%	Grade & recompaction
03000	FOUNDATION ELEMENTS	3,070	sf	52.00	159,640	6.99%	Concrete & Rebar
05000	STRUCTURAL & FRAMING	3,070	sf	115.00	353,051	15.47%	Wood Framed w/ Misc Steel
06000	CASEWORK & FINISH CARPENTRY	3,070	sf	52.60	161,482	7.07%	
07000	THERMAL & MOISTURE	3,070	sf	38.00	116,660	5.11%	
08000	WINDOWS & DOORS	3,070	sf	45.00	138,150	6.05%	
90000	EXTERIOR CLADDING	3,070	sf	80.00	245,600	10.76%	Stucco, Decorative elements
95000	INTERIOR FINISHES	3,070	sf	85.00	260,950	11.43%	
10000	SPECIALTIES & EQUIPMENT	3,070	sf	35.00	107,450	4.71%	
23000	MECHANICAL & PLUMBING / SPRINKLERS	3,070	sf	91.00	279,370	12.24%	w/ fire sprinklers
26000	ELECTRICAL / LOW VOLTAGE / SOLAR	3,070	sf	103.00	316,210	13.85%	
28000	FIRE LIFE SAFETY / ACCESS CONTROL	3,070	sf	22.00	67,540	2.96%	
32000	LANDSCAPE & SITE ACCESSORIES				n/a		See Site
	TOTAL HARD COSTS		$/sf	744	2,282,853		
	CONSTRUCTION ADMINISTRATION	5%	%		114,143		
	OWNER CONTINGENCY	10%	%		228,285		In master GMP
	CONTRACTOR CONTINGENCY	5%	%		114,143		In master GMP
	ESCALATION	4%	%		109,577		
	Offices Special Education & Education Office		$/sf	928	**2,849,000**		

GENERAL CONDITIONS

ARTICLE 1 -DEFINITIONS AND TERMINOLOGY

1.1 Defined Terms.

A. Wherever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined below, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. Act of God -- Act of God is an earthquake of magnitude 3.5 or higher on the Richter Scale or a tidal wave.

2. Additional Work – New or unforeseen work will be classified as "Additional Work" when District's Representative determines that it is not covered by the Contract.

3. Applicable Laws -- The laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued by local, state or federal governmental authorities or private authorities with jurisdiction (including utilities), to the extent they apply to the Work.

4. Application for Payment -- The form acceptable to District's Representative which is to be used by the Design-Build Entity during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

5. Architect of Record or Engineer of Record ("A/E") -- The individual, partnership, corporation, joint venture, or other legal entity named as such in Article 1.1 or any succeeding entity designated by District.

6. Bridging Documents -- Includes, but is not limited to, the portions of the Contract Documents which constitute an outline of design requirements, Work, Project Program, Performance Specifications and schematic drawings.

7. Certificate for Payment -- The form signed by District's Representative attesting to the Design-Build Entity's right to receive payment for certain completed portions of the Work on the Project in accordance with Article 12.

8. Change Order ("CO") -- A document that authorizes an addition, deletion, or revision in the Work or an adjustment in the Guaranteed Maximum Price or the Project Completion Date, issued on or after the Effective Date of the Contract, in accordance with the Contract Documents and in the form contained in the Contract Documents.

9. Change Order Request ("COR") -- A request made by the Design-Build Entity for an adjustment in the Guaranteed Maximum Price and/or Project Completion Date as the result of a Design-Build Entity-claimed change to the Work. This term may also be referred to as a Change Order Proposal ("COP"), or Request for Change ("RFC").

10. District's Representative -- The individual or entity as identified in the Special Conditions to act as District's Representative.

11. Claim -- A demand or assertion by District or Design-Build Entity seeking an adjustment of the Guaranteed Maximum Price or Project Completion Date, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

12. Construction Documents -- The plans and technical specifications prepared by the Design-Build Entity for the Project and approved by District. The Construction Documents shall set forth in detail all items necessary to complete the construction (other than such details customarily provided by others during construction) of the Project in accordance with the Contract Documents. Following commencement of the Construction Phase, Construction Documents become part of the Contract Documents upon their completion and approval by District. All amendments and modifications to the Construction Documents must be approved by District in writing.

13. Construction Documents Phase – The second of three phases of the Work and will commence with the issuance of the approval of the Schematic Design Phase.

14. Construction Phase -- The third phase of the Work and will commence upon final approval of the Construction Documents by District.

15. Construction Work -- That portion of the Work on the Project consisting of the provision of labor, materials, furnishings, equipment and services in connection with the construction of the Project as set forth in the Contract Documents.

16. Contract -- The entire integrated written agreement between District and Design-Build Entity concerning the Work. "Contract" may be used interchangeably with "Agreement" in the Contract Documents. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral, and includes all Contract Documents.

17. Contract Documents -- The documents listed in Article 1.1.G. Some documents provided by District, including but not limited to reports and drawings of subsurface and physical conditions are not Contract Documents.

18. Contract Times -- The number of days or the dates stated in the Contract Documents and Master Project Schedule to: achieve defined Milestones, if any, and to complete the Work so that it is ready for final payment.

19. Cost Breakdown -- A Cost Breakdown/Schedule of Values for each phase of Work shall be submitted by the Design-Build Entity as required pursuant to Article 12 herein and are incorporated into the Contract Documents by reference.

20. Daily Rate – The Daily Rate stipulated in the Contract Documents as full compensation to the Design-Build Entity due to District's unreasonable delay to the Project that was not contemplated by the parties.

21. Day -- A calendar day of 24 hours measured from midnight to the next midnight.

22. Defective Work -- Work that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referenced in the Contract Documents.

23. Demobilization – The complete dismantling and removal by the Design-Build Entity of all of the Design-Build Entity's temporary facilities, equipment, and personnel at the Site.

24. Design-Build Entity -- The individual or entity with which District has contracted for performance of the Work.

25. Design-Build Entity Representative -- The person or firm identified as the primary contact person and representative of the Design-Build Entity as designated in the Contract and who shall not be changed without prior written consent of District.

26. Design Materials -- Any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by, or for, the Design-Build Entity: (1) to District under the Contract Documents or; (2) developed or prepared by or for the Design-Build Entity specifically to discharge its duties under the Contract Documents.

27. Design Professional -- The individuals or entities who will provide the Design-Build Entity with the required architectural, engineering, and other professional services required for the coordinated design of the Project and the administration of construction.

28. Design Work -- The portion of the Work on the Project consisting of the Design services and design deliverables required to be provided in connection with the Design of the Project as set forth in the Contract Documents.

29. Drawings -- The graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work to be done on the Project, generally including plans, elevations, sections, details, schedules, and diagrams prepared as part of the Design Materials. The Drawings are listed in the List of Drawings.

30. Effective Date of the Contract – The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.

31. Equipment Manufacturer -- Any Separate Contractor that fabricates and/or supplies any of District's provided equipment which is installed in the Project by the Design-Build Entity.

32. Governmental Approvals -- Those governmental actions required to be obtained by District and necessary for the completion of the Project.

33. Guaranteed Maximum Price ("GMP") -- The guaranteed maximum price District will pay for the completion of all Work described in the Contract Documents. The GMP is set forth in Article 1.1 and further described in the cost proposal submitted by the Design-Build Entity.

34. Hazardous Environmental Condition – The presence at the Site of Hazardous Waste.

35. Hazardous Waste – Has the same meaning provided in Section 104 of the Solid Waste Disposal Act (42 U.S.C. § 6903) as amended from time to time or, 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, whichever is more restrictive.

36. Holidays -- The Holidays occur on:

    New Year's Day - January 1
    Memorial Day - Last Monday in May
    Independence Day - July 4
    Labor Day - First Monday in September
    Veteran's Day - November 11
    Thanksgiving Day - Fourth Thursday in November
    Friday after Thanksgiving
    Christmas Day - December 25

    If any Holiday listed above falls on a Saturday, Saturday and the preceding Friday are both Holidays. If the Holiday should fall on a Sunday, Sunday and the following Monday are both Holidays.

37. Liens – Charges, security interests, or encumbrances upon Project funds, or personal property, including without limitation Stop Payment Notices.

38. Master Project Schedule -- The overall schedule for completion of the Project as prepared by District and included in the RFP.

39. Milestones – A principal event specified in the Contract Documents associated with a required completion date or time prior to Completion of all the Work. Failure to achieve Milestones may result in Liquidated Damages as described in the Contract Documents.

40. Notice of Award – The written notice by District to the Design-Build Entity stating that upon timely compliance by the Design-Build Entity with the conditions precedent listed therein, District will sign and deliver the Contract.

41. Notice of Completion – The form which may be executed by District and recorded by the county where the Project is located constituting final acceptance of the Project.

42. Notice to Proceed -- A written notice given by District to the Design-Build Entity fixing the date on which the Design-Build Entity may proceed with the Work and when Contract Times will commence to run.

43. Partial Utilization – Use by District of a substantially completed part of the Work prior to Completion of all the Work.

44. Performance Specifications -- That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto included within the Bridging Documents.

45. Project -- The total design and construction of which the Work performed under the Contract Documents may be the whole, or a part, and which may include separate design or construction work performed by District or by Separate Contractors for the Project.

46. Project Completion Date -- The date by which the Design-Build Entity agrees that all Work described in the Contract Documents shall be completed. The Project Completion Date is set forth in Article 1.1.

47. Project Schedule -- The graphical representation of a practical plan to complete the Work on the Project within the Project Completion Date and other Contract Times as a part of the Master Project Schedule. The detailed requirements for the Project Schedule are stated in Article 6.

48. Proposal -- The proposal submitted by the Design-Build Entity in response to the Request for Proposal for this Project.

49. Request for Proposal ("RFP") -- The request for proposal issued by District for the Project and includes all documents, exhibits, attachments, and addenda thereto.

50. Samples -- Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

51. Schematic Design Phase -- The first of three phases of the Work. The scope of the Schematic Design Phase is further defined in the RFP.

52. Separate Contractor -- A person, or firm, under separate contract with District performing other work at the Project site which may affect the Work.

53. Shop Drawings -- All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Design-Build Entity and submitted by Design-Build Entity to illustrate some portion of the Work.

54. Site -- Lands or areas indicated in the Contract Documents as being furnished by District upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by District which are designated for the use of Design-Build Entity.

55. Stop Payment Notice -- A written notice as defined in Civil Code section 8044.

56. Subcontractor – An individual or entity that has a contract with the Design-Build Entity or with a Subcontractor of the Design-Build Entity to perform a portion of the Work on the Project. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of all tiers.

57. Submittal - Written or graphic information and physical samples prepared and supplied by the Design-Build Entity demonstrating various portions of the Work.

58. Supplier -- A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Design-Build Entity or with any Subcontractor to furnish materials or equipment used in the performance of the Work or to be incorporated in the Work.

59. Technical Specifications – All documents developed by the Design-Build Entity during the Schematic Design Phase and which are ready for final construction.

60. Tier -- The contractual level of a Subcontractor or supplier or consultant with respect to the Design-Build Entity. For example, a first tier Subcontractor is under subcontract with the Design-Build Entity, a second tier Subcontractor is under subcontract with a first tier Subcontractor, and so forth.

61. Unexcusable Delay -- Any delay other than an Excusable Delay, as described in Articles 9 and 10 of these General Conditions, that does not entitle the Design-Build Entity to an adjustment of the Guaranteed Maximum Price and does not entitle the Design-Build Entity to an adjustment of the Project Completion Date.

62. Warranty A written guarantee provided to District by the Design-Build Entity that the Work remain free of defects and suitable for its intended use for the period required by the Contract Documents or the longest period permitted by the law of this State, whichever is longer.

63. Work -- The entire design and construction, or the various separately identifiable parts thereof, required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such design and construction, and furnishing, installing, and incorporating all materials and equipment into such design and construction, all as required by the Contract Documents.

1.2 Terminology.

A. The words and terms below are not defined but, when used in the Contract Documents, have the indicated meaning.

B. Furnish, Install, Perform, Provide.

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Project site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. Regardless of whether “furnish,” “install,” “perform,” or “provide” is used in connection with services, materials, or equipment, an obligation of Design-Build Entity is implied.

C. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning

ARTICLE 2 -PRELIMINARY MATTERS

2.1 Delivery of Contract Documents.

A. Within fifteen (15) Days after receipt of the Notice of Award and before District will execute the Contract, the Design-Build Entity shall furnish and file with District a signed Contract in duplicate and the necessary Performance Bond, Payment Bond, Certificates of Insurance and Endorsements, Escrow Agreement (if used) and Tax Identification Number, as well as any other documents specified in the Contract Documents.

2.2 Bonds.

A. Design-Build Entity shall submit the bonds on the forms provided with the Contract Documents, duly executed by a responsible corporate surety admitted to transact surety business in the State of California, as defined in Code of Civil Procedure section 995.120, and listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California and acceptable to District conditioned upon the faithful performance by the Design-Build Entity of all requirements of the Contract Documents. Each of the bonds shall be in a sum no less than one hundred percent (100%) of the Guaranteed Maximum Price.

2.3 Evidence of Insurance.

A. Design-Build Entity shall obtain, at its sole cost and expense, all insurance required by Article 5. Certificates of such insurance and copies of the insurance policies and endorsements shall be delivered to District within fifteen (15) Days after receipt of the Notice of Award and before execution of the agreement for construction by District.

2.4 Execution of Contract.

A. Upon receipt of the required Contract Documents, District will execute the Contract, establishing the Effective Date of the Contract.

2.5 Commencement of Contract Times; Notice to Proceed.

A. District will not issue a Notice to Proceed until after the Effective Date of the Contract.

B. Work shall commence within fifteen (15) Days of the date stated in District's Notice to Proceed.

C. The Contract Times begin to run on the Day the Design-Build Entity commences Work. If the Design-Build Entity fails to commence Work as required herein, the Contract Times commence on the fifteenth (15th) Day after the date stated in the Notice to Proceed.

D. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

E. Nothing herein shall affect the Project Completion Date.

2.6 Copies of Documents.

A. District will furnish to Design-Build Entity one (1) copy of the Bridging Documents electronically. Additional copies will be furnished upon request at the cost of reproduction.

2.7 Preconstruction Conference; Designation of Authorized Representatives.

A. Before any Work at the Project site is started, a conference attended by District, Design-Build Entity, District's Representative, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to herein, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

B. At this conference District and Design-Build Entity each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.8 Initial Acceptance of Schedules.

A. At least ten (10) Days before submission of the first Application for Payment, a conference attended by Design-Build Entity, District's Representative, and others as appropriate will be held to review for acceptability to District's Representative the schedules submitted, as required by the Contract Documents. Design-Build Entity shall have an additional ten (10) Days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Design-Build Entity until acceptable schedules are submitted to District's Representative.

B. Acceptance of the schedules by District's Representative will not impose on responsibility for accuracy, for sequencing, scheduling, or progress of the Work, or compliance with the Contract Documents. Acceptance will not interfere with or relieve Design-Build Entity from Design-Build Entity's full responsibility therefor.

2.9 Subcontractor Mobilization Meeting.

Prior to the start of each major Subcontractor's Site Work, the Design-Build Entity, the involved Subcontractor, and District's Representative shall attend a pre-start meeting to discuss the schedule, coordination, procedures, and other administrative issues.

2.10 Project Signage.

District will permit a single project sign, which shall be subject to District's prior and sole discretion and approval, as to all matters including, without limitation, size, location, material, colors, style and size of printing, logos and trademarks (if any), text, and selection of names to be displayed.

ARTICLE 3 -CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.1 Intent.

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be designed and constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to District.

C. Clarifications and interpretations of the Contract Documents shall be issued by District's Representative as provided in these General Conditions.

D. If utilities to equipment/fixtures are not shown but are necessary to operate the equipment/fixtures, the utilities service installation is considered to be part of the Work. The implied Work will conform to the appropriate sections of the Contract Documents.

E. Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the Design-Build Entity in dividing Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

3.2 Reference Standards.

A. Standards, Specifications, Codes, Laws, and Regulations.

1. Reference to federal specifications, federal standards, other standards, specifications, manuals, or codes of any technical society, organization, or association, or to Applicable Laws, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Applicable Laws in effect at the time of opening of proposals (or on the Effective Date of the Contract if there were no proposals), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, or code, or any instruction of a supplier, shall be effective to change the duties or responsibilities of District, Design-Build Entity, or District's Representative, or any of their Subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to District or District's Representative, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.3 Order of Precedence.

The intent of the Contract Documents is to include all necessary criteria to establish the scope and quality for completion of the Work on the Project by the Design-Build Entity. The Contract Documents are complementary and what is required by one shall be as binding as if required by all. Performance by the Design-Build Entity shall be required to the extent consistent with, and reasonably inferable from, the Contract Documents.

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

   a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or

   b. the provisions of any Applicable Laws (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Applicable Law).

A. In resolving conflicts among any of the Contract Documents, the order of precedence shall be as follows:

1. Permits from other agencies as may be required by law;

2. Change Orders or Pending Change Orders, most recent first;

3. Attachment 5 to the Contract: Enhancements/Additional Scope of Work Terms and Conditions and Attachment 6 to the Contract: Exclusions/Clarifications of Scope by the Design-Build Entity;

4. Design-Build Contract;

5. Special Conditions;

6. General Conditions;

7. RFP and all addenda, attachments and appendices;

8. Design-Build Entity Proposal in response to RFP;

9. Technical Specifications prepared by Design-Build Entity;

10. Drawings prepared by Design-Build Entity;

11. Request for Qualifications and all addenda, attachments and appendices; and

12. Design-Build Entity Statement of Qualifications in response to Request for Qualifications.

B. With reference to the Drawings the order of precedence shall be as follows:

1. Figures govern over scaled dimensions;

2. Detail drawings govern over general drawings;

3. Change Order drawings govern over Drawings;

4. Drawings govern over standard drawings.

C. Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard, higher quality and most expensive shall always apply.

3.4 Amending and Supplementing Contract Documents.

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof only by a Change Order.

3.5 Interpretation and Use of Contract Documents.

A. District and the Design-Build Entity acknowledge that the Contract Documents may differ in some respect(s) from the other documents included in the RFP upon which the Design-Build Entity based its Proposal. Prior to the commencement of construction on the Project, the parties shall confirm, in writing, the final form of the Contract Documents that are to be utilized. Specifically, once approved by District, the Construction Documents become a part of the Contract Documents and define the

entire scope of work, so long as such documents incorporate all minimum requirements of the design criteria and performance specifications set forth in the RFP as may be amended by the Contract Documents. The Design-Build Entity shall certify that the Construction Documents are in full compliance with the Contract Documents, except as noted.

B. As described in the RFP, the construction materials, items, supplies, etc., including the quality and/or quantity of such items, specified in the Design-Build Entity's proposal for the design and construction of the Project represent a substantive basis which District factored into its determination of the "best value" for award of the Contract. Any change in such materials, items, supplies, etc. from those specified in the Design-Build Entity's proposal (and subsequently incorporated into the Contract Documents) during the design and construction of the Project requires the express written authorization of District pursuant to Article 9.

C. Organization of the Performance Specifications into various subdivisions and the arrangement of the Drawings shall not control the Design-Build Entity in dividing portions of the Work necessary for the Project among Subcontractors or in establishing the extent of Work to be performed by any trade.

D. Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood design professional and construction industry meanings; nontechnical words and abbreviations are used in accordance with their commonly understood meanings.

E. The Contract Documents may omit modifying words such as "all" and "any," and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word "including," when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non limiting language (such as "without limitation," "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

F. Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include a corporation, partnership, trust, or other legal entity, whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

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

H. Before commencing any Work on the Project, the Design-Build Entity shall check and review the Contract Documents, including the Construction Documents, for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental authorities and public utilities affecting the construction and operation of the physical plant of the Project, all quasi-governmental and other regulations affecting the construction and operation of the physical plant of the Project, and other special requirements, if any, designated in the Contract. In the event the Design-Build Entity observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract, the Design-Build Entity shall immediately notify District's Representative in writing of the same and shall cause to be corrected any such violation or inconsistency in the manner provided hereunder. The Design-Build Entity shall be solely liable for any such violation, inconsistency or special requirement, if Design-Build Entity fails to conduct such review or notification to District.

I. Before commencing any Work on the Project, the Design-Build Entity shall carefully examine all Performance Specifications, the Contract, the Contract Documents and other information given to the Design-Build Entity as to Project requirements. The Design-Build Entity shall immediately notify District's Representative of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in such documents in writing. Neither the Design-Build Entity nor any Subcontractor shall take advantage of any apparent error or omission which may be found in the Performance Specifications, the Contract, the Contract Documents or other information given to Design-Build Entity. If the Design-Build Entity or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any Work under the Contract, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, the Design-Build Entity shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Guaranteed Maximum Price or the Project Completion Date. In no case shall any Subcontractor proceed with Work if uncertain without the Design-Build Entity's written direction and/or approval.

3.6 Reuse of Documents.

A. Design-Build Entity and any Subcontractor shall not:

1. have or acquire any title to or Ownership rights in any of the Drawings, Technical Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of the A/E or its consultants, including electronic media editions; or

2. reuse of any such Drawings, Technical Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of District and A/E and specific written verification or adaptation by the A/E.

B. The prohibitions of this Article 3.6 will survive final payment, or termination of the Contract. Nothing herein shall preclude Design-Build Entity from retaining copies of the Contract Documents for record purposes.

3.7 Electronic Data.

A. Unless otherwise stated in the Special Conditions, the data furnished by District or District's Representative to Design-Build Entity, or by Design-Build Entity to District or District's Representative, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within sixty (60) Days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-Day acceptance period will be corrected by the transferring party.

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

3.8 Ownership and Use of Construction Documents.

A. The Construction Documents, and all copies thereof, furnished to, or provided by, the Design-Build Entity are the property of District. District and the Design-Build Entity explicitly agree that all materials and documents developed in the performance of this Contract are the property of District pursuant to the requirements of District. District shall have unlimited rights, for the benefit of District, in all drawings, designs, technical specifications, notes and any other documentation and other Work developed in the performance of this Contract for the Project, including the right to re-use details of the Design on any other District Work at no additional cost to District. The Design-Build Entity agrees to, and hereby does, grant to District a royalty free license to all such data that the Design-Build Entity may cover by copyright and to all designs as to which the Design-Build Entity may assert any right or establish any claim to under the patent or copyright laws. The Design-Build Entity, for a period up to five (5) years from the date of Completion of the Project, agrees to furnish and to provide access to the originals or copies of all such materials immediately upon the written request of District. Any use or reuse by District of the Construction Documents on any project other than this Project without employing the services of the Design-Build Entity shall be at District's own risk with respect to third parties. If District uses or re-uses the Construction Documents on any project other than this Project, it shall remove the A/E's seal from the Construction Documents and hold harmless Design-Build Entity, A/E, and their officers, directors, agents and employees from claims arising out of the use or re-use of the Construction Documents on such other project. Design-Build Entity shall not be responsible or liable for any revisions to the Construction Documents made by any party other than the Design-Build Entity, a party for which the Design-Build Entity is legally responsible or liable, or anyone approved by the Design-Build Entity.

3.9 Administration of the Contract by District's Representative.

A. During the term of this Design-Build Contract, District's Representative shall have the right to review the Design-Build Entity's Work at such intervals as deemed appropriate by District's Representative. However, no actions taken during such review or site visit by District's Representative shall relieve the Design-Build Entity of any of its obligations of single point responsibility for the design and construction of this Project nor form the basis for a Claim if such actions extend beyond the Project Completion Date.

B. District's Representative will not have control over, will not be in charge of, and will not be responsible for design or construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work on the Project, since these are solely the Design-Build Entity's responsibility.

C. Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, District and the Design-Build Entity shall communicate through District's Representative. Communications by the Design-Build Entity with District's consultants and District's Representative's consultants shall be through District's Representative. Communications by District and District's Representative with Subcontractors will be through the Design-Build Entity. Communications by the Design-Build Entity and Subcontractors with Separate Contractors shall be through District's Representative. The Design-Build Entity shall not rely on oral or other non-written communications.

D. Based on District's Representative's Project site visits, review of the Work, and evaluations of the Design-Build Entity's Applications for Payment, District's Representative will recommend amounts, if any, due the Design-Build Entity and will issue Certificates for Payment in such amounts.

E. District's Representative will have the authority to reject Work on the Project, or any portion thereof, which does not conform to the Contract Documents. District's Representative will have the authority to stop Work on the Project, or any portion thereof. Whenever District's Representative considers it necessary, or advisable, for implementation of the intent of the Contract Documents, District's Representative will have the authority to require additional inspection or testing of the Work on the Project in accordance with the Contract Documents, whether or not such Work is fabricated, installed, or completed. However, no authority of District's Representative conferred by the Contract Documents nor any decision made in good faith either to exercise, or to not exercise such authority, will give rise to a duty or responsibility of District or District's Representative to the Design-Build Entity, or any person or entity claiming under, or through, the Design-Build Entity.

F. District's Representative will have the authority to conduct inspections in connection with Beneficial Occupancy and to determine the dates of Completion; will receive for review and approval any records, written warranties, and related documents required by the Contract Documents and assembled by the Design-Build Entity; and will issue a final Certificate for Payment upon the Design-Build Entity's compliance with the requirements of the Contract Documents.

G. District's Representative will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of performance thereunder by the Design-Build Entity. Should the Design-Build Entity discover any conflicts, omissions, or errors in the Construction Documents or the Contract Documents; have any questions about the interpretation or clarification of the Contract Documents; question whether Work is within the scope of the Contract Documents; then, before proceeding with the Work affected, the Design-Build Entity shall notify District's Representative in writing and request interpretation, or clarification. District's Representative's response to questions and requests for interpretations, clarifications, instructions, or decisions will be made with reasonable promptness. Should the Design-Build Entity proceed with the Work affected before receipt of a response from District's Representative, any portion of the Work on the Project which is not done in accordance with District's Representative's interpretations, clarifications, instructions, or decisions shall be removed or replaced and the Design-Build Entity shall be responsible for all resultant losses.

H. District may at any time and from time to time, without prior notice to or approval of the Design-Build Entity, replace District's Representative with a new District Representative. Upon receipt of notice from District informing the Design-Build Entity of such replacement and identifying the new District's Representative, the Design-Build Entity shall recognize such person or firm as District's Representative for all purposes under the Contract Documents.

ARTICLE 4 -AVAILABILITY AND OWNERSHIP OF LANDS AND MATERIALS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.1 Availability of Lands.

A. District shall furnish the Project site. District shall notify Design-Build Entity of any encumbrances or restrictions not of general application but specifically related to use of the Project site with which Design-Build Entity must comply in performing the Work. District will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities.

B. Design-Build Entity shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment at no additional cost to District.

4.2 Ownership of Site Materials Found.

A. The title to water, soil, rock, gravel, sand, minerals, timber and any other materials developed or obtained in the excavation or other operations of Design-Build Entity or any of its Subcontractors in the performance of the Contract, and the right to use said items in carrying out the Contract, or to dispose of same, is hereby expressly reserved by District. Neither Design-Build Entity nor any of its Subcontractors nor any of their representatives or employees shall have any right, title, or interest in said materials, nor shall they assert or make any claim thereto. Design-Build Entity will, as determined by District's Representative, be permitted to use in the Work without charge, any such materials which meet the requirements of the Contract Documents, provided District shall have the right to use or consume these materials without payment to a third party.

4.3 Hazardous Environmental Conditions at Site.

A. Reports and Drawings. The Special Conditions identify those reports and drawings known to District relating to Hazardous Environmental Conditions that have been identified at the Site.

B. Limited Reliance by Design-Build Entity on Technical Data Authorized. Design-Build Entity may rely upon the accuracy of the "technical data" contained in such reports and drawings but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Special Conditions. Design-Build Entity shall make its own interpretation of the "technical data" and shall be solely responsible for any such interpretations. Except for reliance on the accuracy of such "technical data," Design-Build Entity may not rely upon or make any claim against District or District's Representative, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Design-Build Entity's purposes, including without limitation any aspects of the means, methods, techniques, sequences, and procedures of design or construction to be employed by Design-Build Entity and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Design-Build Entity interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. Design-Build Entity shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Construction Documents or identified in the Contract Documents to be within the scope of the Work. Design-Build Entity shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Design-Build Entity, Subcontractors, Suppliers, or anyone else for whom Design-Build Entity is responsible.

D. If Design-Build Entity encounters a Hazardous Environmental Condition or if Design-Build Entity or anyone for whom Design-Build Entity is responsible creates a Hazardous Environmental Condition, Design-Build Entity shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an Emergency); and (iii) notify District and District's Representative (and promptly thereafter confirm such notice in writing). District shall promptly consult with District's Representative concerning the necessity for District to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. Design-Build Entity shall not be required to resume Work in connection with such condition or in any affected area until after District has obtained any required permits related thereto and delivered written notice to Design-Build Entity: (i) specifying that such condition and any affected area is or has been rendered safe

for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely.

F. If after receipt of such written notice Design-Build Entity does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then District may order the portion of the Project that is in the area affected by such condition to be deleted from the Work in accordance with the Contract Documents. District may have such deleted portion of the Project performed by District's own forces or others.

G. To the fullest extent permitted by Applicable Laws, Design-Build Entity shall indemnify, defend, and hold harmless District and District's Representative, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created, in whole or in part, by Design-Build Entity or by anyone for whom Design-Build Entity is responsible. Nothing in this Section shall obligate Design-Build Entity to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

4.4 Protection and Restoration of Existing Improvements and Reference Points.

A. Design-Build Entity shall be responsible for confirming whether any historical stamps/impressions or survey monuments are located on existing sidewalks or curbs, which may be affected by the Work or construction activities. Design-Build Entity shall be solely responsible for ensuring that the design provides for the protection of existing improvements.

B. Design-Build Entity shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of District. Design-Build Entity shall report to District's Representative whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

ARTICLE 5 -BONDS AND INSURANCE

5.1 Time for Compliance. Design-Build Entity shall not commence Work under this Contract until it has provided evidence to District that it has secured all insurance required under this Section. Design-Build Entity shall require and verify that all subconsultants and subcontractors maintain insurance meeting all the requirements stated herein. Design-Build Entity shall not allow any subconsultant or subcontractor to commence work on any subcontract until it has provided evidence to District that the subconsultant or subcontractor has secured all insurance required under this Article.

5.2 Minimum Requirements. Design-Build Entity shall, at its expense, procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages

to property which may arise out of or result from the performance of the Work and Design-Build Entity's other obligations under the Contract Documents whether by Design-Build Entity, its agents, representatives, employees or subcontractors. Design-Build Entity shall also require all of its subconsultants and subcontractors to procure and maintain the same insurance for the duration of the Contract and verify the subconsultants' and subcontractors' compliance. Design-Build Entity's and subconsultants' and subcontractors' insurance shall meet at least the minimum levels of coverage set forth in this Article:

A. Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto) or if Design-Build Entity has no owned autos, non-owned, leased or hired autos Code 8 (hired) and Code 9 (non-owned); (3) Workers' Compensation and Employer's Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance; (4) Installation Floater/Builder's Risk: "All Risk All Perils" form; (5) Professional Liability/Errors and Omissions; and (6) Sexual Abuse and Molestation Liability as required by the State of California. The policies shall not contain any exclusion contrary to the Contract, including but not limited to endorsements or provisions limiting coverage for (1) contractual liability or (2) cross liability for claims or suits by one insured against another.

B. Minimum Limits of Insurance. The Design-Build Entity shall maintain limits no less than:

1. For Commercial General Liability, Design-Build Entity shall have limits of at least the amount that corresponds to the Guaranteed Maximum Price in the following table:

Guaranteed Maximum Price	**Amount of Liability Insurance** (per occurrence)
$ 0 - $ 2 million	$ 2 million
$ 2 million - $ 5 million	$ 3 million
$ 5 million - $ 10 million	$ 5 million
$10 million - $ 20 million	$10 million

If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 25 03, either the general aggregate limit shall apply separately to the Project or the general aggregate limit shall be twice the required occurrence limit. Should any of the Work involve aircraft (fixed wing or helicopter) owned or operated by Design-Build Entity, liability insurance with limits of not less than $5,000,000 per occurrence for bodily injury and property damage is required. Should any of the Work involve watercraft owned or operated by Design-Build Entity, liability insurance with limits of not less than $5,000,000 per occurrence for bodily injury and property damage is required.

2. Automobile Liability: $1 million per accident for bodily injury and property damage.

3. Workers' Compensation and Employer's Liability:

   a. Workers' Compensation: statutory limits.

   b. Employer's Liability limits of $1 million per accident for bodily injury or disease.

   c. Should any of the Work be upon or contiguous to navigable bodies of water, Design-Build Entity shall carry insurance covering its employees for benefits available under the Federal Longshoremen's and Harbor Worker's Act to the extent required by law;

4. Excess/Umbrella Liability Policy may be provided to insure the total limits required for Commercial General Liability and Automobile Liability and must apply to all primary coverage afforded, including but not limited to general liability, owned and non-owned automobiles, leased and hired cars.

5. Professional Liability/Errors and Omissions: $5,000,000 per claim.

6. Sexual Abuse and Molestation Liability: Not less than $1,000,000 per claim, and $2,000,000 aggregate.

C. Notices; Cancellation or Reduction of Coverage. At least fifteen (15) Days prior to the expiration of any such policy, evidence showing that such insurance coverage has been renewed or extended shall be filed with District. If such coverage is cancelled or materially reduced, Design-Build Entity shall, within ten (10) Days after receipt of written notice of such cancellation or reduction of coverage, file with District evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. In the event any policy of insurance required under this Contract does not comply with these specifications or is canceled and not replaced, District has the right but not the duty to obtain the insurance it deems necessary and any premium paid by District will be promptly reimbursed by Design-Build Entity or District may withhold amounts sufficient to pay premium from Design-Build Entity payments. In the alternative, District may suspend or terminate this Contract.

5.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Design-Build Entity shall provide endorsements on forms approved by District to add the following provisions to the insurance policies:

A. General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) using ISO CG forms 20 10 and 20 37 (including completed operations), or endorsements providing the exact same coverage, District, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions shall be covered as additional insureds with respect to the Work or ongoing and completed operations performed by or on behalf of the Design-Build Entity, including materials, parts or equipment furnished in connection with such work; and (2) using ISO form 20 01, or endorsements providing the exact same coverage, the insurance coverage shall be primary insurance as respects District, its officials, officers, employees, agents, and volunteers and any other additional insureds

named in the Special Conditions, or if excess, shall stand in an unbroken chain of coverage excess of the Design-Build Entity's scheduled underlying coverage. Any excess insurance shall contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of District, before District's own primary insurance or self-insurance shall be called upon to protect it as a named insured. Any insurance or self-insurance maintained by District, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions shall be excess of the Design-Build Entity's insurance and shall not be called upon to contribute with it in any way.

B. Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) District, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Design-Build Entity or for which the Design-Build Entity is responsible; and (2) the insurance coverage shall be primary insurance as respects District, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions, or if excess, shall stand in an unbroken chain of coverage excess of the Design-Build Entity's scheduled underlying coverage. Any insurance or self-insurance maintained by District, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions shall be excess of the Design-Build Entity's insurance and shall not be called upon to contribute with it in any way.

C. Workers' Compensation and Employer's Liability Coverage. The insurer shall agree, using WC 00 03 13 or the exact equivalent, to waive all rights of subrogation against District, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions for losses paid under the terms of the insurance policy.

D. Professional Liability/Errors and Omissions. Professional Liability Insurance insuring the A/E, its officers, directors, stockholders, employees, agents, or partner, and all other persons for whose acts the A/E may be liable, against any and all liabilities arising out of or in connection with the negligent acts, errors or omissions of any of the foregoing in connection with the carrying out of their professional responsibilities described in this Contract. Professional Liability Insurance shall remain in full force and effect, and shall be so certified to District by the insurer, for a period of five (5) years after the completion of all of the Design-Build Entity's services hereunder and District's acceptance of the Project. All subconsultants shall have professional liability insurance with the same limits (additional requirements for Professional Liability/Errors and Omissions Insurance written on a "claims made" basis are set forth below).

E. Sexual Abuse and Molestation Liability. This insurance shall be endorsed to include contractual liability.

F. All Coverages. Each insurance policy required by this Agreement shall be endorsed to include the following provisions:

1. coverage shall not be suspended, voided, reduced or canceled except after thirty (30) Days (10 Days for nonpayment of premium) prior written notice by mail has been given to District and all additional insureds.

2. any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to District and any other additional insureds.

3. standard separation of insureds provisions.

4. no special limitations on the scope of protection afforded to District, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions.

5. waiver of any right of subrogation of the insurer against District, its officials, officers, employees, agents, and volunteers, or any other additional insureds, or shall specifically allow the Design-Build Entity or others providing insurance in compliance with these specifications to waive their right of recovery prior to a loss. By signing this agreement, the Design-Build Entity hereby waives its own right of recovery against District or any other additional insureds, and shall require similar written express waivers and insurance clauses from each of its subconsultants and subcontractors.

5.4 Installation Floater Insurance Shall Be for the Total Value of Project. The policy shall be written on an "All Risk, All Perils" form, to include coverage for earthquake, flood, and Acts of God (as defined in Public Contract Code Section 7105), insuring for physical loss or damage to the Work, false work, completed work, work in progress, material, supplies, and equipment of the Project site, but also to property at off-site storage locations and in transit, without regard to the location of the covered property. The premium for the Acts of God insurance shall be included as a separate item number in the Cost Proposal and shall be provided to District prior to commencement of the Construction phase of the Project. The policy shall be issued on a replacement cost basis, and shall insure against at least the following perils or causes of loss: fire, lightning, weather damage, explosion, extended replacement cost coverage, theft, vandalism, malicious mischief, collapse, debris removal, aircraft, demolition occasioned by enforcement of Applicable Laws, water damage from any source, snow, sleet, hail, wind, acts of terrorism, and such other perils not specifically listed. The policy shall include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects), allow for Partial Utilization of the Work by District, and include testing and startup.

If the replacement cost increases during the course of construction, additional insurance limits must be purchased by the Design-Build Entity.

Should any of the Work involve construction or remodeling of, or addition to, a building or buildings, then Builder's Risk/Course of Construction Coverage shall be added to the Installation Floater Insurance. The Builder's Risk/Course of Construction coverage shall also include the perils of Acts of God, flood and earthquake.

Installation Floater Insurance deductible amounts may be selected by the Design-Build Entity, but shall not exceed the maximum allowable deductible for the Guaranteed Maximum Price of the Project in the table set forth below. The maximum allowable

deductibles for the perils of earthquake and flood shall not be greater than five percent of the value at risk at the time of loss.

Guaranteed Maximum Price			All Risk Perils Maximum Deductible
$ 0		$ 2,000,000	$ 10,000
$ 2,000,001		$ 5,000,000	$ 20,000
$ 5,000,001		$ 10,000,000	$ 50,000
$ 10,000,001	--	$ 50,000,000	$ 100,000

Installation Floater Insurance policy shall name District, Design-Build Entity, Subconsultants, and Subcontractors as insureds, with deductible amounts, if any, for the sole account of and payable by Design-Build Entity. Loss under Installation Floater Insurance shall be adjusted with and payable to District for the interest of all parties.

The amount of Installation Floater Insurance shall be sufficient to protect against such loss or damage in full until all Work is accepted by District. The premium for Installation Floater Insurance will be paid by Design-Build Entity.

5.5 Pollution Liability insurance is required should any of the Project involve pollutants. Liability coverage shall include coverage for the environmental risk associated with the project and expenses related to such, including bodily injury, property damage, on and off site clean-up, transporting, carrying, or storing pollutants, coverage for non-owned disposal site in an amount not less than that set forth in the Special Conditions.

Pollutants include, but are not limited to, asbestos, mold, microbial matter, solid, liquid, gaseous or thermal irritants or contaminants, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.

5.6 Receipt and Application of Insurance Proceeds.

Any insured loss under the policies of insurance required herein will be adjusted with District and made payable to District as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of the provisions herein. District shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Project and the cost thereof covered by an appropriate Change Order.

District as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing to District's exercise of this power within fifteen (15) Days after the occurrence of loss. If such objection be made, District as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, District as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, District as fiduciary shall give bond for the proper performance of such duties.

5.7 Partial Utilization, Acknowledgement of Property Insurer.

If District finds it necessary to occupy or use a portion or portions of the Project prior to Completion of all the Work, no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

5.8 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by District. Design-Build Entity shall guarantee that, at the option of District, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects District, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions; or (2) the Design-Build Entity shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

5.9 Claims Made Policies. Claims made policies are not acceptable other than for Professional Liability. In addition to the requirements above, for any claims made policy:

A. The Retroactive Date must be shown and must be before the date of the Contract or the beginning of contract work.

B. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after District's acceptance of the Work.

C. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Design-Build Entity must purchase "extended reporting" coverage for a minimum of five (5) years after District's acceptance of the Work.

5.10 Subcontractor Insurance Requirements. Design-Build Entity shall not allow any subcontractors to commence work on any subcontract relating to the Work until Design-Build Entity has verified that all subcontractors maintain insurance meeting all requirements under this Section and has provided evidence to District of such insurance. For Commercial General Liability coverage subcontractors shall provide coverage naming District, its officials, officers, employees, agents, and volunteers with a format at least as broad as CG 20 38 04 13. If requested by Design-Build Entity, District may approve different scopes or minimum limits of insurance for particular subcontractors. Design-Build Entity shall confirm that District and entities identified in the Special Conditions shall be named as additional insureds on all subcontractors' policies of Commercial General Liability Insurance and Commercial Automobile Insurance.

5.11 Subconsultant Insurance Requirements. Design-Build Entity shall not allow any subconsultants to commence work on any subcontract relating to the Work until Design-Build Entity has verified that all subconsultants maintain insurance meeting all requirements under this Section and has provided evidence to District of such insurance. Additionally, all subconsultants must maintain professional liability/ errors and omissions coverage with limits of at least $5,000,000 per claim. For Commercial General Liability

coverage subcontractors shall provide coverage naming District, its officials, officers, employees, agents, and volunteers with a format at least as broad as CG 20 38 04 13. If requested by Design-Build Entity, District may approve different scopes or minimum limits of insurance for particular subcontractors. Design-Build Entity shall confirm that District and entities identified in the Special Conditions shall be named as additional insureds on all subcontractors' policies of Commercial General Liability Insurance and Commercial Automobile Insurance.

5.12 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to District.

5.13 Verification of Coverage. Design-Build Entity shall furnish District with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to District. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by District before work commences. District reserves the right to require complete, certified copies of all required insurance policies, at any time.

5.14 Reservation of Rights. District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

5.15 Performance Bond and Payment Bond.

A. The Design-Build Entity shall submit performance and payment bonds on the forms provided with the Contract Documents, duly executed by a responsible corporate surety admitted to transact surety business in the State of California, as defined in Code of Civil Procedure Section 995.120, and listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California and acceptable to District conditioned upon the faithful performance by the Design-Build Entity of all requirements of the Contract Documents. Each of the bonds shall be in a sum no less than one hundred percent (100%) of the Guaranteed Maximum Price. The Design-Build Entity shall furnish bonds covering the faithful performance of the Contract (Performance Bond) and payment of obligations arising thereunder (Payment Bond) on the forms contained in the Contract.

B. The Payment Bond and Performance Bond shall be in effect on the date the Contract is signed by District.

C. The Design-Build Entity shall promptly furnish such additional security as may be required by District to protect its interests and those interests of persons or firms supplying labor or materials to the Project.

D. The premiums for the Payment Bond and Performance Bond shall be paid by the Design-Build Entity.

E. The Design-Build Entity maintains and agrees that it has executed Payment and Performance Bonds in the amounts and manner required by the Contract Documents.

F. No payment will be made to the Design-Build Entity until the Design-Build Entity's Payment Bond and Performance Bond have been approved by District.

G. Should, in District's sole opinion, any bond become insufficient or surety found to be unsatisfactory, the Design-Build Entity shall renew or replace the effected bond within 10 Days of receiving notice from District.

H. In the event the surety or the Design-Build Entity intends to reduce or cancel any required bonds, at least thirty (30) Days prior written notice shall be given to District, and the Design-Build Entity shall post acceptable replacement bonds at least ten (10) Days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Article 5.15 are accepted by District.

I. To the extent, if any, that the Guaranteed Maximum Price is increased in accordance with the Contract, the Design-Build Entity shall, upon request of District, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to District.

J. The bonds shall further provide that no change or alteration of the Contract (including, without limitation, an increase in the Guaranteed Maximum Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Design-Build Entity will release the surety. If the Design-Build Entity fails to furnish any required bond, District may terminate the Contract for cause.

ARTICLE 6 -DESIGN-BUILD ENTITY'S RESPONSIBILITIES

6.1 Design-Build Entity Responsibility; Independent Contractor.

The Design-Build Entity shall be responsible to District for acts and omissions of the Design-Build Entity's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of Work on the Project under direct or indirect contract with the Design-Build Entity or any of its Subcontractors. District retains the Design-Build Entity on an independent contractor basis. The Design-Build Entity is not an employee, agent or representative of District. The Design-Build Entity represents that it is fully experienced and properly qualified to perform the class of Work provided for in this Contract and that it is properly licensed, equipped, organized, and financed to perform Work on the Project. The Design-Build Entity shall maintain complete control over its employees and its Subcontractors and shall pay all wages, salaries and other amounts due such personnel in connection with their performance as required by law. The Design-Build Entity shall be responsible for all reports and obligations respecting such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, and workers' compensation insurance.

6.2 Review of Contract Documents and Field Conditions by The Design-Build Entity; Single Point Responsibility of The Design-Build Entity.

A. In addition to the examination and reviews performed, and obligations assumed, incident to making the representations set forth in Article 1.1, the Design-Build Entity shall carefully study and compare each of the Contract Documents provided by District

with the others and with information furnished by District, and shall promptly report in writing to District's Representative any errors, inconsistencies, or omissions in the Contract Documents provided by District or inconsistencies with Applicable Law observed by the Design-Build Entity. The Design-Build Entity shall be solely responsible for any errors, inconsistencies or omissions in the Contract Documents if the Design-Build Entity fails to perform such review and examination or fails to report such errors, inconsistencies or omissions to District in writing.

B. The Design-Build Entity is responsible for the design and construction of the Project and shall use the highest design and engineering standards of care applicable to projects, buildings or work of similar size, complexity, quality and scope in performing Work on the Project. The Design-Build Entity shall be solely responsible for any and all design errors including, but without limitation, errors, inconsistencies or omissions in the Construction Documents. The Design-Build Entity shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to the Design-Build Entity before commencing Work on the Project. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to District's Representative.

C. If the Design-Build Entity performs any design and/or construction activity which it knows, or should know, involves an error, inconsistency, or omission referred to in this Article, without notifying and obtaining the written consent of District's Representative, the Design-Build Entity shall be responsible for the resultant Losses, including, without limitation, the costs of correcting Defective Work.

D. District does not assume any obligation to employ the Design-Build Entity's services or pay the Design-Build Entity royalties of any type as to future programs that may result from Work performed under this Contract.

E. The Design-Build Entity shall be responsible for all plotting, printing, copying and distribution costs of any and all documents required in connection with Work on the Project.

F. The Design-Build Entity agrees that it has single point responsibility for the design and construction of this Project, and agrees to utilize the highest standard of excellent design, engineering and construction practices. The Design-Build Entity has the duty to act in District's best interests at all times throughout the course and performance of this Contract.

6.3 Design, Supervision and Construction Procedures.

A. The Design-Build Entity shall supervise, coordinate, and direct all Work on the Project using the Design-Build Entity's best skill and attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. The Design-Build Entity shall be solely responsible for, and have control over, the entire design effort, construction means, methods, techniques, sequences, procedures, and the coordination of all portions of Work on the Project, including, but without limitation, landscape and site work, utilities, and building systems.

B. The Design-Build Entity shall be responsible to District for acts and omissions of the Design-Build Entity, its agents, employees, and Subcontractors, and their respective agents and employees.

C. The Design-Build Entity shall not be relieved of its obligation to perform all Work on the Project in accordance with the Contract Documents either by acts or omissions of District or District's Representative in the administration of the Contract, or by tests, inspections, or approvals required, or performed, by persons or firms other than the Design-Build Entity.

D. The Design-Build Entity shall be responsible for inspection of all portions of Work on the Project to determine that such portions conform to the requirements of the Contract Documents and are ready to receive subsequent Work.

E. To facilitate communications and the management of the design process, the Design-Build Entity shall maintain an office in San Diego County for the duration of the design process.

F. Unless otherwise provided in the Contract Documents, the Design-Build Entity shall provide and pay for all professional design/engineering services, services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work on the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in Work on the Project. The Design-Build Entity shall furnish architectural and engineering services for the preparation of Construction Documents necessary to complete the Project in accordance with the requirements of the Contract Documents. From the District-approved Construction Documents, which are developed from the District-accepted Proposal, the Design-Build Entity shall furnish all labor, materials, equipment, services, and transportation necessary to complete construction of the Project, including site work, structures and utilities.

G. The Design-Build Entity is required to deliver to District, if requested, any and all Design Materials including, but not limited to, calculations, preliminary drawings, construction drawings, shop drawings, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, mock ups, and other information developed, prepared, furnished, or delivered in the prosecution of the Design Work.

H. The Design-Build Entity is responsible for preparation of the Construction Documents for the entire Project.

I. The Design-Build Entity is responsible for construction of the entire Project as required by the Contract Documents.

J. The Design-Build Entity shall at all times maintain good discipline and order among its employees and Subcontractors. The Design-Build Entity shall provide competent, fully qualified personnel to perform all Work on the Project.

6.4 Labor; Working Hours.

A. The Design-Build Entity shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. The Design-Build Entity shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, which are defined as hours between 7:00 a.m. and 3:30 p.m. any day Monday through Friday of any week except on Holidays and/or during Schedule Constraints defined in the Contract Documents. The Design-Build Entity will not permit the performance of Work on a Saturday, Sunday, any Holiday or during identified Schedule Constraints without District's written consent given after prior written notice to District's Representative. The Design-Build Entity shall be responsible for, and shall reimburse District for, all inspection costs outside regular working hours, including overtime.

C. The Design-Build Entity will provide all labor needed to complete the Work within the Contract Times.

6.5 Progress Meetings.

A. The Design-Build Entity shall schedule and hold regular on-Site progress meetings at least weekly and at other times as requested by the District or as required by progress of the Work. The Design-Build Entity, District's Representative, and all Subcontractors active on the Site shall attend each meeting. The Design-Build Entity may at its discretion request attendance by representatives of its Suppliers, manufacturers, and other Subcontractors.

B. District's Representative will preside at the progress meetings and will arrange for keeping and distributing the minutes. The purpose of the meetings is to review the progress of the Work, maintain coordination of efforts, discuss changes in scheduling, and resolve other problems which may develop. During each meeting, the Design-Build Entity shall present any issues which may impact its progress with a view to resolve these issues expeditiously.

6.6 Cost-Loaded CPM Progress Schedule and Recovery Schedule.

A. Design-Build Entity shall adhere to the Master Project Schedule, which shall be a cost-loaded CPM progress schedule established in accordance with the Contract Documents as it may be adjusted from time to time as provided below:

1. Design-Build Entity shall submit to District's Representative for acceptance proposed adjustments in the Project Schedule that will not result in changing the Project Completion Date. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Project Schedule that will change the Project Completion Date shall be submitted in accordance with the requirements of the Contract Documents. Adjustments in the Project Completion Date may only be made by a Change Order.

3. Should any of the following conditions exist, District may require Design-Build Entity to prepare, at no extra cost to District, a plan of action and a recovery schedule for completing the Work and achieving all contractual milestones within the Project Completion Date:

a. The Design-Build Entity's monthly progress report indicates delays that are, in the opinion of District, of sufficient magnitude that District questions the Design-Build Entity's ability to complete the Work;

b. The Project Schedule shows the Design-Build Entity to be thirty (30) or more Days behind the critical path at any time during construction;

c. The Design-Build Entity desires to make changes in the logic or the planned duration of future activities of the Project Schedule which, in the opinion of District, are major in nature.

d. The recovery schedule shall include proposed revisions to the Project Schedule, demonstrating how Design-Build Entity intends to achieve all contractual milestones including contract completion within the Project Completion Date. The submittal shall include a narrative describing the actions planned by the Design-Build Entity to recover the schedule.

e. Design-Build Entity shall submit the recovery schedule within seven (7) Days of District's request:

(i) If Design-Build Entity asserts that District is responsible for the delay, failure to submit the recovery schedule within seven (7) Days of District's request will be considered a concurrent delay event attributable to Design-Build Entity, and Design-Build Entity shall only be entitled to non-compensable adjustments to the Project Completion Date.

(ii) If Design-Build Entity is responsible for the delay, this provision will not limit or affect Design-Build Entity's liability and failure to submit the recovery schedule with seven (7) Days of District's request may result in District

withholding progress payments or other amounts due under the Contract Documents.

f. Design-Build Entity is responsible for all costs associated with the preparation and execution of the recovery schedule, including any necessary recovery actions, which may include, but are not limited to, assignment of additional labor, and/or equipment, shift or overtime work, expediting of submittals or deliveries, overlapping of activities or sequencing changes to increase activity concurrence.

g. Regardless of whether District directs Design-Build Entity to prepare a recovery schedule pursuant to this Article 6.6, Design-Build Entity shall promptly undertake appropriate action at no additional cost to District to recover the schedule whenever the current Project Schedule shows that the Design-Build Entity will not achieve a milestone and/or complete the Work within the Project Completion Date.

B. Unless otherwise specified in the Contract Documents, Design-Build Entity shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work within the Project Completion Date.

C. Failure of District's Representative to discover errors or omissions in schedules that it has reviewed, or to inform the Design-Build Entity that the Design-Build Entity, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Project Schedule shall not relieve the Design-Build Entity from its sole responsibility to perform and complete all Work on the Project within the Project Completion Date and shall not be a cause for an adjustment of the Project Completion Date or the Guaranteed Maximum Price.

D. The Design-Build Entity shall perform all Work on the Project in accordance with the current accepted Project Schedule.

6.7 Materials.

A. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All materials furnished by the Design-Build Entity shall be of the most suitable grade for the purpose intended considering strength, ductility, durability, and best industry practice.

B. All special warranties and guarantees required by the Contract Documents shall expressly run to the benefit of District. If required by District's Representative, Design-Build Entity shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.

D. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required by the Contract Documents. Design-Build Entity shall be entirely responsible for damage or loss by weather or other causes to materials or Work until District has accepted the Work.

E. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. Design-Build Entity warrants good title to all material, supplies, and equipment installed or incorporated in the work and agrees upon completion to deliver the Work to District free from any claims, liens, or encumbrances.

F. Materials shall be stored on the Project site in such manner so as not to interfere with any operations of District or any independent contractor.

6.8 Submittals.

A. Industry Standard Submittals.

Design-Build Entity will identify in the Construction Documents all industry standard submittals for all materials, systems, and equipment incorporated into the Work.

B. Schedule of Submittals.

Design-Build Entity will prepare and deliver a Schedule of Submittals to District's Representative that has been fully integrated with the Cost-Loaded CPM Progress Schedule and identifies each Submittal required by the Construction Documents as well as the date on which Design-Build Entity will deliver each Submittal to District's Representative. Each Submittal must be delivered to District's Representative at least thirty (30) Days prior to the date the material or equipment is scheduled to be incorporated into the Work. The Design-Build Entity is responsible for any schedule delays resulting from the Submittal process.

C. Submittal Procedures.

1. The Design-Build Entity will follow the following procedures for each Submittal, Shop Drawing and Sample required by the Contract Documents:

   a. Transmit three (3) copies of each with a Submittal Transmittal.

   b. Transmittals will be sequentially numbered. The Design-Build Entity to mark revised Submittals with original number and sequential alphabetic suffix.

c. Each Submittal will identify the Project, the Design-Build Entity, Subcontractor and supplier, pertinent Construction Document and detail number, and specification section number appropriate to the Submittal.

d. The Design-Build Entity must sign each Submittal, certifying that it has reviewed and approved the Submittal, verified products required, field dimensions, adjacent construction work, and that coordination of information is according to requirements of the Project and Contract Documents.

e. Identify variations in Contract Documents and product or system limitations that may differ and/or be detrimental to successful performance of completed Work.

f. When a Submittal is revised for resubmission, the Design-Build Entity shall promptly address District comments and resubmit. The Design-Build Entity shall identify changes made since previous submission.

g. District's review of Submittals shall not relieve the Design-Build Entity from responsibility for deviations from the Contract Documents unless the Design-Build Entity has, in writing, called District's attention to such deviations at time of submission and District's has taken no exception to the deviation. District's review of Submittals shall not relieve the Design-Build Entity from responsibility for errors in the Submittals.

h. Submittals not required by the Construction Documents or requested by District's Representative will not be acknowledged or processed.

i. Incomplete Submittals will not be reviewed by District's Representative. Delays resulting from incomplete submittals are not the responsibility of District's Representative.

j. The Design-Build Entity shall not be entitled to any extension of the Project Completion Date as a result of the Submittal process.

2. Where a Submittal, Shop Drawing or Sample is required by the Construction Documents, any related Work performed prior to District's Representative's review and approval of the pertinent Submittal will be at the sole expense and responsibility of the Design-Build Entity.

3. Schedule Milestones for Submittals. Design-Build Entity must submit all submittals required by the Construction Documents in accordance with the Schedule of Submittals. If Design-Build Entity fails to submit the submittals in accordance with the Schedule of Submittals, Design-Build Entity will be solely liable for any delays or impacts caused by the delayed submittal, whether direct or indirect. Design-Build Entity will be liable for the time calculated from the date the submittal is due until the date a compliant submittal is made. A compliant submittal will be one that is complete and satisfies the requirements of the Contract Documents.

6.9 Shop Drawing and Sample Submittal Procedures.

A. Before submitting each Shop Drawing or Sample, Design-Build Entity shall have:

1. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

2. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

3. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

4. determined and verified all information relative to the Design-Build Entity's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

B. With each Submittal, the Design-Build Entity shall give District's Representative specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal and, in addition, a specific notation made on each Shop Drawing or Sample submitted to District's Representative for review and approval of each such variation.

C. Shop Drawings.

1. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show District's Representative the services, materials, and equipment Design-Build Entity proposes to provide and to enable District's Representative to review the information Representative for assessing conformance with information given and design concept expressed in Contract Documents.

2. When required by individual Specification Sections, provide Shop Drawings signed and sealed by a professional engineer responsible for designing components shown on Shop Drawings. Shop Drawings must include signed and sealed calculations to support design in a form suitable for submission to and approval by authorities having jurisdiction.

3. Design-Build Entity shall make revisions and provide additional information when required by authorities having jurisdiction.

D. Samples.

1. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as required to enable District's Representative to review the submittal for assessing conformance with information given and design concept expressed in Contract Documents.

2. Samples should be of appropriate size and detail to assess functional, aesthetic, color, texture, patterns and finish selection.

E. District's Representative's Review.

1. District's Representative will review Shop Drawings and Samples in accordance with the Schedule of Submittals. District's Representative's review and acceptance will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Project, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. District's Representative's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of design or construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. District's Representative's review and acceptance shall not relieve the Design-Build Entity from responsibility for any variation from the requirements of the Contract Documents unless District's Representative has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Submittal.

F. The Design-Build Entity shall make corrections required by District's Representative and shall return three (3) corrected copies of Shop Drawings and Product Data, and submit, as required, new Samples for review and approval. The Design-Build Entity shall direct specific attention in writing to revisions other than the corrections called for by District's Representative on previous Submittals.

G. District will review the first resubmittal of Shop Drawings at its cost. District reserves the right to reduce the Guaranteed Maximum Price by Change Order for its cost for any subsequent reviews of Shop Drawing resubmittals.

6.10 Construction Documents.

A. Construction Documents.

1. Upon receipt of the Notice to Proceed, the Design-Build Entity shall instruct the A/E to commence the design of the building systems and the preparation of the Construction Documents. The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality. The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. District's review of the Construction Documents shall be conducted in accordance with the approved Master Project Schedule with procedures set forth in this Article 6.10. Such review shall not relieve the Design-Build Entity from its responsibilities under the Contract. Such review shall not be deemed an approval or waiver by District of any deviation from, or of the Design-Build Entity's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the Document submitted by the Design-Build Entity and approved by District.

2. However, it is acknowledged by the parties hereto that inherent in a Design-Build concept, bridging or otherwise, the production and review of Construction Documents may be a continuing process with portions thereof completed at different times. The Design-Build Entity will submit the Construction Document packages to District for review and approval in accordance with the agreed upon schedule, unless otherwise approved in writing by District. The Master Project Schedule shall indicate the times for District to review the completion of each such portion of the Construction Documents and a reasonable time for review of same.

3. The Design-Build Entity shall submit completed packages of the Construction Documents for review by District at the times indicated on the Master Project Schedule and as defined in the Scheduling Specification. Meetings between the Design-Build Entity and District to review the Construction Document packages, shall be scheduled at least every two weeks, or as otherwise agreed to by the parties, and held so as not to delay Work on the Project. The Design-Build Entity will conduct these design meetings with District in accordance with the schedule approved by District. The Design-Build Entity will be responsible for preparing and circulating for the parties review, design meeting minutes from all such meetings.

4. The Construction Documents for hazardous and/or toxic abatement efforts and demolition activity shall be of sufficient clarity and shall be fully detailed when submitted to District for review.

B. Shop Drawings, Product Data, Samples, Materials, and Equipment.

1. Shop drawings means drawings, submitted to the Design-Build Entity by Subcontractors, manufacturers, supplier or distributors, showing in detail the proposed fabrication and assembly of building elements and the installation (e.g., form, fit, and attachment details) of materials or equipment.

2. The Design-Build Entity shall coordinate all submittals and review them for accuracy, completeness, and compliance with the requirements of the Contract Documents and the Design-Build Entity's Construction Documents and shall indicate its approval thereon as evidence of such coordination and review.

3. Materials and equipment incorporated in the Work on the Project shall match the approved samples within tolerances appropriate to the items, and as may be described in the Contract Documents.

4. The Design-Build Entity shall submit shop drawings approved by the A/E and samples of submittals that relate to finish materials and products.

5. Wherever the name or brand of manufacturer or an article is listed in the Contract Documents, it is to be used in Work on the Project as the standard. Any variation in quality must be approved by District.

C. Field Engineering.

1. The Design-Build Entity shall retain and pay expenses of a civil engineer or land surveyor to establish on the Project site the required reference points and benchmarks, establish building lines and elevations, check for building framing, plumbness, and establish on building frame the required basic grid lines. The engineer or land surveyor shall be properly licensed in the State of California.

2. The Design-Build Entity shall locate and protect control points prior to starting Work on the Project site and preserve permanent reference points during construction, and shall require the engineer or surveyor to replace control points which become lost or destroyed.

D. Geotechnical and Survey.

1. Design-Build Entity shall be responsible for obtaining a geotechnical report which includes supporting data, findings and recommendations; and also with a legal description and a project survey, as necessary, which shall become a part of the Contract Documents. The Design Work shall be consistent with both the findings and recommendations of the Design-Build Entity's geotechnical report and legal description and Project survey, or such other geotechnical recommendations obtained by Design-Build Entity at its sole cost and expense.

2. The Design-Build Entity shall verify the location and depth (elevation) of all existing utilities and services before performing any excavation work.

3. Any additional tests, borings, etc. necessary to support the Construction Documents shall be the responsibility of the Design-Build Entity.

6.11 Dust Control.

A. Design-Build Entity, at its expense, shall maintain all excavations, embankments, haul roads, permanent access rods, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry accepted methods of dust control suitable for the area involved, such as sprinkling, chemical treatment, light bituminous treatment or similar methods, will be permitted.

6.12 Air Pollution.

A. Design-Build Entity shall not discharge into the atmosphere from any source whatever smoke, dust, or other air contaminants in violation of the laws, rules, and regulations of the governmental entities having jurisdiction.

6.13 Patent Fees and Royalties.

A. Design-Build Entity shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of District or District's Representative, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by District in the Contract Documents.

B. To the fullest extent permitted by Applicable Laws, Design-Build Entity shall indemnify, defend, and hold harmless District and District's Representative, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents or specified in the Contract Documents and identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

6.14 Permits and Licenses.

Permits and licenses necessary for prosecution of the Work shall be secured and paid for by Design-Build Entity, unless otherwise specified in the Contract Documents.

A. Design-Build Entity shall obtain and pay for all other permits and licenses required for the Work, including excavation permit and permits for plumbing, mechanical and electrical work and for operations in or over public streets or right of way under jurisdiction of public agencies other than District.

B. The Design-Build Entity shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the Performance Specifications, drawings, or by governing authorities, except for such off-site inspections identified as District's responsibility in the Contract Documents.

C. Before acceptance of the Work, the Design-Build Entity shall submit all licenses, permits, certificates of inspection and required approvals to District.

6.15 Design-Build Entity Standard of Care.

A. The Design-Build Entity warrants to District that all Design Work will be performed in accordance with the highest professional standards and degree of care applicable to those design professionals who specialize in designing and providing services for projects of the type, scope, quality and complexity of the Project utilizing the Design-Build contracting mode. The Design-Build Entity warrants to District that all labor, materials, equipment and furnishings used in, or incorporated into, the Construction Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents), and all Work will be free of liens, claims and security interests of third parties; that the Work will be of the highest quality and free from defects and that all Work will conform with the requirements of the Contract Documents. If required by District's Representative, the Design-Build Entity shall furnish satisfactory evidence of compliance with this Article 6.15. Further, the type, quality and quantity of such evidence shall be within the sole discretion of District's Representative.

B. The Design-Build Entity shall supervise, inspect, and direct the Project competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Project in accordance with the Contract Documents. The Design-Build Entity shall be solely responsible for the means, methods, techniques, sequences, and procedures of design and construction of the Project.

6.16 Applicable Laws.

A. Design-Build Entity shall give all notices required by and shall comply with all Applicable Laws applicable to the performance of the Work. Except where otherwise expressly required by Applicable Laws, neither District nor District's Representative shall be responsible for monitoring Design-Build Entity's compliance with any Applicable Laws.

B. If Design-Build Entity performs any Work knowing or having reason to know that it is contrary to Applicable Laws, Design-Build Entity shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.

6.17 Labor Laws and Design-Build Entity's Obligations.

A. Hours of Work.

1. The Design-Build Entity and Subcontractors shall furnish sufficient forces to ensure the prosecution of the Work on the Project in accordance with the Construction Schedule and in such a manner to allow for the full and adequate completion of the Project within the Project Completion Date.

2. Work on the Project shall be performed during regular working hours, except that in the event of an emergency or when required to complete the Work on the Project in accordance with job progress, Work may be performed outside of regular working hours with advance written notice to District. Permissible working hours shall be between 7:00 a.m. to 6:00 p.m. and shall not be changed except with consent of District.

3. Eight (8) hours of work shall constitute a legal day's work. The Design-Build Entity and each Subcontractor shall forfeit, as penalty to District, twenty-five dollars ($25) for each worker employed in the execution of Work on the Project by the Design-Build Entity or any Subcontractor for each day during which such worker is required or permitted to work more than eight (8) hours in any one day and forty (40) hours in any week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, except as provided in Labor Code Section 1815.

4. If the work done after hours is required by the Contract to be done outside the Design-Build Entity's regular working hours, the costs of any inspections, if required to be done outside normal working hours, shall be borne by District. If District allows the Design-Build Entity to do Work outside regular working hours for the Design-Build Entity's own convenience, the costs of any inspections required outside regular working hours shall be invoiced to the Design-Build Entity by District and deducted from the next progress payment. If the Design-Build Entity elects to perform Work outside the Inspector's regular working hours, costs of any inspections required outside regular working hours shall be invoiced to the Design-Build Entity by District and deducted from the next progress payment.

5. No Work on the Project or other activities by or on behalf of the Design-Build Entity which presents a hazard or unreasonable disruption to District staff shall be allowed during normal working hours. The determination as to whether Work on the Project or some other activity presents a hazard or constitutes an unreasonable disruption to District staff shall be made by and pursuant to the sole discretion of a representative of District. All Work on the Project or other activities which could present a hazard or unreasonable disruption to District staff shall be performed before or after normal working hours, on weekends, or on a District recognized holiday. Neither the Design-Build Entity nor its Subcontractors or anyone working on behalf of the Design-Build Entity or Subcontractors shall be entitled to additional compensation or an extension of the Project Completion Date for having to arrange their Work schedule so as not to violate the provisions of this Article 6.17A. The Design-Build Entity, Subcontractors and persons working on behalf of the Design-Build Entity shall be expected to arrange such Work and other activities in advance so as to avoid creating monetary or time impacts.

B. Wage Rates, Travel, and Subsistence.

1. The Design-Build Entity is aware of the requirements of Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since the Work on the Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is $1,000 or more, the Design-Build Entity agrees to fully comply with such Prevailing Wage Laws. District has obtained the prevailing wage rates from the Director of the Department of Industrial Relations, State of California. Copies of the prevailing wage rates are on file at District's office and shall be made available to any interested party on request. the Design-Build Entity shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform the Project available to interested parties upon request, and shall post copies at the Design-Build Entity's principal place of business and at the Project site. The Design-Build Entity shall defend, indemnify and hold District, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or allege failure to comply with the Prevailing Wage Laws.

2. Pursuant to Labor Code Section 1775, the Design-Build Entity is hereby advised that in the event that the Design-Build Entity fails to pay prevailing wages, the Design-Build Entity will be held liable for penalties and for shortfalls in wages and such amounts may be withheld from progress payments. the Design-Build Entity and each Subcontractor shall forfeit as a penalty to District not more than two hundred dollars ($200) for each Day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontract under him, in violation of the provisions of the Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each Day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Design-Build Entity.

3. The Design-Build Entity shall post, at appropriate conspicuous points on the Project site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

C. Labor Compliance/Payroll Records.

1. Pursuant to Labor Code Section 1776, the Design-Build Entity and each Subcontractor shall maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the Project. The Design-Build Entity shall certify under penalty of perjury that records maintained and submitted by the Design-Build Entity are true and accurate. The Design-Build Entity shall also require Subcontractor(s) to certify weekly payroll records under penalty of perjury.

2. In accordance with Labor Code section 1771.4, the Design-Build Entity and each Subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on a weekly basis and in the format prescribed by the DIR. This may include electronic submission. Design-Build Entity shall ensure full compliance with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement and all other applicable labor law.

3. If not subject to paragraph (2), above, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR.

4. In the event of noncompliance with the requirements of this Article 6.17C, the Design-Build Entity shall have ten (10) Days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to ensure compliance with this Article 6.17C. Should noncompliance still be evident after such ten (10) day period, the Design-Build Entity shall, as a penalty to the District, forfeit One Hundred Dollars ($100.00) for each day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of DIR, such penalties shall be withheld from contract payments.

5. In submitting the Proposal on this Project, it shall be the Design-Build Entity's sole responsibility to evaluate and include the cost of complying with all labor compliance requirements under this Contract and Applicable Law in its Proposal.

6. The Design-Build Entity shall include provisions of this Article 6.17C in all Subcontracts and require Subcontractors to comply with these provisions at no additional cost to District.

D. Apprentices.

1. The Design-Build Entity's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by the Design-Build Entity or any Subcontractor. The Design-Build Entity shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Sections 1777.5, 1777.6, and 1777.7 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from DIR, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

E. Labor Compliance; Stop Orders.

1. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be the Design-Build Entity's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Contract and applicable law. Any stop orders issued by the Department of Industrial Relations against Design-Build Entity or any subcontractor that affect Design-Build Entity's performance of Work, including any delay, shall be Design-Build Entity's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Design-Build Entity caused delay subject to any applicable liquidated damages and shall not be compensable by the District. Design-Build Entity shall defend, indemnify and hold the District, its officials, officers, employees and agents free and harmless from any claim or

liability arising out of stop orders issued by the Department of Industrial Relations against Design-Build Entity or any subcontractor.

F. Nondiscrimination.

1. Pursuant to Labor Code section 1735 and other applicable provisions of law, the Design-Build Entity and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap on this Work. The Design-Build Entity will take affirmative action to insure that employees are treated during employment or training without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap.

G. Workers' Compensation. Pursuant to Labor Code section 1860, Design-Build Entity shall secure the payment of workers' compensation to its employees in accordance with the provisions of Labor Code section 3700. Prior to commencement of work, Design-Build Entity shall sign and file with District the following certification:

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

6.18 Skilled and Trained Workforce.

A. Education Code section 17250.25(c) requires the Design-Build Entity to ensure that it and its Subcontractors at every tier use a skilled and trained workforce to perform all Work on the Project that falls within an apprenticeable occupation in the building and construction trades. As part of the Design-Build Entity's Statement of Qualifications submitted in response to the RFQ, the Design-Build Entity submitted a Skilled and Trained Workforce Certification certifying its compliance with all skilled and trained workforce requirements in place for this Project.

B. A "skilled and trained workforce" means a workforce that meets all of the following conditions:

1. All the workers are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards.

2. As of January 1, 2017, at least 30 percent of the skilled journeypersons employed to perform work on the contract or project by the Design-Build Entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

3. As of January 1, 2018, at least 40 percent of the skilled journeypersons employed to perform work on the contract or project by the Design-Build Entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

4. As of January 1, 2019, at least 50 percent of the skilled journeypersons employed to perform work on the contract or project by the Design-Build Entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

5. As of January 1, 2020, at least 60 percent of the skilled journeypersons employed to perform work on the contract or project by the Design-Build Entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

6. For an apprenticeable occupation in which no apprenticeship program has been approved by the chief prior to January 1, 1995, up to one-half of the graduation percentage requirements under Public Contract Code section 22164(c)(1)(B)(ii) may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation prior to the chief's approval of an apprenticeship program for that occupation in the county in which the project is located.

C. The Design-Build Entity shall comply with the foregoing skilled and trained workforce requirements in accordance with Education Code section 17250.25(c)(2) and will establish its compliance in one of the following methods:

1. The Design-Build Entity shall provide monthly reports to the District demonstrating that it and its Subcontractors performing work on the Project are complying with the requirements of Public Contract Code section 2602; or

2. The Design-Build Entity shall provide evidence that it has become party to a project labor agreement entered into by the District that binds all contractors and subcontractors performing Work on the Project and that includes the requirements of Public Contract Code section 2500.

6.19 Taxes.

A. The Design-Build Entity shall pay all sales, consumer, use, and other similar taxes required to be paid in accordance with the Applicable Law of the place of the Project which are applicable during the performance of the Project.

B. In accordance with Revenue and Taxation Code Section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which the Design-Build Entity will be responsible.

C. The Design-Build Entity shall include in its Proposal the patent fees or royalties on any patented article or process furnished or used in the Project. The Design-Build Entity shall assume all liability and responsibility arising from the use of any patented, or allegedly patented, materials, equipment, devices or processes used in or incorporated with the Project, and shall defend, indemnify and hold harmless District, its officials, officers, agents, employees and representatives from and against any and all liabilities, demands, claims, damages, losses, costs and expenses, of whatsoever kind or nature, arising from such use.

6.20 Use of Site and Other Areas.

A. Limitation on Use of Site and Other Areas.

1. The Design-Build Entity shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Applicable Laws, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Design-Build Entity shall assume full responsibility for any damage to any such land or area, or to the District or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such District or occupant because of the performance of the Work, Design-Build Entity shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

B. Removal of Debris. During the progress of the Work Design-Build Entity shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to Applicable Laws.

C. Cleaning. Prior to Completion of the Work, Design-Build Entity shall clean the Site and the Work and make it ready for utilization by District. At the completion of the Work Design-Build Entity shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. Loading Structures. Design-Build Entity shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design-Build Entity subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.21 Utility Usage.

A. All temporary utilities, including but not limited to electricity, water, gas, and telephone, used on the Work shall be furnished and paid for by Design-Build Entity.

Design-Build Entity shall provide necessary temporary distribution systems, including meters, if necessary, from distribution points to points on the Work where the utility is needed. Upon completion of the Work, Design-Build Entity shall remove all temporary distribution systems.

B. Design-Build Entity shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Work, including but not limited to startup and testing required in the Contract Documents.

C. All permanent meters installed shall be listed in the Design-Build Entity's name until the Work is accepted.

D. If Work is to be performed in existing District's facilities, Design-Build Entity may, to the extent authorized by District in writing, use District's existing utilities. If Design-Build Entity uses District utilities, it shall compensate District for utilities used.

6.22 Record Documents.

A. Design-Build Entity shall maintain in a safe place at the Site one record copy of all Drawings, Performance Specifications, Technical Specifications, Addenda, Change Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to District's Representative for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to District. See 01 00 00 for additional Record Drawing requirements.

6.23 Safety and Protection.

A. Design-Build Entity shall be solely responsible for all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety laws. Design-Build Entity shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Design-Build Entity shall comply with all Applicable Laws relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and

protection. Design-Build Entity shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. Design-Build Entity shall comply with the applicable requirements of District's safety programs, if any. The Special Conditions identify any District's safety programs that are applicable to the Work.

D. Design-Build Entity shall inform District and District's Representative of the specific requirements of Design-Build Entity's safety program with which District's and District's Representative's employees and representatives must comply while at the Site.

E. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Design-Build Entity, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Design-Build Entity.

F. Design-Build Entity's duties and responsibilities for safety and for protection of the Work shall continue until District files the Notice of Completion in accordance with Contract Documents.

6.24 Safety Representative.

A. Design-Build Entity shall designate an OSHA-certified and experienced safety representative at the Project site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs. Design-Build Entity shall provide District's Representative the name and contract information of the safety representative in writing. Design-Build Entity shall provide District's Representative the name and contact information of the safety representative in writing.

6.25 Hazard Communication Programs.

A. Design-Build Entity shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Project site in accordance with Applicable Laws.

6.26 Emergencies.

A. In an emergency affecting safety of life or of Work or of adjoining property, Design-Build Entity, without special instruction or authorization from District, shall act to prevent such threatened loss or injury; and Design-Build Entity shall so act, without appeal, if directed or instructed by District. Any compensation claimed by Design-Build Entity on account of emergency work shall be determined in accordance with the Contract Documents.

6.27 Continuing The Work.

A. Design-Build Entity shall carry on the Work during negotiation of all Change Orders and all disputes or disagreements with District. No Work shall be delayed or postponed pending resolution of any Change Orders, disputes or disagreements, unless District and Design-Build Entity otherwise agree in writing.

6.28 Guarantee.

A. The Design-Build Entity unconditionally guarantees all Work on the Project will be completed in accordance with the requirements of the Contract Documents, and will remain free of defects in workmanship and materials for a period of two (2) years from the date of Project Completion, unless a longer guarantee period is specifically called for in the Contract Documents. However, a shorter guarantee period shall apply to landscape plants, trees, turf, etc. Trees or shrubs greater than one gallon in size at the time of planting shall be guaranteed for one (1) year, and all other plant material shall be guaranteed for six (6) months. The Design-Build Entity shall repair or replace any and all Work, together with any adjacent work that may have been damaged or displaced, which was not in accordance with the requirements of the Contract Documents, or that may be defective in its workmanship or material within the guarantee period specified in the Contract Documents, without any expense whatsoever to District; ordinary wear and tear and abuse excepted.

B. The Design-Build Entity further agrees, within fourteen (14) Days, or as such shorter period as may be designated for emergency repairs, after being notified in writing by District, of any Work not in accordance with the requirements of the Contract Documents or any defects in the Work on the Project, that the Design-Build Entity shall commence and execute, with due diligence, all Work necessary to fulfill the terms of the guarantee. If District finds that the Design-Build Entity fails to perform any of the Work under the guarantee, District may elect to have the Work completed at the Design-Build Entity's expense and the Design-Build Entity will pay costs of the Work upon demand. District will be entitled to all costs, including reasonable attorneys' fees and consultants' expenses necessarily incurred upon the Design-Build Entity's refusal to pay the above costs.

C. Notwithstanding the foregoing provisions, in the event of an emergency constituting an immediate hazard to health or safety of District employees, property, or licensees, District may undertake, at the Design-Build Entity's expense and without prior notice, all Work necessary to correct such condition(s) when it is caused by Work of the Design-Build Entity not being in accordance with the requirements of the Contract Documents.

6.29 Warranty.

A. The Design-Build Entity warrants to District that any and all materials, equipment and furnishings incorporated in the Project will be of good quality and new unless otherwise required or permitted by the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The foregoing warranty excludes improper operation, or normal wear and tear under normal usage under the control of District. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or

implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of District to maintain an action for breach of contract against the Design-Build Entity. Nothing contained in these Contract Documents pertaining to warranty or guarantee shall be construed as limiting any other rights District may have at law, including rights for latent defects under Code of Civil Procedure Section 337.15.

6.30 Indemnification.

B. To the fullest extent allowed by law (including without limitation Civil Code Sections 2782 and 2782.8), the Design-Build Entity shall defend (with counsel of District's choosing), indemnify and hold District, its officials, officers, agents, employees, and representatives free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, Losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, regardless of whether the allegations are false, fraudulent, or groundless, arising out of, related to, or in connection with any acts, omissions or willful misconduct of Design-Build Entity, its officials, officers, employees, agents, consultants, contractors, and Subcontractors arising out of or in connection with the performance of the Work or this Contract, including claims made by Subcontractors for nonpayment, and including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses. The Design-Build Entity shall defend, at the Design-Build Entity's own cost, expense and risk, with counsel of District's choosing, any and all such suits, actions or other legal proceedings of every kind that may be brought or instituted against District, its officials, officers, agents, employees and representatives. the Design-Build Entity shall pay and satisfy any judgment, award or decree that may be rendered against District, its officials, officers, agents, employees and representatives, in any such suit, action or other legal proceeding. The Design-Build Entity shall reimburse District, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The Design-Build Entity agrees to pay, or reimburse District and District's Representative, for regulatory agency or court imposed fees, fines, or penalties imposed on District and District's Representative arising from the Design-Build Entity's failure to complete the Project in a timely manner and/or in accordance with the Contract Documents and any applicable permits or Applicable Laws. The Design-Build Entity's responsibility and obligation to pay, or reimburse District and District's Representative, for these fees, fines, or penalties shall be in addition to the assessment of liquidated damages for late completion of the Project.

A. In claims against any person or entity indemnified under this Article 6.30 that are made by an employee of the Design-Build Entity or any Subcontractor, a person indirectly employed by the Design-Build Entity or any Subcontractor, or anyone for whose acts the Design-Build Entity or any Subcontractor may be liable, the indemnification obligation under this Article 6.30 shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for Design-Build Entity or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts or any other insurance limitations.

B. The indemnification obligations under this Article 6.30 shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.

C. Joint and Several Liability. In the event the Design-Build Entity and one or more than one other party is connected with an accident or occurrence covered by this indemnification, then all such parties shall be jointly and severally responsible to each of the Indemnitees for indemnification, and the ultimate responsibility among such indemnifying parties for the loss and expense of any such indemnification shall be resolved without jeopardy to any indemnitee listed in this Article 6.30.

6.31 Superintendent.

A. The Design-Build Entity shall employ a competent Superintendent satisfactory to District who shall be in attendance at the Project site at all times during the performance of the Construction Work. Superintendent shall represent the Design-Build Entity and communications given to, and received from, Superintendent shall be binding on the Design-Build Entity. Superintendent must be able to proficiently speak, read and write in English. Failure to maintain a Superintendent on the Project site at all times Work on the Project is in progress shall be considered a material breach of this Contract, entitling District to terminate the Contract or, alternatively, issue a Suspension Order until the Superintendent is on the Project site. If, by virtue of issuance of said Suspension Order, the Design-Build Entity fails to complete the Contract by the Project Completion Date, the Design-Build Entity will be assessed Liquidated Damages in accordance with the Contract.

B. Any changes to the assignment of the Superintendent shall receive prior written approval from District. The Superintendent may not perform the work of any trade, pick up materials, or perform any work not directly related to the supervision and coordination of the Construction Work at the Project site when work is in progress. In addition, the Design-Build Entity will provide all key personnel identified in the Contract for the time periods stipulated.

6.32 Project Staffing.

A. The Design-Build Entity and each Subcontractor shall: furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work on the Project; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and keep an adequate force of skilled and fit workers on the job to complete all Work on the Project in accordance with all requirements of the Contract.

District shall have the right, but not the obligation, to require the removal from the Project of the Design-Build Entity's Representative, or any other superintendent, staff member, agent, or employee of any contractor, Subcontractor, material or equipment supplier, or any other entity working on the Project. Removal may be required for any reason designated by District, including but not limited to, failure or refusal to perform Work on the Project in a manner acceptable to District, uncooperative or incompetent performance on the Project, threatening the adequate or timely completion of the Project, or threatening the safety of persons or property.

6.33 Compliance With State Storm Water Permit for Construction.

Refer to Section 01 00 00 for information regarding compliance with State Storm Water Permit for Construction.

6.34 Monthly Report.

The Design-Build Entity shall prepare and submit to District, during both the Construction Documents Phase and the Construction Phase, monthly written reports on the Work accomplished during the prior monthly period. Such reports shall be prepared in a manner and in a format approved by District. Reports shall be furnished at the time of submission of each monthly application for payment. The monthly report shall also set forth the Design-Build Entity's projected progress for the forthcoming month.

6.35 Other Reports.

The Design-Build Entity will cooperate with District in preparing, or causing to be prepared, all or part of, periodic project reports required by state or federal agencies.

6.36 Notice of Labor Dispute.

A. If the Design-Build Entity has knowledge that any actual or potential labor dispute is delaying, or threatens to delay, the timely performance of Work on the Project, the Design-Build Entity shall immediately give written notice including all relevant information to District.

B. The Design-Build Entity agrees to insert the substance of this Article 6.36 in any subcontract to which a labor dispute may delay the timely performance of Work on the Project, except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor shall immediately notify the next higher tier Subcontractor or the Design-Build Entity, as the case may be, of all relevant information concerning the dispute.

6.37 Documents and Samples At Project Site.

A. The Design-Build Entity shall maintain the following at the Project site:

1. One current copy of the Contract Documents (including Construction Documents), in good order and marked to record current changes and selections made during construction.

2. One copy of the prevailing wage rates applicable to the Project.

3. The current accepted Master Project Schedule.

4. Shop Drawings, Product Data, and Samples.

5. One current copy of all documents required by Article 6.21.

6. All other required submittals.

These shall be available to District's Representative and shall be delivered to District's Representative for submittal to District upon the earlier of Final Completion or termination of the Contract.

6.38 Cutting, Fitting, and Patching.

A. The Design-Build Entity shall do all cutting, fitting, or patching work required to make all parts of the Project come together properly and to allow the Project to receive or be received by the work of Separate Contractors shown upon, or reasonably implied by, the Contract Documents.

B. The Design-Build Entity shall not endanger the Project, or adjacent property by cutting, digging, or otherwise. The Design-Build Entity shall not cut or alter the work of any Separate Contractor without the prior written consent of District's Representative.

6.39 Access to Work.

A. District, District's Representative, their consultants, and other persons authorized by District will at all times have access to the Work on the Project wherever it is in preparation or progress. The Design-Build Entity shall provide safe and proper facilities for such access and for inspection.

6.40 Concealed Or Unknown Conditions.

A. Except and only to the extent provided otherwise in Articles 9 and 10, by signing the Contract, the Design-Build Entity agrees:

1. To bear the risk of concealed or unknown conditions, if any, which may be encountered in performing the Contract, as described in the Contract Documents, and/or can reasonably be inferred by the Design-Build Entity based on its experience and expertise; and

2. That the Design-Build Entity's Guaranteed Maximum Price for the Contract was made with full knowledge of this risk.

In agreeing to bear the risk of concealed or unknown conditions, The Design-Build Entity understands that, except and only to the extent provided otherwise in Articles 9 and 10, concealed and/or unknown conditions shall not excuse the Design-Build Entity from its obligation to achieve full completion of the Project within the Project Completion Date, and shall not entitle the Design-Build Entity to an adjustment of the Guaranteed Maximum Price.

B. If concealed or unknown conditions are encountered which require, in the opinion of District's Representative, design details which differ from those details shown in the Bridging Documents and District's Representative finds that such revised design details will cause an increase or decrease in the cost of, or the time required for performance of the Contract, and if District agrees with District's Representative's determinations, District will issue a Change Order modifying the Contract Terms to provide for the change in design details and to provide for an adjustment in the Guaranteed Maximum Price and/or Project Completion Date pursuant to Articles 9 and 10 following receipt of a Change Order Request.

C. If the Design-Build Entity encounters concealed or unknown conditions that differ materially from those anticipated or expected, the Design-Build Entity shall notify District's Representative within three (3) Days in writing of such conditions so that District's Representative can determine if such conditions require design details which differ from those design details shown in the Bridging Documents. Design-Build Entity shall be liable to District for any extra costs incurred as a result of the Design-Build Entity's failure to give such notice. Design-Build Entity's failure to give such notice shall constitute a waiver by Design-Build Entity of any additional compensation.

6.41 Liability for and Repair of Damaged Work.

A. Design-Build Entity shall be liable for any and all damages and losses to the Project (whether by fire, theft, vandalism, earthquake, flood or otherwise) prior to District's acceptance of the Project as fully completed.

6.42 Permits, Fees, and Notices.

A. Except for the permits and approvals which are to be obtained on behalf of District or the requirements with respect to which District is not subject, the Design-Build Entity shall secure, and pay for, all other permits, approvals, government fees, licenses, and inspections necessary for the proper execution and performance of Work on the Project. The Design-Build Entity shall deliver to District all original licenses, permits, and approvals obtained by the Design-Build Entity in connection with Work on the Project prior to the final payment or upon termination of the Contract, whichever is earlier.

ARTICLE 7 -OTHER WORK AT THE PROJECT SITE

7.1 Related Work At Project Site.

A. Nothing contained in the Contract Documents shall be interpreted as granting to Design-Build Entity exclusive occupancy at the Project site. District reserves the right to award separate contracts for, or to perform with its own forces, construction or operations related to the Work or other construction or operations at or affecting the Project site, including portions of Work on the Project which have been deleted by Change Order. The Design-Build Entity shall cooperate with District's employees or through other direct contracts, or have other work performed by utility owners (collectively, "Other Contractors"). If such other work is not noted in the Contract Documents, then written notice thereof will be given to the Design-Build Entity prior to starting any such other work. The Design-Build Entity shall participate with District and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. The Design-Build Entity shall make necessary revisions to the Master Project Schedule after such joint review.

B. Design-Build Entity shall be solely responsible for all costs associated with coordinating its Work with Separate Contractors. Design-Build Entity shall not be entitled to additional compensation from District for damages resulting from such simultaneous, collateral, and essential Work. If necessary to avoid or minimize such damage or delay, Design-Build Entity shall redeploy its work forces to other parts of the Work, or adjust its Work schedule including reasonable acceleration

of the Work. If a portion of the Work on the Project is dependent upon the proper execution or results of other construction or operations by District or Separate Contractors, the Design-Build Entity shall inspect such other design or construction or operations before proceeding with that portion of the Work on the Project. The Design-Build Entity shall promptly report to District's Representative apparent discrepancies or defects which render the other design, construction or operations unsuitable to receive the Work on the Project. Unless otherwise directed by District's Representative, the Design-Build Entity shall not proceed with the portion of the Work on the Project affected until apparent discrepancies or defects have been corrected. Failure of the Design-Build Entity to so report within a reasonable time after discovering such discrepancies or defects shall constitute an acknowledgment that the other construction or operations by District or Separate Contractors is suitable to receive the Work on the Project, except as to defects not then reasonably discoverable.

C. Design-Build Entity's Responsibility. Design-Build Entity shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work.

D. Design-Build Entity Shall Not Endanger Existing Work. Design-Build Entity shall not endanger any work of Separate Contractor by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of District's Representative and the Separate Contractor whose work will be affected.

E. Design-Build Entity shall afford each Separate Contractor proper and safe access to the Project site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Design-Build Entity shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Design-Build Entity shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Design-Build Entity may cut or alter others' work with the written consent of District's Representative and the others whose work will be affected.

F. If the proper execution or results of any part of Design-Build Entity's Work depends upon work performed by Separate Contractors, Design-Build Entity shall inspect such other work and promptly report to District's Representative in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Design-Build Entity's Work. Design-Build Entity's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Design-Build Entity's Work except for latent defects and deficiencies in such other work.

G. If any claims are made by Separate Contractors arising out of Design-Build Entity's performance of the Work, Design-Build Entity shall be responsible to immediately resolve the dispute and indemnify District pursuant to the Contract Documents.

7.2 Coordination.

A. If District intends to have work performed by Separate Contractors at the Project site, the following will be set forth in the Special Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Special Conditions, District shall have sole authority and responsibility for such coordination.

C. Coordination Delays. District's Representative shall arrange meetings with Separate Contractors performing work to plan coordination of construction activities but will not be responsible to direct coordination efforts. Any difference or conflict arising between Design-Build Entity and any Separate Contractor shall be submitted to District's Representative for a decision in the matter. Design-Build Entity shall comply with direction from District's Representative whose decision on coordination matters will be final.

7.3 For Delays by Others.

A. By entering into this Contract, Design-Build Entity acknowledges that there may be Separate Contractors on the Project site whose work will be coordinated with that of Design-Build Entity. Design-Build Entity expressly warrants and agrees that Design-Build Entity will cooperate with Separate Contractors and will do nothing to delay, hinder, or interfere with the work of Separate Contractors, District, or District's Representative. Design-Build Entity also expressly agrees that, in the event its Work is hindered, delayed, interfered with, or otherwise affected by a Separate Contractor, its sole remedy will be a direct action against the Separate Contractor. Design-Build Entity will have no remedy, and hereby expressly waives any remedy, against District or District's Representative on account of delay, hindrance, interference, or other event caused by Separate Contractor.

7.4 Design-Build Entity's Delay Or Damage.

A. Design-Build Entity shall be liable to District and any Separate Contractor for the direct delay and disruption costs or damages incurred by such Separate Contractor as a result of Design-Build Entity's wrongful action or inactions.

ARTICLE 8 -FINGERPRINTING REQUIREMENTS

District shall determine the Fingerprinting requirements for the Project as set forth in the Special Conditions. The Project shall be governed by paragraph (a) or (b) below, depending on the Work involved in the Project.

8.1 Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility Involving More Than Limited Contact with Students.

If the District determines, based on the totality of the circumstances concerning the Project, that the Design-Build Entity and Design-Build Entity's employees are subject to the requirements of Education Code section 45125.2 pertaining to Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility because they will have contact other than limited contact with pupils, by execution of the Contract, the Design-Build Entity acknowledges that Design-Build Entity is entering into a contract for the construction, reconstruction, rehabilitation, or repair of a school facility where the Design-Build Entity and/or its employees will have more than limited contact with students and the services to be provided do not constitute an emergency or exceptional situation. In accordance with Education Code section 45125.2 the Design-Build Entity shall, at Contractor's own expense: **[DISTRICT TO DETERMINE WHICH ITEMS TO INCLUDE]**

A. install a physical barrier to limit contact with students by Design-Build Entity and/or Design-Build Entity's employees;

B. provide for the continuous supervision and monitoring of the Design-Build Entity and/or Design-Build Entity's employees by an employee of the Contractor who has received fingerprint clearance from the California Department of Justice;

C. provide for the surveillance of the Design-Build Entity and Design-Build Entity's employees by a District employee;

D. require any employee of the Design-Build Entity potentially having contact with students to obtain fingerprint clearance as described in Education Code section 45125.1.

8.2 Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility Involving Only Limited Contact with Students.

If the District determines based on the totality of the circumstances concerning the Project that the Design-Build Entity and Design-Build Entity's employees are subject to the requirements of Education Code section 45125.2 pertaining to Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility because they will have only limited contact with pupils, by execution of the Contract, the Design-Build Entity acknowledges that Design-Build Entity is entering into a contract for the construction, reconstruction, rehabilitation or repair of a school facility involving only limited contact with students. Accordingly, the parties agree that the following conditions apply to any work performed by the Design-Build Entity and/or Design-Build Entity's employees on a school site: (1) Design-Build Entity and/or Design-Build Entity's employees shall check in with the school office each day immediately upon arriving at the school site; (2) Design-Build Entity and/or Design-Build Entity's employees shall inform school office staff of their proposed activities and location at the school site; (3) Once at such location Design-Build Entity and/or Design-Build Entity's employees shall not change locations without contacting the school office; (4) Design-Build Entity and Design-Build Entity's employees shall not use student restroom facilities; and (5) If Design-Build Entity and/or Design-Build Entity's employees find themselves alone with a student, Design-Build Entity and Design-Build Entity's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.

ARTICLE 9 -SUBCONTRACTORS

9.1 Award of Subcontracts and Other Contracts for Portions of The Work.

A. All portions of the Work on the Project for which Subcontractors were not listed by the Design-Build Entity in its Proposal, shall be awarded by the Design-Build Entity pursuant to the requirements described in this Article.

B. The Design-Build Entity shall submit to District's Representative after selecting Subcontractors pursuant to an open and competitive process, an updated expanded list of Subcontractors, along with their respective addresses, telephone numbers, e-mail addresses and contractor's license numbers. The expanded list of Subcontractors shall be provided and/or updated no later than ten (10) Days after the date which the Design-Build Entity awards a contract for any portion of the Work to a Subcontractor not originally listed in the Design-Build Entity's Proposal.

C. District has the right to request all documentation that supports the Design-Build Entity's selection of a Subcontractor. District shall have the right of final approval as to the qualifications of a Subcontractor to perform its designated scope of Work. Within District's discretion, any Subcontractor may be deemed not qualified to perform Work on the Project if District or District's Representative determines that the Subcontractor fails to meet the requirements of the Contract Documents, or for any other reason.

D. The Subcontractors listed by the Design-Build Entity shall only be substituted in strict accordance with the "Subletting and Subcontracting Fair Practices Act" and upon the written consent of District. Only upon compliance with the "Subletting and Subcontracting Fair Practices Act" and with the written consent of District shall a substitution be made.

E. Any increase in the cost of the Work on the Project resulting from the replacement or substitution of a Subcontractor pursuant to this Article or as required by District or District's Representative pursuant to this Article, shall be borne solely by the Design-Build Entity. The Design-Build Entity shall not be entitled to any increase in Guaranteed Maximum Price or an extension of Project Completion Date due to such replacement or substitution.

F. The Design-Build Entity shall require, in each subcontract for any portion of Work on the Project, the Subcontractor to indemnify District, District's Representative and its consultants, representatives, directors, officers, agents and employees, pursuant to the provisions set forth in Article 6.

G. Each subcontract shall preserve and protect the rights of District under the Contract Documents, with respect to the Work to be performed by Subcontractor, so that subcontracting thereof will not prejudice such rights. The Design-Build Entity shall cause each such subcontract to expressly include the following requirements:

1. Subcontractor waives all rights that Subcontractor may have against District for damages caused by fire or other perils covered by builder's risk property insurance carried by Design-Build Entity or District, except for such rights Subcontractor may have to the proceeds of such insurance held by District under Article 5.1.

2. District and entities and agencies designated by District will have access to and the right to audit and the right to copy at District's cost all of Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to Work on the Project. Subcontractor shall preserve all such records and other items for a period of at least 3 years after Final Completion.

3. Subcontractor recognizes the rights of District under Article 8.3, Contingent Assignment of Subcontracts, and agrees, upon notice from District that District has elected to accept said assignment and to retain Subcontractor pursuant to the terms of the subcontract, to complete the unperformed obligations under the subcontract and, if requested by District, to execute a written Contract confirming that Subcontractor is bound to District under the terms of the subcontract.

4. The Design-Build Entity is responsible for reviewing and coordinating the Work of and among his Subcontractors and Design Professionals. This review and coordination includes, but is not limited to, resolution of any inconsistencies, errors or omissions.

9.2 Contingent Assignment of Subcontracts.

A. The Design-Build Entity hereby assigns to District all its interest in first tier subcontracts now or hereafter entered into by the Design-Build Entity for performance of any part of the Work on the Project. The assignment will be effective upon acceptance by District in writing and only as to those subcontracts which District designates in writing. District may accept said assignment at any time during the course of the Work on the Project and prior to Final Completion in the event of a suspension or termination of the Design-Build Entity's rights under the Contract Documents. Such assignment is part of the consideration to District for entering into the Contract with the Design-Build Entity and may not be withdrawn prior to Final Completion.

9.3 Award of Subcontracts and Other Contracts for Portions of The Work.

A. All Subcontractors shall be retained in accordance with the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100 *et seq*.) The Design-Build Entity shall not, without the consent of District: substitute any person or entity as a Subcontractor in place of the Subcontractor designated in the Proposal; permit any such Subcontractor to be assigned or transferred, or allow it to be performed by any person or entity other than the original Subcontractor listed in the Proposal; sublet or subcontract any portion of the Work on the Project in excess of one-half of one percent (.5%) of the Guaranteed Maximum Price as to which its Proposal did not designate a Subcontractor. Any assignment or substitution made without the prior written consent of the awarding authority or not in compliance with the Subletting and Subcontracting Fair Practices Act shall be void, and the assignees shall acquire no rights in the Contract. Any consent, if given, shall not relieve the Design-Build Entity or its Subcontractors from their obligations under the terms of the Contract. All requests by the Design-Build Entity for substitution will be handled through District's Representative.

B. All Subcontractor and Sub-Subcontractor substitutions shall be made pursuant only to the Subletting and Subcontracting Fair Practices Act found at Public Contract Code Section 4100 *et seq.*

C. Any substitutions of Subcontractors shall not result in any increase in the Guaranteed Maximum Price or result in the granting of any extension of Project Completion Date for the completion of the Project.

D. Substitutions due to a claim of inadvertent clerical error shall be made pursuant to Public Contract Code Section 4107.5.

E. The Design-Build Entity is responsible for reviewing and coordinating the Work of and among his Subcontractors and Design Professionals. This review and coordination includes, but is not limited to, resolution of any inconsistencies, errors or omissions.

F. Upon the request of District, the Design-Build Entity shall promptly furnish to District a true, complete, and executed copy of any subcontract.

9.4 Subcontractor's Responsibilities.

Every Subcontractor is bound to the following provisions, subject to the limitations of Article 8.3 above:

A. Subcontractors shall efficiently supervise their Work, using their best skill and attention. Each of them shall carefully study and compare all Drawings, Performance Specifications, and other instructions, shall at once report to the Design-Build Entity any error or omission which any of them may discover, and shall subsequently proceed with the Work in accordance with instructions from the Design-Build Entity concerning such error or omission. Each Subcontractor shall be fully responsible for and shall bear the full risk of loss of all of its property.

B. Each Subcontractor shall at all times enforce strict discipline and good order among its Subcontractors, material or equipment suppliers, or their agents, employees, and invitees, and shall establish and maintain surveillance over the activities of each of the foregoing to minimize any disturbance, damage, pollution, or unsightly conditions relative to property areas adjacent to or in the vicinity of the Project site. The Subcontractor shall not employ on the Project any unfit person or anyone not skilled in the task assigned. The Design-Build Entity shall have the right to remove from the Project any employee of a Subcontractor for any reason including, without limitation, incompetence or carelessness.

C. Should the proper and accurate performance of the Work on the Project depend upon the proper and accurate performance of other Work not included in its agreement, each Subcontractor shall use all necessary means to discover any defect in such other Work and shall allow the Design-Build Entity or other Subcontractors as the Design-Build Entity elects a reasonable amount of time to remedy such defects. If the Subcontractor should proceed with its Work, it shall be considered to have accepted such other work, unless the Subcontractor shall have proceeded pursuant to instructions in writing by the Design-Build Entity over its written objection.

D. Each Subcontractor shall submit to the Design-Build Entity, as the case may be, promptly when requested by any of the foregoing, information with respect to the names, responsibilities, and titles of the principal members of its staff, the adequacy of the Subcontractor's equipment and the availability of necessary materials and supplies. Subcontractor shall fully cooperate with Design-Build Entity in its periodic review of the adequacy of Subcontractor's supervision, personnel, and equipment, and the availability of necessary materials and supplies and shall promptly comply with the requirements of the Design-Build Entity with respect thereto.

E. Each Subcontractor shall furnish at its expense its own temporary facilities and storage except those specifically agreed to be furnished to it by the Design-Build Entity in the subcontract. Subcontractor's material storage rooms and field offices, etc., will be placed in locations designated by the Design-Build Entity. When it becomes necessary due to the progress of the Project for the Subcontractor to relocate its field operations, it will do so in an expeditious manner and at no additional cost to Design-Build Entity or District. The construction of material storage rooms and field offices, etc., will be of fire resistive material only, such as concrete or gypsum block, rated drywall, or sheet metal.

F. Each Subcontractor may be subject to the Design-Build Entity's reasonable charges for hoisting, repair to other work caused by the fault or negligence of Subcontractor, removal of Subcontractor's rubbish, and clean-up occasioned by Subcontractor.

G. Subcontractor shall comply with and pay any fines or penalties imposed for violation of any applicable law, ordinance, rule, regulation, Environmental Impact Report mitigation requirement, and lawful order of any public authority, including, without limitation, all OSHA and California OSHA requirements and those of other authorities having jurisdiction of the safety of persons or property.

H. Each Subcontractor shall not display on or about the Project any sign, trademark, or other advertisement.

I. Without limitation of any other right or remedy available to the Design-Build Entity under the Contract or at law, should the Subcontractor: (1) fail to perform its portion of the Work on the Project in a skilled and expeditious manner in accordance with the terms of the subcontract with sufficient labor, materials, equipment, and facilities; (2) delay the progress of the job; (3) otherwise fail in any of its obligations; (4) have a receiver appointed for the Subcontractor; or (5) be declared bankrupt or insolvent, and such appointment, bankruptcy, or insolvency proceeding or declaration is not set aside within thirty (30) Days, then the Design-Build Entity, upon three (3) Days' notice to the Subcontractor (subject to the requirements of Public Contracts Code § 4107), may provide such labor, materials, or perform such Work and recover the cost plus profit and overhead from monies due or to become due thereafter to the Subcontractor. The Design-Build Entity may terminate the employment of the Subcontractor, taking possession of its tools, materials, and equipment related to the Work on the Project and cause the entire portion of the Subcontractor's Work to be finished either by another Subcontractor or through the Design-Build Entity's own forces.

J. In the event of any dispute as to whether or not any portion of the Work on the Project is within the scope of the Work to be performed by a Subcontractor, or any dispute as to whether or not the Subcontractor is entitled to a change order for any Work

requested of it, the Subcontractor shall continue to proceed diligently with the performance as required by the Design-Build Entity. Regardless of the size or nature of the dispute, the Subcontractor shall not under any circumstances cease or delay performance of its portion of Work on the Project during the existence of the dispute. The Design-Build Entity shall continue to pay the undisputed amounts called for under the subcontract during the existence of the dispute. Any party stopping or delaying the progress of the Work on the Project because of a dispute shall be responsible in damages to District, and the Design-Build Entity for any losses suffered as a result of the delay.

K. The Design-Build Entity agrees to advise the Subcontractor if any documentation in connection with the Subcontractor's application for payment has not been accepted or is in any way unsatisfactory.

L. The Design-Build Entity shall require each Subcontractor to comply with all procedures established by the Design-Build Entity for coordination among District, District's consultants, the Design-Build Entity, and the various Subcontractors for coordination of the Work on the Project with all local municipal authorities, government agencies, utility companies, and any other agencies with jurisdiction over all or any portion of the Work. The Subcontractor shall cooperate fully with all of the foregoing parties and authorities.

M. The Design-Build Entity shall require each Subcontractor to comply with all on-site record keeping systems established by the Design-Build Entity and shall, upon the request of the Design-Build Entity, provide the Design-Build Entity with such information and reports as the Design-Build Entity may deem appropriate. Without limitation of the foregoing, the Subcontractor shall assemble all required permits and certificates so that they are readily accessible at the Project site.

N. The specific requirements of this Article are not intended to exclude the obligation of the Subcontractor to comply with any of the other provisions of the General Conditions and the Contract Documents which are relevant to the proper performance of its portion of the Work on the Project.

O. The Design-Build Entity shall require all Subcontractors to commence their Work within two (2) Days after the Design-Build Entity provides them with a notice to begin, and shall require all Subcontractors to diligently prosecute their Work in accordance with the Master Project Schedule, so as to allow the Project to be totally and adequately completed within the Project Completion Date.

ARTICLE 10 - CHANGE IN GUARANTEED MAXIMUM PRICE; CHANGE IN CONTRACT TIMES

10.1 Contract Change Orders.

A. District, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, and the Guaranteed Maximum Price and Contract Time shall be adjusted accordingly. All such changes in the Work shall be authorized by written Change Order, and shall be performed under the applicable conditions of the Contract Documents. A Change Order signed by the Design-Build Entity indicates the Design-Build Entity's agreement therewith,

including any adjustment in the Guaranteed Maximum Price or the Contract Times, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.

B. Design-Build Entity shall promptly execute changes in the Work as directed in writing by District even when the parties have not reached agreement on whether the change increases the scope of Work or affects the Guaranteed Maximum Price or Contract Time, if any. All claims for additional compensation to the Design-Build Entity shall be presented in writing. No claim will be considered after the work in question has been done unless a written Change Order has been issued or a timely written notice of claim has been made by Design-Build Entity. Design-Build Entity shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract Documents, and shall be subject to all terms, conditions and provisions of the original Contract Documents.

C. The Design-Build Entity may request a Change Order under the procedures specified herein.

D. No changes in the work covered by this Contract shall exonerate any surety or any bond given in connection with this Contract.

E. A Field Order, as defined below, may be issued by District; such Field Order does not require the agreement of the Design-Build Entity, and shall be valid with or without the signature of the Design-Build Entity.

F. The Design-Build Entity shall proceed promptly with any changes in the Work, unless otherwise provided in the relevant Change Order, District Directed Change Order or Field Order.

G. A Change Order becomes a Contract Document when: (i) it is a District Directed Change Order as described in Article 9.3; or (ii) after it has been signed by both District and the Design-Build Entity, and states their agreement upon all of the following:

1. A change in the Work, if any.

2. The amount of an adjustment of the Guaranteed Maximum Price, if any.

3. The amount of an adjustment of the Project Completion Date, if any.

4. The terms and conditions of the Change Order are accepted as full and final settlement of any and all claims arising out of or related to the subject of the Change Order and the compensation set forth therein comprises the total compensation due for the work or change defined in the Change Order, including all impacts on any unchanged work.

10.2 Design-Build Entity Change Order Requests.

A. The Design-Build Entity may only request changes to the Guaranteed Maximum Price and/or Project Completion Date for Additional Work or Excusable Delays to completion of the Project caused by the acts, errors, or omissions of District, District's Representative, their agents or employees, or caused by unforeseen conditions or Acts of God if, and only if, the Design-Build Entity follows the procedures specified in this Article.

B. If the Design-Build Entity asserts that the Design-Build Entity is entitled to an adjustment of the Guaranteed Maximum Price and/or Project Completion Date as the result of an act, error, or omission of District, or as the result of unforeseen conditions that could not have been foreseen by the Design-Build Entity, then the Design-Build Entity may submit a Change Order Request in a form acceptable to District, to District's Representative.

C. A Change Order Request must state and justify the reason for the request, and specify the amount of any requested adjustment to the Guaranteed Maximum Price and/or Project Completion Date. Upon request of District's Representative, the Design-Build Entity shall submit such additional information as may be requested by District's Representative for the purpose of evaluating the Change Order Request. Such additional information may include a cost proposal meeting the requirements of this Article and written documentation demonstrating the Design-Build Entity's entitlement to a time extension under Article 10. If the Change Order Request seeks an adjustment of the Guaranteed Maximum Price for a Compensable Delay, upon request of District's Representative, the Design-Build Entity shall submit written documentation demonstrating the Design-Build Entity's entitlement to such an adjustment under Article 9.

D. A condition precedent to obtaining an adjustment of the Guaranteed Maximum Price and/or Project Completion Date as the result of an act, error, or omission of District, District's Representative, their agents or employees, or as the result of an unforeseen condition, is timely submission of a Change Order Request that meets the requirements set forth in this Article. A Change Order Request based upon such acts, errors or omissions will be deemed timely submitted if, and only if, it is submitted within five (5) Days of the date the Design-Build Entity discovers, or reasonably should discover, that an act, error, or omission of District has occurred that may entitle the Design-Build Entity to an adjustment of the Guaranteed Maximum Price and/or Project Completion Date (even if the Design-Build Entity has not been damaged, delayed, or incurred extra cost when the Design-Build Entity discovers, or reasonably should discover, the act, error or omission giving rise to the Change Order Request). A Change Order Request based upon an unforeseen condition will be deemed timely submitted if, and only if, it is submitted within fourteen (14) Days of the date the Design-Build Entity discovers, or reasonably should discover, the existence of an unforeseen condition that may entitle the Design-Build Entity to an adjustment of the Guaranteed Maximum Price and/or Project Completion Date (even if the Design-Build Entity has not been damaged, delayed, or incurred extra cost when the Design-Build Entity discovers, or reasonably should discover, the unforeseen condition giving rise to the Change Order Request). Although the Design-Build Entity shall have fourteen (14) Days to submit such Change Order Requests, the Design-Build Entity shall provide

District written or oral notice of the issue being the basis for such Change Order within fourteen (14) business days of discovery.

E. If District's Representative issues a final decision on all or part of a Change Order Request, the Design-Build Entity may contest the decision by filing a timely Claim under the procedures specified in Article 14. A final decision is any decision on a Change Order Request by District's Representative which states that it is final.

10.3 Unilateral Change Order; Field Order.

A. An District Directed Change Order is a type of Change Order which may be issued by District and incorporated into the Contract Documents without the Design-Build Entity's signature, where District determine that it is in District's best interest to adjust the Guaranteed Maximum Price and/or Project Completion Date as District believes necessary, even though no agreement has been reached between District and the Design-Build Entity.

B. A Field Order is a preliminary to a Change Order that describes a change in the Work, the estimated adjustments of the Guaranteed Maximum Price and/or the Project Completion Date, if any, and orders a change in the Work before all of the terms of the change are fully agreed upon by District and the Design-Build Entity. A Field Order must eventually be memorialized as a Change Order or an District Directed Change Order and incorporated into the Contract Documents.

1. A Field Order may be issued by District. If requested in writing, the Design-Build Entity shall promptly provide District's Representative with a cost proposal, setting forth the proposed adjustments of the Guaranteed Maximum Price and/or the Project Completion Date, if any, for performing the change in the Work. The Field Order will be superseded by a Change Order which shall include the actual adjustments, if any, of the Guaranteed Maximum Price and the Project Completion Date, as well as the change in the Work.

2. A Field Order signed by the Design-Build Entity indicates the agreement of the Design-Build Entity therewith, including the Design-Build Entity's agreement to the proposed adjustments to the Guaranteed Maximum Price and/or the Project Completion Date stated therein. Such agreement shall be effective immediately and will be incorporated into a Change Order.

3. Upon receipt of a Field Order, the Design-Build Entity shall promptly proceed with the change in the Work.

4. If the Design-Build Entity does not agree to the adjustment of the Guaranteed Maximum Price set forth in a Field Order, the amount shall be determined in accordance with the provisions of Article 9.4; and the Design-Build Entity shall comply with the provisions of Article 9.4 regarding records and documentation of actual costs.

10.4 Changes to The Guaranteed Maximum Price.

A. Process for Determining Adjustments in the Guaranteed Maximum Price.

1. Change Order Request Detail. Design-Build Entity's Change Order Request shall include all professional services, material, labor, and equipment separately priced for each element of Work. Allowable Overhead and Profit may be added to the total of these costs if allowed by the Contract Documents. As general guidance, all cost documentation shall be tabulated from detailed computerized spreadsheets in a "workbook" which will be compiled into useful summary spreadsheets as directed by District's Representative.

    a. Lump Sum Change Orders. By mutual acceptance of a lump sum price negotiated on the basis of the Design-Build Entity's itemized estimate of the anticipated costs of the Additional Work.

    b. Time and Materials Change Orders. District may direct Design-Build Entity to proceed with the Additional Work with payments to be made on the basis of the actual cost of the labor and materials required to complete the Additional Work.

2. Change Order Request Form. Design-Build Entity's Change Order Request shall be on forms acceptable to District's Representative. Design-Build Entity's Change Order Request shall certify in writing that the amounts included cover all direct, supplemental, indirect, consequential, and cumulative costs and delays, as applicable, and that those costs and delays would be or were necessarily incurred, despite Design-Build Entity's reasonable and diligent efforts to mitigate them. Mitigation efforts undertaken by Design-Build Entity must be described.

B. Lump Sum Change Orders. Compensation for Lump Sum Change Orders shall be limited to expenditures necessitated specifically by the Additional Work, and shall be segregated as follows:

1. Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the additional work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the cost of the Additional Work will not be permitted unless the Design-Build Entity establishes the necessity for such new classifications. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental. Compensation for the design element of any Additional Work as an adjustment to the Guaranteed Maximum Price, authorized by Change Order shall be computed as specified in Attachment 1.

2. Materials. The cost of materials shall be at invoice or lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight and delivery. Materials cost shall be based upon supplier or manufacturer's invoice. If invoices or other satisfactory evidence of cost are not furnished within fifteen (15) Days of delivery, then District shall determine the materials cost, at its sole discretion.

3. Tool and Equipment Use. Costs for the use of small tools, which are tools that have a replacement value of $1,000 or less, shall be considered included in the

Overhead and Profit markups established below. Regardless of ownership, the rates to be used in determining equipment use costs shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the Work is performed.

C. Time and Materials Change Orders.

1. General. The term Time and Materials means the sum of all costs reasonably and necessarily incurred and paid by Design-Build Entity for labor, materials, and equipment in the proper performance of Additional Work. Except as otherwise may be agreed to in writing by District, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items.

2. Timely and Final Documentation.

a. Design-Build Entity must submit timesheets, materials invoices, records of equipment hours and records of rental equipment hours to District's Representative for an approval signature each day Additional Work is performed. Failure to get District's Representative's approval signature each Day may result in a waiver of Design-Build Entity's right to claim these costs.

b. All documentation of incurred costs shall be submitted by Design-Build Entity and approved by District's Representative within three (3) Days of incurring the cost for labor, material, equipment, and special services. Design-Build Entity's total actual cost shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and special services (T&M Summary Sheets). Design-Build Entity's failure to provide the T&M Summary Sheets within three (3) Days of performance of the work will result in the Design-Build Entity's otherwise allowable profit being reduced by 50% for that portion of Additional Work which was not documented in a timely manner. Design-Build Entity's failure to submit the T&M Summary Sheets within three (3) Days of completion of the work will result in Design-Build Entity's waiver for any reimbursement of any costs associated with the T&M Summary Sheets or the performance of the Additional Work.

3. Labor. The costs of labor will be the actual cost substantiated by timesheets and certified payroll for wages prevailing for each craft or type of workers performing the Additional Work at the time the Additional Work is done, plus employer payments of payroll taxes, workers compensation insurance, liability insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. Compensation for the design element of any Additional Work as an adjustment to the Guaranteed Maximum Price, authorized by Change Order shall be computed as specified in Attachment 1.

a. Equipment Operator Exception. Labor costs for equipment operators and helpers shall be paid only when such costs are not included in the invoice for equipment rental.

b. Foreman Exception. The labor costs for foremen shall be proportioned to all of their assigned work and only that applicable to the Additional Work shall be paid. Indirect labor costs, including without limitation the superintendent, project manager, and other labor identified in the Contract Documents will be considered Overhead.

4. Materials. The cost of materials reported shall be itemized at invoice or lowest current price at which materials are locally available and delivered to the Site in the quantities involved, plus the cost of sales tax, freight, delivery, and storage.

   a. Trade discounts available to the purchaser shall be credited to District notwithstanding the fact that such discounts may not have been taken by Design-Build Entity.

   b. For materials secured by other than a direct purchase and direct billing to the purchaser, the cost shall be deemed to be the price paid to the actual supplier as determined by District's Representative.

   c. Payment for materials from sources owned wholly or in part by the purchaser shall not exceed the price paid by the purchaser for similar materials from said sources on Additional Work items or the current wholesale price for such materials delivered to the Site, whichever price is lower.

   d. If in the opinion of District's Representative the cost of materials is excessive, or Design-Build Entity does not furnish satisfactory evidence of the cost of such materials, then the cost shall be deemed to be the lowest current wholesale price for the total quantity concerned delivered to the Site less trade discounts.

   e. District reserves the right to furnish materials for the Additional Work and no Claim shall be allowed by Design-Build Entity for costs of such materials or Indirect Costs or profit on District furnished materials.

5. Equipment. Design-Build Entity will be paid for the use of equipment at the rental rates listed for that equipment in the California Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates, which is in effect on the date upon which the Contract was executed. Such rental rate will be used to compute payments for equipment whether the equipment is under Design-Build Entity's control through direct Ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment shall be the rate resulting in the least total cost to District for the total period of use. If it is deemed necessary by Design-Build Entity to use equipment not listed in the publication, an equitable rental rate for the equipment will be established by District's Representative. Design-Build Entity may furnish cost data which might assist District's Representative in the establishment of the rental rate.

   a. All equipment shall, in the opinion of District's Representative, be in good working condition and suitable for the purpose for which the equipment is to be used.

   b. Before construction equipment is used on the Additional Work, Design-Build Entity shall plainly stencil or stamp an identifying number thereon at a

conspicuous location, and shall furnish to District's Representative, in duplicate, a description of the equipment and its identifying number and the scheduled Additional Work activities planned.

c. Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

6. Rental Equipment.

a. Rental Time. The rental time to be paid for equipment on the Site shall be the time the equipment is in productive operation on the Additional Work being performed and, in addition, shall include the time required to move the equipment to the location of the Additional Work and return it to the original location or to another location requiring no more time than that required to return it to its original location; except, that moving time will not be paid if the equipment is used on other than the Additional Work, even though located at the site of the Additional Work.

b. Rental Time Not Allowed. Rental time will not be allowed while equipment is inoperative due to breakdowns.

c. Computation Method. The following shall be used in computing the rental time of equipment on the Site:

(i) When hourly rates are listed, any part of an hour less than 30 minutes of operation shall be considered to be ½-hour of operation, and any part of an hour in excess of 30 minutes will be considered one hour of operation.

(ii) When daily rates are listed, any part of a day less than 4 hours operation shall be considered to be ½-day of operation.

7. Design-Build Entity-Owned Equipment. For Design-Build Entity-owned equipment, the allowed equipment rental rate will be limited to the monthly equipment rental rate using a utilization rate of 173 hours per month which is found in the rental rate source identified in the Special Conditions for rental equipment.

8. Special Services. Special work or services are defined as that Additional Work characterized by extraordinary complexity, sophistication, or innovation or a combination of the foregoing attributes which are unique to the construction industry.

a. Invoices for Special Services. When District's Representative and Design-Build Entity determine that a special service is required which cannot be performed by the forces of Design-Build Entity or those of any of its Subcontractors, the special service may be performed by an entity especially skilled in the Additional Work. Invoices for special services based upon the current fair market value thereof may be accepted without complete itemization

of labor, material, and equipment rental costs, after validation of market values by District's Representative.

b. Discount and Allowance. All invoices for special services will be adjusted by deducting all trade discounts offered or available, whether the discounts were taken or not. In lieu of Overhead and Profit specified herein, a total allowance not to exceed fifteen percent (15%) for Overhead and Profit will be added to invoices for special services.

9. Excluded Costs. The term Time and Materials shall not include any of the following costs or any other home or field office overhead costs, all of which are to be considered administrative costs covered by Design-Build Entity's allowance for Overhead and Profit:

a. Overhead Cost. Payroll costs and other compensation of Design-Build Entity's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, timekeepers, clerks and other personnel employed by Design-Build Entity whether at the Site or in Design-Build Entity's principal office or any branch office, material yard, or shop for general administration of the Additional Work;

b. Office Expenses. Expenses of Design-Build Entity's principal and branch offices;

c. Capital Expenses. Any part of Design-Build Entity's capital expenses, including interest on Design-Build Entity's capital employed for the Additional Work and charges against Design-Build Entity for delinquent payments;

d. Negligence. Costs due to the negligence of Design-Build Entity or any Subcontractor or Supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including without limitation the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property;

e. Other. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included by the Contract Documents;

f. Small Tools. Cost of small tools valued at less than $1000 and that remain the property of Design-Build Entity;

g. Administrative Costs. Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of Claims;

h. Anticipated Lost Profits. Expenses of Design-Build Entity associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings or unpaid retention;

i. Home Office Overhead. Costs derived from the computation of a "home office overhead" rate by application of the Eichleay, Allegheny, burden fluctuation, or other similar methods;

j. Special Consultants and Attorneys. Costs of special consultants or attorneys, whether or not in the direct employ of Design-Build Entity, employed for services specifically related to the resolution of a Claim, dispute, or other matter arising out of or relating to the performance of the Additional Work; or

k. Design Costs. Design costs in excess of the hourly rates included in Attachment 1.

10. Overhead and Profit for Lump Sum and Time and Materials Change Orders.

a. The mark-up to be added to Lump Sum and Time and Materials Change Orders for Overhead (including supervision) and Profit on Additional Work shall be determined in accordance with the following provisions:

(i) "Net Cost" is defined as the actual costs of labor, materials and tools and equipment as defined herein only, excluding Overhead and Profit. The costs of applicable insurance and bond premium will be reimbursed to the Design-Build Entity and Subcontractors at cost only, without mark-up and in no case shall the total costs exceed one and one-half percent (1.5%) of Net Cost. Design-Build Entity shall provide District with documentation of the costs, including not limited to payroll records, invoices, and such other information as District may reasonably request.

(ii) For Work performed by the Design-Build Entity's forces the added cost for overhead and profit shall not exceed fifteen (15%) percent of the Net Cost of the Work.

(iii) For Work performed by a Subcontractor, the added cost for overhead and profit shall not exceed fifteen (15%) percent of the Subcontractor's Net Cost of the Work, to which the Design-Build Entity may add five (5%) percent of the Subcontractor's Net Cost.

(iv) For Work performed by a sub-subcontractor the added cost for overhead and profit shall not exceed fifteen (15 %) percent of the Net Cost for Work, to which the subcontractor and Design-Build Entity may each add an additional five (5 %) percent of the Net Cost of the lower tier subcontractor.

(v) No additional markup will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by District exceed twenty-five (25%) percent of the Net Cost, as defined herein, of the party that performs the Work.

(vi) No additional markup will be allowed for design costs computed as specified in Attachment 1.

b. All of the following costs are included in the markups for overhead and profit described above, and Design-Build Entity shall not receive any additional

compensation for: Submittals, drawings: field drawings, Shop Drawings, including submissions of drawings; field inspection; General Superintendence; General administration and preparation of cost proposals, schedule analysis, Change Orders, and other supporting documentation; computer services; reproduction services; Salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; Janitorial services; Small tools, incidentals and consumables; Temporary on Site facilities (Offices, Telephones, Internet access, Plumbing, Electrical Power, lighting; Platforms, Fencing, Water), Jobsite and Home office overhead or other expenses; vehicles and fuel used for work otherwise included in the Contract Documents; Surveying; Estimating; Protection of Work; Handling and disposal fees; Final cleanup; Other incidental Work; Related warranties.

D. Change for Compensable Delay.

1. The Guaranteed Maximum Price will be adjusted for Compensable Delay, which for the purposes of this Article exists if, and only if, the Design-Build Entity demonstrates that all of the following four conditions are met:

   a. Condition Number One: The delay results in an extension of the Project Completion Date pursuant to Article 10.

   b. Condition Number Two: The delay is caused solely by one, or more of the following:

      (i) An error or omission in the Contract Documents caused by District and not as a result of the Design-Build Entity's failure to conform to bridging documents, performance standards, Construction Documents, or Contract Documents; or

      (ii) District's decision to change the Work, where such decision is not the result of any default or misconduct of the Design-Build Entity; or

      (iii) District's decision to suspend Work on the Project, where such decision is not the result of any default or misconduct of the Design-Build Entity; or

      (iv) The failure of District, District's Representative or Separate Contractors to timely perform any contract obligation where the failure to so perform is not the result of any default or misconduct of the Design-Build Entity.

   c. Condition Number Three: The delay is not concurrent with a delay that is:

      (i) Critical under Article 10; and

      (ii) Caused by an event not listed in this Article 9.4D(1)(b).

   d. Condition Number Four: The delay is not caused, in whole or in part, by an event not listed in Article 9.4D(1)(b).

2. For each day of delay that meets all four conditions prescribed in Article 9.4(D)(1), the Guaranteed Maximum Price will be adjusted in accordance with the Reverse Liquidated Damages specified herein .

3. Except as provided in Articles 9 and 10, the Design-Build Entity shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption. The Reverse Liquidated Damages specified herein will be full and final compensation for any compensable delay.

4. If for any reason one or more of the conditions prescribed in Article 9.4(D)(1) is held legally unenforceable, the remaining conditions must be met as a condition to obtaining an adjustment of the Guaranteed Maximum Price.

10.5 District Reservation of Rights.

A. By signing the Contract, the parties agree that District has the right to do any or all of the following, which are reasonable and within the contemplation of the parties:

1. To order changes in the Work, including without limitation:

a. Changes to correct errors or omissions caused by District, if any, in the Contract Documents.

b. Changes resulting from District's decision to change the Work subsequent to execution of the Contract.

c. Changes due to unforeseen conditions.

2. To suspend Work on the Project or any part thereof.

3. To delay Work on the Project, including without limitation, delays resulting from the failure of District or District's Representative to timely perform any Contract obligation and delays for District's convenience.

ARTICLE 11 - PROJECT COMPLETION DATE

11.1 Commencement of Work On The Project.

A. The date of commencement of the Work shall be set forth in the Notice to Proceed. The date of commencement for the Work shall not be postponed by the failure of the Design-Build Entity, Subcontractors, or of persons or firms for whom the Design-Build Entity is responsible, to act.

11.2 Progress and Completion.

A. By signing the Contract:

1. The Design-Build Entity represents to District that the Project Completion Date is reasonable for performing the Work and that the Design-Build Entity is able to perform and complete the Work within the Project Completion Date.

2. The Design-Build Entity agrees that District is purchasing the right to have the Design-Build Entity present on the Project for the full duration of the time period necessary to complete the Work described in the RFP.

B. The Design-Build Entity shall not, except by agreement or instruction of District in writing, commence operations on the Project site or elsewhere prior to the effective date of insurance required by Article 5.1 to be furnished by the Design-Build Entity. The date of commencement and the Project Completion Date shall not be changed by the effective date of such insurance.

C. The Design-Build Entity shall proceed expeditiously with adequate forces and shall achieve full completion of the Work by the Project Completion Date. If District's Representative determines and notifies the Design-Build Entity that the Design-Build Entity's progress is such that the Design-Build Entity will not achieve full completion of the Work by the Project Completion Date, the Design-Build Entity shall immediately and at no additional cost to District, take all measures necessary, including working such overtime, additional shifts, Sundays, or holidays as may be required to ensure that the entire Project is completed within the Project Completion Date. Upon receipt of such notice from District's representative, the Design-Build Entity shall immediately notify District's Representative of all measures to be taken to ensure full completion of the Work within the Project Completion Date. The Design-Build Entity shall reimburse District for any extra costs or expenses (including the reasonable value of any services provided by District's employees) incurred by District as the result of such measures.

11.3 Delay.

A. There are two kinds of delay, Excusable Delay (which may be compensable or non-compensable) and Unexcusable Delay. Only Excusable Delay, that meets the requirements specified herein may result in the adjustment of the Project Completion Date, and/or the Guaranteed Maximum Price and may be compensated as Additional Work as described below. All other delay(s) are Unexcusable, and except and only to the extent provided otherwise in Articles 9 and 10, by signing the Contract, the Design-Build Entity agrees:

1. to bear the risk of non-compensable and Unexcusable Delays to completion of the Work on the Project; and

2. that the Proposal was made with full knowledge of this risk.

B. In agreeing to bear the risk of Unexcusable Delays to completion of the Work on the Project, the Design-Build Entity understands that, except and only to the extent provided otherwise in Articles 9 and 10, the occurrence of events that result in any delay in completion of the Work on the Project shall not excuse the Design-Build Entity from its obligation to achieve full completion of the Work on the Project within the Project Completion Date, and shall not entitle the Design-Build Entity to an adjustment of the Guaranteed Maximum Price.

11.4 Adjustment of The Project Completion Date for Excusable Delay.

A. The Project Completion Date will be extended for an Excusable Delay, if and only if, the Design-Build Entity demonstrates that all of the following six conditions are met:

1. Condition Number One: When the event causing the delay commences, the Design-Build Entity has complied with all Contract requirements for maintaining, submitting, and updating Project Schedules.

2. Condition Number Two: The delay is critical. A delay is critical if and only to the extent it delays a Work activity that cannot be delayed without delaying completion of the entire Project beyond the Project Completion Date. Additionally:

    a. If the Master Project Schedule shows completion of the Project before the Project Completion Date, a delay is critical if and only to the extent the delay pushes completion of the entire project to a date that is beyond the Project Completion Date.

    b. When two or more delays occur concurrently, and each such concurrent delay by itself without consideration of the other delays would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Project Completion Date should be adjusted pursuant to Article 10.4B, such concurrent critical delays shall be treated as a single delay which commences at the start of the delay that begins first and terminates at the cessation of the delay that ends last.

3. Condition Number Three: The delay is supported by the Master Project Schedule (or, if appropriate, the Preliminary Schedule), current at the commencement of the event giving rise to the delay. A delay is supported only to the extent the Master Project Schedule (or, if appropriate, the Preliminary Schedule) corroborates that it causes a delay to completion of the entire Project beyond the Project Completion Date because of its effect on the operation referred to in Article 10.4A(2).

4. Condition Number Four: Within fourteen (14) Days of the date the Design-Build Entity discovers or reasonably should discover an act, error, omission or unforeseen condition causing the delay, (even if the Design-Build Entity has not been delayed when the Design-Build Entity discovers or reasonably should discover the act, error, omission or unforeseen condition giving rise to the delay) the Design-Build Entity submits a timely Change Order Request that meets the requirements of Article 9.

5. Condition Number Five: The delay is not caused by:

    a. A naturally occurring unforeseen site condition not anticipated in the Contract Documents (e.g., unanticipated naturally occurring rock or sand); or

    b. The financial inability, misconduct or default of the Design-Build Entity, a Subcontractor or supplier; or

    c. The unavailability of materials or parts, as long as such materials or parts were timely ordered by Design-Build Entity within thirty (30) Days of the issuance of the Notice to Proceed; or

    d. An error or omission in the Contract Documents caused by the Design-Build Entity or the Design-Build Entity's design consultants.

6. Condition Number Six: The delay is caused by:

   a. Fire; or

   b. Strikes, boycotts, or like obstructive actions by employees or labor organizations; or

   c. Acts of God, including earthquakes in excess of a magnitude of 3.5 on the Richter Scale, tidal waves, floods, unusually severe weather, epidemic, or other severe natural disaster; or

   d. A man made (not naturally occurring) unforeseen site condition such as buried utility lines, pipes, and the like; or

   e. An error or omission in the Contract Documents caused by District; or

   f. District's decision to change the Work, where such decision is not the result of any default or misconduct of the Design-Build Entity; or

   g. District's decision to suspend the Work on the Project, where such decision is not the result of any default or misconduct of the Design-Build Entity; or

   h. The failure of District, District's representative or a Separate Contractor to timely perform any Contract obligation unless such failure is due to the Design-Build Entity's default or misconduct.

B. If and only if a delay meets all six conditions prescribed in Article 10.4A, then the Project Completion Date will be extended by the number of days completion of the entire Project is delayed beyond the Project Completion Date for full completion of the Work on the Project.

C. If for any reason one or more of the six conditions prescribed in Article 10.4A is held legally unenforceable, then all remaining conditions must be met as a condition to obtaining an extension of the Project Completion Date under Article 10.4B.

11.5 Non-Compensable Delay

A. For Excusable, non-compensable delay, the extension of the Project Completion Date pursuant to Article 10.4 above, shall constitute full and final consideration to the Design-Build Entity for the delay.

11.6 Compensable Delay.

A. Subject to the limitations set forth in Article 10.7, below, any adjustment of the Guaranteed Maximum Price as the result of Compensable Delay shall be limited to the amounts specified in Article 9.

11.7 No Damages for Reasonable Delay.

A. District's liability to the Design-Build Entity for delays for which District is responsible shall be limited to only an extension of the Project Completion Date unless such delays were unreasonable under the circumstances. In no case shall District be liable for any

costs which are borne by the Design-Build Entity in the regular course of business, including, but not limited to, home office overhead and other ongoing costs.

B. Damages caused by unreasonable District delay that impact the critical path, including delays caused by items that are the responsibility of District pursuant to Government Code section 4215, shall be compensated at the Reverse Liquidated Damages rate established herein, no other calculations, proportions or formulas shall be used to calculate any delay damages.

C. District and District's Representative, and the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each of them, shall not be liable to Design-Build Entity for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Design-Build Entity on or in connection with any other project or anticipated project.

ARTICLE 12 -TEST AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK; NOTICE OF DEFECTS

12.1 Notice of Defective Work.

A. Prompt notice of all Defective Work of which District or District's Representative has actual knowledge will be given to Design-Build Entity. Defective Work may be rejected, corrected, or accepted as provided in the Contract Documents.

12.2 Access to Work.

A. District, District's Representative, their consultants and other representatives and personnel, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Project site and the Work at reasonable times for their observation, inspection, and testing. Design-Build Entity shall provide them proper and safe conditions for such access and advise them of Design-Build Entity's safety procedures and programs.

12.3 Tests and Inspections.

A. Design-Build Entity shall give District's Representative timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. Except as provided by the Contract Documents, District shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents.

C. If Applicable Laws of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Design-Build Entity shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish District's Representative the required certificates of inspection or approval.

D. Design-Build Entity shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for District and District's Representative's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Design-Build Entity's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to District.

E. District will provide inspection during normal working hours from 7:00 a.m. to 3:30 p.m. Monday through Friday. Inspection before or after this time will be charged to the contractor as reimbursable inspection time. Inspections on weekends requires two days' notice for review and approval. Upon written request and approval the 8.5 hour working day may be changed to other limits subject to District ordinance.

12.4 Uncovering Work.

A. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Design-Build Entity without written concurrence of District's Representative, Design-Build Entity shall, if requested by District's Representative, uncover such Work for observation.

B. Uncovering Work shall be at Design-Build Entity's expense unless Design-Build Entity has given District's Representative timely notice of Design-Build Entity's intention to cover the same and District's Representative has not acted with reasonable promptness in response to such notice.

C. If Design-Build Entity has given District's Representative timely notice of Design-Build Entity's intention to cover the work and District's Representative has not acted with reasonable promptness in response to such notice, and District's Representative later considers it necessary or advisable that covered Work be observed by District's Representative or inspected or tested by others, Design-Build Entity, at District's Representative's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as District's Representative may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

1. If it is found that the uncovered Work is defective, Design-Build Entity shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and District shall be entitled to an appropriate decrease in the GMP.

2. If the uncovered Work is not found to be defective, Design-Build Entity shall be allowed an increase in the GMP and/or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction.

12.5 District May Stop The Work.

A. If the Work is defective, District may in its sole discretion order Design-Build Entity to stop the Work, or any portion thereof, until the cause for such order has been eliminated. All delays associated with the stop Work order will be the responsibility of the Design-Build Entity.

12.6 Correction of Defective Work and Guarantee to Repair Period.

A. Promptly after receipt of written notice, Design-Build Entity shall correct all Defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by District or District's Representative, remove it from the Project and replace it with Work that is not defective. Design-Build Entity shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. The term "Guarantee to Repair Period" means a period of two (2) years, unless a longer period of time is specified, commencing as follows:

1. For any Construction Work not described as incomplete on the date of Project Completion.

2. For space beneficially occupied or for separate systems fully utilized prior to Substantial Completion pursuant to Article 12.6, from the first date of such Beneficial Occupancy or actual use, as established in a Certificate of Beneficial Occupancy.

3. For all Construction Work other than 1. or 2. above, from the date of Final Completion.

C. When correcting Defective, Design-Build Entity shall take no action that would void or otherwise impair District's special warranty and guarantee, if any, on said Work.

D. The Design-Build Entity shall (1) correct Defective Work that becomes apparent during the progress of the Work on the Project or during the Guarantee to Repair Period and (2) replace, repair, or restore to District's satisfaction any other parts of the Work on the Project and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work. The Design-Build Entity shall promptly commence such correction, replacement, repair, or restoration upon notice from District's Representative or District, but in no case later than fourteen (14) Days after receipt of such notice; and the Design-Build Entity shall diligently and continuously prosecute such correction to completion. The Design-Build Entity shall bear all costs of such correction, replacement, repair, or restoration, and all Losses resulting from such Defective Work, including additional testing, inspection, and compensation for District's Representative's services and expenses. The Design-Build Entity shall perform corrective Work on the Project at such times that are acceptable to District and in such a manner as to avoid, to the extent practicable, disruption to District's activities.

E. If immediate correction of Defective Work is required for life safety or the protection of property and is performed by District or Separate Contractors, the Design-Build Entity shall pay to District all reasonable costs of correcting such Defective Work. The Design-Build Entity shall replace, repair, or restore to District's satisfaction any other parts of the Construction Work and any other real or personal property which is damaged or destroyed as a result of such Defective Work or the correction of such Defective Work.

F. The Design-Build Entity shall remove from the Project site portions of the Construction Work and materials which are not in accordance with the Contract Documents and which are neither corrected by the Design-Build Entity nor accepted by District.

G. The Design-Build Entity's obligations under this Article are in addition to and not in limitation of its standard of cared owed on the Project to District under Article 6 or any other obligation of the Design-Build Entity under the Contract Documents. Enforcement of the Design-Build Entity's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies District may have under the Contract Documents or at law or in equity for Defective Work. Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations of the Design-Build Entity under the Contract Documents. Establishment of the Guarantee to Repair Period relates only to the specific obligation of the Design-Build Entity to correct the Work on the Project and in no way limits either the Design-Build Entity's liability for Defective Work or the time within which proceedings may be commenced to enforce the Design-Build Entity's obligations under the Contract Documents.

H. If the Design-Build Entity fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services, with respect to either the Schematic Design or Construction phases, to maintain the Contract Schedule, or otherwise fails to comply with any material term of the Contract Documents, and fails within ten (10) Days after receipt of notice from District to promptly commence and thereafter diligently continue to completion the correction of such failure, District may, without prejudice to other remedies District may have, correct such failure at the Design-Build Entity's sole expense. In such case, District will be entitled to deduct from payments then or thereafter due the Design-Build Entity the cost of correcting such failure, including compensation for the additional services and expenses of District's Representative and District's consultants made necessary thereby. If payments then or thereafter due the Design-Build Entity are not sufficient to cover such amounts, the Design-Build Entity shall pay the additional amount to District.

12.7 Acceptance of Defective Work.

A. If, instead of requiring correction or removal and replacement of Defective Work, District prefers to accept it, District may do so. Design-Build Entity shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to District's evaluation of and determination to accept such Defective Work and for the diminished value of the Work.

B. If any acceptance of Defective Work occurs prior to release of the Project retention, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and District shall be entitled to an appropriate decrease in the Guaranteed Maximum Price, reflecting the diminished value of Work and all costs incurred by District.

C. If the Project retention is held in an escrow account as permitted by the Contract Documents, Design-Build Entity will promptly alert the escrow holder, in writing, of the amount of retention to be paid to District.

D. If the acceptance of defective Work occurs after release of the Project retention, an appropriate amount will be paid by Design-Build Entity to District.

12.8 District May Correct Defective Work.

A. If Design-Build Entity fails within a reasonable time after written notice from District's Representative to correct Defective Work, or to remove and replace rejected Work as required by District, or if Design-Build Entity fails to perform the Work in accordance with the Contract Documents, or if Design-Build Entity fails to comply with any other provision of the Contract Documents, District may, after seven (7) Days written notice to Design-Build Entity, correct, or remedy any such deficiency.

B. In connection with such corrective or remedial action, District may exclude Design-Build Entity from all or part of the Site, take possession of all or part of the Work and suspend Design-Build Entity's services related thereto, take possession of Design-Build Entity's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which District has paid Design-Build Entity but which are stored elsewhere. Design-Build Entity shall allow District and District's Representative, and the agents, employees, other contractors, and consultants of each of them, access to the Site to enable District to exercise the rights and remedies to correct the defective work.

C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by District correcting the defective work will be charged against Design-Build Entity, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and District shall be entitled to an appropriate decrease in the GMP.

D. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of defective Work.

E. If the Change Order is executed after all payments under the Contract have been paid by District and the Project Retention is held in an escrow account as permitted by the Contract Documents, Design-Build Entity will promptly alert the escrow holder, in writing, of the amount of Retention to be paid to District.

F. If the Change Order is executed after release of the Project Retention, an appropriate amount will be paid by Design-Build Entity to District.

G. Design-Build Entity shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to District correcting defective work.

12.9 Warranty Period.

A. If within two (2) years after commencement of the Warranty, or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective or not performing suitably for its intended use, or if the repair of any damages to the Site or areas made available for Design-Build Entity's use during the performance of the Work is found to be defective, Design-Build Entity shall promptly, without cost to District and in accordance with District's written instructions:

1. repair such defective land or areas;

2. correct such defective or non-performing work;

3. if the Defective Work has been rejected by District pursuant to the Contract Documents, remove it from the Project and replace it with Work that is not defective; and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Design-Build Entity does not promptly comply with the terms of District's written instructions, or in an emergency where delay would cause serious risk of loss or damage, District may have the Defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Design-Build Entity in accordance with Article 11.1.E.

C. Where Defective Work (or damage to other Work resulting therefrom) has been corrected or removed and replaced, the Warranty period hereunder with respect to such Work shall be extended for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed.

D. Design-Build Entity's obligations under this Article are in addition to any other obligation or warranty and do not limit District's rights and remedies pursuant to California Code of Civil Procedure sections 337.10 and 337.15. or any other Applicable Law.

ARTICLE 13 - PAYMENTS TO DESIGN-BUILD ENTITY AND COMPLETION

13.1 Progress Payments.

The Cost-Loaded CPM Progress Schedule will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to District's Representative. Progress payments on account of Unit Price Work will be based on the number of units completed.

A. Applications for Payments.

1. By the twenty-fifth (25th) day of each month Design-Build Entity shall submit to District's Representative for review an Application for Payment filled out and signed by Design-Build Entity covering the Work completed as of the date of the Application for Payment and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that District has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect District's interest therein, all of which must be satisfactory to District.

2. Beginning with the second Application for Payment, each Application shall include an affidavit executed by the Design-Build Entity stating that it has paid all amounts due on account of the Work paid by District in the prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as set forth in the Special Conditions.

B. Review of Applications.

1. District's Representative will either indicate in writing a recommendation of payment to District or return the Application for Payment to Design-Build Entity indicating in writing District's Representative's reasons for refusing to recommend payment. In the latter case, Design-Build Entity may make the necessary corrections and resubmit the Application for Payment.

2. By recommending any such payment District's Representative will not thereby be deemed to have represented that:

   a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to District's Representative in the Contract Documents; or

   b. there may not be other matters or issues between the parties that might entitle Design-Build Entity to be paid additionally by District or entitle District to withhold payment to Design-Build Entity.

3. Neither District's Representative's review of Design-Build Entity's Work for the purposes of recommending payments nor District's Representative's recommendation of any payment, including final payment, will impose responsibility on District's Representative:

    a. to supervise, direct, or control the Work;

    b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;

    c. for Design-Build Entity's failure to comply with Applicable Laws applicable to Design-Build Entity's performance of the Work;

    d. to make any examination to ascertain how or for what purposes Design-Build Entity has used the moneys paid on account of the GMP; or

    e. to determine that title to any of the Work, materials, or equipment has passed to District free and clear of any Liens.

4. District's Representative may refuse to recommend the whole or any part of any payment due to subsequently discovered evidence or the results of subsequent inspections or tests. District retains the right to revise or revoke any such payment recommendation previously made, to such extent as may be necessary in District's opinion to protect District from loss.

C. Payment Becomes Due.

1. Thirty (30) Days after presentation of an undisputed and properly submitted Application for Payment to District's Representative, and subject to District's Representative's recommendation, subject to the modifications above, the amount recommended will become due, and when due will be paid by District to Design-Build Entity.

D. Retention and Securities in Lieu of Retention.

1. Unless Project has been deemed substantially complex as noted in the Special Conditions, District will retain five percent (5%) of the amount invoiced in accordance with Applicable Laws.

2. Pursuant to Public Contract Code section 22300, Design-Build Entity may substitute securities for any moneys withheld as a retention by District to ensure performance under the Contract. At the request and expense of Design-Build Entity, securities equivalent to the amount withheld shall be deposited with District, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to Design-Build Entity. Upon satisfactory completion of the Contract, the securities shall be returned to Design-Build Entity.

    a. Alternatively, Design-Build Entity may request, and District shall make payment of retentions earned directly to the escrow agent selected by the Design-Build Entity. At the expense of Design-Build Entity, Design-Build Entity may direct the investment of the payments into securities and Design-Build Entity shall

receive the interest earned on the investments upon the same terms provided for in Public Contract Code section 22300 for securities deposited by Design-Build Entity. Upon satisfactory completion of the Contract, Design-Build Entity shall receive from the escrow agent all securities, interest, and payments received by the escrow agent when District authorizes the escrow agent to release these funds to the Design-Build Entity, pursuant to the terms of Public Contract Code section 22300.

3. Securities eligible for investment shall include those listed in Government Code section 16430, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Design-Build Entity and District.

4. Design-Build Entity shall be the beneficial District of any securities substituted for moneys withheld and shall receive any interest thereon.

5. The escrow agreement shall be in the form of the Escrow Agreement provided as part of the Contract Documents.

E. District's Reduction in Recommended Payment.

1. In addition to reductions recommended by District's Representative, District may refuse to make payment of the full amount recommended by District's Representative because:

   a. Claims have been made against District on account of Design-Build Entity's performance or furnishing of the Work.

   b. Stop Payment Notices or Liens have been filed in connection with the Work.

   c. Defective Work not remedied.

   d. Failure of Design-Build Entity to make proper payments to its subcontractors or suppliers.

   e. Completion of the Contract if there exists a reasonable doubt that the Work can be completed for the unpaid Contract balance.

   f. Damage to another contractor or third party.

   g. Amounts which may be due the District for claims against Design-Build Entity.

   h. Failure of Design-Build Entity to keep the record ('as-built") drawings up to date.

   i. Failure to provide updates on the construction schedule.

   j. Site cleanup.

   k. Failure of the Design-Build Entity to comply with requirements of the Contract Documents.

l. Liquidated Damages.

Upon completion of the Contract, District will reduce the final Contract Price to reflect costs charged to the Design-Build Entity, back charges or payments withheld pursuant to the Contract Documents.

13.2 Design-Build Entity's Warranty of Title.

A. Design-Build Entity warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to District no later than the time of payment free and clear of all Liens.

13.3 Partial Utilization.

A. District reserves the right to occupy or utilize any portion of the Work at any time before completion, and such occupancy or use shall not constitute acceptance of any part of Work covered by this Contract. This use shall not relieve the Design-Build Entity of its responsibilities under the Contract.

13.4 Final Inspection.

A. Upon written notice from Design-Build Entity that the entire Work is complete, District's Representative will promptly make a final inspection with District and Design-Build Entity and will notify Design-Build Entity in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Design-Build Entity shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

13.5 Final Acceptance.

A. After Design-Build Entity has, in the opinion of District's Representative, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents, and other documents required by the Contract Documents, District shall execute and file with the County in which the Project is located a Notice of Completion, constituting final acceptance and completion of the Project, except as may be expressly noted.

13.6 Final Payment.

A. Application for Payment.

1. Upon execution of the Notice of Completion, Design-Build Entity may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance;

b. consent of the surety to final payment;

c. a fully completed Conditional Waiver and Release on Final Payment.

B. District's Representative's Review of Application and Acceptance.

1. If, on the basis of District's Representative's observation of the Work during construction and final inspection, and District's Representative's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, District's Representative is satisfied that the Work has been completed and Design-Build Entity has satisfied all other requirements for final payment, District's Representative will indicate in writing District's Representative's recommendation of payment and present the Application for Payment to District for payment. Otherwise, District's Representative will return the Application for Payment to Design-Build Entity, indicating in writing the reasons for refusing to recommend final payment, in which case Design-Build Entity shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due.

1. Within sixty (60) Days after the presentation to District's Representative of the proper and complete final Application for Payment and accompanying documentation, the amount recommended by District's Representative, less any sum District is entitled to set off pursuant to the Contract Documents, will become due and will be paid by District to Design-Build Entity.

13.7 Waiver of Claims.

A. The making and acceptance of final payment will constitute a waiver of all Claims by Design-Build Entity against District other than those previously made in accordance with the requirements herein and expressly acknowledged by District in writing as still unsettled.

ARTICLE 14 -SUSPENSION OF WORK AND COMPLETION

14.1 District May Suspend Work.

A. District may, at its sole option, decide to suspend at any time the performance of all or any portion of the Work by notice in writing to Design-Build Entity. Such notice of suspension of Work will designate the amount and type of plant, labor, and equipment to be committed to the Project during the period of suspension. Design-Build Entity shall use its best efforts to utilize its plant, labor, and equipment in such a manner as to minimize costs associated with suspension.

B. Upon receipt of any such notice, Design-Build Entity shall, unless the notice requires otherwise:

1. Immediately discontinue Work on the date and to the extent specified in the notice;

2. Place no further orders or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice;

3. Promptly make every reasonable effort to obtain suspension upon terms satisfactory to District's Representative of all orders, subcontracts, and rental agreements to the extent they relate to performance of Work suspended; and

4. Continue to protect and maintain the Work including those portions on which Work has been suspended.

C. Except as provided by this article, as full and complete compensation for such suspension, Design-Build Entity shall be granted an adjustment in the GMP based on a negotiated daily rate that reflects the Design-Build Entity's actual costs associated with the demobilized condition of the Site (and as a result will be less than the Daily Rate contained in the Special Conditions) and an extension of the Contract Times equal to the number of days performance of Work is suspended; provided, however, that no adjustment of GMP or extension of Contract Times shall be granted if the suspension results from Design-Build Entity's non-compliance with the requirements of the Contract.

14.2 District May Terminate for Cause.

A. District may, without prejudice to any other right or remedy, serve written notice upon Design-Build Entity of its intention to terminate this Contract in whole or in part if the Design-Build Entity: (i) refuses or fails to prosecute the Work or any part thereof with such diligence as will ensure its completion within the Project

Completion Date; (ii) fails to complete the Work within the required time; (iii) files a bankruptcy petition or is adjudged a bankruptcy; (iv) makes a general assignment for the benefit of its creditors; (v) has a receiver appointed; (vi) refuses or fails to supply enough properly skilled workers or proper materials to complete the Work; (vii) fails to make prompt payment to subcontractors or for material or labor; (viii) disregards Applicable Laws, other requirements or instructions of District; or (ix) violates any of the provisions of the Contract Documents.

B. The Notice of Default and Intent to Terminate shall state the reasons for termination. Unless within five (5) Days after the service of such notice, Design-Build Entity resolves the circumstances giving rise to the Notice of Default to District's satisfaction, or makes arrangements acceptable to District for the required corrective action, District may terminate this Contract. In such case, Design-Build Entity shall not be entitled to receive any further payment until the Work has been finished. District may take over and complete the Work by any method it may deem appropriate, including enforcement of the Project Performance Bond. Design-Build Entity and its surety shall be liable to District for any excess costs or other damages incurred by District to complete the Work. If District takes over the Work, District may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to the Design-Build Entity as may be on the Site.

14.3 District May Terminate for Convenience.

A. In addition to its right to terminate this Contract for default, District may terminate the Contract, in whole or in part, at any time upon seven (7) Days written notice to Design-Build Entity. The Notice of Termination shall specify that the termination is for the convenience of District, the extent of termination, and the effective date of such termination ("Effective Date of Termination").

B. After receipt of Notice of Termination, and except as directed by District, the Design-Build Entity 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.

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 Site and any other property upon which the Design-Build Entity was working in a safe and sanitary manner such that it does not pose any threat to the public health or safety.

4. Terminate all subcontracts and purchase orders 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 remaining portion of the Work.

6. Submit to District, within fifteen (15) Days from the Notice of Termination, all of the documentation called for by the Contract Documents to substantiate all costs incurred by the Design-Build Entity for labor, materials and equipment through the Notice of Termination. Any documentation substantiating costs incurred by the Design-Build Entity solely as a result of District's exercise of its right to terminate this Contract pursuant to this clause, which costs the Design-Build Entity is authorized under the Contract Documents to incur, shall: (i) be submitted to and received by District no later than thirty (30) Days after the Effective Date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs Occasioned by District's Termination for Convenience."

7. District's total liability to Design-Build Entity by reason of the termination shall be limited to the total (without duplication of any items) of:

    a. The reasonable cost to the Design-Build Entity for all Work performed prior to the Effective Date of Termination, including the Work done to secure the Project for termination. Reasonable cost may not exceed the applicable percentage completion values derived from the progress schedule and the Cost Breakdown. Deductions shall be made for cost of materials to be retained by the Design-Build Entity, cost of Work defectively performed, amounts realized by sale of materials, and for other appropriate credits or offsets against cost of Work as allowed by the Contract Documents.

    b. When, in District's opinion, the cost of any item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, reasonable cost to be allowed will be the estimated reasonable cost of performing the Work in compliance with requirements of the Contract Documents and excessive actual cost shall be disallowed.

    c. Any Work required by the Termination for Convenience that is not included in Contract Documents will be negotiated pursuant to the Contract Change Order provisions.

    d. Reasonable costs to the Design-Build Entity of handling material returned to vendors, delivered to District or otherwise disposed of as directed by District.

    e. A reasonable allowance for the Design-Build Entity's internal administrative costs in preparing termination claim.

    f. Reasonable demobilization costs, and reasonable payments made to Subcontractors or suppliers on account of termination.

8. In no event shall District be liable for unreasonable costs incurred by the Design-Build Entity or subcontractors after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, the cost of or anticipated profits on Work not performed as of the date of termination, post-termination employee salaries, unreasonable post-termination administrative expenses, post-termination overhead or unabsorbed overhead, surety costs of any type, costs of preparing and submitting the Design-Build Entity's termination claim, attorney fees of any type, and all other costs relating to prosecution of a claim or lawsuit.

9. District shall have no obligation to pay the Design-Build Entity under this Article unless and until the Design-Build Entity provides District with updated and acceptable as-builts and Record Documents for Work completed prior to termination as required by the Contract Documents.

10. In arriving at the amount due the Design-Build Entity under this clause there shall be deducted in whole, or in the appropriate part(s) if the termination is partial:

    a. All unliquidated advances or other payments on account previously made to the Design-Build Entity, including without limitation all payments which are applicable to the terminated portion of the Contract Documents,

    b. Any claim District may have against the Design-Build Entity in connection with the Work or any amounts that may be withheld in accordance with the Contract Documents, and

    c. The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by the Design-Build Entity and not otherwise recovered by or credited to District.

    Design-Build Entity shall not be paid on account of loss of anticipated profits or revenue or other economic loss or consequential damages arising out of or resulting from such termination.

11. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, District may immediately order Design-Build Entity to cease Work until such safety or liability issues are addressed to the satisfaction of District or the Contract is terminated.

12. If District terminates Design-Build Entity for cause, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Design-Build Entity shall be entitled to receive only the amounts payable under this section, and Design-Build Entity specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

ARTICLE 15 -CLAIMS, DISPUTE AVOIDANCE AND RESOLUTION

15.1 Design-Build Entity shall timely comply with all notices and requests for changes to the Contract Time or Contract Price as a prerequisite to filing any claim governed by this Article. The failure to timely submit a notice of delay or notice of change, or to timely request a change to the Contract Price or Contract Time, or to timely provide any other

notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Contract or at law.

15.2 Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of $375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Article is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Article shall be construed to be consistent with said statutes.

15.3 Claims. For purposes of this Article, "Claim" means a separate demand by the Design-Build Entity, after a change order duly requested in accordance with Article 44 "Changes and Extra Work" has been denied by the District, for (A) a time extension, (B) payment of money or damages arising from Work done by or on behalf of the Design-Build Entity pursuant to the Contract, or (C) an amount the payment of which is disputed by the District. Claims governed by this Article may not be filed unless and until the Design-Build Entity completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the procedures contained in Article 44, Changes and Extra Work, and Design-Build Entity's request for a change has been denied in whole or in part. Claims governed by this Article must be filed no later than the date of final payment. The claim shall be submitted in writing to the District and shall include on its first page the following in 16 point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing herein is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims, including all requirements pertaining to compensation or payment for extra Work, disputed Work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

15.4 Supporting Documentation. The Design-Build Entity will submit all claims in the following format:

A. Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made.

B. List of documents relating to claim:

1. Specifications

2. Drawings

3. Clarifications (Requests for Information)

4. Schedules

5. Other

C. Chronology of events and correspondence

D. Analysis of claim merit

E. Analysis of claim cost

F. Time impact analysis in CPM format

G. If Design-Build Entity's claim is based in whole or in part on an allegation of errors or omissions in the Drawings or Specifications for the Project, Design-Build Entity shall provide a summary of the percentage of the claim subject to design errors or omissions and shall obtain a certificate of merit in support of the claim of design errors and omissions.

15.5 District Response to Claim. Upon receipt of a claim pursuant to this Article, District shall conduct a reasonable review of the claim and, within a period not to exceed 45 Days, shall provide the Design-Build Entity a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 Days after the District issues its written statement.

If the District needs approval from the Board of Directors to provide Design-Build Entity a written statement as set forth above, and Board of Directors does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a Claim, the District shall have up to three (3) days following the next publicly noticed meeting of Board of Directors after the 45-day period, or extension, expires to provide Design-Build Entity a written statement identifying the disputed portion and the undisputed portion of the Claim.

Within thirty Days of receipt of a claim, the District may request in writing additional documentation supporting the claim or relating to defenses or claims the District may have against the Design-Build Entity. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of District and the Design-Build Entity. The District's written response to the claim, as further documented, shall be submitted to the Design-Build Entity within 30 Days (if the claim is less than $15,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by the Design-Build Entity in producing the additional information or requested documentation, whichever is greater.

15.6 Meet and Confer Conference. If the Design-Build Entity disputes the District's written response, or the District fails to respond within the time prescribed, the Design-Build Entity may so notify the District, in writing, either within 15 Days of receipt of the District's response or within 15 Days of the District's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the District shall schedule a meet and confer conference within 30 Days for settlement of the dispute.

15.7 Mediation. 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 Design-Build Entity 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 Design-Build Entity in writing, shall be submitted to nonbinding mediation, with the District and the

Design-Build Entity sharing the associated costs equally. The District and Design-Build Entity shall mutually agree to a mediator within 10 business Days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

A. 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.

B. For purposes of this section, 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.

C. Unless otherwise agreed to by the District and the Design-Build Entity in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

D. The mediation shall be held no earlier than the date the Design-Build Entity completes the Work or the date that the Design-Build Entity last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

15.8 Procedures After Mediation. If following the mediation, the claim or any portion remains in dispute, the Design-Build Entity must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Design-Build Entity submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference.

15.9 Civil Actions. The following procedures are established for all civil actions filed to resolve claims of $375,000 or less:

A. Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. The mediation process shall provide for the selection within 15 Days by both parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

B. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of

the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

15.10 Condition Precedent. Submission of a claim, properly certified, with all required supporting documentation, and written rejection or denial of all or part of the claim by District, is a condition precedent to any action, proceeding, litigation, suit, general conditions claim, or demand for arbitration by Design-Build Entity.

15.11 Government Code Claim. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, construction claims and/or changed conditions, the Design-Build Entity must comply with the claim procedures set forth in Government Code section 900 et seq. prior to filing any lawsuit against the District. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, construction claims, and/or changed conditions have been followed by Design-Build Entity. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not otherwise satisfied as specified herein, Design-Build Entity shall be barred from bringing and maintaining a valid lawsuit against the District. **A Government Code claim must be filed no earlier than the date the Work is completed or the date the Design-Build Entity last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted**

15.12 Non-Waiver.

The District's failure to respond to a claim from the Design-Build Entity within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the claim being deemed rejected in its entirety.

15.13 Duty to Continue Performance.

Unless provided to the contrary in the Contract Documents, Design-Build Entity shall continue to perform the Work and District shall continue to satisfy its payment obligations to Design-Build Entity, pending the final resolution of any dispute or disagreement between Design-Build Entity and District.

ARTICLE 16 -REQUIRED CERTIFICATIONS

16.1 Design-Build Entity shall, for all contracts involving state funds, submit a "Drug-Free Workplace Certification" and a "Recycled Content Certification." These forms are included in the Contract Documents and must be signed under the penalty of perjury and dated prior to commencing work on this Project.

16.2 In addition to the above listed certifications, Design-Build Entity shall, for all contracts involving state funds, execute and submit an "Asbestos-Free Materials Certification." Design-Build Entity, further, is aware of the following:

A. Should asbestos containing materials be installed by the Design-Build Entity 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:

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).

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.

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

4. The Work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

B. 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 Design-Build Entity.

C. Hold Harmless: Interface of Work for the Project with work containing asbestos shall be executed by the Design-Build Entity 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 Contract, the Design-Build Entity acknowledges the above and agrees to the fullest extent permitted by law to hold harmless the District, its Governing Board, employees, agents, representatives, including its Architect and assigns, for all asbestos liability which may be associated with this work. The Design-Build Entity further agrees to instruct his/her employees with respect to the above-mentioned standards, hazards, risk and liabilities..

ARTICLE 17 -DISTRICT'S INSPECTOR

17.1 One or more inspectors employed by District in accordance with requirements of title 19, 21 and/or 24 of the California Code of Regulations will be assigned to the work. His or her duties are specifically defined in the California Code of Regulations

17.2 Inspector shall have access to all plant operations involving work under this contract and shall be provided reasonable advance notice of the time and place of operations which the inspector desires to observe. Inspector shall be provided with all necessary samples

of materials and work for testing purposes. All work shall be under the observation of said inspector. He shall have free access to any or all parts of work at any time. Design-Build Entity shall furnish inspector reasonable facilities for obtaining such information as may be necessary to keep him fully informed respecting progress and manner of work and character of materials. Inspection of work shall not relieve contractor from any obligation to fulfill this contract. Inspector, after consultation with the Design-Build Entity, shall have authority to stop work whenever the provisions of the contract documents are not being complied with and contractor shall instruct his employees accordingly.

ARTICLE 18 -MISCELLANEOUS PROVISIONS

18.1 Giving Notice.

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

18.2 Limitations On District's Responsibilities.

A. District shall not supervise, direct, or have control or authority over, nor be responsible for, the Design-Build Entity's means, methods, techniques, sequences, or procedures of design or construction, or the safety precautions and programs incident thereto, or for any failure of the Design-Build Entity to comply with Applicable Laws applicable to the performance of the Work. District will not be responsible for the Design-Build Entity's failure to perform the Project in accordance with the Contract Documents.

18.3 Cumulative Remedies.

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto 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 Applicable Laws, by special warranty or guarantee, or by other provisions of the Contract Documents. 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.

18.4 Survival of Obligations.

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Project or termination or completion of the Contract or termination of the services of the Design-Build Entity.

18.5 Controlling Law.

A. Notwithstanding any subcontract or other contract with any Subcontractor, Supplier, or other person or organization performing any part of the Project, this Contract shall be governed by the law of the State of California excluding any choice of law provisions.

18.6 Jurisdiction; Venue.

A. The Design-Build Entity and any Subcontractor, supplier, or other person or organization performing any part of the Project agree that any action or suits at law or in equity arising out of or related to the proposal process, award, or performance of the Project shall be maintained in the Superior Court of San Diego County, California, and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

18.7 Headings.

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

18.8 District's Right to Audit.

A. The Design-Build Entity shall make available to District for auditing, all relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to District.

B. If the Design-Build Entity submits a Change Order Request or a Claim to District, District shall have the right to audit the Design-Build Entity's books, records, documents, and other evidence to the extent they are relevant.

C. The right to audit shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which the claim has been submitted, including but not limited to job cost reports, estimates, proposals, bids, proposal papers, documents of other work administered by the Design-Build Entity's home office, and any and all other documentation relied upon by the Design-Build Entity to obtain this Contract. District shall have the right to make and take copies of any records examined.

D. The right to audit shall include the right to inspect the Design-Build Entity's plans, or such parts thereof, as may be or have been engaged in the performance of the Project.

E. The Design-Build Entity further agrees that the right to audit encompasses all subcontracts and is binding upon Subcontractors.

F. The right to audit provided herein shall be exercisable through such representatives as District deems desirable during the Design-Build Entity's normal business hours at the Design-Build Entity's office.

G. In accordance with Government Code Section 8546.7, records of both District and the Design-Build Entity shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment. The Design-Build Entity shall make available to District any of the Design-Build Entity's other documents related to the Project immediately upon request of District. In addition to the State Auditor's rights described above, District shall have the right to examine and audit all books, estimates, records, contracts, documents, Proposals, subcontracts, and other data of the Design-Build Entity (including electronic records, computations and projections) related to negotiating, pricing, or performing the Project in order to evaluate the accuracy and completeness of the cost or pricing data, for a period of four (4) years after final payment.

18.9 Assignment.

A. Design-Build Entity shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract or any part thereof including any claims, without prior written consent of District. Any assignment without the written consent of District shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or Material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such Materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.

B. As set forth in Public Contract Code section 7103.5, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

18.10 All Legal Provisions Included.

A. Design-Build Entity shall give all notices and comply with all federal, state and local laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified by their terms. References to specific laws, rules or regulations in this Contract are for reference purposes only, and shall not limit or affect the applicability of provisions not specifically mentioned. If Design-Build Entity observes that drawings and specifications are at variance therewith, he shall promptly notify District in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in Work. If Design-Build Entity performs

any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to District, he shall bear all costs arising therefrom.

B. Design-Build Entity shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA laws, rules and regulations. Design-Build Entity shall comply with the Historic Building Code, including, but not limited to, as it relates to the ADA, whenever applicable..

C. Design-Build Entity acknowledges and understands that, pursuant to Public Contract Code section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code section 2717(b) in order to supply mined material for this Contract.

D. No District official or representative who is authorized in such capacity and on behalf of District to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Work, shall be or become directly or indirectly interested financially in the Contract.

E. All provisions of law required to be inserted in the Contract or Contract Documents pursuant to any Applicable Laws shall be and are inserted herein. If through mistake, neglect, oversight, or otherwise, any such provision is not herein inserted or inserted in improper form, upon the application of either party, the Contract or Contract Documents shall be changed by District, at no increase in GMP or extension in Contract Times, so as to strictly comply with the Applicable Laws and without prejudice to the rights of either party hereunder.

18.11 State License Board Notice.

A. Contractors are required by law to be licensed and regulated by the Design-Build Entity's State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, the Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

18.12 Air Pollution Control.

A. The Design-Build Entity shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements.

B. Without limiting the foregoing, the Design-Build Entity must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the Air Quality Management District with jurisdiction over

the Project and/or California Air Resources Board (CARB). The Design-Build Entity shall specifically be aware of the application of these limits and requirements to "portable equipment", which definition includes any item of equipment with a fuel-powered engine.

18.13 Noise.

A. The Design-Build Entity shall use only such equipment on the Project and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by CAL-OSHA.

B. The Design-Build Entity shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the Design-Build Entity shall promptly remove the equipment and shall not return that equipment to the Project site until the device is repaired or replaced. Noise and vibration level requirements shall apply to all equipment on the jobsite or related to the Project, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by the Design-Build Entity.

18.14 Change In Name Or Nature of Design-Build Entity's Legal Entity.

A. Should a change be contemplated in the name or nature of the Design-Build Entity's legal entity, the Design-Build Entity shall first notify District in order that proper steps may be taken to have the change reflected in the Contract Documents and all related documents. No change of the Design-Build Entity's name or nature will affect District's rights under the Contract Documents, including but not limited to the bonds and insurance.

18.15 Complete Contract.

A. The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may be modified only by a written instrument signed by both parties or as otherwise provided in the Contract Documents.

18.16 Notice of Third Party Claims.

A. Pursuant to Public Contract Code section 9201, District shall provide Design-Build Entity with timely notification of the receipt of any third-party claim relating to the Contract.

18.17 Severability of Provisions.

A. If any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability

of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

18.18 Correction of Errors and Omissions.

A. The Design-Build Entity agrees to correct any error or omission in the Construction Documents or Contract Documents at no additional cost to District.

18.19 Interpretation.

A. The Contract Documents shall not be construed in favor of or against any party, but shall be construed as if all parties prepared the Contract Documents.

END OF GENERAL CONDITIONS

00 73 13 – SPECIAL CONDITIONS

1.1 Engineer of Record.

A. The Architect and Engineer of Record shall be ROESLING NAKAMURA TERADA ARCHITECTS.

1.2 Location of the Project.

1. The Project is located at 2312 E Beyer Blvd, San Diego, CA 92173.

1.3 Description of the Project.

A. The Project consists of the items set forth below and related facilities.

1. The Beyer Community Resource Center project involves constructing a new 7,400 square foot Community Resource Center on the former site of Beyer Elementary School, which was demolished in 2012. The new center will consider cultural, educational, and community needs in its design and aims to strengthen the District's relationship with the neighborhood. It will include a multi-purpose room, conference rooms, offices, a Health Center, a staging kitchen, an outdoor event area, and illuminated sports fields and courts.

1.4 Status of the Project Area and Rights-of-Way.

A. District, at its expense, will provide all rights-of-way or permits, or both, covering the crossing of private property and public and private rights-of-way necessary for the permanent Work; provided, however, Design-Build Entity shall, at its expense, obtain any bonds or insurance policies or pay any fees and enter into any agreements required by a controlling authority, *e.g.*, Caltrans or Southern Pacific Railroad Company, before Design-Build Entity enters upon any property or right-of-way under the jurisdiction of any such controlling authority for the purpose of performing Work.

B. District has acquired or is negotiating to acquire any rights-of-way, or both, necessary for the permanent Work.

C. If such permits are required, all operations of Design-Build Entity shall conform to the restrictions, regulations, and requirements set forth in said permits, copies of which will be included in the Contract Documents.

D. Design-Build Entity may be required, as a condition for receiving final payment, to obtain, and provide District's Representative with copies of, executed damage releases from the owners of public and private property whose property has been damaged by the Work. The damage releases will be on a form provided by District.

E. Design-Build Entity shall, also, as a condition for receiving final payment, obtain, and provide District's Representative with copies of, executed damage releases from the owners of certain public and private property or areas which have been crossed by the Work or otherwise affected by the Work. The damage releases will be on a form provided by District.

1.5 Designation of District's Representative.

A. Unless otherwise modified by District, District's Representative(s) shall be Khary Knowles, Program Manager, and Joshua Beltran, Project Manager.

1.6 Project Retention

In accordance with Public Contract Code section 7201, District will withhold 5% of each progress payment as retention on the Project.

1.7 Reverse Liquidated Damages Due to Unreasonable District Delay.

A. In compliance with the provisions of California Public Contract Code section 7102, the Design-Build Entity will be compensated for damages incurred due to delays in completing the Work due solely to the fault of the District, where such delay is unreasonable under the circumstances and not contemplated by the parties and such delay is not the result of Additional Work. The Design-Build Entity and District agree that determining actual damages is impracticable and extremely difficult. As such, the Design-Build Entity shall be entitled to the appropriate time extension and to payment of liquidated damages in the sum of **THREE THOUSAND DOLLARS ($3,000.00)** per Day of delay in excess of the time specified for the Completion of the Work. Such amount shall constitute the only payment allowed and shall necessarily include all overhead (direct or indirect), all profit, all administrative costs, all bond costs, all labor, materials, equipment and rental costs, and any other costs, expenses and fees incurred or sustained as a result of such delay. The Design-Build Entity expressly agrees to be limited solely to the liquidated damages for all such delays as defined in this subsection.

1.8 Liquidated Damages Due to Design-Build Entity Delay.

A. Time is of the essence. Should Design-Build Entity fail to complete all or any part of the Work within the time specified in the Contract Documents, District will suffer damage, the amount of which is difficult, if not impossible, to ascertain and, pursuant to the authority of Government Code section 53069.85, District shall therefore be entitled to **THREE THOUSAND DOLLARS ($3,000.00)** per Day as liquidated damages for each Day or part thereof that actual completion extends beyond the time specified.

B. Liquidated damages may be deducted from progress payments due Design-Build Entity, Project retention or may be collected directly from Design-Build Entity, or from Design-Build Entity's surety. These provisions for liquidated damages shall not prevent District, in case of Design-Build Entity's default, from terminating the Design-Build Entity.

1.9 Utility Outages – Notices to Residents.

A. Should Design-Build Entity's operations require interruption of any utility service, Design-Build Entity shall notify District at least ten (10) Days prior to the scheduled outage. Design-Build Entity will notify all impacted residents on a form provided by District at least seven (7) Days prior to the scheduled outage.

B. Design-Build Entity shall be responsible for providing, at its cost, any temporary utility or facilities necessitated by the utility outage.

1.10 Temporary Field Office

A. Utility Services. Design-Build Entity, at its expense, shall arrange for, develop and maintain all utilities, including but not limited to water, electric power, sewage disposal and telephone communications, at the Site to meet the requirements of the Work.

B. Sanitation. The Design-Build Entity shall provide sanitary facilities for all persons working on the project. These facilities shall be kept clean and shall not be unsightly or produce odors.

1.11 Fugitive Dust

A. In addition to all other environmental and air quality requirements of the Contract Documents, Design-Build Entity must also comply with the most recent version of South Coast Air Quality Management District's Rule 403 – Fugitive Dust, to reduce the amount of particulate matter entrained in the ambient air as a result of the Project.

B. District has considered these other requirements when determining the Contract Times and no additional time or compensation will be added to the Contract due to these requirements.

1.12 Design Services

A. Application of Article 1.12 of the Special Conditions for Design Services. The Provisions of this article relate to the DBE's Design Services responsibilities.

1. **Schedule of Services**

a. **Timely Performance Standard.** The DBE shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, the DBE, AOR and any other Design Consultant to the DBE shall perform its Services to allow for the full and adequate completion of the Project within the time required by the District and within any completion schedules adopted for the Project. DBE agrees to coordinate with District's staff, contractors and consultants in the performance of the Services, and shall be available to District's staff, contractors and consultants at all reasonable times.

b. **Performance Schedule.** The DBE shall prepare an estimated time schedule for the performance of the DBE Services, to be adjusted as the Project proceeds. Such schedule shall be subject to the District's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for District's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If District and DBE cannot mutually agree on a performance schedule, District shall have the authority to immediately

terminate this Agreement. The schedule shall not be exceeded by the DBE, without the prior written approval of District. If the DBE's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that the District will suffer damage for which the DBE will be responsible pursuant to the indemnification and the liquidated damages provisions of this Agreement.

2. **Design Responsibilities.**

a. **Design Consultation.** The DBE shall on an on-going continuing basis throughout its performance of the Work provide the District Project Manager with complete, continuous and current advice and recommendations on issues related to the status and progress of the design and non-design portions of the Work, including, without limitation, matters related to design feasibility, constructability, occupancy and maintenance, and shall keep the District Project Manager apprised at all times of the full range of alternatives that are available to District to reducing construction time, lowering costs, easing long-term maintenance, minimize adverse effects of labor and material shortages, shortening time requirements for procurement, expediting installation and construction completion and other possible economies and efficiencies. As part of this collaborative effort, DBE shall throughout the duration of its performance of the Work attend regular meetings (as frequently as may be necessary to maintain progress of the Work or as otherwise reasonably required by District) for the purpose of reviewing the status of the Construction Documents and Work.

b. **Construction Documents.** Using qualified, licensed design professionals, DBE shall furnish all necessary and appropriate architectural, engineering and other professional services required for the preparation of the Construction Documents that incorporate designs and specifications that are complete, detailed and suitable to produce a completed construction that, without limitation to any other requirements of the Contract Documents: (i) conforms to the Project Documents and any Approved Deviations; (ii) is consistent with the Design Intent, and (iii) gives due and appropriate consideration to the matters disclosed by the Reference Documents and any other information provided by the District to DBE.

c. **Submissions to District.** DBE shall formally submit to District Project Manager in accordance with the Submittal Schedule, for District's review and approval, in progress Construction Documents reflecting DBE's progress in the performance of its design portion of the work at points in time outlined in 1.12.A.7 DBE Development of Design Documents. Additional formal submissions reflecting the status of in-progress Construction Documents, if reasonably judged by District as necessary, shall be prepared and made without Contract Adjustment. All such formal submissions shall be both hard copy and electronic format. Construction Documents submitted by the DBE shall incorporate changes or corrections required by the District Project Manager, or Governmental Agencies or be accompanied by a written statement as to why such changes were not incorporated. The District may, in its sole and absolute discretion, reject the DBE's explanation and require the

DBE to make such changes or corrections to the Construction Documents. Notwithstanding District reviews, DBE shall at all times remain solely responsible, review or approval of the Construction Documents, for the accuracy, completeness, sufficiency and suitability of the Construction Documents and for their compliance with Applicable Laws and the Contract Documents.

d. **Professional Certifications.** All submissions of Construction Documents and Submittals to District Project Manager shall include certification by the Architect of Record ("AOR"), who shall be a properly licensed design professional, including such professional's manual signature and seal. Any Construction Documents or Submittals related to the Work designed or certified by such professional, if prepared by others, shall nevertheless bear such professional's manual signature when submitted to the District. The District shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals provided by such design professionals.

e. **Assignments or Staff Changes.** The DBE shall promptly obtain written District approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in DBE team and key personnel shall be subject to approval by District.

f. **Performance of DBE Team.** Any DBE team member or consultant who is reasonably determined by the District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee or consultant who fails or refuses to perform the Services in a manner acceptable to the District, shall be promptly removed from the Project by the DBE and shall not be re-employed to perform any of the Services or to work on the Project.

g. **Design Deficiencies.** Design Deficiencies in the Construction Documents, whether or not the Construction Documents are approved by District, are the sole responsibility of the DBE and shall be corrected by DBE at the DBE's Own Expense.

h. **Title 24 Compliance.** DBE shall perform the Work in accordance with the Contract Documents, including, without limitation, the Final Construction Documents approved by District and the Submittals approved by the District Project Manager and, if required by District, the District's Consultants. DBE's Architect of Record shall be responsible to comply with the requirements of the California Code of Regulations, including, without limitation Title 24, California Code of Regulations, relating to assumption of responsibilities by the district project manager or registered engineer responsible for submitting plans and specifications for approval by DSA and for assuming responsibility as the District Project Manager in general responsible charge of the Work.

i. **Sustainable Design.** DBE shall make recommendations to District for incorporating into the Final Construction Documents the design requirements for design and construction that will, to the best of DBE's efforts and within the

constraints of the Contract Sum and Contract Time, incorporate the elements of sustainable design and construction.

3. **Use and Ownership of Design Documents.**

   a. **Ownership.** Subject to the provisions hereof, all Drawings, Specifications, calculations, and other Instruments of Service and other tangible items ("Project Documents") prepared by or through the DBE for the Project shall be and remain the property of the District regardless of the format on which said items are prepared or stored, including without limitation paper copies, original or reproducible transparencies, AutoCAD files (or similar computer-aided drafting of design formats), or other types of computerized/electronic data. The District specifically maintains ownership of the design of the Project and the design of any buildings or other improvements which are a part thereof, notwithstanding creation/preparation of such design by or through the DBE, and such design may not be re-used by the DBE or any members of the DBE, including without limitation, sub-consultants to the members of the DBE, without the specific prior written consent of the District which may granted, denied or conditioned in the sole exclusive discretion of the District.

   b. **Right to Use.** The DBE shall grant to the District a perpetual license to use and/or reuse all or any part of the Project Documents at the District's sole discretion with no additional compensation to the DBE for the purposes of: (i) construction of all or part of the Project; (ii) the repair, renovation, modernization, replacement, reconstruction or expansion of the Project; or (iii) the construction of another project by or for the District for the District's ownership and/or use. The District is not bound by the Contract Documents to employ the services of the DBE in the event any of the Project Documents are used for any such purposes. The District shall be authorized to use or reuse the Project Documents for these purposes without additional compensation to the DBE or the AOR, its Design Consultants or third parties. The District's use or reuse of the Project Documents for these purposes shall be not be construed or interpreted to waive or limit the District's right to recover for latent defects or for errors or omissions in the Project Documents prepared by or on behalf of the DBE provided, however, that any use or reuse by the District of the Project Documents on any project other than the Project for which the Project Documents were prepared without employing the services of the DBE shall be at the District's own risk. If the District uses or reuses the Project Documents on any project other than the Project for which the Project Documents were prepared for, the District shall remove the DBE's seal from the Project Documents and indemnify and hold harmless the DBE from claims arising out of the use or re-use of the Project Documents on such other project.

   c. **District License to Use Project Documents.** The Contract Documents create a non-exclusive and perpetual license for the District to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. DBE shall require the AOR and all of the Design Consultants to the DBE or the AOR to agree in writing that the District is granted a non-exclusive and perpetual license for the work of such Design Consultants.

d. **DBE Right to Grant License.** The DBE represent and warrant that the DBE has the legal right to license the District's use of the Project Documents, any and all copyrights, designs and other intellectual property embodied in the Project Documents prepared by or through the DBE under the Contract Documents.

4. **Design Services Standard of Care.** The DBE, AOR and any other Design Consultant to the DBE shall provide and complete the Design Services: (i) using their best professional skill and judgment; (ii) acting with due care and in accordance with respective applicable standards of care under California law for those providing similar design professional services for projects of the size, scope and complexity of the Project; (iii) the terms of the Contract Documents; and (iv) in accordance with applicable standards of care.

5. **Compliance with Regulatory Agencies.** The DBE, AOR and any other Design Consultant to the DBE shall respond to and comply with all requests relating to the Project made by any applicable federal, state, regional or local governmental or quasi-governmental agency with jurisdiction over any portion of the Project, including without limitation, DSA and the Utility.

6. **Conformity to District Standards.** Design Documents prepared by or through the DBE, AOR and any other Design Consultant to the DBE for the Project shall conform to District standards for materials, equipment and/or workmanship in effect as of the completion of the Design Documents. Modifications of the Design Documents for the Project to conform to District materials, equipment or workmanship standards shall be without adjustment of the Contract Price.

7. **Approval/Permitting of Design Documents.** The DBE shall provide District with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. The DBE shall obtain, on behalf of the District, all necessary approvals or permits for the Design Documents for the Project as necessary for construction of the Project including without limitation, DSA and the Utility. Without adjustment of the Contract Price, the DBE shall revise the Design Documents as required by DSA or other governmental or quasi-governmental agencies with jurisdiction over the Project, or portions thereof, to obtain their respective approval(s) or permit issuance. The costs of such permits, approvals and other authorizations shall be paid by the District.

8. **DBE Development of Design Documents.** The development of Design Documents shall sequentially progress as set forth herein.

   a. **Schematic Design Documents**

      (i) **Schematic Design Documents / Meet and Confer with District.** Prior to development and refinement of the Schematic Design Project Documents, the DBE, AOR, and such Design Consultants to the DBE as reasonably determined by the District shall conduct and participate in meet and confer sessions with the District Project Manager and the District's administrative, facilities and end-user staff to review and finalize the Project design, including the feasibility and programming for

the Project to define the scope, size, space relationship and site development. Upon completion of such Meet and Confer sessions, the DBE shall submit (i) the final Schematic Design Documents; (ii) updated Schematic Design cost estimate consistent with the Target Cost, and (iii) updated schedule to the District Project Manager for review and approval. The Schematic Design Plans shall include a conceptual site plan and preliminary plans and studies, sections, elevations, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project, the plot plan development at the site, and the proposed architectural concept of the buildings. The DBE shall incorporate the educational programs and the functional requirements of District into the Schematic Plans.

(ii) **DBE Incorporation of Revisions** If mutual concurrence between the District and the DBE regarding revisions, or the scope/nature of revisions to the Project Documents is not reached in the meet and confer sessions, the DBE shall revise the Project Documents as directed or authorized by the District. In the event the Schematic Design cost estimate exceeds the Target Cost and the parties cannot come to a mutual concurrence in the meet and confer sessions, the District, in its sole discretion, may require the DBE to make revisions as necessary to bring the cost estimate within the Target Cost or else terminate the Agreement without further obligation to the DBE.

(iii) **District Project Manager Minutes; Design Changes Summary.** Within five (5) days of the conclusion of each meet and confer session, the DBE shall prepare and distribute minutes to the District Project Manager for approval. At the conclusion of the final meet and confer session, the DBE shall prepare a written summary of the revisions to the Project Documents which have been agreed to through the meet and confer sessions or which have been directed or authorized by the District ("Design Changes Summary"). The DBE development of Design Documents shall conform to the Design Changes Summary.

b. **Design Development Documents**

(i) **DBE Development of 50% Design Development Documents.** Based upon the District accepted Schematic Design Documents, the DBE, AOR and any other Design Consultant to the DBE shall prepare fifty percent (50%) Design Development Documents necessary or appropriate for setting forth in detail the requirements for the Work of the Project. Upon completion of the fifty percent (50%) Design Development Documents, the DBE shall submit the same to the District Project Manager for review and comment. Design Development Documents shall consist of: (1) site and floor plans; (2) elevations; (3) sections; (4) typical construction details; (5) equipment layouts; and (6) any other drawings and documents sufficient to fix and describe the types and makeup of materials, as well as the scope, relationships, forms, size, appearance and character of the Project's structural, mechanical and electrical systems, and to outline the Project

specifications. The DBE shall also provide, for District's review and approval, a preliminary schedule of all color materials and selections of textures, finishes and other matters involving an aesthetic decision about the Project as well as a 50% Design Development construction cost estimate.

(ii) **DBE and District Review of 50% Design Development Documents.** Upon receipt of the District's review comments of the fifty percent (50%) Design Development Documents submitted to the DBE, the District Project Manager shall meet and confer with the DBE to review the review notes and comments and to determine the extent of revisions of the 50% Design Development Documents necessary for the District's acceptance of the fifty percent (50%) Design Development Documents. If mutual concurrence between the DBE and the District is not reached as to the extent or nature of the DBE revisions to the fifty percent (50%) Design Development Documents, the DBE shall complete such revisions as directed or authorized by the District. In the event the 50% Design Development cost estimate exceeds the Target Cost and the parties cannot come to a mutual concurrence in the meet and confer sessions, the District, in its sole discretion, may require the DBE to make revisions as necessary to bring the cost estimate within the Target Cost or else terminate the Agreement without further obligation to the DBE.

(iii) **DBE Development of Final Design Development Documents.** The DBE shall revise the fifty percent (50%) Design Development Documents to further illustrate and define the refinement of the Project, establishing the scope, relationships, forms, size and appearance of the Project and shall include: typical construction details; equipment layouts; landscape plans; architectural information to fix and illustrate the size, character and quality of all Project components as they relate to the District's requirements; and such other essentials as may be deemed appropriate by the District, specifications that identify major materials and systems (including civil, landscape, structural, mechanical, and electrical systems) and establish in general their quality levels, and to incorporate the District's review comments and revisions mutually agreed upon by the District and the DBE or as directed/authorized by the District. Upon completion of such revisions, the DBE shall submit (i) the Final one hundred percent (100%) Design Development Documents; (ii) updated Final Design Development cost estimate consistent with the Target Cost, and (iii) updated schedule to the District Project Manager for review and confirmation that all of the mutually agreed upon revisions or the revisions directed/authorized by the District to the fifty percent (50%) Design Development Documents have been incorporated therein. The DBE shall revise Design Development Documents as necessary to incorporate all such revisions and to obtain the District's acceptance of the entirety of the Final Design Development Documents. The revised one hundred percent (100%) Design Development Documents accepted by the District are referred to as "Final Design Development Documents". In the event the Final Design Development cost estimate exceeds the

Target Cost and the parties cannot come to a mutual concurrence in the meet and confer sessions, the District, in its sole discretion, may require the DBE to make revisions as necessary to bring the cost estimate within the Target Cost in order to allow for the approval of a Preliminary GMP or else terminate the Agreement without further obligation to the DBE.

c. **Construction Documents.**

(i) **DBE Development of Construction Documents.** Based upon the District accepted Final Design Development Documents, the DBE, AOR and any other Design Consultant to the DBE shall prepare Construction Documents consisting of all Drawings and Specifications and other Design Documents necessary or appropriate for setting forth in detail the requirements for the Work of the Project sufficient for DSA review and permitting. Upon achieving fifty percent (50%) completion of the Construction Documents, the DBE shall submit the same to the District Project Manager for review and comment. The DBE shall assemble and deliver to the District the Construction Documents and any and all other portions of the Construction Documents.

(ii) **Construction Documents Incorporation of Materials/Equipment.** The Construction Documents shall include all materials, equipment and other products along with layouts and configurations of spaces within the Project conforming to the District's requirements. Any work, services, materials, equipment, products or other tangible or intangible items/services necessary to complete the Project in accordance with the District's requirements for the Project shall be provided or performed by the DBE without adjustment of the Contract Price hereunder.

(iii) **District Review of Construction Documents.** Upon receipt of the District's review comments of the fifty percent (50%) Construction Documents submitted to the DBE, the District Project Manager shall meet and confer to review the review notes and comments and to determine the extent of revisions of the Construction Documents necessary for the District's acceptance of the Construction Documents. If mutual concurrence between the DBE and the District is not reached as to the extent or nature of the DBE's revisions to the Construction Documents, the DBE shall complete such revisions as directed or authorized by the District.

(iv) **DBE Development of 95% Construction Documents.** The DBE shall revise the fifty percent (50%) Construction Documents to incorporate the review notes, comments and revisions mutually agreed upon by the District and the DBE or as directed/authorized by the District. Upon completion of such revisions and upon achieving ninety-five percent (95%) completion of the Construction Documents, the DBE shall submit to the District Project Manager for review and confirmation that all of the mutually agreed upon revisions or the revisions directed/authorized by the District to the fifty percent (50%) Construction Documents and

other requirements for the Project have been incorporated therein. The DBE shall revise the Construction Documents to incorporate all such revisions, Project requirements and to obtain the District's acceptance of the entirety of the Construction Documents. Upon written approval by the District, the DBE shall submit the ninety-five percent (95%) completed Construction Documents to DSA and any applicable federal, state, regional or local governmental or quasi-governmental agency with jurisdiction over any portion of the Project for review.

(v) **DBE Development of Final Construction Documents.** The DBE shall revise the one hundred percent (100%) completed Construction Documents to incorporate the review comments from DSA and any other agency with jurisdiction on the project; the review notes, comments and revisions mutually agreed upon by the District and the DBE or as directed/authorized by the District prior to resubmittal to DSA for approval. The DBE shall submit a sufficient number of copies of the revised 100% Construction Documents to DSA so that DSA will return one (1) original set bearing DSA's stamp of approval. Promptly following DSA's approval of the revised 100% Construction Documents, the DBE shall assemble and deliver to the District the Construction Documents and all other portions of the Contract Documents. The DSA-approved Construction Documents will also include all other agency approvals with jurisdiction, and are referred to as "Final 100% Construction Documents". The Final 100% Construction Documents shall also result in the preparation and written confirmation of the Final GMP, which shall not exceed the Preliminary GMP unless explicitly authorized by the District in writing. If the proposed Final GMP based on the Final 100% Construction Documents does exceed the Preliminary GMP and the parties cannot come to a mutual concurrence on the Final GMP, the District, in its sole discretion, may require the DBE to make revisions as necessary to reduce the Final GMP to a level at or below the Preliminary GMP or else terminate the Agreement without further obligation to the DBE.

d. **Project Construction.** During Project construction, the DBE, AOR, and any other Design Consultant to the DBE shall perform and complete the tasks and activities set forth in this Agreement, inclusive of these General Conditions, which are designated therein for performance and completion by the DBE, including without limitation, monthly site visits to observe the Contractor's work for general conformance with the Construction Documents and any approved schedule, monthly site visits to communicate and observe the activities of the Project Inspectors, including the Inspector of Record, the review/acceptance of Submittals and the review/verify and certification of Applications for Progress Payments. All actions of the DBE during the construction of the Project shall be commenced and completed in a timely manner to avoid delay or disruption to the planned sequencing and schedule for construction of the Project. The DBE shall prepare and submit for processing such documentation as required by governmental agencies, including DSA, in connection with construction of the Project and/or completion of the construction of the Project. The foregoing shall include without limitation, the DBE's Final Verified Report of Project construction and all other materials required by DSA to close-out the Project.

9. **Disbursement of Design Services Portion of the Contract Price.**

    a. **Application of Article 13 to Design Services Portion of the Contract Price.** The provisions of Article 13 of the General Conditions shall be applicable to disbursement of the Construction Services Contract Price and Design Services Contract Price. The Design Services Contract Price shall also be governed by the provisions of Special Conditions Article 1.12.

    b. **Allocation of Design Services Portion of the Contract Price.** The Design Services Contract Price shall be allocated to completion of the Design Services as set forth in the Design Build Agreement.

    c. **Reproduction.** DBE shall do all reproduction and distribution of such reproducible prints of Design Documents, Contract Documents and Project Documents as are necessary for the complete development of design, complete pricing and performance of the Work, including, without limitation, all Changes. The costs of such reproduction shall be at the DBE's Own Expense.

    d. **Disbursement of Design Services Payments.** The DBE shall submit monthly billings for payment of portions of the Design Services Contract Price. During the DBEs preparation of Design Documents, each monthly billing shall reflect the percentage completed of the Design Documents, as applicable. The DBE's billings and the District's disbursement of the Design Services Contract Price on each monthly billing during development of Design Documents shall be limited by the portion of the Design Services Contract Price allocated to the phase of Design Services being completed by the DBE, AOR, and any other specialty consultants to the DBE. The portion of the Design Services Contract Price allocated for the DSA permit issuance may be billed by the DBE only after DSA issues such permit.

10. **DBE Responsibility for Design Documents.** Notwithstanding references to the DBE and the DBE's Design Consultants in this Article 1.12, the DBE shall be liable and responsible to the District for the performance and completion by the DBE and its Design Consultants of the obligations described herein.

11. **Post-Construction Obligations.**

    a. **Preparation of Record Drawings and Specifications.** Not later than thirty (30) days after substantial completion of the Project, the DBE shall prepare and deliver to the District all as-built improvements made or modified in connection with the Project, in electronic CAD format and full-size paper copies for review and written approval by the District. Record Drawings and Specifications shall note all changes made by change orders or otherwise pursuant to the Construction Documents, as well as all information called for on the specifications, thus producing a "record" set of Final Drawings and Specifications ("Record Drawings and Specifications"). The Record Drawings and Specifications shall show, among other things, the location of all concealed pipe, buried conduit runs and other similar elements within the completed Project. The DBE and AOR shall personally review and certify that the Record Drawings and Specifications are a correct representation of the information

supplied to the DBE by the Inspector of Record and shall obtain certifications from the Inspector of Record that the drawings are correct.

b. **Assistance Regarding Close-Out and Final Regulatory Certification**. In connection with the project closeout, the DBE, AOR, and any other Design Consultant to the DBE shall complete all actions and activities which by operation of applicable law, code, rule or regulation are the responsibility of the DBE relating to DSA reporting requirements pursuant to Education Code §81141 (including amendments thereto) and issuance of DSA's Certificate of Compliance for the Project pursuant to Education Code 81147 (including amendments thereto) upon completion of Project construction. The foregoing shall include without limitation, the timely preparation, completion and filing of Verified Reports during Project construction, and the filing of the Final Verified Report with DSA within ten (10) days of the determination of Project Final Completion. The DBE shall provide the District Project Manager with the DBE's submission thereof to DSA. The DBE shall assist the District in obtaining final certifications from other Governmental Agencies as required to enable the District to obtain final close-out of the Project.

c. **Final Verified Report Retention.** The completion and filing of the Final Verified Report with DSA by the DBE is an express condition precedent to the District's disbursement of the percentage for Final Verified Report Retention. The District's disbursement to the DBE shall be made by the District within thirty (30) days of the presentation by the DBE of reasonably satisfactory written evidence that the Final Verified Report has been filed with DSA in accordance with the preceding and the submission of a billing invoice for payment of the Final Verified Report Retention. If the DBE fails to file the Final Verified Report with DSA within ten (10) days of the determination of Project Final Completion, notwithstanding the preparation or filing of such report by the DBE thereafter, the District may in the sole and exclusive discretion of the District retain and withhold from disbursement to the DBE all or any part of the Final Verified Report Retention as damages for the failure of the DBE to have timely discharged its obligations.

END OF SPECIAL CONDITIONS

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM: Jose F. Iniguez, Ed.D.
Assistant Superintendent of
Admin. Leadership, School Support & Safety

☐ Informational
☒ Action

AGENDA ITEM: DESIGN-BUILD AGREEMENT WITH CORE WEST, INC. FOR THE SAN YSIDRO MIDDLE SCHOOL REVITALIZATION PROJECT

BACKGROUND INFORMATION:
On May 29, 2024, the District advertised a Request for Qualifications and Proposals ("RFQP") for Design-Build Services ("RFQ/P") to invite firms, partnerships, corporations, associations, persons, or professional organizations to submit their Statement of Qualifications ("SOQ") and proposal as a potential **Design-Build Entity ("DBE")** for the performance of design and construction services for the District's **"San Ysidro Middle School Revitalization Project"** and/or the "Community Resource Center (CRC) at the Beyer Site Project".

Following a prequalification process, on July 1, 2024, Staff received SOQs and proposals from five (5) prequalified entities based on RFQ/P #2425-01 that submitted on the projects as follows:

Entity Name	San Ysidro Middle School Revitalization	Community Resource Center at Beyer
Barnhart-Reese Construction, Inc. (RNT Architects)	O	X
Core West, Inc. (PBK Architects)	X	X
C.W. Driver (Ruhnau Clarke Architects)	X	X
Soltek Pacific (Sillman Architects)	X	X
Swinerton Builders (Delawie Architects)	X	X

On July 17, 2024, interviews were conducted of all five (5) entities and the following Design-Build Agreement is recommended by Staff for approval by the Board of Education. Please note that Staff and consultant teams evaluated, deliberated, and negotiated in regards to the "economies of scale" of having the same entity design and construct both projects, and found no significant savings lost from having the projects designed and constructed by two (2) different entities. Additionally, the entity that provided the best value for the CRC Project, did not submit on both projects, therefore, two (2) entities remains Staff's recommendation.

As allowed by statute, this design-build entity has been chosen based on the best value for the District.

Firm	**Board Approved Project Budget**	**Design-Build Contract Value**
Core West, Inc.	$50,000,000.00	$38,555,532.00

RECOMMENDATION:
Approve the Design-Build Agreement of $38,555,532.00 with Core West, Inc. based on the RFQ/P# 2425-01 for the construction and design services for the "San Ysidro Middle School Revitalization Project". Cost implications will be paid from the General Obligation Bonds Measures T & U.

LCAP GOAL AND ACTION/SERVICE (please indicate):
Goal 7.0 – Provide sufficient, safe, well-maintained, and visually appealing facilities that create an environment for improving student achievement.

☐ **Renewal** ☒ **New** ☐ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No ☐ N/A	N/A

$38,555,532.00	General Obligation Bonds Measures T & U
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

SAN YSIDRO SCHOOL DISTRICT

SAN YSIDRO MIDDLE SCHOOL REVITALIZATION PROJECT
DESIGN-BUILD CONTRACT

1.1 Contract for Design and Construction.

This Design-Build Contract is effective as of the 9th day of August, 2024, by and between San Ysidro School District, a school district organized and existing under the laws of the State of California ("District"), and CORE West, Inc. dba CORE Construction ("Design-Build Entity").

The parties agree as follows:

A. Design-Build Entity, for and in consideration of the payment to be made to Design-Build Entity as hereinafter provided, shall furnish all labor, technical and professional design services, supervision, materials and equipment, other than such materials and equipment as may be specified to be furnished by District, and perform all operations necessary to complete the Work in strict conformance with the Contract Documents (defined below) for the public work of improvement titled:

SAN YSIDRO MIDDLE SCHOOL REVITALIZATION PROJECT

Design-Build Entity is an independent contractor and not an agent of District. The Design-Build Entity and its surety shall be liable to District for any damages arising as a result of the Design-Build Entity's failure to comply with this obligation.

B. The Design-Build Entity is made up of **PBK ARCHITECTS, INC.** (License No. C28020), which shall function as the designer and Architect/Engineer of Record for the Project and provide all architectural/engineering design services, and **CORE WEST, INC. DBA CORE CONSTRUCTION** (License No. 1092402), which shall function as the general contractor for the Project and provide all construction services for the Project together with its chosen subcontractors. For purposes of this Contract, **Seth Maurer on behalf of CORE CONSTRUCTION** shall execute the Contract on behalf of the Design-Build Entity and shall have the authority to make all decisions necessary on behalf of the Design-Build Entity. Notwithstanding the foregoing, District may accept bonds naming the Design-Build Entity as principal and professional liability insurance naming the member of the Design-Build Entity designated for design/architectural services as named insured.

Design-Build Entity shall perform all services required under the Contract Documents in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform such services in the same discipline in the State of California.

C. Time is of the essence in the performance of the Work. The Work shall be commenced by the date stated in District's Notice to Proceed. The Design-Build Entity shall complete all Work required by the Contract Documents within **SEVEN HUNDRED FIFTY ONE CALENDAR DAYS** from the commencement date stated in the Notice to Proceed, which equates to a Project Completion Date of **August 31, 2026**.

By its signature hereunder, Design-Build Entity agrees the Project Completion Date is adequate and reasonable to complete the Work.

D. District shall pay to the Design-Build Entity as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the **Negotiated Cost established as part of the RFP process which shall be defined for the purposes of this contract as the Target Cost** of **THIRTY EIGHT MILLION FIVE HUNDRED FIFTY-FIVE THOUSAND FIVE HUNDRED THIRTY TWO DOLLARS ($38,555,532.00)**. Payment shall be made as set forth in the General Conditions. Unless otherwise stated in the Contract Documents, the Target Cost shall pay for all costs and expenses required to design and construct the Project, and shall not be exceeded by the Design-Build Entity except as expressly permitted in the Contract.

Specifically included within the Target Cost is a District owned Contingency in the amount of **SEVEN HUNDRED EIFHTY FOUR THOUSAND TWO HUNDRED ONE DOLLARS ($784,201.00)** ("District Owned Contingency"). District Owned Contingency shall be for the exclusive use of District as needed to pay for unforeseen conditions and/or District added scope of work for the Project. District must authorize any use of these contingency funds in writing before the Design-Build Entity shall be entitled to any compensation from District Owned Contingency. Design-Build Entity shall be responsible at all times for tracking and accounting for any expenditure of District Owned Contingency. Any District Owned Contingency remaining at Project completion shall remain the sole property of District.

Specifically included within the Target Cost are a series of District-Controlled Allowances as noted below:

1. Classroom Moving: **ONE HUNDRED THOUSAND DOLLARS ($100,000.00)**

2. Replace vs Repair: **THREE HUNDRED THOUSAND DOLLARS ($300,000.00)**

3. Survey and Mapping: **EIGHTY-FOUR THOUSAND NINE HUNDRED FIFTY DOLLARS ($84,950.00)**

4. Cost Loaded Schedule: **ONE HUNDRED NINETY THOUSAND DOLLARS ($190,000.00)**

Other than District Owned Contingency and the District-Owned Allowances, the rest of the Target Cost is the sum payable to the Design-Build Entity to design and construct the Project.

1. At the completion of the **100% Design Development phase**, the District and selected DBE will determine a Preliminary Guaranteed Maximum Price ("Preliminary GMP") agreed by both parties which includes all items necessary to perform the Design-Build Contract and which shall not exceed the Target Cost. If the District accepts the Preliminary GMP as consistent with the Target Cost, the parties will amend the Contract by replacing the Target Cost with the Preliminary GMP. The Preliminary GMP shall not exceed the Target Cost without District written approval.

2. At the completion of the **100% Construction Documents phase**, the District and selected DBE will determine a **Final Guaranteed Maximum Price ("GMP")** agreed by both parties which shall include all items necessary to perform the Design-Build Contract and which shall not exceed the Preliminary GMP without the District's written approval. The DBE shall be responsible to maintain the Final GMP throughout the Construction and Closeout Phase. If the District accepts the Final GMP, the parties will amend the Contract by replacing the Preliminary GMP with the Final GMP.

E. Design-Build Entity shall provide indemnification and defense as set forth in the General Conditions.

F. No oral agreement or conversation with any representative or employee of District, either before or after the execution of the Contract shall affect or modify any of the terms or obligations herein contained. This Contract constitutes the entire agreement between the parties hereto and no changes, alterations or modifications hereof shall be effective unless in writing and signed by District.

G. The "Contract Documents" include only the following documents, each of which is incorporated into this Contract by reference:

Request for Qualifications ("RFQ") and all addenda, attachments and appendices

Design-Build Entity Statement of Qualifications in response to RFQ

Request for Proposal ("RFP") and all addenda, attachments and appendices

Design-Build Entity Proposal submitted in response to RFP

Design-Build Contract and all addenda

General Conditions

Special Conditions

District approved Change Orders

Attachment 1 to this Contract - Design Professional Rate Schedule for Extra Work

Attachment 2 to this Contract - Performance Bond

Attachment 3 to this Contract - Payment Bond

Attachment 4 to this Contract - Escrow Agreement for Security (optional)

Attachment 5 to this Contract - Enhancements/Additional Scope of Work Terms And Conditions

Attachment 6 to this Contract – Additional Assumptions and Clarifications of Scope by the Design-Build Entity

Completed and approved Construction Documents in accordance with the General Conditions

The Design-Build Entity shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of a conflict, the various Contract Documents will be given effect in the order set forth in the General Conditions.

H. Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Design-Build Entity shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which are applicable to this Work.

I. By my signature hereunder, as Design-Build Entity, I certify that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

J. The parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract. The Design-Build Entity may not either voluntarily or by action of law, assign any obligation assumed by the Design-Build Entity hereunder without the prior written consent of District.

K. All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

District:	DESIGN-BUILD ENTITY:
San Ysidro School District	CORE West, Inc. dba CORE Construction
4350 Otay Mesa Road	7150 Cascade Valley Ct.
San Ysidro, CA 92173	Las Vegas, NV 89128
Attn: Jose F. Iniguez, Ed.D.	Attn: Seth Maurer
Jose.iniguez@sysdschools.org	SethMaurer@coreconstruction.com

Any notice so given shall be considered received by the other party three (3) days after deposit in the U.S. Mail, first class postage prepaid, addressed to the party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

L. The persons executing this Contract on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties, on the day and year above written.

SAN YSIDRO SCHOOL DISTRICT

By: _____

Printed Name: Marilyn Adrianzen

Title: Chief Business Official

Dated: _____

Board approved: _____

ATTEST:

_____
District Clerk

CORE WEST, INC. DBA CORE CONSTRUCTION

By: _____
(Authorized Representative of Design-Build Entity)

Printed Name: Seth Maurer

Title: President
(Attach Acknowledgment for Authorized Representative of Design-Build Entity)

License No. 1092402

Dated: 7-25-2024

END OF CONTRACT

ATTACHMENT 1

DESIGN PROFESSIONAL RATE SCHEDULE FOR EXTRA WORK

1. **Reimbursable Expenses**.

	HOURLY RATES
Project Executive	$ 210.00
Project Manager	$ 135.00
Project Superintendent	$ 142.00
Project Engineer	$ 110.00
Safety Officer	$ 125.00
Estimator	$ 120.00
Scheduler	$ 120.00
MEP / BIM Manager	$ 125.00
Project Administrator	$ 95.00
Design Principal	$ 350.00
Design Project Manager	$ 290.00
Design Construction Administrator	$ 200.00
Design Job Captain	$ 180.00
Designer	$ 130.00
CADD Operator	$ 180.00

These are the current hourly rates effective August 9, 2024, through Project Completion. Increases in the above hourly rates shall be made only by an authorized amendment to this Agreement.

2. **Reimbursable Expenses**.

[INSERT AUTHORIZED REIMBURSABLE EXPENSES AS NEGOTIATED]

3. **Additional Services**.

Additional Services shall be computed at the actual hourly rates described above.

Design-Build entity shall only apply mark-ups as allowed in the General Conditions for Overhead and Profit on design change directives.

END OF DESIGN PROFESSIONAL RATE SCHEDULE FOR EXTRA WORK

ATTACHMENT 2

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the San Ysidro School District (hereinafter referred to as "District") has awarded to _____, (hereinafter referred to as the "Design-Build Entity") an agreement for _____ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Design-Build Entity is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Design-Build Entity is required by the Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of the Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Design-Build Entity and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto District in the sum of _____ DOLLARS, ($_____), the sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Design-Build Entity, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless District, its officers and agents, as stipulated in the Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Project, unless otherwise provided for in the Contract Documents, the guarantee obligation shall hold good for a period of two (2) years after the acceptance of the work by District, during which time if Design-Build Entity shall fail to make full, complete, and satisfactory repair and replacements and totally protect District from loss or damage resulting from or caused by defective materials or faulty workmanship the above obligation in penal sum thereof shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligations of Surety hereunder shall continue so long as any obligation of Design-Build Entity remains. Nothing herein shall limit District 's rights or the Design-Build Entity or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by District in enforcing such obligation.

Whenever Design-Build Entity shall be, and is declared by District to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at District's option:

1. Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or

2. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and District, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Design-Build Entity by District under the Contract and any modification thereto, less any amount previously paid by District to the Design-Build Entity and any other set offs pursuant to the Contract Documents.

3. Permit District to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Design-Build Entity by District under the Contract and any modification thereto, less any amount previously paid by District to the Design-Build Entity and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that District may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Design-Build Entity.

Surety shall not utilize Design-Build Entity in completing the Project nor shall Surety accept a bid from Design-Build Entity for completion of the Project if District, when declaring the Design-Build Entity in default, notifies Surety of District's objection to Design-Build Entity's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract to be performed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of Contract. including but not limited to the provisions of Sections 2819 and 2845 of the California Civil Code.

[Remainder of Page Left Intentionally Blank.]

ATTACHMENT 2

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 2024.

_____
DESIGN-BUILD ENTITY/PRINCIPAL

_____
Name

By_____

SURETY:

By: _____
Attorney-In-Fact

Signatures of those signing for the Design-Build Entity and Surety must be notarized and evidence of corporate authority attached.

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, $_____.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

_____

_____

(Name and Address of Agent or Representative for service of process in California, if different from above) _____

_____

_____

(Telephone number of Surety and Agent or Representative for service of process in California) _____

ATTACHMENT 2

END OF PERFORMANCE BOND

ATTACHMENT 2

ATTACHMENT 3
PAYMENT (MATERIAL & LABOR) BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the San Ysidro School District (hereinafter referred to as "District ") has awarded to _____, (hereinafter referred to as the "Design-Build Entity") _____ an agreement for _____ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Design-Build Entity is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, Design-Build Entity is required to furnish a bond in connection with the contract described above; providing that if Design-Build Entity or any of its subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Design-Build Entity and its subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Design-Build Entity and _____ as Surety, are held and firmly bound unto District in the penal sum of _____ Dollars ($_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if Design-Build Entity, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by District in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between District and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract to be performed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of Contract, including but not limited to the provisions of Sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Design-Build Entity and Surety above named, on the _____ day of _____ 20_____ the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(Corporate Seal of Design-Build Entity, if corporation)

_____
Design-Build Entity/Principal

By _____
(Signature of Design-Build Entity)

(Seal of Surety)

_____
Surety

By _____
Attorney in Fact

Signatures of those signing for the Design-Build Entity and Surety must be notarized and evidence of corporate authority attached. A Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

END OF PAYMENT (LABOR AND MATERIALS) BOND
ATTACHMENT 3

ATTACHMENT 4

ESCROW AGREEMENT FOR SECURITY

This Escrow Contract is made and entered into by and between the **SAN YSIDRO SCHOOL DISTRICT**, whose address is **4350 Otay Mesa Road, San Ysidro, CA 92173** (hereinafter called the "District") and **[INSERT DESIGN-BUILD ENTITY NAME]** whose address is **[INSERT ADDRESS]** (hereinafter called "the Design-Build Entity") and _____ whose address is **[INSERT ADDRESS]** (hereinafter called "Escrow Agent").

For the consideration hereinafter set forth, District, the Design-Build Entity, and Escrow Agent agree as follows:

(1) Pursuant to Section 22300 of the Public Contract Code of the State of California, the Design-Build Entity has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by District pursuant to the Construction Contract entered into between District and the Design-Build Entity for the **[INSERT PROJECT NAME]** Project in the amount of $**[INSERT AMOUNT]** dated **[INSERT DATE]** (hereinafter referred to as the "Contract"). Alternatively, on written request of the Design-Build Entity, District shall make payments of the retention earnings directly to the Escrow Agent. When the Design-Build Entity deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify District within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between District and the Design-Build Entity. Securities shall be held in the name of District, and shall designate the Design-Build Entity as the beneficial owner.

(2) District shall make progress payments to the Design-Build Entity for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When District makes payment of retention earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Design-Build Entity until the time that the escrow created under this Escrow Contract is terminated. The Design-Build Entity may direct the investment of the payments into securities. All terms and conditions of this Escrow Contract and the rights and responsibilities of the parties shall be equally applicable and binding when District pays the Escrow Agent directly.

(4) The Design-Build Entity shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of District. These expenses and payment terms shall be determined by District, the Design-Build Entity and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of the Design-Build Entity and shall be subject to withdrawal by the Design-Build Entity at any time and from time to time without notice to District.

(6) The Design-Build Entity shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from District to the Escrow Agent that District consents to the withdrawal of the amount sought to be withdrawn by the Design-Build Entity.

(7) District shall have a right to draw upon the securities in the event of default by the Design-Build Entity. Upon seven days' written notice to the Escrow Agent from District of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by District.

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

(9) Escrow Agent shall rely on the written notifications from District and the Design-Build Entity pursuant to Sections (5) to (8), inclusive, of this Escrow Contract and District and the Design-Build Entity shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of District and on behalf of the Design-Build Entity in connection with the foregoing, and exemplars of their respective signatures are as follows:

ON BEHALF OF THE DESIGN-BUILD ENTITY:

By: _____

Name: _____

Its: _____

ON BEHALF OF DISTRICT:

By: _____

Name: _____

Its: _____

ON BEHALF OF ESCROW AGENT:

By: _____

Name: _____

Its: _____

Address: _____

ATTACHMENT 4

At the time the Escrow Account is opened, District and the Design-Build Entity shall deliver to the Escrow Agent a fully executed counterpart of this Escrow Contract.

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

ON BEHALF OF THE DESIGN-BUILD ENTITY:	**ON BEHALF OF DISTRICT:**
By:_____	By:_____
Name:_____	Name:_____
Its:_____	Its:_____

END OF ESCROW AGREEMENT FOR SECURITY

ATTACHMENT 5

ENHANCEMENTS/ADDITIONAL SCOPE OF WORK TERMS AND CONDITIONS

[NOT APPLICABLE]

END OF ENHANCEMENTS/ADDITIONAL SCOPE OF WORK TERMS AND CONDITIONS

ATTACHMENT 6

ADDITIONAL ASSUMPTIONS AND CLARIFICATIONS OF SCOPE BY DESIGN-BUILD ENTITY

[ATTACHED SEPARATELY]

END OF ADDITIONAL ASSUMPTIONS AND CLARIFICATIONS OF SCOPE BY DESIGN-BUILD ENTITY

ATTACHMENT 6 DESIGN-BUILD AGREEMENT
ADDITIONAL ASSUMPTIONS AND CLARIFICATIONS OF SCOPE FOR DBE

	ASSUMPTIONS, CLARIFICATIONS AND EXCLUSIONS
1	Price per unit for each scope element are target values based on bridging narratives. Target cost is considered lump sum and not line itemed. Therefore budgeted lines items may be leveled with others **by mutual agreement with the district through the 100% DD phase.**
2	Design fees assumes one increment/design package for entire scope. Included in the target cost is an early procurement package which may be necessary to meet schedule expectations. Schedule assumes and anticipates phased construction with entire building or multiped buildings available for the scope of work to take place during the school year. Phase approach and move-in dates to be mutually agreed to. We anticipate normal working hours 7:00 AM to 4:00 PM, Monday through Friday, with some Saturday work as required to meet the schedule. **Add alternate for off hour work during the course of construction will be established in the preliminary GMP.**
3	Any line-item cost variances will be carried across the duration of the entire project and the net savings (if any) will be split with the district per the terms of the contract at final completion. Costs for any individual line items are not guaranteed within this target estimate, but rather the bottom-line cost of the target cost estimate. Any cost savings from any individual line items will be offset against possible overruns of any other line items throughout the duration of the project. **This does not include Owner controlled contingencies.**
4	Any adverse soil conditions including but not limited to contaminated soils, different shrink/swell factors, etc. are excluded.
5	Any and all off-site improvements and work be completed by any municipalities are excluded.
6	DSA permits, Health Department fees and any utility connection fees are excluded. Temp utility installation fees are included. Temporary utility consumption costs are by the District **if DBE cannot find means to cover such costs in the preliminary GMP.**
7	Special inspection, 3rd party testing and commissioning agent services are excluded.
8	Microsoft Project is included for master scheduling, monthly updates and phased planning. Traditional G702 and G703 will reflect the detail schedule of values for billing purposes. **An allowance of $190,000 is included in the target cost estimate if district requires a cost loaded schedule.**
9	Construction escalation is **included. See escalation table in target cost estimate.**
10	Loose furniture, fixtures, and equipment (FF&E) are excluded. **Design and coordination is included.**
11	Salvaging and relocation of any existing equipment and/or furnishings, including items to be moved from existing spaces for the phased scope of work **will be tracked and reimbursed from the classroom moving allowance. Admin relocation is included in the direct cost.**
12	Servers, computers, racks and other communication head-in equipment **will be tracked and reimbursed from the classroom moving allowance. Admin relocation is included in the direct cost.**
13	Domestic and fire water booster pumps are excluded. Available pressure assumed adequate.
14	Salvaging any existing equipment, materials or FF&E **will be tracked and reimbursed from the classroom moving allowance. Admin relocation is included in the direct cost.**
15	Temporary watering of existing landscaping is excluded. **Any system or part of the system that is disconnected or interrupted during the course of construction will be maintained.**
16	Reasonably basic scope for site security and technology systems are included.
17	Alternate **design** means for **permanent** shade at spaces between buildings may be necessary **to meet target budgets.**
18	Replacing DG track and concrete curb is excluded. Target pricing includes repairs only.
19	Target estimates and agreed to scope, assumes that each building modernization will be between 45-49% of replacement costs per IR-EB-4. DBE to maximize the budget with desired program in each building.
20	Repairs and resurfacing of existing stucco assumes that substrate are in good condition. Replacing substrates, mesh and waterproofing is excluded**, with exception of portions of the Admin building.**
21	Excessive primary structural, civil and MEP modifications to buildings to address access compliance in buildings are excluded. **DBE will investigate existing conditions to evaluate any access compliance issues during preconstruction phase. Ultimately, DSA will govern any and all access issues rulings.**
22	Moisture barriers on existing concrete where new flooring scope occurs are excluded**, with the exception of the admin building.**
23	Replacement of existing ceiling tile and grid assumes existing **primary** structure is compliant for seismic requirements. **DBE will investigate existing conditions to evaluate any structural issues during preconstruction phase.**
24	Replacement of rusted metals that are to be repair and repainted are excluded. **This may include fencing, gutters, downspouts, etc. An allowance of $150,000 has been included for scope that can't be repaired and must be replaced.**
25	Replacement costs of existing doors, windows and frames that cannot be reasonably refinished are excluded. **An allowance of $150,000 has been included for scope that can't be repaired and must be replaced.**
26	Electric-mechanical window coverings are **included based on district standards.**
27	Multi-Cultural Center Roofing Options - Target cost estimate include most cost effective solution that maximize the design intent of previous conditions. Multiple cost options will be offered.
28	Means to address significant structure slab cracking is excluded. Slab cracking that requires minimal floor prep is included.
29	Campus wide roofing replacement is excluded, but will be priced separately as an alternate. Repairs are included.
30	Alternate for replacement lockers and new storage cages are excluded, but will be priced separately as an alternate.
31	Relocation of basketball courts to create open views are excluded, but will be priced separately as an alternate.
32	**Liquid dated damages has been agreed to at $3,000 per day. This may be reduced upon mutual agreement during preconstruction. DBE's extended general conditions for approved compensable delays shall be $3,000 per day.**
33	**Survey, mapping and title report is excluded from the target estimate. Below is an allowance that's included in the target cost for the following scope:**

I.	SURVEYING/MAPPING	FF or T&M		
A.	Preliminary Title Report	FF	$	2,000
B.	Survey Control and Aerial Topography (~40 acres)	FF	$	8,070
C.	Easement Plotting	FF	$	3,570
D.	Boundary Survey	FF	$	4,795
E.	Utility Markout and CCTV (sewer and storm)	FF	$	27,150
F.	Ground Level Topo and Utility Survey	FF	$	16,735
G.	Office Processing	FF	$	7,630
	Subtotal		**$**	**69,950**

POTHOLE ADD-OPTION ALLOWANCE = Up to 10X potholes for $15,000 total ($1,500 each). This assumes no ROW permit is required or the fee for ROW permit is to be covered by others.

Total with Potholing **$ 84,950**

Exclusions and Clarifications

1 Assumes preliminary title report shall not contain more than five (5) plottable encumbrances.
2 Potholing not included except as utilized in the allowance
3 Staking for construction not included.
4 Assumes prevailing wages for field work.

34	**Design Build cost for synthetic 4-lane track with lane markings and new curbs are included in the target cost estimate.**

San Ysidro School District
San Ysidro Middle School Revitalization (NO BEYER)

Section 4.4.2.8. - TARGET COST (OPINION OF TARGET COST)

Thursday, July 25, 2024

DIRECT SYSTEM COSTS TARGET	METRIC	UOM	RATE	TOTAL VALUE
***GENERAL REQUIREMENTS	1.00	LS	1,200,000	$1,200,000
CAMPUS SITEWORK MODIFICATIONS	8.50	ACRE	500,000	$4,250,000
TRACK & FIELD UPGRADE	23333	SF	35.00	$816,655
ADMIN (OFFICE) RELOCATION-700 BLDG	13093	SF	350	$4,582,550
STUDENT INNOVATION CENTER-100 BLDG	7155	SF	250	$1,788,750
MULTI-CULTURAL CENTER	28138	SF	150	$4,220,700
CLASSROOMS-300 BLDG	10267	SF	150	$1,540,050
CLASSROOMS-400 BLDG	9432	SF	200	$1,886,400
CLASSROOMS-500 BLDG	8613	SF	150	$1,291,950
PHYSICAL EDUCATOIN BUILDING	7566	SF	150	$1,134,900
PATHWAYS MEDIA CENTER-800 BLDG	5030	SF	150	$754,500
FORMER LOCKER SHELTER-600 BLDG	2698	SF	125	$337,250
CLASSROOM MOVING ALLOWANCE	1	LS	100,000	$100,000
REPLACE VERSUS REPAIR ALLOWANCE	1	LS	300,000	$300,000
SUB-TOTAL: DIRECT COST TARGET				**$24,203,705**

CONTINGENCY BUDGETS	METRIC	UOM	RATE	TOTAL VALUE
DESIGN / ESTIMATING CONTINGENCY		%	8.00	$1,936,297
DBE CONSTRUCTION CONTINGENCY		%	3.00	$784,201
OWNER CONTINGENCY		%	3.00	$784,201
SUB-TOTAL: CONTINGENCY/ALLOWANCE BUDGETS				**$3,504,699**

DBE INDIRECT COSTS	METRIC	UOM	RATE	TOTAL VALUE
PRECONSTRUCTION FEES	1	LS	125000	$125,000
DESIGN FEES - PBK	1	LS	2140625	$2,140,625
CA FEES (DURING CONSTRUCTION) - PBK	1	LS	569250	$569,250
GENERAL CONDITIONS	14	MO	142500	$1,995,000
SURVEY / MAPPING ALLOWANCE	1	LS	84950	$84,950
COST LOADED SCHEDULE ALLOWANCE	1	LS	190000	$190,000
BONDS & INSURANCE (w/SAM)		%	3.40	$1,229,968
SDI / SUB-BONDS		%	1.50	$415,627
DB FEE		%	5.00	$1,716,692
SUB-TOTAL: DBE INDIRECT COSTS				**$8,467,112**
TOTAL: DBE TOTAL PROJECT COST TARGET				**$36,175,516**

ESCALATION	METRIC	UOM	RATE	TOTAL VALUE
ESCALATION TO CONSTRUCTION NTP		%	5.68	$1,764,816
ESCALATION FROM NTP TO MIDPOINT		%	1.98	$615,200
L: DBE TOTAL PROJECT COST TARGET (ESCALATED)				**$38,555,532**

TOTAL PROJECT COST TARGET RANGE				
LOW (-5%)				$36,627,755
TARGET				**$38,555,532**
HIGH (+25%)				$48,194,415

San Ysidro School District
San Ysidro Middle School Revitalization (NO BEYER)

Section 4.4.2.8. - TARGET COST (OPINION OF TARGET COST)

Thursday, July 25, 2024

DIRECT SYSTEM COSTS TARGET	METRIC	UOM	RATE	TOTAL VALUE	SYMS with Beyer (7/1/24 Proposal) TOTAL VALUE	Difference
***GENERAL REQUIREMENTS	1.00	LS	1,200,000	$1,200,000	$ 950,000	$ (250,000)
CAMPUS SITEWORK MODIFICATIONS	8.50	ACRE	500,000	$4,250,000	$ 4,250,000	$ -
TRACK & FIELD UPGRADE	23333	SF	35.00	$816,655	$ 4,582,550	$ -
ADMIN (OFFICE) RELOCATION-700 BLDG	13093	SF	350	$4,582,550	$ 1,788,750	$ -
STUDENT INNOVATION CENTER-100 BLDG	7155	SF	250	$1,788,750	$ 4,220,700	$ -
MULTI-CULTURAL CENTER	28138	SF	150	$4,220,700	$ 1,540,050	$ -
CLASSROOMS-300 BLDG	10267	SF	150	$1,540,050	$ 1,886,400	$ -
CLASSROOMS-400 BLDG	9432	SF	200	$1,886,400	$ 1,291,950	$ -
CLASSROOMS-500 BLDG	8613	SF	150	$1,291,950	$ 1,134,900	$ -
PHYSICAL EDUCATOIN BUILDING	7566	SF	150	$1,134,900	$ 754,500	$ -
PATHWAYS MEDIA CENTER-800 BLDG	5030	SF	150	$754,500	$ 337,250	$ -
FORMER LOCKER SHELTER-600 BLDG	2698	SF	125	$337,250	$ -	$ (100,000)
CLASSROOM MOVING ALLOWANCE	1	LS	100,000	$100,000	$ -	$ (300,000)
REPLACE VERSUS REPAIR ALLOWANCE	1	LS	300,000	$300,000		
SUB-TOTAL: DIRECT COST TARGET				**$24,203,705**	**$ 22,737,050**	**$ (1,466,655)**

CONTINGENCY BUDGETS	METRIC	UOM	RATE	TOTAL VALUE	TOTAL VALUE	
DESIGN / ESTIMATING CONTINGENCY		%	8.00	$1,936,297	$ 1,818,964	$ (117,333)
DBE CONSTRUCTION CONTINGENCY		%	3.00	$784,201	$ 736,681	$ (47,520)
OWNER CONTINGENCY		%	3.00	$784,201	$ 736,681	$ (47,520)
SUB-TOTAL: CONTINGENCY/ALLOWANCE BUDGETS				**$3,504,699**	**$ 3,292,326**	**$ (212,373)**

DBE INDIRECT COSTS	METRIC	UOM	RATE	TOTAL VALUE	TOTAL VALUE		
PRECONSTRUCTION FEES	1	LS	125000	$125,000	$ 125,000	$ -	
DESIGN FEES - PBK	1	LS	2140625	$2,140,625	$ 1,435,625	$ (705,000)	$200K increase includes updated target value and track
CA FEES (DURING CONSTRUCTION) - PBK	1	LS	569250	$569,250	$ 463,125	$ (106,125)	
GENERAL CONDITIONS	14	MO	142500	$1,995,000	$ 1,400,000	$ (595,000)	
SURVEY / MAPPING ALLOWANCE	1	LS	84950	$84,950	$ -	$ (84,950)	
COST LOADED SCHEDULE ALLOWANCE	1	LS	190000	$190,000	$ -	$ (190,000)	
BONDS & INSURANCE (w/SAM)		%	3.40	$1,229,968	$ 1,015,631	$ (214,337)	
SDI / SUB-BONDS		%	1.50	$415,627	$ 390,441	$ (25,186)	
DB FEE		%	5.00	$1,716,692	$ 1,383,039	$ (333,653)	
SUB-TOTAL: DBE INDIRECT COSTS				**$8,467,112**	**$ 6,212,861**	**$ (2,254,251)**	
TOTAL: DBE TOTAL PROJECT COST TARGET				**$36,175,516**	**$ 32,242,237**	**$ (3,933,279)**	

ESCALATION	METRIC	UOM	RATE	TOTAL VALUE		
ESCALATION TO CONSTRUCTION NTP		%	5.68	$1,764,816	$ -	$ (1,764,816)
ESCALATION FROM NTP TO MIDPOINT		%	1.98	$615,200	$ -	$ (615,200)
L: DBE TOTAL PROJECT COST TARGET (ESCALATED)				**$38,555,532**		

TOTAL PROJECT COST TARGET RANGE						
LOW (-5%)				$36,627,755	$ 30,630,130	$ (5,997,625)
TARGET				**$38,555,532**	**$ 32,242,237**	**$ (6,313,295)**
HIGH (+25%)				$48,194,415	$ 40,302,800	$ (7,891,615)

CONSTRUCTION COST TARGET RANGE *(WITHOUT DESIGN, OWNER CONTINGENCY AND ESCALATION COSTS)*						
LOW (-5%)				$31,469,406	$ 28,332,824	$ (3,136,582)
TARGET		Budget:	$30,000,000	**$33,125,690**	**$ 29,944,931**	**$ (3,180,759)**
HIGH (+25%)				$41,407,113	$ 38,005,494	$ (3,401,619)

ESCALATION		Months
Today	8/1/2024	0
NTP	6/1/2025	10
Midpoint	12/1/2025	6
Substantial	7/1/2026	13 From NTP

RATES	Annual	Monthly
2024 Q3-Q4	8%	0.67
2025 Q1-Q2	6%	0.5
2025 Q3-Q4	4%	0.33

CALCULATOR	
Rate to NTP	5.68
Rate to Midpoint	1.98

Total Amount			
		Values	Comments
Design / Precon			
	Design (AE) Fees	$ 2,140,625	
	Preconstuction Fees	$ 125,000	
	Total Design/Precon Fees	$ 2,265,625	
Construction			
	Construction Admin Fees (Design Team)	$ 569,250	
Ranges don't include design, owner's cont and escalation costs	Construction Target Cost Ranges	$ 31,469,406	-5% Lower than Target
	Construction Target Cost Ranges	$ 33,125,690	Target
	Construction Target Cost Ranges	$ 41,407,113	25% Higher than Target
	General Conditions	$ 190,000	14mos * $142,500 / mo ($100,000 + half of Beyer's GC's $85,000/2=$42,500)
	General Requirements	$ 1,200,000	($950,000 + $250,000 of Beyer's GR's)
	DBE Fee / Overhead & Profit	$ 1,716,692	5.00%
	Sub Bonds / SDI	$ 415,627	1.50%
	Insurance (including Builder's Risk)	$ 1,229,968	3.40% (1.15% GL, 0.85% Bonds, 1.15% BR, 0.25% SAM) BR could increase based on final BR Quote
Contingencies			
	Design	$ 1,936,297	8% Low for a Moderization at Program Level. Recommend increasing it to 12-15%
	Construction	$ 784,201	3% Low for a Moderization. Recommend increasing it to 5%
	Owner's	$ 784,201	3% Low for a Moderization.Recommend increasing it to 7-10%
	Escalation	$ 2,380,016	See table in target estimate
Allowances			
	Classroom moving allowance	$ 100,000	Included in Construction Target Cost Ranges
	Replace versus repaire allowance	$ 300,000	Included in Construction Target Cost Ranges
	Survey / Mapping Allowance	$ 84,950	Included in Construction Target Cost Ranges
	Cost loaded schedule allowance	$ 190,000	Included in Construction Target Cost Ranges

Markups	
Subontractor CO's	5.00%
Self-Perform CO's	10.00%

Staffing Costs / Rates		
CORE | CONAN		
	Project Executive	$ 215.00
	Project Manager	$ 135.00
	Project Superintendent	$ 142.00
	Project Engineer	$ 110.00
	Safety Officer	$ 125.00
	Estimator	$ 120.00
	Scheduler	$ 120.00
	MEP / BIM Manager	$ 125.00
	Project Coordinator	$ 95.00
PBK		
	Design Principle	$ 350.00
	Design Project Manager	$ 290.00
	Design Construction Administor	$ 200.00
	Design Job Captain	$ 180.00
	Designer	$ 130.00
	CADD Operator	$ 180.00

GENERAL CONDITIONS

ARTICLE 1 -DEFINITIONS AND TERMINOLOGY

1.1 Defined Terms.

A. Wherever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined below, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. Act of God -- Act of God is an earthquake of magnitude 3.5 or higher on the Richter Scale or a tidal wave.

2. Additional Work – New or unforeseen work will be classified as "Additional Work" when District's Representative determines that it is not covered by the Contract.

3. Applicable Laws -- The laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued by local, state or federal governmental authorities or private authorities with jurisdiction (including utilities), to the extent they apply to the Work.

4. Application for Payment -- The form acceptable to District's Representative which is to be used by the Design-Build Entity during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

5. Architect of Record or Engineer of Record ("A/E") -- The individual, partnership, corporation, joint venture, or other legal entity named as such in Article 1.1 or any succeeding entity designated by District.

6. Bridging Documents -- Includes, but is not limited to, the portions of the Contract Documents which constitute an outline of design requirements, Work, Project Program, Performance Specifications and schematic drawings.

7. Certificate for Payment -- The form signed by District's Representative attesting to the Design-Build Entity's right to receive payment for certain completed portions of the Work on the Project in accordance with Article 12.

8. Change Order ("CO") -- A document that authorizes an addition, deletion, or revision in the Work or an adjustment in the Guaranteed Maximum Price or the Project Completion Date, issued on or after the Effective Date of the Contract, in accordance with the Contract Documents and in the form contained in the Contract Documents.

9. Change Order Request ("COR") -- A request made by the Design-Build Entity for an adjustment in the Guaranteed Maximum Price and/or Project Completion Date as the result of a Design-Build Entity-claimed change to the Work. This term may also be referred to as a Change Order Proposal ("COP"), or Request for Change ("RFC").

10. District's Representative -- The individual or entity as identified in the Special Conditions to act as District's Representative.

11. Claim -- A demand or assertion by District or Design-Build Entity seeking an adjustment of the Guaranteed Maximum Price or Project Completion Date, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

12. Construction Documents -- The plans and technical specifications prepared by the Design-Build Entity for the Project and approved by District. The Construction Documents shall set forth in detail all items necessary to complete the construction (other than such details customarily provided by others during construction) of the Project in accordance with the Contract Documents. Following commencement of the Construction Phase, Construction Documents become part of the Contract Documents upon their completion and approval by District. All amendments and modifications to the Construction Documents must be approved by District in writing.

13. Construction Documents Phase – The second of three phases of the Work and will commence with the issuance of the approval of the Schematic Design Phase.

14. Construction Phase -- The third phase of the Work and will commence upon final approval of the Construction Documents by District.

15. Construction Work -- That portion of the Work on the Project consisting of the provision of labor, materials, furnishings, equipment and services in connection with the construction of the Project as set forth in the Contract Documents.

16. Contract -- The entire integrated written agreement between District and Design-Build Entity concerning the Work. "Contract" may be used interchangeably with "Agreement" in the Contract Documents. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral, and includes all Contract Documents.

17. Contract Documents -- The documents listed in Article 1.1.G. Some documents provided by District, including but not limited to reports and drawings of subsurface and physical conditions are not Contract Documents.

18. Contract Times -- The number of days or the dates stated in the Contract Documents and Master Project Schedule to: achieve defined Milestones, if any, and to complete the Work so that it is ready for final payment.

19. Cost Breakdown -- A Cost Breakdown/Schedule of Values for each phase of Work shall be submitted by the Design-Build Entity as required pursuant to Article 12 herein and are incorporated into the Contract Documents by reference.

20. Daily Rate – The Daily Rate stipulated in the Contract Documents as full compensation to the Design-Build Entity due to District's unreasonable delay to the Project that was not contemplated by the parties.

21. Day -- A calendar day of 24 hours measured from midnight to the next midnight.

22. Defective Work -- Work that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referenced in the Contract Documents.

23. Demobilization – The complete dismantling and removal by the Design-Build Entity of all of the Design-Build Entity's temporary facilities, equipment, and personnel at the Site.

24. Design-Build Entity -- The individual or entity with which District has contracted for performance of the Work.

25. Design-Build Entity Representative -- The person or firm identified as the primary contact person and representative of the Design-Build Entity as designated in the Contract and who shall not be changed without prior written consent of District.

26. Design Materials -- Any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by, or for, the Design-Build Entity: (1) to District under the Contract Documents or; (2) developed or prepared by or for the Design-Build Entity specifically to discharge its duties under the Contract Documents.

27. Design Professional -- The individuals or entities who will provide the Design-Build Entity with the required architectural, engineering, and other professional services required for the coordinated design of the Project and the administration of construction.

28. Design Work -- The portion of the Work on the Project consisting of the Design services and design deliverables required to be provided in connection with the Design of the Project as set forth in the Contract Documents.

29. Drawings -- The graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work to be done on the Project, generally including plans, elevations, sections, details, schedules, and diagrams prepared as part of the Design Materials. The Drawings are listed in the List of Drawings.

30. Effective Date of the Contract – The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.

31. Equipment Manufacturer -- Any Separate Contractor that fabricates and/or supplies any of District's provided equipment which is installed in the Project by the Design-Build Entity.

32. Governmental Approvals -- Those governmental actions required to be obtained by District and necessary for the completion of the Project.

33. Guaranteed Maximum Price ("GMP") -- The guaranteed maximum price District will pay for the completion of all Work described in the Contract Documents. The GMP is set forth in Article 1.1 of the Design-Build Contract and further described in the cost proposal submitted by the Design-Build Entity.

34. Hazardous Environmental Condition – The presence at the Site of Hazardous Waste.

35. Hazardous Waste – Has the same meaning provided in Section 104 of the Solid Waste Disposal Act (42 U.S.C. § 6903) as amended from time to time or, 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, whichever is more restrictive.

36. Holidays -- The Holidays occur on:

    New Year's Day - January 1
    Memorial Day - Last Monday in May
    Independence Day - July 4
    Labor Day - First Monday in September
    Veteran's Day - November 11
    Thanksgiving Day - Fourth Thursday in November
    Friday after Thanksgiving
    Christmas Day - December 25

    If any Holiday listed above falls on a Saturday, Saturday and the preceding Friday are both Holidays. If the Holiday should fall on a Sunday, Sunday and the following Monday are both Holidays.

37. Liens – Charges, security interests, or encumbrances upon Project funds, or personal property, including without limitation Stop Payment Notices.

38. Master Project Schedule -- The overall schedule for completion of the Project as prepared by District and included in the RFP.

39. Milestones – A principal event specified in the Contract Documents associated with a required completion date or time prior to Completion of all the Work. Failure to achieve Milestones may result in Liquidated Damages as described in the Contract Documents.

40. Notice of Award – The written notice by District to the Design-Build Entity stating that upon timely compliance by the Design-Build Entity with the conditions precedent listed therein, District will sign and deliver the Contract.

41. Notice of Completion – The form which may be executed by District and recorded by the county where the Project is located constituting final acceptance of the Project.

42. Notice to Proceed -- A written notice given by District to the Design-Build Entity fixing the date on which the Design-Build Entity may proceed with the Work and when Contract Times will commence to run.

43. Partial Utilization – Use by District of a substantially completed part of the Work prior to Completion of all the Work.

44. Performance Specifications -- That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto included within the Bridging Documents.

45. Project -- The total design and construction of which the Work performed under the Contract Documents may be the whole, or a part, and which may include separate design or construction work performed by District or by Separate Contractors for the Project.

46. Project Completion Date -- The date by which the Design-Build Entity agrees that all Work described in the Contract Documents shall be completed. The Project Completion Date is set forth in Article 1.1 of the Design-Build Contract.

47. Project Schedule -- The graphical representation of a practical plan to complete the Work on the Project within the Project Completion Date and other Contract Times as a part of the Master Project Schedule. The detailed requirements for the Project Schedule are stated in Article 6.

48. Proposal -- The proposal submitted by the Design-Build Entity in response to the Request for Proposal for this Project.

49. Request for Proposal ("RFP") -- The request for proposal issued by District for the Project and includes all documents, exhibits, attachments, and addenda thereto.

50. Samples -- Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

51. Schematic Design Phase -- The first of three phases of the Work. The scope of the Schematic Design Phase is further defined in the RFP.

52. Separate Contractor -- A person, or firm, under separate contract with District performing other work at the Project site which may affect the Work.

53. Shop Drawings -- All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Design-Build Entity and submitted by Design-Build Entity to illustrate some portion of the Work.

54. Site -- Lands or areas indicated in the Contract Documents as being furnished by District upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by District which are designated for the use of Design-Build Entity.

55. Stop Payment Notice -- A written notice as defined in Civil Code section 8044.

56. Subcontractor – An individual or entity that has a contract with the Design-Build Entity or with a Subcontractor of the Design-Build Entity to perform a portion of the Work on the Project. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of all tiers.

57. Submittal - Written or graphic information and physical samples prepared and supplied by the Design-Build Entity demonstrating various portions of the Work.

58. Supplier -- A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Design-Build Entity or with any Subcontractor to furnish materials or equipment used in the performance of the Work or to be incorporated in the Work.

59. Technical Specifications – All documents developed by the Design-Build Entity during the Schematic Design Phase and which are ready for final construction.

60. Tier -- The contractual level of a Subcontractor or supplier or consultant with respect to the Design-Build Entity. For example, a first tier Subcontractor is under subcontract with the Design-Build Entity, a second tier Subcontractor is under subcontract with a first tier Subcontractor, and so forth.

61. Unexcusable Delay -- Any delay other than an Excusable Delay, as described in Articles 9 and 10 of these General Conditions, that does not entitle the Design-Build Entity to an adjustment of the Guaranteed Maximum Price and does not entitle the Design-Build Entity to an adjustment of the Project Completion Date.

62. Warranty A written guarantee provided to District by the Design-Build Entity that the Work remain free of defects and suitable for its intended use for the period required by the Contract Documents or the longest period permitted by the law of this State, whichever is longer.

63. Work -- The entire design and construction, or the various separately identifiable parts thereof, required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such design and construction, and furnishing, installing, and incorporating all materials and equipment into such design and construction, all as required by the Contract Documents.

1.2 Terminology.

A. The words and terms below are not defined but, when used in the Contract Documents, have the indicated meaning.

B. Furnish, Install, Perform, Provide.

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Project site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. Regardless of whether “furnish,” “install,” “perform,” or “provide” is used in connection with services, materials, or equipment, an obligation of Design-Build Entity is implied.

C. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning

ARTICLE 2 -PRELIMINARY MATTERS

2.1 Delivery of Contract Documents.

A. Within fifteen (15) Days after receipt of the Notice of Award and before District will execute the Contract, the Design-Build Entity shall furnish and file with District a signed Contract in duplicate and the necessary Performance Bond, Payment Bond, Certificates of Insurance and Endorsements, Escrow Agreement (if used) and Tax Identification Number, as well as any other documents specified in the Contract Documents.

2.2 Bonds.

A. Design-Build Entity shall submit the bonds onthe forms provided with the Contract Documents, duly executed by a responsible corporate surety admitted to transact surety business in the State of California, as defined in Code of Civil Procedure section 995.120, and listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California and acceptable to District conditioned upon the faithful performance by the Design-Build Entity of all requirements of the Contract Documents. Each of the bonds shall be in a sum no less than one hundred percent (100%) of the Guaranteed Maximum Price.

2.3 Evidence of Insurance.

A. Design-Build Entity shall obtain, at its sole cost and expense, all insurance required by Article 5. Certificates of such insurance and copies of the insurance policies and endorsements shall be delivered to District within fifteen (15) Days after receipt of the Notice of Award and before execution of the agreement for construction by District.

2.4 Execution of Contract.

A. Upon receipt of the required Contract Documents, District will execute the Contract, establishing the Effective Date of the Contract.

2.5 Commencement of Contract Times; Notice to Proceed.

A. District will not issue a Notice to Proceed until after the Effective Date of the Contract.

B. Work shall commence within fifteen (15) Days of the date stated in District's Notice to Proceed.

C. The Contract Times begin to run on the Day the Design-Build Entity commences Work. If the Design-Build Entity fails to commence Work as required herein, the Contract Times commence on the fifteenth (15th) Day after the date stated in the Notice to Proceed.

D. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

E. Nothing herein shall affect the Project Completion Date.

2.6 Copies of Documents.

A. District will furnish to Design-Build Entity one (1) copy of the Bridging Documents electronically. Additional copies will be furnished upon request at the cost of reproduction.

2.7 Preconstruction Conference; Designation of Authorized Representatives.

A. Before any Work at the Project site is started, a conference attended by District, Design-Build Entity, District's Representative, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to herein, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

B. At this conference District and Design-Build Entity each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.8 Initial Acceptance of Schedules.

A. At least ten (10) Days before submission of the first Application for Payment, a conference attended by Design-Build Entity, District's Representative, and others as appropriate will be held to review for acceptability to District's Representative the schedules submitted, as required by the Contract Documents. Design-Build Entity shall have an additional ten (10) Days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Design-Build Entity until acceptable schedules are submitted to District's Representative.

B. Acceptance of the schedules by District's Representative will not impose on responsibility for accuracy, for sequencing, scheduling, or progress of the Work, or compliance with the Contract Documents. Acceptance will not interfere with or relieve Design-Build Entity from Design-Build Entity's full responsibility therefor.

2.9 Subcontractor Mobilization Meeting.

Prior to the start of each major Subcontractor's Site Work, the Design-Build Entity, the involved Subcontractor, and District's Representative shall attend a pre-start meeting to discuss the schedule, coordination, procedures, and other administrative issues.

2.10 Project Signage.

District will permit a single project sign, which shall be subject to District's prior and sole discretion and approval, as to all matters including, without limitation, size, location, material, colors, style and size of printing, logos and trademarks (if any), text, and selection of names to be displayed.

ARTICLE 3 -CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.1 Intent.

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be designed and constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to District.

C. Clarifications and interpretations of the Contract Documents shall be issued by District's Representative as provided in these General Conditions.

D. If utilities to equipment/fixtures are not shown but are necessary to operate the equipment/fixtures, the utilities service installation is considered to be part of the Work. The implied Work will conform to the appropriate sections of the Contract Documents.

E. Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the Design-Build Entity in dividing Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

3.2 Reference Standards.

A. Standards, Specifications, Codes, Laws, and Regulations.

1. Reference to federal specifications, federal standards, other standards, specifications, manuals, or codes of any technical society, organization, or association, or to Applicable Laws, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Applicable Laws in effect at the time of opening of proposals (or on the Effective Date of the Contract if there were no proposals), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, or code, or any instruction of a supplier, shall be effective to change the duties or responsibilities of District, Design-Build Entity, or District's Representative, or any of their Subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to District or District's Representative, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.3 Order of Precedence.

The intent of the Contract Documents is to include all necessary criteria to establish the scope and quality for completion of the Work on the Project by the Design-Build Entity. The Contract Documents are complementary and what is required by one shall be as binding as if required by all. Performance by the Design-Build Entity shall be required to the extent consistent with, and reasonably inferable from, the Contract Documents.

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

   a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or

   b. the provisions of any Applicable Laws (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Applicable Law).

A. In resolving conflicts among any of the Contract Documents, the order of precedence shall be as follows:

1. Permits from other agencies as may be required by law;

2. Change Orders or Pending Change Orders, most recent first;

3. Attachment 5 to the Contract: Enhancements/Additional Scope of Work Terms and Conditions and Attachment 6 to the Contract: Exclusions/Clarifications of Scope by the Design-Build Entity;

4. Design-Build Contract;

5. Special Conditions;

6. General Conditions;

7. RFP and all addenda, attachments and appendices;

8. Design-Build Entity Proposal in response to RFP;

9. Technical Specifications prepared by Design-Build Entity;

10. Drawings prepared by Design-Build Entity;

11. Request for Qualifications and all addenda, attachments and appendices; and

12. Design-Build Entity Statement of Qualifications in response to Request for Qualifications.

B. With reference to the Drawings the order of precedence shall be as follows:

1. Figures govern over scaled dimensions;

2. Detail drawings govern over general drawings;

3. Change Order drawings govern over Drawings;

4. Drawings govern over standard drawings.

C. Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard, higher quality and most expensive shall always apply.

3.4 Amending and Supplementing Contract Documents.

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof only by a Change Order.

3.5 Interpretation and Use of Contract Documents.

A. District and the Design-Build Entity acknowledge that the Contract Documents may differ in some respect(s) from the other documents included in the RFP upon which the Design-Build Entity based its Proposal. Prior to the commencement of construction on the Project, the parties shall confirm, in writing, the final form of the Contract Documents that are to be utilized. Specifically, once approved by District, the Construction Documents become a part of the Contract Documents and define the

entire scope of work, so long as such documents incorporate all minimum requirements of the design criteria and performance specifications set forth in the RFP as may be amended by the Contract Documents. The Design-Build Entity shall certify that the Construction Documents are in full compliance with the Contract Documents, except as noted.

B. As described in the RFP, the construction materials, items, supplies, etc., including the quality and/or quantity of such items, specified in the Design-Build Entity's proposal for the design and construction of the Project represent a substantive basis which District factored into its determination of the "best value" for award of the Contract. Any change in such materials, items, supplies, etc. from those specified in the Design-Build Entity's proposal (and subsequently incorporated into the Contract Documents) during the design and construction of the Project requires the express written authorization of District pursuant to Article 9.

C. Organization of the Performance Specifications into various subdivisions and the arrangement of the Drawings shall not control the Design-Build Entity in dividing portions of the Work necessary for the Project among Subcontractors or in establishing the extent of Work to be performed by any trade.

D. Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood design professional and construction industry meanings; nontechnical words and abbreviations are used in accordance with their commonly understood meanings.

E. The Contract Documents may omit modifying words such as "all" and "any," and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word "including," when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non limiting language (such as "without limitation," "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

F. Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include a corporation, partnership, trust, or other legal entity, whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

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

H. Before commencing any Work on the Project, the Design-Build Entity shall check and review the Contract Documents, including the Construction Documents, for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental authorities and public utilities affecting the construction and operation of the physical plant of the Project, all quasi-governmental and other regulations affecting the construction and operation of the physical plant of the Project, and other special requirements, if any, designated in the Contract. In the event the Design-Build Entity observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract, the Design-Build Entity shall immediately notify District's Representative in writing of the same and shall cause to be corrected any such violation or inconsistency in the manner provided hereunder. The Design-Build Entity shall be solely liable for any such violation, inconsistency or special requirement, if Design-Build Entity fails to conduct such review or notification to District.

I. Before commencing any Work on the Project, the Design-Build Entity shall carefully examine all Performance Specifications, the Contract, the Contract Documents and other information given to the Design-Build Entity as to Project requirements. The Design-Build Entity shall immediately notify District's Representative of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in such documents in writing. Neither the Design-Build Entity nor any Subcontractor shall take advantage of any apparent error or omission which may be found in the Performance Specifications, the Contract, the Contract Documents or other information given to Design-Build Entity. If the Design-Build Entity or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any Work under the Contract, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, the Design-Build Entity shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Guaranteed Maximum Price or the Project Completion Date. In no case shall any Subcontractor proceed with Work if uncertain without the Design-Build Entity's written direction and/or approval.

3.6 Reuse of Documents.

A. Design-Build Entity and any Subcontractor shall not:

1. have or acquire any title to or Ownership rights in any of the Drawings, Technical Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of the A/E or its consultants, including electronic media editions; or

2. reuse of any such Drawings, Technical Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of District and A/E and specific written verification or adaptation by the A/E.

B. The prohibitions of this Article 3.6 will survive final payment, or termination of the Contract. Nothing herein shall preclude Design-Build Entity from retaining copies of the Contract Documents for record purposes.

3.7 Electronic Data.

A. Unless otherwise stated in the Special Conditions, the data furnished by District or District's Representative to Design-Build Entity, or by Design-Build Entity to District or District's Representative, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within sixty (60) Days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-Day acceptance period will be corrected by the transferring party.

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

3.8 Ownership and Use of Construction Documents.

A. The Construction Documents, and all copies thereof, furnished to, or provided by, the Design-Build Entity are the property of District. District and the Design-Build Entity explicitly agree that all materials and documents developed in the performance of this Contract are the property of District pursuant to the requirements of District. District shall have unlimited rights, for the benefit of District, in all drawings, designs, technical specifications, notes and any other documentation and other Work developed in the performance of this Contract for the Project, including the right to re-use details of the Design on any other District Work at no additional cost to District. The Design-Build Entity agrees to, and hereby does, grant to District a royalty free license to all such data that the Design-Build Entity may cover by copyright and to all designs as to which the Design-Build Entity may assert any right or establish any claim to under the patent or copyright laws. The Design-Build Entity, for a period up to five (5) years from the date of Completion of the Project, agrees to furnish and to provide access to the originals or copies of all such materials immediately upon the written request of District. Any use or reuse by District of the Construction Documents on any project other than this Project without employing the services of the Design-Build Entity shall be at District's own risk with respect to third parties. If District uses or re-uses the Construction Documents on any project other than this Project, it shall remove the A/E's seal from the Construction Documents and hold harmless Design-Build Entity, A/E, and their officers, directors, agents and employees from claims arising out of the use or re-use of the Construction Documents on such other project. Design-Build Entity shall not be responsible or liable for any revisions to the Construction Documents made by any party other than the Design-Build Entity, a party for which the Design-Build Entity is legally responsible or liable, or anyone approved by the Design-Build Entity.

3.9 Administration of the Contract by District's Representative.

A. During the term of this Design-Build Contract, District's Representative shall have the right to review the Design-Build Entity's Work at such intervals as deemed appropriate by District's Representative. However, no actions taken during such review or site visit by District's Representative shall relieve the Design-Build Entity of any of its obligations of single point responsibility for the design and construction of this Project nor form the basis for a Claim if such actions extend beyond the Project Completion Date.

B. District's Representative will not have control over, will not be in charge of, and will not be responsible for design or construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work on the Project, since these are solely the Design-Build Entity's responsibility.

C. Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, District and the Design-Build Entity shall communicate through District's Representative. Communications by the Design-Build Entity with District's consultants and District's Representative's consultants shall be through District's Representative. Communications by District and District's Representative with Subcontractors will be through the Design-Build Entity. Communications by the Design-Build Entity and Subcontractors with Separate Contractors shall be through District's Representative. The Design-Build Entity shall not rely on oral or other non-written communications.

D. Based on District's Representative's Project site visits, review of the Work, and evaluations of the Design-Build Entity's Applications for Payment, District's Representative will recommend amounts, if any, due the Design-Build Entity and will issue Certificates for Payment in such amounts.

E. District's Representative will have the authority to reject Work on the Project, or any portion thereof, which does not conform to the Contract Documents. District's Representative will have the authority to stop Work on the Project, or any portion thereof. Whenever District's Representative considers it necessary, or advisable, for implementation of the intent of the Contract Documents, District's Representative will have the authority to require additional inspection or testing of the Work on the Project in accordance with the Contract Documents, whether or not such Work is fabricated, installed, or completed. However, no authority of District's Representative conferred by the Contract Documents nor any decision made in good faith either to exercise, or to not exercise such authority, will give rise to a duty or responsibility of District or District's Representative to the Design-Build Entity, or any person or entity claiming under, or through, the Design-Build Entity.

F. District's Representative will have the authority to conduct inspections in connection with Beneficial Occupancy and to determine the dates of Completion; will receive for review and approval any records, written warranties, and related documents required by the Contract Documents and assembled by the Design-Build Entity; and will issue a final Certificate for Payment upon the Design-Build Entity's compliance with the requirements of the Contract Documents.

G. District's Representative will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of performance thereunder by the Design-Build Entity. Should the Design-Build Entity discover any conflicts, omissions, or errors in the Construction Documents or the Contract Documents; have any questions about the interpretation or clarification of the Contract Documents; question whether Work is within the scope of the Contract Documents; then, before proceeding with the Work affected, the Design-Build Entity shall notify District's Representative in writing and request interpretation, or clarification. District's Representative's response to questions and requests for interpretations, clarifications, instructions, or decisions will be made with reasonable promptness. Should the Design-Build Entity proceed with the Work affected before receipt of a response from District's Representative, any portion of the Work on the Project which is not done in accordance with District's Representative's interpretations, clarifications, instructions, or decisions shall be removed or replaced and the Design-Build Entity shall be responsible for all resultant losses.

H. District may at any time and from time to time, without prior notice to or approval of the Design-Build Entity, replace District's Representative with a new District Representative. Upon receipt of notice from District informing the Design-Build Entity of such replacement and identifying the new District's Representative, the Design-Build Entity shall recognize such person or firm as District's Representative for all purposes under the Contract Documents.

ARTICLE 4 -AVAILABILITY AND OWNERSHIP OF LANDS AND MATERIALS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.1 Availability of Lands.

A. District shall furnish the Project site. District shall notify Design-Build Entity of any encumbrances or restrictions not of general application but specifically related to use of the Project site with which Design-Build Entity must comply in performing the Work. District will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities.

B. Design-Build Entity shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment at no additional cost to District.

4.2 Ownership of Site Materials Found.

A. The title to water, soil, rock, gravel, sand, minerals, timber and any other materials developed or obtained in the excavation or other operations of Design-Build Entity or any of its Subcontractors in the performance of the Contract, and the right to use said items in carrying out the Contract, or to dispose of same, is hereby expressly reserved by District. Neither Design-Build Entity nor any of its Subcontractors nor any of their representatives or employees shall have any right, title, or interest in said materials, nor shall they assert or make any claim thereto. Design-Build Entity will, as determined by District's Representative, be permitted to use in the Work without charge, any such materials which meet the requirements of the Contract Documents, provided District shall have the right to use or consume these materials without payment to a third party.

4.3 Hazardous Environmental Conditions at Site.

A. Reports and Drawings. The Special Conditions identify those reports and drawings known to District relating to Hazardous Environmental Conditions that have been identified at the Site.

B. Limited Reliance by Design-Build Entity on Technical Data Authorized. Design-Build Entity may rely upon the accuracy of the "technical data" contained in such reports and drawings but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Special Conditions. Design-Build Entity shall make its own interpretation of the "technical data" and shall be solely responsible for any such interpretations. Except for reliance on the accuracy of such "technical data," Design-Build Entity may not rely upon or make any claim against District or District's Representative, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Design-Build Entity's purposes, including without limitation any aspects of the means, methods, techniques, sequences, and procedures of design or construction to be employed by Design-Build Entity and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Design-Build Entity interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. Design-Build Entity shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Construction Documents or identified in the Contract Documents to be within the scope of the Work. Design-Build Entity shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Design-Build Entity, Subcontractors, Suppliers, or anyone else for whom Design-Build Entity is responsible.

D. If Design-Build Entity encounters a Hazardous Environmental Condition or if Design-Build Entity or anyone for whom Design-Build Entity is responsible creates a Hazardous Environmental Condition, Design-Build Entity shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an Emergency); and (iii) notify District and District's Representative (and promptly thereafter confirm such notice in writing). District shall promptly consult with District's Representative concerning the necessity for District to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. Design-Build Entity shall not be required to resume Work in connection with such condition or in any affected area until after District has obtained any required permits related thereto and delivered written notice to Design-Build Entity: (i) specifying that such condition and any affected area is or has been rendered safe

for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely.

F. If after receipt of such written notice Design-Build Entity does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then District may order the portion of the Project that is in the area affected by such condition to be deleted from the Work in accordance with the Contract Documents. District may have such deleted portion of the Project performed by District's own forces or others.

G. To the fullest extent permitted by Applicable Laws, Design-Build Entity shall indemnify, defend, and hold harmless District and District's Representative, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created, in whole or in part, by Design-Build Entity or by anyone for whom Design-Build Entity is responsible. Nothing in this Section shall obligate Design-Build Entity to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

4.4 Protection and Restoration of Existing Improvements and Reference Points.

A. Design-Build Entity shall be responsible for confirming whether any historical stamps/impressions or survey monuments are located on existing sidewalks or curbs, which may be affected by the Work or construction activities. Design-Build Entity shall be solely responsible for ensuring that the design provides for the protection of existing improvements.

B. Design-Build Entity shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of District. Design-Build Entity shall report to District's Representative whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

ARTICLE 5 -BONDS AND INSURANCE

5.1 Time for Compliance. Design-Build Entity shall not commence Work under this Contract until it has provided evidence to District that it has secured all insurance required under this Section. Design-Build Entity shall require and verify that all subconsultants and subcontractors maintain insurance meeting all the requirements stated herein. Design-Build Entity shall not allow any subconsultant or subcontractor to commence work on any subcontract until it has provided evidence to District that the subconsultant or subcontractor has secured all insurance required under this Article.

5.2 Minimum Requirements. Design-Build Entity shall, at its expense, procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages

to property which may arise out of or result from the performance of the Work and Design-Build Entity's other obligations under the Contract Documents whether by Design-Build Entity, its agents, representatives, employees or subcontractors. Design-Build Entity shall procure and maintain for the duration of the Contract insurance that shall meet at least the minimum levels of coverage set forth in this Article:

A. Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto) or if Design-Build Entity has no owned autos, non-owned, leased or hired autos Code 8 (hired) and Code 9 (non-owned); (3) Workers' Compensation and Employer's Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance; (4) Installation Floater/Builder's Risk: "All Risk All Perils" form; (5) Professional Liability/Errors and Omissions; and (6) Sexual Abuse and Molestation Liability as required by the State of California. The policies shall not contain any exclusion contrary to the Contract, including but not limited to endorsements or provisions limiting coverage for (1) contractual liability or (2) cross liability for claims or suits by one insured against another.

B. Minimum Limits of Insurance. The Design-Build Entity shall maintain limits no less than:

1. For Commercial General Liability, Design-Build Entity shall have limits of at least the amount that corresponds to the Guaranteed Maximum Price in the following table:

Guaranteed Maximum Price	**Amount of Liability Insurance** (per occurrence)
$ 0 - $ 2 million	$ 2 million
$ 2 million - $ 5 million	$ 3 million
$ 5 million - $ 10 million	$ 5 million
$10 million - $ 20 million	$10 million

If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 25 03, either the general aggregate limit shall apply separately to the Project or the general aggregate limit shall be twice the required occurrence limit. Should any of the Work involve aircraft (fixed wing or helicopter) owned or operated by Design-Build Entity, liability insurance with limits of not less than $5,000,000 per occurrence for bodily injury and property damage is required. Should any of the Work involve watercraft owned or operated by Design-Build Entity, liability insurance with limits of not less than $5,000,000 per occurrence for bodily injury and property damage is required.

2. Automobile Liability: $1 million per accident for bodily injury and property damage.

3. Workers' Compensation and Employer's Liability:

   a. Workers' Compensation: statutory limits.

b. Employer's Liability limits of $1 million per accident for bodily injury or disease.

c. Should any of the Work be upon or contiguous to navigable bodies of water, Design-Build Entity shall carry insurance covering its employees for benefits available under the Federal Longshoremen's and Harbor Worker's Act to the extent required by law;

4. Excess/Umbrella Liability Policy may be provided to insure the total limits required for Commercial General Liability and Automobile Liability and must apply to all primary coverage afforded, including but not limited to general liability, owned and non-owned automobiles, leased and hired cars.

5. Professional Liability/Errors and Omissions: $5,000,000 per claim.

6. Sexual Abuse and Molestation Liability: Not less than $1,000,000 per occurrence, and $2,000,000 aggregate.

C. Notices; Cancellation or Reduction of Coverage. At least fifteen (15) Days prior to the expiration of any such policy, evidence showing that such insurance coverage has been renewed or extended shall be filed with District. If such coverage is cancelled or materially reduced, Design-Build Entity shall, within ten (10) Days after receipt of written notice of such cancellation or reduction of coverage, file with District evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. In the event any policy of insurance required under this Contract does not comply with these specifications or is canceled and not replaced, District has the right but not the duty to obtain the insurance it deems necessary and any premium paid by District will be promptly reimbursed by Design-Build Entity or District may withhold amounts sufficient to pay premium from Design-Build Entity payments. In the alternative, District may suspend or terminate this Contract.

5.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Design-Build Entity shall provide endorsements on forms approved by District to add the following provisions to the insurance policies:

A. General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) using ISO CG forms 20 10 and 20 37 (including completed operations), or endorsements providing the exact same coverage, District, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions shall be covered as additional insureds with respect to the Work or ongoing and completed operations performed by or on behalf of the Design-Build Entity, including materials, parts or equipment furnished in connection with such work; and (2) using ISO form 20 01, or endorsements providing the exact same coverage, the insurance coverage shall be primary insurance as respects District, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions, or if excess, shall stand in an unbroken chain of coverage excess of the Design-Build Entity's scheduled underlying coverage. Any excess insurance shall contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of District, before District's own

primary insurance or self-insurance shall be called upon to protect it as a named insured. Any insurance or self-insurance maintained by District, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions shall be excess of the Design-Build Entity's insurance and shall not be called upon to contribute with it in any way.

B. Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) District, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Design-Build Entity or for which the Design-Build Entity is responsible; and (2) the insurance coverage shall be primary insurance as respects District, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions, or if excess, shall stand in an unbroken chain of coverage excess of the Design-Build Entity's scheduled underlying coverage. Any insurance or self-insurance maintained by District, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions shall be excess of the Design-Build Entity's insurance and shall not be called upon to contribute with it in any way.

C. Workers' Compensation and Employer's Liability Coverage. The insurer shall agree, using WC 00 03 13 or the exact equivalent, to waive all rights of subrogation against District, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions for losses paid under the terms of the insurance policy.

D. Professional Liability/Errors and Omissions. Professional Liability Insurance insuring the A/E, its officers, directors, stockholders, employees, agents, or partner, and all other persons for whose acts the A/E may be liable, against any and all liabilities arising out of or in connection with the negligent acts, errors or omissions of any of the foregoing in connection with the carrying out of their professional responsibilities described in this Contract. Professional Liability Insurance shall remain in full force and effect, and shall be so certified to District by the insurer, for a period of five (5) years after the completion of all of the Design-Build Entity's services hereunder and District's acceptance of the Project. All subconsultants shall have professional liability insurance with the same limits (additional requirements for Professional Liability/Errors and Omissions Insurance written on a "claims made" basis are set forth below).

E. Sexual Abuse and Molestation Liability. This insurance shall be endorsed to include contractual liability.

F. All Coverages. Each insurance policy required by this Agreement shall be endorsed to include the following provisions:

1. coverage shall not be suspended, voided, reduced or canceled except after thirty (30) Days (10 Days for nonpayment of premium) prior written notice by mail has been given to District and all additional insureds.

2. any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to District and any other additional insureds.

3. standard separation of insureds provisions.

4. no special limitations on the scope of protection afforded to District, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions.

5. waiver of any right of subrogation of the insurer against District, its officials, officers, employees, agents, and volunteers, or any other additional insureds, or shall specifically allow the Design-Build Entity or others providing insurance in compliance with these specifications to waive their right of recovery prior to a loss. By signing this agreement, the Design-Build Entity hereby waives its own right of recovery against District or any other additional insureds, and shall require similar written express waivers and insurance clauses from each of its subconsultants and subcontractors.

5.4 Installation Floater Insurance Shall Be for the Total Value of Project. The policy shall be written on an "All Risk, All Perils" form, to include coverage for earthquake, flood, and Acts of God (as defined in Public Contract Code Section 7105), insuring for physical loss or damage to the Work, false work, completed work, work in progress, material, supplies, and equipment of the Project site, but also to property at off-site storage locations and in transit, without regard to the location of the covered property. The premium for the Acts of God insurance shall be included as a separate item number in the Cost Proposal and shall be provided to District prior to commencement of the Construction phase of the Project. The policy shall be issued on a replacement cost basis, and shall insure against at least the following perils or causes of loss: fire, lightning, weather damage, explosion, extended replacement cost coverage, theft, vandalism, malicious mischief, collapse, debris removal, aircraft, demolition occasioned by enforcement of Applicable Laws, water damage from any source, snow, sleet, hail, wind, acts of terrorism, and such other perils not specifically listed. The policy shall include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects), allow for Partial Utilization of the Work by District, and include testing and startup.

If the replacement cost increases during the course of construction, additional insurance limits must be purchased by the Design-Build Entity.

Should any of the Work involve construction or remodeling of, or addition to, a building or buildings, then Builder's Risk/Course of Construction Coverage shall be added to the Installation Floater Insurance. The Builder's Risk/Course of Construction coverage shall also include the perils of Acts of God, flood and earthquake.

Installation Floater Insurance deductible amounts may be selected by the Design-Build Entity, but shall not exceed the maximum allowable deductible for the Guaranteed Maximum Price of the Project in the table set forth below. The maximum allowable deductibles for the perils of earthquake and flood shall not be greater than five percent of the value at risk at the time of loss.

Guaranteed Maximum Price			All Risk Perils Maximum Deductible
$ 0		$ 2,000,000	$ 10,000
$ 2,000,001		$ 5,000,000	$ 20,000
$ 5,000,001		$ 10,000,000	$ 50,000
$ 10,000,001	--	$ 50,000,000	$ 100,000

Installation Floater Insurance policy shall name District, Design-Build Entity, Subconsultants, and Subcontractors as insureds, with deductible amounts, if any, for the sole account of and payable by Design-Build Entity. Loss under Installation Floater Insurance shall be adjusted with and payable to District for the interest of all parties.

The amount of Installation Floater Insurance shall be sufficient to protect against such loss or damage in full until all Work is accepted by District. The premium for Installation Floater Insurance will be paid by Design-Build Entity.

5.5 Pollution Liability insurance is required should any of the Project involve pollutants. Liability coverage shall include coverage for the environmental risk associated with the project and expenses related to such, including bodily injury, property damage, on and off site clean-up, transporting, carrying, or storing pollutants, coverage for non-owned disposal site in an amount not less than that set forth in the Special Conditions.

Pollutants include, but are not limited to, asbestos, mold, microbial matter, solid, liquid, gaseous or thermal irritants or contaminants, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.

5.6 Receipt and Application of Insurance Proceeds.

Any insured loss under the policies of insurance required herein will be adjusted with District and made payable to District as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of the provisions herein. District shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Project and the cost thereof covered by an appropriate Change Order.

District as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing to District's exercise of this power within fifteen (15) Days after the occurrence of loss. If such objection be made, District as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, District as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, District as fiduciary shall give bond for the proper performance of such duties.

5.7 Partial Utilization, Acknowledgement of Property Insurer.

If District finds it necessary to occupy or use a portion or portions of the Project prior to Completion of all the Work, no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

5.8 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by District. Design-Build Entity shall guarantee that, at the option of District, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects District, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions; or (2) the Design-Build Entity shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

5.9 Claims Made Policies. Claims made policies are not acceptable other than for Professional Liability. In addition to the requirements above, for any claims made policy:

A. The Retroactive Date must be shown and must be before the date of the Contract or the beginning of contract work.

B. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after District's acceptance of the Work.

C. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Design-Build Entity must purchase "extended reporting" coverage for a minimum of five (5) years after District's acceptance of the Work.

5.10 Subcontractor Insurance Requirements. Design-Build Entity shall not allow any subcontractors to commence work on any subcontract relating to the Work until Design-Build Entity has verified that all subcontractors maintain insurance requirements and has provided evidence to District of such insurance. For Commercial General Liability coverage subcontractors shall provide coverage naming District, its officials, officers, employees, agents, and volunteers with a format at least as broad as CG 20 38 04 13. If requested by Design-Build Entity, District may approve different scopes or minimum limits of insurance for particular subcontractors. Design-Build Entity shall confirm that District and entities identified in the Special Conditions shall be named as additional insureds on all subcontractors' policies of Commercial General Liability Insurance and Commercial Automobile Insurance.

5.11 Subconsultant Insurance Requirements. Design-Build Entity shall not allow any subconsultants to commence work on any contract relating to the Work until Design-Build Entity has verified that all subconsultants maintain insurance requirements and has provided evidence to District of such insurance. Additionally, all subconsultants must maintain professional liability/ errors and omissions coverage with limits of at least $2,000,000 per claim. For Commercial General Liability coverage subconsultants shall

provide coverage naming District, its officials, officers, employees, agents, and volunteers with a format at least as broad as CG 20 38 04 13. If requested by Design-Build Entity, District may approve different scopes or minimum limits of insurance for particular subconsultants. Design-Build Entity shall confirm that District and entities identified in the Special Conditions shall be named as additional insureds on all subconsultants' policies of Commercial General Liability Insurance and Commercial Automobile Insurance.

5.12 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to District.

5.13 Verification of Coverage. Design-Build Entity shall furnish District with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to District. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by District before work commences. District reserves the right to require complete, certified copies of all required insurance policies, at any time.

5.14 Reservation of Rights. District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

5.15 Performance Bond and Payment Bond.

A. The Design-Build Entity shall submit performance and payment bonds on the forms provided with the Contract Documents, duly executed by a responsible corporate surety admitted to transact surety business in the State of California, as defined in Code of Civil Procedure Section 995.120, and listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California and acceptable to District conditioned upon the faithful performance by the Design-Build Entity of all requirements of the Contract Documents. Each of the bonds shall be in a sum no less than one hundred percent (100%) of the Guaranteed Maximum Price. The Design-Build Entity shall furnish bonds covering the faithful performance of the Contract (Performance Bond) and payment of obligations arising thereunder (Payment Bond) on the forms contained in the Contract.

B. The Payment Bond and Performance Bond shall be in effect on the date of the execution of the GMP Amendment the Contract is signed by District.

C. The Design-Build Entity shall promptly furnish such additional security as may be required by District to protect its interests and those interests of persons or firms supplying labor or materials to the Project.

D. The premiums for the Payment Bond and Performance Bond shall be paid by the Design-Build Entity.

E. The Design-Build Entity maintains and agrees that it has executed Payment and Performance Bonds in the amounts and manner required by the Contract Documents.

F. No payment will be made to the Design-Build Entity until the Design-Build Entity's Payment Bond and Performance Bond have been approved by District.

G. Should, in District's sole opinion, any bond become insufficient or surety found to be unsatisfactory, the Design-Build Entity shall renew or replace the effected bond within 10 Days of receiving notice from District.

H. In the event the surety or the Design-Build Entity intends to reduce or cancel any required bonds, at least thirty (30) Days prior written notice shall be given to District, and the Design-Build Entity shall post acceptable replacement bonds at least ten (10) Days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Article 5.15 are accepted by District.

I. To the extent, if any, that the Guaranteed Maximum Price is increased in accordance with the Contract, the Design-Build Entity shall, upon request of District, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to District.

J. The bonds shall further provide that no change or alteration of the Contract (including, without limitation, an increase in the Guaranteed Maximum Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Design-Build Entity will release the surety. If the Design-Build Entity fails to furnish any required bond, District may terminate the Contract for cause.

ARTICLE 6 -DESIGN-BUILD ENTITY'S RESPONSIBILITIES

6.1 Design-Build Entity Responsibility; Independent Contractor.

The Design-Build Entity shall be responsible to District for acts and omissions of the Design-Build Entity's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of Work on the Project under direct or indirect contract with the Design-Build Entity or any of its Subcontractors. District retains the Design-Build Entity on an independent contractor basis. The Design-Build Entity is not an employee, agent or representative of District. The Design-Build Entity represents that it is fully experienced and properly qualified to perform the class of Work provided for in this Contract and that it is properly licensed, equipped, organized, and financed to perform Work on the Project. The Design-Build Entity shall maintain complete control over its employees and its Subcontractors and shall pay all wages, salaries and other amounts due such personnel in connection with their performance as required by law. The Design-Build Entity shall be responsible for all reports and obligations respecting such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, and workers' compensation insurance.

6.2 Review of Contract Documents and Field Conditions by The Design-Build Entity; Single Point Responsibility of The Design-Build Entity.

A. In addition to the examination and reviews performed, and obligations assumed, incident to making the representations set forth in Article 1.1 of the Design Build Contract, the Design-Build Entity shall carefully study and compare each of the

Contract Documents provided by District with the others and with information furnished by District, and shall promptly report in writing to District's Representative any errors, inconsistencies, or omissions in the Contract Documents provided by District or inconsistencies with Applicable Law observed by the Design-Build Entity. The Design-Build Entity shall be solely responsible for any errors, inconsistencies or omissions in the Contract Documents if the Design-Build Entity fails to perform such review and examination or fails to report such errors, inconsistencies or omissions to District in writing.

B. The Design-Build Entity is responsible for the design and construction of the Project and shall use the highest design and engineering standards of care applicable to projects, buildings or work of similar size, complexity, quality and scope in performing Work on the Project. The Design-Build Entity shall be solely responsible for any and all design errors including, but without limitation, errors, inconsistencies or omissions in the Construction Documents. The Design-Build Entity shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to the Design-Build Entity before commencing Work on the Project. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to District's Representative.

C. If the Design-Build Entity performs any design and/or construction activity which it knows, or should know, involves an error, inconsistency, or omission referred to in this Article, without notifying and obtaining the written consent of District's Representative, the Design-Build Entity shall be responsible for the resultant Losses, including, without limitation, the costs of correcting Defective Work.

D. District does not assume any obligation to employ the Design-Build Entity's services or pay the Design-Build Entity royalties of any type as to future programs that may result from Work performed under this Contract.

E. The Design-Build Entity shall be responsible for all plotting, printing, copying and distribution costs of any and all documents required in connection with Work on the Project.

F. The Design-Build Entity agrees that it has single point responsibility for the design and construction of this Project, and agrees to utilize the highest standard of excellent design, engineering and construction practices. The Design-Build Entity has the duty to act in District's best interests at all times throughout the course and performance of this Contract.

6.3 Design, Supervision and Construction Procedures.

A. The Design-Build Entity shall supervise, coordinate, and direct all Work on the Project using the Design-Build Entity's best skill and attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. The Design-Build Entity shall be solely responsible for, and have control over, the entire design effort, construction means, methods, techniques, sequences, procedures, and the coordination of all portions of Work on the Project, including, but without limitation, landscape and site work, utilities, and building systems.

B. The Design-Build Entity shall be responsible to District for acts and omissions of the Design-Build Entity, its agents, employees, and Subcontractors, and their respective agents and employees.

C. The Design-Build Entity shall not be relieved of its obligation to perform all Work on the Project in accordance with the Contract Documents either by acts or omissions of District or District's Representative in the administration of the Contract, or by tests, inspections, or approvals required, or performed, by persons or firms other than the Design-Build Entity.

D. The Design-Build Entity shall be responsible for inspection of all portions of Work on the Project to determine that such portions conform to the requirements of the Contract Documents and are ready to receive subsequent Work.

E. To facilitate communications and the management of the design process, the Design-Build Entity shall maintain an office in San Diego County for the duration of the design process.

F. Unless otherwise provided in the Contract Documents, the Design-Build Entity shall provide and pay for all professional design/engineering services, services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work on the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in Work on the Project. The Design-Build Entity shall furnish architectural and engineering services for the preparation of Construction Documents necessary to complete the Project in accordance with the requirements of the Contract Documents. From the District-approved Construction Documents, which are developed from the District-accepted Proposal, the Design-Build Entity shall furnish all labor, materials, equipment, services, and transportation necessary to complete construction of the Project, including site work, structures and utilities.

G. The Design-Build Entity is required to deliver to District, if requested, any and all Design Materials including, but not limited to, calculations, preliminary drawings, construction drawings, shop drawings, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, mock ups, and other information developed, prepared, furnished, or delivered in the prosecution of the Design Work.

H. The Design-Build Entity is responsible for preparation of the Construction Documents for the entire Project.

I. The Design-Build Entity is responsible for construction of the entire Project as required by the Contract Documents.

J. The Design-Build Entity shall at all times maintain good discipline and order among its employees and Subcontractors. The Design-Build Entity shall provide competent, fully qualified personnel to perform all Work on the Project.

6.4 Labor; Working Hours.

A. The Design-Build Entity shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. The Design-Build Entity shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, which are defined as hours between 7:00 a.m. and 3:30 p.m. any day Monday through Friday of any week except on Holidays and/or during Schedule Constraints defined in the Contract Documents. The Design-Build Entity will not permit the performance of Work on a Saturday, Sunday, any Holiday or during identified Schedule Constraints without District's written consent given after prior written notice to District's Representative. The Design-Build Entity shall be responsible for, and shall reimburse District for, all inspection costs outside regular working hours, including overtime.

C. The Design-Build Entity will provide all labor needed to complete the Work within the Contract Times.

6.5 Progress Meetings.

A. The Design-Build Entity shall schedule and hold regular on-Site progress meetings at least weekly and at other times as requested by the District or as required by progress of the Work. The Design-Build Entity, District's Representative, and all Subcontractors active on the Site shall attend each meeting. The Design-Build Entity may at its discretion request attendance by representatives of its Suppliers, manufacturers, and other Subcontractors.

B. District's Representative will preside at the progress meetings and will arrange for keeping and distributing the minutes. The purpose of the meetings is to review the progress of the Work, maintain coordination of efforts, discuss changes in scheduling, and resolve other problems which may develop. During each meeting, the Design-Build Entity shall present any issues which may impact its progress with a view to resolve these issues expeditiously.

6.6 Cost-Loaded CPM Progress Schedule and Recovery Schedule.

A. Design-Build Entity shall adhere to the Master Project Schedule, which shall be a cost-loaded CPM progress schedule established in accordance with the Contract Documents as it may be adjusted from time to time as provided below:

1. Design-Build Entity shall submit to District's Representative for acceptance proposed adjustments in the Project Schedule that will not result in changing the Project Completion Date. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Project Schedule that will change the Project Completion Date shall be submitted in accordance with the requirements of the Contract Documents. Adjustments in the Project Completion Date may only be made by a Change Order.

3. Should any of the following conditions exist, District may require Design-Build Entity to prepare, at no extra cost to District, a plan of action and a recovery schedule for completing the Work and achieving all contractual milestones within the Project Completion Date:

a. The Design-Build Entity's monthly progress report indicates delays that are, in the opinion of District, of sufficient magnitude that District questions the Design-Build Entity's ability to complete the Work;

b. The Project Schedule shows the Design-Build Entity to be thirty (30) or more Days behind the critical path at any time during construction;

c. The Design-Build Entity desires to make changes in the logic or the planned duration of future activities of the Project Schedule which, in the opinion of District, are major in nature.

d. The recovery schedule shall include proposed revisions to the Project Schedule, demonstrating how Design-Build Entity intends to achieve all contractual milestones including contract completion within the Project Completion Date. The submittal shall include a narrative describing the actions planned by the Design-Build Entity to recover the schedule.

e. Design-Build Entity shall submit the recovery schedule within seven (7) Days of District's request:

(i) If Design-Build Entity asserts that District is responsible for the delay, failure to submit the recovery schedule within seven (7) Days of District's request will be considered a concurrent delay event attributable to Design-Build Entity, and Design-Build Entity shall only be entitled to non-compensable adjustments to the Project Completion Date.

(ii) If Design-Build Entity is responsible for the delay, this provision will not limit or affect Design-Build Entity's liability and failure to submit the recovery schedule with seven (7) Days of District's request may result in District

withholding progress payments or other amounts due under the Contract Documents.

f. Design-Build Entity is responsible for all costs associated with the preparation and execution of the recovery schedule, including any necessary recovery actions, which may include, but are not limited to, assignment of additional labor, and/or equipment, shift or overtime work, expediting of submittals or deliveries, overlapping of activities or sequencing changes to increase activity concurrence.

g. Regardless of whether District directs Design-Build Entity to prepare a recovery schedule pursuant to this Article 6.6, Design-Build Entity shall promptly undertake appropriate action at no additional cost to District to recover the schedule whenever the current Project Schedule shows that the Design-Build Entity will not achieve a milestone and/or complete the Work within the Project Completion Date.

B. Unless otherwise specified in the Contract Documents, Design-Build Entity shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work within the Project Completion Date.

C. Failure of District's Representative to discover errors or omissions in schedules that it has reviewed, or to inform the Design-Build Entity that the Design-Build Entity, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Project Schedule shall not relieve the Design-Build Entity from its sole responsibility to perform and complete all Work on the Project within the Project Completion Date and shall not be a cause for an adjustment of the Project Completion Date or the Guaranteed Maximum Price.

D. The Design-Build Entity shall perform all Work on the Project in accordance with the current accepted Project Schedule.

6.7 Materials.

A. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All materials furnished by the Design-Build Entity shall be of the most suitable grade for the purpose intended considering strength, ductility, durability, and best industry practice.

B. All special warranties and guarantees required by the Contract Documents shall expressly run to the benefit of District. If required by District's Representative, Design-Build Entity shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.

D. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required by the Contract Documents. Design-Build Entity shall be entirely responsible for damage or loss by weather or other causes to materials or Work until District has accepted the Work.

E. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. Design-Build Entity warrants good title to all material, supplies, and equipment installed or incorporated in the work and agrees upon completion to deliver the Work to District free from any claims, liens, or encumbrances.

F. Materials shall be stored on the Project site in such manner so as not to interfere with any operations of District or any independent contractor.

6.8 Submittals.

A. Industry Standard Submittals.

Design-Build Entity will identify in the Construction Documents all industry standard submittals for all materials, systems, and equipment incorporated into the Work.

B. Schedule of Submittals.

Design-Build Entity will prepare and deliver a Schedule of Submittals to District's Representative that has been fully integrated with the Cost-Loaded CPM Progress Schedule and identifies each Submittal required by the Construction Documents as well as the date on which Design-Build Entity will deliver each Submittal to District's Representative. Each Submittal must be delivered to District's Representative at least thirty (30) Days prior to the date the material or equipment is scheduled to be incorporated into the Work. The Design-Build Entity is responsible for any schedule delays resulting from the Submittal process.

C. Submittal Procedures.

1. The Design-Build Entity will follow the following procedures for each Submittal, Shop Drawing and Sample required by the Contract Documents:

   a. Transmit three (3) copies of each with a Submittal Transmittal.

   b. Transmittals will be sequentially numbered. The Design-Build Entity to mark revised Submittals with original number and sequential alphabetic suffix.

c. Each Submittal will identify the Project, the Design-Build Entity, Subcontractor and supplier, pertinent Construction Document and detail number, and specification section number appropriate to the Submittal.

d. The Design-Build Entity must sign each Submittal, certifying that it has reviewed and approved the Submittal, verified products required, field dimensions, adjacent construction work, and that coordination of information is according to requirements of the Project and Contract Documents.

e. Identify variations in Contract Documents and product or system limitations that may differ and/or be detrimental to successful performance of completed Work.

f. When a Submittal is revised for resubmission, the Design-Build Entity shall promptly address District comments and resubmit. The Design-Build Entity shall identify changes made since previous submission.

g. District's review of Submittals shall not relieve the Design-Build Entity from responsibility for deviations from the Contract Documents unless the Design-Build Entity has, in writing, called District's attention to such deviations at time of submission and District's has taken no exception to the deviation. District's review of Submittals shall not relieve the Design-Build Entity from responsibility for errors in the Submittals.

h. Submittals not required by the Construction Documents or requested by District's Representative will not be acknowledged or processed.

i. Incomplete Submittals will not be reviewed by District's Representative. Delays resulting from incomplete submittals are not the responsibility of District's Representative.

j. The Design-Build Entity shall not be entitled to any extension of the Project Completion Date as a result of the Submittal process.

2. Where a Submittal, Shop Drawing or Sample is required by the Construction Documents, any related Work performed prior to District's Representative's review and approval of the pertinent Submittal will be at the sole expense and responsibility of the Design-Build Entity.

3. Schedule Milestones for Submittals. Design-Build Entity must submit all submittals required by the Construction Documents in accordance with the Schedule of Submittals. If Design-Build Entity fails to submit the submittals in accordance with the Schedule of Submittals, Design-Build Entity will be solely liable for any delays or impacts caused by the delayed submittal, whether direct or indirect. Design-Build Entity will be liable for the time calculated from the date the submittal is due until the date a compliant submittal is made. A compliant submittal will be one that is complete and satisfies the requirements of the Contract Documents.

6.9 Shop Drawing and Sample Submittal Procedures.

A. Before submitting each Shop Drawing or Sample, Design-Build Entity shall have:

1. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

2. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

3. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

4. determined and verified all information relative to the Design-Build Entity's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

B. With each Submittal, the Design-Build Entity shall give District's Representative specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal and, in addition, a specific notation made on each Shop Drawing or Sample submitted to District's Representative for review and approval of each such variation.

C. Shop Drawings.

1. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show District's Representative the services, materials, and equipment Design-Build Entity proposes to provide and to enable District's Representative to review the information Representative for assessing conformance with information given and design concept expressed in Contract Documents.

2. When required by individual Specification Sections, provide Shop Drawings signed and sealed by a professional engineer responsible for designing components shown on Shop Drawings. Shop Drawings must include signed and sealed calculations to support design in a form suitable for submission to and approval by authorities having jurisdiction.

3. Design-Build Entity shall make revisions and provide additional information when required by authorities having jurisdiction.

D. Samples.

1. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as required to enable District's Representative to review the submittal for assessing conformance with information given and design concept expressed in Contract Documents.

2. Samples should be of appropriate size and detail to assess functional, aesthetic, color, texture, patterns and finish selection.

E. District's Representative's Review.

1. District's Representative will review Shop Drawings and Samples in accordance with the Schedule of Submittals. District's Representative's review and acceptance will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Project, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. District's Representative's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of design or construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. District's Representative's review and acceptance shall not relieve the Design-Build Entity from responsibility for any variation from the requirements of the Contract Documents unless District's Representative has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Submittal.

F. The Design-Build Entity shall make corrections required by District's Representative and shall return three (3) corrected copies of Shop Drawings and Product Data, and submit, as required, new Samples for review and approval. The Design-Build Entity shall direct specific attention in writing to revisions other than the corrections called for by District's Representative on previous Submittals.

G. District will review the first resubmittal of Shop Drawings at its cost. District reserves the right to reduce the Guaranteed Maximum Price by Change Order for its cost for any subsequent reviews of Shop Drawing resubmittals.

6.10 Construction Documents.

A. Construction Documents.

1. Upon receipt of the Notice to Proceed, the Design-Build Entity shall instruct the A/E to commence the design of the building systems and the preparation of the Construction Documents. The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality. The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. District's review of the Construction Documents shall be conducted in accordance with the approved Master Project Schedule with procedures set forth in this Article 6.10. Such review shall not relieve the Design-Build Entity from its responsibilities under the Contract. Such review shall not be deemed an approval or waiver by District of any deviation from, or of the Design-Build Entity's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the Document submitted by the Design-Build Entity and approved by District.

2. However, it is acknowledged by the parties hereto that inherent in a Design-Build concept, bridging or otherwise, the production and review of Construction Documents may be a continuing process with portions thereof completed at different times. The Design-Build Entity will submit the Construction Document packages to District for review and approval in accordance with the agreed upon schedule, unless otherwise approved in writing by District. The Master Project Schedule shall indicate the times for District to review the completion of each such portion of the Construction Documents and a reasonable time for review of same.

3. The Design-Build Entity shall submit completed packages of the Construction Documents for review by District at the times indicated on the Master Project Schedule and as defined in the Scheduling Specification. Meetings between the Design-Build Entity and District to review the Construction Document packages, shall be scheduled at least every two weeks, or as otherwise agreed to by the parties, and held so as not to delay Work on the Project. The Design-Build Entity will conduct these design meetings with District in accordance with the schedule approved by District. The Design-Build Entity will be responsible for preparing and circulating for the parties review, design meeting minutes from all such meetings.

4. The Construction Documents for hazardous and/or toxic abatement efforts and demolition activity shall be of sufficient clarity and shall be fully detailed when submitted to District for review.

B. Shop Drawings, Product Data, Samples, Materials, and Equipment.

1. Shop drawings means drawings, submitted to the Design-Build Entity by Subcontractors, manufacturers, supplier or distributors, showing in detail the proposed fabrication and assembly of building elements and the installation (e.g., form, fit, and attachment details) of materials or equipment.

2. The Design-Build Entity shall coordinate all submittals and review them for accuracy, completeness, and compliance with the requirements of the Contract Documents and the Design-Build Entity's Construction Documents and shall indicate its approval thereon as evidence of such coordination and review.

3. Materials and equipment incorporated in the Work on the Project shall match the approved samples within tolerances appropriate to the items, and as may be described in the Contract Documents.

4. The Design-Build Entity shall submit shop drawings approved by the A/E and samples of submittals that relate to finish materials and products.

5. Wherever the name or brand of manufacturer or an article is listed in the Contract Documents, it is to be used in Work on the Project as the standard. Any variation in quality must be approved by District.

C. Field Engineering.

1. The Design-Build Entity shall retain and pay expenses of a civil engineer or land surveyor to establish on the Project site the required reference points and benchmarks, establish building lines and elevations, check for building framing, plumbness, and establish on building frame the required basic grid lines. The engineer or land surveyor shall be properly licensed in the State of California.

2. The Design-Build Entity shall locate and protect control points prior to starting Work on the Project site and preserve permanent reference points during construction, and shall require the engineer or surveyor to replace control points which become lost or destroyed.

D. Geotechnical and Survey.

1. District shall be responsible for obtaining a geotechnical report which includes supporting data, findings and recommendations; and also with a legal description and a project survey, as necessary, which shall become a part of the Contract Documents. The Design Work shall be consistent with both the findings and recommendations of the Design-Build Entity's geotechnical report and legal description and Project survey, or such other geotechnical recommendations obtained by Design-Build Entity at its sole cost and expense.

2. The Design-Build Entity shall verify the location and depth (elevation) of all existing utilities and services before performing any excavation work.

3. Any additional tests, borings, etc. necessary to support the Construction Documents shall be the responsibility of the Design-Build Entity.

6.11 Dust Control.

A. Design-Build Entity, at its expense, shall maintain all excavations, embankments, haul roads, permanent access rods, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry accepted methods of dust control suitable for the area involved, such as sprinkling, chemical treatment, light bituminous treatment or similar methods, will be permitted.

6.12 Air Pollution.

A. Design-Build Entity shall not discharge into the atmosphere from any source whatever smoke, dust, or other air contaminants in violation of the laws, rules, and regulations of the governmental entities having jurisdiction.

6.13 Patent Fees and Royalties.

A. Design-Build Entity shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of District or District's Representative, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by District in the Contract Documents.

B. To the fullest extent permitted by Applicable Laws, Design-Build Entity shall indemnify, defend, and hold harmless District and District's Representative, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents or specified in the Contract Documents and identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

6.14 Permits and Licenses.

Permits and licenses necessary for prosecution of the Work shall be secured and paid for by Design-Build Entity, unless otherwise specified in the Contract Documents.

A. Design-Build Entity shall obtain and pay for all other permits and licenses required for the Work, including excavation permit and permits for plumbing, mechanical and electrical work and for operations in or over public streets or right of way under jurisdiction of public agencies other than District.

B. The Design-Build Entity shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the Performance Specifications, drawings, or by governing authorities, except for such off-site inspections identified as District's responsibility in the Contract Documents.

C. Before acceptance of the Work, the Design-Build Entity shall submit all licenses, permits, certificates of inspection and required approvals to District.

D. Design-Build Entity shall assist District and District shall pay for DSA permits.

6.15 Design-Build Entity Standard of Care.

A. The Design-Build Entity warrants to District that all Design Work will be performed in accordance with the highest professional standards and degree of care applicable to those design professionals who specialize in designing and providing services for projects of the type, scope, quality and complexity of the Project utilizing the Design-Build contracting mode. The Design-Build Entity warrants to District that all labor, materials, equipment and furnishings used in, or incorporated into, the Construction Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents), and all Work will be free of liens, claims and security interests of third parties; that the Work will be of the highest quality and free from defects and that all Work will conform with the requirements of the Contract Documents. If required by District's Representative, the Design-Build Entity shall furnish satisfactory evidence of compliance with this Article 6.15. Further, the type, quality and quantity of such evidence shall be within the sole discretion of District's Representative.

B. The Design-Build Entity shall supervise, inspect, and direct the Project competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Project in accordance with the Contract Documents. The Design-Build Entity shall be solely responsible for the means, methods, techniques, sequences, and procedures of design and construction of the Project.

6.16 Applicable Laws.

A. Design-Build Entity shall give all notices required by and shall comply with all Applicable Laws applicable to the performance of the Work. Except where otherwise expressly required by Applicable Laws, neither District nor District's Representative shall be responsible for monitoring Design-Build Entity's compliance with any Applicable Laws.

B. If Design-Build Entity performs any Work knowing or having reason to know that it is contrary to Applicable Laws, Design-Build Entity shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.

6.17 Labor Laws and Design-Build Entity's Obligations.

A. Hours of Work.

1. The Design-Build Entity and Subcontractors shall furnish sufficient forces to ensure the prosecution of the Work on the Project in accordance with the Construction Schedule and in such a manner to allow for the full and adequate completion of the Project within the Project Completion Date.

2. Work on the Project shall be performed during regular working hours, except that in the event of an emergency or when required to complete the Work on the Project in accordance with job progress, Work may be performed outside of regular working hours with advance written notice to District. Permissible working hours shall be between 7:00 a.m. to 6:00 p.m. and shall not be changed except with consent of District.

3. Eight (8) hours of work shall constitute a legal day's work. The Design-Build Entity and each Subcontractor shall forfeit, as penalty to District, twenty-five dollars ($25) for each worker employed in the execution of Work on the Project by the Design-Build Entity or any Subcontractor for each day during which such worker is required or permitted to work more than eight (8) hours in any one day and forty (40) hours in any week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, except as provided in Labor Code Section 1815.

4. If the work done after hours is required by the Contract to be done outside the Design-Build Entity's regular working hours, the costs of any inspections, if required to be done outside normal working hours, shall be borne by District. If District allows the Design-Build Entity to do Work outside regular working hours for the Design-Build Entity's own convenience, the costs of any inspections required outside regular working hours shall be invoiced to the Design-Build Entity by District and deducted from the next progress payment. If the Design-Build Entity elects to perform Work outside the Inspector's regular working hours, costs of any inspections required outside regular working hours shall be invoiced to the Design-Build Entity by District and deducted from the next progress payment.

5. No Work on the Project or other activities by or on behalf of the Design-Build Entity which presents a hazard or unreasonable disruption to District staff shall be allowed during normal working hours. The determination as to whether Work on the Project or some other activity presents a hazard or constitutes an unreasonable disruption to District staff shall be made by and pursuant to the sole discretion of a representative of District. All Work on the Project or other activities which could present a hazard or unreasonable disruption to District staff shall be performed before or after normal working hours, on weekends, or on a District recognized holiday. Neither the Design-Build Entity nor its Subcontractors or anyone working on behalf of the Design-Build Entity or Subcontractors shall be entitled to additional compensation or an extension of the Project Completion Date for having to arrange their Work schedule so as not to violate the provisions of this Article 6.17A. The Design-Build Entity, Subcontractors and persons working on behalf of the Design-Build Entity shall be expected to arrange such Work and other activities in advance so as to avoid creating monetary or time impacts.

B. Wage Rates, Travel, and Subsistence.

1. The Design-Build Entity is aware of the requirements of Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since the Work on the Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is $1,000 or more, the Design-Build Entity agrees to fully comply with such Prevailing Wage Laws. District has obtained the prevailing wage rates from the Director of the Department of Industrial Relations, State of California. Copies of the prevailing wage rates are on file at District's office and shall be made available to any interested party on request. the Design-Build Entity shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform the Project available to interested parties upon request, and shall post copies at the Design-Build Entity's principal place of business and at the Project site. The Design-Build Entity shall defend, indemnify and hold District, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or allege failure to comply with the Prevailing Wage Laws.

2. Pursuant to Labor Code Section 1775, the Design-Build Entity is hereby advised that in the event that the Design-Build Entity fails to pay prevailing wages, the Design-Build Entity will be held liable for penalties and for shortfalls in wages and such amounts may be withheld from progress payments. the Design-Build Entity and each Subcontractor shall forfeit as a penalty to District not more than two hundred dollars ($200) for each Day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontract under him, in violation of the provisions of the Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each Day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Design-Build Entity.

3. The Design-Build Entity shall post, at appropriate conspicuous points on the Project site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

C. Labor Compliance/Payroll Records.

1. Pursuant to Labor Code Section 1776, the Design-Build Entity and each Subcontractor shall maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the Project. The Design-Build Entity shall certify under penalty of perjury that records maintained and submitted by the Design-Build Entity are true and accurate. The Design-Build Entity shall also require Subcontractor(s) to certify weekly payroll records under penalty of perjury.

2. In accordance with Labor Code section 1771.4, the Design-Build Entity and each Subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on a weekly basis and in the format prescribed by the DIR. This may include electronic submission. Design-Build Entity shall ensure full compliance with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement and all other applicable labor law.

3. If not subject to paragraph (2), above, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR.

4. In the event of noncompliance with the requirements of this Article 6.17C, the Design-Build Entity shall have ten (10) Days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to ensure compliance with this Article 6.17C. Should noncompliance still be evident after such ten (10) day period, the Design-Build Entity shall, as a penalty to the District, forfeit One Hundred Dollars ($100.00) for each day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of DIR, such penalties shall be withheld from contract payments.

5. In submitting the Proposal on this Project, it shall be the Design-Build Entity's sole responsibility to evaluate and include the cost of complying with all labor compliance requirements under this Contract and Applicable Law in its Proposal.

6. The Design-Build Entity shall include provisions of this Article 6.17C in all Subcontracts and require Subcontractors to comply with these provisions at no additional cost to District.

D. Apprentices.

1. The Design-Build Entity's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by the Design-Build Entity or any Subcontractor. The Design-Build Entity shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Sections 1777.5, 1777.6, and 1777.7 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from DIR, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

E. Labor Compliance; Stop Orders.

1. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be the Design-Build Entity's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Contract and applicable law. Any stop orders issued by the Department of Industrial Relations against Design-Build Entity or any subcontractor that affect Design-Build Entity's performance of Work, including any delay, shall be Design-Build Entity's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Design-Build Entity caused delay subject to any applicable liquidated damages and shall not be compensable by the District. Design-Build Entity shall defend, indemnify and hold the District, its officials, officers, employees and agents free and harmless from any claim or

liability arising out of stop orders issued by the Department of Industrial Relations against Design-Build Entity or any subcontractor.

F. Nondiscrimination.

1. Pursuant to Labor Code section 1735 and other applicable provisions of law, the Design-Build Entity and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap on this Work. The Design-Build Entity will take affirmative action to insure that employees are treated during employment or training without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap.

G. Workers' Compensation. Pursuant to Labor Code section 1860, Design-Build Entity shall secure the payment of workers' compensation to its employees in accordance with the provisions of Labor Code section 3700. Prior to commencement of work, Design-Build Entity shall sign and file with District the following certification:

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

6.18 Skilled and Trained Workforce.

A. Education Code section 17250.25(c) requires the Design-Build Entity to ensure that it and its Subcontractors at every tier use a skilled and trained workforce to perform all Work on the Project that falls within an apprenticeable occupation in the building and construction trades. As part of the Design-Build Entity's Statement of Qualifications submitted in response to the RFQ, the Design-Build Entity submitted a Skilled and Trained Workforce Certification certifying its compliance with all skilled and trained workforce requirements in place for this Project.

B. A "skilled and trained workforce" means a workforce that meets all of the following conditions:

1. All the workers are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards.

2. As of January 1, 2017, at least 30 percent of the skilled journeypersons employed to perform work on the contract or project by the Design-Build Entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

3. As of January 1, 2018, at least 40 percent of the skilled journeypersons employed to perform work on the contract or project by the Design-Build Entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

4. As of January 1, 2019, at least 50 percent of the skilled journeypersons employed to perform work on the contract or project by the Design-Build Entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

5. As of January 1, 2020, at least 60 percent of the skilled journeypersons employed to perform work on the contract or project by the Design-Build Entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

6. For an apprenticeable occupation in which no apprenticeship program has been approved by the chief prior to January 1, 1995, up to one-half of the graduation percentage requirements under Public Contract Code section 22164(c)(1)(B)(ii) may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation prior to the chief's approval of an apprenticeship program for that occupation in the county in which the project is located.

C. The Design-Build Entity shall comply with the foregoing skilled and trained workforce requirements in accordance with Education Code section 17250.25(c)(2) and will establish its compliance in one of the following methods:

1. The Design-Build Entity shall provide monthly reports to the District demonstrating that it and its Subcontractors performing work on the Project are complying with the requirements of Public Contract Code section 2602; or

2. The Design-Build Entity shall provide evidence that it has become party to a project labor agreement entered into by the District that binds all contractors and subcontractors performing Work on the Project and that includes the requirements of Public Contract Code section 2500.

6.19 Taxes.

A. The Design-Build Entity shall pay all sales, consumer, use, and other similar taxes required to be paid in accordance with the Applicable Law of the place of the Project which are applicable during the performance of the Project.

B. In accordance with Revenue and Taxation Code Section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which the Design-Build Entity will be responsible.

C. The Design-Build Entity shall include in its Proposal the patent fees or royalties on any patented article or process furnished or used in the Project. The Design-Build Entity shall assume all liability and responsibility arising from the use of any patented, or allegedly patented, materials, equipment, devices or processes used in or incorporated with the Project, and shall defend, indemnify and hold harmless District, its officials, officers, agents, employees and representatives from and against any and all liabilities, demands, claims, damages, losses, costs and expenses, of whatsoever kind or nature, arising from such use.

6.20 Use of Site and Other Areas.

A. Limitation on Use of Site and Other Areas.

1. The Design-Build Entity shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Applicable Laws, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Design-Build Entity shall assume full responsibility for any damage to any such land or area, or to the District or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such District or occupant because of the performance of the Work, Design-Build Entity shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

B. Removal of Debris. During the progress of the Work Design-Build Entity shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to Applicable Laws.

C. Cleaning. Prior to Completion of the Work, Design-Build Entity shall clean the Site and the Work and make it ready for utilization by District. At the completion of the Work Design-Build Entity shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. Loading Structures. Design-Build Entity shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design-Build Entity subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.21 Utility Usage.

A. All temporary utilities, including but not limited to electricity, water, gas, and telephone, used on the Work shall be furnished and paid for by Design-Build Entity.

Design-Build Entity shall provide necessary temporary distribution systems, including meters, if necessary, from distribution points to points on the Work where the utility is needed. Upon completion of the Work, Design-Build Entity shall remove all temporary distribution systems.

B. Design-Build Entity shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Work, including but not limited to startup and testing required in the Contract Documents.

C. All permanent meters installed shall be listed in the Design-Build Entity's name until the Work is accepted.

D. If Work is to be performed in existing District's facilities, Design-Build Entity may, to the extent authorized by District in writing, use District's existing utilities. If Design-Build Entity uses District utilities, it shall compensate District for utilities used.

6.22 Record Documents.

A. Design-Build Entity shall maintain in a safe place at the Site one record copy of all Drawings, Performance Specifications, Technical Specifications, Addenda, Change Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to District's Representative for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to District. See 01 00 00 for additional Record Drawing requirements.

6.23 Safety and Protection.

A. Design-Build Entity shall be solely responsible for all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety laws. Design-Build Entity shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Design-Build Entity shall comply with all Applicable Laws relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and

protection. Design-Build Entity shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. Design-Build Entity shall comply with the applicable requirements of District's safety programs, if any. The Special Conditions identify any District's safety programs that are applicable to the Work.

D. Design-Build Entity shall inform District and District's Representative of the specific requirements of Design-Build Entity's safety program with which District's and District's Representative's employees and representatives must comply while at the Site.

E. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Design-Build Entity, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Design-Build Entity.

F. Design-Build Entity's duties and responsibilities for safety and for protection of the Work shall continue until District files the Notice of Completion in accordance with Contract Documents.

6.24 Safety Representative.

A. Design-Build Entity shall designate an OSHA-certified and experienced safety representative at the Project site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs. Design-Build Entity shall provide District's Representative the name and contract information of the safety representative in writing. Design-Build Entity shall provide District's Representative the name and contact information of the safety representative in writing.

6.25 Hazard Communication Programs.

A. Design-Build Entity shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Project site in accordance with Applicable Laws.

6.26 Emergencies.

A. In an emergency affecting safety of life or of Work or of adjoining property, Design-Build Entity, without special instruction or authorization from District, shall act to prevent such threatened loss or injury; and Design-Build Entity shall so act, without appeal, if directed or instructed by District. Any compensation claimed by Design-Build Entity on account of emergency work shall be determined in accordance with the Contract Documents.

6.27 Continuing The Work.

A. Design-Build Entity shall carry on the Work during negotiation of all Change Orders and all disputes or disagreements with District. No Work shall be delayed or postponed pending resolution of any Change Orders, disputes or disagreements, unless District and Design-Build Entity otherwise agree in writing.

6.28 Guarantee.

A. The Design-Build Entity unconditionally guarantees all Work on the Project will be completed in accordance with the requirements of the Contract Documents, and will remain free of defects in workmanship and materials for a period of two (2) years from the date of Project Completion, unless a longer guarantee period is specifically called for in the Contract Documents. However, a shorter guarantee period shall apply to landscape plants, trees, turf, etc. Trees or shrubs greater than one gallon in size at the time of planting shall be guaranteed for one (1) year, and all other plant material shall be guaranteed for six (6) months. The Design-Build Entity shall repair or replace any and all Work, together with any adjacent work that may have been damaged or displaced, which was not in accordance with the requirements of the Contract Documents, or that may be defective in its workmanship or material within the guarantee period specified in the Contract Documents, without any expense whatsoever to District; ordinary wear and tear and abuse excepted.

B. The Design-Build Entity further agrees, within fourteen (14) Days, or as such shorter period as may be designated for emergency repairs, after being notified in writing by District, of any Work not in accordance with the requirements of the Contract Documents or any defects in the Work on the Project, that the Design-Build Entity shall commence and execute, with due diligence, all Work necessary to fulfill the terms of the guarantee. If District finds that the Design-Build Entity fails to perform any of the Work under the guarantee, District may elect to have the Work completed at the Design-Build Entity's expense and the Design-Build Entity will pay costs of the Work upon demand. District will be entitled to all costs, including reasonable attorneys' fees and consultants' expenses necessarily incurred upon the Design-Build Entity's refusal to pay the above costs.

C. Notwithstanding the foregoing provisions, in the event of an emergency constituting an immediate hazard to health or safety of District employees, property, or licensees, District may undertake, at the Design-Build Entity's expense and without prior notice, all Work necessary to correct such condition(s) when it is caused by Work of the Design-Build Entity not being in accordance with the requirements of the Contract Documents.

6.29 Warranty.

A. The Design-Build Entity warrants to District that any and all materials, equipment and furnishings incorporated in the Project will be of good quality and new unless otherwise required or permitted by the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The foregoing warranty excludes improper operation, or normal wear and tear under normal usage under the control of District. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or

implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of District to maintain an action for breach of contract against the Design-Build Entity. Nothing contained in these Contract Documents pertaining to warranty or guarantee shall be construed as limiting any other rights District may have at law, including rights for latent defects under Code of Civil Procedure Section 337.15.

6.30 Indemnification.

B. To the fullest extent allowed by law (including without limitation Civil Code Sections 2782 and 2782.8), the Design-Build Entity shall defend (with counsel of District's choosing), indemnify and hold District, its officials, officers, agents, employees, and representatives free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, Losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, regardless of whether the allegations are false, fraudulent, or groundless, arising out of, related to, or in connection with any acts, omissions or willful misconduct of Design-Build Entity, its officials, officers, employees, agents, consultants, contractors, and Subcontractors arising out of or in connection with the performance of the Work or this Contract, including claims made by Subcontractors for nonpayment, and including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses. The Design-Build Entity shall defend, at the Design-Build Entity's own cost, expense and risk, with counsel of District's choosing, any and all such suits, actions or other legal proceedings of every kind that may be brought or instituted against District, its officials, officers, agents, employees and representatives. the Design-Build Entity shall pay and satisfy any judgment, award or decree that may be rendered against District, its officials, officers, agents, employees and representatives, in any such suit, action or other legal proceeding. The Design-Build Entity shall reimburse District, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The Design-Build Entity agrees to pay, or reimburse District and District's Representative, for regulatory agency or court imposed fees, fines, or penalties imposed on District and District's Representative arising from the Design-Build Entity's failure to complete the Project in a timely manner and/or in accordance with the Contract Documents and any applicable permits or Applicable Laws. The Design-Build Entity's responsibility and obligation to pay, or reimburse District and District's Representative, for these fees, fines, or penalties shall be in addition to the assessment of liquidated damages for late completion of the Project.

A. In claims against any person or entity indemnified under this Article 6.30 that are made by an employee of the Design-Build Entity or any Subcontractor, a person indirectly employed by the Design-Build Entity or any Subcontractor, or anyone for whose acts the Design-Build Entity or any Subcontractor may be liable, the indemnification obligation under this Article 6.30 shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for Design-Build Entity or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts or any other insurance limitations.

B. The indemnification obligations under this Article 6.30 shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.

C. Joint and Several Liability. In the event the Design-Build Entity and one or more than one other party is connected with an accident or occurrence covered by this indemnification, then all such parties shall be jointly and severally responsible to each of the Indemnitees for indemnification, and the ultimate responsibility among such indemnifying parties for the loss and expense of any such indemnification shall be resolved without jeopardy to any indemnitee listed in this Article 6.30.

6.31 Superintendent.

A. The Design-Build Entity shall employ a competent Superintendent satisfactory to District who shall be in attendance at the Project site at all times during the performance of the Construction Work. Superintendent shall represent the Design-Build Entity and communications given to, and received from, Superintendent shall be binding on the Design-Build Entity. Superintendent must be able to proficiently speak, read and write in English. Failure to maintain a Superintendent on the Project site at all times Work on the Project is in progress shall be considered a material breach of this Contract, entitling District to terminate the Contract or, alternatively, issue a Suspension Order until the Superintendent is on the Project site. If, by virtue of issuance of said Suspension Order, the Design-Build Entity fails to complete the Contract by the Project Completion Date, the Design-Build Entity will be assessed Liquidated Damages in accordance with the Contract.

B. Any changes to the assignment of the Superintendent shall receive prior written approval from District. The Superintendent may not perform the work of any trade, pick up materials, or perform any work not directly related to the supervision and coordination of the Construction Work at the Project site when work is in progress. In addition, the Design-Build Entity will provide all key personnel identified in the Contract for the time periods stipulated.

6.32 Project Staffing.

A. The Design-Build Entity and each Subcontractor shall: furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work on the Project; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and keep an adequate force of skilled and fit workers on the job to complete all Work on the Project in accordance with all requirements of the Contract.

District shall have the right, but not the obligation, to require the removal from the Project of the Design-Build Entity's Representative, or any other superintendent, staff member, agent, or employee of any contractor, Subcontractor, material or equipment supplier, or any other entity working on the Project. Removal may be required for any reason designated by District, including but not limited to, failure or refusal to perform Work on the Project in a manner acceptable to District, uncooperative or incompetent performance on the Project, threatening the adequate or timely completion of the Project, or threatening the safety of persons or property.

6.33 Compliance With State Storm Water Permit for Construction.

Refer to Section 01 00 00 for information regarding compliance with State Storm Water Permit for Construction.

6.34 Monthly Report.

The Design-Build Entity shall prepare and submit to District, during both the Construction Documents Phase and the Construction Phase, monthly written reports on the Work accomplished during the prior monthly period. Such reports shall be prepared in a manner and in a format approved by District. Reports shall be furnished at the time of submission of each monthly application for payment. The monthly report shall also set forth the Design-Build Entity's projected progress for the forthcoming month.

6.35 Other Reports.

The Design-Build Entity will cooperate with District in preparing, or causing to be prepared, all or part of, periodic project reports required by state or federal agencies.

6.36 Notice of Labor Dispute.

A. If the Design-Build Entity has knowledge that any actual or potential labor dispute is delaying, or threatens to delay, the timely performance of Work on the Project, the Design-Build Entity shall immediately give written notice including all relevant information to District.

B. The Design-Build Entity agrees to insert the substance of this Article 6.36 in any subcontract to which a labor dispute may delay the timely performance of Work on the Project, except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor shall immediately notify the next higher tier Subcontractor or the Design-Build Entity, as the case may be, of all relevant information concerning the dispute.

6.37 Documents and Samples At Project Site.

A. The Design-Build Entity shall maintain the following at the Project site:

1. One current copy of the Contract Documents (including Construction Documents), in good order and marked to record current changes and selections made during construction.

2. One copy of the prevailing wage rates applicable to the Project.

3. The current accepted Master Project Schedule.

4. Shop Drawings, Product Data, and Samples.

5. One current copy of all documents required by Article 6.21.

6. All other required submittals.

These shall be available to District's Representative and shall be delivered to District's Representative for submittal to District upon the earlier of Final Completion or termination of the Contract.

6.38 Cutting, Fitting, and Patching.

A. The Design-Build Entity shall do all cutting, fitting, or patching work required to make all parts of the Project come together properly and to allow the Project to receive or be received by the work of Separate Contractors shown upon, or reasonably implied by, the Contract Documents.

B. The Design-Build Entity shall not endanger the Project, or adjacent property by cutting, digging, or otherwise. The Design-Build Entity shall not cut or alter the work of any Separate Contractor without the prior written consent of District's Representative.

6.39 Access to Work.

A. District, District's Representative, their consultants, and other persons authorized by District will at all times have access to the Work on the Project wherever it is in preparation or progress. The Design-Build Entity shall provide safe and proper facilities for such access and for inspection.

6.40 Concealed Or Unknown Conditions.

A. Except and only to the extent provided otherwise in Articles 9 and 10, by signing the Contract, the Design-Build Entity agrees:

1. To bear the risk of concealed or unknown conditions, if any, which may be encountered in performing the Contract, as described in the Contract Documents, and/or can reasonably be inferred by the Design-Build Entity based on its experience and expertise; and

2. That the Design-Build Entity's Guaranteed Maximum Price for the Contract was made with full knowledge of this risk.

In agreeing to bear the risk of concealed or unknown conditions, The Design-Build Entity understands that, except and only to the extent provided otherwise in Articles 9 and 10, concealed and/or unknown conditions shall not excuse the Design-Build Entity from its obligation to achieve full completion of the Project within the Project Completion Date, and shall not entitle the Design-Build Entity to an adjustment of the Guaranteed Maximum Price.

B. If concealed or unknown conditions are encountered which require, in the opinion of District's Representative, design details which differ from those details shown in the Bridging Documents and District's Representative finds that such revised design details will cause an increase or decrease in the cost of, or the time required for performance of the Contract, and if District agrees with District's Representative's determinations, District will issue a Change Order modifying the Contract Terms to provide for the change in design details and to provide for an adjustment in the Guaranteed Maximum Price and/or Project Completion Date pursuant to Articles 9 and 10 following receipt of a Change Order Request.

C. If the Design-Build Entity encounters concealed or unknown conditions that differ materially from those anticipated or expected, the Design-Build Entity shall notify District's Representative within three (3) Days in writing of such conditions so that District's Representative can determine if such conditions require design details which differ from those design details shown in the Bridging Documents. Design-Build Entity shall be liable to District for any extra costs incurred as a result of the Design-Build Entity's failure to give such notice. Design-Build Entity's failure to give such notice shall constitute a waiver by Design-Build Entity of any additional compensation.

6.41 Liability for and Repair of Damaged Work.

A. Design-Build Entity shall be liable for any and all damages and losses to the Project (whether by fire, theft, vandalism, earthquake, flood or otherwise) prior to District's acceptance of the Project as fully completed.

6.42 Permits, Fees, and Notices.

A. Except for the permits and approvals which are to be obtained on behalf of District or the requirements with respect to which District is not subject, the Design-Build Entity shall secure, and pay for, all other permits, approvals, government fees, licenses, and inspections necessary for the proper execution and performance of Work on the Project. The Design-Build Entity shall deliver to District all original licenses, permits, and approvals obtained by the Design-Build Entity in connection with Work on the Project prior to the final payment or upon termination of the Contract, whichever is earlier.

ARTICLE 7 -OTHER WORK AT THE PROJECT SITE

7.1 Related Work At Project Site.

A. Nothing contained in the Contract Documents shall be interpreted as granting to Design-Build Entity exclusive occupancy at the Project site. District reserves the right to award separate contracts for, or to perform with its own forces, construction or operations related to the Work or other construction or operations at or affecting the Project site, including portions of Work on the Project which have been deleted by Change Order. The Design-Build Entity shall cooperate with District's employees or through other direct contracts, or have other work performed by utility owners (collectively, "Other Contractors"). If such other work is not noted in the Contract Documents, then written notice thereof will be given to the Design-Build Entity prior to starting any such other work. The Design-Build Entity shall participate with District and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. The Design-Build Entity shall make necessary revisions to the Master Project Schedule after such joint review.

B. Design-Build Entity shall be solely responsible for all costs associated with coordinating its Work with Separate Contractors. Design-Build Entity shall not be entitled to additional compensation from District for damages resulting from such simultaneous, collateral, and essential Work. If necessary to avoid or minimize such damage or delay, Design-Build Entity shall redeploy its work forces to other parts of the Work, or adjust its Work schedule including reasonable acceleration

of the Work. If a portion of the Work on the Project is dependent upon the proper execution or results of other construction or operations by District or Separate Contractors, the Design-Build Entity shall inspect such other design or construction or operations before proceeding with that portion of the Work on the Project. The Design-Build Entity shall promptly report to District's Representative apparent discrepancies or defects which render the other design, construction or operations unsuitable to receive the Work on the Project. Unless otherwise directed by District's Representative, the Design-Build Entity shall not proceed with the portion of the Work on the Project affected until apparent discrepancies or defects have been corrected. Failure of the Design-Build Entity to so report within a reasonable time after discovering such discrepancies or defects shall constitute an acknowledgment that the other construction or operations by District or Separate Contractors is suitable to receive the Work on the Project, except as to defects not then reasonably discoverable.

C. Design-Build Entity's Responsibility. Design-Build Entity shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work.

D. Design-Build Entity Shall Not Endanger Existing Work. Design-Build Entity shall not endanger any work of Separate Contractor by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of District's Representative and the Separate Contractor whose work will be affected.

E. Design-Build Entity shall afford each Separate Contractor proper and safe access to the Project site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Design-Build Entity shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Design-Build Entity shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Design-Build Entity may cut or alter others' work with the written consent of District's Representative and the others whose work will be affected.

F. If the proper execution or results of any part of Design-Build Entity's Work depends upon work performed by Separate Contractors, Design-Build Entity shall inspect such other work and promptly report to District's Representative in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Design-Build Entity's Work. Design-Build Entity's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Design-Build Entity's Work except for latent defects and deficiencies in such other work.

G. If any claims are made by Separate Contractors arising out of Design-Build Entity's performance of the Work, Design-Build Entity shall be responsible to immediately resolve the dispute and indemnify District pursuant to the Contract Documents.

7.2 Coordination.

A. If District intends to have work performed by Separate Contractors at the Project site, the following will be set forth in the Special Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Special Conditions, District shall have sole authority and responsibility for such coordination.

C. Coordination Delays. District's Representative shall arrange meetings with Separate Contractors performing work to plan coordination of construction activities but will not be responsible to direct coordination efforts. Any difference or conflict arising between Design-Build Entity and any Separate Contractor shall be submitted to District's Representative for a decision in the matter. Design-Build Entity shall comply with direction from District's Representative whose decision on coordination matters will be final.

7.3 For Delays by Others.

A. By entering into this Contract, Design-Build Entity acknowledges that there may be Separate Contractors on the Project site whose work will be coordinated with that of Design-Build Entity. Design-Build Entity expressly warrants and agrees that Design-Build Entity will cooperate with Separate Contractors and will do nothing to delay, hinder, or interfere with the work of Separate Contractors, District, or District's Representative. Design-Build Entity also expressly agrees that, in the event its Work is hindered, delayed, interfered with, or otherwise affected by a Separate Contractor, its sole remedy will be a direct action against the Separate Contractor. Design-Build Entity will have no remedy, and hereby expressly waives any remedy, against District or District's Representative on account of delay, hindrance, interference, or other event caused by Separate Contractor.

7.4 Design-Build Entity's Delay Or Damage.

A. Design-Build Entity shall be liable to District and any Separate Contractor for the direct delay and disruption costs or damages incurred by such Separate Contractor as a result of Design-Build Entity's wrongful action or inactions.

ARTICLE 8 -FINGERPRINTING REQUIREMENTS

District shall determine the Fingerprinting requirements for the Project as set forth in the Special Conditions. The Project shall be governed by paragraph (a) or (b) below, depending on the Work involved in the Project.

8.1 Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility Involving More Than Limited Contact with Students.

If the District determines, based on the totality of the circumstances concerning the Project, that the Design-Build Entity and Design-Build Entity's employees are subject to the requirements of Education Code section 45125.2 pertaining to Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility because they will have contact other than limited contact with pupils, by execution of the Contract, the Design-Build Entity acknowledges that Design-Build Entity is entering into a contract for the construction, reconstruction, rehabilitation, or repair of a school facility where the Design-Build Entity and/or its employees will have more than limited contact with students and the services to be provided do not constitute an emergency or exceptional situation. In accordance with Education Code section 45125.2 the Design-Build Entity shall, at Contractor's own expense: **[DISTRICT TO DETERMINE WHICH ITEMS TO INCLUDE]**

A. install a physical barrier to limit contact with students by Design-Build Entity and/or Design-Build Entity's employees;

B. provide for the continuous supervision and monitoring of the Design-Build Entity and/or Design-Build Entity's employees by an employee of the Contractor who has received fingerprint clearance from the California Department of Justice;

C. provide for the surveillance of the Design-Build Entity and Design-Build Entity's employees by a District employee;

D. require any employee of the Design-Build Entity potentially having contact with students to obtain fingerprint clearance as described in Education Code section 45125.1.

8.2 Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility Involving Only Limited Contact with Students.

If the District determines based on the totality of the circumstances concerning the Project that the Design-Build Entity and Design-Build Entity's employees are subject to the requirements of Education Code section 45125.2 pertaining to Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility because they will have only limited contact with pupils, by execution of the Contract, the Design-Build Entity acknowledges that Design-Build Entity is entering into a contract for the construction, reconstruction, rehabilitation or repair of a school facility involving only limited contact with students. Accordingly, the parties agree that the following conditions apply to any work performed by the Design-Build Entity and/or Design-Build Entity's employees on a school site: (1) Design-Build Entity and/or Design-Build Entity's employees shall check in with the school office each day immediately upon arriving at the school site; (2) Design-Build Entity and/or Design-Build Entity's employees shall inform school office staff of their proposed activities and location at the school site; (3) Once at such location Design-Build Entity and/or Design-Build Entity's employees shall not change locations without contacting the school office; (4) Design-Build Entity and Design-Build Entity's employees shall not use student restroom facilities; and (5) If Design-Build Entity and/or Design-Build Entity's employees find themselves alone with a student, Design-Build Entity and Design-Build Entity's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.

ARTICLE 9 -SUBCONTRACTORS

9.1 Award of Subcontracts and Other Contracts for Portions of The Work.

A. All portions of the Work on the Project for which Subcontractors were not listed by the Design-Build Entity in its Proposal, shall be awarded by the Design-Build Entity pursuant to the requirements described in this Article.

B. The Design-Build Entity shall submit to District's Representative after selecting Subcontractors pursuant to an open and competitive process, an updated expanded list of Subcontractors, along with their respective addresses, telephone numbers, e-mail addresses and contractor's license numbers. The expanded list of Subcontractors shall be provided and/or updated no later than ten (10) Days after the date which the Design-Build Entity awards a contract for any portion of the Work to a Subcontractor not originally listed in the Design-Build Entity's Proposal.

C. District has the right to request all documentation that supports the Design-Build Entity's selection of a Subcontractor. District shall have the right of final approval as to the qualifications of a Subcontractor to perform its designated scope of Work. Within District's discretion, any Subcontractor may be deemed not qualified to perform Work on the Project if District or District's Representative determines that the Subcontractor fails to meet the requirements of the Contract Documents, or for any other reason.

D. The Subcontractors listed by the Design-Build Entity shall only be substituted in strict accordance with the "Subletting and Subcontracting Fair Practices Act" and upon the written consent of District. Only upon compliance with the "Subletting and Subcontracting Fair Practices Act" and with the written consent of District shall a substitution be made.

E. Any increase in the cost of the Work on the Project resulting from the replacement or substitution of a Subcontractor pursuant to this Article or as required by District or District's Representative pursuant to this Article, shall be borne solely by the Design-Build Entity. The Design-Build Entity shall not be entitled to any increase in Guaranteed Maximum Price or an extension of Project Completion Date due to such replacement or substitution.

F. The Design-Build Entity shall require, in each subcontract for any portion of Work on the Project, the Subcontractor to indemnify District, District's Representative and its consultants, representatives, directors, officers, agents and employees, pursuant to the provisions set forth in Article 6.

G. Each subcontract shall preserve and protect the rights of District under the Contract Documents, with respect to the Work to be performed by Subcontractor, so that subcontracting thereof will not prejudice such rights. The Design-Build Entity shall cause each such subcontract to expressly include the following requirements:

1. Subcontractor waives all rights that Subcontractor may have against District for damages caused by fire or other perils covered by builder's risk property insurance carried by Design-Build Entity or District, except for such rights Subcontractor may have to the proceeds of such insurance held by District under Article 5.1.

2. District and entities and agencies designated by District will have access to and the right to audit and the right to copy at District's cost all of Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to Work on the Project. Subcontractor shall preserve all such records and other items for a period of at least 3 years after Final Completion.

3. Subcontractor recognizes the rights of District under Article 8.3, Contingent Assignment of Subcontracts, and agrees, upon notice from District that District has elected to accept said assignment and to retain Subcontractor pursuant to the terms of the subcontract, to complete the unperformed obligations under the subcontract and, if requested by District, to execute a written Contract confirming that Subcontractor is bound to District under the terms of the subcontract.

4. The Design-Build Entity is responsible for reviewing and coordinating the Work of and among his Subcontractors and Design Professionals. This review and coordination includes, but is not limited to, resolution of any inconsistencies, errors or omissions.

9.2 Contingent Assignment of Subcontracts.

A. The Design-Build Entity hereby assigns to District all its interest in first tier subcontracts now or hereafter entered into by the Design-Build Entity for performance of any part of the Work on the Project. The assignment will be effective upon acceptance by District in writing and only as to those subcontracts which District designates in writing. District may accept said assignment at any time during the course of the Work on the Project and prior to Final Completion in the event of a suspension or termination of the Design-Build Entity's rights under the Contract Documents. Such assignment is part of the consideration to District for entering into the Contract with the Design-Build Entity and may not be withdrawn prior to Final Completion.

9.3 Award of Subcontracts and Other Contracts for Portions of The Work.

A. All Subcontractors shall be retained in accordance with the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100 *et seq*.) The Design-Build Entity shall not, without the consent of District: substitute any person or entity as a Subcontractor in place of the Subcontractor designated in the Proposal; permit any such Subcontractor to be assigned or transferred, or allow it to be performed by any person or entity other than the original Subcontractor listed in the Proposal; sublet or subcontract any portion of the Work on the Project in excess of one-half of one percent (.5%) of the Guaranteed Maximum Price as to which its Proposal did not designate a Subcontractor. Any assignment or substitution made without the prior written consent of the awarding authority or not in compliance with the Subletting and Subcontracting Fair Practices Act shall be void, and the assignees shall acquire no rights in the Contract. Any consent, if given, shall not relieve the Design-Build Entity or its Subcontractors from their obligations under the terms of the Contract. All requests by the Design-Build Entity for substitution will be handled through District's Representative.

B. All Subcontractor and Sub-Subcontractor substitutions shall be made pursuant only to the Subletting and Subcontracting Fair Practices Act found at Public Contract Code Section 4100 *et seq.*

C. Any substitutions of Subcontractors shall not result in any increase in the Guaranteed Maximum Price or result in the granting of any extension of Project Completion Date for the completion of the Project.

D. Substitutions due to a claim of inadvertent clerical error shall be made pursuant to Public Contract Code Section 4107.5.

E. The Design-Build Entity is responsible for reviewing and coordinating the Work of and among his Subcontractors and Design Professionals. This review and coordination includes, but is not limited to, resolution of any inconsistencies, errors or omissions.

F. Upon the request of District, the Design-Build Entity shall promptly furnish to District a true, complete, and executed copy of any subcontract.

9.4 Subcontractor's Responsibilities.

Every Subcontractor is bound to the following provisions, subject to the limitations of Article 8.3 above:

A. Subcontractors shall efficiently supervise their Work, using their best skill and attention. Each of them shall carefully study and compare all Drawings, Performance Specifications, and other instructions, shall at once report to the Design-Build Entity any error or omission which any of them may discover, and shall subsequently proceed with the Work in accordance with instructions from the Design-Build Entity concerning such error or omission. Each Subcontractor shall be fully responsible for and shall bear the full risk of loss of all of its property.

B. Each Subcontractor shall at all times enforce strict discipline and good order among its Subcontractors, material or equipment suppliers, or their agents, employees, and invitees, and shall establish and maintain surveillance over the activities of each of the foregoing to minimize any disturbance, damage, pollution, or unsightly conditions relative to property areas adjacent to or in the vicinity of the Project site. The Subcontractor shall not employ on the Project any unfit person or anyone not skilled in the task assigned. The Design-Build Entity shall have the right to remove from the Project any employee of a Subcontractor for any reason including, without limitation, incompetence or carelessness.

C. Should the proper and accurate performance of the Work on the Project depend upon the proper and accurate performance of other Work not included in its agreement, each Subcontractor shall use all necessary means to discover any defect in such other Work and shall allow the Design-Build Entity or other Subcontractors as the Design-Build Entity elects a reasonable amount of time to remedy such defects. If the Subcontractor should proceed with its Work, it shall be considered to have accepted such other work, unless the Subcontractor shall have proceeded pursuant to instructions in writing by the Design-Build Entity over its written objection.

D. Each Subcontractor shall submit to the Design-Build Entity, as the case may be, promptly when requested by any of the foregoing, information with respect to the names, responsibilities, and titles of the principal members of its staff, the adequacy of the Subcontractor's equipment and the availability of necessary materials and supplies. Subcontractor shall fully cooperate with Design-Build Entity in its periodic review of the adequacy of Subcontractor's supervision, personnel, and equipment, and the availability of necessary materials and supplies and shall promptly comply with the requirements of the Design-Build Entity with respect thereto.

E. Each Subcontractor shall furnish at its expense its own temporary facilities and storage except those specifically agreed to be furnished to it by the Design-Build Entity in the subcontract. Subcontractor's material storage rooms and field offices, etc., will be placed in locations designated by the Design-Build Entity. When it becomes necessary due to the progress of the Project for the Subcontractor to relocate its field operations, it will do so in an expeditious manner and at no additional cost to Design-Build Entity or District. The construction of material storage rooms and field offices, etc., will be of fire resistive material only, such as concrete or gypsum block, rated drywall, or sheet metal.

F. Each Subcontractor may be subject to the Design-Build Entity's reasonable charges for hoisting, repair to other work caused by the fault or negligence of Subcontractor, removal of Subcontractor's rubbish, and clean-up occasioned by Subcontractor.

G. Subcontractor shall comply with and pay any fines or penalties imposed for violation of any applicable law, ordinance, rule, regulation, Environmental Impact Report mitigation requirement, and lawful order of any public authority, including, without limitation, all OSHA and California OSHA requirements and those of other authorities having jurisdiction of the safety of persons or property.

H. Each Subcontractor shall not display on or about the Project any sign, trademark, or other advertisement.

I. Without limitation of any other right or remedy available to the Design-Build Entity under the Contract or at law, should the Subcontractor: (1) fail to perform its portion of the Work on the Project in a skilled and expeditious manner in accordance with the terms of the subcontract with sufficient labor, materials, equipment, and facilities; (2) delay the progress of the job; (3) otherwise fail in any of its obligations; (4) have a receiver appointed for the Subcontractor; or (5) be declared bankrupt or insolvent, and such appointment, bankruptcy, or insolvency proceeding or declaration is not set aside within thirty (30) Days, then the Design-Build Entity, upon three (3) Days' notice to the Subcontractor (subject to the requirements of Public Contracts Code § 4107), may provide such labor, materials, or perform such Work and recover the cost plus profit and overhead from monies due or to become due thereafter to the Subcontractor. The Design-Build Entity may terminate the employment of the Subcontractor, taking possession of its tools, materials, and equipment related to the Work on the Project and cause the entire portion of the Subcontractor's Work to be finished either by another Subcontractor or through the Design-Build Entity's own forces.

J. In the event of any dispute as to whether or not any portion of the Work on the Project is within the scope of the Work to be performed by a Subcontractor, or any dispute as to whether or not the Subcontractor is entitled to a change order for any Work

requested of it, the Subcontractor shall continue to proceed diligently with the performance as required by the Design-Build Entity. Regardless of the size or nature of the dispute, the Subcontractor shall not under any circumstances cease or delay performance of its portion of Work on the Project during the existence of the dispute. The Design-Build Entity shall continue to pay the undisputed amounts called for under the subcontract during the existence of the dispute. Any party stopping or delaying the progress of the Work on the Project because of a dispute shall be responsible in damages to District, and the Design-Build Entity for any losses suffered as a result of the delay.

K. The Design-Build Entity agrees to advise the Subcontractor if any documentation in connection with the Subcontractor's application for payment has not been accepted or is in any way unsatisfactory.

L. The Design-Build Entity shall require each Subcontractor to comply with all procedures established by the Design-Build Entity for coordination among District, District's consultants, the Design-Build Entity, and the various Subcontractors for coordination of the Work on the Project with all local municipal authorities, government agencies, utility companies, and any other agencies with jurisdiction over all or any portion of the Work. The Subcontractor shall cooperate fully with all of the foregoing parties and authorities.

M. The Design-Build Entity shall require each Subcontractor to comply with all on-site record keeping systems established by the Design-Build Entity and shall, upon the request of the Design-Build Entity, provide the Design-Build Entity with such information and reports as the Design-Build Entity may deem appropriate. Without limitation of the foregoing, the Subcontractor shall assemble all required permits and certificates so that they are readily accessible at the Project site.

N. The specific requirements of this Article are not intended to exclude the obligation of the Subcontractor to comply with any of the other provisions of the General Conditions and the Contract Documents which are relevant to the proper performance of its portion of the Work on the Project.

O. The Design-Build Entity shall require all Subcontractors to commence their Work within two (2) Days after the Design-Build Entity provides them with a notice to begin, and shall require all Subcontractors to diligently prosecute their Work in accordance with the Master Project Schedule, so as to allow the Project to be totally and adequately completed within the Project Completion Date.

ARTICLE 10 - CHANGE IN GUARANTEED MAXIMUM PRICE; CHANGE IN CONTRACT TIMES

10.1 Contract Change Orders.

A. District, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, and the Guaranteed Maximum Price and Contract Time shall be adjusted accordingly. All such changes in the Work shall be authorized by written Change Order, and shall be performed under the applicable conditions of the Contract Documents. A Change Order signed by the Design-Build Entity indicates the Design-Build Entity's agreement therewith,

including any adjustment in the Guaranteed Maximum Price or the Contract Times, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.

B. Design-Build Entity shall promptly execute changes in the Work as directed in writing by District even when the parties have not reached agreement on whether the change increases the scope of Work or affects the Guaranteed Maximum Price or Contract Time, if any. All claims for additional compensation to the Design-Build Entity shall be presented in writing. No claim will be considered after the work in question has been done unless a written Change Order has been issued or a timely written notice of claim has been made by Design-Build Entity. Design-Build Entity shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract Documents, and shall be subject to all terms, conditions and provisions of the original Contract Documents.

C. The Design-Build Entity may request a Change Order under the procedures specified herein.

D. No changes in the work covered by this Contract shall exonerate any surety or any bond given in connection with this Contract.

E. A Field Order, as defined below, may be issued by District; such Field Order does not require the agreement of the Design-Build Entity, and shall be valid with or without the signature of the Design-Build Entity.

F. The Design-Build Entity shall proceed promptly with any changes in the Work, unless otherwise provided in the relevant Change Order, District Directed Change Order or Field Order.

G. A Change Order becomes a Contract Document when: (i) it is a District Directed Change Order as described in Article 9.3; or (ii) after it has been signed by both District and the Design-Build Entity, and states their agreement upon all of the following:

1. A change in the Work, if any.

2. The amount of an adjustment of the Guaranteed Maximum Price, if any.

3. The amount of an adjustment of the Project Completion Date, if any.

4. The terms and conditions of the Change Order are accepted as full and final settlement of any and all claims arising out of or related to the subject of the Change Order and the compensation set forth therein comprises the total compensation due for the work or change defined in the Change Order, including all impacts on any unchanged work.

10.2 Design-Build Entity Change Order Requests.

A. The Design-Build Entity may only request changes to the Guaranteed Maximum Price and/or Project Completion Date for Additional Work or Excusable Delays to completion of the Project caused by the acts, errors, or omissions of District, District's Representative, their agents or employees, or caused by unforeseen conditions or Acts of God if, and only if, the Design-Build Entity follows the procedures specified in this Article.

B. If the Design-Build Entity asserts that the Design-Build Entity is entitled to an adjustment of the Guaranteed Maximum Price and/or Project Completion Date as the result of an act, error, or omission of District, or as the result of unforeseen conditions that could not have been foreseen by the Design-Build Entity, then the Design-Build Entity may submit a Change Order Request in a form acceptable to District, to District's Representative.

C. A Change Order Request must state and justify the reason for the request, and specify the amount of any requested adjustment to the Guaranteed Maximum Price and/or Project Completion Date. Upon request of District's Representative, the Design-Build Entity shall submit such additional information as may be requested by District's Representative for the purpose of evaluating the Change Order Request. Such additional information may include a cost proposal meeting the requirements of this Article and written documentation demonstrating the Design-Build Entity's entitlement to a time extension under Article 10. If the Change Order Request seeks an adjustment of the Guaranteed Maximum Price for a Compensable Delay, upon request of District's Representative, the Design-Build Entity shall submit written documentation demonstrating the Design-Build Entity's entitlement to such an adjustment under Article 9.

D. A condition precedent to obtaining an adjustment of the Guaranteed Maximum Price and/or Project Completion Date as the result of an act, error, or omission of District, District's Representative, their agents or employees, or as the result of an unforeseen condition, is timely submission of a Change Order Request that meets the requirements set forth in this Article. A Change Order Request based upon such acts, errors or omissions will be deemed timely submitted if, and only if, it is submitted within five (5) Days of the date the Design-Build Entity discovers, or reasonably should discover, that an act, error, or omission of District has occurred that may entitle the Design-Build Entity to an adjustment of the Guaranteed Maximum Price and/or Project Completion Date (even if the Design-Build Entity has not been damaged, delayed, or incurred extra cost when the Design-Build Entity discovers, or reasonably should discover, the act, error or omission giving rise to the Change Order Request). A Change Order Request based upon an unforeseen condition will be deemed timely submitted if, and only if, it is submitted within fourteen (14) Days of the date the Design-Build Entity discovers, or reasonably should discover, the existence of an unforeseen condition that may entitle the Design-Build Entity to an adjustment of the Guaranteed Maximum Price and/or Project Completion Date (even if the Design-Build Entity has not been damaged, delayed, or incurred extra cost when the Design-Build Entity discovers, or reasonably should discover, the unforeseen condition giving rise to the Change Order Request). Although the Design-Build Entity shall have fourteen (14) Days to submit such Change Order Requests, the Design-Build Entity shall provide

District written or oral notice of the issue being the basis for such Change Order within fourteen (14) business days of discovery.

E. If District's Representative issues a final decision on all or part of a Change Order Request, the Design-Build Entity may contest the decision by filing a timely Claim under the procedures specified in Article 14. A final decision is any decision on a Change Order Request by District's Representative which states that it is final.

10.3 Unilateral Change Order; Field Order.

A. An District Directed Change Order is a type of Change Order which may be issued by District and incorporated into the Contract Documents without the Design-Build Entity's signature, where District determine that it is in District's best interest to adjust the Guaranteed Maximum Price and/or Project Completion Date as District believes necessary, even though no agreement has been reached between District and the Design-Build Entity.

B. A Field Order is a preliminary to a Change Order that describes a change in the Work, the estimated adjustments of the Guaranteed Maximum Price and/or the Project Completion Date, if any, and orders a change in the Work before all of the terms of the change are fully agreed upon by District and the Design-Build Entity. A Field Order must eventually be memorialized as a Change Order or an District Directed Change Order and incorporated into the Contract Documents.

1. A Field Order may be issued by District. If requested in writing, the Design-Build Entity shall promptly provide District's Representative with a cost proposal, setting forth the proposed adjustments of the Guaranteed Maximum Price and/or the Project Completion Date, if any, for performing the change in the Work. The Field Order will be superseded by a Change Order which shall include the actual adjustments, if any, of the Guaranteed Maximum Price and the Project Completion Date, as well as the change in the Work.

2. A Field Order signed by the Design-Build Entity indicates the agreement of the Design-Build Entity therewith, including the Design-Build Entity's agreement to the proposed adjustments to the Guaranteed Maximum Price and/or the Project Completion Date stated therein. Such agreement shall be effective immediately and will be incorporated into a Change Order.

3. Upon receipt of a Field Order, the Design-Build Entity shall promptly proceed with the change in the Work.

4. If the Design-Build Entity does not agree to the adjustment of the Guaranteed Maximum Price set forth in a Field Order, the amount shall be determined in accordance with the provisions of Article 9.4; and the Design-Build Entity shall comply with the provisions of Article 9.4 regarding records and documentation of actual costs.

10.4 Changes to The Guaranteed Maximum Price.

A. Process for Determining Adjustments in the Guaranteed Maximum Price.

1. Change Order Request Detail. Design-Build Entity's Change Order Request shall include all professional services, material, labor, and equipment separately priced for each element of Work. Allowable Overhead and Profit may be added to the total of these costs if allowed by the Contract Documents. As general guidance, all cost documentation shall be tabulated from detailed computerized spreadsheets in a "workbook" which will be compiled into useful summary spreadsheets as directed by District's Representative.

    a. Lump Sum Change Orders. By mutual acceptance of a lump sum price negotiated on the basis of the Design-Build Entity's itemized estimate of the anticipated costs of the Additional Work.

    b. Time and Materials Change Orders. District may direct Design-Build Entity to proceed with the Additional Work with payments to be made on the basis of the actual cost of the labor and materials required to complete the Additional Work.

2. Change Order Request Form. Design-Build Entity's Change Order Request shall be on forms acceptable to District's Representative. Design-Build Entity's Change Order Request shall certify in writing that the amounts included cover all direct, supplemental, indirect, consequential, and cumulative costs and delays, as applicable, and that those costs and delays would be or were necessarily incurred, despite Design-Build Entity's reasonable and diligent efforts to mitigate them. Mitigation efforts undertaken by Design-Build Entity must be described.

B. Lump Sum Change Orders. Compensation for Lump Sum Change Orders shall be limited to expenditures necessitated specifically by the Additional Work, and shall be segregated as follows:

1. Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the additional work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the cost of the Additional Work will not be permitted unless the Design-Build Entity establishes the necessity for such new classifications. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental. Compensation for the design element of any Additional Work as an adjustment to the Guaranteed Maximum Price, authorized by Change Order shall be computed as specified in Attachment 1.

2. Materials. The cost of materials shall be at invoice or lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight and delivery. Materials cost shall be based upon supplier or manufacturer's invoice. If invoices or other satisfactory evidence of cost are not furnished within fifteen (15) Days of delivery, then District shall determine the materials cost, at its sole discretion.

3. Tool and Equipment Use. Costs for the use of small tools, which are tools that have a replacement value of $1,000 or less, shall be considered included in the

Overhead and Profit markups established below. Regardless of ownership, the rates to be used in determining equipment use costs shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the Work is performed.

C. Time and Materials Change Orders.

1. General. The term Time and Materials means the sum of all costs reasonably and necessarily incurred and paid by Design-Build Entity for labor, materials, and equipment in the proper performance of Additional Work. Except as otherwise may be agreed to in writing by District, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items.

2. Timely and Final Documentation.

a. Design-Build Entity must submit timesheets, materials invoices, records of equipment hours and records of rental equipment hours to District's Representative for an approval signature each day Additional Work is performed. Failure to get District's Representative's approval signature each Day may result in a waiver of Design-Build Entity's right to claim these costs.

b. All documentation of incurred costs shall be submitted by Design-Build Entity and approved by District's Representative within three (3) Days of incurring the cost for labor, material, equipment, and special services. Design-Build Entity's total actual cost shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and special services (T&M Summary Sheets). Design-Build Entity's failure to provide the T&M Summary Sheets within three (3) Days of performance of the work will result in the Design-Build Entity's otherwise allowable profit being reduced by 50% for that portion of Additional Work which was not documented in a timely manner. Design-Build Entity's failure to submit the T&M Summary Sheets within three (3) Days of completion of the work will result in Design-Build Entity's waiver for any reimbursement of any costs associated with the T&M Summary Sheets or the performance of the Additional Work.

3. Labor. The costs of labor will be the actual cost substantiated by timesheets and certified payroll for wages prevailing for each craft or type of workers performing the Additional Work at the time the Additional Work is done, plus employer payments of payroll taxes, workers compensation insurance, liability insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. Compensation for the design element of any Additional Work as an adjustment to the Guaranteed Maximum Price, authorized by Change Order shall be computed as specified in Attachment 1.

a. Equipment Operator Exception. Labor costs for equipment operators and helpers shall be paid only when such costs are not included in the invoice for equipment rental.

b. Foreman Exception. The labor costs for foremen shall be proportioned to all of their assigned work and only that applicable to the Additional Work shall be paid. Indirect labor costs, including without limitation the superintendent, project manager, and other labor identified in the Contract Documents will be considered Overhead.

4. Materials. The cost of materials reported shall be itemized at invoice or lowest current price at which materials are locally available and delivered to the Site in the quantities involved, plus the cost of sales tax, freight, delivery, and storage.

   a. Trade discounts available to the purchaser shall be credited to District notwithstanding the fact that such discounts may not have been taken by Design-Build Entity.

   b. For materials secured by other than a direct purchase and direct billing to the purchaser, the cost shall be deemed to be the price paid to the actual supplier as determined by District's Representative.

   c. Payment for materials from sources owned wholly or in part by the purchaser shall not exceed the price paid by the purchaser for similar materials from said sources on Additional Work items or the current wholesale price for such materials delivered to the Site, whichever price is lower.

   d. If in the opinion of District's Representative the cost of materials is excessive, or Design-Build Entity does not furnish satisfactory evidence of the cost of such materials, then the cost shall be deemed to be the lowest current wholesale price for the total quantity concerned delivered to the Site less trade discounts.

   e. District reserves the right to furnish materials for the Additional Work and no Claim shall be allowed by Design-Build Entity for costs of such materials or Indirect Costs or profit on District furnished materials.

5. Equipment. Design-Build Entity will be paid for the use of equipment at the rental rates listed for that equipment in the California Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates, which is in effect on the date upon which the Contract was executed. Such rental rate will be used to compute payments for equipment whether the equipment is under Design-Build Entity's control through direct Ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment shall be the rate resulting in the least total cost to District for the total period of use. If it is deemed necessary by Design-Build Entity to use equipment not listed in the publication, an equitable rental rate for the equipment will be established by District's Representative. Design-Build Entity may furnish cost data which might assist District's Representative in the establishment of the rental rate.

   a. All equipment shall, in the opinion of District's Representative, be in good working condition and suitable for the purpose for which the equipment is to be used.

   b. Before construction equipment is used on the Additional Work, Design-Build Entity shall plainly stencil or stamp an identifying number thereon at a

conspicuous location, and shall furnish to District's Representative, in duplicate, a description of the equipment and its identifying number and the scheduled Additional Work activities planned.

c. Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

6. Rental Equipment.

a. Rental Time. The rental time to be paid for equipment on the Site shall be the time the equipment is in productive operation on the Additional Work being performed and, in addition, shall include the time required to move the equipment to the location of the Additional Work and return it to the original location or to another location requiring no more time than that required to return it to its original location; except, that moving time will not be paid if the equipment is used on other than the Additional Work, even though located at the site of the Additional Work.

b. Rental Time Not Allowed. Rental time will not be allowed while equipment is inoperative due to breakdowns.

c. Computation Method. The following shall be used in computing the rental time of equipment on the Site:

(i) When hourly rates are listed, any part of an hour less than 30 minutes of operation shall be considered to be ½-hour of operation, and any part of an hour in excess of 30 minutes will be considered one hour of operation.

(ii) When daily rates are listed, any part of a day less than 4 hours operation shall be considered to be ½-day of operation.

7. Design-Build Entity-Owned Equipment. For Design-Build Entity-owned equipment, the allowed equipment rental rate will be limited to the monthly equipment rental rate using a utilization rate of 173 hours per month which is found in the rental rate source identified in the Special Conditions for rental equipment.

8. Special Services. Special work or services are defined as that Additional Work characterized by extraordinary complexity, sophistication, or innovation or a combination of the foregoing attributes which are unique to the construction industry.

a. Invoices for Special Services. When District's Representative and Design-Build Entity determine that a special service is required which cannot be performed by the forces of Design-Build Entity or those of any of its Subcontractors, the special service may be performed by an entity especially skilled in the Additional Work. Invoices for special services based upon the current fair market value thereof may be accepted without complete itemization

of labor, material, and equipment rental costs, after validation of market values by District's Representative.

b. Discount and Allowance. All invoices for special services will be adjusted by deducting all trade discounts offered or available, whether the discounts were taken or not. In lieu of Overhead and Profit specified herein, a total allowance not to exceed fifteen percent (15%) for Overhead and Profit will be added to invoices for special services.

9. Excluded Costs. The term Time and Materials shall not include any of the following costs or any other home or field office overhead costs, all of which are to be considered administrative costs covered by Design-Build Entity's allowance for Overhead and Profit:

a. Overhead Cost. Payroll costs and other compensation of Design-Build Entity's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, timekeepers, clerks and other personnel employed by Design-Build Entity whether at the Site or in Design-Build Entity's principal office or any branch office, material yard, or shop for general administration of the Additional Work;

b. Office Expenses. Expenses of Design-Build Entity's principal and branch offices;

c. Capital Expenses. Any part of Design-Build Entity's capital expenses, including interest on Design-Build Entity's capital employed for the Additional Work and charges against Design-Build Entity for delinquent payments;

d. Negligence. Costs due to the negligence of Design-Build Entity or any Subcontractor or Supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including without limitation the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property;

e. Other. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included by the Contract Documents;

f. Small Tools. Cost of small tools valued at less than $1000 and that remain the property of Design-Build Entity;

g. Administrative Costs. Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of Claims;

h. Anticipated Lost Profits. Expenses of Design-Build Entity associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings or unpaid retention;

i. Home Office Overhead. Costs derived from the computation of a "home office overhead" rate by application of the Eichleay, Allegheny, burden fluctuation, or other similar methods;

j. Special Consultants and Attorneys. Costs of special consultants or attorneys, whether or not in the direct employ of Design-Build Entity, employed for services specifically related to the resolution of a Claim, dispute, or other matter arising out of or relating to the performance of the Additional Work; or

k. Design Costs. Design costs in excess of the hourly rates included in Attachment 1.

10. Overhead and Profit for Lump Sum and Time and Materials Change Orders.

a. The mark-up to be added to Lump Sum and Time and Materials Change Orders for Overhead (including supervision) and Profit on Additional Work shall be determined in accordance with the following provisions:

(i) "Net Cost" is defined as the actual costs of labor, materials and tools and equipment as defined herein only, excluding Overhead and Profit. The costs of applicable insurance and bond premium will be reimbursed to the Design-Build Entity and Subcontractors at cost only, without mark-up and in no case shall the total costs exceed one and one-half percent (1.5%) of Net Cost. Design-Build Entity shall provide District with documentation of the costs, including not limited to payroll records, invoices, and such other information as District may reasonably request.

(ii) For Work performed by the Design-Build Entity's forces the added cost for overhead and profit shall not exceed fifteen (15%) percent of the Net Cost of the Work.

(iii) For Work performed by a Subcontractor, the added cost for overhead and profit shall not exceed fifteen (15%) percent of the Subcontractor's Net Cost of the Work, to which the Design-Build Entity may add five (5%) percent of the Subcontractor's Net Cost.

(iv) For Work performed by a sub-subcontractor the added cost for overhead and profit shall not exceed fifteen (15 %) percent of the Net Cost for Work, to which the subcontractor and Design-Build Entity may each add an additional five (5 %) percent of the Net Cost of the lower tier subcontractor.

(v) No additional markup will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by District exceed twenty-five (25%) percent of the Net Cost, as defined herein, of the party that performs the Work.

(vi) No additional markup will be allowed for design costs computed as specified in Attachment 1.

b. All of the following costs are included in the markups for overhead and profit described above, and Design-Build Entity shall not receive any additional

compensation for: Submittals, drawings: field drawings, Shop Drawings, including submissions of drawings; field inspection; General Superintendence; General administration and preparation of cost proposals, schedule analysis, Change Orders, and other supporting documentation; computer services; reproduction services; Salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; Janitorial services; Small tools, incidentals and consumables; Temporary on Site facilities (Offices, Telephones, Internet access, Plumbing, Electrical Power, lighting; Platforms, Fencing, Water), Jobsite and Home office overhead or other expenses; vehicles and fuel used for work otherwise included in the Contract Documents; Surveying; Estimating; Protection of Work; Handling and disposal fees; Final cleanup; Other incidental Work; Related warranties.

D. Change for Compensable Delay.

1. The Guaranteed Maximum Price will be adjusted for Compensable Delay, which for the purposes of this Article exists if, and only if, the Design-Build Entity demonstrates that all of the following four conditions are met:

   a. Condition Number One: The delay results in an extension of the Project Completion Date pursuant to Article 10.

   b. Condition Number Two: The delay is caused solely by one, or more of the following:

      (i) An error or omission in the Contract Documents caused by District and not as a result of the Design-Build Entity's failure to conform to bridging documents, performance standards, Construction Documents, or Contract Documents; or

      (ii) District's decision to change the Work, where such decision is not the result of any default or misconduct of the Design-Build Entity; or

      (iii) District's decision to suspend Work on the Project, where such decision is not the result of any default or misconduct of the Design-Build Entity; or

      (iv) The failure of District, District's Representative or Separate Contractors to timely perform any contract obligation where the failure to so perform is not the result of any default or misconduct of the Design-Build Entity.

   c. Condition Number Three: The delay is not concurrent with a delay that is:

      (i) Critical under Article 10; and

      (ii) Caused by an event not listed in this Article 9.4D(1)(b).

   d. Condition Number Four: The delay is not caused, in whole or in part, by an event not listed in Article 9.4D(1)(b).

2. For each day of delay that meets all four conditions prescribed in Article 9.4(D)(1), the Guaranteed Maximum Price will be adjusted in accordance with the Reverse Liquidated Damages specified herein .

3. Except as provided in Articles 9 and 10, the Design-Build Entity shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption. The Reverse Liquidated Damages specified herein will be full and final compensation for any compensable delay.

4. If for any reason one or more of the conditions prescribed in Article 9.4(D)(1) is held legally unenforceable, the remaining conditions must be met as a condition to obtaining an adjustment of the Guaranteed Maximum Price.

10.5 District Reservation of Rights.

A. By signing the Contract, the parties agree that District has the right to do any or all of the following, which are reasonable and within the contemplation of the parties:

1. To order changes in the Work, including without limitation:

a. Changes to correct errors or omissions caused by District, if any, in the Contract Documents.

b. Changes resulting from District's decision to change the Work subsequent to execution of the Contract.

c. Changes due to unforeseen conditions.

2. To suspend Work on the Project or any part thereof.

3. To delay Work on the Project, including without limitation, delays resulting from the failure of District or District's Representative to timely perform any Contract obligation and delays for District's convenience.

ARTICLE 11 - PROJECT COMPLETION DATE

11.1 Commencement of Work On The Project.

A. The date of commencement of the Work shall be set forth in the Notice to Proceed. The date of commencement for the Work shall not be postponed by the failure of the Design-Build Entity, Subcontractors, or of persons or firms for whom the Design-Build Entity is responsible, to act.

11.2 Progress and Completion.

A. By signing the Contract:

1. The Design-Build Entity represents to District that the Project Completion Date is reasonable for performing the Work and that the Design-Build Entity is able to perform and complete the Work within the Project Completion Date.

2. The Design-Build Entity agrees that District is purchasing the right to have the Design-Build Entity present on the Project for the full duration of the time period necessary to complete the Work described in the RFP.

B. The Design-Build Entity shall not, except by agreement or instruction of District in writing, commence operations on the Project site or elsewhere prior to the effective date of insurance required by Article 5.1 to be furnished by the Design-Build Entity. The date of commencement and the Project Completion Date shall not be changed by the effective date of such insurance.

C. The Design-Build Entity shall proceed expeditiously with adequate forces and shall achieve full completion of the Work by the Project Completion Date. If District's Representative determines and notifies the Design-Build Entity that the Design-Build Entity's progress is such that the Design-Build Entity will not achieve full completion of the Work by the Project Completion Date, the Design-Build Entity shall immediately and at no additional cost to District, take all measures necessary, including working such overtime, additional shifts, Sundays, or holidays as may be required to ensure that the entire Project is completed within the Project Completion Date. Upon receipt of such notice from District's representative, the Design-Build Entity shall immediately notify District's Representative of all measures to be taken to ensure full completion of the Work within the Project Completion Date. The Design-Build Entity shall reimburse District for any extra costs or expenses (including the reasonable value of any services provided by District's employees) incurred by District as the result of such measures.

11.3 Delay.

A. There are two kinds of delay, Excusable Delay (which may be compensable or non-compensable) and Unexcusable Delay. Only Excusable Delay, that meets the requirements specified herein may result in the adjustment of the Project Completion Date, and/or the Guaranteed Maximum Price and may be compensated as Additional Work as described below. All other delay(s) are Unexcusable, and except and only to the extent provided otherwise in Articles 9 and 10, by signing the Contract, the Design-Build Entity agrees:

1. to bear the risk of non-compensable and Unexcusable Delays to completion of the Work on the Project; and

2. that the Proposal was made with full knowledge of this risk.

B. In agreeing to bear the risk of Unexcusable Delays to completion of the Work on the Project, the Design-Build Entity understands that, except and only to the extent provided otherwise in Articles 9 and 10, the occurrence of events that result in any delay in completion of the Work on the Project shall not excuse the Design-Build Entity from its obligation to achieve full completion of the Work on the Project within the Project Completion Date, and shall not entitle the Design-Build Entity to an adjustment of the Guaranteed Maximum Price.

11.4 Adjustment of The Project Completion Date for Excusable Delay.

A. The Project Completion Date will be extended for an Excusable Delay, if and only if, the Design-Build Entity demonstrates that all of the following six conditions are met:

1. Condition Number One: When the event causing the delay commences, the Design-Build Entity has complied with all Contract requirements for maintaining, submitting, and updating Project Schedules.

2. Condition Number Two: The delay is critical. A delay is critical if and only to the extent it delays a Work activity that cannot be delayed without delaying completion of the entire Project beyond the Project Completion Date. Additionally:

    a. If the Master Project Schedule shows completion of the Project before the Project Completion Date, a delay is critical if and only to the extent the delay pushes completion of the entire project to a date that is beyond the Project Completion Date.

    b. When two or more delays occur concurrently, and each such concurrent delay by itself without consideration of the other delays would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Project Completion Date should be adjusted pursuant to Article 10.4B, such concurrent critical delays shall be treated as a single delay which commences at the start of the delay that begins first and terminates at the cessation of the delay that ends last.

3. Condition Number Three: The delay is supported by the Master Project Schedule (or, if appropriate, the Preliminary Schedule), current at the commencement of the event giving rise to the delay. A delay is supported only to the extent the Master Project Schedule (or, if appropriate, the Preliminary Schedule) corroborates that it causes a delay to completion of the entire Project beyond the Project Completion Date because of its effect on the operation referred to in Article 10.4A(2).

4. Condition Number Four: Within fourteen (14) Days of the date the Design-Build Entity discovers or reasonably should discover an act, error, omission or unforeseen condition causing the delay, (even if the Design-Build Entity has not been delayed when the Design-Build Entity discovers or reasonably should discover the act, error, omission or unforeseen condition giving rise to the delay) the Design-Build Entity submits a timely Change Order Request that meets the requirements of Article 9.

5. Condition Number Five: The delay is not caused by:

    a. A naturally occurring unforeseen site condition not anticipated in the Contract Documents (e.g., unanticipated naturally occurring rock or sand); or

    b. The financial inability, misconduct or default of the Design-Build Entity, a Subcontractor or supplier; or

    c. The unavailability of materials or parts, as long as such materials or parts were timely ordered by Design-Build Entity within thirty (30) Days of the issuance of the Notice to Proceed; or

    d. An error or omission in the Contract Documents caused by the Design-Build Entity or the Design-Build Entity's design consultants.

6. Condition Number Six: The delay is caused by:

   a. Fire; or

   b. Strikes, boycotts, or like obstructive actions by employees or labor organizations; or

   c. Acts of God, including earthquakes in excess of a magnitude of 3.5 on the Richter Scale, tidal waves, floods, unusually severe weather, epidemic, or other severe natural disaster; or

   d. A man made (not naturally occurring) unforeseen site condition such as buried utility lines, pipes, and the like; or

   e. An error or omission in the Contract Documents caused by District; or

   f. District's decision to change the Work, where such decision is not the result of any default or misconduct of the Design-Build Entity; or

   g. District's decision to suspend the Work on the Project, where such decision is not the result of any default or misconduct of the Design-Build Entity; or

   h. The failure of District, District's representative or a Separate Contractor to timely perform any Contract obligation unless such failure is due to the Design-Build Entity's default or misconduct.

B. If and only if a delay meets all six conditions prescribed in Article 10.4A, then the Project Completion Date will be extended by the number of days completion of the entire Project is delayed beyond the Project Completion Date for full completion of the Work on the Project.

C. If for any reason one or more of the six conditions prescribed in Article 10.4A is held legally unenforceable, then all remaining conditions must be met as a condition to obtaining an extension of the Project Completion Date under Article 10.4B.

11.5 Non-Compensable Delay

A. For Excusable, non-compensable delay, the extension of the Project Completion Date pursuant to Article 10.4 above, shall constitute full and final consideration to the Design-Build Entity for the delay.

11.6 Compensable Delay.

A. Subject to the limitations set forth in Article 10.7, below, any adjustment of the Guaranteed Maximum Price as the result of Compensable Delay shall be limited to the amounts specified in Article 9.

11.7 No Damages for Reasonable Delay.

A. District's liability to the Design-Build Entity for delays for which District is responsible shall be limited to only an extension of the Project Completion Date unless such delays were unreasonable under the circumstances. In no case shall District be liable for any

costs which are borne by the Design-Build Entity in the regular course of business, including, but not limited to, home office overhead and other ongoing costs.

B. Damages caused by unreasonable District delay that impact the critical path, including delays caused by items that are the responsibility of District pursuant to Government Code section 4215, shall be compensated at the Reverse Liquidated Damages rate established herein, no other calculations, proportions or formulas shall be used to calculate any delay damages.

C. District and District's Representative, and the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each of them, shall not be liable to Design-Build Entity for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Design-Build Entity on or in connection with any other project or anticipated project.

ARTICLE 12 -TEST AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK; NOTICE OF DEFECTS

12.1 Notice of Defective Work.

A. Prompt notice of all Defective Work of which District or District's Representative has actual knowledge will be given to Design-Build Entity. Defective Work may be rejected, corrected, or accepted as provided in the Contract Documents.

12.2 Access to Work.

A. District, District's Representative, their consultants and other representatives and personnel, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Project site and the Work at reasonable times for their observation, inspection, and testing. Design-Build Entity shall provide them proper and safe conditions for such access and advise them of Design-Build Entity's safety procedures and programs.

12.3 Tests and Inspections.

A. Design-Build Entity shall give District's Representative timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. Except as provided by the Contract Documents, District shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents.

C. If Applicable Laws of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Design-Build Entity shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish District's Representative the required certificates of inspection or approval.

D. Design-Build Entity shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for District and District's Representative's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Design-Build Entity's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to District.

E. District will provide inspection during normal working hours from 7:00 a.m. to 3:30 p.m. Monday through Friday. Inspection before or after this time will be charged to the contractor as reimbursable inspection time. Inspections on weekends requires two days' notice for review and approval. Upon written request and approval the 8.5 hour working day may be changed to other limits subject to District ordinance.

12.4 Uncovering Work.

A. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Design-Build Entity without written concurrence of District's Representative, Design-Build Entity shall, if requested by District's Representative, uncover such Work for observation.

B. Uncovering Work shall be at Design-Build Entity's expense unless Design-Build Entity has given District's Representative timely notice of Design-Build Entity's intention to cover the same and District's Representative has not acted with reasonable promptness in response to such notice.

C. If Design-Build Entity has given District's Representative timely notice of Design-Build Entity's intention to cover the work and District's Representative has not acted with reasonable promptness in response to such notice, and District's Representative later considers it necessary or advisable that covered Work be observed by District's Representative or inspected or tested by others, Design-Build Entity, at District's Representative's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as District's Representative may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

1. If it is found that the uncovered Work is defective, Design-Build Entity shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and District shall be entitled to an appropriate decrease in the GMP.

2. If the uncovered Work is not found to be defective, Design-Build Entity shall be allowed an increase in the GMP and/or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction.

12.5 District May Stop The Work.

A. If the Work is defective, District may in its sole discretion order Design-Build Entity to stop the Work, or any portion thereof, until the cause for such order has been eliminated. All delays associated with the stop Work order will be the responsibility of the Design-Build Entity.

12.6 Correction of Defective Work and Guarantee to Repair Period.

A. Promptly after receipt of written notice, Design-Build Entity shall correct all Defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by District or District's Representative, remove it from the Project and replace it with Work that is not defective. Design-Build Entity shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. The term "Guarantee to Repair Period" means a period of two (2) years, unless a longer period of time is specified, commencing as follows:

1. For any Construction Work not described as incomplete on the date of Project Completion.

2. For space beneficially occupied or for separate systems fully utilized prior to Substantial Completion pursuant to Article 12.6, from the first date of such Beneficial Occupancy or actual use, as established in a Certificate of Beneficial Occupancy.

3. For all Construction Work other than 1. or 2. above, from the date of Final Completion.

C. When correcting Defective, Design-Build Entity shall take no action that would void or otherwise impair District's special warranty and guarantee, if any, on said Work.

D. The Design-Build Entity shall (1) correct Defective Work that becomes apparent during the progress of the Work on the Project or during the Guarantee to Repair Period and (2) replace, repair, or restore to District's satisfaction any other parts of the Work on the Project and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work. The Design-Build Entity shall promptly commence such correction, replacement, repair, or restoration upon notice from District's Representative or District, but in no case later than fourteen (14) Days after receipt of such notice; and the Design-Build Entity shall diligently and continuously prosecute such correction to completion. The Design-Build Entity shall bear all costs of such correction, replacement, repair, or restoration, and all Losses resulting from such Defective Work, including additional testing, inspection, and compensation for District's Representative's services and expenses. The Design-Build Entity shall perform corrective Work on the Project at such times that are acceptable to District and in such a manner as to avoid, to the extent practicable, disruption to District's activities.

E. If immediate correction of Defective Work is required for life safety or the protection of property and is performed by District or Separate Contractors, the Design-Build Entity shall pay to District all reasonable costs of correcting such Defective Work. The Design-Build Entity shall replace, repair, or restore to District's satisfaction any other parts of the Construction Work and any other real or personal property which is damaged or destroyed as a result of such Defective Work or the correction of such Defective Work.

F. The Design-Build Entity shall remove from the Project site portions of the Construction Work and materials which are not in accordance with the Contract Documents and which are neither corrected by the Design-Build Entity nor accepted by District.

G. The Design-Build Entity's obligations under this Article are in addition to and not in limitation of its standard of cared owed on the Project to District under Article 6 or any other obligation of the Design-Build Entity under the Contract Documents. Enforcement of the Design-Build Entity's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies District may have under the Contract Documents or at law or in equity for Defective Work. Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations of the Design-Build Entity under the Contract Documents. Establishment of the Guarantee to Repair Period relates only to the specific obligation of the Design-Build Entity to correct the Work on the Project and in no way limits either the Design-Build Entity's liability for Defective Work or the time within which proceedings may be commenced to enforce the Design-Build Entity's obligations under the Contract Documents.

H. If the Design-Build Entity fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services, with respect to either the Schematic Design or Construction phases, to maintain the Contract Schedule, or otherwise fails to comply with any material term of the Contract Documents, and fails within ten (10) Days after receipt of notice from District to promptly commence and thereafter diligently continue to completion the correction of such failure, District may, without prejudice to other remedies District may have, correct such failure at the Design-Build Entity's sole expense. In such case, District will be entitled to deduct from payments then or thereafter due the Design-Build Entity the cost of correcting such failure, including compensation for the additional services and expenses of District's Representative and District's consultants made necessary thereby. If payments then or thereafter due the Design-Build Entity are not sufficient to cover such amounts, the Design-Build Entity shall pay the additional amount to District.

12.7 Acceptance of Defective Work.

A. If, instead of requiring correction or removal and replacement of Defective Work, District prefers to accept it, District may do so. Design-Build Entity shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to District's evaluation of and determination to accept such Defective Work and for the diminished value of the Work.

B. If any acceptance of Defective Work occurs prior to release of the Project retention, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and District shall be entitled to an appropriate decrease in the Guaranteed Maximum Price, reflecting the diminished value of Work and all costs incurred by District.

C. If the Project retention is held in an escrow account as permitted by the Contract Documents, Design-Build Entity will promptly alert the escrow holder, in writing, of the amount of retention to be paid to District.

D. If the acceptance of defective Work occurs after release of the Project retention, an appropriate amount will be paid by Design-Build Entity to District.

12.8 District May Correct Defective Work.

A. If Design-Build Entity fails within a reasonable time after written notice from District's Representative to correct Defective Work, or to remove and replace rejected Work as required by District, or if Design-Build Entity fails to perform the Work in accordance with the Contract Documents, or if Design-Build Entity fails to comply with any other provision of the Contract Documents, District may, after seven (7) Days written notice to Design-Build Entity, correct, or remedy any such deficiency.

B. In connection with such corrective or remedial action, District may exclude Design-Build Entity from all or part of the Site, take possession of all or part of the Work and suspend Design-Build Entity's services related thereto, take possession of Design-Build Entity's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which District has paid Design-Build Entity but which are stored elsewhere. Design-Build Entity shall allow District and District's Representative, and the agents, employees, other contractors, and consultants of each of them, access to the Site to enable District to exercise the rights and remedies to correct the defective work.

C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by District correcting the defective work will be charged against Design-Build Entity, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and District shall be entitled to an appropriate decrease in the GMP.

D. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of defective Work.

E. If the Change Order is executed after all payments under the Contract have been paid by District and the Project Retention is held in an escrow account as permitted by the Contract Documents, Design-Build Entity will promptly alert the escrow holder, in writing, of the amount of Retention to be paid to District.

F. If the Change Order is executed after release of the Project Retention, an appropriate amount will be paid by Design-Build Entity to District.

G. Design-Build Entity shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to District correcting defective work.

12.9 Warranty Period.

A. If within two (2) years after commencement of the Warranty, or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective or not performing suitably for its intended use, or if the repair of any damages to the Site or areas made available for Design-Build Entity's use during the performance of the Work is found to be defective, Design-Build Entity shall promptly, without cost to District and in accordance with District's written instructions:

1. repair such defective land or areas;

2. correct such defective or non-performing work;

3. if the Defective Work has been rejected by District pursuant to the Contract Documents, remove it from the Project and replace it with Work that is not defective; and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Design-Build Entity does not promptly comply with the terms of District's written instructions, or in an emergency where delay would cause serious risk of loss or damage, District may have the Defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Design-Build Entity in accordance with Article 11.1.E.

C. Where Defective Work (or damage to other Work resulting therefrom) has been corrected or removed and replaced, the Warranty period hereunder with respect to such Work shall be extended for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed.

D. Design-Build Entity's obligations under this Article are in addition to any other obligation or warranty and do not limit District's rights and remedies pursuant to California Code of Civil Procedure sections 337.10 and 337.15. or any other Applicable Law.

ARTICLE 13 - PAYMENTS TO DESIGN-BUILD ENTITY AND COMPLETION

13.1 Progress Payments.

The Cost-Loaded CPM Progress Schedule will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to District's Representative. Progress payments on account of Unit Price Work will be based on the number of units completed.

A. Applications for Payments.

1. By the twenty-fifth (25th) day of each month Design-Build Entity shall submit to District's Representative for review an Application for Payment filled out and signed by Design-Build Entity covering the Work completed as of the date of the Application for Payment and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that District has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect District's interest therein, all of which must be satisfactory to District.

2. Beginning with the second Application for Payment, each Application shall include an affidavit executed by the Design-Build Entity stating that it has paid all amounts due on account of the Work paid by District in the prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as set forth in the Special Conditions.

B. Review of Applications.

1. District's Representative will either indicate in writing a recommendation of payment to District or return the Application for Payment to Design-Build Entity indicating in writing District's Representative's reasons for refusing to recommend payment. In the latter case, Design-Build Entity may make the necessary corrections and resubmit the Application for Payment.

2. By recommending any such payment District's Representative will not thereby be deemed to have represented that:

   a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to District's Representative in the Contract Documents; or

   b. there may not be other matters or issues between the parties that might entitle Design-Build Entity to be paid additionally by District or entitle District to withhold payment to Design-Build Entity.

3. Neither District's Representative's review of Design-Build Entity's Work for the purposes of recommending payments nor District's Representative's recommendation of any payment, including final payment, will impose responsibility on District's Representative:

    a. to supervise, direct, or control the Work;

    b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;

    c. for Design-Build Entity's failure to comply with Applicable Laws applicable to Design-Build Entity's performance of the Work;

    d. to make any examination to ascertain how or for what purposes Design-Build Entity has used the moneys paid on account of the GMP; or

    e. to determine that title to any of the Work, materials, or equipment has passed to District free and clear of any Liens.

4. District's Representative may refuse to recommend the whole or any part of any payment due to subsequently discovered evidence or the results of subsequent inspections or tests. District retains the right to revise or revoke any such payment recommendation previously made, to such extent as may be necessary in District's opinion to protect District from loss.

C. Payment Becomes Due.

1. Thirty (30) Days after presentation of an undisputed and properly submitted Application for Payment to District's Representative, and subject to District's Representative's recommendation, subject to the modifications above, the amount recommended will become due, and when due will be paid by District to Design-Build Entity.

D. Retention and Securities in Lieu of Retention.

1. Unless Project has been deemed substantially complex as noted in the Special Conditions, District will retain five percent (5%) of the amount invoiced in accordance with Applicable Laws.

2. Pursuant to Public Contract Code section 22300, Design-Build Entity may substitute securities for any moneys withheld as a retention by District to ensure performance under the Contract. At the request and expense of Design-Build Entity, securities equivalent to the amount withheld shall be deposited with District, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to Design-Build Entity. Upon satisfactory completion of the Contract, the securities shall be returned to Design-Build Entity.

    a. Alternatively, Design-Build Entity may request, and District shall make payment of retentions earned directly to the escrow agent selected by the Design-Build Entity. At the expense of Design-Build Entity, Design-Build Entity may direct the investment of the payments into securities and Design-Build Entity shall

receive the interest earned on the investments upon the same terms provided for in Public Contract Code section 22300 for securities deposited by Design-Build Entity. Upon satisfactory completion of the Contract, Design-Build Entity shall receive from the escrow agent all securities, interest, and payments received by the escrow agent when District authorizes the escrow agent to release these funds to the Design-Build Entity, pursuant to the terms of Public Contract Code section 22300.

3. Securities eligible for investment shall include those listed in Government Code section 16430, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Design-Build Entity and District.

4. Design-Build Entity shall be the beneficial District of any securities substituted for moneys withheld and shall receive any interest thereon.

5. The escrow agreement shall be in the form of the Escrow Agreement provided as part of the Contract Documents.

E. District's Reduction in Recommended Payment.

1. In addition to reductions recommended by District's Representative, District may refuse to make payment of the full amount recommended by District's Representative because:

   a. Claims have been made against District on account of Design-Build Entity's performance or furnishing of the Work.

   b. Stop Payment Notices or Liens have been filed in connection with the Work.

   c. Defective Work not remedied.

   d. Failure of Design-Build Entity to make proper payments to its subcontractors or suppliers.

   e. Completion of the Contract if there exists a reasonable doubt that the Work can be completed for the unpaid Contract balance.

   f. Damage to another contractor or third party.

   g. Amounts which may be due the District for claims against Design-Build Entity.

   h. Failure of Design-Build Entity to keep the record ('as-built") drawings up to date.

   i. Failure to provide updates on the construction schedule.

   j. Site cleanup.

   k. Failure of the Design-Build Entity to comply with requirements of the Contract Documents.

l. Liquidated Damages.

Upon completion of the Contract, District will reduce the final Contract Price to reflect costs charged to the Design-Build Entity, back charges or payments withheld pursuant to the Contract Documents.

13.2 Design-Build Entity's Warranty of Title.

A. Design-Build Entity warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to District no later than the time of payment free and clear of all Liens.

13.3 Partial Utilization.

A. District reserves the right to occupy or utilize any portion of the Work at any time before completion, and such occupancy or use shall not constitute acceptance of any part of Work covered by this Contract. This use shall not relieve the Design-Build Entity of its responsibilities under the Contract.

13.4 Final Inspection.

A. Upon written notice from Design-Build Entity that the entire Work is complete, District's Representative will promptly make a final inspection with District and Design-Build Entity and will notify Design-Build Entity in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Design-Build Entity shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

13.5 Final Acceptance.

A. After Design-Build Entity has, in the opinion of District's Representative, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents, and other documents required by the Contract Documents, District shall execute and file with the County in which the Project is located a Notice of Completion, constituting final acceptance and completion of the Project, except as may be expressly noted.

13.6 Final Payment.

A. Application for Payment.

1. Upon execution of the Notice of Completion, Design-Build Entity may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance;

b. consent of the surety to final payment;

c. a fully completed Conditional Waiver and Release on Final Payment.

B. District's Representative's Review of Application and Acceptance.

1. If, on the basis of District's Representative's observation of the Work during construction and final inspection, and District's Representative's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, District's Representative is satisfied that the Work has been completed and Design-Build Entity has satisfied all other requirements for final payment, District's Representative will indicate in writing District's Representative's recommendation of payment and present the Application for Payment to District for payment. Otherwise, District's Representative will return the Application for Payment to Design-Build Entity, indicating in writing the reasons for refusing to recommend final payment, in which case Design-Build Entity shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due.

1. Within sixty (60) Days after the presentation to District's Representative of the proper and complete final Application for Payment and accompanying documentation, the amount recommended by District's Representative, less any sum District is entitled to set off pursuant to the Contract Documents, will become due and will be paid by District to Design-Build Entity.

13.7 Waiver of Claims.

A. The making and acceptance of final payment will constitute a waiver of all Claims by Design-Build Entity against District other than those previously made in accordance with the requirements herein and expressly acknowledged by District in writing as still unsettled.

ARTICLE 14 -SUSPENSION OF WORK AND COMPLETION

14.1 District May Suspend Work.

A. District may, at its sole option, decide to suspend at any time the performance of all or any portion of the Work by notice in writing to Design-Build Entity. Such notice of suspension of Work will designate the amount and type of plant, labor, and equipment to be committed to the Project during the period of suspension. Design-Build Entity shall use its best efforts to utilize its plant, labor, and equipment in such a manner as to minimize costs associated with suspension.

B. Upon receipt of any such notice, Design-Build Entity shall, unless the notice requires otherwise:

1. Immediately discontinue Work on the date and to the extent specified in the notice;

2. Place no further orders or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice;

3. Promptly make every reasonable effort to obtain suspension upon terms satisfactory to District's Representative of all orders, subcontracts, and rental agreements to the extent they relate to performance of Work suspended; and

4. Continue to protect and maintain the Work including those portions on which Work has been suspended.

C. Except as provided by this article, as full and complete compensation for such suspension, Design-Build Entity shall be granted an adjustment in the GMP based on a negotiated daily rate that reflects the Design-Build Entity's actual costs associated with the demobilized condition of the Site (and as a result will be less than the Daily Rate contained in the Special Conditions) and an extension of the Contract Times equal to the number of days performance of Work is suspended; provided, however, that no adjustment of GMP or extension of Contract Times shall be granted if the suspension results from Design-Build Entity's non-compliance with the requirements of the Contract.

14.2 District May Terminate for Cause.

A. District may, without prejudice to any other right or remedy, serve written notice upon Design-Build Entity of its intention to terminate this Contract in whole or in part if the Design-Build Entity: (i) refuses or fails to prosecute the Work or any part thereof with such diligence as will ensure its completion within the Project

Completion Date; (ii) fails to complete the Work within the required time; (iii) files a bankruptcy petition or is adjudged a bankruptcy; (iv) makes a general assignment for the benefit of its creditors; (v) has a receiver appointed; (vi) refuses or fails to supply enough properly skilled workers or proper materials to complete the Work; (vii) fails to make prompt payment to subcontractors or for material or labor; (viii) disregards Applicable Laws, other requirements or instructions of District; or (ix) violates any of the provisions of the Contract Documents.

B. The Notice of Default and Intent to Terminate shall state the reasons for termination. Unless within five (5) Days after the service of such notice, Design-Build Entity resolves the circumstances giving rise to the Notice of Default to District's satisfaction, or makes arrangements acceptable to District for the required corrective action, District may terminate this Contract. In such case, Design-Build Entity shall not be entitled to receive any further payment until the Work has been finished. District may take over and complete the Work by any method it may deem appropriate, including enforcement of the Project Performance Bond. Design-Build Entity and its surety shall be liable to District for any excess costs or other damages incurred by District to complete the Work. If District takes over the Work, District may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to the Design-Build Entity as may be on the Site.

14.3 District May Terminate for Convenience.

A. In addition to its right to terminate this Contract for default, District may terminate the Contract, in whole or in part, at any time upon seven (7) Days written notice to Design-Build Entity. The Notice of Termination shall specify that the termination is for the convenience of District, the extent of termination, and the effective date of such termination ("Effective Date of Termination").

B. After receipt of Notice of Termination, and except as directed by District, the Design-Build Entity 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.

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 Site and any other property upon which the Design-Build Entity was working in a safe and sanitary manner such that it does not pose any threat to the public health or safety.

4. Terminate all subcontracts and purchase orders 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 remaining portion of the Work.

6. Submit to District, within fifteen (15) Days from the Notice of Termination, all of the documentation called for by the Contract Documents to substantiate all costs incurred by the Design-Build Entity for labor, materials and equipment through the Notice of Termination. Any documentation substantiating costs incurred by the Design-Build Entity solely as a result of District's exercise of its right to terminate this Contract pursuant to this clause, which costs the Design-Build Entity is authorized under the Contract Documents to incur, shall: (i) be submitted to and received by District no later than thirty (30) Days after the Effective Date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs Occasioned by District's Termination for Convenience."

7. District's total liability to Design-Build Entity by reason of the termination shall be limited to the total (without duplication of any items) of:

    a. The reasonable cost to the Design-Build Entity for all Work performed prior to the Effective Date of Termination, including the Work done to secure the Project for termination. Reasonable cost may not exceed the applicable percentage completion values derived from the progress schedule and the Cost Breakdown. Deductions shall be made for cost of materials to be retained by the Design-Build Entity, cost of Work defectively performed, amounts realized by sale of materials, and for other appropriate credits or offsets against cost of Work as allowed by the Contract Documents.

    b. When, in District's opinion, the cost of any item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, reasonable cost to be allowed will be the estimated reasonable cost of performing the Work in compliance with requirements of the Contract Documents and excessive actual cost shall be disallowed.

    c. Any Work required by the Termination for Convenience that is not included in Contract Documents will be negotiated pursuant to the Contract Change Order provisions.

    d. Reasonable costs to the Design-Build Entity of handling material returned to vendors, delivered to District or otherwise disposed of as directed by District.

    e. A reasonable allowance for the Design-Build Entity's internal administrative costs in preparing termination claim.

    f. Reasonable demobilization costs, and reasonable payments made to Subcontractors or suppliers on account of termination.

8. In no event shall District be liable for unreasonable costs incurred by the Design-Build Entity or subcontractors after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, the cost of or anticipated profits on Work not performed as of the date of termination, post-termination employee salaries, unreasonable post-termination administrative expenses, post-termination overhead or unabsorbed overhead, surety costs of any type, costs of preparing and submitting the Design-Build Entity's termination claim, attorney fees of any type, and all other costs relating to prosecution of a claim or lawsuit.

9. District shall have no obligation to pay the Design-Build Entity under this Article unless and until the Design-Build Entity provides District with updated and acceptable as-builts and Record Documents for Work completed prior to termination as required by the Contract Documents.

10. In arriving at the amount due the Design-Build Entity under this clause there shall be deducted in whole, or in the appropriate part(s) if the termination is partial:

    a. All unliquidated advances or other payments on account previously made to the Design-Build Entity, including without limitation all payments which are applicable to the terminated portion of the Contract Documents,

    b. Any claim District may have against the Design-Build Entity in connection with the Work or any amounts that may be withheld in accordance with the Contract Documents, and

    c. The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by the Design-Build Entity and not otherwise recovered by or credited to District.

    Design-Build Entity shall not be paid on account of loss of anticipated profits or revenue or other economic loss or consequential damages arising out of or resulting from such termination.

11. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, District may immediately order Design-Build Entity to cease Work until such safety or liability issues are addressed to the satisfaction of District or the Contract is terminated.

12. If District terminates Design-Build Entity for cause, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Design-Build Entity shall be entitled to receive only the amounts payable under this section, and Design-Build Entity specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

ARTICLE 15 -CLAIMS, DISPUTE AVOIDANCE AND RESOLUTION

15.1 Design-Build Entity shall timely comply with all notices and requests for changes to the Contract Time or Contract Price as a prerequisite to filing any claim governed by this Article. The failure to timely submit a notice of delay or notice of change, or to timely request a change to the Contract Price or Contract Time, or to timely provide any other

notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Contract or at law.

15.2 Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of $375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Article is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Article shall be construed to be consistent with said statutes.

15.3 Claims. For purposes of this Article, "Claim" means a separate demand by the Design-Build Entity, after a change order duly requested in accordance with Article 44 "Changes and Extra Work" has been denied by the District, for (A) a time extension, (B) payment of money or damages arising from Work done by or on behalf of the Design-Build Entity pursuant to the Contract, or (C) an amount the payment of which is disputed by the District. Claims governed by this Article may not be filed unless and until the Design-Build Entity completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the procedures contained in Article 44, Changes and Extra Work, and Design-Build Entity's request for a change has been denied in whole or in part. Claims governed by this Article must be filed no later than the date of final payment. The claim shall be submitted in writing to the District and shall include on its first page the following in 16 point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing herein is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims, including all requirements pertaining to compensation or payment for extra Work, disputed Work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

15.4 Supporting Documentation. The Design-Build Entity will submit all claims in the following format:

A. Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made.

B. List of documents relating to claim:

1. Specifications

2. Drawings

3. Clarifications (Requests for Information)

4. Schedules

5. Other

C. Chronology of events and correspondence

D. Analysis of claim merit

E. Analysis of claim cost

F. Time impact analysis in CPM format

G. If Design-Build Entity's claim is based in whole or in part on an allegation of errors or omissions in the Drawings or Specifications for the Project, Design-Build Entity shall provide a summary of the percentage of the claim subject to design errors or omissions and shall obtain a certificate of merit in support of the claim of design errors and omissions.

15.5 District Response to Claim. Upon receipt of a claim pursuant to this Article, District shall conduct a reasonable review of the claim and, within a period not to exceed 45 Days, shall provide the Design-Build Entity a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 Days after the District issues its written statement.

If the District needs approval from the Board of Directors to provide Design-Build Entity a written statement as set forth above, and Board of Directors does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a Claim, the District shall have up to three (3) days following the next publicly noticed meeting of Board of Directors after the 45-day period, or extension, expires to provide Design-Build Entity a written statement identifying the disputed portion and the undisputed portion of the Claim.

Within thirty Days of receipt of a claim, the District may request in writing additional documentation supporting the claim or relating to defenses or claims the District may have against the Design-Build Entity. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of District and the Design-Build Entity. The District's written response to the claim, as further documented, shall be submitted to the Design-Build Entity within 30 Days (if the claim is less than $15,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by the Design-Build Entity in producing the additional information or requested documentation, whichever is greater.

15.6 Meet and Confer Conference. If the Design-Build Entity disputes the District's written response, or the District fails to respond within the time prescribed, the Design-Build Entity may so notify the District, in writing, either within 15 Days of receipt of the District's response or within 15 Days of the District's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the District shall schedule a meet and confer conference within 30 Days for settlement of the dispute.

15.7 Mediation. 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 Design-Build Entity 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 Design-Build Entity in writing, shall be submitted to nonbinding mediation, with the District and the

Design-Build Entity sharing the associated costs equally. The District and Design-Build Entity shall mutually agree to a mediator within 10 business Days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

A. 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.

B. For purposes of this section, 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.

C. Unless otherwise agreed to by the District and the Design-Build Entity in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

D. The mediation shall be held no earlier than the date the Design-Build Entity completes the Work or the date that the Design-Build Entity last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

15.8 Procedures After Mediation. If following the mediation, the claim or any portion remains in dispute, the Design-Build Entity must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Design-Build Entity submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference.

15.9 Civil Actions. The following procedures are established for all civil actions filed to resolve claims of $375,000 or less:

A. Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. The mediation process shall provide for the selection within 15 Days by both parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

B. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of

the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

15.10 Condition Precedent. Submission of a claim, properly certified, with all required supporting documentation, and written rejection or denial of all or part of the claim by District, is a condition precedent to any action, proceeding, litigation, suit, general conditions claim, or demand for arbitration by Design-Build Entity.

15.11 Government Code Claim. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, construction claims and/or changed conditions, the Design-Build Entity must comply with the claim procedures set forth in Government Code section 900 et seq. prior to filing any lawsuit against the District. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, construction claims, and/or changed conditions have been followed by Design-Build Entity. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not otherwise satisfied as specified herein, Design-Build Entity shall be barred from bringing and maintaining a valid lawsuit against the District. **A Government Code claim must be filed no earlier than the date the Work is completed or the date the Design-Build Entity last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted**

15.12 Non-Waiver.

The District's failure to respond to a claim from the Design-Build Entity within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the claim being deemed rejected in its entirety.

15.13 Duty to Continue Performance.

Unless provided to the contrary in the Contract Documents, Design-Build Entity shall continue to perform the Work and District shall continue to satisfy its payment obligations to Design-Build Entity, pending the final resolution of any dispute or disagreement between Design-Build Entity and District.

ARTICLE 16 -REQUIRED CERTIFICATIONS

16.1 Design-Build Entity shall, for all contracts involving state funds, submit a "Drug-Free Workplace Certification" and a "Recycled Content Certification." These forms are included in the Contract Documents and must be signed under the penalty of perjury and dated prior to commencing work on this Project.

16.2 In addition to the above listed certifications, Design-Build Entity shall, for all contracts involving state funds, execute and submit an "Asbestos-Free Materials Certification." Design-Build Entity, further, is aware of the following:

A. Should asbestos containing materials be installed by the Design-Build Entity 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:

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).

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.

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

4. The Work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

B. 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 Design-Build Entity.

C. Hold Harmless: Interface of Work for the Project with work containing asbestos shall be executed by the Design-Build Entity 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 Contract, the Design-Build Entity acknowledges the above and agrees to the fullest extent permitted by law to hold harmless the District, its Governing Board, employees, agents, representatives, including its Architect and assigns, for all asbestos liability which may be associated with this work. The Design-Build Entity further agrees to instruct his/her employees with respect to the above-mentioned standards, hazards, risk and liabilities..

ARTICLE 17 -DISTRICT'S INSPECTOR

17.1 One or more inspectors employed by District in accordance with requirements of title 19, 21 and/or 24 of the California Code of Regulations will be assigned to the work. His or her duties are specifically defined in the California Code of Regulations

17.2 Inspector shall have access to all plant operations involving work under this contract and shall be provided reasonable advance notice of the time and place of operations which the inspector desires to observe. Inspector shall be provided with all necessary samples

of materials and work for testing purposes. All work shall be under the observation of said inspector. He shall have free access to any or all parts of work at any time. Design-Build Entity shall furnish inspector reasonable facilities for obtaining such information as may be necessary to keep him fully informed respecting progress and manner of work and character of materials. Inspection of work shall not relieve contractor from any obligation to fulfill this contract. Inspector, after consultation with the Design-Build Entity, shall have authority to stop work whenever the provisions of the contract documents are not being complied with and contractor shall instruct his employees accordingly.

ARTICLE 18 -MISCELLANEOUS PROVISIONS

18.1 Giving Notice.

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

18.2 Limitations On District's Responsibilities.

A. District shall not supervise, direct, or have control or authority over, nor be responsible for, the Design-Build Entity's means, methods, techniques, sequences, or procedures of design or construction, or the safety precautions and programs incident thereto, or for any failure of the Design-Build Entity to comply with Applicable Laws applicable to the performance of the Work. District will not be responsible for the Design-Build Entity's failure to perform the Project in accordance with the Contract Documents.

18.3 Cumulative Remedies.

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto 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 Applicable Laws, by special warranty or guarantee, or by other provisions of the Contract Documents. 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.

18.4 Survival of Obligations.

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Project or termination or completion of the Contract or termination of the services of the Design-Build Entity.

18.5 Controlling Law.

A. Notwithstanding any subcontract or other contract with any Subcontractor, Supplier, or other person or organization performing any part of the Project, this Contract shall be governed by the law of the State of California excluding any choice of law provisions.

18.6 Jurisdiction; Venue.

A. The Design-Build Entity and any Subcontractor, supplier, or other person or organization performing any part of the Project agree that any action or suits at law or in equity arising out of or related to the proposal process, award, or performance of the Project shall be maintained in the Superior Court of San Diego County, California, and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

18.7 Headings.

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

18.8 District's Right to Audit.

A. The Design-Build Entity shall make available to District for auditing, all relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to District.

B. If the Design-Build Entity submits a Change Order Request or a Claim to District, District shall have the right to audit the Design-Build Entity's books, records, documents, and other evidence to the extent they are relevant.

C. The right to audit shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which the claim has been submitted, including but not limited to job cost reports, estimates, proposals, bids, proposal papers, documents of other work administered by the Design-Build Entity's home office, and any and all other documentation relied upon by the Design-Build Entity to obtain this Contract. District shall have the right to make and take copies of any records examined.

D. The right to audit shall include the right to inspect the Design-Build Entity's plans, or such parts thereof, as may be or have been engaged in the performance of the Project.

E. The Design-Build Entity further agrees that the right to audit encompasses all subcontracts and is binding upon Subcontractors.

F. The right to audit provided herein shall be exercisable through such representatives as District deems desirable during the Design-Build Entity's normal business hours at the Design-Build Entity's office.

G. In accordance with Government Code Section 8546.7, records of both District and the Design-Build Entity shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment. The Design-Build Entity shall make available to District any of the Design-Build Entity's other documents related to the Project immediately upon request of District. In addition to the State Auditor's rights described above, District shall have the right to examine and audit all books, estimates, records, contracts, documents, Proposals, subcontracts, and other data of the Design-Build Entity (including electronic records, computations and projections) related to negotiating, pricing, or performing the Project in order to evaluate the accuracy and completeness of the cost or pricing data, for a period of four (4) years after final payment.

18.9 Assignment.

A. Design-Build Entity shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract or any part thereof including any claims, without prior written consent of District. Any assignment without the written consent of District shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or Material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such Materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.

B. As set forth in Public Contract Code section 7103.5, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

18.10 All Legal Provisions Included.

A. Design-Build Entity shall give all notices and comply with all federal, state and local laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified by their terms. References to specific laws, rules or regulations in this Contract are for reference purposes only, and shall not limit or affect the applicability of provisions not specifically mentioned. If Design-Build Entity observes that drawings and specifications are at variance therewith, he shall promptly notify District in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in Work. If Design-Build Entity performs

any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to District, he shall bear all costs arising therefrom.

B. Design-Build Entity shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA laws, rules and regulations. Design-Build Entity shall comply with the Historic Building Code, including, but not limited to, as it relates to the ADA, whenever applicable..

C. Design-Build Entity acknowledges and understands that, pursuant to Public Contract Code section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code section 2717(b) in order to supply mined material for this Contract.

D. No District official or representative who is authorized in such capacity and on behalf of District to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Work, shall be or become directly or indirectly interested financially in the Contract.

E. All provisions of law required to be inserted in the Contract or Contract Documents pursuant to any Applicable Laws shall be and are inserted herein. If through mistake, neglect, oversight, or otherwise, any such provision is not herein inserted or inserted in improper form, upon the application of either party, the Contract or Contract Documents shall be changed by District, at no increase in GMP or extension in Contract Times, so as to strictly comply with the Applicable Laws and without prejudice to the rights of either party hereunder.

18.11 State License Board Notice.

A. Contractors are required by law to be licensed and regulated by the Design-Build Entity's State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, the Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

18.12 Air Pollution Control.

A. The Design-Build Entity shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements.

B. Without limiting the foregoing, the Design-Build Entity must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the Air Quality Management District with jurisdiction over

the Project and/or California Air Resources Board (CARB). The Design-Build Entity shall specifically be aware of the application of these limits and requirements to "portable equipment", which definition includes any item of equipment with a fuel-powered engine.

18.13 Noise.

A. The Design-Build Entity shall use only such equipment on the Project and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by CAL-OSHA.

B. The Design-Build Entity shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the Design-Build Entity shall promptly remove the equipment and shall not return that equipment to the Project site until the device is repaired or replaced. Noise and vibration level requirements shall apply to all equipment on the jobsite or related to the Project, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by the Design-Build Entity.

18.14 Change In Name Or Nature of Design-Build Entity's Legal Entity.

A. Should a change be contemplated in the name or nature of the Design-Build Entity's legal entity, the Design-Build Entity shall first notify District in order that proper steps may be taken to have the change reflected in the Contract Documents and all related documents. No change of the Design-Build Entity's name or nature will affect District's rights under the Contract Documents, including but not limited to the bonds and insurance.

18.15 Complete Contract.

A. The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may be modified only by a written instrument signed by both parties or as otherwise provided in the Contract Documents.

18.16 Notice of Third Party Claims.

A. Pursuant to Public Contract Code section 9201, District shall provide Design-Build Entity with timely notification of the receipt of any third-party claim relating to the Contract.

18.17 Severability of Provisions.

A. If any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability

of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

18.18 Correction of Errors and Omissions.

A. The Design-Build Entity agrees to correct any error or omission in the Construction Documents or Contract Documents at no additional cost to District.

18.19 Interpretation.

A. The Contract Documents shall not be construed in favor of or against any party, but shall be construed as if all parties prepared the Contract Documents.

END OF GENERAL CONDITIONS

00 73 13 – SPECIAL CONDITIONS

1.1 Engineer of Record.

A. The Architect and Engineer of Record shall be PBK ARCHITECTS, INC.

1.2 Location of the Project.

1. The Project is located at 4345 Otay Mesa Road, San Ysidro, CA 92173

1.3 Description of the Project.

A. The Project consists of the items set forth below and related facilities.

1. The San Ysidro Middle School Revitalization project is a whole-site modernization of the original 1978 facility and additional expansions, which spans over 92,000 square feet. The project will focus on enhancing the front entry appearance, relocating the main office, renovating classroom interiors and building exteriors, improving landscaping, and creating a new student innovation center.

1.4 Status of the Project Area and Rights-of-Way.

A. District, at its expense, will provide all rights-of-way or permits, or both, covering the crossing of private property and public and private rights-of-way necessary for the permanent Work; provided, however, Design-Build Entity shall, at its expense, obtain any bonds or insurance policies or pay any fees and enter into any agreements required by a controlling authority, *e.g.*, Caltrans or Southern Pacific Railroad Company, before Design-Build Entity enters upon any property or right-of-way under the jurisdiction of any such controlling authority for the purpose of performing Work.

B. District has acquired or is negotiating to acquire any rights-of-way, or both, necessary for the permanent Work.

C. If such permits are required, all operations of Design-Build Entity shall conform to the restrictions, regulations, and requirements set forth in said permits, copies of which will be included in the Contract Documents.

D. Design-Build Entity may be required, as a condition for receiving final payment, to obtain, and provide District's Representative with copies of, executed damage releases from the owners of public and private property whose property has been damaged by the Work. The damage releases will be on a form provided by District.

E. Design-Build Entity shall, also, as a condition for receiving final payment, obtain, and provide District's Representative with copies of, executed damage releases from the owners of certain public and private property or areas which have been crossed by the Work or otherwise affected by the Work. The damage releases will be on a form provided by District.

1.5 Designation of District's Representative.

A. Unless otherwise modified by District, District's Representative shall be Khary Knowles, Program Manager, and Joshua Beltran, Project Manager.

1.6 Project Retention

In accordance with Public Contract Code section 7201, District will withhold 5% of each progress payment as retention on the Project.

1.7 Reverse Liquidated Damages Due to Unreasonable District Delay.

A. In compliance with the provisions of California Public Contract Code section 7102, the Design-Build Entity will be compensated for damages incurred due to delays in completing the Work due solely to the fault of the District, where such delay is unreasonable under the circumstances and not contemplated by the parties and such delay is not the result of Additional Work. The Design-Build Entity and District agree that determining actual damages is impracticable and extremely difficult. As such, the Design-Build Entity shall be entitled to the appropriate time extension and to payment of liquidated damages in the sum of **THREE THOUSAND DOLLARS ($3,000.00)** per Day of delay in excess of the time specified for the Completion of the Work. Such amount shall constitute the only payment allowed and shall necessarily include all overhead (direct or indirect), all profit, all administrative costs, all bond costs, all labor, materials, equipment and rental costs, and any other costs, expenses and fees incurred or sustained as a result of such delay. The Design-Build Entity expressly agrees to be limited solely to the liquidated damages for all such delays as defined in this subsection.

1.8 Liquidated Damages Due to Design-Build Entity Delay.

A. Time is of the essence. Should Design-Build Entity fail to complete all or any part of the Work within the time specified in the Contract Documents, District will suffer damage, the amount of which is difficult, if not impossible, to ascertain and, pursuant to the authority of Government Code section 53069.85, District shall therefore be entitled to **THREE THOUSAND DOLLARS ($3,000.00)** per Day as liquidated damages for each Day or part thereof that Project Completion extends beyond the time specified.

B. Liquidated damages may be deducted from progress payments due Design-Build Entity, Project retention or may be collected directly from Design-Build Entity, or from Design-Build Entity's surety. These provisions for liquidated damages shall not prevent District, in case of Design-Build Entity's default, from terminating the Design-Build Entity.

1.9 Utility Outages – Notices to Residents.

A. Should Design-Build Entity's operations require interruption of any utility service, Design-Build Entity shall notify District at least ten (10) Days prior to the scheduled outage. Design-Build Entity will notify all impacted residents on a form provided by District at least seven (7) Days prior to the scheduled outage.

B. Design-Build Entity shall be responsible for providing, at its cost, any temporary utility or facilities necessitated by the utility outage.

1.10 Temporary Field Office

A. Utility Services. Design-Build Entity, at its expense, shall arrange for, develop and maintain all utilities, including but not limited to water, electric power, sewage disposal and telephone communications, at the Site to meet the requirements of the Work.

B. Sanitation. The Design-Build Entity shall provide sanitary facilities for all persons working on the project. These facilities shall be kept clean and shall not be unsightly or produce odors.

1.11 Fugitive Dust

A. In addition to all other environmental and air quality requirements of the Contract Documents, Design-Build Entity must also comply with the most recent version of South Coast Air Quality Management District's Rule 403 – Fugitive Dust, to reduce the amount of particulate matter entrained in the ambient air as a result of the Project.

B. District has considered these other requirements when determining the Contract Times and no additional time or compensation will be added to the Contract due to these requirements.

1.12 Design Services

A. Application of Article 1.12 of the Special Conditions for Design Services. The Provisions of this article relate to the DBE's Design Services responsibilities.

1. **Schedule of Services**

a. **Timely Performance Standard.** The DBE shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, the DBE, AOR and any other Design Consultant to the DBE shall perform its Services to allow for the full and adequate completion of the Project within the time required by the District and within any completion schedules adopted for the Project. DBE agrees to coordinate with District's staff, contractors and consultants in the performance of the Services, and shall be available to District's staff, contractors and consultants at all reasonable times.

b. **Performance Schedule.** The DBE shall prepare an estimated time schedule for the performance of the DBE Services, to be adjusted as the Project proceeds. Such schedule shall be subject to the District's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for District's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If District and DBE cannot mutually agree on a performance schedule, District shall have the authority to immediately

terminate this Agreement. The schedule shall not be exceeded by the DBE, without the prior written approval of District. If the DBE's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that the District will suffer damage for which the DBE will be responsible pursuant to the indemnification and the liquidated damages provisions of this Agreement.

2. **Design Responsibilities.**

a. **Design Consultation.** The DBE shall on an on-going continuing basis throughout its performance of the Work provide the District Project Manager with complete, continuous and current advice and recommendations on issues related to the status and progress of the design and non-design portions of the Work, including, without limitation, matters related to design feasibility, constructability, occupancy and maintenance, and shall keep the District Project Manager apprised at all times of the full range of alternatives that are available to District to reducing construction time, lowering costs, easing long-term maintenance, minimize adverse effects of labor and material shortages, shortening time requirements for procurement, expediting installation and construction completion and other possible economies and efficiencies. As part of this collaborative effort, DBE shall throughout the duration of its performance of the Work attend regular meetings (as frequently as may be necessary to maintain progress of the Work or as otherwise reasonably required by District) for the purpose of reviewing the status of the Construction Documents and Work.

b. **Construction Documents.** Using qualified, licensed design professionals, DBE shall furnish all necessary and appropriate architectural, engineering and other professional services required for the preparation of the Construction Documents that incorporate designs and specifications that are complete, detailed and suitable to produce a completed construction that, without limitation to any other requirements of the Contract Documents: (i) conforms to the Project Documents and any Approved Deviations; (ii) is consistent with the Design Intent, and (iii) gives due and appropriate consideration to the matters disclosed by the Reference Documents and any other information provided by the District to DBE.

c. **Submissions to District.** DBE shall formally submit to District Project Manager in accordance with the Submittal Schedule, for District's review and approval, in progress Construction Documents reflecting DBE's progress in the performance of its design portion of the work at points in time outlined in 1.12.A.7 DBE Development of Design Documents. Additional formal submissions reflecting the status of in-progress Construction Documents, if reasonably judged by District as necessary, shall be prepared and made without Contract Adjustment. All such formal submissions shall be both hard copy and electronic format. Construction Documents submitted by the DBE shall incorporate changes or corrections required by the District Project Manager, or Governmental Agencies or be accompanied by a written statement as to why such changes were not incorporated. The District may, in its sole and absolute discretion, reject the DBE's explanation and require the

DBE to make such changes or corrections to the Construction Documents. Notwithstanding District reviews, DBE shall at all times remain solely responsible, review or approval of the Construction Documents, for the accuracy, completeness, sufficiency and suitability of the Construction Documents and for their compliance with Applicable Laws and the Contract Documents.

d. **Professional Certifications.** All submissions of Construction Documents and Submittals to District Project Manager shall include certification by the Architect of Record ("AOR"), who shall be a properly licensed design professional, including such professional's manual signature and seal. Any Construction Documents or Submittals related to the Work designed or certified by such professional, if prepared by others, shall nevertheless bear such professional's manual signature when submitted to the District. The District shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals provided by such design professionals.

e. **Assignments or Staff Changes.** The DBE shall promptly obtain written District approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in DBE team and key personnel shall be subject to approval by District.

f. **Performance of DBE Team.** Any DBE team member or consultant who is reasonably determined by the District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee or consultant who fails or refuses to perform the Services in a manner acceptable to the District, shall be promptly removed from the Project by the DBE and shall not be re-employed to perform any of the Services or to work on the Project.

g. **Design Deficiencies.** Design Deficiencies in the Construction Documents, whether or not the Construction Documents are approved by District, are the sole responsibility of the DBE and shall be corrected by DBE at the DBE's Own Expense.

h. **Title 24 Compliance.** DBE shall perform the Work in accordance with the Contract Documents, including, without limitation, the Final Construction Documents approved by District and the Submittals approved by the District Project Manager and, if required by District, the District's Consultants. DBE's Architect of Record shall be responsible to comply with the requirements of the California Code of Regulations, including, without limitation Title 24, California Code of Regulations, relating to assumption of responsibilities by the district project manager or registered engineer responsible for submitting plans and specifications for approval by DSA and for assuming responsibility as the District Project Manager in general responsible charge of the Work.

i. **Sustainable Design.** DBE shall make recommendations to District for incorporating into the Final Construction Documents the design requirements for design and construction that will, to the best of DBE's efforts and within the

constraints of the Contract Sum and Contract Time, incorporate the elements of sustainable design and construction.

3. **Use and Ownership of Design Documents.**

   a. **Ownership.** Subject to the provisions hereof, all Drawings, Specifications, calculations, and other Instruments of Service and other tangible items ("Project Documents") prepared by or through the DBE for the Project shall be and remain the property of the District regardless of the format on which said items are prepared or stored, including without limitation paper copies, original or reproducible transparencies, AutoCAD files (or similar computer-aided drafting of design formats), or other types of computerized/electronic data. The District specifically maintains ownership of the design of the Project and the design of any buildings or other improvements which are a part thereof, notwithstanding creation/preparation of such design by or through the DBE, and such design may not be re-used by the DBE or any members of the DBE, including without limitation, sub-consultants to the members of the DBE, without the specific prior written consent of the District which may granted, denied or conditioned in the sole exclusive discretion of the District.

   b. **Right to Use.** The DBE shall grant to the District a perpetual license to use and/or reuse all or any part of the Project Documents at the District's sole discretion with no additional compensation to the DBE for the purposes of: (i) construction of all or part of the Project; (ii) the repair, renovation, modernization, replacement, reconstruction or expansion of the Project; or (iii) the construction of another project by or for the District for the District's ownership and/or use. The District is not bound by the Contract Documents to employ the services of the DBE in the event any of the Project Documents are used for any such purposes. The District shall be authorized to use or reuse the Project Documents for these purposes without additional compensation to the DBE or the AOR, its Design Consultants or third parties. The District's use or reuse of the Project Documents for these purposes shall be not be construed or interpreted to waive or limit the District's right to recover for latent defects or for errors or omissions in the Project Documents prepared by or on behalf of the DBE provided, however, that any use or reuse by the District of the Project Documents on any project other than the Project for which the Project Documents were prepared without employing the services of the DBE shall be at the District's own risk. If the District uses or reuses the Project Documents on any project other than the Project for which the Project Documents were prepared for, the District shall remove the DBE's seal from the Project Documents and indemnify and hold harmless the DBE from claims arising out of the use or re-use of the Project Documents on such other project.

   c. **District License to Use Project Documents.** The Contract Documents create a non-exclusive and perpetual license for the District to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. DBE shall require the AOR and all of the Design Consultants to the DBE or the AOR to agree in writing that the District is granted a non-exclusive and perpetual license for the work of such Design Consultants.

d. **DBE Right to Grant License.** The DBE represent and warrant that the DBE has the legal right to license the District's use of the Project Documents, any and all copyrights, designs and other intellectual property embodied in the Project Documents prepared by or through the DBE under the Contract Documents.

4. **Design Services Standard of Care.** The DBE, AOR and any other Design Consultant to the DBE shall provide and complete the Design Services: (i) using their best professional skill and judgment; (ii) acting with due care and in accordance with respective applicable standards of care under California law for those providing similar design professional services for projects of the size, scope and complexity of the Project; (iii) the terms of the Contract Documents; and (iv) in accordance with applicable standards of care.

5. **Compliance with Regulatory Agencies.** The DBE, AOR and any other Design Consultant to the DBE shall respond to and comply with all requests relating to the Project made by any applicable federal, state, regional or local governmental or quasi-governmental agency with jurisdiction over any portion of the Project, including without limitation, DSA and the Utility.

6. **Conformity to District Standards.** Design Documents prepared by or through the DBE, AOR and any other Design Consultant to the DBE for the Project shall conform to District standards for materials, equipment and/or workmanship in effect as of the completion of the Design Documents. Modifications of the Design Documents for the Project to conform to District materials, equipment or workmanship standards shall be without adjustment of the Contract Price.

7. **Approval/Permitting of Design Documents.** The DBE shall provide District with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. The DBE shall obtain, on behalf of the District, all necessary approvals or permits for the Design Documents for the Project as necessary for construction of the Project including without limitation, DSA and the Utility. Without adjustment of the Contract Price, the DBE shall revise the Design Documents as required by DSA or other governmental or quasi-governmental agencies with jurisdiction over the Project, or portions thereof, to obtain their respective approval(s) or permit issuance. The costs of such permits, approvals and other authorizations shall be paid by the District.

8. **DBE Development of Design Documents.** The development of Design Documents shall sequentially progress as set forth herein.

   a. **Schematic Design Documents**

      (i) **Schematic Design Documents / Meet and Confer with District.** Prior to development and refinement of the Schematic Design Project Documents, the DBE, AOR, and such Design Consultants to the DBE as reasonably determined by the District shall conduct and participate in meet and confer sessions with the District Project Manager and the District's administrative, facilities and end-user staff to review and finalize the Project design, including the feasibility and programming for

the Project to define the scope, size, space relationship and site development. Upon completion of such Meet and Confer sessions, the DBE shall submit (i) the final Schematic Design Documents; (ii) updated Schematic Design cost estimate consistent with the Target Cost, and (iii) updated schedule to the District Project Manager for review and approval. The Schematic Design Plans shall include a conceptual site plan and preliminary plans and studies, sections, elevations, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project, the plot plan development at the site, and the proposed architectural concept of the buildings. The DBE shall incorporate the educational programs and the functional requirements of District into the Schematic Plans.

(ii) **DBE Incorporation of Revisions** If mutual concurrence between the District and the DBE regarding revisions, or the scope/nature of revisions to the Project Documents is not reached in the meet and confer sessions, the DBE shall revise the Project Documents as directed or authorized by the District. In the event the Schematic Design cost estimate exceeds the Target Cost and the parties cannot come to a mutual concurrence in the meet and confer sessions, the District, in its sole discretion, may require the DBE to make revisions as necessary to bring the cost estimate within the Target Cost or else terminate the Agreement without further obligation to the DBE.

(iii) **District Project Manager Minutes; Design Changes Summary.** Within five (5) days of the conclusion of each meet and confer session, the DBE shall prepare and distribute minutes to the District Project Manager for approval. At the conclusion of the final meet and confer session, the DBE shall prepare a written summary of the revisions to the Project Documents which have been agreed to through the meet and confer sessions or which have been directed or authorized by the District ("Design Changes Summary"). The DBE development of Design Documents shall conform to the Design Changes Summary.

b. **Design Development Documents**

(i) **DBE Development of 50% Design Development Documents.** Based upon the District accepted Schematic Design Documents, the DBE, AOR and any other Design Consultant to the DBE shall prepare fifty percent (50%) Design Development Documents necessary or appropriate for setting forth in detail the requirements for the Work of the Project. Upon completion of the fifty percent (50%) Design Development Documents, the DBE shall submit the same to the District Project Manager for review and comment. Design Development Documents shall consist of: (1) site and floor plans; (2) elevations; (3) sections; (4) typical construction details; (5) equipment layouts; and (6) any other drawings and documents sufficient to fix and describe the types and makeup of materials, as well as the scope, relationships, forms, size, appearance and character of the Project's structural, mechanical and electrical systems, and to outline the Project

specifications. The DBE shall also provide, for District's review and approval, a preliminary schedule of all color materials and selections of textures, finishes and other matters involving an aesthetic decision about the Project as well as a 50% Design Development construction cost estimate.

(ii) **DBE and District Review of 50% Design Development Documents.** Upon receipt of the District's review comments of the fifty percent (50%) Design Development Documents submitted to the DBE, the District Project Manager shall meet and confer with the DBE to review the review notes and comments and to determine the extent of revisions of the 50% Design Development Documents necessary for the District's acceptance of the fifty percent (50%) Design Development Documents. If mutual concurrence between the DBE and the District is not reached as to the extent or nature of the DBE revisions to the fifty percent (50%) Design Development Documents, the DBE shall complete such revisions as directed or authorized by the District. In the event the 50% Design Development cost estimate exceeds the Target Cost and the parties cannot come to a mutual concurrence in the meet and confer sessions, the District, in its sole discretion, may require the DBE to make revisions as necessary to bring the cost estimate within the Target Cost or else terminate the Agreement without further obligation to the DBE.

(iii) **DBE Development of Final Design Development Documents.** The DBE shall revise the fifty percent (50%) Design Development Documents to further illustrate and define the refinement of the Project, establishing the scope, relationships, forms, size and appearance of the Project and shall include: typical construction details; equipment layouts; landscape plans; architectural information to fix and illustrate the size, character and quality of all Project components as they relate to the District's requirements; and such other essentials as may be deemed appropriate by the District, specifications that identify major materials and systems (including civil, landscape, structural, mechanical, and electrical systems) and establish in general their quality levels, and to incorporate the District's review comments and revisions mutually agreed upon by the District and the DBE or as directed/authorized by the District. Upon completion of such revisions, the DBE shall submit (i) the Final one hundred percent (100%) Design Development Documents; (ii) updated Final Design Development cost estimate consistent with the Target Cost, and (iii) updated schedule to the District Project Manager for review and confirmation that all of the mutually agreed upon revisions or the revisions directed/authorized by the District to the fifty percent (50%) Design Development Documents have been incorporated therein. The DBE shall revise Design Development Documents as necessary to incorporate all such revisions and to obtain the District's acceptance of the entirety of the Final Design Development Documents. The revised one hundred percent (100%) Design Development Documents accepted by the District are referred to as "Final Design Development Documents". In the event the Final Design Development cost estimate exceeds the

Target Cost and the parties cannot come to a mutual concurrence in the meet and confer sessions, the District, in its sole discretion, may require the DBE to make revisions as necessary to bring the cost estimate within the Target Cost in order to allow for the approval of a Preliminary GMP or else terminate the Agreement without further obligation to the DBE.

c. **Construction Documents.**

(i) **DBE Development of Construction Documents.** Based upon the District accepted Final Design Development Documents, the DBE, AOR and any other Design Consultant to the DBE shall prepare Construction Documents consisting of all Drawings and Specifications and other Design Documents necessary or appropriate for setting forth in detail the requirements for the Work of the Project sufficient for DSA review and permitting. Upon achieving fifty percent (50%) completion of the Construction Documents, the DBE shall submit the same to the District Project Manager for review and comment. The DBE shall assemble and deliver to the District the Construction Documents and any and all other portions of the Construction Documents.

(ii) **Construction Documents Incorporation of Materials/Equipment.** The Construction Documents shall include all materials, equipment and other products along with layouts and configurations of spaces within the Project conforming to the District's requirements. Any work, services, materials, equipment, products or other tangible or intangible items/services necessary to complete the Project in accordance with the District's requirements for the Project shall be provided or performed by the DBE without adjustment of the Contract Price hereunder.

(iii) **District Review of Construction Documents.** Upon receipt of the District's review comments of the fifty percent (50%) Construction Documents submitted to the DBE, the District Project Manager shall meet and confer to review the review notes and comments and to determine the extent of revisions of the Construction Documents necessary for the District's acceptance of the Construction Documents. If mutual concurrence between the DBE and the District is not reached as to the extent or nature of the DBE's revisions to the Construction Documents, the DBE shall complete such revisions as directed or authorized by the District.

(iv) **DBE Development of 95% Construction Documents.** The DBE shall revise the fifty percent (50%) Construction Documents to incorporate the review notes, comments and revisions mutually agreed upon by the District and the DBE or as directed/authorized by the District. Upon completion of such revisions and upon achieving ninety-five percent (95%) completion of the Construction Documents, the DBE shall submit to the District Project Manager for review and confirmation that all of the mutually agreed upon revisions or the revisions directed/authorized by the District to the fifty percent (50%) Construction Documents and

other requirements for the Project have been incorporated therein. The DBE shall revise the Construction Documents to incorporate all such revisions, Project requirements and to obtain the District's acceptance of the entirety of the Construction Documents. Upon written approval by the District, the DBE shall submit the ninety-five percent (95%) completed Construction Documents to DSA and any applicable federal, state, regional or local governmental or quasi-governmental agency with jurisdiction over any portion of the Project for review.

(v) **DBE Development of Final Construction Documents.** The DBE shall revise the one hundred percent (100%) completed Construction Documents to incorporate the review comments from DSA and any other agency with jurisdiction on the project; the review notes, comments and revisions mutually agreed upon by the District and the DBE or as directed/authorized by the District prior to resubmittal to DSA for approval. The DBE shall submit a sufficient number of copies of the revised 100% Construction Documents to DSA so that DSA will return one (1) original set bearing DSA's stamp of approval. Promptly following DSA's approval of the revised 100% Construction Documents, the DBE shall assemble and deliver to the District the Construction Documents and all other portions of the Contract Documents. The DSA-approved Construction Documents will also include all other agency approvals with jurisdiction, and are referred to as "Final 100% Construction Documents". The Final 100% Construction Documents shall also result in the preparation and written confirmation of the Final GMP, which shall not exceed the Preliminary GMP unless explicitly authorized by the District in writing. If the proposed Final GMP based on the Final 100% Construction Documents does exceed the Preliminary GMP and the parties cannot come to a mutual concurrence on the Final GMP, the District, in its sole discretion, may require the DBE to make revisions as necessary to reduce the Final GMP to a level at or below the Preliminary GMP or else terminate the Agreement without further obligation to the DBE.

d. **Project Construction.** During Project construction, the DBE, AOR, and any other Design Consultant to the DBE shall perform and complete the tasks and activities set forth in this Agreement, inclusive of these General Conditions, which are designated therein for performance and completion by the DBE, including without limitation, monthly site visits to observe the Contractor's work for general conformance with the Construction Documents and any approved schedule, monthly site visits to communicate and observe the activities of the Project Inspectors, including the Inspector of Record, the review/acceptance of Submittals and the review/verify and certification of Applications for Progress Payments. All actions of the DBE during the construction of the Project shall be commenced and completed in a timely manner to avoid delay or disruption to the planned sequencing and schedule for construction of the Project. The DBE shall prepare and submit for processing such documentation as required by governmental agencies, including DSA, in connection with construction of the Project and/or completion of the construction of the Project. The foregoing shall include without limitation, the DBE's Final Verified Report of Project construction and all other materials required by DSA to close-out the Project.

9. **Disbursement of Design Services Portion of the Contract Price.**

   a. **Application of Article 13 to Design Services Portion of the Contract Price.** The provisions of Article 13 of the General Conditions shall be applicable to disbursement of the Construction Services Contract Price and Design Services Contract Price. The Design Services Contract Price shall also be governed by the provisions of Special Conditions Article 1.12.

   b. **Allocation of Design Services Portion of the Contract Price.** The Design Services Contract Price shall be allocated to completion of the Design Services as set forth in the Design Build Agreement.

   c. **Reproduction.** DBE shall do all reproduction and distribution of such reproducible prints of Design Documents, Contract Documents and Project Documents as are necessary for the complete development of design, complete pricing and performance of the Work, including, without limitation, all Changes. The costs of such reproduction shall be at the DBE's Own Expense.

   d. **Disbursement of Design Services Payments.** The DBE shall submit monthly billings for payment of portions of the Design Services Contract Price. During the DBEs preparation of Design Documents, each monthly billing shall reflect the percentage completed of the Design Documents, as applicable. The DBE's billings and the District's disbursement of the Design Services Contract Price on each monthly billing during development of Design Documents shall be limited by the portion of the Design Services Contract Price allocated to the phase of Design Services being completed by the DBE, AOR, and any other specialty consultants to the DBE. The portion of the Design Services Contract Price allocated for the DSA permit issuance may be billed by the DBE only after DSA issues such permit.

10. **DBE Responsibility for Design Documents.** Notwithstanding references to the DBE and the DBE's Design Consultants in this Article 1.12, the DBE shall be liable and responsible to the District for the performance and completion by the DBE and its Design Consultants of the obligations described herein.

11. **Post-Construction Obligations.**

   a. **Preparation of Record Drawings and Specifications.** Not later than thirty (30) days after substantial completion of the Project, the DBE shall prepare and deliver to the District all as-built improvements made or modified in connection with the Project, in electronic CAD format and full-size paper copies for review and written approval by the District. Record Drawings and Specifications shall note all changes made by change orders or otherwise pursuant to the Construction Documents, as well as all information called for on the specifications, thus producing a "record" set of Final Drawings and Specifications ("Record Drawings and Specifications"). The Record Drawings and Specifications shall show, among other things, the location of all concealed pipe, buried conduit runs and other similar elements within the completed Project. The DBE and AOR shall personally review and certify that the Record Drawings and Specifications are a correct representation of the information

supplied to the DBE by the Inspector of Record and shall obtain certifications from the Inspector of Record that the drawings are correct.

b. **Assistance Regarding Close-Out and Final Regulatory Certification**. In connection with the project closeout, the DBE, AOR, and any other Design Consultant to the DBE shall complete all actions and activities which by operation of applicable law, code, rule or regulation are the responsibility of the DBE relating to DSA reporting requirements pursuant to Education Code §81141 (including amendments thereto) and issuance of DSA's Certificate of Compliance for the Project pursuant to Education Code 81147 (including amendments thereto) upon completion of Project construction. The foregoing shall include without limitation, the timely preparation, completion and filing of Verified Reports during Project construction, and the filing of the Final Verified Report with DSA within ten (10) days of the determination of Project Final Completion. The DBE shall provide the District Project Manager with the DBE's submission thereof to DSA. The DBE shall assist the District in obtaining final certifications from other Governmental Agencies as required to enable the District to obtain final close-out of the Project.

c. **Final Verified Report Retention.** The completion and filing of the Final Verified Report with DSA by the DBE is an express condition precedent to the District's disbursement of the percentage for Final Verified Report Retention. The District's disbursement to the DBE shall be made by the District within thirty (30) days of the presentation by the DBE of reasonably satisfactory written evidence that the Final Verified Report has been filed with DSA in accordance with the preceding and the submission of a billing invoice for payment of the Final Verified Report Retention. If the DBE fails to file the Final Verified Report with DSA within ten (10) days of the determination of Project Final Completion, notwithstanding the preparation or filing of such report by the DBE thereafter, the District may in the sole and exclusive discretion of the District retain and withhold from disbursement to the DBE all or any part of the Final Verified Report Retention as damages for the failure of the DBE to have timely discharged its obligations.

END OF SPECIAL CONDITIONS

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM: Jose F. Iniguez, Ed.D.
Assistant Superintendent of Admin.
Leadership, School Support & Safety

☐ Informational
☒ Action

AGENDA ITEM: AGREEMENT WITH IDS GROUP

BACKGROUND INFORMATION:
In September 2023, Staff developed a Request for Qualifications ("RFQ") #2307 to provide Professional Services to the District on an "as needed" basis. Through that RFQ process, the Board of Education accepted Twining Consulting Inc. as an approved vendor.

Subsequently, District Staff sent out a Request for Proposals ("RFP") for Boundary and Topographic Surveying Services for the future Campus Consolidation Project of La Mirada Elementary School and Child Development Center. The District chose the proposal from IDS Group in the amount of $31,690.00 as the proposal that offered the best total value for the District.

If approved, these services are expected to start on August 9, 2024 with completion of services by December 31, 2024.

Staff is requesting approval of this Agreement with IDS Group for Boundary and Topographic Surveying Services for the Campus Consolidation Project of La Mirada Elementary School and Child Development Center Consolidation Project.

RECOMMENDATION:
Approve the agreement with IDS Group for Boundary and Topographic Surveying Services in the amount of $31,690.00 for the Campus Consolidation Project of La Mirada Elementary School and Child Development Center. Cost implications will be paid from the General Obligation Bonds.

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LCAP GOAL AND ACTION/SERVICE (please indicate):
Goal 7.0 – Provide sufficient, safe, well-maintained, and visually appealing facilities that create an environment for improving student achievement.

☐ **Renewal** ☒ **New** ☐ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-25 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No ☐ N/A	

$31,690.00	MEASURE T, G.O. BOND FUNDS (2139)
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN SAN YSIDRO SCHOOL DISTRICT AND IDS GROUP

1. **Parties and Date.**

This Agreement ("Agreement") is made and entered into this NINTH day of AUGUST, 2024, by and between **SAN YSIDRO SCHOOL DISTRICT** ("DISTRICT") and **IDS GROUP** ("Consultant") (collectively referred to as the "Parties" and each individually as "Party").

2. **Recitals.**

2.1 **Consultant.** Consultant is a professional consultant, experienced and properly certified/licensed to provide the professional services described herein, and is familiar with the plans of DISTRICT.

2.2 **Project**. DISTRICT desires to engage Consultant to render its **BOUNDARY & TOPOGRAPHIC SURVEYING** services for the **LA MIRADA ES AND CDC CONSOLIDATION PROJECT** (the "Project").

3. **Terms.**

3.1 **Scope of Services, Qualifications and Term**.

(a) General Scope of Services. Consultant promises and agrees to furnish all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply professional services, as more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (collectively "Services"). All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.2 **Term**. The term of this Agreement shall be from the date first written above and shall continue until DISTRICT's acceptance of all work and final payment to Consultant, unless earlier terminated as provided herein. The Parties may mutually agree to extend this term by written amendment. Should the Parties agree to extend the term of this Agreement, the fee for services described in **Exhibit "B"** shall remain the same.

3.3 **Responsibilities of Consultant.**

(a) Control and Payment of Consultants and its Subordinates. DISTRICT retains Consultant on an independent contractor basis and Consultant is not an employee of DISTRICT. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant

shall be responsible for all reports and obligations respecting such employees, including, but not limited to, social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

(b) Conformance to Applicable Requirements. All work prepared by Consultant is subject to the approval of DISTRICT and any and all applicable regulatory State agencies, and shall be the property of DISTRICT.

(c) Reports. Consultant shall provide copies of all reports required to be submitted to applicable regulatory State agencies to DISTRICT, whether or not such reports must be submitted to the DISTRICT.

(d) Work Authorization. Consultant shall obtain from DISTRICT a work authorization for the Project prior to commencing work. Such work authorization shall reiterate Consultant's duties outlined herein.

(e) Coordination of Services. Consultant agrees to work closely with DISTRICT staff in the performance of Services and shall be available to DISTRICT's staff, consultants and other staff at all reasonable times.

(f) Standard of Care. Consultant shall perform all Services under this Agreement in a skillful, competent and timely manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all of Consultant's employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Consultant further represents that it, its employees and subcontractors or subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any of Consultant's employees who are determined by DISTRICT to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any of Consultant's employees who fail or refuse to perform the Services in a manner acceptable to DISTRICT, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

(g) Use of sub-consultants and subcontractors. In the event utilized, Consultant to provide listing as outlined in Exhibit "D"

(h) Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services.

(i) Iran and Russia Sanctions: Consultants and its sub-consultants and subcontractors acknowledge and will adhere to Russia Sanctions as stated in Presidential Executive Order 14065 and California Executive Order N-6-22 and Iran sanctions required by

Public Contract Code section 2204 for contracts of $1,000,000 or more. Consultant to sign and return Exhibit C for all agreements of $1,000,000 or more.

(j) California Air Resources Board (CARB). Consultant and its sub-consultants and subcontractors acknowledge and will adhere to Off-Road Diesel Certification requirements. In the event off-road diesel vehicles and or equipment is utilized while performing contracted services, consultant will provide CARB Certificates of Reported Compliance ("CRC") to the district.

(k) Insurance. Consultant and that of its consultants and subcontractors shall comply with the following insurance provisions, unless one or more paragraphs are specifically waived by the DISTRICT in writing.

(i) Time for Compliance. Consultant shall not commence Services under this Agreement until it has provided evidence satisfactory to DISTRICT that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to DISTRICT that the subcontractor has secured all insurance required under this Section.

(ii) Minimum Requirements and Limits. Consultant shall, at its expense, procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(1) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability:* Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); (3) *Workers' Compensation and Employers' Liability:* Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance; and (4) *Professional Liability:* Coverage which is appropriate to the Consultant's profession, or that of its consultants or subcontractors.

(2) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability:* $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability:* $1,000,000 per accident for bodily injury and property damage; (3) *Workers' Compensation and Employer's Liability:* Workers' compensation limits as required by the Labor Code of the State of California. Employers Liability limits of $1,000,000 per accident for bodily injury or disease; and (4) *Professional Liability:* Not less than $1,000,000 per claim/ $2,000,000 aggregate.

(3) Insurance Endorsements. The insurance policies shall contain the following provisions or Consultant shall provide endorsements on forms supplied or approved by the DISTRICT to add the following provisions to the insurance policies:

a. General Liability. The general liability policy shall be endorsed to state that: (1) the DISTRICT, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the DISTRICT, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the DISTRICT, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

b. Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the DISTRICT, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the DISTRICT, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the DISTRICT, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

c. Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the DISTRICT, its governing board, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

d. Professional Liability. This insurance shall be endorsed to include contractual liability and maintained for a period of five (5) years following completion of the Project, errors and omissions liability insurance with limits discussed in this Section.

(4) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to DISTRICT; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to DISTRICT, its directors, officials, officers, employees, agents and volunteers.

(iii) Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the DISTRICT, its directors, officials, officers, employees, agents and volunteers.

(iv) Acceptability of Insurers. With the exception of Workers' Compensation Insurance, all insurance required hereunder is to be placed with insurers with a current A.M. Best's rating no less than A-: VII, which are licensed to do business in California, and which maintain an agent for process within the state. Workers' Compensation insurance required under this Agreement must be offered by an insurer meeting the above standards with the exception that the A.M. Best's rating condition is waived at the discretion of the DISTRICT.

(v) Verification of Coverage. Consultant shall furnish DISTRICT with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to DISTRICT. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by DISTRICT if requested. DISTRICT reserves the right to require complete, certified copies of all required insurance policies, at any time.

(l) Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees and subcontractors appropriate to the nature of the Services and the conditions under which the Services are to be performed. Safety precautions as applicable shall include, but shall not be limited to: (1) adequate life protection and life saving equipment and procedures; (2) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (3) adequate facilities for the proper inspection and maintenance of all safety measures.

(m) Project Staffing. Consultant shall provide adequate staff and resources to facilitate all contractor's activity. Should Consultant fail to adequately staff a project, the DISTRICT may, at its sole discretion, retain third party inspection services and back charge Consultant for all third party fees.

3.4 **Fees and Payments.**

(a) Compensation. Consultant shall receive compensation, including reimbursements, for all Services rendered under this Agreement at the rates set forth in **Exhibit "B"** attached hereto and incorporated herein by reference. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

(b) Reimbursement of Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by DISTRICT.

(c) Payment of Compensation. Consultant shall submit to DISTRICT an itemized statement which indicates work completed and hours of Services rendered by Consultant. DISTRICT shall pay Consultant within a reasonable time and in accordance with this Agreement.

(d) Extra Work. At any time during the term of this Agreement, DISTRICT may request that Consultant perform Extra Work. As used herein, "Extra Work" means any Services which are determined by DISTRICT to be necessary, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written supplemental work authorization from DISTRICT.

3.5 **Maintenance of Accounting Records.** Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of DISTRICT during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of four (4) years from the date of final payment under this Agreement.

3.6 **General Provisions**.

(a) Suspension of Services. The DISTRICT may, in its sole discretion, suspend all or any part of Services provided hereunder without cost; provided, however, that if the DISTRICT shall suspend Services for a period of ninety (90) consecutive days or more and in addition such suspension is not caused by Consultant or the acts or omissions of Consultant, upon recession of such suspension, the compensation will be subject to adjustment to provide for actual costs and expenses incurred by Consultant as a direct result of the suspension and resumption of Services under this Agreement. Consultant may not suspend its service without DISTRICT's express written consent.

(b) Termination of Agreement.

(i) Grounds for Termination. DISTRICT may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to DISTRICT, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

(ii) Effect of Termination. If this Agreement is terminated as provided in this Section, DISTRICT may require Consultant to provide all finished or unfinished documents, data, programming source code, reports or any other items prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

(iii) Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, DISTRICT may procure, upon such terms and in such manner as it may determine appropriate, services similar or identical to those terminated.

(c) Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

CONSULTANT:

IDS GROUP
1 Peters Canyon Road
Suite 130
Irvine, CA 92606

Attn: **SAID HILMY**
said.hilmy@idsgi.com

DISTRICT:

SAN YSIDRO SCHOOL DISTRICT
4350 Otay Mesa Rd.
San Ysidro CA 92173

Attn: Jose F. Iniguez, Ed D., Assistant Superintendent of Administrative Leadership, School Support & Safety
Jose.Iniguez@SYSDSchools.org

Such notice shall be deemed made when personally delivered to the address set forth above, or forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed as set forth above. Notice shall be deemed adequate on the date actual notice occurred, regardless of the method of service.

(d) Mediation. Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the Parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the Parties.

(e) Ownership of Materials and Confidentiality.

(i) All materials and data, including but not limited to, data on magnetic media and any materials and data required to be made or kept pursuant to federal, state or local laws, rules or regulations, prepared or collected by Consultant pursuant to this Agreement, shall be the sole property of the DISTRICT, except that Consultant shall have the right to retain copies of all such documents and data for its records. DISTRICT shall not be limited in any way in its use of such materials and data at any time, provided that any such use not within the purposes intended by this Agreement shall be at DISTRICT's sole risk and provided that Consultant shall be indemnified against any damages resulting from such use, including the release of this material to third parties for a use not intended by this Agreement.

(ii) All such materials and data shall be provided to the DISTRICT, or such other agency or entity as directed by DISTRICT or required by law, rule or regulation,

immediately upon completion of the term of this Agreement as directed by DISTRICT. Should DISTRICT wish to obtain possession of any such materials or data during the term of this Agreement, it shall make its request in writing. Such information shall be provided to the DISTRICT within forty-eight (48) hours of its request.

(f) Indemnification. To the fullest extent permitted by law, Consultant shall defend (with counsel of DISTRICT's choosing), indemnify and hold the DISTRICT, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the DISTRICT, its officials officers, employees, agents, or volunteers.

If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

(g) California Labor Code Requirements.

(i) Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the DISTRICT, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

(ii) If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

(iii) This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the DISTRICT. Consultant shall defend, indemnify and hold the DISTRICT, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

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

(i) Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

(j) Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Any action brought to enforce the terms of this Agreement shall be brought in a state or federal court located in the County of San Diego, State of California. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 *et seq*. prior to filing any lawsuit against the DISTRICT. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the DISTRICT.

(k) Time of Essence. Time is of the essence for each and every provision of this Agreement.

(l) DISTRICT's Right to Employ Other Consultants. DISTRICT reserves right to employ other consultants in connection with this Project. However, Consultant shall be the exclusive consultant for purposes of the Services as noted within this Agreement, unless terminated as provided herein.

(m) Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties, and shall not be assigned by Consultant without the prior written consent of DISTRICT.

(n) Amendments. This Agreement may not be amended except by a writing signed by the DISTRICT and Consultant.

(o) Severability. If any section, subsection, sentence, clause or phrases of this Agreement, or the application thereof to any of the Parties, is for any reason held invalid or unenforceable, the validity of the remainder of the Agreement shall not be affected thereby and may be enforced by the Parties to this Agreement.

(p) Interpretation. In interpreting this Agreement, it shall be deemed that it was prepared jointly by the Parties with full access to legal counsel of their own. No ambiguity shall be resolved against any party on the premise that it or its attorneys were solely responsible for drafting this Agreement or any provision thereof.

(q) Conflict of Interest. For the term of this Agreement, no member, officer or employee of DISTRICT, during the term of his or her service with DISTRICT, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

(r) Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of DISTRICT's Minority Business Enterprise program, if any, or other related programs or guidelines currently in effect or hereinafter enacted. Consultant must make a good faith effort to contact and utilize DVBE subcontractors or subconsultants and suppliers in securing bids for performance of the Agreement and shall be required to certify its good faith efforts towards retaining DVBE subcontractors or subconsultants and suppliers and identify DVBE firms utilized in performance of the Agreement.

(s) Fingerprinting Requirements. Consultant hereby acknowledges that, if applicable, it is required to comply with the requirements of Education Code Section 45125.1 with respect to fingerprinting of employees who may have contact with the DISTRICT's pupils. The Consultant shall also ensure that its consultants on the Project also comply with the requirements of Section 45125.1. If required by Education Code Section 45125.1, the Consultant must provide for the completion of a Fingerprint Certification form, in the DISTRICT's required format, prior

to any of the Consultant's employees, or those of any other consultants, coming into contact with the DISTRICT's pupils. Consultant further acknowledges that other fingerprinting requirements may apply, as set forth in Education Code Section 45125 et seq., and will comply with any such requirements.

(t) Non-Waiver. None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is expressly specified in writing.

(u) Drug/Tobacco-Free Facilities. All DISTRICT facilities are drug and tobacco-free facilities. Any drug and/or tobacco use (smoked or smokeless) is prohibited at all times on all areas of DISTRICT facilities.

(v) Board Approval Required. This Agreement shall not be binding nor take effect unless approved or ratified by the DISTRICT Board of Education. Any amendments to this Agreement shall require Board approval or ratification.

(w) Exhibits and Recitals. All Exhibits and Recitals contained herein are hereby incorporated into this Agreement by this reference.

(x) Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one agreement.

(y) Authority to Execute. The persons executing this Agreement on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

(z) Tuberculosis Certification. Proposer and/or Subcontractor shall at all times comply with the tuberculosis certification requirements as set forth with the requirements of California Education Code Section 49406. Proposer shall maintain on file the certification of examination and tests found free from active tuberculosis.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their authorized officers as of the day, month and year first written above.

SAN YSIDRO SCHOOL DISTRICT	**IDS GROUP**
By: _____	**By:** _____
Name: Marilyn Adrianzen	**Name:** Said Hilmy
Title: CBO	**Title:** President
Attest:	**Attest:**
By: _____	**By:** _____
Name: _____	**Name:** Rami Elhassan
Title: _____	**Title:** Vice President and Secretary
Board Approved: _____	**Federal Tax I.D. Number:** 33-0819861

EXHIBIT "A"
SCOPE OF SERVICES

Scope of Work: Boundary and Topographic surveys for La Mirada Elementary School at 222 Avenida De La Madrid, San Ysidro, CA 92173 and as shown via diagram below, including the furthest outer limits, shall include the following:

1. The survey be inclusive of all metes and bounds and all property lines are identified.

2. Provide grade lines (contours) at 1'-0" increment of all structures and topography survey.

3. Exterior faces of all buildings to be identified.

4. Perimeter edge of all flat work to be identified. This includes parking lots, play surfaces and courts, sidewalks, overhead structures, curbs and gutters, storm sewer inlets and utilities therein.

5. All surface utility lines are to be included on survey; this includes surface systems such as hydrants, meters, utility hot box enclosures, electric, water and reclaimed water systems, and traffic control devices.

6. Known underground utilities, as confirmed by the CA Dig Alert Service (as applicable).

7. Existing site elements such as but not limited to - landscaping, signage, screen walls and structures. Indicate surface finishes such as asphalt, concrete, gravel, grass, dirt.

8. Roadways, curbs, driveways and sidewalks.

9. Identify any / all easements.

10. Rights-of-way, street centerlines.

11. Extend survey to the property lines on the other side of the street on all sides. If no roadway exists, extend the survey to a minimum of 10'-0" beyond the property line.

END OF EXHIBIT A

EXHIBIT "B"
COMPENSATION FOR SERVICES

Fixed Fee: Thirty-One Thousand Six Hundred Ninety Dollars ($31,690.00).

END OF EXHIBIT B

EXHIBIT "C"

IRAN CONTRACTING ACT CERTIFICATION

(Public Contract Code sections 2202-2208)

(To be Executed by Consultant and Submitted with Contract for agreements of $1,000,000 or more)

As required by Public Contract Code ("PCC") section 2204 for contracts of $1,000,000 or more, please insert bidder's or financial institution's name and Federal ID Number (if available) and complete **one** of the options below. Please note that 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. (PCC §2205.)

NOT APPLICABLE

END OF EXHIBIT C

EXHIBIT "D"
SUB-CONSULTANTS & SUBCONTRACTORS
(To be Executed if Sub-Consultants and or Subcontractors utilized)

DESIGNATION OF SUBCONTRACTORS

Service provider shall set forth below the name and the location of the place of business of each sub-consultant or subcontractor, the DIR registration number and California license number of each sub-consultant or subcontractor who will perform work or labor or render services as part of agreement.

Portion of Work	Name of Sub-consultants and Subcontractor & Phone No.	Location of Sub-consultants and Subcontractor	CA Contractor License Number and License Class	**DIR#&** Classification	Email Address

END OF EXHIBIT D

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM: Jose F. Iniguez, Ed.D.
Assistant Superintendent of Admin.
Leadership, School Support & Safety

☐ Informational
☒ Action

AGENDA ITEM: AGREEMENT WITH SWS ENGINEERING, INC. FOR SAN YSIDRO MIDDLE SCHOOL REVITALIZATION PROJECT

BACKGROUND INFORMATION:
In September 2023, Staff developed Request for Qualifications ("RFQ") #2307 to provide Professional Services to the District on an "as needed basis". Through that RFQ process, the Board of Education accepted SWS Engineering, Inc. as an approved vendor.

Subsequently, District staff sent out a Request for Proposals ("RFP") for Boundary and Topographic Surveying Services for the San Ysidro Middle School Revitalization Project. The District chose the proposals from SWS Engineering, Inc., in the amount of $48,700.00 for the San Ysidro Middle School Revitalization Project, as the proposal offers the best total value for the District.

If approved, these services are expected to start on August 9, 2024 for both projects, with completion for the project by December 31, 2024.

Staff is requesting approval of this Agreement with SWS for Boundary and Topographic Surveying Services for the San Ysidro Middle School Revitalization Project.

RECOMMENDATION:
Approve the agreement with SWS Engineering, Inc. to provide Boundary and Topographic Surveying Services for the San Ysidro Middle School Revitalization Project for $48,700.00. Cost implications will be paid from General Obligation Bonds.

LCAP GOAL AND ACTION/SERVICE (please indicate):
Goal 7.0 – Provide sufficient, safe, well-maintained, and visually appealing facilities that create an environment for improving student achievement.

☐ **Renewal** ☒ **New** ☐ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-25 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No ☐ N/A	

$48,700.00	MEASURE U, G.O. BOND FUNDS (2133)
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN SAN YSIDRO SCHOOL DISTRICT AND SWS ENGINEERING, INC.

1. **Parties and Date.**

This Agreement ("Agreement") is made and entered into this NINTH day of AUGUST 2024, by and between **SAN YSIDRO SCHOOL DISTRICT** ("DISTRICT") and **SWS ENGINEERING, INC.** ("Consultant") (collectively referred to as the "Parties" and each individually as "Party").

2. **Recitals.**

2.1 **Consultant.** Consultant is a professional consultant, experienced and properly certified/licensed to provide the professional services described herein and is familiar with the plans of DISTRICT.

2.2 **Project.** DISTRICT desires to engage Consultant to render its **BOUNDARY AND TOPOGRAPHIC SURVEYING** services for **THE SAN YSIDRO MIDDLE SCHOOL REVITALIZATION PROJECT** (the "Project").

3. **Terms.**

3.1 **Scope of Services, Qualifications and Term.**

(a) General Scope of Services. Consultant promises and agrees to furnish all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply professional services, as more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (collectively "Services"). All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.2 **Term.** The term of this Agreement shall be from the date first written above and shall continue until DISTRICT's acceptance of all work and final payment to Consultant, unless earlier terminated as provided herein. The Parties may mutually agree to extend this term by written amendment. Should the Parties agree to extend the term of this Agreement, the fee for services described in **Exhibit "B"** shall remain the same.

3.3 **Responsibilities of Consultant.**

(a) Control and Payment of Consultants and its Subordinates. DISTRICT retains Consultant on an independent contractor basis and Consultant is not an employee of

DISTRICT. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall be responsible for all reports and obligations respecting such employees, including, but not limited to, social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

(b) Conformance to Applicable Requirements. All work prepared by Consultant is subject to the approval of DISTRICT and any and all applicable regulatory State agencies, and shall be the property of DISTRICT.

(c) Reports. Consultant shall provide copies of all reports required to be submitted to applicable regulatory State agencies to DISTRICT, whether or not such reports must be submitted to the DISTRICT.

(d) Work Authorization. Consultant shall obtain from DISTRICT a work authorization for the Project prior to commencing work. Such work authorization shall reiterate Consultant's duties outlined herein.

(e) Coordination of Services. Consultant agrees to work closely with DISTRICT staff in the performance of Services and shall be available to DISTRICT's staff, consultants and other staff at all reasonable times.

(f) Standard of Care. Consultant shall perform all Services under this Agreement in a skillful, competent and timely manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all of Consultant's employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Consultant further represents that it, its employees and subcontractors or subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any of Consultant's employees who are determined by DISTRICT to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any of Consultant's employees who fail or refuse to perform the Services in a manner acceptable to DISTRICT, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

(g) Use of sub-consultants and subcontractors. In the event utilized, Consultant to provide listing as outlined in Exhibit "D"

(h) Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services.

(i) Iran and Russia Sanctions: Consultants and its sub-consultants and subcontractors acknowledge and will adhere to Russia Sanctions as stated in Presidential

Executive Order 14065 and California Executive Order N-6-22 and Iran sanctions required by Public Contract Code section 2204 for contracts of $1,000,000 or more. Consultant to sign and return Exhibit C for all agreements of $1,000,000 or more.

(j) California Air Resources Board (CARB). Consultant and its sub-consultants and subcontractors acknowledge and will adhere to Off-Road Diesel Certification requirements. In the event off-road diesel vehicles and or equipment is utilized while performing contracted services, consultant will provide CARB Certificates of Reported Compliance ("CRC") to the district.

(k) Insurance. Consultant shall comply with the following insurance provisions, unless one or more paragraphs are specifically waived by the DISTRICT in writing.

(i) Time for Compliance. Consultant shall not commence Services under this Agreement until it has provided evidence satisfactory to DISTRICT that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to DISTRICT that the subcontractor has secured all insurance required under this Section.

(ii) Minimum Requirements and Limits. Consultant shall, at its expense, procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(1) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability:* Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); (3) *Workers' Compensation and Employers' Liability:* Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance; and (4) *Professional Liability:* Coverage which is appropriate to the Consultant 's profession, or that of its consultants or subcontractors.

(2) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability:* $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability:* $1,000,000 per accident for bodily injury and property damage; (3) *Workers' Compensation and Employer's Liability:* Workers' compensation limits as required by the Labor Code of the State of California. Employers Liability limits of $1,000,000 per accident for bodily injury or disease; and (4) *Professional Liability:* Not less than $1,000,000 per claim/ $2,000,000 aggregate.

(3) Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the DISTRICT to add the following provisions to the insurance policies:

a. General Liability. The general liability policy shall be endorsed to state that: (1) the DISTRICT, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the DISTRICT, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the DISTRICT, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

b. Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the DISTRICT, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the DISTRICT, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the DISTRICT, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

c. Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the DISTRICT, its governing board, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

d. Professional Liability. Consultant and its sub-consultants and subcontractors shall procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance with limits discussed in this Section. This insurance shall be endorsed to include contractual liability.

(4) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to DISTRICT; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to DISTRICT, its directors, officials, officers, employees, agents and volunteers.

(iii) Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the DISTRICT, its directors, officials, officers, employees, agents and volunteers.

(iv) Acceptability of Insurers. With the exception of Workers' Compensation Insurance, all insurance required hereunder is to be placed with insurers with a current A.M. Best's rating no less than A-: VII, which are licensed to do business in California, and which maintain an agent for process within the state. Workers' Compensation insurance required under this Agreement must be offered by an insurer meeting the above standards with the exception that the A.M. Best's rating condition is waived at the discretion of the DISTRICT.

(v) Verification of Coverage. Consultant shall furnish DISTRICT with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to DISTRICT. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by DISTRICT if requested. DISTRICT reserves the right to require complete, certified copies of all required insurance policies, at any time.

(l) Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees and subcontractors appropriate to the nature of the Services and the conditions under which the Services are to be performed. Safety precautions as applicable shall include, but shall not be limited to: (1) adequate life protection and life saving equipment and procedures; (2) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (3) adequate facilities for the proper inspection and maintenance of all safety measures.

(m) Project Staffing. Consultant shall provide adequate staff and resources to facilitate all contractor's activity. Should Consultant fail to adequately staff a project, the DISTRICT may, at its sole discretion, retain third party inspection services and back charge Consultant for all third party fees.

3.4 **Fees and Payments.**

(a) Compensation. Consultant shall receive compensation, including reimbursements, for all Services rendered under this Agreement at the rates set forth in **Exhibit "B"** attached hereto and incorporated herein by reference. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

(b) Reimbursement of Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by DISTRICT.

(c) Payment of Compensation. Consultant shall submit to DISTRICT an itemized statement which indicates work completed and hours of Services rendered by Consultant. DISTRICT shall pay Consultant within a reasonable time and in accordance with this Agreement.

(d) Extra Work. At any time during the term of this Agreement, DISTRICT may request that Consultant perform Extra Work. As used herein, "Extra Work" means any Services which are determined by DISTRICT to be necessary, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written supplemental work authorization from DISTRICT.

3.5 **Maintenance of Accounting Records.** Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of DISTRICT during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of four (4) years from the date of final payment under this Agreement.

3.6 **General Provisions.**

(a) Suspension of Services. The DISTRICT may, in its sole discretion, suspend all or any part of Services provided hereunder without cost; provided, however, that if the DISTRICT shall suspend Services for a period of ninety (90) consecutive days or more and in addition such suspension is not caused by Consultant or the acts or omissions of Consultant, upon recession of such suspension, the compensation will be subject to adjustment to provide for actual costs and expenses incurred by Consultant as a direct result of the suspension and resumption of Services under this Agreement. Consultant may not suspend its service without DISTRICT's express written consent.

(b) Termination of Agreement.

(i) Grounds for Termination. DISTRICT may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to DISTRICT, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

(ii) Effect of Termination. If this Agreement is terminated as provided in this Section, DISTRICT may require Consultant to provide all finished or unfinished documents, data, programming source code, reports or any other items prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

(iii) Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, DISTRICT may procure, upon such terms and in such manner as it may determine appropriate, services similar or identical to those terminated.

(c) Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

CONSULTANT:

SWS ENGINEERING, INC.
1635 Lake San Marcos Drive
Suite 200
San Marcos, CA 92078
760-744-0011 Phone / 760-744-0046 Fax

Attn: Michael Schweitzer, CEO
michael@sws-engr.com

DISTRICT:

SAN YSIDRO SCHOOL DISTRICT
4350 Otay Mesa Rd.
San Ysidro, CA 92173

Attn: Jose F. Iniguez, Ed D., Assistant Superintendent of Administrative Leadership, School Support & Safety
Jose.Iniguez@SYSDSchools.org

Such notice shall be deemed made when personally delivered to the address set forth above, or forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed as set forth above. Notice shall be deemed adequate on the date actual notice occurred, regardless of the method of service.

(d) Mediation. Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the Parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the Parties.

(e) Ownership of Materials and Confidentiality.

(i) All materials and data, including but not limited to, data on magnetic media and any materials and data required to be made or kept pursuant to federal, state or local laws, rules or regulations, prepared or collected by Consultant pursuant to this Agreement, shall be the sole property of the DISTRICT, except that Consultant shall have the right to retain copies of all such documents and data for its records. DISTRICT shall not be limited in any way in its use of such materials and data at any time, provided that any such use not within the purposes intended by this Agreement shall be at DISTRICT's sole risk and provided that Consultant shall be indemnified against any damages resulting from such use, including the release of this material to third parties for a use not intended by this Agreement.

(ii) All such materials and data shall be provided to the DISTRICT, or such other agency or entity as directed by DISTRICT or required by law, rule or regulation, immediately upon completion of the term of this Agreement as directed by DISTRICT. Should DISTRICT wish to obtain possession of any such materials or data during the term of this Agreement, it shall make its request in writing. Such information shall be provided to the DISTRICT within forty-eight (48) hours of its request.

(f) Indemnification. To the fullest extent permitted by law, Consultant shall defend (with counsel of DISTRICT's choosing), indemnify and hold the DISTRICT, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the DISTRICT, its officials officers, employees, agents, or volunteers.

If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

(g) California Labor Code Requirements.

(i) Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the DISTRICT, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

(ii) If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

(iii) This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the DISTRICT. Consultant shall defend, indemnify and hold the DISTRICT, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

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

(i) Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

(j) Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Any action brought to enforce the terms of this Agreement shall be brought in a state or federal court located in the County of San Diego, State of California. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 *et seq*. prior to filing any lawsuit against the DISTRICT. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the DISTRICT.

(k) Time of Essence. Time is of the essence for each and every provision of this Agreement.

(l) DISTRICT's Right to Employ Other Consultants. DISTRICT reserves right to employ other consultants in connection with this Project. However, Consultant shall be the exclusive consultant for purposes of the Services as noted within this Agreement, unless terminated as provided herein.

(m) Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties, and shall not be assigned by Consultant without the prior written consent of DISTRICT.

(n) Amendments. This Agreement may not be amended except by a writing signed by the DISTRICT and Consultant.

(o) Severability. If any section, subsection, sentence, clause or phrases of this Agreement, or the application thereof to any of the Parties, is for any reason held invalid or unenforceable, the validity of the remainder of the Agreement shall not be affected thereby and may be enforced by the Parties to this Agreement.

(p) Interpretation. In interpreting this Agreement, it shall be deemed that it was prepared jointly by the Parties with full access to legal counsel of their own. No ambiguity shall be resolved against any party on the premise that it or its attorneys were solely responsible for drafting this Agreement or any provision thereof.

(q) Conflict of Interest. For the term of this Agreement, no member, officer or employee of DISTRICT, during the term of his or her service with DISTRICT, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

(r) Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of DISTRICT's Minority Business Enterprise program, if any, or other related programs or guidelines currently in effect or hereinafter enacted. Consultant must make a good faith effort to contact and utilize DVBE subcontractors or subconsultants and suppliers in securing bids for performance of the Agreement and shall be required to certify its good faith efforts towards retaining DVBE subcontractors or subconsultants and suppliers and identify DVBE firms utilized in performance of the Agreement.

(s) Fingerprinting Requirements. Consultant hereby acknowledges that, if applicable, it is required to comply with the requirements of Education Code Section 45125.1 with respect to fingerprinting of employees who may have contact with the DISTRICT's pupils. The Consultant shall also ensure that its consultants on the Project also comply with the requirements of Section 45125.1. If required by Education Code Section 45125.1, the Consultant must provide for the completion of a Fingerprint Certification form, in the DISTRICT's required format, prior

to any of the Consultant's employees, or those of any other consultants, coming into contact with the DISTRICT's pupils. Consultant further acknowledges that other fingerprinting requirements may apply, as set forth in Education Code Section 45125 et seq., and will comply with any such requirements.

(t) Non-Waiver. None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is expressly specified in writing.

(u) Drug/Tobacco-Free Facilities. All DISTRICT facilities are drug and tobacco-free facilities. Any drug and/or tobacco use (smoked or smokeless) is prohibited at all times on all areas of DISTRICT facilities.

(v) Board Approval Required. This Agreement shall not be binding nor take effect unless approved or ratified by the DISTRICT Board of Education. Any amendments to this Agreement shall require Board approval or ratification.

(w) Exhibits and Recitals. All Exhibits and Recitals contained herein are hereby incorporated into this Agreement by this reference.

(x) Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one agreement.

(y) Authority to Execute. The persons executing this Agreement on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

(z) Tuberculosis Certification. Proposer and/or Subcontractor shall at all times comply with the tuberculosis certification requirements as set forth with the requirements of California Education Code Section 49406. Proposer shall maintain on file the certification of examination and tests found free from active tuberculosis.

THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their authorized officers as of the day, month and year first written above.

SAN YSIDRO SCHOOL DISTRICT

By: _____
Name: Marilyn Adrianzen
Title: Chief Business Official

Attest:

By: _____
Name: _____
Title: _____

Board Approved: _____

SWS ENGINEERING, INC.

By: _____
Name: MICHAEL D. SCHWEITZER
Title: CEO

Attest:

By: _____
Name: _____
Title: _____

27-1419365
Federal Tax I.D. Number

EXHIBIT "A"
SCOPE OF SERVICES

Boundary and Topographic Scope of Services, including Preliminary Title Report and Easement Plotting:

The Service Provider shall perform a boundary survey for each site based on CCS83 horizontal coordinates. Service Provider shall also obtain a Preliminary Title Report for the property for the purpose of plotting existing easements.

The topographic survey for the San Ysidro Middle School site shall be based on the City of San Diego Vertical control. The survey shall include an aerial survey of the project area mapped at a 1"=20' scale with a one-foot (1'-0") contour interval.

Boundary and Topographic surveys shall include the following:

1. The survey be inclusive of all metes and bounds and all property lines are identified.
2. All site utility lines are to be included on survey, this includes surface systems such as hydrants, meters, utility hot box enclosures, electric, water and reclaimed water systems.
3. Provide grade lines (contours) at 1'-0" increment of all structures and topography survey.
4. Exterior faces of all buildings to be identified.
5. Perimeter edge of all flat work to be identified. This includes parking lots, play surfaces and courts, sidewalks, overhead structures, curbs and gutters, storm sewer inlets and utilities therein.
6. Known underground utilities, as confirmed by the CA Dig Alert Service/private GPR service.
7. Above ground utilities and traffic control devices.
8. Existing site elements such as but not limited to - landscaping, signage, screen walls and structures. Indicate surface finishes such as asphalt, concrete, gravel, grass, dirt.
9. Roadways, curbs, driveways and sidewalks.
10. Identify any / all easements.
11. Rights-of-way, street centerlines
12. Extend survey to the property lines on the other side of the street on all sides. If no roadway exists, extend the survey to a minimum of 10'-0" beyond the property line.

END OF EXHIBIT "A"

EXHIBIT "B"
COMPENSATION FOR SERVICES

Scope of work shall be compensated as a fixed fee of **Forty-Eight Thousand Seven Hundred Dollars ($48,700.00)** for Boundary and Topographic Scope of Services, as well as, Title Report and Easement Plotting. Work shall be billed on a monthly time-and-materials basis.

NOTES AND EXCLUSIONS:

1. The pricing quotation provided herein is valid for a period of thirty (30) days from the date of this quotation.
2. Excludes all agency fees and annexation processing fees and off-site letters of permission and retaining wall plans.
3. Excludes Record of Survey and resetting of any missing property monumentation.
4. District to provide as-built plans for site utilities which are to be included in scope item 2.

END OF EXHIBIT "B"

EXHIBIT "C"

IRAN CONTRACTING ACT CERTIFICATION

(Public Contract Code sections 2202-2208)

(To be Executed by Consultant and Submitted with Contract for agreements of $1,000,000 or more)

As required by Public Contract Code ("PCC") section 2204 for contracts of $1,000,000 or more, please insert bidder's or financial institution's name and Federal ID Number (if available) and complete **one** of the options below. Please note that 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. (PCC §2205.)

NOT APPLICABLE

END OF EXHIBIT "C"

EXHIBIT "D"
SUB-CONSULTANTS & SUBCONTRACTORS
(To be Executed if Sub-Consultants and or Subcontractors utilized)

DESIGNATION OF SUBCONTRACTORS

Service provider shall set forth below the name and the location of the place of business of each sub-consultant or subcontractor, the DIR registration number and California license number of each sub-consultant or subcontractor who will perform work or labor or render services as part of agreement.

Portion of Work	Name of Sub-consultants and Subcontractor & Phone No.	Location of Sub-consultants and Subcontractor	CA Contractor License Number and License Class	DIR#& Classification	Email Address

END OF EXHIBIT "D"

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM: Jose F. Iniguez, Ed.D.
Assistant Superintendent of Admin.
Leadership, School Support & Safety

☐ Informational
☒ Action

AGENDA ITEM: AGREEMENT WITH SWS ENGINEERING, INC. FOR COMMUNITY RESOURCE CENTER AT BEYER SITE

BACKGROUND INFORMATION:
In September 2023, Staff developed Request for Qualifications ("RFQ") #2307 to provide Professional Services to the District on an "as needed basis". The Board of Education accepted SWS Engineering, Inc. as an approved vendor through that RFQ process.

Subsequently, District Staff sent a Request for Proposals ("RFP") for Boundary and Topographic Surveying Services for the Community Resource Center at the Beyer Site. The District chose the proposal from SWS Engineering, Inc., for $6,500.00, as it offers the best total value for the District.

If approved, these services are expected to start on August 9, 2024, for the project, with completion of the project by December 31, 2024.

Staff is requesting approval of this Agreement with SWS for Boundary and Topographic Surveying Services for the Community Resource Center at the Beyer Site.

RECOMMENDATION:
Approve the agreement with SWS Engineering, Inc. to provide Boundary and Topographic Surveying Services at the Community Resource Center at Beyer Site for $6,500.00. Cost implications will be paid from the General Obligation Bonds.

LCAP GOAL AND ACTION/SERVICE (please indicate):
Goal 7.0 – Provide sufficient, safe, well-maintained, and visually appealing facilities that create an environment for improving student achievement.

☐ **Renewal** ☒ **New** ☐ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-25 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No ☐ N/A	

$6,500.00	MEASURE U, G.O. BOND FUNDS (2133)
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

23-253A

C# 4511

AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN SAN YSIDRO SCHOOL DISTRICT AND SWS ENGINEERING, INC.

1. **Parties and Date.**

This Agreement ("Agreement") is made and entered into this NINTH day of AUGUST 2024, by and between **SAN YSIDRO SCHOOL DISTRICT** ("DISTRICT") and **SWS ENGINEERING, INC.** ("Consultant") (collectively referred to as the "Parties" and each individually as "Party").

2. **Recitals.**

2.1 **Consultant.** Consultant is a professional consultant, experienced and properly certified/licensed to provide the professional services described herein and is familiar with the plans of DISTRICT.

2.2 **Project.** DISTRICT desires to engage Consultant to render its **BOUNDARY AND TOPOGRAPHIC SURVEYING** services for **THE COMMUNITY RESOURCE CENTER AT BEYER SITE PROJECT** (the "**Project**").

3. **Terms.**

3.1 **Scope of Services, Qualifications and Term.**

(a) General Scope of Services. Consultant promises and agrees to furnish all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply professional services, as more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (collectively "Services"). All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.2 **Term.** The term of this Agreement shall be from the date first written above and shall continue until DISTRICT's acceptance of all work and final payment to Consultant, unless earlier terminated as provided herein. The Parties may mutually agree to extend this term by written amendment. Should the Parties agree to extend the term of this Agreement, the fee for services described in **Exhibit "B"** shall remain the same.

3.3 **Responsibilities of Consultant.**

(a) Control and Payment of Consultants and its Subordinates. DISTRICT retains Consultant on an independent contractor basis and Consultant is not an employee of

DISTRICT. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall be responsible for all reports and obligations respecting such employees, including, but not limited to, social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

(b) Conformance to Applicable Requirements. All work prepared by Consultant is subject to the approval of DISTRICT and any and all applicable regulatory State agencies, and shall be the property of DISTRICT.

(c) Reports. Consultant shall provide copies of all reports required to be submitted to applicable regulatory State agencies to DISTRICT, whether or not such reports must be submitted to the DISTRICT.

(d) Work Authorization. Consultant shall obtain from DISTRICT a work authorization for the Project prior to commencing work. Such work authorization shall reiterate Consultant's duties outlined herein.

(e) Coordination of Services. Consultant agrees to work closely with DISTRICT staff in the performance of Services and shall be available to DISTRICT's staff, consultants and other staff at all reasonable times.

(f) Standard of Care. Consultant shall perform all Services under this Agreement in a skillful, competent and timely manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all of Consultant's employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Consultant further represents that it, its employees and subcontractors or subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any of Consultant's employees who are determined by DISTRICT to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any of Consultant's employees who fail or refuse to perform the Services in a manner acceptable to DISTRICT, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

(g) Use of sub-consultants and subcontractors. In the event utilized, Consultant to provide listing as outlined in Exhibit "D"

(h) Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services.

(i) Iran and Russia Sanctions: Consultants and its sub-consultants and subcontractors acknowledge and will adhere to Russia Sanctions as stated in Presidential

Executive Order 14065 and California Executive Order N-6-22 and Iran sanctions required by Public Contract Code section 2204 for contracts of $1,000,000 or more. Consultant to sign and return Exhibit C for all agreements of $1,000,000 or more.

(j) California Air Resources Board (CARB). Consultant and its sub-consultants and subcontractors acknowledge and will adhere to Off-Road Diesel Certification requirements. In the event off-road diesel vehicles and or equipment is utilized while performing contracted services, consultant will provide CARB Certificates of Reported Compliance ("CRC") to the district.

(k) Insurance. Consultant shall comply with the following insurance provisions, unless one or more paragraphs are specifically waived by the DISTRICT in writing.

(i) Time for Compliance. Consultant shall not commence Services under this Agreement until it has provided evidence satisfactory to DISTRICT that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to DISTRICT that the subcontractor has secured all insurance required under this Section.

(ii) Minimum Requirements and Limits. Consultant shall, at its expense, procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(1) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability:* Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); (3) *Workers' Compensation and Employers' Liability:* Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance; and (4) *Professional Liability:* Coverage which is appropriate to the Consultant 's profession, or that of its consultants or subcontractors.

(2) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability:* $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability:* $1,000,000 per accident for bodily injury and property damage; (3) *Workers' Compensation and Employer's Liability:* Workers' compensation limits as required by the Labor Code of the State of California. Employers Liability limits of $1,000,000 per accident for bodily injury or disease; and (4) *Professional Liability:* Not less than $1,000,000 per claim/ $2,000,000 aggregate.

(3) Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the DISTRICT to add the following provisions to the insurance policies:

a. General Liability. The general liability policy shall be endorsed to state that: (1) the DISTRICT, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the DISTRICT, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the DISTRICT, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

b. Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the DISTRICT, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the DISTRICT, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the DISTRICT, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

c. Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the DISTRICT, its governing board, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

d. Professional Liability. Consultant and its sub-consultants and subcontractors shall procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance with limits discussed in this Section. This insurance shall be endorsed to include contractual liability.

(4) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to DISTRICT; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to DISTRICT, its directors, officials, officers, employees, agents and volunteers.

(iii) Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the DISTRICT, its directors, officials, officers, employees, agents and volunteers.

(iv) Acceptability of Insurers. With the exception of Workers' Compensation Insurance, all insurance required hereunder is to be placed with insurers with a current A.M. Best's rating no less than A-: VII, which are licensed to do business in California, and which maintain an agent for process within the state. Workers' Compensation insurance required under this Agreement must be offered by an insurer meeting the above standards with the exception that the A.M. Best's rating condition is waived at the discretion of the DISTRICT.

(v) Verification of Coverage. Consultant shall furnish DISTRICT with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to DISTRICT. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by DISTRICT if requested. DISTRICT reserves the right to require complete, certified copies of all required insurance policies, at any time.

(l) Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees and subcontractors appropriate to the nature of the Services and the conditions under which the Services are to be performed. Safety precautions as applicable shall include, but shall not be limited to: (1) adequate life protection and life saving equipment and procedures; (2) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (3) adequate facilities for the proper inspection and maintenance of all safety measures.

(m) Project Staffing. Consultant shall provide adequate staff and resources to facilitate all contractor's activity. Should Consultant fail to adequately staff a project, the DISTRICT may, at its sole discretion, retain third party inspection services and back charge Consultant for all third party fees.

3.4 **Fees and Payments.**

(a) Compensation. Consultant shall receive compensation, including reimbursements, for all Services rendered under this Agreement at the rates set forth in **Exhibit "B"** attached hereto and incorporated herein by reference. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

(b) Reimbursement of Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by DISTRICT.

(c) Payment of Compensation. Consultant shall submit to DISTRICT an itemized statement which indicates work completed and hours of Services rendered by Consultant. DISTRICT shall pay Consultant within a reasonable time and in accordance with this Agreement.

(d) Extra Work. At any time during the term of this Agreement, DISTRICT may request that Consultant perform Extra Work. As used herein, "Extra Work" means any Services which are determined by DISTRICT to be necessary, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written supplemental work authorization from DISTRICT.

3.5 **Maintenance of Accounting Records.** Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of DISTRICT during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of four (4) years from the date of final payment under this Agreement.

3.6 **General Provisions.**

(a) Suspension of Services. The DISTRICT may, in its sole discretion, suspend all or any part of Services provided hereunder without cost; provided, however, that if the DISTRICT shall suspend Services for a period of ninety (90) consecutive days or more and in addition such suspension is not caused by Consultant or the acts or omissions of Consultant, upon recession of such suspension, the compensation will be subject to adjustment to provide for actual costs and expenses incurred by Consultant as a direct result of the suspension and resumption of Services under this Agreement. Consultant may not suspend its service without DISTRICT's express written consent.

(b) Termination of Agreement.

(i) Grounds for Termination. DISTRICT may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to DISTRICT, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

(ii) Effect of Termination. If this Agreement is terminated as provided in this Section, DISTRICT may require Consultant to provide all finished or unfinished documents, data, programming source code, reports or any other items prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

(iii) Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, DISTRICT may procure, upon such terms and in such manner as it may determine appropriate, services similar or identical to those terminated.

(c) Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose

CONSULTANT:

SWS ENGINEERING, INC.
1635 Lake San Marcos Drive
Suite 200
San Marcos, CA 92078
760-744-0011 Phone / 760-744-0046 Fax

Attn: Michael Schweitzer, CEO michael@sws-engr.com

DISTRICT:

SAN YSIDRO SCHOOL DISTRICT
4350 Otay Mesa Rd.
San Ysidro, CA 92173

Attn: Jose F. Iniguez, Ed D., Assistant Superintendent of Administrative Leadership, School Support & Safety
Jose.Iniguez@SYSDSchools.org

Such notice shall be deemed made when personally delivered to the address set forth above, or forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed as set forth above. Notice shall be deemed adequate on the date actual notice occurred, regardless of the method of service.

(d) Mediation. Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the Parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the Parties.

(e) Ownership of Materials and Confidentiality.

(i) All materials and data, including but not limited to, data on magnetic media and any materials and data required to be made or kept pursuant to federal, state or local laws, rules or regulations, prepared or collected by Consultant pursuant to this Agreement, shall be the sole property of the DISTRICT, except that Consultant shall have the right to retain copies of all such documents and data for its records. DISTRICT shall not be limited in any way in its use of such materials and data at any time, provided that any such use not within the purposes intended by this Agreement shall be at DISTRICT's sole risk and provided that Consultant shall be indemnified against any damages resulting from such use, including the release of this material to third parties for a use not intended by this Agreement.

(ii) All such materials and data shall be provided to the DISTRICT, or such other agency or entity as directed by DISTRICT or required by law, rule or regulation,

immediately upon completion of the term of this Agreement as directed by DISTRICT. Should DISTRICT wish to obtain possession of any such materials or data during the term of this Agreement, it shall make its request in writing. Such information shall be provided to the DISTRICT within forty-eight (48) hours of its request.

(f) Indemnification. To the fullest extent permitted by law, Consultant shall defend (with counsel of DISTRICT's choosing), indemnify and hold the DISTRICT, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the DISTRICT, its officials officers, employees, agents, or volunteers.

If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

(g) California Labor Code Requirements.

(i) Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the DISTRICT, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

(ii) If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

(iii) This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the DISTRICT. Consultant shall defend, indemnify and hold the DISTRICT, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

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

(i) Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

(j) Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Any action brought to enforce the terms of this Agreement shall be brought in a state or federal court located in the County of San Diego, State of California. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 *et seq*. prior to filing any lawsuit against the DISTRICT. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the DISTRICT.

(k) Time of Essence. Time is of the essence for each and every provision of this Agreement.

(l) DISTRICT's Right to Employ Other Consultants. DISTRICT reserves right to employ other consultants in connection with this Project. However, Consultant shall be the exclusive consultant for purposes of the Services as noted within this Agreement, unless terminated as provided herein.

(m) Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties, and shall not be assigned by Consultant without the prior written consent of DISTRICT.

(n) Amendments. This Agreement may not be amended except by a writing signed by the DISTRICT and Consultant.

(o) Severability. If any section, subsection, sentence, clause or phrases of this Agreement, or the application thereof to any of the Parties, is for any reason held invalid or unenforceable, the validity of the remainder of the Agreement shall not be affected thereby and may be enforced by the Parties to this Agreement.

(p) Interpretation. In interpreting this Agreement, it shall be deemed that it was prepared jointly by the Parties with full access to legal counsel of their own. No ambiguity shall be resolved against any party on the premise that it or its attorneys were solely responsible for drafting this Agreement or any provision thereof.

(q) Conflict of Interest. For the term of this Agreement, no member, officer or employee of DISTRICT, during the term of his or her service with DISTRICT, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

(r) Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of DISTRICT's Minority Business Enterprise program, if any, or other related programs or guidelines currently in effect or hereinafter enacted. Consultant must make a good faith effort to contact and utilize DVBE subcontractors or subconsultants and suppliers in securing bids for performance of the Agreement and shall be required to certify its good faith efforts towards retaining DVBE subcontractors or subconsultants and suppliers and identify DVBE firms utilized in performance of the Agreement.

(s) Fingerprinting Requirements. Consultant hereby acknowledges that, if applicable, it is required to comply with the requirements of Education Code Section 45125.1 with respect to fingerprinting of employees who may have contact with the DISTRICT's pupils. The Consultant shall also ensure that its consultants on the Project also comply with the requirements of Section 45125.1. If required by Education Code Section 45125.1, the Consultant must provide for the completion of a Fingerprint Certification form, in the DISTRICT's required format, prior

to any of the Consultant's employees, or those of any other consultants, coming into contact with the DISTRICT's pupils. Consultant further acknowledges that other fingerprinting requirements may apply, as set forth in Education Code Section 45125 et seq., and will comply with any such requirements.

(t) Non-Waiver. None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is expressly specified in writing.

(u) Drug/Tobacco-Free Facilities. All DISTRICT facilities are drug and tobacco-free facilities. Any drug and/or tobacco use (smoked or smokeless) is prohibited at all times on all areas of DISTRICT facilities.

(v) Board Approval Required. This Agreement shall not be binding nor take effect unless approved or ratified by the DISTRICT Board of Education. Any amendments to this Agreement shall require Board approval or ratification.

(w) Exhibits and Recitals. All Exhibits and Recitals contained herein are hereby incorporated into this Agreement by this reference.

(x) Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one agreement.

(y) Authority to Execute. The persons executing this Agreement on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

(z) Tuberculosis Certification. Proposer and/or Subcontractor shall at all times comply with the tuberculosis certification requirements as set forth with the requirements of California Education Code Section 49406. Proposer shall maintain on file the certification of examination and tests found free from active tuberculosis.

THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their authorized officers as of the day, month and year first written above.

SAN YSIDRO SCHOOL DISTRICT

By: _____
Name: Marilyn Adrianzen
Title: CBO

Attest:

By: _____
Name: _____
Title: _____

Board Approved: _____

SWS ENGINEERING, INC.

By: _____
Name: Michael D. Schweitzer
Title: C.E.O

Attest:

By: _____
Name: _____
Title: _____

27-1419365
Federal Tax I.D. Number

EXHIBIT "A"
SCOPE OF SERVICES

Beyer Site Title Report and Easement Plotting:

The Engineer shall coordinate with the Title Company to obtain a Title Report for the Beyer site and shall plot the easements shown in the Title Report onto the Boundary and Topo that the Engineer had previously prepared.

NOTES AND EXCLUSIONS:

1. School District to provide as-built plans for the site utilities which are to be included in scope.

END OF EXHIBIT "A"

EXHIBIT "B"
COMPENSATION FOR SERVICES

Scope of work shall be compensated as a fixed fee of **Six Thousand Five Hundred Dollars ($6,500.00)**. Work shall be billed on a monthly time-and-materials basis.

NOTES AND EXCLUSIONS:

1. The pricing quotation provided herein is valid for a period of thirty (30) days from the date of this quotation.
2. Excludes all agency fees and annexation processing fees and off-site letters of permission and retaining wall plans.
3. Excludes Record of Survey and resetting of any missing property monumentation.

END OF EXHIBIT "B"

EXHIBIT "C"

IRAN CONTRACTING ACT CERTIFICATION

(Public Contract Code sections 2202-2208)

(To be Executed by Consultant and Submitted with Contract for agreements of $1,000,000 or more)

As required by Public Contract Code ("PCC") section 2204 for contracts of $1,000,000 or more, please insert bidder's or financial institution's name and Federal ID Number (if available) and complete **one** of the options below. Please note that 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. (PCC §2205.)

NOT APPLICABLE

END OF EXHIBIT "C"

EXHIBIT "D"
SUB-CONSULTANTS & SUBCONTRACTORS
(To be Executed if Sub-Consultants and or Subcontractors utilized)

DESIGNATION OF SUBCONTRACTORS

Service provider shall set forth below the name and the location of the place of business of each sub-consultant or subcontractor, the DIR registration number and California license number of each sub-consultant or subcontractor who will perform work or labor or render services as part of agreement.

Portion of Work	Name of Sub-consultants and Subcontractor & Phone No.	Location of Sub-consultants and Subcontractor	CA Contractor License Number and License Class	DIR#& Classification	Email Address

END OF EXHIBIT "D"

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Educational Services
Russell Little, Assistant Superintendent

☒ Informational
☐ Action

AGENDA ITEM: EXTENSION OF THE MEMORANDUM OF AGREEMENT WITH SAN DIEGO COUNTY SUPERINTENDENT OF SCHOOLS FOR THE ESSER III SUMMER GRANT PROGRAM

BACKGROUND INFORMATION:

The Agreement for the Elementary and Secondary School Emergency Relief III (ESSER III) Summer Grant Program was entered into and effective as of the 1st day of July 2022 by and between the San Diego County Superintendent of Schools (SDCOE) and our District, for the implementation of the ESSER III Summer Grant Program.

The agreement's original term was from July 1, 2021, through September 30, 2023. On December 12, 2023, it was amended to extend the term until June 30, 2024.

For any balance of the initial allocation of this grant, the San Diego County Office of Education, Expanded Learning will not be entering into a new MOA. Instead, it will extend the grant period for the ESSER III Summer Grant Program to operate until September 30, 2024.

RECOMMENDATION:

Information Only.

LCAP GOAL AND ACTION/SERVICE:

Goal 1: Student Achievement and Goal 2: School Culture and Student Well-Being

☐ **Renewal** ☐ **New** ☒ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☐ Yes ☒ No	☐ Yes ☐ No	

N/A	
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

san diego county office of EDUCATION
FUTURE WITHOUT BOUNDARIES℠

San Diego County Office of Education **Main Campus**
6401 Linda Vista Road, San Diego, CA 92111
858-292-3500 | www.sdcoe.net

May 16, 2024

Dear District/Charter Contact,

As a Round 1 recipient of ESSER III Summer Grant funding, you have until September 30, 2024 to spend the balance of your Round 1 *initial* allocation (Grant ID#37-15652-1037-ES).

To this end, SDCOE Expanded Learning will not be entering into a new MOA. Rather we will be extending the grant period for the ESSER III Summer Grant MOA dated July 1, 2022 to September 30, 2024. We recommend that you make this MOA extension an information item on your June board agenda.

As always, we are here to assist in working through any questions that you might have. Please feel free to contact Liza Flowers, Director, Expanded Learning at liza.flowers@sdcoe.net or 858-298-2079.

Regards,

Michael Simonson
Deputy Superintendent, Chief Business Officer

San Diego County Superintendent of Schools **Dr. Paul Gothold**

San Diego County Board of Education

Paulette Donnellon **Guadalupe González** **Alicia Muñoz** **Gregg Robinson** **Rick Shea**

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Russell Little, Asst. Superintendent
Educational Leadership & Pupil Services

☐ Informational
☒ Action

AGENDA ITEM: AGREEMENT WITH RO HEALTH, LLC

BACKGROUND INFORMATION:
Ro Health, LLC operates a supplemental staffing agency and employs licensed healthcare personnel to provide healthcare services. Ro Health will provide a Licensed Vocational Nurse on an "as needed" basis at an hourly rate of $58.80. Days/times will be as scheduled with the District's Pupil Services Department.

Term: School Year 2024-2025 (August 2024 to June 2025)

RECOMMENDATION:
Approve the agreement with Ro Health, LCC to provide a temporary Licensed Vocational Nurse on an "as needed" basis during school year 2024-2025 at a rate of $58.80 per hour from the General fund and/or Special Education Budget.

LCAP GOAL AND ACTION/SERVICE (please indicate):
Goal 1
1.3 Provide certificated and classified staffing to support students, including teachers, site and district office staff, instructional aides, speech therapists, health care assistants, LVNs, behavioral specialists, and site and district administrators.

☐ **Renewal** ☒ **New** ☐ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

$58.80/hr	General fund and/or Special Education Budget
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

SAN YSIDRO SCHOOL DISTRICT

TITLE: Licensed Vocational Nurse **REPORTS TO:** Site Supervisor
DEPARTMENT: As Assigned

BASIC FUNCTION: Under the general direction of the assigned administrator, the Licensed Vocational Nurse (LVN) will receive technical and functional supervision by the District credentialed school nurse. The LVN provides LVN-level nursing services, including specialized health care procedures to any regular or special education students who have prescribed specialized physical health care needs, as assigned.

REPRESENTATIVE DUTIES: (Incumbents may perform any combination of the essential functions shown below. This position description is not intended to be an exhaustive list of all duties, knowledge, or abilities associated with this classification, but are intended to accurately reflect the principal elements.)

- Implements specialized health care procedures, including but not limited to, glucose testing, catheterization, blood pressure monitoring, oral suctioning, tracheostomy care, gastrostomy tube feedings, oxygen therapy chest percussion, postural drainage, ventilator care, manual manipulation of respirator bag if needed, ileostomy and colostomy care, and seizure precautions.
- Turns medically fragile students and operates and maintains various mechanical apparatus used in caring for students, as necessary.
- Assures that all procedures are provided under specified written provisions approved by physician and requested by parent.
- Responds to medical emergencies and provides first aid to students.
- Reports adverse medical conditions of students served through coordination and consultation with the district credentialed school nurse.
- Provides assistance to the District credentialed school nurse and/or health clerk at the assigned school(s) as directed by the District credentialed school nurse or the site administrator(s) in accomplishing the computer entry of health data and other health related administrative activities.
- Records data regarding health related activities with students on District approved forms and computer programs as required and appropriate.
- Records food and fluid intake and output, as appropriate.
- Assists in training designated students in the basic academic and physical skills necessary to care for their individual health care needs as directed by the credentialed school nurse.
- Performs minor adjustments on special equipment such as wheelchairs, lifts, braces, and walkers; positions or repositions students; assists students in walking.
- Assists/trains students in hygiene, changing clothing, or putting on garments.
- Accompanies medically fragile students to their classrooms when needed; may assist medically fragile students during playground activities, bus loading and unloading, outings, and other school-related activities; assists disabled students in entering and exiting the bus or from a restricted space on the bus; may be required to accompany medically fragile students on bus.
- Reporting of suspicion of child abuse as required by California statute for mandated reporters.
- Reports required contagious diseases under California statute to the health department.
- Attends and participates in faculty/staff meetings, as needed. May participate, if required, in parent and student conferences and/or I.E.P. meetings.

- Assists in maintaining a neat, orderly, and safe learning environment.
- Attains and maintains training in exposure control and blood borne pathogen as required by OSHA and CALOSHA using the District Exposure Control and Blood Borne Pathogens manual including cleaning and disposal of contaminated supplies/equipment.
- Administers prescribed medications, as directed; maintains related records.
- Exercises professional judgment in providing daily care of students assigned.
- Establishes and maintains effective working relationships.
- Maintains confidentiality.
- Handles emergency situations calmly and effectively.
- Perform other duties as assigned.

WORKING CONDITIONS:

Indoor and outdoor school settings which can include office and outdoor interactions.

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Educational Services
Russell Little, Assistant Superintendent

☐ Informational
☒ Action

AGENDA ITEM: AGREEMENT WITH NWEA

BACKGROUND INFORMATION:
NWEA is a research-based, mission-driven organization that supports students and educators worldwide by creating assessment solutions that precisely measure growth and proficiency—and provide insights to help tailor instruction. For 40 years, NWEA has developed Pre-K–12 assessments and professional learning offerings to help advance all students along their optimal learning paths.

MAP Reading Fluency is part of the Early Literacy Solution from NWEA and provides a clear view of early literacy skills and learning needs. This program helps teachers to get precise, reliable insights to support early readers while maximizing valuable instructional time.

Educational Services is requesting approval to renew the agreement with NWEA to continue with the MAP Reading Fluency Program at all our elementary schools during the 2024-25 school year.

RECOMMENDATION:
Approve the agreement with NWEA to continue with the MAP Reading Fluency Program at our elementary schools at the total cost of $36,400.00 from the Title I fund.

LCAP GOAL AND ACTION/SERVICE:
Goal 1: Student Achievement, Action 1.12: To support and improve students' academic success in our language acquisition programs of SEI and the Dual Language program, we will provide additional certificated staffing focused on increasing and improving services for students with disabilities, English learners (ELL), long-term English learners (LTELs), Reclassified (RFEPs), foster youth, and low-income students. This action aims to ensure these student groups receive the necessary support and resources to thrive in a bilingual educational environment. We will also maintain reduced class sizes in grades K-3 and 4-6. This strategy will create smaller, more manageable classroom settings, which are particularly beneficial for ELL students, foster youth, and students identified under the McKinney-Vento Homeless Assistance Act. By reducing class sizes, teachers can offer more individualized attention and tailored instruction, further supporting these vulnerable student populations' unique needs.

☒ **Renewal** ☐ **New** ☐ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

$36,400.00	Title I fund
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

SALES ORDER

Order Date: 07/29/2024
Order #: 00100143
Start Date: 07/01/2024
End Date: 06/30/2025

Prepared For

Account Name: San Ysidro School District

Agency Code: 24082

Primary Contact: Russell Little

Email: russell.little@sysdschools.org

Customer Information

San Ysidro School District
4350 Otay Mesa Rd
San Ysidro, CA 92173-1685
United States

Bill-To Information

San Ysidro School District
4350 Otay Mesa Rd
SAN YSIDRO, CA 92173-1685
United States

NWEA Sales Point of Contact

Shelley Ghannam

shelley.ghannam@nwea.org

7072804895

Products & Services

Product	Sales Price	Quantity	Total Price
MAP Reading Fluency Foundations Online Annual License	$1,000.00	1	$1,000.00
Onsite (3-hour session, up to 30 participants) MAP Reading Fluency Student Goal Setting	$2,100.00	5	$10,500.00
MAP Reading Fluency Stand-Alone	$9.00	1,600	$14,400.00
Onsite (3-hour session, up to 35 participants) MAP Reading Fluency- Informing Instruction Responsive Planning	$2,100.00	5	$10,500.00

Subtotal	$36,400.00
Estimated Tax	$0.00
Grand Total	**$36,400.00**

Invoicing Information

Unless otherwise specified, payment terms are Net 30. Remittance instructions will be included with your invoice.

Until this Sales Order is signed, the pricing is valid for 30 days from the Order Date listed at the top of this document. Please confirm the billing address or specify changes to your Sales Point of Contact.

For a copy of the latest NWEA division W-9, it is available at https://support.hmhco.com/s/article/Billing-and-Invoices. Click on “Requesting a W-9” and select “NWEA”.

The Tax ID for NWEA, a division of Houghton Mifflin Harcourt Publishing Company, is 04-1456030.

Terms and Conditions

This Sales Order is between Customer and NWEA, a division of Houghton Mifflin Harcourt Publishing Company, and is subject to the HMH Standard PreK-12 Terms of Purchase located at https://www.hmhco.com/terms-of-purchase (the “Agreement”) for the Products and Services listed above. By signing this Sales Order, you agree you have read, understand, and agree to the Agreement.

Signature

Customer Signature: _____

Customer Printed Name: Marilyn Adrianzen

Date: _____

Customer Title CBO

Board approved: _____

HMH Standard PreK-12
Terms of Purchase

The following HMH Standard PreK-12 Terms of Purchase apply to the purchase of all HMH

Physical Products, **Digital Products**, **Connected Products**, **Services** and **Pilots**. Additional terms and conditions may pertain to the use of specified platforms or products (including, as provided below, terms applicable to the Assessment Products and Services offered by the NWEA division of HMH). In the event that HMH is an authorized distributor of any Digital Products owned by third parties, the Terms of Use and Privacy Policies associated with such third-party products may apply.

The **Privacy Policy for HMH PreK-12 Products** governs all HMH Products in relation to privacy matters and is incorporated herein.

The **NWEA Privacy Policy - Assessment Products** governs all NWEA Assessment Products in relation to privacy matters and is incorporated herein.

The **K-12 Learning Platforms Terms of Use** governs all users access to and use of Products on HMH learning platforms and is incorporated herein.

The **NWEA Platform Terms of Use** governs all users access to and use of Products on the NWEA Platform and is incorporated herein.

GENERAL TERMS APPLICABLE TO ALL PRODUCTS

1. CONTRACT. The ordering or acceptance of any **Products** purchased from Houghton Mifflin Harcourt or its applicable divisions, subsidiaries, or affiliates (collectively, "HMH") by any **Customer** shall constitute an agreement to these standard terms and conditions (the "General Terms"). These General Terms, together with any other applicable terms, as specified below, any terms and conditions published by HMH in the applicable HMH catalog, the **Order Document(s)** (if applicable to Customer's purchase) and/or any other terms and conditions, attachments or exhibits associated with the purchased Products (collectively, the "Terms") constitute the entire agreement between the parties relating to the subject matter hereof, except for any agreements, amendments, or waivers agreed to in writing by both HMH and Customer. Any contrary or inconsistent terms appearing on purchase orders, acknowledgments, or other documents of Customer or oral stipulations shall not be binding on HMH.

2. PURCHASE AUTHORIZATION; SOLVENCY. By ordering Products, Customer represents and warrants that it has complied with any and all of its own requirements necessary to authorize the purchase. Customer is solely responsible for all purchase decisions, including ensuring the compatibility and suitability of all Products. Further, by ordering and accepting delivery, Customer represents to HMH that Customer is solvent and will make payment in full when due for such Products in accordance with the applicable invoice. In the event that the Customer orders and/or accepts delivery of any Products while insolvent, HMH shall have the right to stop shipment of any and all Products en route and Customer shall immediately return all such Products actually received to HMH. Events which shall be deemed to establish Customer's insolvency include, but are not limited to, the filing of a bankruptcy petition by or against Customer and/or Customer's admission of its inability to pay its debts when due.

3. ACCEPTANCE, PRICES, CANCELLATIONS, AND TERMS. Orders are subject to acceptance and availability. HMH's list prices and other terms shown are subject to change without notice. HMH may make changes in quantities, casepacks, specifications, delivery schedules, method of shipment, and packaging, and may cancel or terminate work on any order for its own convenience, in whole or in part, by written or electronic notice at any time. Any changes to orders requested by Customer may be approved or rejected in HMH's sole and absolute discretion. In the event of any errors relating to the pricing or specifications of any Products, HMH shall have the right to refuse or cancel any orders in its sole discretion.

4. BILLING AND PAYMENT. All amounts owing from Customer to HMH with respect to any Products purchased from HMH are subject to timely payment due within thirty (30) days of the date set forth on HMH's invoice. Accounts must be current before subsequent deliveries will be made or Services will be delivered. Customer credit limits may be established and modified by HMH in its sole discretion. Past due accounts are subject to a one percent

(1%) monthly finance charge. Unless a set-off or deduction is specifically provided for by HMH in a valid credit memo, Customer may not charge back to HMH or make any set-offs or deductions, including, but not limited to, set-offs or deductions for violations of customer shipping or routing guidelines and/or other promotional programs. HMH shall process any credit to Customer's account in accordance with HMH's standard practices and procedures. All claims relating to any delivery and/or applicable invoice and/or Products must be made in writing within 30 days of the date of the invoice. Any request for proof of delivery must be made within 30 days of the date of the invoice.

5. TAXES. Where appropriate, Customer shall provide HMH with a duly executed tax certificate indicating that such purchase is for exemption or resale, and listing Customer's sales tax registration number for each state into which HMH's Products will be delivered. HMH shall have no liability for any tax required to be billed, collected, and/or remitted by Customer as a result of sales of Products made by Customer, and Customer shall defend, indemnify, and hold harmless HMH against all losses, penalties, interest, and expense (including reasonable attorneys' fees) arising out of any claims relating to such liability for taxes. Where applicable, all prices and payments for Products are exclusive of all taxes, and Customer agrees to pay all applicable national, state and local sales, use, value-added and other taxes, customs duties and similar tariffs and fees, other than taxes imposed on HMH’s net income.

6. SHIPPING; HANDLING; RISK OF LOSS. Unless otherwise expressly indicated on the face of an order, the shipping term for all deliveries is F.O.B. HMH's shipping point (whether to an HMH or third-party facility). Risk of loss and title is passed to Customer upon transfer of the Physical Products to the carrier. Shipping costs quoted are estimates and may vary from the actual costs. Unless otherwise agreed, the cost of shipping is calculated by taking the Physical Product price and adding 16%. Minimum charge is $10.00. HMH will ship Physical Products using its established methods of packing and transportation, except as otherwise instructed by Customer and agreed to by HMH. If Customer requires other packing or preparation, Customer will pay the additional costs. In the event that Customer requests to pick up its own deliveries of Physical Products by its own carrier, Customer must pay 5% of the value of the order as a handling fee. In addition, the pickup must occur within 48 hours of confirming the date and time of pickup or HMH will ship and charge standard shipping and handling rates to a maximum of 16%. Customer assumes full liability for the materials upon freight leaving our distribution center dock.

7. REJECTION. Customer may, immediately on receipt of any incorrect titles or damaged or defective Products, or if Products are not as described, reject and return them to HMH, with authorization from HMH and at HMH's expense. Customer assumes, and shall bear and pay, all risks and expenses of returning any such Products without HMH's authorization. Shortages, damaged Products or incorrect titles must be reported within thirty (30) days of delivery. In the event of a shortage, HMH shall ship the items or credit Customer's account for the shortfall. For damaged Products, HMH shall pick up the Products and issue an appropriate credit or ship replacement Products. For Products showing visible damage on the shipping carton, the carrier must note damages on the freight bill before accepting delivery. Merchandise damaged in transit must be reported to the carrier immediately. All original shipping cartons, packing slips, packing materials and damaged Products must be saved until they have been inspected or Customer's claim has been resolved.

8. RETURNS. Except for Products sold on a non-refundable basis, Customer may return, at Customer's risk and expense, purchased Products no later than six (6) months (or one month for home schools and individual customers) after the invoice date, in accordance with HMH's standard practices and procedures with pre-approval from HMH Customer Experience. Customer assumes, and shall bear and pay, all risks and expenses of returning any such Products. If Customer returns any Product that is damaged by Customer, used or otherwise ineligible for credit for any reason specified in our policy, HMH has the right to dispose of it without any further obligation, including, without limitation, notice, credit obligation or obligation to return it to the Customer.

9. MODIFICATION, DISCONTINUATION OR RECALL. HMH may update, enhance and/or expand the content, features and functionality of a Product and/or change the name and branding of a Product from time to time. In the event a Product is discontinued by HMH or is the subject of a recall by HMH during the term of HMH’s contract with the Customer, HMH shall be responsible only for, at HMH's election: (a) supplying Customer with a revised or corrected versions of the Product; (b) substituting the Product with a new product in the same subject area and the same type, quality, condition and price or (b) providing a pro-rated credit to Customer that may be applied

toward the purchase of other HMH Products in the amount of the costs paid by Customer to HMH for the use of such Product during the remaining term of HMH's contract.

10. COMPLIANCE WITH LAWS. Customer shall comply with all applicable laws and regulations applicable to the purchase of Products. Furthermore, Customer warrants that it shall comply with all applicable data privacy laws, including federal and state laws including but not limited to the Family Educational Rights and Privacy Act, including the Protection of Pupil Rights Amendment ("FERPA") and the Children's Online Privacy Protection Act ("COPPA"). Please see our **Privacy Policy for HMH PreK-12 Products** and the **NWEA Privacy Policy – Assessment Products**.

11. HMH'S INTELLECTUAL PROPERTY RIGHTS. The intellectual property contained in the Products (and any derivative works based on the Products) is confidential and/or proprietary information of HMH or its licensors and is protected by copyright, trademark, and other intellectual property laws. HMH, or its licensors, are the sole and exclusive owners and shall retain all right, title and interest in and to the Products, including without limitation all materials, software, documentation, training and implementation materials, methodology, all parts of presentations and other materials provided in connection therewith, related software code, specifications, documentation, technical information, copyrighted and other proprietary content, HMH trademarks and brands, information and other materials of HMH, its licensors and other third parties; as well as corrections, modifications, additions, improvements and enhancements to the foregoing (collectively, "HMH IP"); subject to the personal, nonexclusive license to use the HMH IP granted to Customer for its own non-commercial, incidental use as contemplated herein.

12. EQUAL OPPORTUNITY CLAUSE. As applicable, HMH and its subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment qualified individuals without regard to race, color, religion, sex, sexual orientation, gender identification, national origin, protected veteran status or disability. If applicable, HMH and its subcontractors shall also abide by the requirements 41 CFR § 61-300.10 regarding veterans' employment reports, 29 CFR § 1602.7 regarding the annual EEO-1 Report, and 29 CFR Part 471, Appendix A to Subpart A, regarding posting a notice of employee labor rights.

13. FORCE MAJEURE. HMH shall not be deemed in default of its obligations to Customer to the extent that performance of its obligations or attempts to cure any breach are delayed, cancelled, rescheduled or prevented by reason of any act of God, war, civil commotion, strikes, labor disputes, fire, natural disaster, epidemic, pandemic, accident, riots, acts of government, shortage of materials and supplies, or any other cause beyond its reasonable control.

14. INDEMNIFICATION. To the extent allowed by law and subject to the right of Customer to raise the defense(s) of sovereign governmental or qualified immunity against third party claims, Customer will indemnify, defend and hold harmless HMH, its parent companies, subsidiaries, affiliates, directors, officers and employees from any third party claims, causes of action, damages, costs, liabilities or expenses that arise from a breach of these Terms or from improper, illegal or unauthorized use, distribution or operation of the Products.

15. DISCLAIMER OF WARRANTIES AND INDEMNITIES; LIMITATION OF LIABILITY. ALL PRODUCTS ARE PROVIDED ON AN "AS IS" BASIS, AND HMH EXPRESSLY EXCLUDES THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT. WHILE HMH DOES ITS BEST TO DESCRIBE EVERY PRODUCT OFFERED AS ACCURATELY AS POSSIBLE, HMH DOES NOT WARRANT THAT PRODUCTS, SPECIFICATIONS, PRICING, AND/OR OTHER CONTENT HMH PROVIDES ARE COMPLETE, ACCURATE, RELIABLE, CURRENT, OR ERROR-FREE. TO THE EXTENT PERMITTED BY LAW, CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS HMH AND ITS PARENT, AFFILIATES, SUCCESSORS AND ASSIGNS AND THEIR RESPECTIVE OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL LOSSES, COSTS AND EXPENSES (INCLUDING REASONABLE OUTSIDE ATTORNEYS' FEES AND EXPENSES) INCURRED IN DEFENDING ANY CLAIM, JUDGMENT OR PROCEEDING RELATING TO OR ARISING OUT OF: (I) CUSTOMER'S BREACH OR ALLEGED BREACH OF ITS REPRESENTATIONS, WARRANTIES, OBLIGATIONS AND AGREEMENTS CONTAINED IN THESE TERMS; AND/OR (II) THE DISTRIBUTION, RESALE AND PROMOTION OF PRODUCTS BY CUSTOMER. HMH WILL HAVE THE

RIGHT TO CONTROL THE DEFENSE AND SETTLEMENT OF ANY CLAIMS SUBJECT TO INDEMNIFICATION HEREIN. HMH SHALL HAVE NEITHER LIABILITY NOR RESPONSIBILITY TO ANY PERSON OR ENTITY WITH RESPECT TO ANY LOSS OR DAMAGE ARISING FROM THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, HMH'S FAILURE OR ALLEGED FAILURE TO FILL ORDERS BY CUSTOMER IN WHOLE OR IN PART. HMH DOES NOT GUARANTEE THAT ANY DIGITAL PRODUCTS WILL BE DELIVERED ERROR-FREE OR UNINTERRUPTED. HMH DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND DIGITAL PRODUCTS MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. HMH SHALL NOT BE LIABLE FOR ANY DAMAGES TO COMPUTERS, COMMUNICATION SYSTEMS, DATA OR SERVICES THAT MAY ARISE AS A RESULT OF THE USE OF DIGITAL PRODUCTS. IN NO EVENT SHALL HMH BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER IN TORT, CONTRACT, STRICT LIABILITY, WARRANTY OR OTHERWISE, AND REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL HMH'S TOTAL AGGREGATE LIABILITY IN CONTRACT, TORT OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THESE TERMS EXCEED THE FEES PAID OR PAYABLE BY CUSTOMER DURING THE MOST RECENT TWELVE (12) MONTH PERIOD PRIOR TO THE CLAIM.

16. TERMINATION; EFFECT OF TERMINATION. HMH may terminate this Agreement upon the failure of Customer to comply with any of the Terms, at any time by giving Customer 30 days' prior written notice, specifying the breach upon which the notice is based. If Customer has not cured the breach to HMH's satisfaction within the notice period, this Agreement will terminate. HMH shall have, in addition to any other remedies available to it, the right to injunctive and other equitable relief to restrain action by Customer inconsistent with this Agreement, and Customer hereby acknowledges that other remedies are inadequate in such cases. Upon termination for any reason, HMH will disable access to any applicable Digital Products, including at the end of the **Subscription Term**. In addition, Sections 11, 14 through 18 and 20 shall survive any termination of this Agreement.

17. MODIFICATION AND SEVERABILITY. If any provision of these Terms is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining portions of the Terms shall remain in force and in effect and be construed so as to best effectuate the intention of the parties. The waiver of one default shall not waive subsequent defaults of the same or different kind. HMH reserves the right to make changes to these Terms at any time.

18. JURISDICTION; VENUE; CHOICE OF LAW. THE STATE COURTS OF THE COMMONWEALTH OF MASSACHUSETTS SITTING IN SUFFOLK COUNTY AND, IF THE JURISDICTIONAL PREREQUISITES EXIST AT THE TIME, THE UNITED STATES DISTRICT COURT FOR MASSACHUSETTS SHALL HAVE THE SOLE AND EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY DISPUTE OR CONTROVERSY ARISING UNDER OR CONCERNING THIS CONTRACT. THIS CONTRACT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, WITHOUT REFERENCE TO ITS PRINCIPLES OF CONFLICTS OF LAWS, EXCEPT THAT FOR GOVERNMENTAL CUSTOMERS IN THE UNITED STATES THESE TERMS SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE GOVERNMENT AGENCY CUSTOMER IS LOCATED.

19. EXPORT. Import duties, taxes and customs clearance fees relating to Products shipped outside the United States will be borne by Customer. Export laws and regulations of the United States apply to all Products. Customer agrees that export control laws govern its use of the Digital Products and related Services (including technical data) and any Digital Products deliverables provided to Customer by HMH, and Customer agrees to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). For Products exported outside the United States, Customer agrees that it will not import or allow a third party to import such Products into the United States.

20. CONFIDENTIALITY. Customer acknowledges that in the course of providing Products under this Agreement, representatives of HMH may disclose certain confidential information to Customer. All concepts, work, materials, and related information disclosed to Customer by any person acting on behalf of HMH are proprietary and confidential information of HMH. Customer acknowledges this and agrees not to disclose any such concepts, work, material or related information to any other parties, or to make any use of the Products other than the use that is intended by HMH through its provision of the Products. Customer shall disclose the confidential information only to Customer's employees or agents who are subject to confidentiality and nondisclosure

agreements or obligations before such disclosure; and (ii) as required by governmental authority or applicable law, provided that Customer shall provide HMH prompt written notice of such requirement so that HMH may see, at its sole cost and expense, a protective order.

TERMS APPLICABLE TO DIGITAL PRODUCTS

In addition to the above General Terms applicable to all Products, the following terms are applicable to the purchase of Digital Products. In the event of a discrepancy between the General Terms and the Terms Applicable to Digital Products, the Terms Applicable to Digital Products shall apply, provided that for the Digital Products of HMH's NWEA division, the additional "Terms Applicable to NWEA Products" shall also apply as provided below.

1. SUBSCRIPTION TERM. Any subscription to Digital Products is for the price and time period or term, listed in the applicable Order Document(s). If Customer wishes to modify or extend any Subscription Term, a purchase order, change order, or amendment is to be negotiated for additional fees. If no commencement date for the Subscription Term to the Digital Products is specified in the applicable Order Document(s), the Subscription Term shall be deemed to commence on the date on which the Customer is granted access to the Digital Product as delivered by HMH, NOT upon Customer activation of the Digital Product, and shall continue until the end of the Subscription Term. Upon expiration or termination of the Subscription Term, Customer will no longer have permitted access to the Digital Product. In the event that HMH must discontinue access to a Digital Product prior to expiration of the Subscription Term, HMH shall provide a pro-rated credit to Customer applicable toward the purchase of other HMH Products. Such pro-rated credit shall reflect the portion of the Subscription Term that remains unused as of the date of discontinuation of the Digital Product.

2. HOSTING. Any Digital Products purchased for a limited Subscription Term shall be hosted by or through HMH. HMH may choose to transition the hosting of a Digital Product to a different site or platform upon prior written notice to Customer. Any HMH Digital Products Customer wishes to self-host would be considered a separate transaction, and separate agreements and fees are to be negotiated. Self-hosted versions of many of HMH's Digital Products are not available for license. In the case of Digital Products that are self-hosted in whole or in part, HMH grants to Customer a nonexclusive, nontransferable, limited license to install or download a copy, as needed, of the Digital Products solely for Customer's internal use and in compliance with the maximum permitted subscribed users and/or other applicable terms set forth in the Order Document(s) and upon expiration or termination of the applicable Subscription Term, Customer must immediately cease using the Digital Product, delete or destroy any copies of the Digital Product and, if requested, confirm to HMH that the Customer has complied with these requirements.

3. ALLOCATION OF LICENSES. HMH will provide Customer with the number of credentials with respect to Digital Products equal to the number of students, teachers or administrators licensed by Customer under the applicable Order Document(s).

4. LICENSE LIMITATIONS. Customer may not: (1) re-sell, rent or lease a Digital Product or any part of it; (2) copy any part of a Digital Product, except where specifically indicated otherwise or for back-up purposes; (3) reverse engineer, decompile or disassemble a Digital Product or the software through which it is delivered, or convert it into any other format or medium; (4) use more copies of a Digital Product, or deploy a Digital Product on more devices or at more sites, than are authorized by these Terms Applicable to Digital Products and the applicable Order Document(s), or (5) sub-license the Digital Products except as permitted by HMH.

5. SECURITY. Customer acknowledges that Digital Products may include security technology to ensure that they may only be used in accordance with the applicable license rights. Customer shall take all reasonable security measures to prevent unauthorized access to the Digital Products. Customer agrees to: (1) accept all responsibility for all activities that occur under username(s) or password(s) used by Customer; and (2) immediately notify HMH of any unauthorized use of any password or account assigned to Customer, or any other breach of security or confidentiality thereof. In such event, HMH shall have the right, without limitation of any other rights under this Agreement, to terminate any such account or this Agreement in its entirety. In the event that Customer transmits **Customer Materials** to HMH outside of HMH's secure software (e.g. in association with the provision of any Services), Customer agrees to use a secure conduit (e.g., HTTPS) for the transmission of such Customer Materials. HMH shall have no obligation to monitor Customer Materials, but HMH reserves the right to do so and to

remove or disclose any Customer Materials as necessary to satisfy any applicable law, regulation, legal process or governmental request, and HMH will use reasonable efforts to notify Customer reasonably in advance.

6. THIRD PARTY PRIVACY POLICIES. Please note that in some instances Digital Products are owned and hosted by third parties. In such cases, there may be other specific privacy policies that apply. In such cases, you should refer to the applicable third-party privacy policy for such Digital Product(s).

TERMS APPLICABLE TO CONNECTED PRODUCTS

In addition to the General Terms and Terms Applicable to Digital Products that may apply to individual components of the Connected Products, the following terms apply to HMH Connected Products. In the event of any conflict, the Terms Applicable to Connected Products shall apply.

1. CONNECTED PRODUCTS. The Connected Products consists of the HMH program products, professional development services and classroom materials offered by HMH through its platform(s), or otherwise delivered to the Customer (including for install or by download), solely in the formats identified in the Order Document(s). Customer is responsible for supplying its own hardware and other equipment that may be required to use or access the Connected Products according to the associated documentation. Customer understands and agrees that certain content of the Connected Products may be updated or substituted on an ongoing basis in the discretion of HMH. In addition, the Customer may add other Products and Services to the Order Documents, at the applicable HMH price, and all such additional Products and Services shall be governed by these terms and other applicable HMH terms and conditions.

2. LICENSE. Subject to the General Terms and Terms Applicable to Digital Products, HMH hereby grants Customer a limited, non-exclusive, non-sublicensable and non- transferable right to access the Connected Products as identified on the applicable Order Document(s), solely for educational purposes and solely in connection with the Customer's school/district. HMH will provide Customer with the number of credentials with respect to the Connected Products equal to the number of students, teachers or administrators licensed by Customer under the applicable Order Document(s) or according to the Licensed Capacity as specified in the Order Document(s). Teacher licenses can be used by multiple instructors in good faith, in the same school/district so long as such teacher licenses maintain a customary classroom teacher-to-student ratio (i.e. the number of teacher licenses purchased is substantially in proportion to the number of student licenses purchased by the Customer). Any rights not expressly granted by HMH in this Agreement are expressly reserved to HMH. The Subscription Term is for the period of years specified in the applicable Order Document(s) and paid for by Customer. This Subscription Term shall be effective upon the date set forth in the Order Document(s), provided that, if no such commencement date is specified, the Subscription Term shall be deemed to commence on the earliest date on which the applicable product is first accessed or used by Customer and shall continue until the end of the Subscription Term. For a multi-year Subscription Term, Customer shall be permitted to re-allocate the licensed credentials to different grade levels of the same HMH program, so long as the total number of licensed users is not exceeded for the same Subscription Term during the same academic year.

3. EMBEDDED SERVICES. Subject to the General Terms, HMH will provide the then standard embedded professional development services to Customer as HMH makes available with the Connected Products Subscription. In addition, Customer may engage HMH to provide additional training, coaching or other professional development in association with the Connected Products.

4. CONSUMABLE PRINT MATERIALS. For a multi-year Subscription Term, Customer shall be permitted to re-allocate the quantities of consumable print materials of a given Product among different grade levels, so long as the total quantity purchased is not exceeded in a given academic year. As of 3/1/2022, customers must manage their annual shipment of consumable print materials through the **HMH Print Refill Site** in order to specify the Customer's grade level quantities for the following school year. Subscription quantities not specified for shipment may not be carried over to the following year and may not be refunded or credited.

TERMS APPLICABLE TO SERVICES

In addition to the General Terms, the following terms apply to the purchase of Services. In the event of a discrepancy between the General Terms and the Terms Applicable to Services, the Terms Applicable to Services shall apply.

1. PURCHASE ORDER. At least thirty (30) days prior to the first date of Services, Customer shall provide HMH with a purchase order. If Customer's purchase practice is not to provide a purchase order, Customer agrees that it shall sign a Services Agreement or contract and make prompt payment under the terms set forth herein for all Services delivered to Customer by HMH.

2. LOGISTICS. No less than thirty (30) days before a Services Date, Customer shall provide to HMH the following information: shipping address for materials, the address and other pertinent details (e.g., room number) of Services delivery sites, and the number of participants for each day of Services to be delivered. HMH reserves the right to charge Customer expedited shipping charges if additional shipping or handling charges are incurred by HMH, or to reschedule the Services without penalty, as a result of Customer's failure to provide the necessary information within this timeframe.

3. SCHEDULING, RESCHEDULING AND CANCELLATION. The scheduling of Services to be delivered on specified dates ("Services Dates") shall be outlined in the purchase order or agreement. Services to be delivered on dates to be determined ("TBD Dates") must be delivered within twelve (12) months of HMH's receipt of the purchase order or other agreement. Fees paid for any TBD Dates not consumed within twelve (12) months will be forfeited by the Customer. When scheduling TBD Dates, the Customer shall contact HMH at least six (6) weeks prior to the first day on which the Customer would like the Services to begin. HMH cannot guarantee availability of dates for specific consultants.

    a. DATE CHANGES/RESCHEDULING.

        1. Services Dates, once scheduled, may be changed only upon the mutual agreement of HMH and the Customer, except in the event that an HMH consultant delivering in-person Services is unable to attend due to circumstances beyond his/her control (e.g. flight cancellation). In such event, the HMH consultant may provide the Services online for the same fees. Any change to the Services dates requested by the Customer will result in rescheduling fees, and any change to the type of Services requested may affect the fees that will be charged.

            i. Any date change requests must be received by HMH from the Customer no less than thirty (30) days prior to the scheduled Services Date. All rescheduled Services Dates must be delivered within twelve (12) months of HMH's receipt of the purchase order or other agreement. All rescheduled Services Dates not consumed within twelve (12) months will be forfeited by the Customer and no refund of any prepaid fees shall be given.

            ii. For any Services Date changes made at any time by Customer for any reason, Customer shall reimburse HMH 100% of any out-of- pocket travel or other ancillary costs spent by HMH in connection with preparation for providing the Services (e.g., travel already booked).

    b. CANCELLATIONS/DEFAULT.

        1. Customer may cancel Services without incurring any cancellation fee prior to the scheduling of a Services Date by providing HMH no less than thirty (30) days' written notice prior to the Services Date.

        2. Cancellations received from Customer less than thirty (30) days prior to the Services Date shall result in payment by Customer of a cancellation fee of 50% of the fees for the cancelled Services. Cancellations received from Customer less than seven (7) days in advance of the Services Date shall result in payment by Customer of a cancellation fee of 75% of the fees for the cancelled Services.

        3. Cancellations received from Customer less than 24 hours prior to the Services Date, or if Customer is absent from the scheduled Service ("no- show"), shall result in payment by Customer of a cancellation fee of 100% of the fees for the cancelled Services.

        4. If a cancellation involves more than one Service Date, any cancellation fees shall be prorated accordingly. In all cases, Customer shall pay for any Services actually delivered.

5. For any cancellation of Services Dates at any time for any reason, Customer shall reimburse HMH 100% of any out-of-pocket travel or other ancillary costs spent by HMH in connection with preparation for providing the Services in accordance with this Agreement (e.g., travel already booked).

4. PROHIBITION ON REPRODUCTION. No part of the Services or any related materials may be videotaped, audio taped, photographed or in any way copied, excerpted, reproduced or distributed without the prior written consent of HMH. Participants may be asked to leave if they engage in this activity and will be required to delete any unauthorized recordings.

TERMS APPLICABLE TO PILOTS

In addition to all of the above Terms, where Pilots are permitted by applicable law and otherwise available, the following terms are applicable to the Pilots. In the event of a discrepancy, the Terms Applicable to Pilots shall apply.

1. CONSIDERATION. In partial consideration of its participation in the Pilot, Customer agrees to cooperate with HMH's efforts to gather data (including but not limited to performance, usage, and other data at the building, grade, teacher and student levels), testimonials and other information relating to the Pilot. HMH may meet with the Customer to review success data and other information obtained in connection with the Pilot or from the use of Products in the Pilot ("Pilot Materials"). Customer agrees that HMH will collect, use and protect pilot data in accordance with the **Privacy Policy for HMH PreK-12 Products** and the **NWEA Privacy Policy – Assessment Products**, as applicable.

2. PILOT MATERIALS. Pilot Materials shall be provided in limited quantities as specified in the Pilot Proposal and only for the duration of and otherwise within the scope of the Pilot. Participation in the Pilot shall not thereby entitle Customer to participation in future pilots or additional access to Pilot Materials or to other instructional materials.

3. OWNERSHIP. To the fullest extent permitted by law, where the Customer does not share in the funding of the Pilot, HMH retains ownership of all Pilot Materials. HMH also retains all right, title and interest in and to any Pilot Materials consisting of software licensed to the Customer for the limited period of the Pilot. In the event that the HMH program relating to the Pilot is selected and purchased by Customer at the end of the Pilot, Customer will have the option to purchase or license the Pilot Materials on terms to be negotiated between HMH and Customer. Where the Customer does not share in the funding of the Pilot, and the piloted HMH program is NOT selected by the Customer at the end of the Pilot, Customer shall discontinue use of all Pilot Materials provided under license and return such Pilot Materials to HMH (and HMH is entitled to terminate access to or collect all Pilot Materials owned by HMH at its discretion). Customer is not permitted to resell any Pilot Materials.

4. DAMAGE AND/OR LOSS. Customer is responsible for any damage or loss to HMH owned Pilot Materials during the Pilot.

5. TERMINATION. Where Customer has not participated in the funding of the Pilot, HMH may terminate the Pilot at any time upon thirty days prior written notice to Customer.

TERMS APPLICABLE TO NWEA ASSESSMENT PRODUCTS

In the event of any discrepancy between either of the paragraphs entitled Terms Applicable to Digital Products and Terms Applicable to Connected Products stated herein, and these Terms Applicable to NWEA Assessment Products, these Terms Applicable to NWEA Assessment Products shall apply.

1. Customer acknowledges Product limitations on the number of test events per academic year with respect to certain Assessment Products (namely, MAP® Growth™ which, excluding Summer test administration, may not be administered for more than three MAP® Growth™ test events per license in a single academic year, except for MAP® Growth™ K-2 Skills Checklist which may be administered without such academic year limitation). Additionally, Customer may administer one summer test event per license per academic year. Customer shall provide to NWEA its student and class information in a Class Roster File ("Roster File") for each test window in the approved format. Customers must import the Roster File at least one (1) week before Customer's first day of testing.

2. If Customer is new to the Assessment Products, Customer's teachers and staff administering the Assessment Products must, at Customer's cost, participate in introductory product training before testing begins. Before testing commences, Customer shall assign a member of its staff to coordinate the logistics of setting up the Product Training. If Customer experiences staff change in the middle of a Subscription Period or Services Period that affects the administration of the Services, Customer shall promptly notify NWEA in writing and as a condition of such change, NWEA may require Customer to send any new staff to introductory product training.

3. Customer shall use its best efforts to determine the number of permitted Named Users to be tested by Customer. HMH shall send an invoice based on the Licensed Capacity and quantity of Products in the applicable Order Document(s) to Customer, and Customer shall pay the amount due within 30 days of the invoice date by mailing a check or depositing the amount due via a wire transfer. Customer must contact NWEA at **accountsreceivablenwea@hmhco.com** for wire transfer instructions. Customer will immediately notify NWEA in writing of any increase in use beyond the Licensed Capacity and will provide NWEA with any reports reasonably requested by NWEA to verify Customer's use and deployment of the Software. If Customer's access and use of the Software exceeds Customer's Licensed Capacity, NWEA its sole discretion may (i) require Customer to purchase additional licenses from NWEA at NWEA's then-current catalog price; or (ii) immediately terminate this Agreement in accordance with Section 14. Customer shall pay the variance within 30 days of the amended invoice date. Any purchase order, credit card order, or other Order Document with sufficient information for NWEA to process the order that is accepted by NWEA will be governed by this Agreement, provided however, the terms and conditions in any purchase order accepted by NWEA shall not be binding upon NWEA and shall not modify the terms of this Agreement. All Order Document(s) for initial purchases of Products and Services, , renewals, change orders, and/or other order documents will be governed by the terms of this Agreement and/or any other terms and conditions, attachments or exhibits associated with the purchased Products and Services. NWEA reserves the right to increase its then-current catalog prices and introduce new catalog prices upon notice to Customer. Any such increases will only become effective upon renewal of a Subscription term.

4. Customer owns the Student Education Records. NWEA and Customer acknowledge that, notwithstanding anything to the contrary in these General Terms, NWEA will collect, use and disclose Student Education Records consistent with the **NWEA Privacy Policy – Assessment Products**. GRD. Customer authorizes NWEA to use Student Education Records in the GRD, commencing on the Effective Date or upon the date that Customer used or ordered Services, whichever is earlier. NWEA and Customer acknowledge that the permissions and obligations expressed in this Agreement survive the termination of this Agreement and any renewals. As described in Section 15, NWEA will maintain Student Education Records after termination of this Agreement for Services which may include, but are not limited to, Customer's access to Product reports and other reporting and research-related services and to validate the authenticity of data in such reporting. If NWEA receives Customer's written request to opt out of participation in the GRD, NWEA will deidentify Student Education Records in the GRD. As a result of opting out of the GRD, certain research reports are unavailable to Customer due to the inability to accurately link student data with research data. Customer's written request must be sent via email to **legalservices@hmhco.com** and include the following: (i) requestor's name, title and contact information; (ii) the name of requesting school or entity with NCES #; (iii) a request to deidentify Student Education Records in the GRD; and (iv) an attestation that requestor is duly authorized and has legal capacity to execute the request.

Subject to the limitations of warranty set forth in Section 15 of the Agreement, NWEA shall implement administrative, physical, and technical safeguards to protect Student Education Records from unauthorized access, acquisition, or disclosure, destruction, alteration, accidental loss, misuse, or damage that are no less rigorous than accepted industry practices to protect the confidentiality, integrity, and availability of Student Education Records. NWEA has an incident response program that specifies the actions to be taken in the event of a Security Breach. NWEA shall notify Customer by email or telephone in accordance with applicable state law or without unreasonable delay, whichever occurs sooner, after a Security Breach. In the event of a Security Breach, Customer shall cooperate fully with NWEA so that NWEA can comply with its notification obligations to the affected parent(s), legal guardian(s), eligible student(s), or any other parties for which notification by NWEA is required under applicable state law. More information regarding NWEA's information security program can be found in NWEA's **MAP® Growth™ Security Whitepaper**.

After termination of the Agreement, NWEA shall continue to maintain Student Education Records until: (i) NWEA receives Customer's written request to destroy Student Education Records via email to **legalservices@hmhco.com** that includes requestor's name, title, contact information, name of requesting school or entity with NCES #, and attestation that

Customer is duly authorized and has legal capacity to execute the request; and (ii) NWEA confirms the information in Customer's written request. Thereafter, NWEA shall destroy the Student Education Records without undue delay or as otherwise required under applicable state law. Customer understands and agrees that if NWEA destroys Customer's Student Education Records, NWEA will not be able to provide such data to Customer after its destruction. This Section shall survive any termination of this Agreement.

5. Learning Continuum. Learning Continuum is comprised of "Learning Statements". By using Learning Continuum, Customer agrees to the following:

If the Learning Statements are downloaded to Customer's organization or school district via a secure password protected intranet or private workspace, it may reproduce the Learning Statements without NWEA's express written permission provided: (i) the use is for non-commercial purposes only; (ii) Customer does not modify any information or image; (iii) access is password protected and is limited only to Customer's authorized agents; and (iv) Customer includes the copyright notice contained in the Learning Continuum.

Customer shall not use the Learning Statements within the Learning Continuum as a basis for alignment to any third-party products or services. If Customer conducts unauthorized alignments, it shall hold NWEA harmless and indemnify NWEA from any claims or lawsuits that arise from its alignment. NWEA only supports the Learning Statements in their original format. NWEA is not obligated to support any changes to the Learning Statements made by Customer or any third party. In addition to Section 19 (Disclaimer) of the Agreement, neither NWEA nor its vendors warrant the accuracy, completeness, or usefulness of this report and NWEA expressly disclaims all liability and responsibility arising from reliance on the Learning Continuum.

DEFINITIONS

The following terms used throughout this agreement, whether used in the singular or plural, shall have the meanings set forth herein.

1. "Anonymized Data" means any Student Education Record rendered anonymous in such a manner that the student is no longer identifiable. For example, this includes non-identifiable student assessment data and results, and other metadata, testing response times, scores (e.g. goals, RIT), NCES codes, responses, item parameters, and item sequences that result from the Assessment Products.

2. "Assessment Products" means to the assessment, reporting, and administration systems provided by HMH's NWEA division, including but not limited to (i) MAP® Growth or (ii) MAP® Reading Fluency, or (iii) interim or summative assessments. Assessment Products, as used herein, excludes Customer's operating environment and any other systems not directly provided by HMH or within HMH's control.

3. "Connected Product(s)" means Physical Products, Digital Products and Services specifically labelled as part of HMH's "Connected Teaching System" or the NWEA division's Assessment Products and Services.

4. "Customer" means the legal entity identified on the purchasing or registration materials. For purposes of this Agreement, Customer includes affiliates specifically listed in a purchase order or in other purchasing or registration materials. Such affiliates agree to be bound by the terms of this Agreement. Customer is responsible for compliance with the terms of this Agreement by all affiliates, subsidiaries and subdivisions purchasing Products hereunder.

5. "Customer Materials" means the materials, data and information belonging to a Customer and provided to HMH, either directly or by granting HMH access to Customer's files/systems, for the purpose of using an HMH Product.

6. "Digital Product(s)" means non-tangible, digital versions of Products, whether licensed on a fixed, perpetual or subscription term.

7. "FERPA" means the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g(a)(4)(A)(ii), 1232g(b)(1), as amended from time to time.

8. "GRD" means the Growth Research Database used to generate longitudinal studies, alignment studies, linking studies, norming studies, and other research reports that Customer and other subscribers may receive.

9. "Licensed Capacity" means the maximum permitted Named Users' use of the Software based on NWEA's capacity-based license pricing metrics that quantify, measure, and limit Customer's use of the Software, as specified in Customer's Order Document(s) for the applicable Assessment Products.

10. "Named User" is a form of Licensed Capacity and means a single student user who has been designated as an authorized user of the Connected Product or Digital Product by the Customer's Systems Administrator and accesses the applicable Assessment Products using a unique number assigned to such student.

11. "NWEA" means the assets and business of, used by or relating to the NWEA division of HMH or provided specifically under the NWEA brand identity.

12. "Order Document(s)" means the HMH cost proposal or HMH quotation and order form.

13. "Physical Product(s)" means any Product versions that are not Digital Products, including printed books, other printed materials, and the physical media (CDs, DVDs, videos, other audio/ video/multimedia products) that carry copies of any Digital Product(s) delivered to Customer, and any other physical copies of Products.

14. "Pilot" means the paid or unpaid, full or partial access to Products for a specific, limited period of time for evaluation and trial of the Product prior to Customer's decision on whether or not to purchase the Product in full. Pilots are generally of short-duration and for limited Product in order for a Customer to evaluate how a full-scale implementation of Products will work in practice. Ownership of the Product remains with HMH unless and until full purchase of the Pilot Materials, as hereinafter defined, is completed.

15. "Product(s)" collectively refers to all HMH Physical Products, Digital Products, Connected Products, Products on the K-12 Learning Platform, Pilots, Services.

16. "Services" means professional development services delivered personally to the Customer either, virtually or in person on site as specified in the purchase order or other ordering documents or statement of work(s), which may include GRD, training, professional learning, coaching, consulting, conferences, courses, "Getting Started" (implementation, onboarding, and technology readiness training), program management, and software implementation, for Customer as agreed to by the parties, under this Agreement.

17. "Student Education Record**"** means personally identifiable information of Customer's students as defined by FERPA and any applicable state law

18. "Subscription Term" means the term of the Customer's subscription to a Digital Product or a Connected Product.

19. "Systems Administrator" means the Customer-designated individual who, with respect to the Assessment Products, is authorized to: (i) modify assessment preferences for Customer; (ii) create and modify Named User profiles for roles including lead roles (i.e. data administrator, assessment coordinator); and (iii) declare testing complete for Customer. Customer acknowledges that its Systems Administrator controls the access and security points of the Assessment Products. Annually, Customer shall remove any inactive Systems Administrators and confirm to NWEA the names of its active Systems Administrators.

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Educational Services
Russell Little, Assistant Superintendent

☐ Informational
☒ Action

AGENDA ITEM: AGREEMENT WITH SAN DIEGO COUNTY SUPERINTENDENT OF SCHOOLS FOR PARTICIPATION IN PROJECT CLEAR

BACKGROUND INFORMATION:
The San Diego County Office of Education (SDCOE) has been awarded a $14.5 million Learning Acceleration System Grant (LASG) from the California Collaborative for Educational Excellence (CCEE) for Project CLEAR (California Literacy Elevation by Accelerating Reading). The project aims to address students' learning recovery and acceleration by providing access to reading support and intervention.

As funded by the LASG through CCEE and awarded to SDCOE our District agrees to support the Project CLEAR program goals to:

- Provide access and increase availability to learning acceleration in literacy for diverse K-12 Students populations by increasing the number of Teacher Leaders in California.
- Address students' learning recovery and acceleration by providing access to prevention and intervention via Reading Recovery/*Descubriendo la Lectura.*
- Build system capacity by creating literacy teams and networks within districts and at schools through a structured professional learning model.

Educational Services is requesting for this service agreement to be renewed and have one Resource Teacher continue with the preparation and training for the Reading Recovery program, complete her certification and become a "Teacher Leader." Project CLEAR will continue to pay training fees and will reimburse SYSD for professional books, and materials. Through this two-year program, participants will become "Teachers Leaders" who can train and coach teachers to implement comprehensive literacy strategies in schools and interventions for students who have reading, writing, and language-based needs.

The cost implication for the District will be compensation for additional hours as needed for participating teacher, as this is not covered under the Project CLEAR Grant.

RECOMMENDATION:
Approve/Ratify the agreement with the San Diego County Superintendent of Schools for the Reading Recovery Program preparation and certification through the Project CLEAR Grant program during the 2024-25 school year.

LCAP GOAL AND ACTION/SERVICE:
Goal 1: Student Achievement ~ Improve student achievement for all students and accelerate student learning increases for English Learners and students with disabilities.

☒ **Renewal** ☐ **New** ☐ **Amendment** ☒ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

Approximate Grant Award:	
TBA	Project CLEAR Grant
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

Services Agreement

This Agreement, for the provision of services is entered into this 18th day of June, 2024, by and between the SAN DIEGO COUNTY SUPERINTENDENT OF SCHOOLS (hereinafter referred to as "SDCOE") and San Ysidro School District (hereinafter referred to as "Contractor") who agrees to provide the following services to the SDCOE:

1. Scope of Services.
Contractor shall provide services as described in Exhibit "A" entitled "Special Provisions" attached hereto and made a part hereof, specifying the CONTRACTOR'S responsibilities for having its teachers participate in Project CLEAR (California Literacy Elevation by Accelerating Reading), a state-funded Learning Acceleration System Grant.

In the event of a conflict in or inconsistency between the terms of this agreement and Exhibit A, the Agreement shall prevail. Unless specifically stated otherwise, the order of precedence for the purpose of determining any conflict or inconsistency between the terms of this agreement and any other documents shall be as follows 1) Any amendment to this agreement, 2) this agreement, 3) Exhibit(s) to this agreement, 4) Other associated documents named in the agreement.

2.Term of Agreement.
This Agreement shall be effective from the period commencing June 18, 2024 and ending June 30, 2025, unless sooner terminated by SDCOE as provided in the section of this Agreement entitled "Termination." Upon expiration or termination of this Agreement, Contractor shall return to SDCOE any and all equipment, documents or materials and all copies made thereof which Contractor received from SDCOE or produced for SDCOE for the purposes of this Agreement'

3. Termination.
This Agreement may be terminated with or without cause by SDCOE. Termination without cause shall be effective only upon thirty (30) days' written notice to Contractor. During said thirty-day period shall perform all consulting services in accordance with this Agreement.

This Agreement may also be terminated by either party for cause in the event of a material breach of this Agreement, misrepresentation in connection with the formation of this Agreement or the performance of services, or the failure to perform services. Termination for cause shall be effected by delivery of written notice by the non-breaching party. It is understood and agreed the termination may be delivered via email and shall be effective on the date sent.

4. Compensation and Reimbursement.
The SDCOE will compensate Saint Mary's College on behalf of the Contractor including all costs related to certification of teachers participating in the project CLEAR grant, as stipulated in Exhibit "A" entitled "special provisions" attached. Contractor understands and agrees that there shall be no payment made to Saint Mary's College in instances where services are not provided.

SDOCE shall pay Saint Mary's College for services rendered pursuant to this Agreement. No payments shall be made for any extra, further, or additional services without a duly executed amendment. In no Event shall Contractor submit an invoice to SDCOE pursuant to Project CLEAR grant services.

5. Confidential Relationship.
SDCOE may from time to time communicate to Contractor certain information to enable Contractor to effectively perform the services. Contractor shall treat all such information as confidential, whether or not so identified, and shall not disclose any part thereof without the prior written consent of the SDCOE. Contractor shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services. The foregoing obligation of this Paragraph 5, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information; (ii) is, through no fault of Contractor, hereafter disclosed in publicly available sources of information; (iii) is now in the possession of Contractor without any obligation of confidentiality; (iv) is required to be disclosed by operation of law; or (v) has been or is hereafter rightfully disclosed to Contractor by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party.

Contractor shall not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this Agreement without the prior written consent of the SDCOE. In its performance hereunder, Contractor shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm, or corporation.

6. Public Records Act.
Contractor acknowledges that the SDCOE is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 7920.000, et seq. The SDCOE acknowledges that Contractor may submit information that Contractor considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 7927.500 - 7929.010 and section 7922.000 et seq.) Contractor acknowledges that the SDCOE may submit to Contractor information that the SDCOE considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 7927.500 - 7929.010 and section 7922.000 et seq.). Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Disclosing Party as Confidential Information, the Receiving Party as soon practical but within three (3) days of receipt of the request, shall notify the Disclosing Party that such request has been made, by telephone call, letter sent via email and/or by US Mail to the address and email listed within the notices section of this Agreement. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action, after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.

7. Ownership of Documents.
All memoranda, reports, plans, specifications, maps, and other documents prepared or obtained under the terms of this Agreement by or for SDCOE shall be the property of SDCOE and shall be delivered to SDCOE by Contractor upon demand.

Services provided to the SDCOE, and all participating schools therein, and all related materials including, but not limited to; audio; video; images; Contractor's name, slogans, quotes, writings; posters; and any other related materials which are exclusively owned by the Contractor will remain the exclusive property of the Contractor.

8. Fund Availability
Funding of this Agreement, if funded by the SDCOE, is contingent upon appropriation and availability of funds. Work performed in advance of Agreement approval shall be done at the sole risk of Contractor. In the event the funds are not available by operation of law or budget determination, SDCOE shall have the exclusive right to withhold funding.

9. Data Privacy and Protection
All SDCOE content/data (to include but not limited to students, teachers, interns, aides, Principals, and other administrative personnel) involved in this agreement shall continue to be the property of and under the control of the SDCOE.

All content/data created by the SDCOE or by its students or personnel using the service(s) provided by Contractor pursuant to this Agreement will cease to be retained by the Contractor at the conclusion of this Agreement and will, in fact, be removed from the Contractor's records.

The Contractor will not use any information in a student or personnel record for any purposes other than those required or specifically permitted by this Agreement. Any other use of the SDCOE's student and personnel information will not be undertaken without the express, written consent of the SDCOE.

The Contractor certifies it uses and adheres to the following methods to ensure the privacy and security of all electronically stored information:

- transmission of student and personnel information is always via secure protocols (SFTP, SSL and/or encryption)
- no data transmission occurs via email
- student and personnel data are stored in an encrypted form and programmatic access to that data is done using secure coding standards without visible account or password information
- all server systems including data storage are maintained in a locked, secure, environmentally controlled facility
- all server systems have been hardened with industry standard recommended measures for security protection

The Contractor will notify the SDCOE within 24 hours of the Contractor discovering an unauthorized access or disclosure of SDCOE data.

The Contractor and the SDCOE will work together to ensure compliance with FERPA regulations as applicable.

10. No Assignments.
Neither any part nor all of this Agreement may be assigned or subcontracted, except as otherwise specifically provided herein, or to which SDCOE, in its sole discretion, consents to in advance thereof in writing. Any assignment or subcontracting in violation of this provision shall be void.

11. Audit.
Contractor agrees to maintain and preserve, until three (3) years after termination of the Agreement with the SDCOE and to permit the State of California or any of its duly authorized representatives, to have

access to and to examine and audit any pertinent books, documents, papers, and records related to this Agreement.

12. Independent Contractor.
It is expressly understood that at all times, while rendering the services described herein, and in complying with any terms and conditions of this Agreement, Contractor is acting as an independent contractor and not as an officer, agent, or employee of the SDCOE. Except as SDCOE may specify in writing, Contractor shall have no authority express or implied, to act on behalf of SDCOE in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, to bind SDCOE to any obligation whatsoever.

13. Licenses, Permits, Etc.
Contractor represents and declares to SDCOE that it has all licenses, permits, qualifications, and approvals of whatever nature that is legally required to practice its profession. Contractor represents and warrants to SDCOE that Contractor shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval which is legally required for Contractor to practice its profession.

14. Contractor's Insurance.
The Contractor shall maintain and shall cause each Subcontractor to maintain Public Liability and Property Damage Insurance to protect them and the SDCOE from all claims for personal injury, including accidental death, as well as from all claims for property damage arising from the operations under this Agreement. The minimum amounts of such insurance shall be as hereinafter set forth.

Required Amounts of Insurance:

General Liability	
Bodily Injury and	$1,000,000
Comprehensive form - Property Damage	Amount
Products/Completed	
Operations	
Auto Liability	
Bodily Injury and	$100,000/$300,000
Comprehensive form - Property Damage	Amount
Owned, Non-owned Hired Combined	

The Contractor shall file, with the SDCOE, Certificates of Insurance indicating a thirty-day (30) cancellation notice and naming the **SAN DIEGO COUNTY SUPERINTENDENT OF SCHOOLS** as an additional insured.

15. Workers' Compensation.
The Contractor shall provide workers' compensation insurance or shall self-insure their services in compliance with provisions of Section 3700 of the Labor Code of the State of California. A Certificate of Insurance may be provided, providing for such, or Contractor shall sign and file on company letterhead stationery with the SDCOE the following certificate:

> "I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provision of that Code, and I will comply with such provision before commencing the performance of the work of this Agreement."

16. Tuberculosis Clearance.

Contractor shall certify in writing that Contractor's employees, volunteers, and subcontractors receive clearance for TB. In such cases where Contractor does not have in-person contact with students, contractor shall not be required to obtain TB clearance.

17. Pupil Safety/School Safety Act.
California Education Code Sections 33192, 33195, and 45125 et al., provides if the employees of any entity that has a contract with a school district may have any contact with pupils, those employees shall submit or have submitted their fingerprints in a manner authorized by the Department of Justice. Contractor shall comply with all provisions of Education Code section 45125.1 et seq., as applicable to the determination below. The SDCOE has completed the "Pupil Safety Provisions" below certifying the level of contact that Contractor is expected to have with SDCOE'S pupils.

_____The SDCOE has determined that contact (including electronic contact) with pupils may occur under the terms of this Agreement. Fingerprinting and certification will be required of the Contractor. No work may take place until the requirements of Education Code section 45125.1 have been met.

___X__The SDCOE has determined that there will be no contact with pupils under the terms of this Agreement.

The above determination is made by Shannon Baker_____

Signature_____Date___6/18/24_____
(SDCOE Program Manager/Director)

18. Indemnification.
To the fullest extent allowable by law, Contractor agrees to hold harmless, defend, and to indemnify the SDCOE, accept any and all responsibility for loss or damage to any person or entity, including SDCOE, and to indemnify, hold harmless, and release SDCOE, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Contractor, that arise out of, pertain to, or relate to Contractor's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Contractor agrees to provide a complete defense for any claim or action brought against SDCOE based upon a claim relating to such Contractor's or its agents,' employees,' contractors,' subcontractors,' or invitees' performance or obligations under this Agreement. Contractor's obligations under this Section apply whether or not there is concurrent negligence on SDCOE's part, but to the extent required by law, excluding liability due to SDCOE's conduct. SDCOE shall have the right to select its legal counsel at Contractor's expense, subject to Contractor's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

19. Tobacco-Free Facility.
The SDCOE is a tobacco-free facility. Tobacco use (smoked or smokeless) is prohibited at all times on all areas of or within SDCOE property.

20. Notices.
All notices, legal or otherwise, shall be provided as follows:

SDCOE: Dr. Shannon Baker, Executive Director
6401 Linda Vista Rd

San Diego, CA 92111
858-295-8895
Shannon.baker@sdcoe.net

With copy to: Chief Business Officer and
SDCOE Legal Services
6401 Linda Vista Rd
San Diego, CA 92111

Contractor: San Ysidro School District
Russel Little
Assistant Superintendent, Educational Leadership and Pupil Services
619-428-4476 ext. 3027

Luis Ramos
Director of Educational Services
619-428-447 ext. 3071

21. Amendment.
No oral or other agreements or understandings shall be effective to modify or alter the written terms of this Agreement. This Agreement may be amended or modified only by a written instrument signed by the SDCOE and by a duly authorized representative of the Contractor.

22. Governing Law/Venue.
In the event of litigation, the Agreement and related matters shall be governed by and construed in accordance with the laws of the State of California. Venue shall be with the appropriate state or federal court located in San Diego County.

23. Mediation.
In the event of any dispute, claim, question, or agreement or disagreement arising from or relating to this Agreement or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith, recognize their mutual interests, and attempt to reach a just and equitable solution satisfactory to both parties. If the parties are unable to resolve the issue(s) within a period of thirty (30) days, then upon notice of either party to the other, all disputes, claims, questions, or disagreements shall be resolved through mediation. The parties will select a mediator by their mutual agreement, within 30 days. If there can be no such agreement, each party will submit a list of five mediator choices to the other, rank ordered by preference. The mediator will then be selected based on a further discussion, unless an individual is on both lists and then that person would have preference. Each party shall bear its own costs, including without limitation one half of the cost of the fees and costs of mediation.

24. Compliance with Law.
The Contractor shall be subject to, and shall comply with, all federal, state, and local laws and regulations applicable to its performance under this Agreement including, but not limited to licensing, employment, purchasing practices, wages, hours, and conditions of employment, including non-discrimination COVID requirements as stated in Exhibit B to this agreement.

To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Contractor and any subcontractor(s) shall comply with all applicable rules and regulations to which SDCOE is bound by the terms of such fiscal assistance program.

25. Debarment, Suspension, or Ineligibility Clause.
By signing this Agreement, the Contractor certifies that the Contractor, and any of its principles and/or subcontractors:

i. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal agency, and;
ii. Have not, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with containing, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statues or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements, or receiving stolen property. Contractor certifies that no employee, officer, agent, or subcontractor who may come in contact with students in performance of this Agreement, has been convicted of a serious or violent felony.

26. Authorization to Perform Services.
Contractor is not authorized to perform services or incur costs under this agreement until executed by both the Contractor and approved by signature of the SDCOE Superintendent of Schools or his designee, the Deputy Superintendent, Chief Business Officer.

27. Employment with Public Agency and Retirees.
Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are being performed pursuant to this Agreement. Retirees should seek guidance from their respective retirement system to avoid a loss of retirement benefits.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction, the California Public Employees Retirement System (PERS) or the State Teachers Retirement System (STRS) to be eligible for enrolment as an employee of SDCOE, Contractor shall indemnify, defend, and hold harmless SDCOE for the payment of any employee and/or employer contributions for such retirement benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as payment for any penalties and interest on such contributions, which would otherwise be the responsibility of SDCOE.

28. Conflict of Interests.
Contractor may serve other clients, but none whose activities or whose business, regardless of location, would place the Contractor in a "conflict of interest" as the term is defined in the Political Reform Act, codified at California Government Code Section 81000 et seq. Contractor shall not employee any SDCOE official in the work performed pursuant to this Agreement. No officer or employee of SDCOE shall have any financial interest in this Agreement that would violate California Government Code Sections 1029 et seq. Contractor warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of SDCOE. Contractor understands that if this Agreement is or was made in violation of Government Code 1090 et seq. the entire Agreement is void and Contractor will not be entitled to any reimbursement of expenses, and Contractor will be required to reimburse SDCOE for any sums paid to the Contractor. Contractor understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code 1090 and, if applicable, will be disqualified from holding public office in the State of California.

29. Counterparts.
This Agreement (and any amendments) may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Documents delivered electronically shall be valid and binding.

30. Severability.
If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

31. Entire Agreement.
This Agreement represents the entire Agreement and understandings of the parties hereto and no prior writings, conversations or representations of any nature shall be deemed to vary the provisions hereof. This Agreement may not be amended in any way except by a writing duly executed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, such parties acting by their representatives being thereunto duly authorized.

SAN DIEGO COUNTY SUPERINTENDENT OF SCHOOLS	**CONTRACTOR**
_____	_____
By (Authorized Signature)	By (Authorized Signature)
Michael Simonson	Marilyn Adrianzen
Name (Type or Print)	Name (Type or Print)
Deputy Superintendent, Chief Business Officer	Chief Business Official
Title	Title
_____	_____
Date	Date
	Board approved: _____

EXHIBIT A
SPECIAL PROVISIONS

A. Scope of Services.

As funded by the LASG (Learning Acceleration System Grant) through CCEE (California Collaborative for Educational Excellence) and awarded to San Diego County Superintendent of Schools for Project CLEAR (California Literacy Elevation by Accelerating Reading) to advance students' reading capacities, the SAN YSIDRO SCHOOL DISTRICT agrees to support the program goals to:

- Provide access and increase availability to learning acceleration in literacy for diverse K-12 Students populations by increasing the number of Teacher Leaders in California
- Address students' learning recovery and acceleration by providing access to prevention and intervention via Reading Recovery/*Descubriendo la Lectura*
- Build system capacity by creating literacy teams and networks within districts and at schools through a structured professional learning model

Accordingly, SAN YSIDRO SCHOOL DISTRICT acknowledges the following details and commits to support local "**Teacher Leader**" candidates by:

- Assigning a central office or site administrator as point of contact for all matters pertaining to Project CLEAR related to Teacher Leaders, including the execution of this MOU.
- Understanding and supporting "Teacher Leader" candidates for Reading Recovery/*Descubriendo la Lectura* which requires full participation of the "Teacher Leader" candidate in a two-year training program organized by San Diego County Office of Education in collaboration with Saint Mary's College.
- Recognizing and supporting candidates for Teacher Leader certification, Year One of the program, focused on college coursework combined with school site training and fieldwork with students, while Year Two is devoted to field work at schools with students.
- Outline and specify that candidates for Teacher Leader certification must enroll in, and successfully complete, sixteen units of coursework focused on Reading Recovery/ *Descubriendo La Lectura* assessment, teaching, theory, and research in reading; obtain skills to train other teachers, and coordinate a Reading Recovery/*Descubriendo La Lectura* program at a minimum of one school site.
- Accommodate candidates for Teacher Leader certification to attend college courses that will be held during the daytime and early evenings (Pacific Time), including the provision of some release time if needed for successful attendance.
- Clarifying that distance learning is the main mode of course attendance for Teacher Leader candidates, with hybrid learning options to be personalized for individual candidates on an as needed basis.
- Ensuring any candidates for Teacher Leader certification already hold a Master's degree in a related field; have a record of successful teaching of reading and writing in elementary school settings; and demonstrate leadership and coaching abilities.

- Monitoring and assuring that Teacher Leader candidates are each delivering a minimum of four Reading Recovery/*Descubriendo la Lectura* lessons daily (approximately 2.5 to 3 hours).

- Supporting Teacher Leader candidates to demonstrate teaching "behind the glass" (live observation) with a student at least twice a semester for two semesters delivering Reading Recovery/*Descubriendo la Lectura* lessons, and to submit expected video recordings of teaching.

- Providing and assisting Teacher Leader candidates with the basic technology (laptop, camera, tripod, video equipment, microphone) and set-up for the "behind the glass" demonstrations.

- Establishing expectations for Teacher Leader candidates to lead "behind the glass" Reading Recovery/*Descubriendo la Lectura* lessons at least four times under the guidance of a trained/certified Teacher Leader working with their school site.

- Letting Teacher Leader candidates know that they will be observed by the "Trainer-of-Teacher Leaders" a minimum of two times per school year while also working with Reading Recovery/ *Descubriendo la Lectura* students and Reading Recovery/*Descubriendo la Lectura* teachers.

- Supporting Teacher Leader candidates' release time via the grant to attend the required national Teacher Leader Institute during summer of the training year.

- Aiding Teacher Leaders and Teacher Leader candidates to attend a yearly Reading Recovery Conference, as feasible.

- Collecting and maintaining student data related to the grant in accordance with the guidelines for evaluation.

- Reviewing, agreeing and signing a separate MOU detailing the student data collection, scope, timeline and student privacy protocols.

- Organizing and arranging for candidates of Teacher Leader certification to attend/observe a teacher class twice a month with a certified Teacher Leader to fully learn the role.

Additionally, SAN YSIDRO SCHOOL DISTRICT acknowledges the following details and commits to support local Reading Recovery &/or *Descubriendo la Lectura* "**Teacher**" candidates by:

- Explaining that Reading Recovery/*Descubriendo la Lectura* is a year-long program for "Teacher" candidates.

- Ensuring all Reading Recovery/*Descubriendo la Lectura* Teacher candidates have a record of three years of successful teaching of reading and writing in elementary schools.

- Clarifying that all Teacher candidates must enroll in and successfully complete eight units of coursework focused on Reading Recovery/*Descubriendo la Lectura* including assessment; theory in reading; student progress monitoring; student records maintenance; and skill-building for teaching Reading Recovery/*Descubriendo la Lectura* lessons.

- Assuring that Teacher candidates understand and complete their duty to work individually with students for at least four 30-minute Reading Recovery/*Descubriendo la Lectura* lessons daily (approximately 2.5 to 3 hours).

- Informing Teacher candidates that they will be demonstrating teaching "behind the glass" (live observation) with a student at least twice a semester for two semesters delivering Reading Recovery/*Descubriendo la Lectura* lessons, and expected video recordings of teaching.
- Aiding Teacher candidates' release or time to attend a Reading Recovery Conference during the training year, if feasible.
- Collecting and maintaining student data related to the grant in accordance with the guidelines for evaluation.
- Reviewing, agreeing and signing a separate MOU detailing the student data collection, scope, timeline and student privacy protocols
- Organizing and ensuring Reading Recovery/*Descubriendo la Lectura* Teachers and candidates attend 4-6 sessions of the Reading Recovery On-Ongoing Professional Development with a Reading Recovery Teacher Leader

Moreover, SAN YSIDRO SCHOOL DISTRICT, understands and accepts its responsibility to Project CLEAR by:

- Identifying and maintaining a district champion/point-of-contact for Project CLEAR who will collaborate with SDCOE and Saint Mary's College.
- Ensuring a district champion/point of contact and Project CLEAR participants complete occasional focus group interviews/surveys to evaluate the program's support for the district.
- Agreeing to allow the third party evaluator, St. Mary's College, to share de-identified student data with the San Diego County Office of Education for formative evaluation purposes.
- Collaborating with site leaders and Teachers in the identification and availability of students needing intervention to be taught by participating Reading Recovery/*Descubriendo la Lectura* Teachers and/or Teacher Leaders (during school and after school).
- Recruiting and identifying the Teacher Leader and/or Teacher candidates to participate in the Reading Recovery/*Descubriendo la Lectura* project.
- Collaborating with site administrators when recruiting candidates for the program to ensure leadership support for Project CLEAR participation.
- Assuring classroom teachers have access to leveled children's books from their site or district resources.
- Recognizing and affirming that Project CLEAR, via the LAS Grant, will pay for:
    - 16- units of Reading Recovery/*Descubriendo la Lectura* coursework for **Teacher Leader** candidates at Saint Mary's College over the course of two years.
    - 8 units of coursework at Saint Mary's College for Reading Recovery/*Descubriendo la Lectura* coursework for **Teacher** candidates over the course of a year.
    - Other items, as detailed below.

There are the expenses for candidates paid by the grant versus the DISTRICT across the years.

Funded by the Grant; paid directly to Saint Mary's College for the DISTRICT's Teacher Leaders	**Funded by DISTRICT**
Tuition • $7,360 - $8,000 for Teacher Leaders (TLs) [16 units] • $1,920 additional for Spanish TLs [4 units extra over the summer]	N/A
Training fees for Teacher Leaders: $15,000	N/A
Affiliation fee for Year 2 and beyond for Teacher Leaders: $850	N/A
Books and supplies for Teacher Leaders: • $2,500 for English-only • $1,500 additional for Spanish TLs	N/A
Teacher Leader Conference for Year 2 and beyond: $1,600	Any additional expenses for travel and lodging to conference
International Data Evaluation Center fee for TLs: $685 - $955	N/A
Not covered by grant	Salaries and benefits of TLs
Not covered by grant	Setting up or constructing the Behind the glass rooms (can be accomplished via technology)
Not covered by grant	Reading Recovery conference(s) for Teacher Leaders (at least one per year, many options)
Not covered by grant	Travel to Saint Mary's College for conferences and events, if desired
Not covered by grant	Reading Recovery Council of Northern America membership fees (optional)

Funded by the Grant; paid directly to Saint Mary's College for the DISTRICT's Teachers	**Funded by DISTRICT**
Tuition • $3,840 for Teachers, English or Spanish [8 units]	N/A
Books and supplies for Teachers: $245	Use existing books or purchase books (must be at least 300 books levels A-K)
Not covered by grant	Teacher IDEC fees $85 - $90 per teacher
Not covered by grant	Salaries and benefits of TLs and Teachers
Not covered by grant	Setting up or constructing the Behind the glass rooms (can be accomplished via technology)
Not covered by grant	Reading Recovery conference(s) for Teachers (at least one per year, many options)
Not covered by grant	Travel to Saint Mary's College for conferences and events, if feasible
Not covered by grant	Reading Recovery Council of Northern America membership fees (optional)

EXHIBIT B
COVID-19 Vaccination & Testing Requirements

The San Diego County Office of Education ("SDCOE") is a public agency that has a duty to implement health and safety protocols to address COVID-19 in accordance with all state and local regulations.

As a Contractor/Vendor for SDCOE, you are responsible for ensuring that your agents and employees are complying with applicable state, county and SDCOE guidelines whenever services are performed on all SDCOE operated facilities. Accordingly, SDCOE has implemented COVID-19 vaccination verification and testing requirements for all vendors and contractors.

1. Contractor/Vendor must comply with and enforce the following requirements effective October 15, 2021:

a. All employees, volunteers and/or agents of Contractor/Vendor must provide proof of full vaccination. Such proof of vaccination must indicate that there has been at least 14 days between the last dose and the date of services.

b. Any employee, volunteer and/or agent who is not fully vaccinated against COVID-19 must undergo testing and test negative for COVID-19 on a weekly basis. The COVID-19 test must be a PCR or antigen test.

c. The Contractor/Vendor shall verify the vaccination status for each of its own workers by manually reviewing a paper or digital copy of the worker's COVID-19 vaccine record card or testing results in accordance with the Vaccine Record Guidelines & Standards from the California Department of Public Health. As a Contractor/Vendor, if you fail to receive the requisite documentation or digital proof of vaccination or testing from your employees, volunteers and/or agents, then such persons shall be considered untested or unvaccinated and ineligible to perform services on SDCOE facilities for any length of time due to non-compliance with the requirements outlined above.

d. The Contractor/Vendor shall advise each employee, volunteer and/or agent of the Contractor/Vendor of the SDCOE testing and vaccination policy and the requirement that a face mask must be worn at all times while at an SDCOE operated facility.

2. It is the responsibility of the Contractor/Vendor to ensure there is no interruption of service to SDCOE if the Contractor/Vendor and any employee, volunteer and/or agent of the Contractor/Vendor fails to adhere to the guidelines contained herein.

3. The Contractor/Vendor hereby certifies that all employees, volunteers and/or agents of Contractor/Vendor have been provided with a copy of this policy and warrants that employees, volunteers and/or agents of the Contractor/Vendor who perform services at SDCOE facilities have received proof of vaccination or have acquired proof of a negative Covid-19 test within 72 hours of the commencement of work, and will further comply with the testing requirements as outlined in the State Public Health Office Order of August 11, 2021, or as later amended or enacted.

4. Failure by the Contractor/Vendor to comply with the terms of this Addendum or any applicable county or state health order, may result in termination of the agreement to provide services.

5. This Addendum is hereby incorporated into the Agreement as though fully set forth. No other terms or conditions of the Agreement are changed, and in the event of a conflict the terms of This Exhibit B shall prevail.

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Russell Little, Asst. Superintendent
Educational Leadership & Pupil Services

☐ Informational
☒ Action

AGENDA ITEM: AGREEMENT WITH SAN DIEGO STATE UNIVERSITY RESEARCH FOUNDATION FOR THE NATIONAL CENTER FOR URBAN SCHOOL TRANSFORMATION (A-PLUS) PROGRAM

BACKGROUND INFORMATION:
The National Center for Urban School Transformation (NCUST) proposes to implement the Advancing Principal Leadership in Urban Schools Program (A-PLUS) Leadership Certificate Program, and Clear Credential Program in a manner that is aligned with SYSD initiatives and designed to support principals, aspiring leaders and their leadership teams as they create culture, curricula, and instruction needed to generate both equitable and excellent learning results for SYSD students.

A-PLUS networks were designed to create "Professional Learning Communities" for principals and assistant principals committed to advancing equity and excellence in their schools. San Ysidro School District Principals and Assistant Principals will participate in the A-PLUS network during the 2024-2025 school years Term: June 1, 2024 to June 30, 2025.

RECOMMENDATION:
Approve/Ratify the agreement with San Diego State University Research Foundation for the National Center for Urban School Transformation (A-PLUS) Program to provide professional development services to instructional leaders during 2024-25 school year at an estimated cost of $150,000.00 from the Title II fund.

LCAP GOAL AND ACTION/SERVICE:
Goal 4: Social Emotional Well-Being and Mental Health - All students will obtain the necessary social-emotional skills to build resilience and thrive in an equitable educational environment, their community and beyond.

☒ **Renewal** ☐ **New** ☐ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications? ☒ Yes ☐ No

Are funds for this item available in the 2024-2025 Budget? ☒ Yes ☐ No

Requisition #

$150,000.00
(Amount)

Title II
(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

AGREEMENT FOR PROFESSIONAL SERVICES

San Diego State University Research Foundation (Contractor)
5250 Campanile Drive
San Diego, CA 92182

on behalf of
NATIONAL CENTER FOR URBAN SCHOOL TRANSFORMATION
9245 Sky Park Court, Suite 120
San Diego, CA 92123

Attention:
Sandra M. Nordahl, CRA
Director, Sponsored Research Contracting and Compliance
Email: sdsurfawards@sdsu.edu

With copy to:
Karen Jones, NCUST Director of Operations (619-594-7905)

and

San Ysidro School District (District)
4350 Otay Mesa Road
San Ysidro, CA 92173

Attention: Dr. Gina Potter, Superintendent

NOW, THEREFORE, the Parties agree as follows:

1. PERIOD OF AGREEMENT. The term of this Agreement shall be from July 1, 2024 - June 30, 2025.

2. DUTIES OF THE CONTRACTOR. Contractor shall provide services in accordance with EXHIBIT A, Section I, which is attached hereto and made a part hereof.

3. STAFFING. Contractor shall be solely responsible for staff providing services under this Agreement. Contractor certifies that staff and/or trainees providing the services are adequately trained and prepared according to prevailing professional standards for providing such services. Contractor assumes full responsibility for workers' compensation insurance and for payment of all Federal, State and local taxes or contributions, including but not limited to unemployment insurance, social security, Medicare and income taxes with respect to Contractor's staff providing services under this Agreement.

4. INDEPENDENT CONTRACTOR. While engaged in performance of this Agreement the Contractor is an independent contractor and is not an officer, agent, or employee of the District.

5. CONTRACT VALUE. The District shall pay the Contractor a fixed price, not to exceed $150,000 for implementing and providing the services described in EXHIBIT A, Section II. Payment shall be made by District to the Contractor in accordance with the schedule specified in EXHIBIT A, Section II which is attached hereto and made a part hereof.

6. RIGHTS TO REPORTS. The rights to any report or evaluation developed by the Contractor in connection with this Agreement shall belong to the Contractor. District shall have the right to use material developed under this contract for non-commercial education and research purposes.

7. ENTIRE AGREEMENT/AMENDMENT. This Agreement and any exhibits attached hereto constitute the entire Agreement between the parties to the Agreement and supersede any prior or contemporaneous written or oral understanding or agreement, and may be amended only by written amendment executed by both Parties to this Agreement.

8. SEVERABILITY. If any section, provision or portion of this Agreement is held to be invalid, illegal or void by a court of proper jurisdiction, the remainder of this Agreement shall nevertheless subsist and continue in full force and effect.

9. AUTHORITY. Contractor has full power and authority to enter into this Agreement and to perform hereunder, and such entry and performance do not and will not violate any rights of any third party.

10. INDEMNIFICATION. Contractor shall defend, indemnify and hold harmless District, its officers, employees, and agents from and against any and all liability, loss, expense, attorney's fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorney's fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Contractor, its officers, agents or employees.

    District shall defend, indemnify and hold harmless Contractor, San Diego State University, Trustees of the CSU, the State of California, its officers, employees and agents from and against any and all liability, loss, expense, attorney's fees, or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorney's fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of District, its officers, agents or employees.

11. TERMINATION. Either Party may, by thirty (30) days written notice stating the extent and effective date, terminate this Agreement for convenience in whole or in part, at any time. Contractor shall be entitled to payment of allowable and any uncancellable costs up to and including date of termination or such reasonable part of the fee as shall apply to services properly performed prior to the date of postponement, suspension or termination.

12. ORDER OF PRECEDENCE. The use of any purchase orders to facilitate issuance of payments under this Agreement shall be in accordance with the terms of the Agreement, and any terms or conditions contained within such purchase order that directly contradict or conflict with the Agreement or subsequent amendments shall be deemed "RESERVED" or self-deleting.

IN WITNESS HEREOF, THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE DULY EXECUTED.

- DISTRICT-

SAN YSIDRO SCHOOL DISTRICT

BY _____

Dr. Gina Potter

TITLE: Superintendent

Dated _____

Board approved: _____

-CONTRACTOR-

SAN DIEGO STATE UNIVERSITY RESEARCH FOUNDATION
on behalf of
NATIONAL CENTER FOR URBAN SCHOOL TRANSFORMATION

BY _____

_____
Sandra M. Nordahl, CRA

TITLE: Director, SR Contracting and Compliance
Federal Tax ID #95-6042721

Dated: _____

and BY *Francisco Escobedo*
Francisco Escobedo, Ed.D.

TITLE: Exec. Director, National Center for Urban School Transformation

Dated: 7/25/25

Exhibit A

I. Exhibit A

1. SERVICES TO BE PROVIDED BY CONTRACTOR.

Specifically, NCUST proposes to implement the Advancing Principal Leadership in Urban Schools Program (A-PLUS), Leadership Certificate Program, and Clear Credential Program in a manner that is aligned with SYSD initiatives and designed to support principals, aspiring leaders and their leadership teams as they create the culture, curricula, and instruction needed to generate both equitable and excellent learning results for SYSD students.

NCUST has been providing A-PLUS Networks for 15 years. Early in our study of outstanding schools, we recognized that leadership was the central element of each school's success. A-PLUS Networks were designed to create "Professional Learning Communities" for principals and assistant principals who were committed to advancing equity and excellence in their schools. NCUST Executive Coaches use their experience studying outstanding schools (as well as their experience leading schools to achieve outstanding results) in ways that help district and school leaders focus on building systems and structures that will maximize the likelihood that all demographic groups will experience high rates of academic growth.

A) The following will be the focus for our A-PLUS Networks:

1. **Principal-Created/District Approved Goals**: During the academic year starts, each principal will be asked to establish a specific, measurable, achievable, relevant, time-based goal focused on the improvement of a specific academic outcome in the context of a school improvement project and conduct a minimum of three PDSA cycles. The goal should have the following attributes:
    a. The goal should specify a baseline (data indicating actual current student performance or a reasonable estimate of actual current performance) and a target to be achieved by the end of the year A-PLUS project.
    b. The goal should be aligned to the district's or school's instructional focus.
    c. Attainment of the goal should advance the school's pursuit of educational equity.
    d. The goal should be approved by district leaders including Dr. Potter, Superintendent.
2. The purpose of A-PLUS is to build the capacity of each principal and assistant principal to achieve the goal they specified. We know that principals can help their schools attain ambitious goals when they are able to influence culture, curricula, and instruction related to their goals.
3. We want to help principals (and the leaders who support principals) influence changes in everyday classroom practices in ways that will result in the attainment of greater equity and excellence throughout SYSD.

The following will participate in the A-PLUS network:

1. **SYSD Principals and Assistant Principals:** During the 2024-25 school year, La Mirada, Smythe, Willow, Sunset, and Ocean View Hills Elementary Schools, in addition to San Ysidro and Vista Del Mar Middle Schools, and the Preschool Development Program, will be designated as two separate cohorts. The composition of these cohorts will be decided in collaboration with Drs. Potter and Escobedo. Both cohorts will participate in an A+ Network.

NCUST's deliverables will be the following:

1. **One half day professional learning experience** for all principals and assistant principals to occur at a designated time over the one year contract.
2. **Monthly Network Meetings for Each Cohort:** NCUST will assign an Executive Coach to each cohort. The Executive Coach will work with the lead principal for each cohort to establish dates for ½ day network meetings. The location of the network meetings will rotate among the campuses of the cohort principals. Over the year contract period, each principal should have an opportunity to host two-three network meetings. The network meetings will be designed to support the host principal as they make progress toward their articulated goal. The host principal will describe their goal and their efforts to improve 1) the professional culture among their school's educators, 2) the learning culture for students, 3) the school's curricula relevant to the principal's goal, and 4) the instructional practices relevant to the principal's goal. NCUST has learned that principals in outstanding schools leverage these four empowering characteristics to influence improvements in learning outcomes for all demographic groups. At least an hour of the network meeting will include a learning walk during which the cohort will visit classrooms with a focus on the principal's goal, the evidence of progress toward the goal, and opportunities for advancing progress further. The cohort principals and the NCUST Executive Coach will serve as a Professional Learning Committee (PLC) for the host principal, providing support intended to maximize the likelihood that the host principal makes substantial progress toward their goal.
   In particular, the PLC will help host principals consider how they can address existing instructional practices in ways that nurture a positive professional climate, while also helping teachers maximize student success, especially for groups of students who have historically been underserved. Each network meeting will conclude by acknowledging evidence of the host school's progress toward their specified goal and listening to the host principal's immediate next steps (based on both the strengths observed and the needs identified).
   a. ***Approximate NCUST time commitment: two half-day network meetings each month for 10 months***

3. **One-to-One Meetings with Each Principal:** In addition to the monthly network meeting, each principal will receive a monthly on-site visit from their NCUST Executive Coach. This one-to-one meeting will provide the principal an opportunity to present their goal and their improvement strategies to their NCUST coach. The NCUST Executive Coach will listen, observe, and provide feedback designed to accelerate each principal's progress toward the attainment of their goal. Each one-to-one meeting will last approximately two hours. Each month the host of the network meeting will not be receiving a one to one meeting.
   a. ***Approximate NCUST time commitment: 6 two-hour one-to-one meetings each month for 10 months***

4. **District-Level Coordination Meetings:** At every month starting in the 2024-2025 school year, there will be a district-level coordination meeting with an NCUST Executive Coach and the district-level cabinet team. The meetings will provide updates regarding logistics and progress and the creation of specific goals that are aligned to the district's LCAP. The meetings will keep NCUST Executive Coaches apprised of nuances of district initiatives influencing the pursuit of the district's principals' goals. As well, the meetings will provide the district-level leaders opportunities to hear the perspectives of the NCUST coaches about possible ways to refine district-level efforts in ways that might help the district accelerate progress toward their LCAP

goals.

a. ***Approximate NCUST time commitment: 1 district-level coordination meeting every month for 10 months (8 times per year)***

Central Themes: In all the meetings described above a central theme will be helping leaders address critical leadership challenges. In successful schools and districts, leaders recognize that they must overcome real and significant challenges to lead a critical mass of stakeholders to change important processes, structures, and systems that influence student success. Specifically, leaders must address the following important challenges:

1. Leading stakeholders to perceive the changes the leader seeks are desirable, consistent with their values, and worth their effort --(Inspiring stakeholders to want to improve)
2. Leading stakeholders to perceive the changes the leader seeks are possible, despite the limitations associated with budgets, regulations, the challenges students may face at home, and many other realities – (Convincing stakeholders that success is attainable)
3. Leading stakeholders to understand the key roles they play in making the change happen. In particular, leaders need to be able to help teachers know clearly and specifically what they can do to maximize the likelihood that their students will develop deep understandings of challenging academic standards – (Building clarity about each person's role and responsibility)
4. Leading stakeholders to perceive they have the quantity and quality of support they need to succeed in implementing the change the leader seeks. In particular, leaders need to be able to help teachers believe they have great support that will help them lead all their students to high levels of academic success – (Building a powerful sense of collective efficacy)
5. Leading stakeholders to effectively use multiple measures for instructional decision making including, but not limited to, California Dashboard, local universal assessment data, the universal screener, and the California Healthy Kids Survey.

1. <u>PAYMENT SCHEDULE</u>: In accordance with the contract, District shall pay Contractor the following amount by the date listed:

A. By December 1, 2024, District shall pay Contractor $75,000.

B. By June 30, 2025, District shall pay Contractor $75,000.

C. District shall pay invoice upon receipt.

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Special Education Department
Oscar Madera, Director

☐ Informational
☒ Action

AGENDA ITEM: SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT INTERIM WRITTEN APPROVAL WITH THE INSTITUTE FOR EFFECTIVE EDUCATION

BACKGROUND INFORMATION:
California's NonPublic Schools (NPS) are specialized schools that provide services to public school students with disabilities. *EC* Section 56034 defines a nonpublic, nonsectarian school (nonreligious) as a private, nonsectarian school that enrolls individuals with exceptional needs pursuant to an individualized education program. The tuition of a student in an NPS is paid by the public LEA that places the student in the NPS based on the student's individual needs. Unlike other private schools, each NPS is certified by the CDE.

In order to be in compliance with State and Federal Regulations, administration requests the approval of NPS Interim Written Approval (IWA) with The Institute for Effective Education for the 2024-2025 school year. While the NPS approved rates have not been released yet, the District and The Institute for Effective Education will be entering into an Interim Written Approval indicating the 2023-2024 approved rates. Once the new NPS approved rates are available, the District will reimburse the nonpublic school with the difference based on the newly NPS approved rates.

- Mission Valley Academy

RECOMMENDATION:
Approve/Ratify the San Diego County Nonpublic Master Contract Interim Written Approval with The Institute for Effective Education for the school year 2024-2025 2024 to provide individualized education for students with exceptional needs. Cost implications estimated at $174,812.40 will be paid from the Special Education Fund.

LCAP GOAL AND ACTION/SERVICE:
Goal 1, Item 1.18: Continue to provide site and/or district based academic intervention programs to serve the districts unduplicated student groups (i.e. English Learners, Socio-Economically Disadvantaged, Students with Disabilities, etc.) and educationally disadvantaged students in Comprehensive Support and Improvements Schools. Personnel (e.g. instructional aides) may be hired to support in-class interventions for all student groups including unduplicated students at all school sites. Increase the instructional day to expand opportunities for students to accelerate learning through targeted intervention and enrichment to accelerate learning and increase engagement for all students including unduplicated students.

☐ **Renewal** ☒ **New** ☐ **Amendment** ☒ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

PROJECTED	
$174,812.40	Special Education
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

San Diego County Nonpublic Master Contract
(For Use With APPENDIX A: SCHOOLS)

2024-2025

INTERIM WRITTEN APPROVAL

For Provision of Special Education/Related Services and Payment

Pursuant to the Master Contract (Main Document),

the Local Education Agency (LEA) San Ysidro School District

provides to the CONTRACTOR The Institute for Effective Education (Mission Valley Academy)

interim written approval for CONTRACTOR to provide the agreed upon Special Education and/or Related Services

identified in the most recent IEP/IFSP of All Assigned Students,
(Student Name)

at the rates set forth in Appendix A: Schools of the Master Contract for the 20 24 - 20 25 Contract Year.

Anticipated Student Start Date: July 1, 2024.

This interim written approval shall be for a maximum period of one hundred eighty (180) days, beginning with the anticipated student start date at the nonpublic school or nonpublic agency. If an Individual Services Agreement and/or Master Contract is not completed and executed by the LEA and the CONTRACTOR within this one hundred eighty (180) day period, the LEA or CONTRACTOR may request an IEP meeting to be held as soon as possible to discuss a change in placement for the pupil. The LEA shall continue to reimburse the CONTRACTOR as set forth in the interim written approval, or as otherwise agreed by the parties in writing, pending any change in placement or subsequent execution of an Individual Services Agreement.

This interim written approval does not require the CONTRACTOR to provide services for one hundred eighty (180) days, or for any maximum period of time. The parties have already agreed, or may agree, to hold an IEP meeting within thirty (30) days of the student's first day of attendance.

Agreed to by the District Representative of the Special Education Unit of the LEA:

Signature _____ Date _____

Marilyn Adrianzen, Chief Business Official
Name/Title

Agreed to by the CONTRACTOR:

Signature _____ Date 7/19/24

Hilary Whiteside, Executive Director
Name/Title

INDIVIDUAL SERVICES AGREEMENT FOR NONPUBLIC SCHOOL SERVICES

(Education Code Sections 56365 et seq.)

(FOR USE WITH SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT APPENDIX A: SCHOOLS)

2023-2024

This agreement is effective on August 1, 2023 or the date student begins attending a nonpublic school or receiving services from a nonpublic agency, if after the date identified, and terminates at 5:00 P.M. on June 30, 20__, unless sooner terminated as provided in the Master Contract and by applicable law.

Local Education Agency (LEA) San Ysidro School Districti Nonpublic School The Institute for Effective Education (Mission Valley Academy)

LEA Case Manager: Name Oscar Madera Phone Number (619) 428 - 4476

Pupil Name Osuna (Last) Fabian (First) (M.I.) Sex: ☒ M ☐ F Grade: 2nd

Address 1670 Paseo Aurora City San Diego State/Zip CA, 92154

DOB 11/13/2015 Residential Setting: ☒ Home ☐ Foster ☐ LCI # ☐ OTHER

Parent/Guardian Joanna Vazquez/Fidel Osuna Phone (619) 305 - 4852 (Residence) ( ) (Business)

Address (If different from student) City State/Zip

AGREEMENT TERMS:

1. *Nonpublic School*: The average number of minutes in the instructional day will be: 300 during the regular school year
   300 during the extended school year
2. *Nonpublic School*: The number of school days in the calendar of the school year are: 180 during the regular school year
   30 during the extended school year
3. *Educational services as specified in the IEP shall be provided by the CONTRACTOR and paid at the rates specified below.*

   A. *INCLUSIVE EDUCATION PROGRAM: (Applies to nonpublic schools only):* Daily Rate: $281.02
   (Includes Educational Counseling (not ed related mental health) services, Speech & Language services, Behavior Intervention Planning, and Occupational Therapy as specified on the student's IEP.)

   Estimated Number of Days 210 **x Daily Rate** $281.02 **= PROJECTED BASIC EDUCATION COSTS (A)** $59,014.20

   B. RELATED SERVICES:

SERVICE	Provider			# of Times per wk/mo/yr., Duration; or per IEP; or as needed	Cost per session	Maximum Number of Sessions	Estimated Maximum Total Cost for Contracted Period
	LEA	NPS	OTHER Specify				
Intensive Individual Services (340)		X		per IEP	$135.20 /hr	210 days	$28,392
Individual and Small Group Instruction (350) (Ages 3-5 only)							
Language and Speech (415)		X			INCLUDED		INCLUDED
Adapted Physical Ed. (425)							
Health and Nursing: Specialized Physical Health Care - LVN (435)							
Health and Nursing: Specialized Physical Health Care - RN (435)							
Health and Nursing: Specialized Physical Health Care - CRN (435)							

INDIVIDUAL SERVICES AGREEMENT FOR NONPUBLIC SCHOOL SERVICES

(Education Code Sections 56365 et seq.)

(FOR USE WITH SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT APPENDIX A: SCHOOLS)

2023-2024

SERVICE	Provider			# of Times per wk/mo/yr., Duration; or per IEP; or as needed	Cost per session	Maximum Number of Sessions	Estimated Maximum Total Cost for Contracted Period
	LEA	NPS	OTHER Specify				
Health and Nursing Services: Other - LVN (436)							
Health and Nursing Services: Other - RN (436)							
Health and Nursing Services: Other - CRN (436)							
Health and Nursing Services: Other - Health Aide/CNA (436)							
Assistive Technology Services - Credentialed (445)							
Assistive Technology Services – Classified (445)							
Occupational Therapy (450)		X			INCLUDED		INCLUDED
Physical Therapy (460)							
Physical Therapy - Licensed PT Assistant (460)							
Individual Counseling (510)							
Counseling and Guidance (515)							
Parent Counseling (520)							
Social Work Services (525)							
Psychological Services (530)							
Behavior Intervention Services (535) – BI Design		X			INCLUDED		INCLUDED
Behavior Intervention Services (535) – BI Implementation		X			INCLUDED		INCLUDED
Behavior Intervention Services (535) – BII (AIDE)							
Behavior Intervention Services (535) – BII (RBT)							
Specialized Services for Low Incidence Disabilities (610)							
Specialized Deaf and Hard of Hearing Services (710)							

INDIVIDUAL SERVICES AGREEMENT FOR NONPUBLIC SCHOOL SERVICES

(Education Code Sections 56365 et seq.)

(FOR USE WITH SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT APPENDIX A: SCHOOLS)

2023-2024

SERVICE	Provider			# of Times per wk/mo/yr., Duration; or per IEP; or as needed	Cost per session	Maximum Number of Sessions	Estimated Maximum Total Cost for Contracted Period
	LEA	NPS	OTHER Specify				
Interpreter Services (715)							
Interpreter Services – Shift Differential (715)							
Audiological Services (720)							
Specialized Vision Services (725)							
Orientation and Mobility (730)							
Braille Transcription (735)							
Specialized Orthopedic Service (740)							
Reader Services (745)							
Recreation Services, Including Therapeutic (760)							
College Awareness Preparation (820)							
Vocational Assessment, Counseling, Guidance and Career Assessment (830)							
Career Awareness (840)							
Work Experience Education (850)							
Job Coaching (855)							
Mentoring (860)							
Agency Linkages (referral and placement) (865)							
Travel Training (870)							
Other Transition Services (890)							
Other Services (900) Music Therapy							
Other Services (900) Vision Therapy							

INDIVIDUAL SERVICES AGREEMENT FOR NONPUBLIC SCHOOL SERVICES

(Education Code Sections 56365 et seq.)

(FOR USE WITH SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT APPENDIX A: SCHOOLS)

2023-2024

SERVICE	Provider			# of Times per wk/mo/yr., Duration; or per IEP; or as needed	Cost per session	Maximum Number of Sessions	Estimated Maximum Total Cost for Contracted Period
	LEA	NPS	OTHER Specify				
Other Service (900)							
Transportation-Emergency							
Bus Passes							

ESTIMATED MAXIMUM RELATED SERVICES COST (C)$ $28,392

4. Other Provisions/Attachments:

MASTER CONTRACT APPROVED BY THE GOVERNING BOARD ON September 7, 2023

INDIVIDUAL SERVICES AGREEMENT APPROVED BY CASE MANAGER:

8/22/2023 _____

(Signature) (Date)

The parties hereto have executed this Individual Services Agreement by and through their duly authorized agents or representatives as set forth below.

-CONTRACTOR-

The Institute for Effective Education (Mission Valley Academy)
(Name of Nonpublic School)

H Whiteside 8/22/2023
(Signature) (Date)

Hiliary Whiteside, Exeucutive Director
(Name and Title)

-DISTRICT-

San Ysidro School District
(Name of School District)

(Signature) (Date)

Marilyn Adrianzen, Business Chief Official
(Name of Superintendent or Authorized Designee)

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Special Education Department
Oscar Madera, Director

☐ Informational
☒ Action

AGENDA ITEM: SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT INTERIM WRITTEN APPROVAL WITH THE INSTITUTE FOR EFFECTIVE EDUCATION – CHILDREN'S WORKSHOP

BACKGROUND INFORMATION:

California's NonPublic Schools (NPS) are specialized schools that provide services to public school students with disabilities. *EC* Section 56034 defines a nonpublic, nonsectarian school (nonreligious) as a private, nonsectarian school that enrolls individuals with exceptional needs pursuant to an individualized education program. The tuition of a student in an NPS is paid by the public LEA that places the student in the NPS based on the student's individual needs. Unlike other private schools, each NPS is certified by the CDE.

In order to be in compliance with State and Federal Regulations, administration requests the approval of NPS Interim Written Approval (IWA) with The Institute for Effective Education for the 2024-2025 school year. While the NPS approved rates have not been released yet, the District and The Institute for Effective Education will be entering into an Interim Written Approval indicating the 2023-2024 approved rates. Once the new NPS approved rates are available, the District will reimburse the nonpublic school with the difference based on the newly NPS approved rates.

- Children's Workshop

RECOMMENDATION:

Approve/Ratify the San Diego County Nonpublic Master Contract Interim Written Approval with The Institute for Effective Education for the school year 2024-2025 to provide individualized education for students with exceptional needs. Cost implications estimated at $326,592 will be paid from the Special Education Fund.

LCAP GOAL AND ACTION/SERVICE:

Goal 1, Item 1.18: Continue to provide site and/or district based academic intervention programs to serve the districts unduplicated student groups (i.e. English Learners, Socio-Economically Disadvantaged, Students with Disabilities, etc.) and educationally disadvantaged students in Comprehensive Support and Improvements Schools. Personnel (e.g. instructional aides) may be hired to support in-class interventions for all student groups including unduplicated students at all school sites. Increase the instructional day to expand opportunities for students to accelerate learning through targeted intervention and enrichment to accelerate learning and increase engagement for all students including unduplicated students.

☐ **Renewal** ☒ **New** ☐ **Amendment** ☒ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

PROJECTED $326,592.00 (Amount)	Special Education (Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

San Diego County Nonpublic Master Contract
(For Use With APPENDIX A: SCHOOLS)

2024-2025

INTERIM WRITTEN APPROVAL

For Provision of Special Education/Related Services and Payment

Pursuant to the Master Contract (Main Document),

the Local Education Agency (LEA) San Ysidro School District

provides to the CONTRACTOR The Institute for Effrective Education - Children's Workshop

interim written approval for CONTRACTOR to provide the agreed upon Special Education and/or Related Services

identified in the most recent IEP/IFSP of All Assigned Students,
(Student Name)

at the rates set forth in Appendix A: Schools of the Master Contract for the 20 24 - 20 25 Contract Year.

Anticipated Student Start Date: July 1, 2024.

This interim written approval shall be for a maximum period of one hundred eighty (180) days, beginning with the anticipated student start date at the nonpublic school or nonpublic agency. If an Individual Services Agreement and/or Master Contract is not completed and executed by the LEA and the CONTRACTOR within this one hundred eighty (180) day period, the LEA or CONTRACTOR may request an IEP meeting to be held as soon as possible to discuss a change in placement for the pupil. The LEA shall continue to reimburse the CONTRACTOR as set forth in the interim written approval, or as otherwise agreed by the parties in writing, pending any change in placement or subsequent execution of an Individual Services Agreement.

This interim written approval does not require the CONTRACTOR to provide services for one hundred eighty (180) days, or for any maximum period of time. The parties have already agreed, or may agree, to hold an IEP meeting within thirty (30) days of the student's first day of attendance.

Agreed to by the District Representative of the Special Education Unit of the LEA:

_____ _____
Signature Date

Marilyn Adrianzen, Chief Business Official
Name/Title

Agreed to by the CONTRACTOR:

H Whiteside 7/19/24
Signature Date

Hillary Whiteside, Executive Director
Name/Title

INDIVIDUAL SERVICES AGREEMENT FOR NONPUBLIC SCHOOL SERVICES

(Education Code Sections 56365 et seq.)

(FOR USE WITH SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT APPENDIX A: SCHOOLS)

2023-2024

This agreement is effective on July 1, 2023 or the date student begins attending a nonpublic school or receiving services from a nonpublic agency, if after the date identified, and terminates at 5:00 P.M. on June 30, 2024, unless sooner terminated as provided in the Master Contract and by applicable law.

Local Education Agency (LEA) San Ysidro School District Nonpublic School The Institute for Effective Education (Children's Workshop)

LEA Case Manager: Name Oscar Madera Phone Number (619) 428 – 4476

Pupil Name JR _____ _____ _____ Sex: M F Grade: _____
(Last) (First) (M.I.)

Address _____ City San Diego State/Zip 92154

DOB _____ Residential Setting: ☒ Home ☐ Foster ☐ LCI # _____ ☐ OTHER _____

Parent/Guardian _____ Phone (619) _____ ( )_____
(Residence) (Business)

Address _____ City _____ State/Zip _____
(If different from student)

AGREEMENT TERMS:

1. *Nonpublic School*: The average number of minutes in the instructional day will be: 300 during the regular school year
   300 during the extended school year
2. *Nonpublic School*: The number of school days in the calendar of the school year are: 180 during the regular school year
   30 during the extended school year
3. *Educational services as specified in the IEP shall be provided by the CONTRACTOR and paid at the rates specified below.*

   A. *INCLUSIVE EDUCATION PROGRAM: (Applies to nonpublic schools only):* Daily Rate: 383.20
   (Includes Educational Counseling (not ed related mental health) services, Speech & Language services, Behavior Intervention Planning, and Occupational Therapy as specified on the student's IEP.)

   Estimated Number of Days 210 **x Daily Rate** 383.20 **= PROJECTED BASIC EDUCATION COSTS (A)** $80,472

   B. RELATED SERVICES:

SERVICE	Provider			# of Times per wk/mo/yr., Duration; or per IEP; or as needed	Cost per session	Maximum Number of Sessions	Estimated Maximum Total Cost for Contracted Period
	LEA	NPS	OTHER Specify				
Intensive Individual Services (340)		X		per IEP	135.20/hr	210 days	$28,392
Individual and Small Group Instruction (350) (Ages 3-5 only)							
Language and Speech (415)		X			INCLUDED		INCLUDED
Adapted Physical Ed. (425)							
Health and Nursing: Specialized Physical Health Care - LVN (435)							
Health and Nursing: Specialized Physical Health Care - RN (435)							
Health and Nursing: Specialized Physical Health Care - CRN (435)							

INDIVIDUAL SERVICES AGREEMENT FOR NONPUBLIC SCHOOL SERVICES

(Education Code Sections 56365 et seq.)

(FOR USE WITH SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT APPENDIX A: SCHOOLS)

2023-2024

SERVICE	Provider			# of Times per wk/mo/yr., Duration; or per IEP; or as needed	Cost per session	Maximum Number of Sessions	Estimated Maximum Total Cost for Contracted Period
	LEA	NPS	OTHER Specify				
Health and Nursing Services: Other - LVN (436)							
Health and Nursing Services: Other - RN (436)							
Health and Nursing Services: Other - CRN (436)							
Health and Nursing Services: Other - Health Aide/CNA (436)							
Assistive Technology Services - Credentialed (445)							
Assistive Technology Services – Classified (445)							
Occupational Therapy (450)		X			INCLUDED		INCLUDED
Physical Therapy (460)							
Physical Therapy - Licensed PT Assistant (460)							
Individual Counseling (510)							
Counseling and Guidance (515)							
Parent Counseling (520)							
Social Work Services (525)							
Psychological Services (530)							
Behavior Intervention Services (535) – BI Design							
Behavior Intervention Services (535) – BI Implementation							
Behavior Intervention Services (535) – BII (AIDE)							
Behavior Intervention Services (535) – BII (RBT)							
Specialized Services for Low Incidence Disabilities (610)							
Specialized Deaf and Hard of Hearing Services (710)							

INDIVIDUAL SERVICES AGREEMENT FOR NONPUBLIC SCHOOL SERVICES

(Education Code Sections 56365 et seq.)

(FOR USE WITH SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT APPENDIX A: SCHOOLS)

2023-2024

SERVICE	Provider			# of Times per wk/mo/yr., Duration; or per IEP; or as needed	Cost per session	Maximum Number of Sessions	Estimated Maximum Total Cost for Contracted Period
	LEA	NPS	OTHER Specify				
Interpreter Services (715)							
Interpreter Services – Shift Differential (715)							
Audiological Services (720)							
Specialized Vision Services (725)							
Orientation and Mobility (730)							
Braille Transcription (735)							
Specialized Orthopedic Service (740)							
Reader Services (745)							
Recreation Services, Including Therapeutic (760)							
College Awareness Preparation (820)							
Vocational Assessment, Counseling, Guidance and Career Assessment (830)							
Career Awareness (840)							
Work Experience Education (850)							
Job Coaching (855)							
Mentoring (860)							
Agency Linkages (referral and placement) (865)							
Travel Training (870)							
Other Transition Services (890)							
Other Services (900) Music Therapy							
Other Services (900) Vision Therapy							

INDIVIDUAL SERVICES AGREEMENT FOR NONPUBLIC SCHOOL SERVICES

(Education Code Sections 56365 et seq.)

(FOR USE WITH SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT APPENDIX A: SCHOOLS)

2023-2024

SERVICE	Provider			# of Times per wk/mo/yr., Duration; or per IEP; or as needed	Cost per session	Maximum Number of Sessions	Estimated Maximum Total Cost for Contracted Period
	LEA	NPS	OTHER Specify				
Other Service (900)							
Transportation-Emergency							
Bus Passes							

ESTIMATED MAXIMUM RELATED SERVICES COST (C)$ 28,392

4. Other Provisions/Attachments:

MASTER CONTRACT APPROVED BY THE GOVERNING BOARD ON _____

INDIVIDUAL SERVICES AGREEMENT APPROVED BY CASE MANAGER:

(Signature) 7/31/2023 (Date)

The parties hereto have executed this Individual Services Agreement by and through their duly authorized agents or representatives as set forth below.

-CONTRACTOR-	-DISTRICT-
The Institute for Effective Education (Children's Workshop)	San Ysidro School District
(Name of Nonpublic School)	(Name of School District)
(Signature) 7/31/23 (Date)	(Signature) (Date)
Hillary Whiteside, Executive Director	Marilyn Adrianzen, Business Chief Official
(Name and Title)	(Name of Superintendent or Authorized Designee)

INDIVIDUAL SERVICES AGREEMENT FOR NONPUBLIC SCHOOL SERVICES

(Education Code Sections 56365 et seq.)

(FOR USE WITH SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT APPENDIX A: SCHOOLS)

2023-2024

This agreement is effective on Septembet 1, 2023 or the date student begins attending a nonpublic school or receiving services from a nonpublic agency, if after the date identified, and terminates at 5:00 P.M. on June 30, 2023, unless sooner terminated as provided in the Master Contract and by applicable law.

Local Education Agency (LEA) San Ysidro School District Nonpublic School The Institute for Effective Education (Children's Workshop)

LEA Case Manager: Name Oscar Madera Phone Number (619) 428 – 4476

Pupil Name JER _____ S Sex: M ☐ F Grade: _____
(Last) (First) (M.I.)

Address _____ City _____ State/Zip CA 92173

DOB _____ Residential Setting: ☒ Home ☐ Foster ☐ LCI # _____ ☐ OTHER _____

Parent/Guardian _____ Phone (619) _____ ( ) _____
(Residence) (Business)

Address _____ City _____ State/Zip _____
(If different from student)

AGREEMENT TERMS:

1. *Nonpublic School*: The average number of minutes in the instructional day will be: 300 during the regular school year
   300 during the extended school year

2. *Nonpublic School*: The number of school days in the calendar of the school year are: 180 during the regular school year
   30 during the extended school year

3. *Educational services as specified in the IEP shall be provided by the CONTRACTOR and paid at the rates specified below.*

   A. *INCLUSIVE EDUCATION PROGRAM: (Applies to nonpublic schools only):* Daily Rate: 383.20
   (Includes Educational Counseling (not ed related mental health) services, Speech & Language services, Behavior Intervention Planning, and Occupational Therapy as specified on the student's IEP.)

   Estimated Number of Days 210 x Daily Rate 383.20 = PROJECTED BASIC EDUCATION COSTS (A) $80,472

   B. RELATED SERVICES:

SERVICE	Provider			# of Times per wk/mo/yr., Duration; or per IEP; or as needed	Cost per session	Maximum Number of Sessions	Estimated Maximum Total Cost for Contracted Period
	LEA	NPS	OTHER Specify				
Intensive Individual Services (340)		X		per IEP	135.20	210 days	$28,392
Individual and Small Group Instruction (350) (Ages 3-5 only)							
Language and Speech (415)		X			INCLUDED		INCLUDED
Adapted Physical Ed. (425)							
Health and Nursing: Specialized Physical Health Care - LVN (435)							
Health and Nursing: Specialized Physical Health Care - RN (435)							
Health and Nursing: Specialized Physical Health Care - CRN (435)							

INDIVIDUAL SERVICES AGREEMENT FOR NONPUBLIC SCHOOL SERVICES

(Education Code Sections 56365 et seq.)

(FOR USE WITH SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT APPENDIX A: SCHOOLS)

2023-2024

SERVICE	Provider			# of Times per wk/mo/yr., Duration; or per IEP; or as needed	Cost per session	Maximum Number of Sessions	Estimated Maximum Total Cost for Contracted Period
	LEA	NPS	OTHER Specify				
Health and Nursing Services: Other - LVN (436)							
Health and Nursing Services: Other - RN (436)							
Health and Nursing Services: Other - CRN (436)							
Health and Nursing Services: Other - Health Aide/CNA (436)							
Assistive Technology Services - Credentialed (445)							
Assistive Technology Services – Classified (445)							
Occupational Therapy (450)		X			INCLUDED		INCLUDED
Physical Therapy (460)							
Physical Therapy - Licensed PT Assistant (460)							
Individual Counseling (510)							
Counseling and Guidance (515)							
Parent Counseling (520)							
Social Work Services (525)							
Psychological Services (530)							
Behavior Intervention Services (535) – BI Design							
Behavior Intervention Services (535) – BI Implementation							
Behavior Intervention Services (535) – BII (AIDE)							
Behavior Intervention Services (535) – BII (RBT)							
Specialized Services for Low Incidence Disabilities (610)							
Specialized Deaf and Hard of Hearing Services (710)							

INDIVIDUAL SERVICES AGREEMENT FOR NONPUBLIC SCHOOL SERVICES

(Education Code Sections 56365 et seq.)

(FOR USE WITH SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT APPENDIX A: SCHOOLS)

2023-2024

SERVICE	Provider			# of Times per wk/mo/yr., Duration; or per IEP; or as needed	Cost per session	Maximum Number of Sessions	Estimated Maximum Total Cost for Contracted Period
	LEA	NPS	OTHER Specify				
Interpreter Services (715)							
Interpreter Services – Shift Differential (715)							
Audiological Services (720)							
Specialized Vision Services (725)							
Orientation and Mobility (730)							
Braille Transcription (735)							
Specialized Orthopedic Service (740)							
Reader Services (745)							
Recreation Services, Including Therapeutic (760)							
College Awareness Preparation (820)							
Vocational Assessment, Counseling, Guidance and Career Assessment (830)							
Career Awareness (840)							
Work Experience Education (850)							
Job Coaching (855)							
Mentoring (860)							
Agency Linkages (referral and placement) (865)							
Travel Training (870)							
Other Transition Services (890)							
Other Services (900) Music Therapy							
Other Services (900) Vision Therapy							

INDIVIDUAL SERVICES AGREEMENT FOR NONPUBLIC SCHOOL SERVICES

(Education Code Sections 56365 et seq.)

(FOR USE WITH SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT APPENDIX A: SCHOOLS)

2023-2024

SERVICE	Provider			# of Times per wk/mo/yr., Duration; or per IEP; or as needed	Cost per session	Maximum Number of Sessions	Estimated Maximum Total Cost for Contracted Period
	LEA	NPS	OTHER Specify				
Other Service (900)							
Transportation-Emergency							
Bus Passes							

ESTIMATED MAXIMUM RELATED SERVICES COST (C)$ 28,392

4. Other Provisions/Attachments:

MASTER CONTRACT APPROVED BY THE GOVERNING BOARD ON _____

INDIVIDUAL SERVICES AGREEMENT APPROVED BY CASE MANAGER:

(Signature) 8/28/2023 (Date)

The parties hereto have executed this Individual Services Agreement by and through their duly authorized agents or representatives as set forth below.

-CONTRACTOR-	-DISTRICT-
The Institute for Effective Education (Children's Workshop)	San Ysidro School District
(Name of Nonpublic School)	(Name of School District)
HWhiteside 8/28/2023	
(Signature) (Date)	(Signature) (Date)
Hillary Whiteside, Executive Director	Marilyn Adrianzen, Business Chief Official
(Name and Title)	(Name of Superintendent or Authorized Designee)

INDIVIDUAL SERVICES AGREEMENT FOR NONPUBLIC SCHOOL SERVICES

(Education Code Sections 56365 et seq.)

(FOR USE WITH SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT APPENDIX A: SCHOOLS)

2023-2024

This agreement is effective on March 11, 2024 or the date student begins attending a nonpublic school or receiving services from a nonpublic agency, if after the date identified, and terminates at 5:00 P.M. on June 30, 2024, unless sooner terminated as provided in the Master Contract and by applicable law.

Local Education Agency (LEA) San Ysidro School District Nonpublic School The Institute for Effective Education (Children's Workshop)

LEA Case Manager: Name Oscar Madera Phone Number (619) 428 – 4476

Pupil Name JJ (Last) [redacted] (First) [redacted] (M.I.) Sex: M F Grade: [redacted]

Address [redacted] City San Diego State/Zip CA 92154

DOB [redacted] Residential Setting: ☒ Home ☐ Foster ☐ LCI # [redacted] ☐ OTHER [redacted]

Parent/Guardian [redacted] Phone (619) [redacted] (Residence) ( ) [redacted] (Business)

Address [redacted] City [redacted] State/Zip [redacted]
(If different from student)

AGREEMENT TERMS:

1. *Nonpublic School*: The average number of minutes in the instructional day will be: 300 during the regular school year
   300 during the extended school year
2. *Nonpublic School*: The number of school days in the calendar of the school year are: 61 during the regular school year
   30 during the extended school year
3. *Educational services as specified in the IEP shall be provided by the CONTRACTOR and paid at the rates specified below.*

   A. *INCLUSIVE EDUCATION PROGRAM: (Applies to nonpublic schools only):* Daily Rate: 383.20
   (Includes Educational Counseling (not ed related mental health) services, Speech & Language services, Behavior Intervention Planning, and Occupational Therapy as specified on the student's IEP.)

   Estimated Number of Days 91 x Daily Rate 383.20 = PROJECTED BASIC EDUCATION COSTS (A) $34,871.20

   B. RELATED SERVICES:

SERVICE	Provider			# of Times per wk/mo/yr., Duration; or per IEP; or as needed	Cost per session	Maximum Number of Sessions	Estimated Maximum Total Cost for Contracted Period
	LEA	NPS	OTHER Specify				
Intensive Individual Services (340)		X		per IEP	135.20	91 days	$12,303.20
Individual and Small Group Instruction (350) (Ages 3-5 only)							
Language and Speech (415)		X			INCLUDED		INCLUDED
Adapted Physical Ed. (425)							
Health and Nursing: Specialized Physical Health Care - LVN (435)							
Health and Nursing: Specialized Physical Health Care - RN (435)							
Health and Nursing: Specialized Physical Health Care - CRN (435)							

INDIVIDUAL SERVICES AGREEMENT FOR NONPUBLIC SCHOOL SERVICES

(Education Code Sections 56365 et seq.)

(FOR USE WITH SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT APPENDIX A: SCHOOLS)

2023-2024

SERVICE	Provider			# of Times per wk/mo/yr., Duration; or per IEP; or as needed	Cost per session	Maximum Number of Sessions	Estimated Maximum Total Cost for Contracted Period
	LEA	NPS	OTHER Specify				
Health and Nursing Services: Other - LVN (436)							
Health and Nursing Services: Other - RN (436)							
Health and Nursing Services: Other - CRN (436)							
Health and Nursing Services: Other - Health Aide/CNA (436)							
Assistive Technology Services - Credentialed (445)							
Assistive Technology Services – Classified (445)							
Occupational Therapy (450)		X			INCLUDED		INCLUDED
Physical Therapy (460)							
Physical Therapy - Licensed PT Assistant (460)							
Individual Counseling (510)							
Counseling and Guidance (515)							
Parent Counseling (520)							
Social Work Services (525)							
Psychological Services (530)							
Behavior Intervention Services (535) – BI Design							
Behavior Intervention Services (535) – BI Implementation							
Behavior Intervention Services (535) – BII (AIDE)							
Behavior Intervention Services (535) – BII (RBT)							
Specialized Services for Low Incidence Disabilities (610)							
Specialized Deaf and Hard of Hearing Services (710)							

INDIVIDUAL SERVICES AGREEMENT FOR NONPUBLIC SCHOOL SERVICES

(Education Code Sections 56365 et seq.)

(FOR USE WITH SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT APPENDIX A: SCHOOLS)

2023-2024

SERVICE	Provider			# of Times per wk/mo/yr., Duration; or per IEP; or as needed	Cost per session	Maximum Number of Sessions	Estimated Maximum Total Cost for Contracted Period
	LEA	NPS	OTHER Specify				
Other Service (900)							
Transportation-Emergency							
Bus Passes							

ESTIMATED MAXIMUM RELATED SERVICES COST (C) $ $12,303.20

4. Other Provisions/Attachments:

MASTER CONTRACT APPROVED BY THE GOVERNING BOARD ON August 10, 2023

INDIVIDUAL SERVICES AGREEMENT APPROVED BY CASE MANAGER:

(Signature) 3/20/24 (Date)

The parties hereto have executed this Individual Services Agreement by and through their duly authorized agents or representatives as set forth below.

-CONTRACTOR-

The Institute for Effective Education (Children's Workshop)
(Name of Nonpublic School)

(Signature) 3/8/24 (Date)

Hillary Whiteside, Executive Director
(Name and Title)

-DISTRICT-

San Ysidro School District
(Name of School District)

(Signature) 4/15/24 (Date)

Marilyn Adrianzen, Business Chief Official
(Name of Superintendent or Authorized Designee)

Board approved/ratified: 04-11-24

INDIVIDUAL SERVICES AGREEMENT FOR NONPUBLIC SCHOOL SERVICES

(Education Code Sections 56365 et seq.)

(FOR USE WITH SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT APPENDIX A: SCHOOLS)

2023-2024

SERVICE	Provider			# of Times per wk/mo/yr., Duration; or per IEP; or as needed	Cost per session	Maximum Number of Sessions	Estimated Maximum Total Cost for Contracted Period
	LEA	NPS	OTHER Specify				
Interpreter Services (715)							
Interpreter Services – Shift Differential (715)							
Audiological Services (720)							
Specialized Vision Services (725)							
Orientation and Mobility (730)							
Braille Transcription (735)							
Specialized Orthopedic Service (740)							
Reader Services (745)							
Recreation Services, Including Therapeutic (760)							
College Awareness Preparation (820)							
Vocational Assessment, Counseling, Guidance and Career Assessment (830)							
Career Awareness (840)							
Work Experience Education (850)							
Job Coaching (855)							
Mentoring (860)							
Agency Linkages (referral and placement) (865)							
Travel Training (870)							
Other Transition Services (890)							
Other Services (900) Music Therapy							
Other Services (900) Vision Therapy							

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Special Education Department
Oscar Madera, Director

☐ Informational
☒ Action

AGENDA ITEM: SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT INTERIM WRITTEN APPROVAL WITH STEIN EDUCATION CENTER

BACKGROUND INFORMATION:
California's NonPublic Schools (NPS) are specialized schools that provide services to public school students with disabilities. *EC* Section 56034 defines a nonpublic, nonsectarian school (nonreligious) as a private, nonsectarian school that enrolls individuals with exceptional needs pursuant to an individualized education program. The tuition of a student in an NPS is paid by the public LEA that places the student in the NPS based on the student's individual needs. Unlike other private schools, each NPS is certified by the CDE.

In order to be in compliance with State and Federal Regulations, administration requests the approval of NPS Interim Written Approval (IWA) with Stein Education for the 2024-2025 school year. While the NPS approved rates have not been released yet, the District and Stein Education Center will be entering into an Interim Written Approval indicating the 2023-2024 approved rates. Once the new NPS approved rates are available, the District will reimburse the nonpublic school with the difference based on the newly NPS approved rates.

Cost Implications:

- Student A: $99,243.20

RECOMMENDATION:
Approve/Ratify the San Diego County Nonpublic Master Contract Interim Written Approval with Stein Education Center for the school year 2024-2025 to provide individualized education for students with exceptional needs. Cost implications of $99,243.00 will be paid from the Special Education Fund.

LCAP GOAL AND ACTION/SERVICE:
Goal 1, Student Achievement Action 1.3: Provide certificated and classified staffing to support students, including teachers, site and district office staff, instructional aides, speech therapists, health care assistants, LVNs, behavioral specialists, and site and district administrators.

☒ **Renewal** ☐ **New** ☐ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

$99,243.20	Special Education
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

San Diego County Nonpublic Master Contract
(For Use With APPENDIX A: SCHOOLS)

2024-2025

INTERIM WRITTEN APPROVAL

For Provision of Special Education/Related Services and Payment

Pursuant to the Master Contract (Main Document),

the Local Education Agency (LEA) San Ysidro School District

provides to the CONTRACTOR Stein Education Center

interim written approval for CONTRACTOR to provide the agreed upon Special Education and/or Related Services

identified in the most recent IEP/IFSP of All Assigned Students,
(Student Name)

at the rates set forth in Appendix A: Schools of the Master Contract for the 20 24 - 20 25 Contract Year.

Anticipated Student Start Date: July 1, 2024.

This interim written approval shall be for a maximum period of one hundred eighty (180) days, beginning with the anticipated student start date at the nonpublic school or nonpublic agency. If an Individual Services Agreement and/or Master Contract is not completed and executed by the LEA and the CONTRACTOR within this one hundred eighty (180) day period, the LEA or CONTRACTOR may request an IEP meeting to be held as soon as possible to discuss a change in placement for the pupil. The LEA shall continue to reimburse the CONTRACTOR as set forth in the interim written approval, or as otherwise agreed by the parties in writing, pending any change in placement or subsequent execution of an Individual Services Agreement.

This interim written approval does not require the CONTRACTOR to provide services for one hundred eighty (180) days, or for any maximum period of time. The parties have already agreed, or may agree, to hold an IEP meeting within thirty (30) days of the student's first day of attendance.

Agreed to by the District Representative of the Special Education Unit of the LEA:

Signature _____ Date _____

Marilyn Adrianzen, Chief Business Official
Name/Title

Agreed to by the CONTRACTOR:

Signature _____ Date 7/12/2024

Chayo Chavez, M.S., Director of Education Program
Name/Title

INDIVIDUAL SERVICES AGREEMENT FOR NONPUBLIC SCHOOL SERVICES

(Education Code Sections 56365 et seq.)

(FOR USE WITH SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT APPENDIX A: SCHOOLS)

2023-2024

This agreement is effective on July 1, 2023 or the date student begins attending a nonpublic school or receiving services from a nonpublic agency, if after the date identified, and terminates at 5:00 P.M. on June 30, 2024, unless sooner terminated as provided in the Master Contract and by applicable law.

Local Education Agency (LEA) San Ysidro School District Nonpublic School Stein Education Center

LEA Case Manager: Name Oscar Madera Phone Number (619) 428-4476

Pupil Name SR (Last) (First) (M.I.) Sex: M F Grade:

Address City San Diego State/Zip CA 92154

DOB Residential Setting: ☒ Home ☐ Foster ☐ LCI # ☐ OTHER

Parent/Guardian Phone ( ) (Residence) ( ) (Business)

Address City State/Zip
(If different from student)

AGREEMENT TERMS:

1. *Nonpublic School*: The average number of minutes in the instructional day will be: 315 during the regular school year
   during the extended school year
2. *Nonpublic School*: The number of school days in the calendar of the school year are: 180 during the regular school year
   40 during the extended school year
3. *Educational services as specified in the IEP shall be provided by the CONTRACTOR and paid at the rates specified below.*

   A. *INCLUSIVE EDUCATION PROGRAM: (Applies to nonpublic schools only):* Daily Rate: 315.34
   (Includes Educational Counseling (not ed related mental health) services, Speech & Language services, Behavior Intervention Planning, and Occupational Therapy as specified on the student's IEP.)

   Estimated Number of Days 220 **x Daily Rate** 315.34 **= PROJECTED BASIC EDUCATION COSTS (A)** 69374.80

   B. RELATED SERVICES:

SERVICE	Provider			# of Times per wk/mo/yr., Duration; or per IEP; or as needed	Cost per session	Maximum Number of Sessions	Estimated Maximum Total Cost for Contracted Period
	LEA	NPS	OTHER Specify				
Intensive Individual Services (340)		X		per IEP	25.86/hr 135.77/day	220	29868.40
Individual and Small Group Instruction (350) (Ages 3-5 only)							
Language and Speech (415)		X		per IEP	INCLUDED		INCLUDED
Adapted Physical Ed. (425)							
Health and Nursing: Specialized Physical Health Care - LVN (435)							
Health and Nursing: Specialized Physical Health Care - RN (435)							
Health and Nursing: Specialized Physical Health Care - CRN (435)							

INDIVIDUAL SERVICES AGREEMENT FOR NONPUBLIC SCHOOL SERVICES

(Education Code Sections 56365 et seq.)

(FOR USE WITH SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT APPENDIX A: SCHOOLS)

2023-2024

SERVICE	Provider			# of Times per wk/mo/yr., Duration; or per IEP; or as needed	Cost per session	Maximum Number of Sessions	Estimated Maximum Total Cost for Contracted Period
	LEA	NPS	OTHER Specify				
Health and Nursing Services: Other - LVN (436)							
Health and Nursing Services: Other - RN (436)							
Health and Nursing Services: Other - CRN (436)							
Health and Nursing Services: Other - Health Aide/CNA (436)							
Assistive Technology Services - Credentialed (445)							
Assistive Technology Services – Classified (445)							
Occupational Therapy (450)		X	per IEP		INCLUDED		INCLUDED
Physical Therapy (460)							
Physical Therapy - Licensed PT Assistant (460)							
Individual Counseling (510)							
Counseling and Guidance (515)							
Parent Counseling (520)							
Social Work Services (525)							
Psychological Services (530)							
Behavior Intervention Services (535) – BI Design		X			INCLUDED		INCLUDED
Behavior Intervention Services (535) – BI Implementation		X			INCLUDED		INCLUDED
Behavior Intervention Services (535) – BII (AIDE)							
Behavior Intervention Services (535) – BII (RBT)							
Specialized Services for Low Incidence Disabilities (610)							
Specialized Deaf and Hard of Hearing Services (710)							

INDIVIDUAL SERVICES AGREEMENT FOR NONPUBLIC SCHOOL SERVICES

(Education Code Sections 56365 et seq.)

(FOR USE WITH SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT APPENDIX A: SCHOOLS)

2023-2024

SERVICE	Provider			# of Times per wk/mo/yr., Duration; or per IEP; or as needed	Cost per session	Maximum Number of Sessions	Estimated Maximum Total Cost for Contracted Period
	LEA	NPS	OTHER Specify				
Interpreter Services (715)							
Interpreter Services – Shift Differential (715)							
Audiological Services (720)							
Specialized Vision Services (725)							
Orientation and Mobility (730)							
Braille Transcription (735)							
Specialized Orthopedic Service (740)							
Reader Services (745)							
Recreation Services, Including Therapeutic (760)							
College Awareness Preparation (820)							
Vocational Assessment, Counseling, Guidance and Career Assessment (830)							
Career Awareness (840)							
Work Experience Education (850)							
Job Coaching (855)							
Mentoring (860)							
Agency Linkages (referral and placement) (865)							
Travel Training (870)							
Other Transition Services (890)							
Other Services (900) Music Therapy							
Other Services (900) Vision Therapy							

INDIVIDUAL SERVICES AGREEMENT FOR NONPUBLIC SCHOOL SERVICES

(Education Code Sections 56365 et seq.)

(FOR USE WITH SAN DIEGO COUNTY NONPUBLIC MASTER CONTRACT APPENDIX A: SCHOOLS)

2023-2024

SERVICE	Provider			# of Times per wk/mo/yr., Duration; or per IEP; or as needed	Cost per session	Maximum Number of Sessions	Estimated Maximum Total Cost for Contracted Period
	LEA	NPS	OTHER Specify				
Other Service (900)							
Transportation-Emergency		X		Per Master Contract			
Bus Passes		X			23.00/mo		

ESTIMATED MAXIMUM RELATED SERVICES COST (C)$ 29,868.40

4. Other Provisions/Attachments:

MASTER CONTRACT APPROVED BY THE GOVERNING BOARD ON _____

INDIVIDUAL SERVICES AGREEMENT APPROVED BY CASE MANAGER:

(Signature) 7/31/2023 (Date)

The parties hereto have executed this Individual Services Agreement by and through their duly authorized agents or representatives as set forth below.

-CONTRACTOR-	-DISTRICT-
Stein Education Center (Name of Nonpublic School)	San Ysidro School District (Name of School District)
(Signature) 7/28/23 (Date)	(Signature) (Date)
Chayo Chavez, M.S., Director of Education Program (Name and Title)	Marilyn Adrianzen, Chief Business Official (Name of Superintendent or Authorized Designee)

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Special Education Department
Oscar Madera, Director

☐ Informational
☒ Action

AGENDA ITEM: AGREEMENT WITH CONNECT4KIDS PSYCHOLOGICAL SERVICES

BACKGROUND INFORMATION:
Federal law section 34 C.F.R. 300.503 defines an Independent Educational Evaluation (IEE) as "an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question."

Connect4Kids Psychological Services, an independent agency, has been selected by the parents to perform independent psychological, functional behavior assessment, related services independent assessments, educationally-based mental health evaluation and academic assessment for their child with special needs.

Cost implications: $2,620.00 to $4,950.00 per evaluation including IEP attendance for presentation of report.

RECOMMENDATION:
Approve/Ratify the increase in cost implication with Connect4Kids Psychological Services for the 2024-2025 school year to provide independent evaluations for a student with special needs. Cost implication will be paid from the Special Education fund.

LCAP GOAL AND ACTION/SERVICE:
Goal 1: Student Achievement, Action 1.18: Continue to provide site and/or district based academic intervention programs to serve the districts unduplicated student groups (i.e., English Learners, Socio-Economically Disadvantaged, Students with Disabilities, etc.) and educationally disadvantaged students in Comprehensive Support and Improvements Schools. Personnel (e.g., instructional aides) may be hired to support in-class interventions for all student groups including unduplicated students at all school sites.

☐ **Renewal** ☒ **New** ☐ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

TBD	Special Education Fund
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

SAN YSIDRO SCHOOL DISTRICT

4350 Otay Mesa Road, San Ysidro, CA 92173

PROFESSIONAL SERVICES AGREEMENT

This agreement is made and entered into this 21st day of June, 2024, by and between the San Ysidro School District, hereinafter called the "District", and

Connect4Kids Psychological Services	(858) 798-9900
Company/Consultant	Telephone Number
2235 Encinitas Blvd, Ste 108, Encinitas, CA 92025	www.connect-4kids.org
Address	Website

hereinafter referred to as "Consultant."

1 SCOPE AND TERMS

1.1 SCOPE OF SERVICES

Scope of Services. In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the Consultant Services Documentation ("attached documents") attached hereto as ***Exhibit "A"*** and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the District entering into this Agreement, Consultant represents and warrants that Consultant is a provider of first class work and services and Consultant is experienced in performing the work and services contemplated herein and, in light of such status and experience, Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials shall be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

Compliance with Law. All services rendered hereunder shall be provided in accordance with any and all applicable ordinances, resolutions, statutes, rules, and regulations of the District, City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered. Each and every provision required by law to be included in this Agreement shall be deemed to be included by this reference, and this Agreement shall be read and enforced as though they were included.

Licenses, Permits, Fees and Assessments. Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless District against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against District hereunder.

1.2 TERM

From: May 17, 2024 To: June 30, 2025

The Term of this Agreement as noted, unless earlier terminated as provided herein. The Parties may mutually agree to extend this term only by written amendment. Should the Parties agree to extend the term of this Agreement; the Agreement can only be extended on a year-to-year basis with written approval unless otherwise indicated in writing and in accordance with the law. Agreements are limited to a total of 5 years at which point a new Agreement will be needed.

2 FEES AND PAYMENTS

2.1 FEES

District shall pay Consultant for the specified services as reflected on ***Exhibit A*** during this contract term.

2.2 PAYMENTS

Consultant shall submit to District an itemized invoice which indicates work completed by Consultant. District shall review each invoice and/or receipts submitted to determine that the work performed, and expenses incurred are in compliance with the provisions of this Agreement. District shall pay Consultant within 30-days of receipt of an acceptable invoice from Consultant.

3. ADDITIONAL SERVICES.

District shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work as described herein. No such extra work may be undertaken unless a written order is first given by the District Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval or ratification of the Contract Officer. However, any increase in compensation beyond the Contract Sum, for services beyond what is contemplated in the Contract, must be approved or ratified by the Board of Education in a signed writing prior to any payment. Additionally, any other increases, extensions or renewals must be approved in writing by the Board of Education. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefore unless specifically authorized pursuant to the terms of this section.

4 RESPONSIBLIITIES OF CONSULTANT

4.1 ORGANIZATION

Consultant shall assign a Company Contact as Project Manager. The Project manager shall not be removed from the Project or reassigned without the prior written consent of District, which consent shall not be unreasonably withheld. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Agreement.

4.2 COORDINATION OF SERVICES

Consultant agrees to work closely with the District staff in the performance of Services and shall be available to the District staff, consultants and other staff at all reasonable times.

4.3 STANDARD OF CARE:

Consultant shall perform all Services under this Agreement in a skillful, competent and timely manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all of Consultant's employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant further represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any of Consultant's employees who are determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any of Consultant's employees who fail or refuse to perform the Services in a manner acceptable to District, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

4.4 INDEPENDENT CONSULTANT & ADDITIONAL PERSONNEL

Consultant is retained as an independent consultant and is not an agent or employee of the District. No employee or agent of Consultant shall by this Agreement become an agent or employee of the District. The work to be performed shall be in accordance with the work described herein, subject to such direction and amendments from District as herein provided. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind District to any obligation whatsoever, except as specifically provided in writing by District. Any additional personnel

performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law.

4.5 LAWS AND REGULATIONS

The Contractor shall be subject to, and shall comply with, all federal, state, and local laws and regulations applicable to its performance under this Agreement including, but not limited to: licensing, employment, purchasing practices, wages, hours, and conditions of employment, including non-discrimination and COVID requirements as stated in **Attachment No. 2** to this agreement. Consultant shall be liable for all violations of such laws and regulations in connection with Services.

4.6 MAINTENANCE OF ACCOUNTING RECORDS

Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of the District during normal business hours with reasonable notice to examine, audit and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

4.7 INSURANCE – Consultant shall comply with the following insurance provisions, unless one or more paragraphs are specifically waived by the District in writing.

(1) Time for Compliance. Consultant shall not commence Services under this Agreement until it has provided evidence satisfactory to District that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subconsultant or employee to commence work until it has provided evidence satisfactory to the District.

(2) Minimum Requirements and Limits. Consultant shall, at its expense, procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the consultant, its agents, representatives, and employees. Such insurance shall survive after this agreement as permitted by law.

MINIMUM SCOPE OF INSURANCE - Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, sexual misconduct and personal & advertising injury with limits no less than **$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be **$2,000,000** the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation (Employer's Insurance if applicable):** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease. Coverage shall include waiver of subrogation endorsement in favor of San Ysidro School District.
4. **Professional Liability (Errors and Omissions):** Insurance appropriates to the Consultant's profession, with limit no less than $1,000,000 per occurrence or claim, $2,000,000 aggregate. *(If applicable – see footnote next page)* **District waives** _____
5. **Improper Sexual Conduct:** $1,000,000 per occurrence with an aggregate of not less than $2,000,000 for damages because of bodily injury by reason of negligent hiring and supervision. May be included under General Liability. **District waives** _____
6. **Cyber Security Liability:** Coverage for both electronic and non-electronic data breach of $2,000,000 per occurrence with an aggregate limit of not less than $5,000,000 and shall cover all of Consultant's employees, officials and agents. Coverage shall apply to any dishonest, fraudulent, malicious or criminal use of Consultants or computer system or to obtain financial benefit for any party; to steal, take or provide unauthorized access of electronic data, including publicizing confidential electronic data or causing confidential electronic data to be accessible to unauthorized persons; transfer and for Third-Party Liability encompassing judgements or settlement and defense costs arising out of litigation due to a data

breach and data breach response costs for customer notification and credit monitoring service fees.
District waives _____

If the Consultant maintains higher limits than the minimums shown above, the District requires and shall be entitled to coverage for the higher limits maintained by the Consultant.

Additional Insured Status - Endorsement

The San Ysidro School District, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy and Professional Liability (Errors & Omissions) with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. The additional insured coverage must be provided in the form of an **Additional Insured Endorsement** to the Consultant's/SubConsultant's/Subcontractors' insurance. If Blanket Endorsement, it must include policy number and insured's name.

Primary Coverage

For any claims related to this contract, the **Consultant's insurance coverage shall be primary** insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Notice of Cancellation

The Provider shall file, with the District, Certificates of Insurance indicating a thirty-day (30) cancellation notice. If not stated on the Certificates of Insurance, it is understood that a 30-day cancellation notice will be provided and failure to mail such notice shall impose obligation and liability upon the company/insured, its agents or representative.

Waiver of Subrogation

Consultant/SubConsultant/Subcontractor hereby grants to the San Ysidro School District a waiver of any right to subrogation which any insurer of said Consultant may acquire against the District by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the District. The District may require the Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to the District.

Claims Made Policies (note – should be applicable only to professional liability, see below)

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not replaced ***with another claims-made policy form with a Retroactive Date prior to*** the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of work.

Verification of Coverage

Consultant/SubConsultant/Subcontractor shall furnish the District with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. **All certificates and endorsements are to be received and approved by the District before work/services commences**. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

5 GENERAL PROVISIONS

5.1 DELAYS IN PERFORMANCE

(1) Neither District nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other disturbances; sabotage or judicial restraint.

(2) Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

5.2 SUSPENSION OF SERVICES

The District may, in its sole discretion, suspend all or any part of Services provided hereunder with cost to date of suspension. Consultant may not suspend its services without District's express written consent.

5.3 TERMINATION OF AGREEMENT

(1) Termination. District may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to District to date of the notice of termination and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

(2) Consultant's Termination for Cause. This Agreement may be terminated by the Consultant upon thirty (30) days written notice to the District only when the District has substantially failed to perform its obligations under this Agreement. The written notice shall include a detailed description of the District's failure to perform, status of the work completed as of the date of termination together with a description and a cost estimate of the effort necessary to complete work in progress. In such event, the Consultant shall be compensated for services completed to the date of termination, together with compensation for such approved Additional Services performed after termination which are authorized by the District to conclude the work performed to the date of termination. Upon the District's request and authorization, Consultant shall perform any and all Additional Services necessary to wind up the work performed to the date of termination.

(3) Effect of Termination. If this Agreement is terminated as provided in this Section, District may require Consultant to provide all finished or unfinished documents, date, programming source code, reports or any other items prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

(4) Terminated Services. In the event this Agreement is terminated in whole or in part as provided herein, District may procure, upon such terms and in such manner as it may determine appropriate, services similar or identical to those terminated.

5.4 OWNERSHIP OF MATERIALS AND CONFIDENTIALITY

(1) All materials and data, including but not limited to, data on electronic or magnetic media and any materials, documents and data required to be made or kept pursuant to federal, state or local laws, rules or regulations, prepared or collected by Consultant pursuant to this Agreement, shall be the sole property of the District, except that Consultant shall have the right to retain copies of all such documents and data for its records. District shall not be limited in any way in its use of such materials and data at any time, provided that any such use not within the purposes intended by this Agreement shall be at District's sole risk and provided that Consultant shall be indemnified against any damages resulting from such use, including the release of this material to third parties for a use not intended by this Agreement.

(2) All such materials and data shall be provided to the District, or such other agency or District as directed by District or required by law, rule or regulation, as they become due during the term of this Agreement as direct by District.

(3) The District is a California public entity subject to all state and federal laws governing education, including but not limited to California Assembly Bill 1584 (AB 1584), the California Education Code, the Children's Online Privacy and

Protection Act (COPPA), the Family Educational Rights and Privacy Act (FERPA), and HIPAA Privacy regulations and any other privacy laws, policies and regulations that may apply such as American Recovery and Reinvestment Act of 2009 ("ARRA") and the Health Information Technology and Economic Clinical Health Act of 2009 ("HITECH").

AB1584 requires, in part, that any agreement entered into, renewed or amended after January 1, 2015 between a local education agency (LEA) and a third-party service provider must include certain terms; and the LEA and the Service Provider desire to have this Agreement and the services provided comply with AB1584. This includes to all forms of protected health information, including paper, oral, and electronic, etc. Furthermore, only the minimum health information necessary to conduct business is to be used or shared.

- Pupil records obtained by the Consultant/Service Provider from LEA/District continue to be the property of and under the control of the District. The Consultant will obtain information regarding disciplinary and/or behavioral events for the purpose of allowing District personnel to improve and provide services to pupils. The Consultant will not be obtaining pupil-generated content.
- In the event of an unauthorized disclosure of a pupil's records, the Consultant shall report to an affected parent, legal guardian, or eligible pupil pursuant to the following procedure; written communication to the District's Superintendent, Deputy Superintendent and/or designee.
- The Consultant shall not use any information in a pupil record for any purpose other than those required or specifically permitted by this Professional Services Agreement.
- Consultant certifies that a pupil's records shall not be retained or available to the Consultant upon completion of the terms of this Professional Services Agreement.
- District agrees to work with Consultant to ensure compliance with FERPA.
- Consultant shall not use personally identifiable information in pupil records to engage in targeted advertising.
- Pupil records include any information directly related to a pupil that is maintained by the District or acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other District employees. Pupil records does not include/not mean de-identified information (information that cannot be used to identify an individual pupil) used by the third party to (1) improve educational products for adaptive learning purposes and for customized pupil learning; De-identified information, including aggregated de-identified information. (2) Demonstrate the effectiveness of the operator's products in the marketing of those products; or for the development and improvement of educational sites, services, or applications.

5.5 SAFETY

Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

5.6 PROJECT STAFFING

Consultant shall provide adequate staff and resources to facilitate all Consultant activity. Should Consultant fail to adequately staff a project, the District may, at its sole discretion, retain third party consulting services and back charge Consultant for all third-party fees.

5.7 INDEMNIFICATION

Indemnification: To the fullest extent permitted by law, Consultant shall defend (with counsel of District's choosing), indemnify and hold the District, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the District, its officials, officers, employees, agents, or volunteers.

If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a **"design professional"** (as that term is defined under Civil Code section 2782.8), then, and only to the extent required

by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

5.8 AMENDMENTS

This Agreement may not be amended except in writing signed by both Parties.

5.9 SEVERABILITY

If any section, subsection, sentence, clause or phrases of this Agreement, or the application thereof to any of the Parties, is for any reason held invalid or unenforceable, the validity of the remainder of the Agreement shall not be affected thereby and may be enforced by the Parties to this Agreement.

5.10 GOVERNING LAW

This Agreement shall be governed by the laws of the State of California. Any action brought to enforce the terms of this Agreement shall be brought in a state or federal court located in the County of San Diego, State of California, but only after dispute resolution as provided herein.

5.11 CONFLICT OF INTEREST

For the term of this Agreement, no member, officer or employee of District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

5.12 SCHOOL SAFETY, FINGERPRINTING AND BACKGROUND INVESTIGATION REQUIREMENTS:

As a Contractor/Vendor of the District, you are responsible for ensuring that your agents and employees are complying with applicable state, county and District guidelines whenever services are performed on all District operated facilities.

Consultant agrees with the provisions of Education Code Section 45125.1 regarding the submission of fingerprints to the California Department of Justice. Consultant shall not be permitted to have any contact with District pupils until such time as Consultant has verified in writing to the District that they have complied with Educational Code Section 45125.1. (**Please complete attached School Safety Certification Form. Attachment 1)**

Per Ed Code 49406 and Assembly Bill 1667, the District requires for Tuberculosis (TB) Clearances to be in place by anyone coming in contact with pupils. Please submit TB Clearance to the Business Services Office. This section may be waived if the District determines that the Consultant and/or its employees will have limited contact with District pupils or if Consultant and/or its employees will be supervised at all times by District staff.

District is waiving this requirement _____ .

5.13 DRUG/ALCOHOL/TOBACCO-FREE FACILITIES:

ALL DISTRICT FACILITIES ARE DRUG AND TOBACCO-FREE FACILITIES. ANY DRUG, ALCOHOL AND/OR TOBACCO USE (SMOKED OR SMOKELESS) IS PROHIBITED AT ALL TIMES ON ALL AREAS OF THE DISTRICT FACILITIES.

5.14 NOTICES / CONTACT INFORMATION

All notices or demands to be given under this Agreement by either party to the other shall be in writing and given either by: (a) personal service, (b) email or (c) by U.S. Mail, mailed certified mail with return receipt requested, addressed to the following entities.

CONSULTANT:	Connect4Kids Psychological Services
Name:	Crystal Bejarano, Psy.D.
Title:	Executive Director
Address:	2235 Encinitas Blvd, Ste 108
City/State/Zip Code:	Encinitas, CA 92024
Telephone:	(858) 798-9900
Email:	drbejarano@connect4kids.org

DISTRICT:	**San Ysidro School District**	
Name:	Marilyn Adrianzen	Oscar Madera
Title:	Chief Business Official	Director of Special Education
Address:	4350 Otay Mesa Road	4350 Otay Mesa Road
City/State/Zip code:	San Ysidro, CA 92173	San Ysidro, CA 92173
Telephone:	(619) 428-4476	(619) 428-4476
Email:	Marilyn.adrianzen@sysdschools.org	Oscar.madera@sysdschools.org

6 ENTIRE AGREEMENT

This Agreement represents the entire understanding of District and Consultant 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 hereunder. To the extent that any provision or clause contained in an attachment to this Agreement conflicts with a provision or clause in the Agreement, the provision or clause in this Agreement shall control. This Agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated Agreement.

7 WARRANTY OF AUTHORITY:

Each of the parties signing this Agreement warrants to the other that he or she has the full authority to enter into agreement on behalf of the Party for which his or her signature is made.//

CONSULTANT

Connect4Kids Psychological Services
Firm Name

Signature of Authorized Agent

Crystal Bejarano, Psy.D.
Print Name, Title

07/10/20224
Date:

DISTRICT

San Ysidro School District
Firm Name

Signature

Marilyn Adrianzen, Chief Business Official
Print Name, Title

Date

Board Approved:

Revised 08-01-2020

SAN YSIDRO SCHOOL DISTRICT

4350 Otay Mesa Road, San Ysidro, CA 92173

ATTACHMENT NO. 1

SCHOOL SAFETY CERTIFICATION FORM

CERTIFICATION PURSUANT TO EDUCATION CODE ECTION 45125.1 and
Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c)
Fingerprinting and Criminal Background Investigation Requirements

The San Ysidro School District (District) has determined under Education Code Section 45125.1, subdivision (c) that in performing services under this contract, **Contractor/Consultant's employees and/or Subconsultants/Subcontractors may have contact with pupils**.

CB (*Initial*) As required under Education Code Section 45125.1, subdivision (a), Consultant shall require their employees, including the employees of any sub-consultant and/or subcontractor, who will provide services pursuant to this contract to submit their fingerprints in a manner authorized by the Department of Justice in order to conduct a criminal background check to determine whether such employees have been convicted of or have charges pending for a felony as defined under Education Code Section 45122.1.

CB (*Initial*) Consultant shall not permit any employee to perform services that may come in contact with pupils under this contract until the Department of Justice has determined that the employee has not been convicted of a felony or has no criminal charges pending for a felony as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

CB (*Initial*) Consultant certifies that all of its employees who may come in contact with pupils have not been convicted of or have no criminal charges pending for a felony, as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

CB (*Initial*) Consultant shall defend, indemnify, protect and hold the District and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property which arise from or are connected with or are caused or claimed to be caused by Consultant's failure to comply with all of the requirements contained in Education Code Section 45125.1, including, but not limited to, the requirements prohibiting Consultant from using employees who may have contact with pupils who have been convicted or have charges pending for a felony in Education Code Section 45122.1.

CB (*Initial*) Per Ed Code 49406 and Assembly Bill 1667, the District requires for Tuberculosis (TB) Clearances to be in place by anyone coming in contact with pupils.

CB (*Initial*) Consultant's individuals/employees and/or Subconsultants/Subcontractors who may come in contact with pupils in the performance of services in this contract agree to provide fingerprint (DOJ/FBI) and TB Clearances (at their own expense) to be in compliance with the above-mentioned Ed Codes before commencement of any services under this contract. The District will provide LiveScan form if necessary.

- I certify to the District's Governing Board that I have read and understand the above terms and conditions and will report any changes that may affect the performance services of this contract.
- I certify to the District's Governing Board that none of the Consultant's employees/individuals and/or Subconsultants/subcontractors performing services under this agreement have been convicted of a felony as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).
- I certify to the District's Governing Board that all of the Consultant's and Subconsultant's/Subcontractor's employees-individuals performing services under this agreement are clear of tuberculosis (TB) as defined on Education Code Section 49406 and Assembly Bill 1667.

Company Name: Connect4Kids Psychological Services

Name/title of authorized representative *(Print)* Crystal Bejarano, Psy.D.

Signature _____ Date 07/10/2024

REVISED 09-13-18

ATTACHMENT NO. 2

COVID-19 Vaccination & Testing Requirements

The San Ysidro School District ("District") is a public agency that has a duty to implement health and safety protocols to address COVID-19 in accordance with all state and local regulations. As a Contractor/Vendor for the District, you are responsible for ensuring that your agents and employees are complying with applicable state, county and District guidelines whenever services are performed on all District operated facilities.

It is the responsibility of the Contractor/Vendor to ensure there is no interruption of service to District if the Contractor/Vendor and any employee, volunteer and/or agent of the Contractor/Vendor fails to adhere to COVID-19 state and local regulations. Failure by the Contractor/Vendor to comply with the terms of this Addendum or any applicable county or state health order, may result in termination of the agreement to provide services.

This Addendum is hereby incorporated into the Agreement as though fully set forth. No other terms or conditions of the Agreement are changed, and in the event of a conflict the terms of this Attachment No. 2 shall prevail.

EXHIBIT A

SCOPE OF WORK

Connect4Kids Psychological Services will be providing BCBA Consultation services at a rate of $250.00 per hour and in addition the following services to a student with special needs:

Connect4Kids
Psychological Services

Connect4Kids Psychological Services
Fee Schedule

Service	Fee Per Hour/NTE
Psychoeducational Evaluation Typically includes: records review, parent interview, school observation, 2-3 days testing, scoring and report generation, and one hour IEP meeting participation	$225/hr not to exceed $4250
Neuropsychological Evaluation Typically includes: records review, parent interview, school observation, 3-4 days testing, scoring and report generation, and one hour IEP meeting participation	$250/hr not to exceed $4950
Functional Behavioral Assessment Typically includes: records review, parent interview, teacher/staff interview(s), 3-5 hours of direct observation/data collection, review of district data available, scoring and report generation, and one hour IEP meeting participation	$250/hr not to exceed $2640
Related Services Independent Assessment/Special Circumstance Independent Assessment Typically includes: records review, parent interview, school staff interview, school observation, rating scale/scoring and report generation, and one hour IEP meeting participation	$250/hr not to exceed $2640
Post-Secondary Transition Assessment Typically includes: records review, parent interview, school staff interview, school observation, 1 day testing, scoring and report generation, and one hour IEP participation	$225/hr not to exceed $3000
Educationally-based Mental Health Evaluation Typically includes: records review, parent interview, school staff interview, school observation, 1 day testing, scoring and report generation, and one hour IEP meeting participation	$225/hr not to exceed $2840
Academic Assessment Typically includes: records review, parent interview, school staff interview, school observation, 1 day testing, scoring and report generation, and one hour IEP meeting participation	$200/hr not to exceed $2620
Expert Witness Typically includes: records review, preparation with legal counsel, and testimony	$300/hr

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Special Education Department
Oscar Madera, Director

☐ Informational
☒ Action

AGENDA ITEM: AGREEMENT WITH MICHAEL FERGUSON M.A., CCC-SLP

BACKGROUND INFORMATION:
Since the San Ysidro School District has a shortage of speech therapist, the district offers families with an outside agency that can provide speech services to their students with special needs per their IEP. Michael Ferguson, M.A. CCC-CLP will be providing speech services to students who receive special education services per their Individualized Education Program (IEP) for the 2024-2025 school year, in order to meet the State and Federal regulations and compliance. The Speech and Language Pathologist (SLP) will conduct initial and triennial evaluations, provide support to the general education staff and students as part of response to intervention, and consult with special education staff regarding communication development strategies.

Cost Implication: $120.00/hr

RECOMMENDATION:
Approve the agreement with Michael Ferguson, M.A. CCC-SLP to provide speech services to students per their Individualized Education Program (IEP) for the 2024-2025 school year. Cost implications will be paid from the Special Education.

LCAP GOAL AND ACTION/SERVICE:
Goal 1, Student Achievement Action #1.3: Provide certificated and classified staffing to support students, including teachers, site and district office staff, instructional aides, speech therapists, health care assistants, LVNs, behavioral specialists, and site and district administrators.

☐ **Renewal** ☒ **New** ☐ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

TBD	Special Education
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

SAN YSIDRO SCHOOL DISTRICT

4350 Otay Mesa Road, San Ysidro, CA 92173

PROFESSIONAL SERVICES AGREEMENT

This agreement is made and entered into this 1st day of July, 2024, by and between the San Ysidro School District, hereinafter called the "District", and

Michael Ferguson – M.A., CCC-SLP	570-573-4397
Company/Consultant	Telephone Number
2649 N Arroyo Dr, San Diego, CA 92103	
Address	Website

hereinafter referred to as "Consultant."

1 SCOPE AND TERMS

1.1 SCOPE OF SERVICES

Scope of Services. In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the Consultant Services Documentation ("attached documents") attached hereto as ***Exhibit "A"*** and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the District entering into this Agreement, Consultant represents and warrants that Consultant is a provider of first class work and services and Consultant is experienced in performing the work and services contemplated herein and, in light of such status and experience, Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials shall be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

Compliance with Law. All services rendered hereunder shall be provided in accordance with any and all applicable ordinances, resolutions, statutes, rules, and regulations of the District, City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered. Each and every provision required by law to be included in this Agreement shall be deemed to be included by this reference, and this Agreement shall be read and enforced as though they were included.

Licenses, Permits, Fees and Assessments. Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless District against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against District hereunder.

1.2 TERM

From: July 22, 2024 To June 30, 2025

The Term of this Agreement as noted, unless earlier terminated as provided herein. The Parties may mutually agree to extend this term only by written amendment. Should the Parties agree to extend the term of this Agreement; the Agreement can only be extended on a year-to-year basis with written approval unless otherwise indicated in writing and in accordance with the law. Agreements are limited to a total of 5 years at which point a new Agreement will be needed.

2 FEES AND PAYMENTS

2.1 FEES

District shall pay Consultant for the specified services as reflected on ***Exhibit A*** during this contract term.

2.2 PAYMENTS
Consultant shall submit to District an itemized invoice which indicates work completed by Consultant. District shall review each invoice and/or receipts submitted to determine that the work performed, and expenses incurred are in compliance with the provisions of this Agreement. District shall pay Consultant within 30-days of receipt of an acceptable invoice from Consultant.

3. ADDITIONAL SERVICES.
District shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work as described herein. No such extra work may be undertaken unless a written order is first given by the District Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval or ratification of the Contract Officer. However, any increase in compensation beyond the Contract Sum, for services beyond what is contemplated in the Contract, must be approved or ratified by the Board of Education in a signed writing prior to any payment. Additionally, any other increases, extensions or renewals must be approved in writing by the Board of Education. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefore unless specifically authorized pursuant to the terms of this section.

4 RESPONSIBLIITIES OF CONSULTANT

4.1 ORGANIZATION
Consultant shall assign a Company Contact as Project Manager. The Project manager shall not be removed from the Project or reassigned without the prior written consent of District, which consent shall not be unreasonably withheld. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Agreement.

4.2 COORDINATION OF SERVICES
Consultant agrees to work closely with the District staff in the performance of Services and shall be available to the District staff, consultants and other staff at all reasonable times.

4.3 STANDARD OF CARE:
Consultant shall perform all Services under this Agreement in a skillful, competent and timely manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all of Consultant's employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant further represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any of Consultant's employees who are determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any of Consultant's employees who fail or refuse to perform the Services in a manner acceptable to District, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

4.4 INDEPENDENT CONSULTANT & ADDITIONAL PERSONNEL
Consultant is retained as an independent consultant and is not an agent or employee of the District. No employee or agent of Consultant shall by this Agreement become an agent or employee of the District. The work to be performed shall be in accordance with the work described herein, subject to such direction and amendments from District as herein provided. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind District to any obligation whatsoever, except as specifically provided in writing by District. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law.

4.5 LAWS AND REGULATIONS
The Contractor shall be subject to, and shall comply with, all federal, state, and local laws and regulations applicable to its performance under this Agreement including, but not limited to: licensing, employment, purchasing practices, wages, hours, and conditions of employment, including non-discrimination. Consultant shall be liable for all violations of such laws and regulations in connection with Services.

4.6 MAINTENANCE OF ACCOUNTING RECORDS
Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of the District during normal business hours with reasonable notice to examine, audit and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

4.7 INSURANCE – Consultant shall comply with the following insurance provisions, unless one or more paragraphs are specifically waived by the District in writing.

(1) Time for Compliance. Consultant shall not commence Services under this Agreement until it has provided evidence satisfactory to District that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subconsultant or employee to commence work until it has provided evidence satisfactory to the District.

(2) Minimum Requirements and Limits. Consultant shall, at its expense, procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the consultant, its agents, representatives, and employees. Such insurance shall survive after this agreement as permitted by law.

MINIMUM SCOPE OF INSURANCE - Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, sexual misconduct and personal & advertising injury with limits no less than **$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be **$2,000,000** the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation (Employer's Insurance if applicable):** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease. Coverage shall include waiver of subrogation endorsement in favor of San Ysidro School District.
4. **Professional Liability (Errors and Omissions):** Insurance appropriates to the Consultant's profession, with limit no less than $1,000,000 per occurrence or claim, $2,000,000 aggregate. *(If applicable – see footnote next page)* **District waives _____**
5. **Improper Sexual Conduct:** $1,000,000 per occurrence with an aggregate of not less than $2,000,000 for damages because of bodily injury by reason of negligent hiring and supervision. May be included under General Liability. **District waives _____**
6. **Cyber Security Liability:** Coverage for both electronic and non-electronic data breach of $2,000,000 per occurrence with an aggregate limit of not less than $5,000,000 and shall cover all of Consultant's employees, officials and agents. Coverage shall apply to any dishonest, fraudulent, malicious or criminal use of Consultants or computer system or to obtain financial benefit for any party; to steal, take or provide unauthorized access of electronic data, including publicizing confidential electronic data or causing confidential electronic data to be accessible to unauthorized persons; transfer and for Third-Party Liability encompassing judgements or settlement and defense costs arising out of litigation due to a data breach and data breach response costs for customer notification and credit monitoring service fees. **District waives _____**

If the Consultant maintains higher limits than the minimums shown above, the District requires and shall be entitled to coverage for the higher limits maintained by the Consultant.

Additional Insured Status - Endorsement

The San Ysidro School District, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy and Professional Liability (Errors & Omissions) with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. The additional insured coverage must be provided in the form of an **Additional Insured Endorsement** to the Consultant's/SubConsultant's/Subcontractors' insurance. If Blanket Endorsement, it must include policy number and insured's name.

Primary Coverage

For any claims related to this contract, the **Consultant's insurance coverage shall be primary** insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Notice of Cancellation

The Provider shall file, with the District, Certificates of Insurance indicating a thirty-day (30) cancellation notice. If not stated on the Certificates of Insurance, it is understood that a 30-day cancellation notice will be provided and failure to mail such notice shall impose obligation and liability upon the company/insured, its agents or representative.

Waiver of Subrogation

Consultant/SubConsultant/Subcontractor hereby grants to the San Ysidro School District a waiver of any right to subrogation which any insurer of said Consultant may acquire against the District by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the District. The District may require the Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to the District.

Claims Made Policies (note – should be applicable only to professional liability, see below)

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not replaced ***with another claims-made policy form with a Retroactive Date prior to*** the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of work.

Verification of Coverage

Consultant/SubConsultant/Subcontractor shall furnish the District with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. **All certificates and endorsements are to be received and approved by the District before work/services commences**. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

5 GENERAL PROVISIONS

5.1 DELAYS IN PERFORMANCE

(1) Neither District nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other disturbances; sabotage or judicial restraint.

(2) Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

5.2 SUSPENSION OF SERVICES

The District may, in its sole discretion, suspend all or any part of Services provided hereunder with cost to date of suspension. Consultant may not suspend its services without District's express written consent.

5.3 TERMINATION OF AGREEMENT

(1) Termination. District may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to District to date of the notice of termination and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

(2) Consultant's Termination for Cause. This Agreement may be terminated by the Consultant upon thirty (30) days written notice to the District only when the District has substantially failed to perform its obligations under this Agreement. The written notice shall include a detailed description of the District's failure to perform, status of the work completed as of the date of termination together with a description and a cost estimate of the effort necessary to complete work in progress. In such event, the Consultant shall be compensated for services completed to the date of termination, together with compensation for such approved Additional Services performed after termination which are authorized by the District to conclude the work performed to the date of termination. Upon the District's request and authorization, Consultant shall perform any and all Additional Services necessary to wind up the work performed to the date of termination.

(3) Effect of Termination. If this Agreement is terminated as provided in this Section, District may require Consultant to provide all finished or unfinished documents, date, programming source code, reports or any other items prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

(4) Terminated Services. In the event this Agreement is terminated in whole or in part as provided herein, District may procure, upon such terms and in such manner as it may determine appropriate, services similar or identical to those terminated.

5.4 OWNERSHIP OF MATERIALS AND CONFIDENTIALITY

(1) All materials and data, including but not limited to, data on electronic or magnetic media and any materials, documents and data required to be made or kept pursuant to federal, state or local laws, rules or regulations, prepared or collected by Consultant pursuant to this Agreement, shall be the sole property of the District, except that Consultant shall have the right to retain copies of all such documents and data for its records. District shall not be limited in any way in its use of such materials and data at any time, provided that any such use not within the purposes intended by this Agreement shall be at District's sole risk and provided that
Consultant shall be indemnified against any damages resulting from such use, including the release of this material to third parties for a use not intended by this Agreement.

(2) All such materials and data shall be provided to the District, or such other agency or District as directed by District or required by law, rule or regulation, as they become due during the term of this Agreement as direct by District.
(3) The District is a California public entity subject to all state and federal laws governing education, including but not limited to California Assembly Bill 1584 (AB 1584), the California Education Code, the Children's Online Privacy and

Protection Act (COPPA), the Family Educational Rights and Privacy Act (FERPA), and HIPAA Privacy regulations and any other privacy laws, policies and regulations that may apply such as American Recovery and Reinvestment Act of 2009 ("ARRA") and the Health Information Technology and Economic Clinical Health Act of 2009 ("HITECH").

AB1584 requires, in part, that any agreement entered into, renewed or amended after January 1, 2015 between a local education agency (LEA) and a third-party service provider must include certain terms; and the LEA and the Service Provider desire to have this Agreement and the services provided comply with AB1584. This includes to all forms of protected health information, including paper, oral, and electronic, etc. Furthermore, only the minimum health information necessary to conduct business is to be used or shared.

- Pupil records obtained by the Consultant/Service Provider from LEA/District continue to be the property of and under the control of the District. The Consultant will obtain information regarding disciplinary and/or behavioral events for the purpose of allowing District personnel to improve and provide services to pupils. The Consultant will not be obtaining pupil-generated content.
- In the event of an unauthorized disclosure of a pupil's records, the Consultant shall report to an affected parent, legal guardian, or eligible pupil pursuant to the following procedure; written communication to the District's Superintendent, Deputy Superintendent and/or designee.
- The Consultant shall not use any information in a pupil record for any purpose other than those required or specifically permitted by this Professional Services Agreement.
- Consultant certifies that a pupil's records shall not be retained or available to the Consultant upon completion of the terms of this Professional Services Agreement.
- District agrees to work with Consultant to ensure compliance with FERPA.
- Consultant shall not use personally identifiable information in pupil records to engage in targeted advertising.
- Pupil records include any information directly related to a pupil that is maintained by the District or acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other District employees. Pupil records does not include/not mean de-identified information (information that cannot be used to identify an individual pupil) used by the third party to (1) improve educational products for adaptive learning purposes and for customized pupil learning; De-identified information, including aggregated de-identified information. (2) Demonstrate the effectiveness of the operator's products in the marketing of those products; or for the development and improvement of educational sites, services, or applications.

5.5 SAFETY

Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

5.6 PROJECT STAFFING

Consultant shall provide adequate staff and resources to facilitate all Consultant activity. Should Consultant fail to adequately staff a project, the District may, at its sole discretion, retain third party consulting services and back charge Consultant for all third-party fees.

5.7 INDEMNIFICATION

Indemnification: To the fullest extent permitted by law, Consultant shall defend (with counsel of District's choosing), indemnify and hold the District, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the District, its officials, officers, employees, agents, or volunteers.

5.8 AMENDMENTS
This Agreement may not be amended except in writing signed by both Parties.

5.9 SEVERABILITY
If any section, subsection, sentence, clause or phrases of this Agreement, or the application thereof to any of the Parties, is for any reason held invalid or unenforceable, the validity of the remainder of the Agreement shall not be affected thereby and may be enforced by the Parties to this Agreement.

5.10 GOVERNING LAW
This Agreement shall be governed by the laws of the State of California. Any action brought to enforce the terms of this Agreement shall be brought in a state or federal court located in the County of San Diego, State of California, but only after dispute resolution as provided herein.

5.11 CONFLICT OF INTEREST
For the term of this Agreement, no member, officer, or employee of District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

5.12 SCHOOL SAFETY, FINGERPRINTING AND BACKGROUND INVESTIGATION REQUIREMENTS:
As a Contractor/Vendor of the District, you are responsible for ensuring that your agents and employees are complying with applicable state, county and District guidelines whenever services are performed on all District operated facilities.

Consultant agrees with the provisions of Education Code Section 45125.1 regarding the submission of fingerprints to the California Department of Justice. Consultant shall not be permitted to have any contact with District pupils until such time as Consultant has verified in writing to the District that they have complied with Educational Code Section 45125.1. (**Please complete attached School Safety Certification Form. Attachment 1)**

Per Ed Code 49406 and Assembly Bill 1667, the District requires Tuberculosis (TB) Clearances to be in place by anyone coming in contact with pupils. Please submit TB Clearance to the Business Services Office. This section may be waived if the District determines that the Consultant and/or its employees will have limited contact with District pupils or if Consultant and/or its employees will be supervised at all times by District staff. **District is waiving this requirement** _____ .

5.13 DRUG/ALCOHOL/TOBACCO-FREE FACILITIES:
ALL DISTRICT FACILITIES ARE DRUG AND TOBACCO-FREE FACILITIES. ANY DRUG, ALCOHOL AND/OR TOBACCO USE (SMOKED OR SMOKELESS) IS PROHIBITED AT ALL TIMES ON ALL AREAS OF THE DISTRICT FACILITIES.

5.14 NOTICES / CONTACT INFORMATION
All notices or demands to be given under this Agreement by either party to the other shall be in writing and given either by: (a) personal service, (b) email or (c) by U.S. Mail, mailed certified mail with return receipt requested, addressed to the following entities.

CONSULTANT:	
Name:	Michael Ferguson- M.A., CCC-SLP
Title:	SLP Consultant
Address:	2649 N Arroyo Dr
City/State/Zip Code:	San Diego, CA 92103
Telephone:	(570) 573-4397
Email:	fergusonslp@gmail.com

DISTRICT:	San Ysidro School District	
Name:	Marilyn Adrianzen	Oscar Madera
Title:	Chief Business Official	Director of Special Education
Address:	4350 Otay Mesa Road	4350 Otay Mesa Road
City/State/Zip code:	San Ysidro, CA 92173	San Ysidro, CA 92173
Telephone:	(619) 428-4476	(619) 428-4476
Email:	Marilyn.adrianzen@sysdschools.org	Oscar.madera@sysdschools.org

6 ENTIRE AGREEMENT

This Agreement represents the entire understanding of District and Consultant 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 hereunder. To the extent that any provision or clause contained in an attachment or Exhibit to this Agreement conflicts with a provision or clause in the Agreement, the provision or clause in this Agreement shall control. This Agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated Agreement.

7 WARRANTY OF AUTHORITY:

Each of the parties signing this Agreement warrants to the other that he or she has the full authority to enter into agreement on behalf of the Party for which his or her signature is made.//

CONSULTANT

Michael Ferguson – M.A., CCC-SLP
Firm Name

Signature of Authorized Agent

Michael Ferguson - M.A., CCC-SLP
Print Name, Title

7/11/24
Date:

DISTRICT

San Ysidro School District
Firm Name

Signature

Marilyn Adrianzen, Chief Business Official
Print Name, Title

Date

Board Approved:

Revised 2024

SAN YSIDRO SCHOOL DISTRICT

4350 Otay Mesa Road, San Ysidro, CA 92173

SCHOOL SAFETY CERTIFICATION FORM

CERTIFICATION PURSUANT TO EDUCATION CODE ECTION 45125.1 and
Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c)
Fingerprinting and Criminal Background Investigation Requirements

The San Ysidro School District (District) has determined under Education Code Section 45125.1, subdivision (c) that in performing services under this contract, **Contractor/Consultant's employees and/or subconsultants/subcontractors may have potential contact with pupils, minors and/or persons in an incapacitated state.**

___MF___(*Initial*) As required under Education Code Section 45125.1, subdivision (a), Consultant shall require their employees, including the employees of any sub-consultant and/or subcontractor, who will provide services pursuant to this contract to submit their fingerprints in a manner authorized by the Department of Justice in order to conduct a criminal background check to determine whether such employees have been convicted of or have charges pending for a felony as defined under Education Code Section 45122.1.

___MF___(*Initial*) Consultant shall not permit any employee to perform services that may come in contact with pupils under this contract until the Department of Justice has determined that the employee has not been convicted of a felony or has no criminal charges pending for a felony as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

___MF___(*Initial*) Consultant certifies that all of its employees who may come in contact with pupils have not been convicted of or have no criminal charges pending for a felony, as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

___MF___(*Initial*) Consultant certifies and agrees that services provided during the term of this agreement will be supervised by school certificated staff and/or a parent or legal guardian must be present during each contact with pupils (visit, treatment, evaluation, therapy, etc.)

___MF___(*Initial*) Consultant shall defend, indemnify, protect and hold the District and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property which arise from or are connected with or are caused or claimed to be caused by Consultant's failure to comply with all of the requirements contained in Education Code Section 45125.1, including, but not limited to, the requirements prohibiting Consultant from using employees who may have contact with pupils who have been convicted or have charges pending for a felony in Education Code Section 45122.1.

___MF___(*Initial*) Per Ed Code 49406 and Assembly Bill 1667, the District requires for Tuberculosis (TB) Clearances to be in place by anyone coming in contact with pupils.

___MF___(*Initial*) Consultant's individuals/employees and/or Subconsultants/Subcontractors who may come in contact with pupils in the performance of services in this contract agree to provide fingerprint (DOJ/FBI) and TB Clearances (at their own expense) to be in compliance with the above-mentioned Ed Codes before commencement of any services under this contract. The District will provide LiveScan form if necessary.

- I certify to the District's Governing Board that I have read and understand the above terms and conditions and will report any changes that may affect the performance services of this contract.
- I certify to the District's Governing Board that none of the Consultant's employees/individuals and/or Subconsultants/subcontractors performing services under this agreement have been convicted of a felony as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).
- I certify to the District's Governing Board that all of the Consultant's and Subconsultant's/Subcontractor's employees-individuals performing services under this agreement are clear of tuberculosis (TB) as defined on Education Code Section 49406 and Assembly Bill 1667.

Company Name: Ferguson Speech Therapy Corporation

Name/title of authorized representative *(Print)* Michael Ferguson, M.A., CCC-SLP

Signature _____ Date 2/12/24

EXHIBIT A

SCOPE OF WORK AND FEES

Cost Implication: SLP $120.00 per hour.

See attached scope of work.

SAN YSIDRO SCHOOL DISTRICT

SPEECH-LANGUAGE PATHOLOGIST

BASIC FUNCTION: Under the direction of the Director of Special Education and Services, and in cooperation with the school principal, the Language, Speech & Hearing Specialist develops, implements, and conducts a speech, hearing, and language program designed to identify and remediate deficits in language, articulation, voice, rhythm, fluency, and hearing.

REPRESENTATIVE DUTIES: (Incumbents may perform any combination of the essential functions shown below. This position description is not intended to be an exhaustive list of all duties, knowledge, or abilities associated with this classification, but are intended to accurately reflect the principal job elements.)

- Following referral and receipt of parent consent, assesses present level of function and/or performance for purposes of determining need for designated instructional services in the areas of Language, Speech and/or Hearing.
- Provides appropriate IEP, setting program objectives in terms of pupil performance, for pupils identified in need of instructional services in areas of Language, Speech and/or Hearing.
- Provides appropriate instructional services for individuals with exceptional needs in the areas of Language, Speech and Hearing.
- Provides ongoing review and/or assessment of pupil progress as set forth in IEP's for IWEN's receiving DIS in LS&H.
- Trains and supervises Speech Aides, as required.
- Provides in-service as requested, to parents, school staff, and/or other agencies.
- Understands and reflects the district's philosophy and regulations.
- Communicates effectively with pupils, parents, staff, and outside agencies.
- Serves as a member of the individual school(s) Guidance Committee (School Appraisal Team).
- Maintains an environment conducive to student progress.
- Serves as language, speech and hearing consultant member of the District E&P Committee. (Eligibility & Planning).Serves as Language, Speech and Hearing member of the Educational Assessment Services Team, when Master Plan initiated.
- At request of SAT psychologist, provides language and/or speech evaluation for students who are candidates for special day class placement or other designated instructional services.
- Maintains accurate records of all phases of the Language, Speech and Hearing Program.
- Makes referrals to outside agencies for consultation, evaluation, and/or therapy, as appropriate.
- Participates in the Hearing Conservation Program, as required.
- Confers with, and/or counsels parents, teachers, and/or students.
- Supervises Language, Speech and Hearing student interns, as required.
- Develops, evaluates, and adapts tests and materials for language and speech assessment and instruction, with particular attention given to materials to be used with Spanish-speaking individuals.
- Participates in in-service and professional growth meetings.
- Adheres to professional ethics.

KNOWLEDGE

- Demonstrated knowledge of oral and written communication skills.
- Demonstrated knowledge of curriculum
- Demonstrated knowledge of education code
- Demonstrated knowledge of district policies

ABILITIES

- Ability to meet deadlines and schedules.
- Ability to establish and maintain cooperative and effective working relationships with children and adults.
- Ability to maintain records and prepare reports.
- Ability to work independently with little direction.
- Ability to plan and organize work.

MINIMUM QUALIFICATIONS:
EDUCATION AND EXPERIENCE

- Clinical Rehabilitative – Language Speech and Hearing Services Credential or equivalent credential
- Bachelor's degree including all courses needed to meet credential requirements.
- Experience with severely handicapped; behaviorally challenged; and/or autistic students.

DESIRED QUALIFICATIONS:

- Bilingual and Biliterate (English / Spanish)
- Master's Degree in Special Education or related field.

WORKING CONDITIONS

Indoor and outdoor school settings which can include office and outdoor interactions.

PHYSICAL REQUIREMENTS:

Hearing and speaking to exchange information; seeing to perform assigned duties; sitting or standing for extended periods of time; hearing in a noisy environment and locate the source of a sound; dexterity of hands and fingers to operate a computer keyboard and other office equipment; kneeling, bending at the waist, and reaching overhead, above the shoulders and horizontally, to retrieve and store files and supplies; lifting light objects and monitor student activities.

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Special Education Department
Oscar Madera, Director

☐ Informational
☒ Action

AGENDA ITEM: AGREEMENT WITH ALLIANCE FOR AFRICAN ASSISTANCE

BACKGROUND INFORMATION:

Under 34 CFR §300.322(e), the public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. Additionally, IDEA requires that certain notices to parents be provided in the parent's native language unless it is not feasible. See 20 U.S.C. 1415(b)(4) (prior written notice); 20 U.S.C. 1415(d)(2) (procedural safeguards notice); see also 34 CFR §300.503(c) (notice in understandable language). Instead, under Title VI and the EEOA, state educational agencies, and school districts are responsible for providing Limited English Proficient (LEP) parents of children with disabilities meaningful access through timely and complete translation and oral interpretation.

Alliance for African Assistance, an agency that provides interpretation and translation in different languages, will interpret at the IEP meetings and translate special education records into other languages.

Cost Implication: Onsite and remote interpretation services: $75.00/hour with 30-minute increments

RECOMMENDATION:

Approve the agreement with Alliance for African Assistance for the 2024-25 school year to provide interpretation/ translation in different languages and translate special education records into different languages. The cost implications will be paid from the General fund and/or Special Education Budget.

LCAP GOAL AND ACTION/SERVICE:

Goal 5 Item 5.5: Interpreters to provide translation/interpretation services throughout the district.

☐ **Renewal** ☒ **New** ☐ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

$30,000.00	General fund and/or Special Education Budget
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

SAN YSIDRO SCHOOL DISTRICT

4350 Otay Mesa Road, San Ysidro, CA 92173

PROFESSIONAL SERVICES AGREEMENT

This agreement is made and entered into this 21st day of June 2024, by and between the San Ysidro School District, hereinafter called the "District", and

Alliance for African Assistance	(619) 286-9052
Company/Consultant	Telephone Number
5952 El Cajon Blvd., San Diego, CA 92115	interpreters@alliance-for-africa.org
Address	Website

hereinafter referred to as "Consultant."

1 SCOPE AND TERMS

1.1 SCOPE OF SERVICES

Scope of Services. In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the Consultant Services Documentation ("attached documents") attached hereto as ***Exhibit "A"*** and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the District entering into this Agreement, Consultant represents and warrants that Consultant is a provider of first class work and services and Consultant is experienced in performing the work and services contemplated herein and, in light of such status and experience, Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials shall be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

Compliance with Law. All services rendered hereunder shall be provided in accordance with any and all applicable ordinances, resolutions, statutes, rules, and regulations of the District, City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered. Each and every provision required by law to be included in this Agreement shall be deemed to be included by this reference, and this Agreement shall be read and enforced as though they were included.

Licenses, Permits, Fees and Assessments. Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless District against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against District hereunder.

1.2 TERM

From: July 1, 2024 To: June 30, 2025

The Term of this Agreement as noted, unless earlier terminated as provided herein. The Parties may mutually agree to extend this term only by written amendment. Should the Parties agree to extend the term of this Agreement; the Agreement can only be extended on a year-to-year basis with written approval unless otherwise indicated in writing and in accordance with the law. Agreements are limited to a total of 5 years at which point a new Agreement will be needed.

2 FEES AND PAYMENTS

2.1 FEES
District shall pay Consultant for the specified services as reflected on ***Exhibit A*** during this contract term.

2.2 PAYMENTS
Consultant shall submit to District an itemized invoice which indicates work completed by Consultant. District shall review each invoice and/or receipts submitted to determine that the work performed, and expenses incurred are in compliance with the provisions of this Agreement. District shall pay Consultant within 30-days of receipt of an acceptable invoice from Consultant.

3. ADDITIONAL SERVICES.

District shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work as described herein. No such extra work may be undertaken unless a written order is first given by the District Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval or ratification of the Contract Officer. However, any increase in compensation beyond the Contract Sum, for services beyond what is contemplated in the Contract, must be approved or ratified by the Board of Education in a signed writing prior to any payment. Additionally, any other increases, extensions or renewals must be approved in writing by the Board of Education. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefore unless specifically authorized pursuant to the terms of this section.

4 RESPONSIBLIITIES OF CONSULTANT

4.1 ORGANIZATION
Consultant shall assign a Company Contact as Project Manager. The Project manager shall not be removed from the Project or reassigned without the prior written consent of District, which consent shall not be unreasonably withheld. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Agreement.

4.2 COORDINATION OF SERVICES
Consultant agrees to work closely with the District staff in the performance of Services and shall be available to the District staff, consultants and other staff at all reasonable times.

4.3 STANDARD OF CARE:
Consultant shall perform all Services under this Agreement in a skillful, competent and timely manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all of Consultant's employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant further represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any of Consultant's employees who are determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any of Consultant's employees who fail or refuse to perform the Services in a manner acceptable to District, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

4.4 INDEPENDENT CONSULTANT & ADDITIONAL PERSONNEL
Consultant is retained as an independent consultant and is not an agent or employee of the District. No employee or agent of Consultant shall by this Agreement become an agent or employee of the District. The work to be performed shall be in accordance with the work described herein, subject to such direction and amendments from District as herein provided. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind District to any obligation whatsoever, except as specifically provided in writing by District. Any additional personnel

performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law.

4.5 LAWS AND REGULATIONS
The Contractor shall be subject to, and shall comply with, all federal, state, and local laws and regulations applicable to its performance under this Agreement including, but not limited to: licensing, employment, purchasing practices, wages, hours, and conditions of employment, including non-discrimination and COVID requirements as stated in **Attachment No. 2** to this agreement. Consultant shall be liable for all violations of such laws and regulations in connection with Services.

4.6 MAINTENANCE OF ACCOUNTING RECORDS
Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of the District during normal business hours with reasonable notice to examine, audit and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

4.7 INSURANCE – Consultant shall comply with the following insurance provisions, unless one or more paragraphs are specifically waived by the District in writing.

(1) Time for Compliance. Consultant shall not commence Services under this Agreement until it has provided evidence satisfactory to District that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subconsultant or employee to commence work until it has provided evidence satisfactory to the District.

(2) Minimum Requirements and Limits. Consultant shall, at its expense, procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the consultant, its agents, representatives, and employees. Such insurance shall survive after this agreement as permitted by law.

MINIMUM SCOPE OF INSURANCE - Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, sexual misconduct and personal & advertising injury with limits no less than **$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be **$2,000,000** the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation (Employer's Insurance if applicable):** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease. Coverage shall include waiver of subrogation endorsement in favor of San Ysidro School District.
4. **Professional Liability (Errors and Omissions):** Insurance appropriates to the Consultant's profession, with limit no less than $1,000,000 per occurrence or claim, $2,000,000 aggregate. *(If applicable – see footnote next page)* **District waives** _____
5. **Improper Sexual Conduct:** $1,000,000 per occurrence with an aggregate of not less than $2,000,000 for damages because of bodily injury by reason of negligent hiring and supervision. May be included under General Liability. **District waives** _____
6. **Cyber Security Liability:** Coverage for both electronic and non-electronic data breach of $2,000,000 per occurrence with an aggregate limit of not less than $5,000,000 and shall cover all of Consultant's employees, officials and agents. Coverage shall apply to any dishonest, fraudulent, malicious or criminal use of Consultants or computer system or to obtain financial benefit for any party; to steal, take or provide unauthorized access of electronic data, including publicizing confidential electronic data or causing confidential electronic data to be accessible to unauthorized persons; transfer and for Third-Party Liability encompassing judgements or settlement and defense costs arising out of litigation due to a data

breach and data breach response costs for customer notification and credit monitoring service fees.
District waives _____

If the Consultant maintains higher limits than the minimums shown above, the District requires and shall be entitled to coverage for the higher limits maintained by the Consultant.

Additional Insured Status - Endorsement
The San Ysidro School District, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy and Professional Liability (Errors & Omissions) with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. The additional insured coverage must be provided in the form of an **Additional Insured Endorsement** to the Consultant's/SubConsultant's/Subcontractors' insurance. If Blanket Endorsement, it must include policy number and insured's name.

Primary Coverage
For any claims related to this contract, the **Consultant's insurance coverage shall be primary** insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Notice of Cancellation
The Provider shall file, with the District, Certificates of Insurance indicating a thirty-day (30) cancellation notice. If not stated on the Certificates of Insurance, it is understood that a 30-day cancellation notice will be provided and failure to mail such notice shall impose obligation and liability upon the company/insured, its agents or representative.

Waiver of Subrogation
Consultant/SubConsultant/Subcontractor hereby grants to the San Ysidro School District a waiver of any right to subrogation which any insurer of said Consultant may acquire against the District by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions
Any deductibles or self-insured retentions must be declared to and approved by the District. The District may require the Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to the District.

Claims Made Policies (note – should be applicable only to professional liability, see below)
If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not replaced ***with another claims-made policy form with a Retroactive Date prior to*** the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of work.

Verification of Coverage
Consultant/SubConsultant/Subcontractor shall furnish the District with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. **All certificates and endorsements are to be received and approved by the District before work/services commences**. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

5 GENERAL PROVISIONS

5.1 DELAYS IN PERFORMANCE

(1) Neither District nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other disturbances; sabotage or judicial restraint.

(2) Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

5.2 SUSPENSION OF SERVICES

The District may, in its sole discretion, suspend all or any part of Services provided hereunder with cost to date of suspension. Consultant may not suspend its services without District's express written consent.

5.3 TERMINATION OF AGREEMENT

(1) Termination. District may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to District to date of the notice of termination and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

(2) Consultant's Termination for Cause. This Agreement may be terminated by the Consultant upon thirty (30) days written notice to the District only when the District has substantially failed to perform its obligations under this Agreement. The written notice shall include a detailed description of the District's failure to perform, status of the work completed as of the date of termination together with a description and a cost estimate of the effort necessary to complete work in progress. In such event, the Consultant shall be compensated for services completed to the date of termination, together with compensation for such approved Additional Services performed after termination which are authorized by the District to conclude the work performed to the date of termination. Upon the District's request and authorization, Consultant shall perform any and all Additional Services necessary to wind up the work performed to the date of termination.

(3) Effect of Termination. If this Agreement is terminated as provided in this Section, District may require Consultant to provide all finished or unfinished documents, date, programming source code, reports or any other items prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

(4) Terminated Services. In the event this Agreement is terminated in whole or in part as provided herein, District may procure, upon such terms and in such manner as it may determine appropriate, services similar or identical to those terminated.

5.4 OWNERSHIP OF MATERIALS AND CONFIDENTIALITY

(1) All materials and data, including but not limited to, data on electronic or magnetic media and any materials, documents and data required to be made or kept pursuant to federal, state or local laws, rules or regulations, prepared or collected by Consultant pursuant to this Agreement, shall be the sole property of the District, except that Consultant shall have the right to retain copies of all such documents and data for its records. District shall not be limited in any way in its use of such materials and data at any time, provided that any such use not within the purposes intended by this Agreement shall be at District's sole risk and provided that Consultant shall be indemnified against any damages resulting from such use, including the release of this material to third parties for a use not intended by this Agreement.

(2) All such materials and data shall be provided to the District, or such other agency or District as directed by District or required by law, rule or regulation, as they become due during the term of this Agreement as direct by District.

(3) The District is a California public entity subject to all state and federal laws governing education, including but not limited to California Assembly Bill 1584 (AB 1584), the California Education Code, the Children's Online Privacy and

Protection Act (COPPA), the Family Educational Rights and Privacy Act (FERPA), and HIPAA Privacy regulations and any other privacy laws, policies and regulations that may apply such as American Recovery and Reinvestment Act of 2009 ("ARRA") and the Health Information Technology and Economic Clinical Health Act of 2009 ("HITECH").

AB1584 requires, in part, that any agreement entered into, renewed or amended after January 1, 2015 between a local education agency (LEA) and a third-party service provider must include certain terms; and the LEA and the Service Provider desire to have this Agreement and the services provided comply with AB1584. This includes to all forms of protected health information, including paper, oral, and electronic, etc. Furthermore, only the minimum health information necessary to conduct business is to be used or shared.

- Pupil records obtained by the Consultant/Service Provider from LEA/District continue to be the property of and under the control of the District. The Consultant will obtain information regarding disciplinary and/or behavioral events for the purpose of allowing District personnel to improve and provide services to pupils. The Consultant will not be obtaining pupil-generated content.
- In the event of an unauthorized disclosure of a pupil's records, the Consultant shall report to an affected parent, legal guardian, or eligible pupil pursuant to the following procedure; written communication to the District's Superintendent, Deputy Superintendent and/or designee.
- The Consultant shall not use any information in a pupil record for any purpose other than those required or specifically permitted by this Professional Services Agreement.
- Consultant certifies that a pupil's records shall not be retained or available to the Consultant upon completion of the terms of this Professional Services Agreement.
- District agrees to work with Consultant to ensure compliance with FERPA.
- Consultant shall not use personally identifiable information in pupil records to engage in targeted advertising.
- Pupil records include any information directly related to a pupil that is maintained by the District or acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other District employees. Pupil records does not include/not mean de-identified information (information that cannot be used to identify an individual pupil) used by the third party to (1) improve educational products for adaptive learning purposes and for customized pupil learning; De-identified information, including aggregated de-identified information. (2) Demonstrate the effectiveness of the operator's products in the marketing of those products; or for the development and improvement of educational sites, services, or applications.

5.5 SAFETY

Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

5.6 PROJECT STAFFING

Consultant shall provide adequate staff and resources to facilitate all Consultant activity. Should Consultant fail to adequately staff a project, the District may, at its sole discretion, retain third party consulting services and back charge Consultant for all third-party fees.

5.7 INDEMNIFICATION

Indemnification: To the fullest extent permitted by law, Consultant shall defend (with counsel of District's choosing), indemnify and hold the District, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the District, its officials, officers, employees, agents, or volunteers.

If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a **"design professional"** (as that term is defined under Civil Code section 2782.8), then, and only to the extent required

by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

5.8 AMENDMENTS
This Agreement may not be amended except in writing signed by both Parties.

5.9 SEVERABILITY
If any section, subsection, sentence, clause or phrases of this Agreement, or the application thereof to any of the Parties, is for any reason held invalid or unenforceable, the validity of the remainder of the Agreement shall not be affected thereby and may be enforced by the Parties to this Agreement.

5.10 GOVERNING LAW
This Agreement shall be governed by the laws of the State of California. Any action brought to enforce the terms of this Agreement shall be brought in a state or federal court located in the County of San Diego, State of California, but only after dispute resolution as provided herein.

5.11 CONFLICT OF INTEREST
For the term of this Agreement, no member, officer or employee of District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

5.12 SCHOOL SAFETY, FINGERPRINTING AND BACKGROUND INVESTIGATION REQUIREMENTS:
As a Contractor/Vendor of the District, you are responsible for ensuring that your agents and employees are complying with applicable state, county and District guidelines whenever services are performed on all District operated facilities.

Consultant agrees with the provisions of Education Code Section 45125.1 regarding the submission of fingerprints to the California Department of Justice. Consultant shall not be permitted to have any contact with District pupils until such time as Consultant has verified in writing to the District that they have complied with Educational Code Section 45125.1. (**Please complete attached School Safety Certification Form. Attachment 1)**

Per Ed Code 49406 and Assembly Bill 1667, the District requires for Tuberculosis (TB) Clearances to be in place by anyone coming in contact with pupils. Please submit TB Clearance to the Business Services Office. This section may be waived if the District determines that the Consultant and/or its employees will have limited contact with District pupils or if Consultant and/or its employees will be supervised at all times by District staff.

District is waiving this requirement _____ .

5.13 DRUG/ALCOHOL/TOBACCO-FREE FACILITIES:
ALL DISTRICT FACILITIES ARE DRUG AND TOBACCO-FREE FACILITIES. ANY DRUG, ALCOHOL AND/OR TOBACCO USE (SMOKED OR SMOKELESS) IS PROHIBITED AT ALL TIMES ON ALL AREAS OF THE DISTRICT FACILITIES.

5.14 NOTICES / CONTACT INFORMATION
All notices or demands to be given under this Agreement by either party to the other shall be in writing and given either by: (a) personal service, (b) email or (c) by U.S. Mail, mailed certified mail with return receipt requested, addressed to the following entities.

CONSULTANT:	**Alliance with African Assistance**
Name:	Cristina Belpassi
Title:	Global Village Interpretation & Translations Department Manager
Address:	5952 El Cajon Blvd.
City/State/Zip Code:	San Diego, CA 92115
Telephone:	(619) 286-9052
Email:	interpreters@alliance-for-africa.org

DISTRICT:	San Ysidro School District	
Name:	Marilyn Adrianzen	Oscar Madera
Title:	Chief Business Official	Director of Special Education
Address:	4350 Otay Mesa Road	4350 Otay Mesa Road
City/State/Zip code:	San Ysidro, CA 92173	San Ysidro, CA 92173
Telephone:	(619) 428-4476	(619) 428-4476
Email:	Marilyn.adrianzen@sysdschools.org	Oscar.madera@sysdschools.org

6 ENTIRE AGREEMENT
This Agreement represents the entire understanding of District and Consultant 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 hereunder. To the extent that any provision or clause contained in an attachment to this Agreement conflicts with a provision or clause in the Agreement, the provision or clause in this Agreement shall control. This Agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated Agreement.

7 WARRANTY OF AUTHORITY:
Each of the parties signing this Agreement warrants to the other that he or she has the full authority to enter into agreement on behalf of the Party for which his or her signature is made.//

CONSULTANT

Alliance for African Assistance
Firm Name

Signature of Authorized Agent

Walter Lam, President & CEO
Print Name, Title

7/5/24
Date:

DISTRICT

San Ysidro School District
Firm Name

Signature

Marilyn Adrianzen, Chief Business Official
Print Name, Title

Date

Board Approved:

Revised 08-01-2020

SAN YSIDRO SCHOOL DISTRICT
4350 Otay Mesa Road, San Ysidro, CA 92173

EXHIBIT A

SCOPE OF WORK

5952 El Cajon Blvd.
San Diego, CA 92115
619.286.9052
languages@alliance-for-africa.org
www.globalvillagelanguage.com

About Our Services

For most limited English proficient and deaf or hard of hearing individuals, an on-site interpreter is the ideal choice for effective communication. We work hard to provide the most personalized service possible to our clients, tailoring our services to your needs.

With our decades of experience in serving limited English proficient individuals with their language and culture needs, we know what it's like to need an interpreter on short notice. Our scheduling staff is trained to efficiently assist with late requests and changes, and we pride ourselves on the ability to meet nearly every request that comes to us without 24 hours notice.
When an in-person interpreter is not available our Video Remote Interpreting (VRI) or Phone Interpreting services offer an affordable solution to continue meeting the demands of our LEP community.

Pricing

On-site and Remote Scheduled Interpretation Services

Foreign Language:
$75 ($85 for rare languages*) per hour requested for **consecutive interpreting**. Additional hours are billed at the rate of $75/hour in 30 minute increments. Minimum charge is 1-hour (=$75).
$90 per hour requested for **simultaneous interpreting**. Additional hours are billed at the rate of $90/hour in 30 minute increments. Minimum charge is 1-hour (=$90). If interpretation equipment is needed additional fees will apply.

American Sign Language:
$75 per hour per interpreter. Two-hour minimum charge. Additional hours after the first two are charged in 30 minute increments at the same rate of $75/hour. Assignments longer than 1 hour may require two interpreters.

Additional information:
A service recipient's **no-show, late reschedule, late cancellation** without 24 hours notice (excluding weekends) for a foreign language appointment incurs a one hour **$60.00** fee instead of the $75.00 fee. If an interpreter has not been assigned to the appointment and the appointment is cancelled, the minimum fee will not apply. If an appointment was requested for a duration of 3 hours or more and it's no-show, late reschedule, late cancellation without 24 hours notice, it will be billed at **$60.00** for any hour requested.

A service recipient's no-show, late reschedule, late cancellation, or rejection of interpreting services without 24 hours notice (excluding weekends) for an ASL appointment incurs a $120 fee. If an interpreter has not been assigned to the appointment and the appointment is cancelled, the minimum fee will not apply.

If an interpreter travels more than 10 miles round trip, **mileage** is billed at the current standard rate recognized by the Internal Revenue Service. The current rate is $0.67 per mile as of January 1st 2024. Parking fees may also be billed if free parking or validations are not available to the interpreter.

SAN YSIDRO SCHOOL DISTRICT

4350 Otay Mesa Road, San Ysidro, CA 92173

ATTACHMENT NO. 1

SCHOOL SAFETY CERTIFICATION FORM

CERTIFICATION PURSUANT TO EDUCATION CODE ECTION 45125.1 and
Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c)
Fingerprinting and Criminal Background Investigation Requirements

The San Ysidro School District (District) has determined under Education Code Section 45125.1, subdivision (c) that in performing services under this contract, **Contractor/Consultant's employees and/or Subconsultants/Subcontractors may have contact with pupils**.

_____(*Initial*) As required under Education Code Section 45125.1, subdivision (a), Consultant shall require their employees, including the employees of any sub-consultant and/or subcontractor, who will provide services pursuant to this contract to submit their fingerprints in a manner authorized by the Department of Justice in order to conduct a criminal background check to determine whether such employees have been convicted of or have charges pending for a felony as defined under Education Code Section 45122.1.

_____(*Initial*) Consultant shall not permit any employee to perform services that may come in contact with pupils under this contract until the Department of Justice has determined that the employee has not been convicted of a felony or has no criminal charges pending for a felony as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

_____(*Initial*) Consultant certifies that all of its employees who may come in contact with pupils have not been convicted of or have no criminal charges pending for a felony, as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

_____(*Initial*) Consultant shall defend, indemnify, protect and hold the District and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property which arise from or are connected with or are caused or claimed to be caused by Consultant's failure to comply with all of the requirements contained in Education Code Section 45125.1, including, but not limited to, the requirements prohibiting Consultant from using employees who may have contact with pupils who have been convicted or have charges pending for a felony in Education Code Section 45122.1.

_____(*Initial*) Per Ed Code 49406 and Assembly Bill 1667, the District requires for Tuberculosis (TB) Clearances to be in place by anyone coming in contact with pupils.

_____(*Initial*) Consultant's individuals/employees and/or Subconsultants/Subcontractors who may come in contact with pupils in the performance of services in this contract agree to provide fingerprint (DOJ/FBI) and TB Clearances (at their own expense) to be in compliance with the above-mentioned Ed Codes before commencement of any services under this contract. The District will provide LiveScan form if necessary.

- I certify to the District's Governing Board that I have read and understand the above terms and conditions and will report any changes that may affect the performance services of this contract.
- I certify to the District's Governing Board that none of the Consultant's employees/individuals and/or Subconsultants/subcontractors performing services under this agreement have been convicted of a felony as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).
- I certify to the District's Governing Board that all of the Consultant's and Subconsultant's/Subcontractor's employees-individuals performing services under this agreement are clear of tuberculosis (TB) as defined on Education Code Section 49406 and Assembly Bill 1667.

Company Name: Alliance for African Assistance

Name/title of authorized representative *(Print)* Walter Lam, President & CEO

Signature _____ Date 7/5/24

REVISED 09-13-18

ATTACHMENT NO. 2

COVID-19 Vaccination & Testing Requirements

The San Ysidro School District ("District") is a public agency that has a duty to implement health and safety protocols to address COVID-19 in accordance with all state and local regulations. As a Contractor/Vendor for the District, you are responsible for ensuring that your agents and employees are complying with applicable state, county and District guidelines whenever services are performed on all District operated facilities.

It is the responsibility of the Contractor/Vendor to ensure there is no interruption of service to District if the Contractor/Vendor and any employee, volunteer and/or agent of the Contractor/Vendor fails to adhere to COVID-19 state and local regulations. Failure by the Contractor/Vendor to comply with the terms of this Addendum or any applicable county or state health order, may result in termination of the agreement to provide services.

This Addendum is hereby incorporated into the Agreement as though fully set forth. No other terms or conditions of the Agreement are changed, and in the event of a conflict the terms of this Attachment No. 2 shall prevail.

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Special Education Department
Oscar Madera, Director

☐ Informational
☒ Action

AGENDA ITEM: AGREEMENT WITH TANYA KELLER M.S. CCC-SLP ED.S/SD AAC

BACKGROUND INFORMATION:
Augmentative and Alternative Communication (AAC) offers individuals a communication system that can add to or replace speech. AAC is a set of tools and strategies used to solve everyday communication challenges for students with speech problems. Students with severe speech difficulties rely on AAC to learn language and supplement existing speech that is not functional. Some students may have difficulty learning speech because of Autism, Down Syndrome, or other developmental disabilities. Some individuals may lose the ability to speak due to an injury or disease. AAC can help these students with speech difficulties to learn language along the way. AAC is a voice for people who can't speak.

The purpose of training in the school setting is for the team to gather and share information on a student and their AAC system. Ms. Tanya Keller will provide training to school staff and family members to increase knowledge of a language organization system, device modification or programming, and, most importantly, implementation recommendations.

Cost Implication: $155.00 per (training staff/parents and services to students)

RECOMMENDATION:
Approve the agreement with Tanya Keller, M.S. CCC-SLP Ed.S/SD AAC for school year 2024-2025 at a rate up to $155.00 per hour from the Special Education Fund.

LCAP GOAL AND ACTION/SERVICE:
Goal 1: Student Achievement – Action # 1.18: Continue to provide site and/or district based academic intervention programs to serve the districts unduplicated student groups (i.e., English Learners, Socio-Economically Disadvantaged, Students with Disabilities, etc.) and educationally disadvantaged students in Comprehensive Support and Improvements Schools.

Personnel (e.g., instructional aides) may be hired to support in-class interventions for all student groups including unduplicated students at all school sites.

☒ **Renewal** ☐ **New** ☐ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

$155.00/hour	Special Education
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

SAN YSIDRO SCHOOL DISTRICT

4350 Otay Mesa Road, San Ysidro, CA 92173

PROFESSIONAL SERVICES AGREEMENT

This agreement is made and entered into this 9th day of August, 2024, by and between the San Ysidro School District, hereinafter called the "District", and

Tanya Keller M.S. CCC-SLP Ed.S/SD AAC	(617) 780-5193
Company/Consultant	Telephone Number
4735 Bancroft St Apt 6, San Diego, CA 92116	everyonecancommunicate.com
Address	Website

hereinafter referred to as "Consultant."

1 SCOPE AND TERMS

1.1 SCOPE OF SERVICES

Scope of Services. In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the Consultant Services Documentation ("attached documents") attached hereto as ***Exhibit "A"*** and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the District entering into this Agreement, Consultant represents and warrants that Consultant is a provider of first class work and services and Consultant is experienced in performing the work and services contemplated herein and, in light of such status and experience, Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials shall be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

Compliance with Law. All services rendered hereunder shall be provided in accordance with any and all applicable ordinances, resolutions, statutes, rules, and regulations of the District, City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered. Each and every provision required by law to be included in this Agreement shall be deemed to be included by this reference, and this Agreement shall be read and enforced as though they were included.

Licenses, Permits, Fees and Assessments. Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless District against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against District hereunder.

1.2 TERM

From: July 1, 2024 To June 30, 2025

The Term of this Agreement as noted, unless earlier terminated as provided herein. The Parties may mutually agree to extend this term only by written amendment. Should the Parties agree to extend the term of this Agreement; the Agreement can only be extended on a year-to-year basis with written approval unless otherwise indicated in writing and in accordance with the law. Agreements are limited to a total of 5 years at which point a new Agreement will be needed.

2 FEES AND PAYMENTS

2.1 FEES

District shall pay Consultant for the specified services as reflected on ***Exhibit A*** during this contract term.

2.2 PAYMENTS

Consultant shall submit to District an itemized invoice which indicates work completed by Consultant. District shall review each invoice and/or receipts submitted to determine that the work performed, and expenses incurred are in compliance with the provisions of this Agreement. District shall pay Consultant within 30-days of receipt of an acceptable invoice from Consultant.

3. ADDITIONAL SERVICES.

District shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work as described herein. No such extra work may be undertaken unless a written order is first given by the District Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval or ratification of the Contract Officer. However, any increase in compensation beyond the Contract Sum, for services beyond what is contemplated in the Contract, must be approved or ratified by the Board of Education in a signed writing prior to any payment. Additionally, any other increases, extensions or renewals must be approved in writing by the Board of Education. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefore unless specifically authorized pursuant to the terms of this section.

4 RESPONSIBLIITIES OF CONSULTANT

4.1 ORGANIZATION

Consultant shall assign a Company Contact as Project Manager. The Project manager shall not be removed from the Project or reassigned without the prior written consent of District, which consent shall not be unreasonably withheld. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Agreement.

4.2 COORDINATION OF SERVICES

Consultant agrees to work closely with the District staff in the performance of Services and shall be available to the District staff, consultants and other staff at all reasonable times.

4.3 STANDARD OF CARE:

Consultant shall perform all Services under this Agreement in a skillful, competent and timely manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all of Consultant's employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant further represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any of Consultant's employees who are determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any of Consultant's employees who fail or refuse to perform the Services in a manner acceptable to District, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

4.4 INDEPENDENT CONSULTANT & ADDITIONAL PERSONNEL

Consultant is retained as an independent consultant and is not an agent or employee of the District. No employee or agent of Consultant shall by this Agreement become an agent or employee of the District. The work to be performed shall be in accordance with the work described herein, subject to such direction and amendments from District as herein provided. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind District to any obligation whatsoever, except as specifically provided in writing by District. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law.

4.5 LAWS AND REGULATIONS

The Contractor shall be subject to, and shall comply with, all federal, state, and local laws and regulations applicable to its performance under this Agreement including, but not limited to: licensing, employment, purchasing practices, wages, hours, and conditions of employment, including non-discrimination. Consultant shall be liable for all violations of such laws and regulations in connection with Services.

4.6 MAINTENANCE OF ACCOUNTING RECORDS

Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of the District during normal business hours with reasonable notice to examine, audit and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

4.7 INSURANCE – Consultant shall comply with the following insurance provisions, unless one or more paragraphs are specifically waived by the District in writing.

(1) Time for Compliance. Consultant shall not commence Services under this Agreement until it has provided evidence satisfactory to District that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subconsultant or employee to commence work until it has provided evidence satisfactory to the District.

(2) Minimum Requirements and Limits. Consultant shall, at its expense, procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the consultant, its agents, representatives, and employees. Such insurance shall survive after this agreement as permitted by law.

MINIMUM SCOPE OF INSURANCE - Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, sexual misconduct and personal & advertising injury with limits no less than **$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be **$2,000,000** the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation (Employer's Insurance if applicable):** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease. Coverage shall include waiver of subrogation endorsement in favor of San Ysidro School District.
4. **Professional Liability (Errors and Omissions):** Insurance appropriates to the Consultant's profession, with limit no less than $1,000,000 per occurrence or claim, $2,000,000 aggregate. *(If applicable – see footnote next page)* **District waives** _____
5. **Improper Sexual Conduct:** $1,000,000 per occurrence with an aggregate of not less than $2,000,000 for damages because of bodily injury by reason of negligent hiring and supervision. May be included under General Liability. **District waives** _____
6. **Cyber Security Liability:** Coverage for both electronic and non-electronic data breach of $2,000,000 per occurrence with an aggregate limit of not less than $5,000,000 and shall cover all of Consultant's employees, officials and agents. Coverage shall apply to any dishonest, fraudulent, malicious or criminal use of Consultants or computer system or to obtain financial benefit for any party; to steal, take or provide unauthorized access of electronic data, including publicizing confidential electronic data or causing confidential electronic data to be accessible to unauthorized persons; transfer and for Third-Party Liability encompassing judgements or settlement and defense costs arising out of litigation due to a data breach and data breach response costs for customer notification and credit monitoring service fees. **District waives** _____

If the Consultant maintains higher limits than the minimums shown above, the District requires and shall be entitled to coverage for the higher limits maintained by the Consultant.

Additional Insured Status - Endorsement

The San Ysidro School District, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy and Professional Liability (Errors & Omissions) with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. The additional insured coverage must be provided in the form of an **Additional Insured Endorsement** to the Consultant's/SubConsultant's/Subcontractors' insurance. If Blanket Endorsement, it must include policy number and insured's name.

Primary Coverage

For any claims related to this contract, the **Consultant's insurance coverage shall be primary** insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Notice of Cancellation

The Provider shall file, with the District, Certificates of Insurance indicating a thirty-day (30) cancellation notice. If not stated on the Certificates of Insurance, it is understood that a 30-day cancellation notice will be provided and failure to mail such notice shall impose obligation and liability upon the company/insured, its agents or representative.

Waiver of Subrogation

Consultant/SubConsultant/Subcontractor hereby grants to the San Ysidro School District a waiver of any right to subrogation which any insurer of said Consultant may acquire against the District by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the District. The District may require the Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to the District.

Claims Made Policies (note – should be applicable only to professional liability, see below)

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not replaced ***with another claims-made policy form with a Retroactive Date prior to*** the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of work.

Verification of Coverage

Consultant/SubConsultant/Subcontractor shall furnish the District with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. **All certificates and endorsements are to be received and approved by the District before work/services commences**. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

5 GENERAL PROVISIONS

5.1 DELAYS IN PERFORMANCE

(1) Neither District nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other disturbances; sabotage or judicial restraint.

(2) Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

5.2 SUSPENSION OF SERVICES

The District may, in its sole discretion, suspend all or any part of Services provided hereunder with cost to date of suspension. Consultant may not suspend its services without District's express written consent.

5.3 TERMINATION OF AGREEMENT

(1) Termination. District may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to District to date of the notice of termination and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

(2) Consultant's Termination for Cause. This Agreement may be terminated by the Consultant upon thirty (30) days written notice to the District only when the District has substantially failed to perform its obligations under this Agreement. The written notice shall include a detailed description of the District's failure to perform, status of the work completed as of the date of termination together with a description and a cost estimate of the effort necessary to complete work in progress. In such event, the Consultant shall be compensated for services completed to the date of termination, together with compensation for such approved Additional Services performed after termination which are authorized by the District to conclude the work performed to the date of termination. Upon the District's request and authorization, Consultant shall perform any and all Additional Services necessary to wind up the work performed to the date of termination.

(3) Effect of Termination. If this Agreement is terminated as provided in this Section, District may require Consultant to provide all finished or unfinished documents, date, programming source code, reports or any other items prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

(4) Terminated Services. In the event this Agreement is terminated in whole or in part as provided herein, District may procure, upon such terms and in such manner as it may determine appropriate, services similar or identical to those terminated.

5.4 OWNERSHIP OF MATERIALS AND CONFIDENTIALITY

(1) All materials and data, including but not limited to, data on electronic or magnetic media and any materials, documents and data required to be made or kept pursuant to federal, state or local laws, rules or regulations, prepared or collected by Consultant pursuant to this Agreement, shall be the sole property of the District, except that Consultant shall have the right to retain copies of all such documents and data for its records. District shall not be limited in any way in its use of such materials and data at any time, provided that any such use not within the purposes intended by this Agreement shall be at District's sole risk and provided that Consultant shall be indemnified against any damages resulting from such use, including the release of this material to third parties for a use not intended by this Agreement.

(2) All such materials and data shall be provided to the District, or such other agency or District as directed by District or required by law, rule or regulation, as they become due during the term of this Agreement as direct by District.

(3) The District is a California public entity subject to all state and federal laws governing education, including but not limited to California Assembly Bill 1584 (AB 1584), the California Education Code, the Children's Online Privacy and

Protection Act (COPPA), the Family Educational Rights and Privacy Act (FERPA), and HIPAA Privacy regulations and any other privacy laws, policies and regulations that may apply such as American Recovery and Reinvestment Act of 2009 ("ARRA") and the Health Information Technology and Economic Clinical Health Act of 2009 ("HITECH").

AB1584 requires, in part, that any agreement entered into, renewed or amended after January 1, 2015 between a local education agency (LEA) and a third-party service provider must include certain terms; and the LEA and the Service Provider desire to have this Agreement and the services provided comply with AB1584. This includes to all forms of protected health information, including paper, oral, and electronic, etc. Furthermore, only the minimum health information necessary to conduct business is to be used or shared.

- Pupil records obtained by the Consultant/Service Provider from LEA/District continue to be the property of and under the control of the District. The Consultant will obtain information regarding disciplinary and/or behavioral events for the purpose of allowing District personnel to improve and provide services to pupils. The Consultant will not be obtaining pupil-generated content.
- In the event of an unauthorized disclosure of a pupil's records, the Consultant shall report to an affected parent, legal guardian, or eligible pupil pursuant to the following procedure; written communication to the District's Superintendent, Deputy Superintendent and/or designee.
- The Consultant shall not use any information in a pupil record for any purpose other than those required or specifically permitted by this Professional Services Agreement.
- Consultant certifies that a pupil's records shall not be retained or available to the Consultant upon completion of the terms of this Professional Services Agreement.
- District agrees to work with Consultant to ensure compliance with FERPA.
- Consultant shall not use personally identifiable information in pupil records to engage in targeted advertising.
- Pupil records include any information directly related to a pupil that is maintained by the District or acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other District employees. Pupil records does not include/not mean de-identified information (information that cannot be used to identify an individual pupil) used by the third party to (1) improve educational products for adaptive learning purposes and for customized pupil learning; De-identified information, including aggregated de-identified information. (2) Demonstrate the effectiveness of the operator's products in the marketing of those products; or for the development and improvement of educational sites, services, or applications.

5.5 SAFETY

Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

5.6 PROJECT STAFFING

Consultant shall provide adequate staff and resources to facilitate all Consultant activity. Should Consultant fail to adequately staff a project, the District may, at its sole discretion, retain third party consulting services and back charge Consultant for all third-party fees.

5.7 INDEMNIFICATION

Indemnification: To the fullest extent permitted by law, Consultant shall defend (with counsel of District's choosing), indemnify and hold the District, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the District, its officials, officers, employees, agents, or volunteers.

5.8 AMENDMENTS

This Agreement may not be amended except in writing signed by both Parties.

5.9 SEVERABILITY

If any section, subsection, sentence, clause or phrases of this Agreement, or the application thereof to any of the Parties, is for any reason held invalid or unenforceable, the validity of the remainder of the Agreement shall not be affected thereby and may be enforced by the Parties to this Agreement.

5.10 GOVERNING LAW

This Agreement shall be governed by the laws of the State of California. Any action brought to enforce the terms of this Agreement shall be brought in a state or federal court located in the County of San Diego, State of California, but only after dispute resolution as provided herein.

5.11 CONFLICT OF INTEREST

For the term of this Agreement, no member, officer, or employee of District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

5.12 SCHOOL SAFETY, FINGERPRINTING AND BACKGROUND INVESTIGATION REQUIREMENTS:

As a Contractor/Vendor of the District, you are responsible for ensuring that your agents and employees are complying with applicable state, county and District guidelines whenever services are performed on all District operated facilities.

Consultant agrees with the provisions of Education Code Section 45125.1 regarding the submission of fingerprints to the California Department of Justice. Consultant shall not be permitted to have any contact with District pupils until such time as Consultant has verified in writing to the District that they have complied with Educational Code Section 45125.1. (**Please complete attached School Safety Certification Form. Attachment 1)**

Per Ed Code 49406 and Assembly Bill 1667, the District requires Tuberculosis (TB) Clearances to be in place by anyone coming in contact with pupils. Please submit TB Clearance to the Business Services Office. This section may be waived if the District determines that the Consultant and/or its employees will have limited contact with District pupils or if Consultant and/or its employees will be supervised at all times by District staff. **District is waiving this requirement _____ .**

5.13 DRUG/ALCOHOL/TOBACCO-FREE FACILITIES:

ALL DISTRICT FACILITIES ARE DRUG AND TOBACCO-FREE FACILITIES. ANY DRUG, ALCOHOL AND/OR TOBACCO USE (SMOKED OR SMOKELESS) IS PROHIBITED AT ALL TIMES ON ALL AREAS OF THE DISTRICT FACILITIES.

5.14 NOTICES / CONTACT INFORMATION

All notices or demands to be given under this Agreement by either party to the other shall be in writing and given either by: (a) personal service, (b) email or (c) by U.S. Mail, mailed certified mail with return receipt requested, addressed to the following entities.

CONSULTANT:	
Name:	Tanya Keller M.S. CCC-SLP Ed.S
Title:	SLP/AAC Consultant
Address:	4735 Bancroft St Apt 6
City/State/Zip Code:	San Diego, CA 92116
Telephone:	(617) 780-5193
Email:	tanya.keller@sdaacslp.com

DISTRICT:	**San Ysidro School District**	
Name:	Marilyn Adrianzen	Oscar Madera
Title:	Chief Business Official	Director of Special Education
Address:	4350 Otay Mesa Road	4350 Otay Mesa Road
City/State/Zip code:	San Ysidro, CA 92173	San Ysidro, CA 92173
Telephone:	(619) 428-4476	(619) 428-4476
Email:	Marilyn.adrianzen@sysdschools.org	Oscar.madera@sysdschools.org

6 ENTIRE AGREEMENT

This Agreement represents the entire understanding of District and Consultant 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 hereunder. To the extent that any provision or clause contained in an attachment or Exhibit to this Agreement conflicts with a provision or clause in the Agreement, the provision or clause in this Agreement shall control. This Agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated Agreement.

7 WARRANTY OF AUTHORITY:

Each of the parties signing this Agreement warrants to the other that he or she has the full authority to enter into agreement on behalf of the Party for which his or her signature is made.//

CONSULTANT	**DISTRICT**
Tanya Keller M.S. CCC-SLP Ed.S/SD AAC	**San Ysidro School District**
Firm Name	Firm Name
TKeller	
Signature of Authorized Agent	Signature
Tanya Keller, AAC Consultant	Marilyn Adrianzen, Chief Business Official
Print Name, Title	Print Name, Title
7/29/2024	
Date:	Date
	Board Approved:

Revised 2024

SAN YSIDRO SCHOOL DISTRICT

4350 Otay Mesa Road, San Ysidro, CA 92173

SCHOOL SAFETY CERTIFICATION FORM

CERTIFICATION PURSUANT TO EDUCATION CODE ECTION 45125.1 and
Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c)
Fingerprinting and Criminal Background Investigation Requirements

The San Ysidro School District (District) has determined under Education Code Section 45125.1, subdivision (c) that in performing services under this contract, **Contractor/Consultant's employees and/or subconsultants/subcontractors may have potential contact with pupils, minors and/or persons in an incapacitated state**.

TK (*Initial*) As required under Education Code Section 45125.1, subdivision (a), Consultant shall require their employees, including the employees of any sub-consultant and/or subcontractor, who will provide services pursuant to this contract to submit their fingerprints in a manner authorized by the Department of Justice in order to conduct a criminal background check to determine whether such employees have been convicted of or have charges pending for a felony as defined under Education Code Section 45122.1.

TK (*Initial*) Consultant shall not permit any employee to perform services that may come in contact with pupils under this contract until the Department of Justice has determined that the employee has not been convicted of a felony or has no criminal charges pending for a felony as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

TK (*Initial*) Consultant certifies that all of its employees who may come in contact with pupils have not been convicted of or have no criminal charges pending for a felony, as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

TK *(Initial)* Consultant certifies and agrees that services provided during the term of this agreement will be supervised by school certificated staff and/or a parent or legal guardian must be present during each contact with pupils (visit, treatment, evaluation, therapy, etc.)

TK (*Initial*) Consultant shall defend, indemnify, protect and hold the District and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property which arise from or are connected with or are caused or claimed to be caused by Consultant's failure to comply with all of the requirements contained in Education Code Section 45125.1, including, but not limited to, the requirements prohibiting Consultant from using employees who may have contact with pupils who have been convicted or have charges pending for a felony in Education Code Section 45122.1.

TK (*Initial*) Per Ed Code 49406 and Assembly Bill 1667, the District requires for Tuberculosis (TB) Clearances to be in place by anyone coming in contact with pupils.

TK (*Initial*) Consultant's individuals/employees and/or Subconsultants/Subcontractors who may come in contact with pupils in the performance of services in this contract agree to provide fingerprint (DOJ/FBI) and TB Clearances (at their own expense) to be in compliance with the above-mentioned Ed Codes before commencement of any services under this contract. The District will provide LiveScan form if necessary.

- I certify to the District's Governing Board that I have read and understand the above terms and conditions and will report any changes that may affect the performance services of this contract.
- I certify to the District's Governing Board that none of the Consultant's employees/individuals and/or Subconsultants/subcontractors performing services under this agreement have been convicted of a felony as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).
- I certify to the District's Governing Board that all of the Consultant's and Subconsultant's/Subcontractor's employees-individuals performing services under this agreement are clear of tuberculosis (TB) as defined on Education Code Section 49406 and Assembly Bill 1667.

Company Name: _____

Name/title of authorized representative *(Print)* Tanya Keller, M.S. CCC-SLP Ed.S/SD AAC

Signature TKeller Date 7/29/2024

SAN YSIDRO SCHOOL DISTRICT

4350 Otay Mesa Road, San Ysidro, CA 92173

EXHIBIT A

SCOPE OF WORK AND FEES

Tanya Keller M.S. CCC-SLP Ed.S
617-780-5193
Tanya.Keller@sdaacslp.com

2024-2025 School Year
AAC and AT Services

Services:	**Rate:**
• Consultation to staff/parents/caregivers • Staff group training • AT/AAC evaluations • Programming/low-tech materials • Device trials • IEP meetings	$155/hour

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Educational Services,
Russell Little, Assistant Superintendent

☐ Informational
☒ Action

AGENDA ITEM: MEMORANDUM OF UNDERSTANDING WITH THE PARENT INSTITUTE FOR QUALITY EDUCATION (PIQE)

BACKGROUND INFORMATION:

The Parent Institute for Quality Education (PIQE) is a trusted partner providing a variety of hands-on workshops, seminars, and ongoing support for parents and school leaders.

PIQE offers the following programs:

- *Signature Family Engagement Program:* This program educates, empowers, and inspires families to take an active role in their student's education while building community and a peer-to-peer network. Families are engaged in programming that encourages fostering a positive educational environment at home and at school to increase academic success.
- *Social-Emotional Learning (SEL):* In this program, parents will learn about the importance of Social Emotional Learning and its impact on academic success. The five domains of social-emotional health are explained along with implementation strategies to help support SEL at home.
- *Family Literacy Program (P-3):* This Program introduces the five elements of literacy equipping families with strategies to support literacy at home. Families are introduced to Dr. Shefelbine's Literacy Framework of Skills with fun, interactive and purposeful reading strategies.

Principals will choose the program that best fits their school needs. PIQE will recruit parents by phone, provide an Orientation session, a series of weekly training sessions, organize and conduct a Question-and-Answer forum with the school's leadership team, culminating in a graduation ceremony with certificates provided to parents who attend four or more sessions.

Cost implications include a fee of $14,500.00 for each school plus fees for parent workbooks (TBD) in case they select the Family Literacy Program.

RECOMMENDATION:

Approve the Memorandum of Understanding with the Parent Institute for Quality Education (PIQE) for services at all schools during the 2024-25 school year at the total cost of $87,000.00 from the Title I fund.

LCAP GOAL AND ACTION/SERVICE:

Goal 3 : Parent Engagement, Action 3.3: Parent PD: 1. Learn about the Educational System 2. Group-specific learning opportunities (ELs, SWDs, SED, Military, Foster families, etc.) This action is principally directed toward unduplicated students district wide. Based on research, families/caregivers of our unduplicated students experience significant difficulty accessing and negotiating college/career pathways. Enhancing professional development will inform families/caregivers how to support their children better.

☐ **Renewal** ☒ **New** ☐ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

$87,000.00	Title I Fund
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

SAN YSIDRO SCHOOL DISTRICT

4350 Otay Mesa Road, San Ysidro, CA 92173

PROFESSIONAL SERVICES AGREEMENT

This agreement is made and entered into this 9 day of August, 2024, by and between the San Ysidro School District, hereinafter called the "District", and

Parent Institute for Quality Education
Company/Consultant

(619)420-4499
Telephone Number

22 West 35th Street, Suite 201, National City, CA 91950
Address

www.piqe.org
Website

hereinafter referred to as "Consultant."

1 SCOPE AND TERMS

1.1 SCOPE OF SERVICES

Scope of Services. In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the Consultant Services Documentation ("attached documents") attached hereto as ***Exhibit "A"*** and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the District entering into this Agreement, Consultant represents and warrants that Consultant is a provider of first class work and services and Consultant is experienced in performing the work and services contemplated herein and, in light of such status and experience, Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials shall be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

Compliance with Law. All services rendered hereunder shall be provided in accordance with any and all applicable ordinances, resolutions, statutes, rules, and regulations of the District, City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered. Each and every provision required by law to be included in this Agreement shall be deemed to be included by this reference, and this Agreement shall be read and enforced as though they were included.

Licenses, Permits, Fees and Assessments. Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless District against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against District hereunder.

1.2 TERM

From: August 9, 2024 To June 30, 2025

The Term of this Agreement as noted, unless earlier terminated as provided herein. The Parties may mutually agree to extend this term only by written amendment. Should the Parties agree to extend the term of this Agreement; the Agreement can only be extended on a year-to-year basis with written approval unless otherwise indicated in writing and in accordance with the law. Agreements are limited to a total of 5 years at which point a new Agreement will be needed.

2 FEES AND PAYMENTS

2.1 FEES

District shall pay Consultant for the specified services as reflected on ***Exhibit A*** during this contract term.

2.2 PAYMENTS
Consultant shall submit to District an itemized invoice which indicates work completed by Consultant. District shall review each invoice and/or receipts submitted to determine that the work performed, and expenses incurred are in compliance with the provisions of this Agreement. District shall pay Consultant within 30-days of receipt of an acceptable invoice from Consultant.

3. ADDITIONAL SERVICES.
District shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work as described herein. No such extra work may be undertaken unless a written order is first given by the District Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval or ratification of the Contract Officer. However, any increase in compensation beyond the Contract Sum, for services beyond what is contemplated in the Contract, must be approved or ratified by the Board of Education in a signed writing prior to any payment. Additionally, any other increases, extensions or renewals must be approved in writing by the Board of Education. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefore unless specifically authorized pursuant to the terms of this section.

4 RESPONSIBLIITIES OF CONSULTANT

4.1 ORGANIZATION
Consultant shall assign a Company Contact as Project Manager. The Project manager shall not be removed from the Project or reassigned without the prior written consent of District, which consent shall not be unreasonably withheld. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Agreement.

4.2 COORDINATION OF SERVICES
Consultant agrees to work closely with the District staff in the performance of Services and shall be available to the District staff, consultants and other staff at all reasonable times.

4.3 STANDARD OF CARE:
Consultant shall perform all Services under this Agreement in a skillful, competent and timely manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all of Consultant's employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant further represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any of Consultant's employees who are determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any of Consultant's employees who fail or refuse to perform the Services in a manner acceptable to District, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

4.4 INDEPENDENT CONSULTANT & ADDITIONAL PERSONNEL
Consultant is retained as an independent consultant and is not an agent or employee of the District. No employee or agent of Consultant shall by this Agreement become an agent or employee of the District. The work to be performed shall be in accordance with the work described herein, subject to such direction and amendments from District as herein provided. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind District to any obligation whatsoever, except as specifically provided in writing by District. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law.

4.5 LAWS AND REGULATIONS
The Contractor shall be subject to, and shall comply with, all federal, state, and local laws and regulations applicable to its performance under this Agreement including, but not limited to: licensing, employment, purchasing practices, wages, hours, and conditions of employment, including non-discrimination. Consultant shall be liable for all violations of such laws and regulations in connection with Services.

4.6 MAINTENANCE OF ACCOUNTING RECORDS
Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of the District during normal business hours with reasonable notice to examine, audit and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

4.7 INSURANCE – Consultant shall comply with the following insurance provisions, unless one or more paragraphs are specifically waived by the District in writing.

(1) Time for Compliance. Consultant shall not commence Services under this Agreement until it has provided evidence satisfactory to District that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subconsultant or employee to commence work until it has provided evidence satisfactory to the District.

(2) Minimum Requirements and Limits. Consultant shall, at its expense, procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the consultant, its agents, representatives, and employees. Such insurance shall survive after this agreement as permitted by law.

MINIMUM SCOPE OF INSURANCE - Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, sexual misconduct and personal & advertising injury with limits no less than **$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be **$2,000,000** the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation (Employer's Insurance if applicable):** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease. Coverage shall include waiver of subrogation endorsement in favor of San Ysidro School District.
4. **Professional Liability (Errors and Omissions):** Insurance appropriates to the Consultant's profession, with limit no less than $1,000,000 per occurrence or claim, $2,000,000 aggregate. *(If applicable – see footnote next page)* **District waives _____**
5. **Improper Sexual Conduct:** $1,000,000 per occurrence with an aggregate of not less than $2,000,000 for damages because of bodily injury by reason of negligent hiring and supervision. May be included under General Liability. **District waives _____**
6. **Cyber Security Liability:** Coverage for both electronic and non-electronic data breach of $2,000,000 per occurrence with an aggregate limit of not less than $5,000,000 and shall cover all of Consultant's employees, officials and agents. Coverage shall apply to any dishonest, fraudulent, malicious or criminal use of Consultants or computer system or to obtain financial benefit for any party; to steal, take or provide unauthorized access of electronic data, including publicizing confidential electronic data or causing confidential electronic data to be accessible to unauthorized persons; transfer and for Third-Party Liability encompassing judgements or settlement and defense costs arising out of litigation due to a data breach and data breach response costs for customer notification and credit monitoring service fees. **District waives _____**

If the Consultant maintains higher limits than the minimums shown above, the District requires and shall be entitled to coverage for the higher limits maintained by the Consultant.

Additional Insured Status - Endorsement
The San Ysidro School District, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy and Professional Liability (Errors & Omissions) with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. The additional insured coverage must be provided in the form of an **Additional Insured Endorsement** to the Consultant's/SubConsultant's/Subcontractors' insurance. If Blanket Endorsement, it must include policy number and insured's name.

Primary Coverage
For any claims related to this contract, the **Consultant's insurance coverage shall be primary** insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Notice of Cancellation
The Provider shall file, with the District, Certificates of Insurance indicating a thirty-day (30) cancellation notice. If not stated on the Certificates of Insurance, it is understood that a 30-day cancellation notice will be provided and failure to mail such notice shall impose obligation and liability upon the company/insured, its agents or representative.

Waiver of Subrogation
Consultant/SubConsultant/Subcontractor hereby grants to the San Ysidro School District a waiver of any right to subrogation which any insurer of said Consultant may acquire against the District by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions
Any deductibles or self-insured retentions must be declared to and approved by the District. The District may require the Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to the District.

Claims Made Policies (note – should be applicable only to professional liability, see below)
If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not replaced ***with another claims-made policy form with a Retroactive Date prior to*** the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of work.

Verification of Coverage
Consultant/SubConsultant/Subcontractor shall furnish the District with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. **All certificates and endorsements are to be received and approved by the District before work/services commences**. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

5 GENERAL PROVISIONS

5.1 DELAYS IN PERFORMANCE

(1) Neither District nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other disturbances; sabotage or judicial restraint.

(2) Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

5.2 SUSPENSION OF SERVICES

The District may, in its sole discretion, suspend all or any part of Services provided hereunder with cost to date of suspension. Consultant may not suspend its services without District's express written consent.

5.3 TERMINATION OF AGREEMENT

(1) Termination. District may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to District to date of the notice of termination and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

(2) Consultant's Termination for Cause. This Agreement may be terminated by the Consultant upon thirty (30) days written notice to the District only when the District has substantially failed to perform its obligations under this Agreement. The written notice shall include a detailed description of the District's failure to perform, status of the work completed as of the date of termination together with a description and a cost estimate of the effort necessary to complete work in progress. In such event, the Consultant shall be compensated for services completed to the date of termination, together with compensation for such approved Additional Services performed after termination which are authorized by the District to conclude the work performed to the date of termination. Upon the District's request and authorization, Consultant shall perform any and all Additional Services necessary to wind up the work performed to the date of termination.

(3) Effect of Termination. If this Agreement is terminated as provided in this Section, District may require Consultant to provide all finished or unfinished documents, date, programming source code, reports or any other items prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

(4) Terminated Services. In the event this Agreement is terminated in whole or in part as provided herein, District may procure, upon such terms and in such manner as it may determine appropriate, services similar or identical to those terminated.

5.4 OWNERSHIP OF MATERIALS AND CONFIDENTIALITY

(1) All materials and data, including but not limited to, data on electronic or magnetic media and any materials, documents and data required to be made or kept pursuant to federal, state or local laws, rules or regulations, prepared or collected by Consultant pursuant to this Agreement, shall be the sole property of the District, except that Consultant shall have the right to retain copies of all such documents and data for its records. District shall not be limited in any way in its use of such materials and data at any time, provided that any such use not within the purposes intended by this Agreement shall be at District's sole risk and provided that Consultant shall be indemnified against any damages resulting from such use, including the release of this material to third parties for a use not intended by this Agreement.

(2) All such materials and data shall be provided to the District, or such other agency or District as directed by District or required by law, rule or regulation, as they become due during the term of this Agreement as direct by District.

(3) The District is a California public entity subject to all state and federal laws governing education, including but not limited to California Assembly Bill 1584 (AB 1584), the California Education Code, the Children's Online Privacy and

Protection Act (COPPA), the Family Educational Rights and Privacy Act (FERPA), and HIPAA Privacy regulations and any other privacy laws, policies and regulations that may apply such as American Recovery and Reinvestment Act of 2009 ("ARRA") and the Health Information Technology and Economic Clinical Health Act of 2009 ("HITECH").

AB1584 requires, in part, that any agreement entered into, renewed or amended after January 1, 2015 between a local education agency (LEA) and a third-party service provider must include certain terms; and the LEA and the Service Provider desire to have this Agreement and the services provided comply with AB1584. This includes to all forms of protected health information, including paper, oral, and electronic, etc. Furthermore, only the minimum health information necessary to conduct business is to be used or shared.

- Pupil records obtained by the Consultant/Service Provider from LEA/District continue to be the property of and under the control of the District. The Consultant will obtain information regarding disciplinary and/or behavioral events for the purpose of allowing District personnel to improve and provide services to pupils. The Consultant will not be obtaining pupil-generated content.
- In the event of an unauthorized disclosure of a pupil's records, the Consultant shall report to an affected parent, legal guardian, or eligible pupil pursuant to the following procedure; written communication to the District's Superintendent, Deputy Superintendent and/or designee.
- The Consultant shall not use any information in a pupil record for any purpose other than those required or specifically permitted by this Professional Services Agreement.
- Consultant certifies that a pupil's records shall not be retained or available to the Consultant upon completion of the terms of this Professional Services Agreement.
- District agrees to work with Consultant to ensure compliance with FERPA.
- Consultant shall not use personally identifiable information in pupil records to engage in targeted advertising.
- Pupil records include any information directly related to a pupil that is maintained by the District or acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other District employees. Pupil records does not include/not mean de-identified information (information that cannot be used to identify an individual pupil) used by the third party to (1) improve educational products for adaptive learning purposes and for customized pupil learning; De-identified information, including aggregated de-identified information. (2) Demonstrate the effectiveness of the operator's products in the marketing of those products; or for the development and improvement of educational sites, services, or applications.

5.5 SAFETY

Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

5.6 PROJECT STAFFING

Consultant shall provide adequate staff and resources to facilitate all Consultant activity. Should Consultant fail to adequately staff a project, the District may, at its sole discretion, retain third party consulting services and back charge Consultant for all third-party fees.

5.7 INDEMNIFICATION

Indemnification: To the fullest extent permitted by law, Consultant shall defend (with counsel of District's choosing), indemnify and hold the District, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the District, its officials, officers, employees, agents, or volunteers.

5.8 AMENDMENTS
This Agreement may not be amended except in writing signed by both Parties.

5.9 SEVERABILITY
If any section, subsection, sentence, clause or phrases of this Agreement, or the application thereof to any of the Parties, is for any reason held invalid or unenforceable, the validity of the remainder of the Agreement shall not be affected thereby and may be enforced by the Parties to this Agreement.

5.10 GOVERNING LAW
This Agreement shall be governed by the laws of the State of California. Any action brought to enforce the terms of this Agreement shall be brought in a state or federal court located in the County of San Diego, State of California, but only after dispute resolution as provided herein.

5.11 CONFLICT OF INTEREST
For the term of this Agreement, no member, officer, or employee of District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

5.12 SCHOOL SAFETY, FINGERPRINTING AND BACKGROUND INVESTIGATION REQUIREMENTS:
As a Contractor/Vendor of the District, you are responsible for ensuring that your agents and employees are complying with applicable state, county and District guidelines whenever services are performed on all District operated facilities.

Consultant agrees with the provisions of Education Code Section 45125.1 regarding the submission of fingerprints to the California Department of Justice. Consultant shall not be permitted to have any contact with District pupils until such time as Consultant has verified in writing to the District that they have complied with Educational Code Section 45125.1. **(Please complete attached School Safety Certification Form. Attachment 1)**

Per Ed Code 49406 and Assembly Bill 1667, the District requires Tuberculosis (TB) Clearances to be in place by anyone coming in contact with pupils. Please submit TB Clearance to the Business Services Office. This section may be waived if the District determines that the Consultant and/or its employees will have limited contact with District pupils or if Consultant and/or its employees will be supervised at all times by District staff. **District is waiving this requirement** _____ .

5.13 DRUG/ALCOHOL/TOBACCO-FREE FACILITIES:
ALL DISTRICT FACILITIES ARE DRUG AND TOBACCO-FREE FACILITIES. ANY DRUG, ALCOHOL AND/OR TOBACCO USE (SMOKED OR SMOKELESS) IS PROHIBITED AT ALL TIMES ON ALL AREAS OF THE DISTRICT FACILITIES.

5.14 NOTICES / CONTACT INFORMATION
All notices or demands to be given under this Agreement by either party to the other shall be in writing and given either by: (a) personal service, (b) email or (c) by U.S. Mail, mailed certified mail with return receipt requested, addressed to the following entities.

CONSULTANT:	**Parent Institute for Quality Education**	
Name:	Adrianne M. Shaw	
Title:	Deputy Director	
Address:	22 West 35th Street, Suite 201	
City/State/Zip Code:	National City, CA 92150	
Telephone:	(619)420-4499	
Email:	ashaw@piqe.org	

DISTRICT:	San Ysidro School District	
Name:	Marilyn Adrianzen	**Russell Little**
Title:	Chief Business Official	Assistant Superintendent
Address:	4350 Otay Mesa Road	4350 Otay Mesa Road
City/State/Zip code:	San Ysidro, CA 92173	San Ysidro, CA 92173
Telephone:	(619) 428-4476	(619) 428-4476
Email:	Marilyn.adrianzen@sysdschools.org	Russell.little@sysdschools.org

6 ENTIRE AGREEMENT
This Agreement represents the entire understanding of District and Consultant 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 hereunder. To the extent that any provision or clause contained in an attachment or Exhibit to this Agreement conflicts with a provision or clause in the Agreement, the provision or clause in this Agreement shall control. This Agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated Agreement.

7 WARRANTY OF AUTHORITY:
Each of the parties signing this Agreement warrants to the other that he or she has the full authority to enter into agreement on behalf of the Party for which his or her signature is made.//

CONSULTANT

Parent Institute for Quality Education
Firm Name

Adrianne M Shaw AMS
Signature of Authorized Agent

Adrianne M. Shaw, Deputy Director
Print Name, Title

Date:

DISTRICT

San Ysidro School District
Firm Name

Signature

Marilyn Adrianzen, Chief Business Official
Print Name, Title

Date

Board Approved: August 8, 2024

Revised 08-01-2020

SAN YSIDRO SCHOOL DISTRICT

4350 Otay Mesa Road, San Ysidro, CA 92173

SCHOOL SAFETY CERTIFICATION FORM

CERTIFICATION PURSUANT TO EDUCATION CODE ECTION 45125.1 and
Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c)
Fingerprinting and Criminal Background Investigation Requirements

The San Ysidro School District (District) has determined under Education Code Section 45125.1, subdivision (c) that in performing services under this contract, **Contractor/Consultant's employees and/or subconsultants/subcontractors may have potential contact with pupils, minors and/or persons in an incapacitated state**.

AMS (*Initial*) As required under Education Code Section 45125.1, subdivision (a), Consultant shall require their employees, including the employees of any sub-consultant and/or subcontractor, who will provide services pursuant to this contract to submit their fingerprints in a manner authorized by the Department of Justice in order to conduct a criminal background check to determine whether such employees have been convicted of or have charges pending for a felony as defined under Education Code Section 45122.1.

AMS (*Initial*) Consultant shall not permit any employee to perform services that may come in contact with pupils under this contract until the Department of Justice has determined that the employee has not been convicted of a felony or has no criminal charges pending for a felony as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

AMS (*Initial*) Consultant certifies that all of its employees who may come in contact with pupils have not been convicted of or have no criminal charges pending for a felony, as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

AMS (*Initial*) Consultant certifies and agrees that services provided during the term of this agreement will be supervised by school certificated staff and/or a parent or legal guardian must be present during each contact with pupils (visit, treatment, evaluation, therapy, etc.)

AMS (*Initial*) Consultant shall defend, indemnify, protect and hold the District and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property which arise from or are connected with or are caused or claimed to be caused by Consultant's failure to comply with all of the requirements contained in Education Code Section 45125.1, including, but not limited to, the requirements prohibiting Consultant from using employees who may have contact with pupils who have been convicted or have charges pending for a felony in Education Code Section 45122.1.

AMS (*Initial*) Per Ed Code 49406 and Assembly Bill 1667, the District requires for Tuberculosis (TB) Clearances to be in place by anyone coming in contact with pupils.

AMS (*Initial*) Consultant's individuals/employees and/or Subconsultants/Subcontractors who may come in contact with pupils in the performance of services in this contract agree to provide fingerprint (DOJ/FBI) and TB Clearances (at their own expense) to be in compliance with the above-mentioned Ed Codes before commencement of any services under this contract. The District will provide LiveScan form if necessary.

- I certify to the District's Governing Board that I have read and understand the above terms and conditions and will report any changes that may affect the performance services of this contract.
- I certify to the District's Governing Board that none of the Consultant's employees/individuals and/or Subconsultants/subcontractors performing services under this agreement have been convicted of a felony as defined in Education Code Section 45122.1 and in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).
- I certify to the District's Governing Board that all of the Consultant's and Subconsultant's/Subcontractor's employees-individuals performing services under this agreement are clear of tuberculosis (TB) as defined on Education Code Section 49406 and Assembly Bill 1667.

Company Name: Parent Institute for Quality Education

Name/title of authorized representative *(Print)* Adrianne M. Shaw, Deputy Director

Signature Adrianne M Shaw Date 09/09/2024

EXHIBIT A

SCOPE OF WORK AND FEES

The Parent Institute for Quality Education (PIQE) offers three different programs:

- Signature Family Engagement Program
- Social Emotional Learning (SEL)
- Family Literacy Program (P-3)

Schools will select the program that best fits their needs.

See details in the PIQE Memorandum of Understanding

EXHIBIT A

SERVICES ACCEPTANCE MEMORANDUM OF UNDERSTANDING

To: School Administrator / Principal

From: Adrianne Shaw, Deputy Director

Date: 7/17/24

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the parties herein expressed, The Parent Institute for Quality Education (PIQE) and San Ysidro School District agree as follows:

RECITALS

A. Scope of Services: PIQE will provide the following programs: Signature Family Engagement, Family Literacy (P- 3rd Grade), Social Emotional Learning (SEL) workshops to the following SYSD schools; ***La Mirada/Smythe, San Ysidro Middle, Sunset, Vista Del Mar and Willow and Oceanview Hills Elementary.***
PIQE will contact school administrators and assist in the selection of the workshop that best suits the schools needs for the 2024/2025 school year.

PROGRAM DESCRIPTION

Signature Family Engagement Program (K-12)

The Family Engagement Program educates, empowers, and inspires families to take an active role in their student's education while building community and a peer-to-peer network. Families are engaged in programming that encourages fostering a positive educational environment at home and at school to increase academic success.

- ☐ 8-week program | Once a week, 90 minute-session
- ☐ Includes Social Emotional and Digital Literacy Components
- ☐ Families better understand how to navigate the school system, access relevant information for student success, and college admission requirements

© PIQE 2022

Social-Emotional Learning (K-12)

The Social-Emotional Learning curriculum for families with students in grades K-12 will be introduced to the importance of Social Emotional Learning and its impact on academic success. The 5 domains of social-emotional health are explained along with implementation strategies to help support SEL at home.

☐ 8-week program | Once a week, 90 minute-session

☐ Includes effective strategies for managing stress and recognizing the spectrum of emotions and responses

☐ Families better understand self-awareness, self-management, social awareness, and relationship-building skills and how to support their student's development of these skills.

Family Literacy Program (P-3)

Developed in partnership with the California Reading and Literature Project, the Family Literacy Program introduces the five elements of literacy equipping families with strategies to support literacy at home. Families are introduced to Dr. Shefelbine's Literacy Framework of Skills with fun, interactive and purposeful reading strategies. Reading development is emphasized with a direct connection to students' overall academic success.

☐ 8-week program | Once a week, 90 minute-sessions

☐ Includes strategies for supporting literacy through narrative (fiction) and expository (non-fiction) text aligned with the intent of the Common Core Standards

☐ Families receive a learning activities book to keep and continue utilizing with their children

B. Locations: San Ysidro School District schools as identified above.

C. Period of Performance: During School Year 2024-2025.

D. Time of Class: Morning _____ Evening _____ To be determined by each school principal.

E. Type of Class: Virtual (V) _____, Hybrid (H) _____, In-Person (P) _____
To be determined by each school principal.

F. Session Dates: To be determined by each school principal.

G. Compensation: a fee of $14,500.00 for a class of 25-30 parents, max 2 classes per school. Each additional class will be $2,500.00 for up to 30 parents at the same school and the same program. The minimum number of parents to open a class in any language is 15. Total contract cost is $87,000.00 for all schools included in this MOU.

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For our P-3 course, a fee of $26.25 per parent will be charged to cover the cost of the *Family Time Reading* workbook in Spanish, and a fee of $45.44 per parent to cover cost of the English workbook.

H. Cancellation: A class that does not have the minimum number of parents needed to keep the class open might be cancelled by mutual agreement on or before class #3; no classes can be cancelled on or after class #4, in case this happens, the school would have to pay the cost of the agreed class referred in the compensation described above.

I. District funding source/P.O. #: A Purchase Order is required before providing services.

In addition, where the PIQE program is provided in person, the school will make childcare arrangements to have it available to families as well as provide refreshments to the parents.

Copyright Protections: PIQE owns all products and all content in the program(s), including without limitation the information, materials, text, graphics, protocols and the selection and organization thereof ("content"). The content is protected by copyright laws of the United States and other countries and may not be used, copied, distributed, displayed, modified, reproduced, published, posted or reverse engineered in whole or in part without the prior written permission of PIQE. ***Initials:*** _____

I accept these services at San Ysidro School District under the terms and conditions noted.

_____ _____

Administrator / School Principal Date

Board approved: _____

Parent Institute Representative: ***Adrianne M. Shaw***

Deputy Director, PIQE

Parent Institute for Quality Education
22 West 35th St., Suite 201, National City, CA 91950
Telephone: 619.420.4499
www.piqe.org

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SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Human Resources
Manuel Bojorquez, Director

☐ Informational
☒ Action

AGENDA ITEM: AGREEMENT WITH CAMPBELLSVILLE UNIVERSITY

BACKGROUND INFORMATION:
The San Ysidro School District will enter into an agreement with Campbellsville University for educational fieldwork experiences available to the University's candidates at the District's facilities. The term of this agreement shall commence on August 9, 2024 and terminate on June 30, 2025.

RECOMMENDATION:
Approve the agreement with Campbellsville University for educational fieldwork experiences in school counseling 2024-25.

LCAP GOAL AND ACTION/SERVICE (please indicate):
Goal #1: Student Achievement – 1.5 Staffing

☐ **Renewal** ☒ **New** ☐ **Amendment** ☒ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	--

N/A	N/A
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☒ Yes ☐ No

MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT entered into by and between **Campbellsville University** hereinafter called the **UNIVERSITY** and San Ysidro School District, hereinafter called the **DISTRICT:**

WHEREAS, it is to the mutual benefit of the University and the District to make a program of educational fieldwork experiences available to the University's candidates at the District's facilities.

NOW, THEREFORE, it is mutually agreed upon between the parties as follows:

GENERAL TERMS AND CONDITIONS

1. **Term**. The term of this agreement shall commence on August 9, 2024 and terminate on June 30, 2025.

2. **Termination**. Notwithstanding anything herein contained to the contrary, either party may terminate this agreement with thirty (30) days written notice to the undersigned. In the event of early termination of this agreement, candidates who have not yet completed their K-12 Educational field experience assignment in the District may complete their assignment at the discretion of the District. Nothing in this agreement shall limit the right of the University, acting in its sole discretion, to remove a candidate from the K-12 setting at any time.

3. **Amendments.** The provisions of this agreement may be altered, changed, or amended, by mutual written consent of the parties hereto.

4. **Execution.** This agreement may be executed in one or more counterparts, all of which shall constitute one and the same document. Counterparts may be exchanged by facsimile or email. Each counterpart, whether an original signature or a facsimile copy, shall be deemed an original as against any Party who signed it.

5. **Scope of Work and Compensation.**
   a. Refer to **Exhibit A** for Scope of Work and Compensation (if applicable).

   b. The University supervisor will meet remotely with candidate and their approved internship mentor.

6. **Insurance.**
   a. The District shall maintain minimum insurance coverage for Worker's Compensation, including Employer's Liability, covering its employees.

   b. The University shall maintain minimum insurance coverage for Worker's Compensation, including Employer's Liability, covering its agents and employees.

   c. The Student/Candidate shall carry professional liability insurance coverage in the minimum amount of $1,000,000 per limit and $2,000,000 in the aggregate.

d. The Candidate maintains proof of all insurance coverage and will provide said proof to the District upon request.

e. The employment status of candidates and the responsibility for insurance coverage for candidate activities depends upon the status of the candidates as set forth below:

i. Candidates Participating in Unpaid K-12 Educational Field Experience not at Candidate's Place of Employment: If the University's candidates are participating in an unpaid K-12 educational field experience not at his or her place of employment, it is understood that the University's candidates are fulfilling specific requirements for field experiences as part of a degree or credential program requirement, and therefore, the University's candidates do not thereby become employees of the District by virtue of their field experience. If the University does not provide insurance coverage for Student/ Candidate, the Student/Candidate shall be responsible for maintaining insurance coverage as provided in Sections above during the term of their agreement.

ii. Candidates Participating in Unpaid K-12 Educational Field Experience at Candidate's Place of Employment: If the University's candidates are participating in an unpaid internship or field experience at his or her place of employment, it is understood that the University and the District shall keep the field experience and work duties of the University's candidates strictly separate. If the University does not provide insurance coverage for Student/Candidate, the Student/Candidate shall be responsible for maintaining insurance coverage as provided in the Sections above during the term of their assignment.

Each party agrees that no student in a field placement will be deemed to be an employee of the University or District and that the primary purpose of the placement is the students' learning. It is further understood that the student shall not at any time replace or substitute for any District employee and shall not be compensated or receive any benefits (including workers' compensation) from the District.

7. **Confidentiality.**

a. All verbal and written information exchanges, as well as proprietary information relating to business practices, procedures or methods of the District or the project shall remain strictly confidential and shall not be disclosed without consent of the District. The University agrees to notify candidates that they are responsible for respecting and maintaining the confidentiality of all information with respect to all students of the District.

b. The University and the District agree to comply with the Family Educational Rights and Privacy Act (FERPA) of 1974, and all requirements imposed by or pursuant to regulation of the Department of Education to the end that the rights and privacy of the students enrolled in the District and of their parents are not violated or invaded. This assurance is given to obtain access to individual student data for the purpose of using said data to fulfill assignments or contractual obligations with the District. The provisions of the Family Educational Rights and Privacy Act of 1974 include, but are not limited to ensuring that (a) no identification of students or their

parent(s)/guardian(s) by persons other than representatives of the University and required persons performing activities mandated by the California Department of Education, California Commission on Teacher Credentialing (i.e. auditors) is permitted; (b) the individual student data will be destroyed when no longer needed for the purpose(s) for which they were obtained; (c) no access to individual student data shall be granted by the University to any other persons, agency, or organization without the written consent of the pupil's parent/guardian, except for sharing with other persons within the District or representatives of the University, so long as those persons have a legitimate interest in the information; (d) the District will not disclose the candidate records of the University's candidates except to University and District officials who have a legitimate need for the information consistent with their official responsibilities.

8. **Non-Discrimination.** The University and the District agree to make no distinction among candidates covered by this agreement on the basis of race, color, religion, national origin, gender, age, disability, or status as a veteran.

9. **Transportation of Students.** Neither the University nor the District will provide transportation for candidates between the University and the District school. Each candidate shall be responsible for his or her transportation.

10. **Scope of Authority.** The District shall exercise exclusive control over the administration, operation, maintenance and management of the District and its schools, and the University's candidates while they are in residence at the District. Subject thereto, the University shall exercise control and supervision over the operation, curriculum, faculty and candidates of the University within the prescribed framework.

11. **Indemnification.**
    Each Party agrees to be responsible for any personal injury or damage caused by its own negligent acts or omissions. Each Party further agrees to defend itself and pay any judgements and costs arising out of such negligent acts or missions. Nothing in this Agreement shall impute or transfer any such responsibility from one to the other.

12. **Other.**

The District may, for good cause, refuse to accept any candidate of the University assigned to the District. Upon request of the District, made with good cause, the University shall terminate the student teaching assignment of said candidate.

The University will ensure that Candidates (a) meet the California Basic Skills requirement, (b) demonstrate Subject Matter Competence (or 4/5 of subject matter competence for undergraduates in an approved Subject Matter Preparation Program), (c) meet the U.S. Constitution requirement, (d) possess a valid certificate of clearance, or other valid CTC document, (e) have a negative TB test, and (f) provide DOJ Clearance.

13. **Notices / Contact Information**

All notices or demands to be given under this Agreement by either party to the other shall be in writing and given either by: (a) personal service, (b) email or (c) by U.S. Mail, mailed certified mail with return receipt requested, addressed to the following entities.

UNIVERSITY:	**Campbellsville University**
Name:	
Title:	
Address:	
City/State/Zip Code:	
Telephone:	
Email:	

DISTRICT:	**San Ysidro School District**	
Name:	Marilyn Adrianzen	Manuel Bojorquez
Title:	Chief Business Official	Director of Human Resources
Address:	4350 Otay Mesa Road	4350 Otay Mesa Road
City/State/Zip code:	San Ysidro, CA 92173	San Ysidro, CA 92173
Telephone:	(619) 428-4476	(619) 428-4476 x3012
Email:	Marilyn.adrianzen@sysdschools.org	Manuel.bojorquez@sysdschools.org

14. **Governing Law.**

This Agreement shall be governed by the laws of the State of California. Any action brought to enforce the terms of this Agreement shall be brought in a state or federal court located in the County of San Diego, State of California, but only after dispute resolution as provided herein.

Severability

If any provision of this agreement is held invalid by any law, rule, order, of regulation of any government or by the final determination of any state or federal court, such invalidity shall not affect the enforceability of any other provision not held to be invalid.

15. **Entire Agreement**

This Agreement represents the entire understanding of District and University 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 hereunder. To the extent that any provision or clause contained in an attachment to this Agreement conflicts with a provision or clause in the Agreement, the provision or clause in this Agreement shall control. This Agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated Agreement.

16. **Warranty of Authority:**

Each of the parties signing this Agreement warrants to the other that he or she has the full authority to enter into agreement on behalf of the Party for which his or her signature is made.//

■ Signature Page

UNIVERSITY	DISTRICT
Campbellsville University Firm Name	**San Ysidro School District** Firm Name
Signature of Authorized Agent	Signature
Print Name, Title	Marilyn Adrianzen, Chief Business Official Print Name, Title
Date:	Date
Phone Number: _____	Board Approved:

Revised for Campsbellville

EXHIBIT A

Campbellsville UNIVERSITY
SCHOOL OF EDUCATION

1 University Drive • Campbellsville, Kentucky 42718-2190 • tel 270.789.5252 • 1.800.264.6014 • www.campbellsville.edu

School Counseling Internship District Agreement Form

Intern Name: Erika Sanchez
Phone Number: _____ **(Cell and/or Home)**
Current Home Address:
Clinical Site Location & Address:
San Ysidro School District, 4350 Otay Mesa Road, San Ysidro, CA 92173

Clinical Site Mentor, Title, & Contact Information: **To be assigned**

Clinical Site Mentor Area of Certification & Licenses held:

*Internship Mentor (Site Supervisor) Requirements according to the KY Standards of Preparation for School Counselors
Standards: School Counselor Preparation Program Standards (ky.gov)
5.2.c Internship experiences must occur in a school counseling setting under the supervision of a site supervisor.
c. Site supervisors have (1) a minimum of a master's degree in school counseling; (2) relevant certifications and/or licenses (interpreted as in School Counseling) (3) a minimum of two years of professional experience in school counseling; (4) knowledge of the program's expectations, requirements, and evaluation procedures for students; and (5) relevant training in counseling supervision.

***Interns must obtain their own Professional Liability Insurance through a Professional Counseling Association and attach verification of this insurance to this agreement. ***

*Internship Activities for Interns are addressed in three eight-week courses: SC 514, SC 515, & SC 516 and 400 hours of clinical service under the supervision of one School Counseling Certified mentor will be completed. Each week the mentor will verify the Intern's completion of hours by signing their weekly log.

Internship Course Objectives
Interns will:
1. Articulate and contribute to clinical case consultations
2. Synthesize information into ethical clinical practice
3. Access and apply the professional literature/research on specific client populations
4. Demonstrate an ability to give feedback in an appropriate manner
5. Demonstrate an ability to receive and integrate feedback into clinical practice
6. Assimilate and negotiate professional roles in a multidisciplinary setting
7. Understand and implement the credentialing/licensure process

Course Hour Expectations & Anticipated Completion Dates
● SC 514 Internship in School Counseling I -1 1⁄2 credit hours (100 hours of Clinical Experience)
August-October 2024
● SC 515 Internship in School Counseling II- 1 1⁄2 credit hours (100 hours of Clinical Experience)
October-December 2024
● SC 516 Internship in School Counseling III- 3 credit hours (200 hours of Clinical Experience)
July-August 2024

Direct Counseling Hours

Of the 400 total hours of Internship, 150 hours must be direct hours where Intern will work directly with students under the supervision of the mentor counselor in classroom guidance, individual counseling, and group counseling sessions

Indirect Counseling Hours will be performed alongside and under the supervision of the School Counseling mentor and may include, but are not limited to, the following:

- Assisting counselors with student scheduling
- IEP & 504 meeting attendance/observation
- Consultations with stakeholders (ex. colleagues, community-school partners, etc.)
- Counseling presentations
- Program evaluation
- Professional Development meetings (faculty, conferences, school counselor meetings, etc.)
- Comprehensive school improvement planning

Internship Evaluation

- The Supervising Mentor will complete a formative evaluation on the Intern within each course
- The Summative Evaluation will be submitted in the Intern's last Internship course. However, you are encouraged to reference this evaluation throughout the duration of the Internship. For the Intern to successfully complete their three-course Internship, they must obtain a performance level of at least a 2 on each standard at the completion of their 400 required clinical hours.

This agreement confirms the partnership between **Campbellsville University's School of Education School Counseling Program** and **San Ysidro School District** in the preparation of School Counseling Intern Erika Sanchez. The candidate will fulfill these mutually agreed expectations in preparation for the completion of their School Counseling Internship.

Representative from District and Title: Marilyn Adrianzen, CBO Date: _____

_____
Signature of District Representative

Campbellsville University School of Education Internship Representative and Title
Elisha Lawrence, Associate Professor & Assessment Coordinator Date: 6/12/2024

_____
Signature of School of Education Representative

SYSD HR Contact
Manuel Bojorquez
Director of Human Resources
(619) 428-4476
manuel.bojorquez@sysdschools.org

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Business Services
Marilyn Adrianzen, Chief Business Official

☐ Informational
☒ Action

AGENDA ITEM: AGREEMENTS FOR THE IMPLEMENTATION OF THE PUBLIC AGENCIES POST-EMPLOYMENT BENEFITS TRUST

BACKGROUND INFORMATION:
The District's actuarial liability for District-paid retiree benefits (OPEB) is $16,544,352 as of June 30, 2023. The total amount represents the liability cost associated with retiree benefits for all current employees, upon retirement, and retirees for future years out.

The PARS IRS Section 115 Post-Employment Benefits Trust will allow the District to set aside funds into an irrevocable trust to address these future costs. Assets in the PARS Trust can be accessed at any time to offset these liabilities. PARS has partnered with U.S. Bank to serve as Trustee and Vanguard to provide investment management services for the program. PARS is the California School Boards Association (CSBA) endorsed OPEB Trust Administrator Services provider. They currently provide OPEB and Pension administration services for over 300 clients, including dozens of school districts throughout California.

On July 11, 2024, the Governing Board adopted Resolution No. 24/25-0010 authorizing the establishment of the PARS Post Employment Benefit Trust to be administered by Public Agency Retirement Services (PARS) and appointed the Chief Business Official or his/her successor or his/her designee to serve as the District's Plan Administrator and to execute the documents necessary to implement the Trust.

In order to start the OPEB Trust implementation process several documents needed approving:

- Adoption Agreement
- Administrative Services Agreement
- Employer Portal Opt-in Addendum (Optional)

U.S. Bank (Trustee Forms)

- Investment Strategy Selection & Disclosure form
- Discretionary Trustee Fee Schedule

RECOMMENDATION:
Approve/Ratify the agreements for the implementation of the Public Agencies Post-Employment Benefits Trust as described above.

LCAP GOAL AND ACTION/SERVICE (please indicate):

☐ **Renewal** ☒ **New** ☐ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☐ Yes ☒ No	☐ Yes ☐ No	

N/A	N/A
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

Docusign Envelope ID: 337598D6-1D4D-42D6-87E6-F399E4C5E835

AGREEMENT FOR ADMINISTRATIVE SERVICES

This agreement ("Agreement") is made this July 23, 2024, between Phase II Systems, a corporation organized and existing under the laws of the State of California, doing business as Public Agency Retirement Services and PARS (hereinafter "PARS") and the San Ysidro School District ("Agency").

WHEREAS, the Agency has adopted the PARS Public Agencies Post-Employment Benefits Trust for the purpose of prefunding pension obligations and/or Other Post-Employment Benefits ("OPEB") obligations ("Plan") and is desirous of retaining PARS as Trust Administrator to the Trust, to provide administrative services.

NOW THEREFORE, the parties agree:

1. **Services.** PARS will provide the services pertaining to the Plan as described in the exhibit attached hereto as "Exhibit 1A" ("Services") in a timely manner, subject to the further provisions of this Agreement.
2. **Fees for Services.** PARS will be compensated for performance of the Services as described in the exhibit attached hereto as "Exhibit 1B".
3. **Payment Terms.** Payment for the Services will be remitted directly from Plan assets unless the Agency chooses to make payment directly to PARS. In the event that the Agency chooses to make payment directly to PARS, it shall be the responsibility of the Agency to remit payment directly to PARS based upon an invoice prepared by PARS and delivered to the Agency. If payment is not received by PARS within thirty (30) days of the invoice delivery date, the balance due shall bear interest at the rate of 1.5% per month. If payment is not received from the Agency within sixty (60) days of the invoice delivery date, payment plus accrued interest will be remitted directly from Plan assets, unless PARS has previously received written communication disputing the subject invoice that is signed by a duly authorized representative of the Agency.
4. **Fees for Services Beyond Scope.** Fees for services beyond those specified in this Agreement will be billed to the Agency at the rates indicated in the PARS' standard fee schedule in effect at the time the services are provided and shall be payable as described in Section 3 of this Agreement. Before any such services are performed, PARS will provide the Agency with a detailed description of the services, terms, and applicable rates for such services. Such services, terms, and applicable rates shall be agreed upon in writing and executed by both parties.
5. **Information Furnished to PARS.** PARS will provide the Services contingent upon the Agency providing PARS the information specified in the exhibit attached hereto as "Exhibit 1C" ("Data"). It shall be the responsibility of the Agency to certify the accuracy, content, and completeness of the Data so that PARS may rely on such information without further audit. It shall further be the responsibility of the Agency to deliver the Data to PARS in such a manner that allows for a reasonable amount of time for the Services to be performed. Unless specified in Exhibit 1A, PARS shall be under no duty to question Data received from the Agency, to compute contributions made to the

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Plan, to determine or inquire whether contributions are adequate to meet and discharge liabilities under the Plan, or to determine or inquire whether contributions made to the Plan are in compliance with the Plan or applicable law. In addition, PARS shall not be liable for nonperformance of Services to the extent such nonperformance is caused by or results from erroneous and/or late delivery of Data from the Agency. In the event that the Agency fails to provide Data in a complete, accurate and timely manner and pursuant to the specifications in Exhibit 1C, PARS reserves the right, notwithstanding the further provisions of this Agreement, to terminate this Agreement upon no less than ninety (90) days written notice to the Agency.

6. **Records.** Throughout the duration of this Agreement, and for a period of five (5) years after termination of this Agreement, PARS shall provide duly authorized representatives of Agency access to all records and material relating to calculation of PARS' fees under this Agreement. Such access shall include the right to inspect, audit and reproduce such records and material and to verify reports furnished in compliance with the provisions of this Agreement. All information so obtained shall be accorded confidential treatment as provided under applicable law.

7. **Confidentiality.** Without the Agency's consent, PARS shall not disclose any information relating to the Plan except to duly authorized officials of the Agency, subject to applicable law, and to parties retained by PARS to perform specific services within this Agreement. The Agency shall not disclose any information relating to the Plan to individuals not employed by the Agency without the prior written consent of PARS, except as such disclosures may be required by applicable law.

8. **Independent Contractor.** PARS is and at all times hereunder shall be an independent contractor. As such, neither the Agency nor any of its officers, employees or agents shall have the power to control the conduct of PARS, its officers, employees, or agents, except as specifically set forth and provided for herein. PARS shall pay all wages, salaries, and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation, and similar matters.

9. **Indemnification.** PARS and Agency hereby indemnify each other and hold the other harmless, including their respective officers, directors, and employees, from any claim, loss, demand, liability, or expense, including reasonable attorneys' fees and costs, incurred by the other as a consequence of, to the extent, PARS' or Agency's, as the case may be, negligent acts, errors or omissions with respect to the performance of their respective duties hereunder.

10. **Compliance with Applicable Law.** The Agency shall observe and comply with federal, state, and local laws in effect when this Agreement is executed, or which may come into effect during the term of this Agreement, regarding the administration of the Plan. PARS shall observe and comply with federal, state, and local laws in effect when this Agreement is executed, or which may come into effect during the term of this Agreement, regarding Plan administrative services provided under this Agreement.

11. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event any party institutes legal proceedings to enforce or interpret this Agreement, venue and jurisdiction shall be in any state court of competent jurisdiction.

12. **Force Majeure.** When a party's nonperformance hereunder was beyond the control and not due to the fault of the party not performing, a party shall be excused from performing its obligations under this Agreement during the time and to the extent that its performance is prevented by such cause. Such cause shall include, but not be limited to: any incidence of fire, flood, acts of God or unanticipated communicable disease, acts of terrorism or war commandeering of material, products, plants or facilities by the federal, state or local government, a material act or omission by the other party or any law, ordinance, rule, guidance or recommendation by the federal, state or local government, or any agency thereof, which becomes effective after the date of this Agreement that delays or renders impractical either party's performance under the Agreement.

13. **Ownership of Reports and Documents.** The originals of all letters, documents, reports, and data produced for the purposes of this Agreement shall be delivered to and become the property of the Agency. Copies may be made for PARS but shall not be furnished to others without written authorization from Agency.

14. **Designees.** The Plan Administrator of the Agency, or their designee, shall have the authority to act for and exercise any of the rights of the Agency as set forth in this Agreement, subsequent to and in accordance with the written authority granted by the Governing Body of the Agency, a copy of which writing shall be delivered to PARS. Any officer of PARS, or his or her designees, shall have the authority to act for and exercise any of the rights of PARS as set forth in this Agreement.

15. **Notices.** All notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be effected by delivery of the notices in person or by depositing the notices in the U.S. mail, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

    (A) To PARS: PARS; 4350 Von Karman Avenue, Suite 100, Newport Beach, CA 92660; Attention: President

    (B) To Agency: San Ysidro School District; 4350 Otay Mesa Road, San Ysidro, CA 92173; Attention: Chief Business Official

    Notices shall be deemed given on the date received by the addressee.

16. **Term of Agreement.** This Agreement shall remain in effect for the period beginning July 11, 2024 and ending July 10, 2027 ("Term"). This Agreement may be terminated at any time by giving thirty (30) days written notice to the other party of the intent to terminate. Absent a thirty (30) day written notice to the other party of the intent to terminate, this Agreement will continue unchanged for successive twelve-month periods following the Term.

17. **Amendment.** This Agreement may not be amended orally, but only by a written instrument executed by the parties hereto.

18. **Entire Agreement.** This Agreement, including exhibits, contains the entire understanding of the parties with respect to the subject matter set forth in this Agreement. In the event a conflict arises between the parties with respect to any term, condition or provision of this Agreement, the remaining terms, conditions, and provisions shall remain in full force and legal effect. No waiver of any term or condition of this Agreement by any party shall be construed by the other as a continuing waiver of such term or condition.

19. **Attorneys Fees.** In the event any action is taken by a party hereto to enforce the terms of this Agreement the prevailing party herein shall be entitled to receive its reasonable attorney's fees.

20. **Counterparts.** This Agreement may be executed in any number of counterparts, and in that event, each counterpart shall be deemed a complete original and be enforceable without reference to any other counterpart.

21. **Headings.** Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

22. **Effective Date.** This Agreement shall be effective on the date first above written, and also shall be the date the Agreement is executed.

AGENCY:

BY: DocuSigned by: Marilyn Adrianzen FF17E845CADD4EA...
Marilyn Adrianzen

TITLE: Chief Business Official

DATE: July 23, 2024

PARS:

BY: _____
Tod Hammeras

TITLE: Chief Financial Officer

DATE: _____

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EXHIBIT 1A

SERVICES

PARS will provide the following services for the San Ysidro School District Public Agencies Post-Employment Benefits Trust:

1. Plan Installation Services:

   (A) Meeting with appropriate Agency personnel to discuss plan provisions, implementation timelines, actuarial valuation process, funding strategies, benefit communication strategies, data reporting, and submission requirements for contributions/reimbursements/distributions;

   (B) Providing the necessary analysis and advisory services to finalize these elements of the Plan;

   (C) Providing the documentation needed to establish the Plan to be reviewed and approved by Agency legal counsel. Resulting final Plan documentation must be approved by the Agency prior to the commencement of PARS Plan Administration Services outlined in Exhibit 1A, paragraph 2 below.

2. Plan Administration Services:

   (A) Monitoring the receipt of Plan contributions made by the Agency to the trustee of the PARS Public Agencies Post-Employment Benefits Trust ("Trustee"), based upon information received from the Agency and the Trustee;

   (B) Performing periodic accounting of Plan assets, reimbursements/distributions, and investment activity, based upon information received from the Agency and/or Trustee;

   (C) Coordinating the processing of distribution payments pursuant to authorized direction by the Agency, and the provisions of the Plan, and, to the extent possible, based upon Agency-provided Data;

   (D) Coordinating actions with the Trustee as directed by the Plan Administrator within the scope of this Agreement;

   (E) Preparing and submitting a monthly report of Plan activity to the Agency, unless directed by the Agency otherwise;

   (F) Preparing and submitting an annual report of Plan activity to the Agency;

   (G) Facilitating actuarial valuation updates and funding modifications for compliance with the applicable GASB pronouncements and/or statements, if prefunding OPEB obligations;

   (H) Coordinating periodic audits of the Trust;

   (I) Monitoring Plan and Trust compliance with federal and state laws.

3. PARS is not licensed to provide and does not offer tax, accounting, legal, investment or actuarial advice.

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EXHIBIT 1B

FEES FOR SERVICES

PARS will be compensated for performance of Services, as described in Exhibit 1A based upon the following schedule:

An annual asset fee shall be paid from Plan assets based on the following schedule:

For Plan Assets from:			**Annual Rate:**
$1	to	$10,000,000	0.25%
$10,000,001	to	$15,000,000	0.20%
$15,000,001	to	$50,000,000	0.15%
$50,000,001	and	above	0.10%

Annual rates are prorated and paid monthly. The annual asset fee shall be calculated by the following formula [Annual rate divided by 12 (months of the year) multiplied by the Plan asset balance at the end of the month]. Trustee and Investment Management Fees are not included.

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EXHIBIT 1C

DATA REQUIREMENTS

PARS will provide the Services under this Agreement contingent upon receiving the following information. Agency is solely responsible for ensuring that all information and documentation provided to PARS is true, correct, and authorized:

1. Executed Legal Documents:
   - (A) Certified Resolution
   - (B) Adoption Agreement to the Public Agencies Post-Employment Benefits Trust
   - (C) Trustee Investment Forms

2. Contribution – completed Contribution Transmittal Form signed by the Plan Administrator (or authorized Designee) which contains the following information:
   - (A) Agency name
   - (B) Contribution amount
   - (C) Contribution date
   - (D) Contribution method (Check, ACH, Wire)

3. Distribution – completed Payment Reimbursement/Distribution Form signed by the Plan Administrator (or authorized Designee) which contains the following information:
   - (A) Agency name
   - (B) Payment reimbursement/distribution amount
   - (C) Applicable statement date
   - (D) Copy of applicable premium, claim, statement, warrant, and/or administrative expense evidencing payment
   - (E) Signed certification of reimbursement/distribution from the Plan Administrator (or authorized Designee)

4. Other information pertinent to the Services as reasonably requested by PARS and Actuarial Provider.

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PARS. PUBLIC AGENCY RETIREMENT SERVICES

Dear Ms. Adrianzen:

We are pleased the San Ysidro School District (the "District") will be participating in the PARS Public Agencies Post-Employment Benefits Trust (the "Program"). We look forward to serving your District as Trust Administrator. Enclosed you will find the legal documents necessary to complete the implementation process.

DOCUMENT CHECKLIST

❶ Adoption Agreement

The Adoption Agreement is required for the official adoption of the Trust Agreement. **Please review the provisions in the Adoption Agreement, complete sections A.3.1.1 & A.4.2.1, sign and date where indicated on page 4.** A fully executed copy will be returned to your attention.

If the District would also like to adopt the Pension Plan under the Trust, please reach out to me at (800) 540-6369 extension 165.

❷ Administrative Services Agreement

The Administrative Services Agreement outlines the services provided and the billing practices of Public Agency Retirement Services, the PARS Trust Administrator. **Upon review, please fill in the date at the top of page 1, sign & date page 4**. A fully executed copy will be returned to your attention.

❸ (OPTIONAL) Employer Portal Opt-In Addendum

PARS offers agencies the ability to access and view their Plan's latest monthly account balances, transaction history, investment performance as well as download statements through our web-based Portal. **If the District wishes to utilize the Portal at no additional cost, please review and complete the enclosed Addendum and the accompanying Agency Personnel Designation Form.**

U.S. BANK (TRUSTEE FORMS)

❹ Investment Strategy Selection & Disclosure Form

This document sets forth the various investment portfolios offered under the Program. The District's assets will be invested in accordance with your selection. **Upon review, please choose the appropriate investment strategy selection, sign and date where indicated.**

❺ Discretionary Trustee Fee Schedule

This document discloses fees charged by U.S. Bank for trustee and investment management services. **Upon review, please sign and date where indicated.**

PARS. PUBLIC AGENCY RETIREMENT SERVICES

❻ Authorized Signers Form
U.S. Bank is required to have an authorized signer/specimen signature form on file. **Upon review, please include your email address and direct phone number, and sign and date where indicated.**

❼ W-9 Request for Taxpayer Identification Number and Certification
The Trustee is required to have on record a completed Form W-9. **Please note, the name, address, and EIN on Form W-9 must match the name, address, and EIN in Section A.2.1 of the Adoption Agreement.**

Upon review and signature of the above-referenced legal documents, a member from our Client Services department will schedule a meeting and/or conference call with you and your staff to go over the Administrator's Handbook, which includes the necessary forms and instructions on where to send contributions and how to request reimbursements.

Should you have any questions or encounter any issues with DocuSign, please feel free to contact me at (800) 540-6369 extension 165 or at kstanderfer@pars.org.

Sincerely,

Kelsey Standerfer

Kelsey Standerfer
Coordinator, Plan Implementation

PARS is not licensed to provide and does not offer tax, accounting, legal, investment or actuarial advice. We present these documents with the understanding that you will have them reviewed by the appropriate advisor.

SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA

TO: Governing Board

BOARD MEETING DATE: August 8, 2024

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM: Information Management Systems Todd Lewis, Director

☐ Informational
☒ Action

AGENDA ITEM: PURCHASE AGREEMENT WITH PATHWAY COMMUNICATIONS LTD

BACKGROUND INFORMATION:
The District currently has older SMART Technologies brand interactive whiteboards in classrooms throughout the District. These boards are end-of-life and need to be replaced with newer LCD technology.

SMART Technologies has been "innovating and advancing technology focused on the connections that matter since we invented the original SMART Board in 1987." These SMART Boards are designed for education and have a large touch LCD screen, speakers, and digital pens that can be used as a stand-alone device or connected to a computer. The screens have "built-in activities and teaching tools, making it easy for teachers to add interactivity and engagement even if they've never used a SMART Board."

The District recommends purchasing this equipment through Pathway Communications LTD, which was awarded a bid through the North County Educational Purchasing Consortium Bid No. 2023-2024 with a contract period of 01-01-2024 to 12-31-2024. The District is an associate member of this Consortium.

The District requested pricing for SMART Boards for Vista Del Mar Middle and Ocean View Hills School. The cost included mobile cart stands, Lumio software, document cameras, and extended warranties, totaling $278,093.18.

RECOMMENDATION:
Approve the purchase agreement with Pathway Communications LTD through the North County Educational Purchasing Consortium for SMART Boards and related equipment for $278,093.18 from the General Obligation Bonds.

LCAP GOAL AND ACTION/SERVICE:

☐ **Renewal** ☒ **New** ☐ **Amendment** ☐ **Ratify** ☐ **Other**

Financial Implications?	Are funds for this item available in the 2024-2025 Budget?	Requisition #
☒ Yes ☐ No	☒ Yes ☐ No	

$278,093.18	G.O. Bonds Fund
(Amount)	(Name of funding source and/or location)

Recommended for: ☒ Approval ☐ Denial Certification Requested ☐ Yes ☐ No

SMART Equipment & Assembly On-Site at Ocean Air with 7 Yr IFP Warranty

QUOTE 190529

Bill To: **San Ysidro School District**
Accounts Payable
4350 Otay Mesa Road
San Ysidro, CA 92173

Ship To: **San Ysidro School District Warehouse**
PO
4350 Otay Mesa Road
San Ysidro, CA 92173

Contact: Araceli Felix
email: araceli.felix@sysdschools.org
Phone: (619) 428-4476 x 3002
Fax: (619) 428-9355
Date: 8/2/2024
Quote: Good for 30 Days
Delivery: Ground, Destination
Terms: Net 30
PO: To include all items as a package shown below

Becky Thurmon
12740 Danielson Ct, Suite E
Poway, CA 92064
beckyt@pcomus.com
Mobile (619) 847-0169
California Office (858) 324-1036 Fax (858) 430-9459
Nevada Office (702) 568-6517 Fax (702) 446-0325
Texas Office (972) 436-6161 Fax (972) 436-0421
CA Lic C7 #868539 Exp: 12/31/25; CA DIR #1000001958 Exp: 6/30/25

Quantity	Part Number	Manufacture	Description	Unit Cost	Extended Cost
Classroom Equipment					
1	NCEPC%	PATHWAY	NCEPC AV Bid #2023-2024 %-Off Bid Pricing - SMART 12%	$0.00	$ -
2	MX286-V5	SMART	SMART Board MX (v5) 86" - LCD, 86" 4K/UHD 159LB 400NIT 40PT TOUCH WITH IQ 55-69, 3 Yr Warranty, MSRP $7499	$4,799.12	$ 9,598.24
2	**EWY4SBID867Y**	SMART	WARRANTY, 4 YEAR EXTENSION FOR 86" SMARTBoard - **Yrs 4 -7,** MSRP	$524.12	$ 1,048.24
2	EDSW5	SMART	SMART LEARNING SUITE, 5 YEAR SUBSCRIPTION, MSRP $599	$327.12	$ 654.24
2	FSSBID200	SMART	MOBILE STAND FOR INTERACTIVE DISPLAYS, MSRP $729	$493.12	$ 986.24
2	SDC650	SMART	DOCUMENT CAMERA, 650, MSRP $935	$652.80	$ 1,305.60
			Equipment Sub-Total		**$ 13,592.56**
Pathway Assembly - On-Site Vista Del Mar School, Preferred During Fall Break Sept 23 - Oct 4, 2024					
1	SITE PREP	District	Equipment to be delivered to Site, all in one area, in boxes prepped for Assembly	$0.00	$ -
1	SITE SOFTWARE	District	District to load any Software	$0.00	$ -
2	ASSEMBLY	Pathway	Assemble IFP & Carts On-Ste (does not included delivery to classes)	$450.00	$ 900.00
2	DISPOSAL	Pathway	Disposal of FP & Cart Boxes & Packing Materials Off-Site	$50.00	$ 100.00
1	TRIP	Pathway	Trip Charge	$65.00	$ 65.00
			Assembly Sub-Total		**$ 1,065.00**

** Pathway will provide all system design, programming, prefabrication, equipment staging, installation, project management, alignment, documentation, and training. The installation will include all the necessary hardware, interfacing, struts, and cabling to support the aforementioned equipment, unless otherwise stated. Cabling will be rated to meet with fire safety codes. Installation will be preformed in a tidy and professional manner. All considerations will be made to accommodate the scheduling needs of the client.*

Equipment	$	13,592.56
Assembly	$	1,065.00
Sub Total	$	14,657.56
Freight Est	$	-
Bond 1.5%		Add if required
Sales Tax 7.75%	$	1,053.42
Total	**$**	**15,710.98**

** The following work is not included in their scope of work: All inside wiring, conduit, high voltage wiring panels, breakers, relays, boxes, receptacles, etc. Concrete saw cutting and / or core drilling. Fire wall, ceiling, roof and floor penetration. Necessary sheet rock replacement and or repair. Necessary ceiling tile or T-bar modifications, replacement and/or repair. All millwork (moldings, trim, etc.). Painting and patching. Permits (unless specifically provided for elsewhere in the contract). HVAC and plumbing relocation. Asbestos work. Data Access. Inside Wiring.*

SMART Equipment & Assembly On-Site with 7 Yr IFP Warranty

QUOTE 190530

Bill To: **San Ysidro School District**
Accounts Payable
4350 Otay Mesa Road
San Ysidro, CA 92173

Ship To: **San Ysidro School District Warehouse**
PO
4350 Otay Mesa Road
San Ysidro, CA 92173

Contact: Araceli Felix
email: araceli.felix@sysdschools.org
Phone: (619) 428-4476 x 3002
Fax: (619) 428-9355
Date: 8/2/2024
Quote: Good for 30 Days
Delivery: Ground, Destination
Terms: Net 30
PO: To include all items as a package shown below

Becky Thurmon
12740 Danielson Ct, Suite E
Poway, CA 92064
beckyt@pcomus.com
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Texas Office (972) 436-6161 Fax (972) 436-0421
CA Lic C7 #868539 Exp: 12/31/25; CA DIR #1000001958 Exp: 6/30/25

Quantity	Part Number	Manufacture	Description	Unit Cost	Extended Cost
Classroom Equipment					
1	NCEPC%	PATHWAY	NCEPC AV Bid #2023-2024 %-Off Bid Pricing - SMART 12%	$0.00	$ -
32	MX286-V5	SMART	SMART Board MX (v5) 86" - LCD, 86" 4K/UHD 159LB 400NIT 40PT TOUCH WITH IQ 55-69, 3 Yr Warranty, MSRP $7499	$4,799.12	$ 153,571.84
4	MX275-V5	SMART	SMART Board MX (v5) 75" - LCD, 75" 4K/UHD 159LB 400NIT 40PT TOUCH WITH IQ 55-69, 3 Yr Warranty. MSRP $5499	$3,439.12	$ 13,756.48
32	**EWY4SBID867Y**	SMART	WARRANTY, 4 YEAR EXTENSION FOR 86" SMARTBoard - **Yrs 4 -7**, MSRP $599	$524.12	$ 16,771.84
4	**EWY4SBID757Y**	SMART	WARRANTY, 4 YEAR EXTENSION FOR 75" SMARTBoard - **Yrs 4 -7**, MSRP	$429.12	$ 1,716.48
36	EDSW5	SMART	SMART LEARNING SUITE, 5 YEAR SUBSCRIPTION, MSRP $599	$327.12	$ 11,776.32
36	FSSBID200	SMART	MOBILE STAND FOR INTERACTIVE DISPLAYS, MSRP $729	$493.12	$ 17,752.32
16	SDC650	SMART	DOCUMENT CAMERA, 650, MSRP $935	$652.80	$ 10,444.80
1	NO SPEC SVC	SMART	Does not include Lift-Gate, Inside Delivery, only includes Ground Freight FOB Destination Point-To-Point	$652.80	$ 652.80
			Equipment Sub-Total		**$ 226,442.88**
Pathway Assembly - On-Site Vista Del Mar School, Preferred During Fall Break Sept 23 - Oct 4, 2024					
1	SITE PREP	District	Equipment to be delivered to Site, all in one area, in boxes prepped for Assembly	$0.00	$ -
1	SITE SOFTWARE	District	District to load any Software	$0.00	$ -
36	ASSEMBLY	Pathway	Assemble IFP & Carts On-Ste (does not included delivery to classes)	$450.00	$ 16,200.00
36	DISPOSAL	Pathway	Disposal of FP & Cart Boxes & Packing Materials Off-Site	$50.00	$ 1,800.00
6	TRIP	Pathway	Trip Charge	$65.00	$ 390.00
			Assembly Sub-Total		**$ 18,390.00**

** Pathway will provide all system design, programming, prefabrication, equipment staging, installation, project management, alignment, documentation, and training. The installation will include all the necessary hardware, interfacing, struts, and cabling to support the aforementioned equipment, unless otherwise stated. Cabling will be rated to meet with fire safety codes. Installation will be preformed in a tidy and professional manner. All considerations will be made to accommodate the scheduling needs of the client.*

** The following work is not included in their scope of work: All inside wiring, conduit, high voltage wiring panels, breakers, relays, boxes, receptacles, etc. Concrete saw cutting and / or core drilling. Fire wall, ceiling, roof and floor penetration. Necessary sheet rock replacement and or repair. Necessary ceiling tile or T-bar modifications, replacement and/or repair. All millwork (moldings, trim, etc.). Painting and patching. Permits (unless specifically provided for elsewhere in the contract). HVAC and plumbing relocation. Asbestos work. Data Access. Inside Wiring.*

Equipment	$	226,442.88
Assembly	$	18,390.00
Sub Total	$	244,832.88
Freight Est	$	-
Bond 1.5%		Add if required
Sales Tax 7.75%	$	17,549.32
Total	**$**	**262,382.20**