

HUNTINGTON BEACH CITY SCHOOL DISTRICT

**8750 Dorsett Drive
Huntington Beach, CA 92646
(714) 964-8888**

**HUNTINGTON SEACLIFF ELEMENTARY SCHOOL
MODERNIZATION PROJECT**

CONSTRUCTION SERVICES AGREEMENT

Dated as of October 16, 2019

Between

Huntington Beach City School District

and



to Contractor the Project site, and improvements thereon, as described in Exhibit "A" of the Site Lease ("Site") in order for Contractor to construct improvements to the School Site; and

WHEREAS, Contractor will perform preconstruction services for the Project pursuant to said Site Lease, in anticipation of the construction services contemplated by this Construction Services Agreement; and

WHEREAS, Contractor will lease the Site and the Project back to District pursuant to a sublease agreement ("Sublease"), under which District will be required to make sublease payments and tenant improvement payments to Contractor for the use and occupancy of the Site and the Project; and

WHEREAS, at the expiration of the Site Lease and Sublease terms, title to the Project shall vest in District; and

WHEREAS, District and Contractor desire to enter into this Construction Services Agreement to ensure that the Project will meet District's expectations; and

WHEREAS, Contractor is experienced in construction of the type of improvements included in the Project that are desired by District, is duly licensed as a contractor in the State of California, and is willing to perform construction work for District, all as more fully set forth herein; and

WHEREAS, Contractor provided an estimated Guaranteed Maximum Price ("GMP") in its proposal submitted to District in response to District's RFP; and

WHEREAS, after completion of the preconstruction services contemplated by the Site Lease and approval of the Plans and Specifications for the Project by DSA, and before beginning construction services pursuant to this Construction Services Agreement, Contractor will thoroughly investigate the Site conditions and review the Construction Documents, as defined in Section 2.D., below, to establish that there are no known problems with respect to the Site conditions or the Construction Documents; and

WHEREAS, Contractor will provide District with a final GMP (as set forth and defined in Section 4 of this Construction Services Agreement) after Contractor has completed said thorough investigation of the Site conditions and review of the Construction Documents, and this Construction Services Agreement will be amended to reflect said final GMP; and

WHEREAS, Contractor acknowledges and agrees that it shall construct the Project for the final GMP, and that Contractor will not seek any additional compensation whatsoever, including, without limitation, any requests based upon known Site conditions or any other requests; and

WHEREAS, the District acknowledges and agrees that it has entered into the Site Lease, Sublease and this Construction Services Agreement pursuant to Education Code Section 17406 as the best available and most expeditious means for the District to satisfy its substantial need for the facilities to be provided by the Project and to accommodate and educate District students and to utilize its facilities proceeds expeditiously.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants hereinafter set forth, District and Contractor agree as follows:

SECTION 1. CONTRACTOR'S DUTIES AND STATUS

Contractor accepts the contractual relationship established between it and District by this Construction Services Agreement, and Contractor covenants with District to furnish its best skill and judgment in constructing the Project as set forth in the Construction Documents. Contractor agrees to furnish at all times efficient business administration and superintendence, an adequate supply of professionals, workers, and materials and to perform the work appropriately, expeditiously, economically, and consistent with this Construction Services Agreement and Construction Documents.

SECTION 2. DEFINITIONS

A. **“Construction Services Agreement”** means this Construction Services Agreement, together with any duly authorized and executed amendments hereto.

B. **“Construction” or “Construction Services”** means all labor and services necessary for the construction of the Project, and all materials, equipment, tools, supplies, and incidentals incorporated or to be incorporated in such construction as fully described in the Construction Scope of Work set forth in Section 8, below, and Exhibit “A.” Unless otherwise expressly stipulated, Contractor shall perform all work and provide and pay for all materials, labor, tools, equipment, and utilities necessary for the proper execution and completion of the Project.

C. **“Construction Costs”** means any and all costs incurred by Contractor with respect to the construction and equipping, as the case may be, of the Project, whether paid or incurred prior to or after the date hereof, including, without limitation, costs for the: (i) Contractor’s and developers’ overhead, profit and supervisors’ fees and costs directly allocable to the Project; and (ii) all costs and expenses, including any taxes or insurance premiums paid by Contractor with respect to the property, and administrative and other expenses necessary or incident to the Project. The term “Construction Costs” includes all Contractor’s costs associated with preparing or generating additional copies of any Construction Documents related to or required for the Project, including preparation or generation of additional plans and specifications for Contractor’s subcontractors. In no event shall Construction Costs exceed the Guaranteed Maximum Price.

D. **“Construction Documents”** means the final drawings, profiles, cross sections, design development drawings, construction drawings, and supplemental drawings based on the plans and specifications developed for the Project, including any reference specifications or reproductions prepared by Architect and specifications approved by District, which show or describe the location, character, dimensions, or details of the Project and specifications for construction thereof.

E. **“Contract Documents”** means those documents which form the entire contract by and between District and Contractor. The Contract Documents consist of this Construction Services Agreement, including all exhibits and attachments thereto, the Construction Documents, the Site Lease, and the Sublease.

F. **“Day” or “Days”** whenever used in this Construction Services Agreement shall refer to calendar days unless otherwise specifically stated.

G. **“Guaranteed Maximum Price” or “GMP”** means the Guaranteed Maximum Price established pursuant to Section 4, below, to be paid to Contractor for Contractor’s construction of the Project hereunder, subject to any adjustments for Extra Work/Modifications as provided in Section 9, below.

H. **“Project”** means the improvements and equipment to be constructed and installed by Contractor on the Site, as more particularly shown and/or referenced in Exhibit “A” attached hereto.

I. **“Site”** means those certain parcels of real property and improvements thereon (if any) more particularly described in Exhibit “A” of the Site Lease.

J. **“Site Lease”** means the Site Lease dated as of October 16, 2019, by and between District and Contractor together with any duly authorized and executed amendment thereto under which District leases the Site to Contractor and Contractor agrees to perform preconstruction services for the Project.

K. **“Skilled and Trained Workforce”** means a workforce that meets all of the conditions specified in Public Contract Code section 2601(d) including, without limitation the requirements that all the workers on the Project in an apprenticeable occupation in the building and construction trades are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations (the "Chief"), and, except for those occupations specified below, for work performed on or after January 1, 2019, at least 50 percent of the skilled journeypersons employed to perform work on the Project by Contractor and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation, and that percentage shall increase to 60 percent for work performed on or after January 1, 2020. Notwithstanding, for workers on the Project in the following apprenticeable occupations: an acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher, at least 30 percent of the skilled journeypersons employed to perform such work on the Project by Contractor and each of its subcontractors at every tier shall be graduates of an apprenticeship program for the applicable occupation. This percentage shall remain the same for subsequent years, unless revised by applicable law. A subcontractor need not meet the apprenticeship graduation requirements above if both of the following requirements are met: (1) The subcontractor was not listed as a subcontractor under Section 4104 of the California Public Contract Code or a substitute for a listed subcontractor; and

(2) The subcontract does not exceed one-half (1/2) of one percent (1%) of the price of the prime contract.

L. **"Special Conditions"** means, to the extent applicable to the Project, that work which is peculiar to the Project, and does not fall under the general conditions or supplemental conditions. Special conditions are used when the work contemplated is of such a character that the general conditions, which are consistent project to project, cannot adequately cover necessary and additional contractual matters. Special conditions shall be read in conjunction with the general conditions, supplemental conditions, specifications of work, drawings, and any other document forming part of the Contract Documents. Special conditions shall not weaken the character or intent of the general conditions, provided, however, that when the terms of the general conditions and the terms of the special conditions cannot be reconciled, the special conditions shall govern, unless a different intention appears.

M. **"Subcontractor"** means any person or entity, including trade contractors, who have a contract with Contractor to perform any work on the improvements to the Site.

N. **"Sublease"** means the Sublease dated as of October 16, 2019, by and between District and Contractor together with any duly authorized and executed amendment thereto under which District subleases the Site and the Project from Contractor.

O. **"Sublease Payment"** means any payment required to be made by District pursuant to Section 7 of the Sublease.

P. **"Tenant Improvement Payments"** means the payments required to be made by the District pursuant to Section 21 of the Construction Services Agreement and Exhibit "C" of the Sublease.

SECTION 3. ADDITIONAL SERVICES; DISTRICT CONTINGENCY AND CONSTRUCTION CONTINGENCY

A. **Additional Services; District Contingency.** District hereby creates an owner contingency fund which shall originally consist of [REDACTED] Dollars (\$ [REDACTED]) which amount represents five percent (5%) of the Construction Costs for the Project ("District Contingency"). The District Contingency may be increased by District, in its sole discretion, from any savings as set forth in Section 6 herein. The District Contingency shall be a line item within the final GMP for the Project. The District Contingency shall be utilized for the payment of: (1) any unforeseen costs which are within the scope of work for the Project which are not caused by the acts, errors, or omissions of Contractor; or (2) additional work desired by District pursuant to Section 9 of this Construction Services Agreement (collectively, the "Additional Services"). Prior to commencing any work which would result in the utilization of the District Contingency, District and Contractor shall mutually agree in writing, or by way of approved construction meeting minutes, upon the cost of such work. In the event that Contractor commences the Additional Services without District and Contractor agreeing upon the cost for such work or mutually acceptable method for determining the cost for such work, Contractor

shall, for all purposes, be deemed to have waived any rights to compensation with respect to such work.

The District is in no way limited by the manner in which it decides to utilize the District Contingency. Any funds remaining in the District Contingency at the completion of the Project shall remain unspent and remain allocated to District.

B. Construction Contingency. Within the GMP shall be a line item amount representing five percent (5%) of the Construction Costs for the Project ("Construction Contingency"). The Construction Contingency shall originally consist of [REDACTED] Dollars (\$ [REDACTED]). The Construction Contingency shall be for use by Contractor, as approved by District, to pay for miscellaneous work items that are required to complete the Project, including the coverage of trade scope gaps, missed work, areas of damage that may occur between trades during construction, subcontractor coordination problems, and Contractor coordination errors. The Construction Contingency shall not be used to pay the costs of enhancements or additions to the scope of work included within the District Contingency.

Contractor shall obtain written approval from District prior to using the Construction Contingency. The following may be considered, at District's sole discretion, valid Construction Contingency items: (1) overtime and premium time; (2) costs to address safety items; (3) Contractor coordination issues and errors; (4) scope gaps; (5) trade damage; (6) errors or omissions in the Construction Documents on the part of Architect and Architect's consultants; (7) discrepancies with the Construction Documents pertaining to applicable building code requirements; and (8) for other items requested by Contractor if approved by District in District's sole discretion. If, on completion of the Project, funds remain in the Construction Contingency, such funds shall remain unspent and shall be allocated to District, except for any portion of savings added to the Construction Contingency, which savings shall be apportioned at completion of the Project as provided in Section 6 below.

SECTION 4. ESTABLISHMENT OF GUARANTEED MAXIMUM PRICE ("GMP")

A. The estimated GMP for the Project shall be [REDACTED] Dollars (\$ [REDACTED]), as further described in Exhibit "C" of the Sublease. The final GMP shall be based upon the approved plans and specifications existing and reviewed by Contractor at the time the amended Construction Services Agreement is entered into as more fully described and referenced in the Scope of Work set forth in Exhibit "A." Contractor's detailed line item costing of the Project, or Master Budget, totaling the GMP is attached hereto as Exhibit "B." Furthermore, District represents and warrants that the GMP consists of the Tenant Improvement Payments plus the Sublease Payments to be paid as a portion of the rental of the Project and Site under the terms of the Sublease. District represents and warrants that (1) the total amount of Sublease Payments includes the total rental for the Project, which total does not exceed the fair market value for the Project; (2) said rental amount has been incorporated into the GMP in consideration and inducement of this Construction Services Agreement, the Site Lease, the Sublease, the uses and purposes which may be served by the Project, and the benefits therefrom which will accrue to District and the general public; and (3) said rental amount shall be paid by District as a part of the GMP, with District non-local match

contribution local funds. The GMP and Tenant Improvement Payments are subject to adjustments for Extra Work/Modifications in accordance with the provisions of Section 9, below, and adjustments for reductions in the Scope of Work pursuant to the provisions of Section 4.B., below. The GMP includes the cost of all labor, materials, equipment, general conditions, overhead, profit, District Contingency, and Construction Contingency.

B. District, at all times, shall have the right to reduce the scope of the Project. If District reduces the scope of the Project, the GMP shall be reduced to contemplate the reduced Scope of Work pursuant to the provisions of Section 9, below. To the extent possible, it is the mutual goal of District and Contractor to maximize the Scope of Work as allowed by the GMP.

SECTION 5. NOTICE TO PROCEED

After execution of the amended Construction Services Agreement and the Site Lease and Sublease between the parties, the District shall issue a notice to Contractor to proceed with the Project (“Notice to Proceed”) conditioned upon the following:

A. The District's adopted Plans and Specifications for the Project comply with the Field Act and have been approved by DSA, thereby allowing the District to issue a Notice to Proceed for construction.

B. No challenge has been made to the validity of the Site Lease, Sublease, Construction Services Agreement or other agreement related to this transaction. In the event that a third party files a challenge or proceeding to the validity of the documents or transaction the District will not to issue a Notice to Proceed and, in the event a Notice to Proceed has already been issued, either party may rescind the notice to proceed and may opt to terminate this Construction Services Agreement and in which event the District will pay the Contractor pursuant to the provisions of Section 11 (B) herein.

The Notice to Proceed shall include the date upon which the Project shall commence.

SECTION 6. SAVINGS

A. General Intent. The purpose of savings is to minimize the expenditure of funds for the construction of the Project on items that exceed the minimum criteria required without a corresponding benefit to District. District also wishes to eliminate any excess quality levels or performance criteria provided in the Construction Documents so long as such elimination does not alter the design, aesthetics, safety standards, configuration or space, and does not increase future maintenance and operation costs. District and Contractor shall work cooperatively with each other, in good faith, to identify appropriate opportunities to reduce the Project costs and promote savings. There are two stages when savings may be generated. They are (1) Value Engineering when establishing the GMP, and (2) savings generated through changes, reductions, or Subcontractor negotiations that may occur after the GMP is established.

1. Value Engineering is a review of systems so excess quality, unnecessary design elements, reconfiguration for efficiency, or other changes may be made to reduce the cost

of a project. Sometimes, timing and sequences or re-use of materials that are unique to a project or area may generate savings. For example, if export soil is generated on a site which may have a substantial cost for transportation and removal could be sold to offset the costs incurred then a savings may be generated for the project. Similarly, if concrete is ground, it may be sold for aggregate rather than as demolished construction materials.

2. Other Savings generated over the course of the Project through Subcontractor negotiations, replacement of Subcontractors, or through other means shall be calculated as part of the overall costs for the Project as part of the auditing provisions of Section 13 governing the Project and shall be counted towards Project savings.

B. Sharing and Calculation for Return of Savings. If Contractor realizes a savings on an aspect of the Project, including but not limited to, Value Engineering or Other Savings after the GMP is established and after execution of this Construction Services Agreement, such savings shall be divided in the following proportion: Seventy-Five Percent (75%) of any savings shall be returned to District and Twenty-Five Percent (25%) of any savings shall be returned to Contractor. Calculation of savings shall be determined by adding all expenses for the Project (excluding change orders, District Contingency and Construction Contingency expenses), separating out overhead costs and either using the actual overhead costs, or the percentage set for overhead in Section 9, whichever is higher and applying the percentage for profit against the GMP (less change orders, the District Contingency and Construction Contingency). Any remaining money shall be considered savings. If the Project expenses exceed the GMP, then there are no savings for the Project and the GMP shall apply. A separate calculation of whether there are any savings associated with change orders under the District Contingency and Construction Contingency may be performed to determine if there are any savings that remain on these areas and applied to the overall savings calculation.

SECTION 7. SELECTION OF SUBCONTRACTORS

A. Subcontractors. In the interest of minimizing the expenditure of funds for the construction of the Project, Contractor agrees to select appropriately State of California licensed subcontractors for each trade component of the Project consistent with Education Code Section 17406(a)(4) in a manner that fosters competition and complies with the requirements of paragraph B. of this Section 7. Contractor agrees that it will provide public notice of availability of work to be subcontracted in accordance with the publication requirements of Public Contract Code Section 20112, establish reasonable qualification criteria and standards, and award subcontracts either on a best value basis or to the lowest responsible bidder. To be qualified to bid, all such subcontractors must currently be registered and qualified to perform public work pursuant to Section 1725.5 of the Labor Code. Regardless of the method Contractor employs, Contractor shall make a good faith effort to contact and utilize Disabled Veteran Business Enterprise (“DVBE”) contractors and suppliers in securing bids for performance of the Project in accordance with the provisions set forth below. District reserves the right to oversee the bidding process. Contractor shall inform all bidders that District will not be a party to any contract for construction services executed by Contractor and selected bidders. Contractor shall submit a listing of proposed subcontractors to District for District’s review. In no case will Contractor award any subcontract until District has concurred to the scope and price of the subcontracted services. In addition,

Contractor shall provide District with full documentation regarding the bids or competitive quotes received by Contractor. In no event shall such documentation be redacted or obliterated. In the event Contractor does not comply with this provision, District may terminate this Construction Services Agreement in accordance with the provisions of Section 11, below.

B. **Skilled and Trained Workforce.** Contractor covenants and agrees that a "Skilled and Trained Workforce" will be used to perform the Project which are either skilled journeypersons or apprentices registered in an apprenticeship program. On a monthly basis while the Project is being performed, Contractor shall provide a report to the District using the form attached as Exhibit "J" ("Monthly Skilled and Trained Workforce Report") demonstrating that Contractor and its subcontractors at every tier are complying with the requirements of Public Contract Code section 2600 et seq. and Education Code section 17407.5. If Contractor fails to provide District the monthly report, or provides a report that is incomplete, District shall withhold further payments to Contractor until a complete report is provided. If a monthly report is incomplete due to the failure of a subcontractor to timely submit the required information to Contractor, District shall only withhold an amount equal to 150% of the value of the monthly billing for the relevant subcontractor. If a monthly report does not demonstrate compliance with Public Contract Code section 2600 et seq. and Education Code section 17407.5, District shall withhold an amount equal to 150% of the value of the monthly billing to Contractor if Contractor failed to comply with Public Contract Code section 2600 et seq. and Education Code section 17407.5, or 150% of the value of the monthly billing for the subcontractor that failed to comply with Public Contract Code section 2600 et seq. and Education Code section 17407.5, until Contractor provides a plan to achieve substantial compliance with respect to the relevant apprenticeable occupation, prior to completion of the Project. The District shall also forward a copy of the non-compliant monthly report to the Labor Commissioner for issuance of a civil wage and penalty assessment in accordance with Public Contract Code section 2603 as well as a copy of the plan, if any, submitted by Contractor to achieve substantial compliance with Public Contract Code section 2600 et seq. The monthly report provided to the District pursuant to this paragraph B. shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with section 6250) of Division 7 of Title 1 of the Government Code), and shall be open to public inspection.

C. **Prequalification Requirements.**

Contractor and the electrical, mechanical, and plumbing subcontractors, if any, shall be subject to the same prequalification requirements for prospective bidders described in Public Contract Code section 20111.6 including the requirement for the completion and submission of a standardized prequalification questionnaire and financial statement which is certified under oath and not a public record.

D. **DVBE Requirements.**

Compliance with DVBE contracting goals is required under this Construction Services Agreement. In accordance with Education Code section 17076.11 District has a DVBE participation goal of 3% per year of the overall dollar amount of state funds allocated to District pursuant to the Leroy F. Greene School Facilities Act of 1998 and Kindergarten – University Public

Education Facilities Bond Acts of 2002, 2004, and 2006 and the Kindergarten Through Community College Public Education Facilities Bond Act of 2016 for construction and modernization projects, and expended each year by District. District is seeking DVBE participation under this Construction Services Agreement.

Contractor must make a good faith effort to contact and utilize DVBE contractors and suppliers in securing bids for performance of the Project. Information regarding certified DVBE firms can be obtained from the Office of Small Business and DVBE Services (“OSBDVBES”) at (800) 559-5529 or (916) 375-4940 as well as its website at www.pd.dgs.ca.gov/smbus/default.htm. Verification of DVBE status must be obtained from the OSBDVBES by receiving an approved certification letter and reference number from that office. Contractor is required, as a material condition of this Construction Services Agreement, to submit documentation of its good faith efforts to the District prior to commencement of the construction of the Project using the DVBE Compliance Forms attached hereto as Exhibit “C.” Good faith efforts are demonstrated by evidence of the following: (a) Contact was made with District regarding the identification of DVBEs; (b) Contact was made with other state agencies and with local DVBE organizations to identify DVBEs; (c) Advertising was published in trade papers and papers focusing on DVBEs; (d) Invitations to bid were submitted to potential DVBE contractors; and (e) Available DVBEs were considered.

Contractor shall provide to District no later than two (2) calendar days prior to the scheduled award of the Project, the appropriate documentation using DVBE Compliance Forms, including, but not limited to, proof of publication if satisfying the good faith effort requirement (unless goal is met), and identifying the amount to be paid to DVBE’s in conjunction with this Construction Services Agreement, so that District can assess its success in meeting the three percent (3%) goal.

If the DVBE compliance forms specify that Contractor will meet the DVBE participation goal for the Project, prior to, and as a condition precedent for final payment under the agreement for the Project, Contractor shall certify to District, using the certification form included with the DVBE compliance forms, (1) the total amount Contractor received under the contract, (2) the name and address of the DVBE that participated in the performance of the contract, (3) the amount each DVBE received from Contractor, and (4) that all payments under the contract have been made to the DVBE.

SECTION 8. CONSTRUCTION SCOPE OF WORK

A. **Critical Path Method Master Schedule.** Prior to commencing Construction, Contractor shall submit to District a reasonably detailed Critical Path Method (“CPM”) Master Schedule for the Construction, as set forth in Section 10.E., below.

B. **Pre-Construction Orientation/Construction Meetings.** Contractor, in conjunction with Architect, shall conduct pre-construction orientation conferences for the benefit of Subcontractors to orient Subcontractors to the various reporting procedures and Site rules prior to the commencement of actual Construction. Contractor shall also conduct Construction and progress meetings with District Representatives and other interested parties, as requested by District, to

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

C. **Budget/Cash Flow Reports.** Contractor shall incorporate approved changes as they occur and develop cash flow reports and forecasts for submittal to District on a monthly basis. Contractor shall provide regular monitoring of the approved estimates of Construction Costs, showing actual costs for activities in progress, and estimates for uncompleted tasks. Contractor shall identify variances between actual and budgeted or estimated costs, and advise District and Architect whenever the Project costs exceed budgets or estimates. Contractor shall maintain cost accounting records on authorized additional services or work performed under unit costs, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.

D. **Progress Reports.** Contractor shall record the progress of the Project and shall submit monthly written progress reports to District and Architect including information on the entire Project, showing percentages of completion and the number and amounts of proposed Extra Work/Modifications, as defined below, and their effect on the Construction Costs as of the date of the report. Contractor shall also keep a daily log containing a record of weather, contractors, work on the Site, number of workers, work accomplished, problems encountered, and other similar relevant data as District may require. Contractor shall make the log available to District and Architect. District shall be promptly informed of all anticipated delays. In the event that Contractor determines that a schedule modification is necessary, Contractor shall promptly submit a revised schedule for approval by District.

E. **Shop Drawings.** Contractor shall check and verify all field measurements and shall submit with such promptness as to cause no delay in the work or in that of any other contractor, subcontractor, Architect, other independent contractor, or worker on the Project, three (3) copies of all shop or setting drawings, schedules, and materials list, and all other submittals in accordance with other provisions of the Contract Documents required for the work of various trades. Contractor shall sign all submittals affirming that the submittals have been reviewed and approved by Contractor prior to submission to Architect. Each signed submittal shall affirm that the submittal meets all the requirements of the Contract Documents except as specifically and clearly noted and listed on the cover sheet of the submittal.

Contractor shall advise District immediately, if Architect has not checked and approved with reasonable promptness, such schedules and drawings for conformance with the design concept of the Project and in compliance with all information included in the Contract Documents. Contractor shall make any corrections required by Architect, file with Architect three (3) corrected copies, and furnish such other copies as may be needed for Construction. Architect’s approval of such drawings or schedules shall not relieve Contractor from responsibility for deviations in the drawings and/or specifications unless Contractor has called Architect’s attention to such deviations in writing at the time of submission and has secured Architect’s written approval. Architect’s approval of such drawings and schedules shall not relieve Contractor from responsibility for errors in the shop drawings or schedules. For purposes of this Section “reasonable promptness” shall mean such reasonable promptness as to cause no delay in the work or in the activities of

District, Contractor, or other contractors, while allowing sufficient time in Architect's professional judgment to permit adequate review.

F. **Submittals.** Contractor shall furnish for approval, within fourteen (14) days following the Project commencement date stated in the Notice to Proceed, or within any other time frame agreed to by the parties, a log of all samples, material lists and certifications, mix designs, schedules, and other submittals, as required in the specifications for the Project. Such log shall indicate whether samples will be provided as specified and in accordance with other provisions of this Construction Services Agreement. Contractor shall provide samples and submittals, together with catalogs and supporting data required by Architect with reasonable promptness so as not to cause delays on the Project. This provision shall not authorize any extension of time for performance of this Construction Services Agreement. Architect will check and approve such samples, only for conformance with the design concept of the work and for compliance with the information provided in the Contract Documents. Work shall be in accordance with approved samples. Architect's action will be taken within fourteen (14) calendar days after receiving such samples and submittals. If in Architect's professional judgment fourteen (14) days is an insufficient amount of time to permit adequate review, Architect shall, within the initial fourteen (14) day period, notify Contractor, with a copy to Inspector and District, of the amount of time that will be required to respond. If Architect's response results in a change in the Project, then such change shall be affected by a written change order.

G. **Scheduling.** Contractor shall complete the Construction pursuant to the CPM Construction Documents, reduction in scope, shall perform all work set forth in the Scope of Work in Exhibit "A", and shall make reasonable efforts in scheduling to prevent disruption to classes.

H. **District Permit and Other Obligations.** District shall pay for the Inspector, soils testing, special testing, etc. If additional review or permits become necessary for reasons not due to Contractor's fault after the date the GMP is established and not reasonably anticipated at the time the GMP is established, Contractor may seek additional compensation for the cost of that review as an additional cost.

I. **Contractor Permit and Other Obligations.** District shall pay for all general building permits and ancillary permits and licenses not paid by District prior to the commencement of this Construction Services Agreement. District shall also be responsible for arranging and overseeing, all necessary inspections and tests, including, permits, and occupancy permits. All inspection fees and other municipal charges for permanent utilities including, but not limited to, sewer, electrical, phone, gas, water, and irrigation shall be paid by District. Contractor shall be responsible for arranging the payment of such fees, but the inspection fees and other municipal fees relating to permanent utilities shall be paid by District. Contractor may either request reimbursement from District for such fees, or obtain the funds from District prior to paying such fees. Contractor shall be responsible for arranging and overseeing safety procedures and requirements and Construction employee training programs which cover, among other items, hazardous chemicals and materials.

J. **Protection.** Contractor shall establish procedures for the protection of all existing structures, equipment, utilities, and other existing improvements, both on-site and off-site.

K. **Nuisance Abatement.** Contractor shall develop a mutually-agreed-upon program with District to abate and minimize noise, dust, and disruption to normal activities at the existing facilities on the Site, including procedures to control on-site noise, dust, and pollution during Construction.

L. **Site Mitigation and Remediation.** Except as provided below, District shall perform any required Site mitigation or remediation at its sole cost, unless such Site mitigation or remediation is necessitated by any of the conditions described in Section 32, below, in which event the provisions of that section shall govern.

M. **Utilities.** Contractor shall perform and pay for all temporary utility hook-ups and connections and shall pay for use of utilities during Construction, as well as any fees owed to utility suppliers for connection to existing mainline facilities; provided, however, District shall be responsible for all costs associated with establishing permanent utility services for the Project.

N. **Sanitary Facilities.** Contractor shall provide a sanitary temporary toilet building as directed by Inspector for the use of all workers. The building shall be maintained in a sanitary condition at all times and shall be left at the Site until Inspector directs removal. Use of toilet facilities in the work under Construction shall not be permitted except by approval of Inspector.

O. **Layout and Field Engineering.** All field engineering required for laying out this work and establishing grades for earthwork operations shall be furnished by Contractor at its expense. Such work shall be accomplished by a qualified civil engineer or land surveyor licensed in California and approved by Architect. Any required “as built” drawings of Site development shall be prepared by a qualified civil engineer or land surveyor licensed in California and approved by Architect.

P. **Cutting and Patching.** Contractor shall do all cutting, fitting, or patching of work as required to make its several parts come together properly and fit it to receive or be received by work of other contractors showing upon, or reasonably implied by, the drawings and specifications for the completed structure. Contractor shall make good any such work as Architect may direct. All cost caused by defective or ill-timed work shall be borne by the party responsible therefore. Contractor shall not endanger any work by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor save with the consent or at the direction of Architect.

Q. **Close Out.** Contractor shall be responsible for the timely delivery of the technical manuals, warranties, and guarantees as required in the technical specifications at the completion of the Project. Contractor shall coordinate the closeout procedures for the Project with the Inspector, as may be required, and promptly provide any requested documents that may be required for closeout of the Project.

SECTION 9. EXTRA WORK/MODIFICATIONS

A. District may prescribe extra work or modification or reduction of requirements or of methods of performing the Construction which differ from the work or requirements set forth in the Construction Documents (“Extra Work/Modifications”); and for such purposes, District may, at any time during the life of this Construction Services Agreement, by written order, make such changes as it shall find necessary in the design, line, grade, form, location, dimensions, plan, or material of any part of the work or equipment specified herein or in the Construction Documents, or in the quantity or character of the work or equipment to be furnished. In the event conditions develop which make strict compliance with the specifications impractical, Contractor shall notify District of the need for such Extra Work/Modification by placing the matter on the agenda of regularly scheduled Construction meetings with District for discussion as soon as practicable after the need for such Extra Work/Modification is determined. Additionally, Contractor shall submit to District for its consideration and approval or disapproval, a written request for Extra Work/Modifications before such work is performed. If District approves such request in writing, the costs of the Extra Work/Modifications, as established pursuant to this Section 9, shall be added to or deducted from the District Contingency and/or Construction Contingency, as applicable. In the event that either (i) the approved Extra Work/Modifications result in the exhaustion of the District Contingency and/or Construction Contingency, as applicable, or (ii) District reduces the scope of the Project pursuant to Section 4.B., any such additional or reduced approved costs of the Extra Work/Modifications shall be added to or deducted from the GMP, as applicable, and paid as Tenant Improvement Payments.

B. Value of any such Extra Work/Modification, change, or deduction shall be determined at the discretion of District, in consultation with Architect, in one or more of the following ways:

1. By acceptable lump sum proposal from Contractor with itemization as required by District and/or Architect.
2. By unit prices contained in Contractor’s cost estimates and incorporated in the Contract Documents or fixed by subsequent agreement between District and Contractor.
3. By the cost of material and labor. The following form shall be followed as applicable for additions and deductions to the Construction Services Agreement:

	EXTRA/(CREDIT)
a. Material (attach itemized quantity and unit cost plus sales tax)	_____
b. Subcontractor’s labor and profit/overhead (profit/overhead not to exceed 10%) (attach itemized hours and base rates from identified prevailing wage rate schedules)	_____

c.	Commercial General Liability and Property Damage Insurance, Workers' Compensation Insurance, Social Security and Unemployment taxes at actual and verified cost.	_____
d.	Subtotal	_____
e.	Contractor's profit/overhead not to exceed 10% of Item (d) if applicable.	_____
f.	Subtotal	_____
g.	Bond Premium, not to exceed 1% of Item (f)	_____
h.	Total	_____

C. Regardless of whether the cost of the Extra Work/Modification is determined pursuant to 1, 2, or 3, above, in addition to the cost of the material and labor for deleted items, Contractor shall credit back an appropriate and reasonable amount for the bonding mark-up for deleted items at the time of the request for the Extra Work/Modification.

D. Should Contractor claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation (i) obligates District to pay additional compensation to Contractor; or (ii) obligates District to grant an extension of time for the completion of the Construction Services Agreement; or (iii) constitutes a waiver of any provision in this Construction Services Agreement, CONTRACTOR SHALL NOTIFY DISTRICT, IN WRITING, OF SUCH CLAIM AS SOON AS POSSIBLE, BUT IN NO EVENT WITHIN MORE THAN TEN (10) BUSINESS DAYS FROM THE DATE CONTRACTOR HAS ACTUAL OR CONSTRUCTIVE NOTICE OF THE CLAIM. CONTRACTOR SHALL ALSO PROVIDE DISTRICT WITH SUFFICIENT WRITTEN DOCUMENTATION SUPPORTING THE FACTUAL BASIS OF THE CLAIM including the documentation for items B.3.(a) – (h) described in this Section. Contractor shall be required to certify under penalty of perjury the validity and accuracy of any claim submitted. Contractor's failure to notify District within such ten (10) business day period shall be deemed a waiver and relinquishment of the claim against District. If such notice is given within the specified time, the procedure for its consideration shall be as stated above in this Section.

E. In the event a mutual agreement cannot be reached on the cost of an Extra Work/Modification item, Contractor and District agree that an industry estimating guide, such as an estimating guide published by Means, shall be used to determine the cost of a disputed Extra Work/Modification item.

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

G. Expenses of reconstruction and/or costs to replace and/or repair damaged materials and supplies, provided that Contractor is not fully compensated for such expenses and/or costs by insurance or otherwise, may be added to the GMP, if said expenses are the result of the sole established negligent acts or omissions, or willful misconduct of District, or its subcontractors, principals, agents, or employees.

H. The term "profit/overhead" for any Subcontractor shall be considered to include insurance other than mentioned in Section 9.B., above, field and office supervisors and assistants, watchmen, use of small tools, consumables, and general field and home office expenses, and no separate allowance will be made therefor.

SECTION 10. TIME OF COMPLETION

A. ONCE DISTRICT HAS ISSUED A NOTICE TO PROCEED, CONTRACTOR SHALL PROCEED WITH THE CONSTRUCTION OF THE PROJECT WITH REASONABLE DILIGENCE. CONTRACTOR AGREES THAT THE PROJECT WILL BE SUBSTANTIALLY COMPLETED BY [REDACTED], 20[REDACTED] AS SAID DATE MAY BE EXTENDED FOR SUCH PERIODS OF TIME AS CONTRACTOR IS PREVENTED FROM PROCEEDING WITH OR COMPLETING THE PROJECT FOR ANY CAUSE DESCRIBED IN THIS SECTION 10, OR AS OTHERWISE AGREED TO IN WRITING BY DISTRICT AND CONTRACTOR. IF THE WORK IS NOT COMPLETED IN ACCORDANCE WITH THE FOREGOING, IT IS UNDERSTOOD THAT DISTRICT WILL SUFFER DAMAGE. IT BEING IMPRACTICAL AND INFEASIBLE TO DETERMINE THE AMOUNT OF ACTUAL DAMAGE, IT IS AGREED THAT CONTRACTOR SHALL PAY TO DISTRICT AS FIXED AND LIQUIDATED DAMAGES, AND NOT AS A PENALTY, THE SUM OF ONE THOUSAND DOLLARS (\$1,000) PER DAY FOR EACH CALENDAR DAY OF DELAY UNTIL WORK IS SUBSTANTIALLY COMPLETED AND ACCEPTED. CONTRACTOR AND ITS SURETY SHALL BE LIABLE FOR THE AMOUNT THEREOF. ANY MONEY DUE OR TO BECOME DUE CONTRACTOR MAY BE RETAINED BY DISTRICT TO COVER SAID LIQUIDATED DAMAGES. SHOULD SUCH MONEY NOT BE SUFFICIENT TO COVER SAID LIQUIDATED DAMAGES, DISTRICT SHALL HAVE THE RIGHT TO RECOVER THE BALANCE FROM CONTRACTOR OR ITS SURETIES, WHO WILL PAY SAID BALANCE FORTHWITH.

This Section 10 and the liquidated damages referred to directly above are expressly understood and agreed to by the parties hereto:

_____ Contractor's Initials

_____ District's Initials

B. In the event that the performance and/or completion of the Project is delayed at any time by any act or omission of District or of any employee, agent, or tenant of District, by any separate contractor employed by District, by changes or alterations in the Project not caused by any fault or omission by Contractor, by strikes, lockouts, fire, embargoes, windstorm, flood, earthquake, acts of war or God, by changes in public laws, regulations or ordinances enacted after the date of execution of this Construction Services Agreement, by acts of public officials not caused by any fault or omission of Contractor, by an inability to obtain materials or equipment

not caused by any act or omission of Contractor, or by any other cause beyond the reasonable control of Contractor, the aforesaid date for substantial completion of the Project shall be extended for a period commensurate with the delay. Contractor shall not be charged liquidated damages because of such delays in completion of work or delays otherwise due to unforeseeable causes beyond the control and without the fault or negligence of Contractor.

C. The term “substantially completed” or “substantial completion” as used herein shall mean completed in such fashion as to enable District, upon performance of any separate work to be done by District under separate contract or by day labor, beneficially to occupy the Project and to commence operation therein, provided such occupancy and use does not substantially interfere with Contractor’s performance of the remainder of the work, as agreed upon between Contractor and District, which may be accomplished prior to the completion of the work.

D. The term “Fully Completed and Accepted,” as used herein, shall mean that all remaining work has been completed in accordance with the Construction Documents and that successful testing, startup, and satisfactory operation of the Project as a total unit has been accomplished in substantial conformance with the Construction Documents.

E. Within five (5) business days after District’s delivery of a Notice to Proceed for the Project, Contractor shall furnish District with a reasonably detailed CPM Master Schedule, setting forth the expected dates for commencement and completion of each of the various stages of Construction to be performed by Contractor pursuant to this Construction Services Agreement (“Time Schedule”). Contractor shall submit the Time Schedule to District for acceptance and update the Time Schedule as appropriate on at least a monthly basis. Contractor shall incorporate the activities of contractors on the Project and delivery of products requiring long lead time procurement. Contractor shall also include District’s occupancy requirements showing portions of the Project having occupancy priority. Contractor shall be responsible for providing District with a Schedule of Values within ten (10) working days of District’s issuance of a Notice to Proceed, which will be updated as needed. It is specifically understood that District will utilize said Time Schedule as it is revised from time to time to determine completion dates of various aspects of the Project. Tenant Improvement Payments shall be conditioned upon completion of various aspects of the Project as determined by the Inspector pursuant to the Time Schedule and the Schedule of Values.

F. Contractor shall not be assessed liquidated damages for this Construction Services Agreement and shall not be subject to any damages for delay in completion of the Project, when such delay was caused by the failure of District or the owner of the utility to provide for removal or relocation of the existing main or trunkline utility facilities; however, when Contractor is aware that removal or relocation of an existing utility has not been provided for, Contractor shall promptly notify District and the utility in writing, so that provision for such removal or relocation may be made to avoid and minimize any delay which might be caused by the failure to remove or relocate the main or trunkline utility facilities, or to provide for its removal or relocation. In accordance with Section 4215 of the Government Code, if Contractor, while performing the work on of the Project, discovers any existing main or trunkline utility facilities not identified by the public agency [District] in the contract plans or specifications, Contractor shall immediately notify the public agency and utility in writing. The public utility, where it is the owner,

shall have the sole discretion to perform repairs or relocation work or permit Contractor to do such repairs or relocation work at a reasonable price. Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Such compensation shall be in accordance with the extra work provisions set out in Section 9, above.

SECTION 11. TERMINATION OF AGREEMENT

A. Termination for Breach.

1. Except as otherwise expressly provided in this Construction Services Agreement, this Construction Services Agreement shall not terminate, nor shall District have any right to terminate this Construction Services Agreement or be entitled to the abatement of any or all necessary payments pursuant to the GMP provisions indicated in Exhibit "C" of the Sublease or any reduction thereof. The obligations hereunder of District shall not be otherwise affected by reason of any damage to or destruction of all or any part of the Project; the taking of the Project or any portion thereof by condemnation or otherwise; the prohibition, limitation or restriction of District's use of the Project; the interference with such use by any private person or Contractor; the District's acquisition of the ownership of the Project (other than pursuant to an express provision of the Construction Services Agreement or Sublease); any present or future law to the contrary notwithstanding. It is the intention of the parties that all necessary payments pursuant to the GMP indicated in Exhibit "C" of the Sublease shall continue to be payable in all events, and the obligations of the District hereunder shall continue unaffected unless the requirement to pay or perform the same shall be terminated or modified pursuant to an express provision of this Construction Services Agreement.

2. Nothing contained herein shall be deemed a waiver by the District of any rights that it may have to bring a separate action with respect to any Event of Default by Contractor hereunder or under any other agreement to recover the costs and expenses associated with that action. The District covenants and agrees that it will remain obligated under the Construction Services Agreement and Sublease in accordance with their terms.

3. Following the Project Completion, that the District will not take any action to terminate, rescind or avoid this Construction Services Agreement or Sublease, notwithstanding the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceeding, and notwithstanding any action with respect to this Construction Services Agreement or Sublease which may be taken by any trustee or receiver of Contractor or of any assignee of Contractor in any such proceeding or by any court in any such proceeding. Following the Project Completion, except as otherwise expressly provided in this Construction Services Agreement or Sublease, District waives all rights now or hereafter conferred by law to quit, terminate or surrender this Construction Services Agreement or Sublease or the Project or any part thereof.

4. District acknowledges that Contractor may assign an interest in some or all of the necessary payments pursuant to the GMP provisions indicated in Exhibit "C" of the Sublease to a lender in order to obtain financing for the cost of constructing the Project and that the lender may rely on the foregoing covenants and provisions in connection with such financing.

5. If Contractor refuses or fails to prosecute the construction of the Project or any separable part thereof with such diligence as will insure its completion within the time specified by this Construction Services Agreement or any extension thereof, or fails to complete the Project within such time, or if Contractor should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or Contractor or any of its Subcontractors should violate any of the provisions of this Construction Services Agreement, District may serve written notice upon Contractor and its Surety of District's intention to terminate this Construction Services Agreement. This notice of intent to terminate shall contain the reasons for such intention to terminate this Construction Services Agreement and a statement to the effect that Contractor's right to perform work on the Project shall cease and terminate upon the expiration of ten (10) days from receipt of the notice unless such violations have ceased and arrangements satisfactory to District have been made for correction of said violations.

6. In the event that District serves such written notice of termination upon Contractor and the Surety, the Surety shall have the right to take over and perform this Construction Services Agreement. If the Surety does not: (1) give District written notice of Surety's intention to take over and commence performance of this Construction Services Agreement within fifteen (15) days of District's service of said notice of intent to terminate upon Surety; and (2) actually commence performance of this Construction Services Agreement within thirty (30) days of District's service of said notice upon Surety; then District may take over the Project and prosecute the same to completion by separate contract or by any other method it may deem advisable for the account and at the expense of Contractor.

7. In the event that District elects to obtain an alternative performance of the Construction Services Agreement as specified above: (1) District may, without liability for so doing, take possession of and utilize in completion of the Project such materials, appliances, plants, and other property belonging to Contractor that are on the Site and reasonably necessary for such completion; and (2) Surety shall be liable to District for any cost or other damage to District necessitated by District securing an alternate performance pursuant to this Section 11.

B. Termination for Convenience.

1. District may terminate performance of the Project called for by the Contract Documents, in whole or in part, if District determines that a termination is in District's interest.

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

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

a. Stop work as specified in the Notice of Termination.

b. 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.

c. Leave the Property upon which Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.

d. Terminate all subcontracts to the extent that they relate to the portions of the work terminated.

e. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Construction Services Agreement.

f. Submit to District's Representative, within ten (10) days from the effective date of the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by Contractor for labor, materials, and equipment through the effective date of the Notice of Termination. Any documentation substantiating costs incurred by Contractor solely as a result of District's exercise of its right to terminate this Construction Services Agreement pursuant to this clause, which costs Contractor is authorized under the Construction Services Agreement 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."

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

5. In the event that District exercises its right to terminate this Construction Services Agreement pursuant to this clause, District shall pay Contractor, upon Contractor's submission of the documentation required by this provision, and other applicable provisions of the Construction Services Agreement, the following amounts:

a. All actual costs incurred according to the provisions of this Construction Services Agreement, including, but not limited to, insurance costs incurred in connection with the Project.

b. A reasonable allowance for profit on the cost of the work on the Project performed, provided Contractor establishes to the satisfaction of District, that it is reasonably probable that Contractor would have made a profit had the Construction Services Agreement been completed, and provided further, that the overhead and profit allowed shall in no event exceed 10%. In no event shall the total amount exceed the GMP, exclusive of Sublease Payment finance charges.

approval shall not be unreasonably withheld. In the event that District and Contractor cannot agree as to the substitution or replacement of the Project Manager/Superintendent, as applicable, District shall be entitled to terminate this Construction Services Agreement for breach, pursuant to the provisions of Section 11, above.

SECTION 13. MAINTENANCE OF RECORDS; AUDIT

A. Contractor, and Subcontractors, shall keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the course of its activities and operations related to the Project. These documents may include sales slips, invoices, payrolls, personnel records, requests for Subcontractor payment, and other data relating to all matters covered by the Contract Documents. Subject to Paragraph B of this Section 13, at all times during the Construction of the Project, and for four (4) years following the termination of the term of the last document, Contractor and Subcontractors shall retain such data and records. During Construction of the Project, Contractor shall make available all requested data and records at reasonable locations within the County of Orange at any time during normal business hours, and as often as District deems necessary. If records are not made available within the County of Orange during the Construction of the Project, Contractor shall pay District's travel costs to the location where the records are maintained. Failure to make requested records available for audit by the date requested will result in immediate termination of this Construction Services Agreement.

B. The Office of Public School Construction, the administering agency for the State Allocation Board, audits the costs for construction under the general authority of Education Code section 17076.10 and under the specific authority of Title 24 of the California Code of Regulations, section 1859.100 eq. seq. governing program accountability audit, material inaccuracy, and expenditure audits. Given the fact the State has approved the lease-leaseback delivery method, and the likelihood that the records of the Project will be audited if there are State Funds involved, a permanent record of all the financial transactions for the construction of the Project shall be available through an Open Book Accounting of the Project expenditures of both hard and soft costs including, but not limited to labor, material and services costs, including the subcontract and material costs that were utilized to construct the Project.

C. At its own cost, District shall have the right to review and audit, upon reasonable notice, the books and records of Contractor concerning any monies associated with the Project. Any such audit shall be performed by an independent auditor, having no direct or indirect relationship with the functions or activities being audited or with the business conducted by Contractor or District. In the event the independent auditor determines that savings realized during the prosecution and progress of the Project were not added to the Contractor Contingency portion of the GMP, as provided for in Section 6 of this Construction Services Agreement, District shall be entitled to deduct the amount of such savings from the next requested Tenant Improvement Payment. If Contractor disputes the findings of the independent auditor, such dispute shall be handled in accordance with the provisions of Section 35 of this Construction Services Agreement.

D. Ownership of Drawings. Notwithstanding any provision of this Construction Services Agreement, all drawings, specifications, and copies thereof furnished by District are its

property. Such drawings and specifications are not to be used on other work and, with exception of signed contract sets, are to be returned to District on request at completion of work.

SECTION 14. LABOR COMPLIANCE

A. Notwithstanding California Code of Regulations, Title 8, Section 16460, Contractor acknowledges that the Project shall be subject to compliance monitoring and enforcement by the Public Works Unit of the Division of Labor Standards Enforcement of the Department of Industrial Relations (“DIR”), in accordance with the provisions of Sections 1725.5, 1771.1, 1771.3, and 1771.4 of the California Labor Code. Contractor agrees to comply with any such laws and regulations at no additional cost to District. No contractor or subcontractor shall be qualified to bid, listed on a bid proposal or awarded a contract for public work on a public works contract unless currently registered with the Department of Industrial Relations ("DIR") pursuant to Labor Code section 1725.5.

B. The labor compliance requirements include, but are not limited to, provisions requiring compliance with the prevailing rates of wages as set forth in Section 15 of this Construction Services Agreement, debarment of contractors and subcontractors as set forth in Section 16 of this Construction Services Agreement, employment of apprentices as set forth in Section 17 of this Construction Services Agreement, compliance with legal hours of work as set forth in Section 18 of this Construction Services Agreement, and maintenance, inspection, and furnishing of payroll records as set forth in Section 19 of this Construction Services Agreement. In addition, the labor compliance requirements require on-site interviews of workers to ensure that prevailing wages are being paid. Failure to comply with these provisions may result in the withholding of contract payments by District. Contractor expressly acknowledges these provisions and agrees to comply with them and any provisions implemented by District, as well as any subsequent legislation related thereto.

C. Contractor shall include Sections 14.A. and 14.B., above, in all subcontracts and require Subcontractors to comply with these provisions at no additional cost to District.

SECTION 15. PREVAILING RATES OF WAGES

A. Contractor is aware of the requirements of California Labor Code sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, sections 16000 et seq. (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other related requirements on certain “public works” and “maintenance” projects. Since this Construction Services Agreement involves an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and since the total compensation for the Project is one thousand dollars (\$1,000) or more, Contractor agrees to fully comply with such Prevailing Wage Laws. When determining the GMP, Contractor shall include, to the extent possible, anticipated general prevailing wage rates for the time when work on the Project will actually be performed. Contractor shall obtain a copy of the prevailing rates of per diem wages applicable to each craft, classification, or type of work needed to perform work on the Project from the website of the Office of Policy, Research, and Legislation of the DIR, located at www.dir.ca.gov/oprl/. Copies of the prevailing rates of per diem wages for each craft, classification, or type of work needed to perform

work on the Project are on file at the District office and are available to interested parties upon request.

B. Contractor shall post a copy of the determination of the prevailing rates of per diem wages at the Site. Contractor shall also post at the Site a notice containing the following language:

This public works project is subject to compliance monitoring and investigative activities by the Public Works Unit of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California. This notice is intended to provide information to all workers employed in the execution of the contract for public work and to all contractors and other persons having access to the job site in order to enable the Public Works Unit to ensure compliance with and enforcement of prevailing wage laws on public works projects.

The prevailing wage laws require that all workers be paid at least the minimum hourly wage as determined by the Director of Industrial Relations for the specific classification (or type of work) performed by workers on this public works project. These wages are listed on a separate job site posting of minimum prevailing rates required to be maintained by the public entity that awarded the public works contract. Complaints concerning nonpayment of the required minimum wage rates to workers on this public works project may be filed with the Public Works Unit at any office of the Division of Labor Standards Enforcement.

Local Office Telephone Number: (714) 558-4910

Complaints should be filed in writing immediately upon discovery of any violations of the prevailing wage laws. Complaints should contain details about the violations alleged (for example, wrong rate paid, not all hours paid, overtime rate not paid for hours worked in excess of 8 per day or 40 per week, etc.) as well as the name of the employer, the public entity that awarded the public works contract, and the location and name of the project.

For general information concerning the prevailing wage laws and how to file a complaint concerning any violation of these prevailing wage laws, you may contact any Division of Labor Standards Enforcement office. Complaint forms are also available at the Department of Industrial Relations website, <https://www.dir.ca.gov/dlse/DLSE-Forms.htm>.

C. Contractor and each Subcontractor shall forfeit as a penalty to District not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing rate for any work done by him, or by any subcontract under him, in violation of the provisions of the Prevailing Wage Laws. Such penalty shall be withheld from any Tenant Improvement Payment then due. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by Contractor or Subcontractor, as applicable.

D. As a further material part of this Construction Services Agreement, Contractor agrees to hold harmless and indemnify District, its Board, and each member of the Board, its officers, employees, and agents from any and all claims, liability, loss, costs, damages, expenses, fines, and penalties, of whatever kind or nature, including all costs of defense and attorneys' fees, arising from any alleged failure of Contractor or its Subcontractors to comply with the Prevailing Wage Laws. If District or any of the indemnified parties are named as a party in any dispute arising from the failure of Contractor or its Subcontractors to pay prevailing wages, Contractor agrees that District and the other indemnified parties may appoint their own independent counsel, and Contractor agrees to pay all attorneys' fees and defense costs of District and the other indemnified parties as billed, in addition to all other damages, fines, penalties, and losses incurred by District and the other indemnified parties as a result of the action.

SECTION 16. DEBARMENT OF CONTRACTOR AND SUBCONTRACTORS

Contractor, or any Subcontractor working under Contractor, may not perform work on a public works project with a subcontractor or sub-subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.7 of the California Labor Code. Any contract on a public works project entered into between Contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid or may have been paid to a debarred subcontractor by Contractor on the Project shall be returned to District. Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.

SECTION 17. EMPLOYMENT OF APPRENTICES

A. In addition to the requirement that Contractor provide a Skilled and Trained Workforce as provided for in Section 7.B., above, Contractor's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code concerning employment of apprentices by Contractor or any Subcontractor under him. In addition, Contractor shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code.

B. Information relative to apprenticeship standards, wage schedules, and other requirements applicable to apprentices may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, or from the Division of Apprenticeship Standards and its branch offices.

C. Knowing violations of Section 1777.5 will result in forfeiture, as a penalty to District, of an amount not to exceed one hundred dollars (\$100) for each full calendar day of non-compliance, pursuant to Section 1777.7. Such penalty shall be withheld from any Tenant Improvement Payment then due.

SECTION 18. HOURS OF WORK

A. Eight (8) hours of work shall constitute a legal day's work. Contractor and each Subcontractor shall forfeit, as a penalty to District, twenty-five dollars (\$25) for each worker employed in the execution of work on the Project by Contractor or any Subcontractor under him for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any calendar week in violation of the provisions of the California Labor Code, in particular Section 1810 to Section 1815 thereof, inclusive. Such penalty shall be withheld from any Tenant Improvement Payment then due. Notwithstanding the above, work performed by employees of Contractor and his Subcontractors in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon compensation for all hours worked in excess at not less than one and one-half (1½) times the basic rate of pay, as provided in California Labor Code section 1815.

B. Generally, Construction work on the Project shall be accomplished on a regularly scheduled eight (8) hour per day work shift basis, Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m. However, nothing herein shall prevent Contractor from working weekends and after school hours in order to complete the Project, so long as not otherwise prohibited by law or local ordinances or regulations.

C. Any work necessary to be performed after regular working hours, or on Sundays or other holidays, shall be performed and included within the GMP, unless otherwise agreed to in writing before the work in question is commenced pursuant to Section 9, above.

SECTION 19. PAYROLL RECORDS

A. Pursuant to California Labor Code section 1776, as amended from time to time, Contractor and each Subcontractor shall keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by it in connection with the Project.

B. The payroll records enumerated under Section 19.A., above, shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:

1. A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.

2. A certified copy of all payroll records shall be made available for inspection or furnished upon request to District or the Division of Labor Standards Enforcement.

3. A certified copy of all payroll records shall be made available upon request to the public for inspection or for copies thereof; provided, however, that requests by the public shall be made through either District, or the Division of Labor Standards Enforcement, and provided further that if the requested payroll records have not been provided pursuant to Paragraph

2., above, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by Contractor, Subcontractors, and the entity through which the request was made. The public shall not be given access to such records at the principal office of Contractor.

C. Contractor and each Subcontractor shall furnish the payroll records enumerated in Section 19.A., above, directly to the Labor Commissioner in accordance with California Labor Code section 1771.4(a)(3). Contractor and any Subcontractor shall furnish electronic certified payroll records online to the Labor Commissioner at least monthly. Payments to Contractor shall not be made when payroll records are delinquent or inadequate and the Labor Commissioner orders the withholding pursuant to California Code of Regulations, Title 8, Section 16463(e).

D. Except as provided in California Labor Code section 1776(f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by District or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Contractor or any Subcontractor performing work on the Project shall not be marked or obliterated.

E. Contractor shall inform District of the location of the records enumerated under Section 19.A., above, including the street address, city, and county, and shall, within five (5) business days, provide a notice of a change of location and address.

F. Contractor and Subcontractors shall have ten (10) days in which to comply subsequent to receipt of a written notice requesting the records specified in Section 19.A., above. Should Contractor or Subcontractor fail to comply within the ten (10) day period, Contractor or Subcontractor shall, as a penalty to District, forfeit one hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalties shall be withheld from any Tenant Improvement Payment then due. Contractor is not subject to such a penalty assessment due to the failure of a Subcontractor to comply with this section.

SECTION 20. BONDING REQUIREMENTS

Contractor shall provide the following bonds:

A. A "Payment Bond" (material and labor bond) from a California admitted surety and in the form attached hereto as Exhibit "D," shall be provided by Contractor for the Project prior to execution of this Construction Services Agreement. The Payment Bond shall be for One Hundred Percent (100%) of the GMP of the Project, to satisfy claims of materials suppliers and of mechanics and laborers employed on the Project. The Payment Bond shall be maintained by Contractor in full force and effect for the Project until the Project is fully completed and accepted and until all claims for materials and labor are paid, and shall otherwise comply with California law. The Payment Bond, once obtained, shall be attached to this Construction Services Agreement as Exhibit "D." In the event the GMP is increased in accordance with the provisions set forth in Section 9, above, Contractor must increase the Payment Bond to equal the revised GMP. The Payment Bond must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to

California Code of Civil Procedure section 995.120. In addition, to the extent required by law, the Payment Bond must be accompanied by a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California, a certificate from the Clerk of the County of Orange that the certificate of authority of the insurer has not been surrendered, revoked, cancelled, annulled, or suspended, or if it has, that it has been renewed, and four copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance of the State of California.

B. A "Faithful Performance Bond" from a California admitted surety and in the form attached hereto as Exhibit "E" shall be provided by Contractor for the Project prior to execution of this Construction Services Agreement. The Faithful Performance Bond shall be for One Hundred Percent (100%) of the GMP for the Project to guarantee faithful performance of all work, within the time prescribed, in a manner satisfactory to District, and that all materials and workmanship shall be free from original or developed defects. The Faithful Performance Bond shall be maintained by Contractor in full force and effect until the Project is fully completed and accepted and until all claims for materials and labor are paid, and shall otherwise comply with California law. The Faithful Performance Bond shall name District as the entity to which the Principal and Surety, as defined in the Faithful Performance Bond, are bound. The Faithful Performance Bond, once obtained, shall be attached to this Construction Services Agreement as Exhibit "E." In the event the GMP is increased in accordance with the provisions set forth in Section 9, above, Contractor must increase the Faithful Performance Bonds to equal the revised GMP. The Faithful Performance Bond must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to California Code of Civil Procedure section 995.120. In addition, to the extent required by law, the Faithful Performance Bond must be accompanied by a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California, a certificate from the Clerk of the County of Orange that the certificate of authority of the insurer has not been surrendered, revoked, cancelled, annulled, or suspended, or if it has, that it has been renewed, and four copies of the insurer's most recent annual statement and quarterly statement have been filed with the Department of Insurance of the State of California.

C. The bonds required by this Section shall meet the following criteria:

1. Each bond shall be signed by both Contractor and a notary and the signature of the authorized agent of the surety shall be notarized.

2. Should any bond become insufficient, Contractor shall renew or amend the bond within ten (10) days after receiving notice from District.

3. Should any surety at any time not be a California admitted surety, notice shall be given to District to that effect. No further payments shall be deemed due or shall be made under this Construction Services Agreement until a new surety shall qualify and be accepted by District.

4. Changes in the work, or extensions of time, made pursuant to the Construction Services Agreement shall in no way release Contractor or the surety from its obligations. Notice of such changes or extensions shall be waived by the surety.

D. Contractor is hereby authorized to obtain a Performance and Payment Bond from Subcontractors selected by Contractor at its discretion. Any bond required by this subsection shall comply with the requirements set forth above in Section 20.A. - C.

SECTION 21. TENANT IMPROVEMENT PAYMENTS

A. The District shall pay the Contractor monthly Tenant Improvement Payments in a sum equal to ninety-five percent (95%) on the scheduled value of the Tenant Improvements performed up to the last day of the previous month. If all the necessary information is submitted and accurate (including the schedule of values), District shall approve the Tenant Improvement Payments within fifteen (15) days after District's receipt of the periodic estimate for partial payment and District shall pay such payments within thirty (30) days after District's approval of the periodic estimate for the partial payment. Sublease Payments pursuant to the Sublease, including finance charges, are an independent payment obligation of the District from Tenant Improvement Payments. Tenant Improvement Payments shall be made on the basis of monthly estimates which shall be prepared by Contractor on a form approved by District and certified by Architect and Project Inspector, or any other approved representative of District, and filed before the fifth day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall release Contractor or any bondsman from such work or from enforcing each and every provision of this Construction Services Agreement and District shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment made for work performed so long as any lawful or proper direction concerning non-complying work or any portion thereof given by District lacks correction by Contractor. District shall withhold from the Tenant Improvement Payments one hundred fifty percent (150%) of the estimated value of non-complying work unless satisfactorily corrected or remedied.

B. In no event shall the cumulative total of the Sublease Payments (excluding finance charges), and Tenant Improvement Payments (including the balance of any anticipated retention), ever exceed the GMP as defined herein, unless modified pursuant to Section 9 of this Construction Services Agreement.

C. Title to new materials and/or equipment shall vest in District on a continuous basis as payment for the work is made; provided, however, full title shall not vest in the District until full payment under the terms of the Sublease. Responsibility for such new materials and/or equipment shall remain with Contractor until incorporated into the Project and accepted by District. No part of said materials and/or equipment shall be removed from its place of storage except for immediate installation in the work of this Construction Services Agreement. Contractor shall keep an accurate inventory of all said materials and/or equipment in a manner satisfactory to District or its authorized representatives.

D. District will pay Contractor Tenant Improvement Payments pursuant to the terms and conditions of this Section 21, which terms and conditions include five percent (5%) retention of each Tenant Improvement Payment ("retention"). Tenant Improvement Payments shall therefore consist of ninety percent (90%) of the scheduled value of work plus five percent (5%) of the scheduled value

of work withheld for retention. District shall retain and release such retention pursuant to Public Contract Code sections 7107 and 9203, as those sections may be amended from time to time. The remaining five percent (5%) of the scheduled value of work shall comprise the Sublease Payments required to be made by District pursuant to Section 7 of the Sublease.

SECTION 22. CORRECTION OF WORK: WARRANTY

Neither final payment nor any provision in the Contract Documents shall relieve Contractor of responsibility for faulty materials or workmanship incorporated in the Project. Contractor warrants that all work under this Construction Services Agreement will be free of faulty materials or workmanship and hereby agrees, within ten (10) days of receiving notification from District, to remedy, repair, or replace, without cost to District, all defects which may appear as a result of faulty materials or workmanship in the Project, at any time, or from time to time, during a period beginning with commencement of the Project and ending one (1) year after the date of substantial completion of the Project, as defined in Section 10, above. The foregoing warranty of Contractor also applies to the remedy, repair, or replacement of defects which may appear as a result of faulty designs prepared by Contractor and/or any party retained by, through or under Contractor in connection with the Project, but the foregoing warranty of Contractor does not guarantee against damage to the Project sustained by use, wear, intentional acts, accidents, or lack of normal maintenance or as a result of changes or additions to the Project made or done by parties not directly responsible to Contractor, except where such changes or additions to the Project are made in accordance with Contractor's directions. No guarantee furnished by a party other than Contractor with respect to equipment manufactured or supplied by such party shall relieve Contractor from the foregoing warranty obligation of Contractor. The warranty period set forth herein above shall not apply to latent defects appearing in the Project, and with respect to such defects, the applicable statute of limitations shall apply. Contractor agrees to provide District with all equipment and materials warranties provided by manufacturers to District, but has no obligation to assist in processing such warranty claims after said one (1) year warranty period.

SECTION 23. ASSIGNMENT OF ANTI TRUST CLAIMS

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

SECTION 24. PROTECTION OF PERSONS AND PROPERTY

A. By execution of this Construction Services Agreement, Contractor acknowledges that Contractor, its employees and Subcontractors are required to comply with the fingerprinting requirements set forth in Education Code section 45125.1.

B. In the event District determines, based on the totality of the circumstances, that Contractor, Contractor's employees, and Subcontractors will have only limited contact with

pupils, Contractor shall, at its own expense be subject to the following preventative measures: (1) Contractor, Contractor's employees, and Subcontractors shall check in with the school office each day immediately upon arriving at the Site; (2) Contractor, Contractor's employees, and Subcontractors shall inform school office staff of their proposed activities and location at the Site; (3) Once at such location, Contractor and/or Contractor's employees, and Subcontractors shall not change locations without contacting the school office; (4) Contractor, Contractor's employees, and Subcontractors shall not use student restroom facilities; and (5) If Contractor, Contractor's employees, and Subcontractors find themselves alone with a student, Contractor, Contractor's employees, and Subcontractors shall immediately contact the school office and request that a member of the school staff be assigned to the work location.

C. Prior to, and as a condition to commencement of Contractor's performance under this Construction Services Agreement, Contractor shall complete the Fingerprint Certification attached hereto as Exhibit "F," and by this reference incorporated herein, and the Drug-Free Workplace Certification attached hereto as Exhibit "G," and by this reference incorporated herein.

D. Contractor shall, at all times, enforce orderly and disciplined conduct among those performing work on the Project and shall not employ on the work any unfit person not skilled in the task assigned to him, except as provided in Section 17, above.

E. Contractor, in performing the work, shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority having jurisdiction for the safety of persons or property or for their protection from damage, injury, or loss. Contractor shall erect and maintain, as required by existing conditions and progress of the Project, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, and shall promulgate safety regulations and notify owners and users of adjacent utilities. Contractor shall designate a responsible member of Contractor's organization employed at the Site of the Project whose duty shall be the prevention of accidents. Such person shall be Contractor's Senior Project Manager/Superintendent unless otherwise designated in writing by Contractor to District.

F. In any emergency affecting the safety of persons or property, Contractor shall act at its discretion to prevent threatened damage, injury, or loss. Any additional compensation or extension of time claimed by Contractor on account of such emergency shall be determined by mutual agreement between District and Contractor.

SECTION 25. INSPECTION OF WORK

A. **Inspection of Work/Inspector.** District shall hire its own Inspector as required by law. District, District's Representatives, and the Inspector shall at all times have access to the work, whether it is in preparation or progress, and Contractor shall provide proper facilities for such access and for inspection.

1. If the specifications, District's timely instructions, any public authority shall require the Site or the Project to be specially tested or approved, Contractor shall give District forty-eight (48) hour notice of its readiness for inspection and, if the inspection is to be performed

by a party other than District, of the date fixed for such inspection. Inspections by District shall be promptly made, and, where practicable, shall be at the source of supply. If any work required to be inspected by the specifications, District's timely instruction, or by a public authority should be covered up without the approval or consent of District, it must be uncovered for examination at Contractor's expense.

2. Re-examination of questioned work may be ordered by District and if so ordered, such work shall be uncovered by Contractor. If such work is found to be in accordance with the Contract Documents, District shall pay the cost of re-examination and replacement. If such work is not in accordance with the Contract Documents, Contractor shall pay such costs, unless Contractor can demonstrate to the reasonable satisfaction of District that the defects in such work were caused by persons or entities other than Contractor or any of its Subcontractors or employees.

B. **Inspector's Field Office.** Contractor shall provide for the use of Inspector a separate trailer or temporary private office of not less than seventy-five (75) square feet of floor area to be located as directed by Inspector and to be maintained until removal is authorized by District. The office shall be of substantial waterproof construction with adequate natural light and ventilation by means of stock design windows. Door shall have a key type lock or padlock hasp. The Inspector's field office shall have heating and air-conditioning and shall be equipped with a telephone, a telephone answering machine, a fax machine and use of an on-site copier at Contractor's expense. A table satisfactory for the study of plans and two chairs shall be provided by Contractor. Contractor shall provide and pay for adequate electric lights, local telephone service, and adequate heat and air conditioning for the field office until authorized removal.

C. **Architect.**

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

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

SECTION 26. SUPERVISION

A. Contractor shall maintain on-site a competent Project Manager/Superintendent and necessary assistants during the performance of the work. The Project Manager/Superintendent shall be available twenty-four (24) hours a Day, seven (7) Days a week to respond to emergencies. The

Project Manager/Superintendent shall represent Contractor and all directions given to the Project Manager/Superintendent shall be deemed to have been given to Contractor. Important directions shall be confirmed in writing to Contractor, and other direction shall be so confirmed to Contractor upon the written request of Contractor, in accordance with Section 49, below and the address listed therein. Replacement of the Project Manager/Superintendent shall be subject to the provisions of Section 12, above.

B. Contractor shall give efficient supervision to the work, using its best skill and attention and shall cause working drawings and specifications to be prepared and submitted to District. Following agreement by Contractor and District with respect to said working drawings and specifications, it shall be Contractor's responsibility to perform the work described in said working drawings and specifications in substantial compliance with the Construction Documents. Notwithstanding the foregoing, Contractor may from time to time make minor and insignificant changes in said working drawings and specifications and perform the Construction in accordance with such changed drawings and specifications without the consent of District, provided that any such work performed by Contractor in accordance with such changed drawings and specifications shall be consistent with that specifically required to be performed by Contractor under the Construction Documents. For purposes of this Section, the term "minor and insignificant" shall mean changes which result in no change in quality, aesthetics, or integrity of the original specifications of the Project. All changes, including minor and insignificant changes should be placed on the agenda for regularly scheduled construction meetings between Contractor and District to ensure that District is aware of such changes. District agrees to promptly respond to Contractor's requests for information and approvals; and if it fails to do so, the completion dates in this Construction Services Agreement may be extended.

SECTION 27. SEPARATE CONTRACTS

A. District reserves the right to let other contracts in connection with the construction of portions of the Project which are not being performed by Contractor hereunder. Any such contracts entered into by District, and the work they provide, shall in no event interfere with the activities of Contractor on the Project, but if they do, District shall be liable to Contractor for its damages in connection with such interference. Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate the Project with the work of such contractors. Such contractors shall comply with all applicable State safety laws and regulations.

B. If the proper execution of any part of Contractor's work on the Project depends upon the work of any such contractors, Contractor shall inspect and promptly report to District any patent defects or other problems it identifies in such work that render it unsuitable for such proper execution and results. Contractor is only required to inspect the work of such other contractors prior to commencing its own further work in connection with or in relation to that other work. Further, Contractor is only expected to identify patent defects or other problems, and is not required to do any destructive testing or to monitor the progress of such work by other contractors prior to its completion.

SECTION 28. USE OF PREMISES

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

SECTION 29. CLEANING UP

Contractor shall, at all times, keep the Site of the Construction free from accumulations of waste material or rubbish caused by the performance of the Construction by Contractor, and at the completion of the Construction, Contractor shall remove from the Site of the Construction all such waste material and rubbish and all tools, scaffolding, and surplus materials belonging to Contractor and/or Contractor's Subcontractors, laborers, or materialmen, it being specifically understood that at the close of Construction and prior to turning over the premises to District for beneficial use and occupancy, Contractor shall leave the Site "broom clean," or its equivalent, unless more exactly specified.

SECTION 30. SITE REPRESENTATIONS

District warrants and represents that District has, and will continue to retain at all times during the course of Construction, legal title to the Site and that said land is properly subdivided and zoned so as to permit the Construction and use of said Site. District further warrants and represents that title to said land is free of any easements, conditions, limitation, special permits, variances, agreements, or restrictions which would prevent, limit, or otherwise restrict the Construction or use of said facility. Reference is made to the fact that District has provided information on the Site to Contractor. Such information shall not relieve Contractor of its responsibility; and the interpretation of such data regarding the Site, as disclosed by any borings or other preliminary investigations, is not warranted or guaranteed, either expressly or impliedly, by District. Contractor shall be responsible for having ascertained pertinent local conditions such as location, accessibility, and general character of the Site and for having satisfied itself as to the conditions under which the work is to be performed. No claim for any allowance because of Contractor's error or negligence in acquainting himself with the conditions at the Site will be recognized.

SECTION 31. TRENCH SHORING

A. Contractor shall submit to District, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches five (5) feet or more in depth. Contractor shall also submit a copy of its annual trench/excavation permit approved by CAL-OSHA. The plan shall be prepared by a registered civil or structural engineer. As part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with CAL-OSHA Construction Safety Orders, or stating that the

registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the CAL-OSHA Construction Safety Orders.

B. All shoring submittal shall include surcharge loads from adjacent embankments, construction loads, and spoil bank. Submittal shall indicate minimum horizontal distance from top of trench to edge of all surcharge loads for all cases of shoring and side slopes.

C. Nothing in this Section shall relieve Contractor of the full responsibility for providing shoring, bracing sloping, or other provisions adequate for worker protection. If such plan varies from the shoring system standards established by the CAL-OSHA Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer and shall be approved by CAL-OSHA. No excavation of such trench or trenches shall be commenced until said plan has been accepted by District or the person to whom authority to accept has been delegated by District.

SECTION 32. HAZARDOUS WASTE AND UNKNOWN PHYSICAL CONDITIONS

A. Except as provided in Section 8, Paragraph (L) of this Construction Services Agreement, Contractor shall promptly, and before the following conditions are disturbed, notify District, in writing, of any:

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

2. Subsurface or latent physical conditions at the Site differing from those indicated, including geological, soils, and/or water table issues which impede Construction or increase Construction Costs.

3. Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Construction Services Agreement.

B. District shall promptly investigate the conditions, and if it finds that the conditions materially so differ, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work may approve use of funds from District's Contingency pursuant to the procedures described in this Construction Services Agreement. If asbestos-related work or hazardous substance removal is discovered which is not disclosed in the Construction Documents, such work shall be performed pursuant to a contract separate from any other work to be performed as required by Section 25914.2 of the Health and Safety Code, as may from time to time be amended.

C. In the event that a dispute arises between District and Contractor whether the conditions set forth in Paragraph A above materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by this

Construction Services Agreement, but shall proceed with all work to be performed under this Construction Services Agreement. 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.

D. The Provisions of Section 32.A. - C., above, shall also apply to this Construction Services Agreement if this Construction Services Agreement involves digging trenches or other excavations that extend deeper than four feet below the surface.

SECTION 33. INSURANCE

A. Contractor's Insurance Requirements

Contractor shall purchase and maintain, during the performance of all work under this Construction Services Agreement, insurance in amounts as specified below.

1. Commercial General Liability

a. Coverage for Commercial General Liability Insurance shall be at least as broad as the following:

i. Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001)

ii. Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse, and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Construction Services Agreement
- (8) Broad Form Property Damage
- (9) Independent Contractor's Coverage

b. All such policies shall name District, the Board, and each member of the Board, its officers, employees, agents, and volunteers as Additional Insureds under the policies.

c. The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by District.

2. **Automobile Liability**

a. At all times during the performance of the work under this Construction Services Agreement, Contractor shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned, and hired vehicles, in a form and with insurance companies acceptable to District, in the amount specified below.

b. Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 0001 (ed. 6/92) covering automobile liability, Code 1 (any auto).

c. The automobile liability program may utilize deductibles, but not a self-insured retention, subject to written approval by District.

d. All such policies shall name District, the Board, and each member of the Board, its officers, employees, agents, and volunteers as Additional Insureds under the policies.

3. **Workers' Compensation/Employer's Liability**

a. At all times during the performance of the work under this Construction Services Agreement, Contractor shall maintain Workers' Compensation Insurance in compliance with applicable statutory requirements and Employer's Liability Coverage in amounts not less than the limits specified below for all its employees engaged in work under this Construction Services Agreement, on or at the Site of the Project, and, in case the work is sublet, Contractor shall require the Subcontractor similarly to provide Workers' Compensation Insurance for all the latter's employees. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Contractor's insurance. In case any class of employees engaged in work under this Construction Services Agreement, on or at the Site of the Project, is not protected under the Workers' Compensation Statutes, Contractor shall provide or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. Contractor shall file with District certificates of its insurance protecting workers.

b. Company or companies providing insurance coverage shall be acceptable to District, and in the following form and coverage: Statutory Workers' Compensation and Employer's Liability Coverage: Contractor shall maintain insurance to afford protection for all claims under California Workers' Compensation Act and other employee benefit acts, and, in addition, shall maintain Employer's Liability Insurance for a minimum limit of \$1,000,000. The Workers' Compensation Policy shall include the following endorsements, copies of which shall be provided to District:

- (1) The Voluntary Compensation Endorsement; and
- (2) Broad Form All States Endorsement; and
- (3) The Longshoremen's and Harbor Workers endorsement, where applicable to the work under this Construction Services Agreement; and
- (4) Waiver of Subrogation Endorsement.

c. If insurance is maintained, the workers' compensation and employer's liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by District.

d. Before beginning work, Contractor shall furnish to District satisfactory proof that it has taken out, for the period covered by the work under this Construction Services Agreement, full compensation insurance for all persons employed directly by it or through Subcontractors in carrying out the work contemplated under this Construction Services Agreement all in accordance with the "Workers' Compensation and Insurance Act," Division 4 of the Labor Code of the State of California and any acts amendatory thereof.

e. Contractor shall sign a Certificate Regarding Workers' Compensation Insurance which is attached to this Construction Services Agreement as Exhibit "H" incorporated herein by this reference.

4. **Builder's Risk "All Risk" Insurance**

a. In addition to the requirement that the District carry property insurance for any portion of the Project occupied by the District as set forth in the Sublease, at all times during the performance of the work, Contractor shall maintain builder's risk insurance on an "all risk" completed value basis (including flood) upon the entire project which is the subject of this Construction Services Agreement. Coverage shall include completed work as well as work in progress. Such insurance shall include District as Loss Payee.

b. Such insurance may have a deductible clause but not to exceed the smaller of: five percent (5%) of the total amount of the contract; or \$10,000.00 for all risks, except flood. The deductible for flood shall not exceed five percent (5%) of the total amount of this Construction Services Agreement.

c. Such policies shall name District as Additional Insured.

d. The making of Sublease Payments or Tenant Improvement Payments to Contractor shall not be construed as creating an insurable risk interest by or for District or be construed as relieving Contractor or his Subcontractors of responsibility for loss from any direct physical loss, damage, or destruction occurring prior to final acceptance of the work by District.

e. The insurer shall waive all rights of subrogation against District and shall provide District with a Certificate of Insurance for Builder's Risk insurance coverage and evidence of waiver of rights of subrogation against District.

5. **Umbrella Excess Liability Insurance**

a. In addition to the liability insurance coverage required by Paragraph A. of this Section 33, Contractor shall maintain umbrella excess liability insurance.

b. Such insurance shall provide for not less than \$4,000,000.00 of additional insurance coverage over Contractor's primary insurance coverage required herein, together with a self-insured retention amount not less than \$10,000.00.

B. Minimum Policy Limits Required

The following insurance limits are required for the Construction Services Agreement:

	<u>Combined Single Limit</u>
Commercial General Liability	\$1,000,000 per occurrence/\$3,000,000 aggregate for bodily injury, personal injury and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$1,000,000 per occurrence
Builder's Risk	Completed value or replacement cost
Umbrella Excess Liability	\$4,000,000 over primary insurance \$10,000 retention

C. **Evidence Required** Prior to execution of this Construction Services Agreement, Contractor shall file with District evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 2010 (ed. 11/85) (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (ACORD Form 25 S or equivalent). All evidence of insurance shall be certified by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional primary insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

D. Policy Provisions Required

1. All policies shall contain a provision for 30 days' advance written notice by the insurer(s) to District of any cancellation. Statements that the carrier "will endeavor" and "that failure to mail such notice shall impose no obligation and liability upon the company, its agents, or representatives," will not be acceptable on certificates.

2. All policies shall contain a provision stating that Contractor's policies are primary insurance and that the insurance of District or any named insureds shall not be called upon to contribute to any loss.

E. **Qualifying Insurers**

All policies required shall be issued by acceptable insurance companies, as determined by District, which satisfy the following minimum requirements:

Insurance carriers shall be qualified to do business in California and maintain an agent for service of process within the state. Such insurance carrier shall have not less than an "A" policyholder's rating and a financial rating of not less than "Class X" according to the latest Best Key Rating Guide.

F. **Additional Insurance Provisions**

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor and any approval of said insurance by District is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to this Construction Services Agreement, including but not limited to, the provisions concerning indemnification.

2. If at any time during the life of the Construction Services Agreement Contractor fails to maintain in full force any insurance required by the Construction Services Agreement, including required limits, District may acquire the necessary insurance for Contractor and deduct the cost thereof from the Tenant Improvement Payments made by District.

3. Contractor shall include all Subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each Subcontractor. Contractor shall make certain that any and all Subcontractors hired by Contractor are insured in accordance with this Construction Services Agreement. If any Subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold District harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by District as a result thereof.

4. If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:

a. The policy retroactive date coincides with or precedes Contractor's commencement of work under this Construction Services Agreement (including subsequent policies purchased as renewals or replacements).

b. Contractor will make every effort to maintain similar insurance during the required extended period of coverage following expiration of this Construction Services Agreement, including the requirement of adding all additional insureds.

c. If insurance is terminated for any reason, Contractor shall purchase an extended reporting provision of at least two years to report claims arising in connection with the Construction Services Agreement.

d. The policy allows for reporting of circumstances or incidents that might give rise to future claims.

e. District may require Contractor to provide complete copies of all insurance policies in effect for the duration of the Project.

f. Neither District nor the Board, nor any member of the Board, nor any of the directors, officers, employees, agents, or volunteers shall be personally responsible for any liability arising under or by virtue of the Construction Services Agreement.

SECTION 34. HOLD HARMLESS

District, its Board, and each member of the Board, its officers, employees, and agents shall not be liable for, and Contractor shall defend, indemnify, and hold harmless District, its Board, and each member of the Board, its officers, employees, and agents from and against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, injuries to property or persons (including death), expenses, charges or costs of any kind or character, including attorneys' fees and court costs (herein collectively referred to as "Claims"), which arise out of or are in any way connected to the work covered by this Construction Services Agreement arising either directly or indirectly from any act, error, omission, or negligence of Contractor or its contractors, consultants, architects, engineers, licensees, agents, servants, or employees, including, without limitation, Claims caused by the concurrent act, error, omission, or negligence of District or its agents or employees. However, Contractor shall have no obligation to defend or indemnify District from a Claim to the extent that such Claim was caused by the active or sole negligence or willful misconduct of District or its agents or employees.

SECTION 35. RESOLUTION OF AGREEMENT CLAIMS

A. For purposes of this Section, the term "Claim" has the meaning as set forth in Public Contract Code section 20104(b)(2), as that section maybe amended from time to time. Section 20104(b)(2) currently defines "claim" to mean a separate demand by Contractor for (a) a time extension, (b) payment of money or damages arising from work done by, or on behalf of, Contractor pursuant to the Construction Services Agreement and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (c) an amount the payment of which is disputed by District.

B. Notwithstanding any other provision herein, all claims shall be resolved pursuant to the claims resolution process set forth in Public Contract Code section 9204. Furthermore, the resolution of all claims that are equal to or less than Three Hundred Seventy-Five Thousand Dollars (\$375,000) shall also comply with the claims resolution procedures set forth in Public Contract Code section 20104 et seq., as may be amended from time to time, unless in conflict with Public Contract Code section 9204 in which case section 9204 takes precedence.

C. For claims not addressed in Section 35, subsections A. or B. above, the dispute review process set forth in this subsection C. shall apply.

1. The dispute review process set forth in this Section 35 shall be administered by the American Arbitration Association (AAA) and governed by their rules in effect at the time of filing, or by any other neutral organization agreed to by the parties (hereinafter called the "Administrator".)

2. If a dispute arises out of, or relates to this Construction Services Agreement or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the parties agree to first endeavor to settle the dispute using mediation.

3. The costs for all mediation, including the Administrator fees and mediator compensation, will be shared equally by all parties. Fees shall be jointly negotiated by all parties directly with the Administrator. If all parties agree, then the mediation costs may increase as required for resolution of the dispute. The expenses of witnesses for any party shall be paid by the party producing such witnesses.

4. A single mediator, acceptable to all parties, shall be used to mediate the dispute. The mediator will be knowledgeable in construction aspects and will be selected from lists furnished by the Administrator. The initial mediation session shall commence within thirty (30) days of filing, unless otherwise agreed by the parties, or at the direction of the mediator.

5. Mediator hearings will be conducted in an informal manner and discovery will not be allowed unless agreed by all parties. All discussions, statements, or admissions will be confidential to the proceedings and will not be used for any other purpose as it relates to the party's legal position.

6. Spokespersons shall be limited to the District, Contractor, Subcontractor, and Supplier personnel and their consultants. Contractor, Subcontractor and Supplier may have an attorney present and shall advise the other parties no less than five (5) business days before the mediation so that the other parties may also have their attorneys' present.

7. Any resultant agreements from mediation shall be documented in writing, and may be used as the basis for a change order or other directive as appropriate. All mediation results and documentation shall be non-binding and inadmissible for any purpose in any legal proceedings, in accordance with Evidence Code section 1152, unless such admission is otherwise agreed to in writing by all parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

8. If mediation is unsuccessful, the parties thereafter may, but are not required to, agree to submit the matter to the Administrator for binding arbitration. If the parties so agree to arbitrate, the following procedure shall govern such arbitration, unless the parties otherwise agree in writing. The parties agree that the matter shall be submitted to one (1) arbitrator, unless they agree in writing to three (3) arbitrators. A judgment of a court having competent jurisdiction may be entered upon the award, and such judgment shall be enforceable as a final judgment to the fullest extent under the law. The parties agree to evenly split all arbitration and arbitrator(s)' fees and expenses, subject to readjustment by the arbitrator as part of any award. The arbitration shall be subject to, and proceed in accordance with California Code of Civil Procedure sections 1280 through 1294.2. If the

parties do not agree to binding arbitration, neither party is prevented from pursuing other legal remedies.

SECTION 36. SUBSTITUTION OF SECURITY

In accordance with Public Contract Code Section 22300, District will permit the substitution of securities for any moneys withheld by District to ensure performance under the Construction Services Agreement. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with District, or with a state or federally chartered bank as the escrow agent. Upon satisfactory completion of the Construction Services Agreement the securities shall be returned to Contractor.

SECTION 37. TITLE TO WORK

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

SECTION 38. CONTRACT DOCUMENTS AND INTERPRETATIONS

A. The Contract Documents shall be executed, and/or initialed as appropriate, in duplicate by District and Contractor. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, services, and materials reasonably necessary for the proper execution of the work.

B. It is not intended that work and/or services not covered under any heading, section, branch, class, or trade of the specifications shall be supplied, unless it is required elsewhere in the Contract Documents or is reasonably inferable therefrom as being necessary to produce the intended results, in which case such work and/or services shall be supplied by Contractor. Words which have well-known technical or trade meanings are used herein in accordance with such recognized meanings. Mutual agreement shall be reached with respect to words which do not have a well-known technical or trade meaning and the definition of which come into question.

C. Drawings and specifications are intended to be fully cooperative and to agree. All drawing and specification changes shall be dated and sequentially recorded. All modifications to drawings and specifications shall be interpreted in conformity with the Contract Documents, which shall govern, unless otherwise specified.

D. Documents on the Project Site. Contractor shall keep one copy of all Contract Documents, including addenda, change orders, Division 1, Title 21 of the California Code of Regulations, Parts 1-5 and 12 of Title 24, and Title 22 of the California Code of Regulations, and the prevailing wage documents shall be kept in good order and shall be available to District's Representative, Architect and its representatives. Contractor shall be acquainted with and comply with the provisions of said Titles 21, 22 and 24 as they relate to this Project. (See particularly Duties of Contractor, Title 24 California Code of Regulations, section 4-343.) Contractor shall also be

acquainted with and comply with all California Code of Regulations provisions relating to this Project, particularly Titles 17, 19, 21, 22 and 24.) Contractor shall also make available all books, records, accounts, contracts, bids, etc. upon request by District.

E. Record “As Built” Drawings. Contractor shall maintain a clean, undamaged set of contract drawings and shop drawings. In addition to maintaining one complete set of record drawings (herein referred to as “as-builts”), Contractor shall require each trade contractor/subcontractor to do its own as-builts. The trade contractor/subcontractor as-builts shall contain information showing clean and clear drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original drawings; adequacy of the drawings shall be determined by District or Architect. Contractor shall mark the set to show the actual installation where the installation varies from the work as originally shown. Contractor shall mark whichever drawings are most capable of showing conditions fully and accurately where shop drawings are used, and shall record a cross-reference at the corresponding location on the contract drawings. Contractor shall give particular attention to concealed elements that would be difficult to measure and record at a later date. Contractor shall use colors to distinguish variations in separate categories of the work. Contractor shall organize record drawings sheets into manageable sets, bound with durable paper cover sheets and shall print suitable title, dates, and other identification on the cover of each set. At the end of the Project, Contractor shall provide District with a complete set of as-built drawings. The complete set shall contain information showing clean and clear drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original drawings; adequacy of the drawings shall be determined by District or Architect. The as-builts must show the entire site for each major trade, including but not limited to water, sewer, electrical, data, telephone, cable, fire, alarm, gas, and plumbing.

SECTION 39. REQUEST FOR SUBSTITUTIONS

A. For purposes of this provision, the term “substitution” shall mean the substitution of any material, process, or article that is substantially equal or better in every respect to that indicated or specified in the Construction Documents.

B. Pursuant to Public Contract Code section 3400(b), District may make a finding designating certain products, things, or services by specific brand or trade name for the statutorily enumerated purposes. These findings if made, as well as the products and their specific brand or trade names that must be used for the Project may be found in Exhibit “A” of this Construction Services Agreements.

C. Unless specifically designated in Exhibit “A” of this Construction Services Agreement, whenever in specifications any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating the description of the material, process, or article desired and shall be deemed to be followed by the words “or equal.” Contractor may, unless otherwise stated, offer for substitution any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified. However, District has adopted certain uniform standards for certain materials, processes and articles. Except as otherwise provided in paragraph D.

below, if any material, process or article offered for substitution by Contractor is not, in the opinion of District and Architect, substantially equal or better in every respect to that specified, Contractor shall furnish the material, process, or article specified. The burden of proof as to the equality of any material, process or article shall rest with Contractor.

D. Contractor shall submit requests together with substantiating data for substitution of any “or equal” material, process or article no later than 35 days after the Project commencement date in the Notice to Proceed for the Project. Provisions authorizing submission of “or equal” substitution justification data shall not in any way authorize an extension of time for performance of this Construction Services Agreement. Furthermore, if a proposed “or equal” substitution request is rejected, Contractor shall be responsible for including the specified material, process or article for the Project. District shall not be responsible for any costs of Contractor associated with “or equal” substitution requests. District has the complete and sole discretion to determine if a material, process or article is an “or equal” material, process, or article that may be substituted.

E. For purposes of paragraph D. above, data required to substantiate requests for substitution of an “or equal” material, process, or article shall include a signed affidavit from Contractor stating that the substituted “or equal” material, process, or article is equivalent to that specified in the specification in every way except as listed on the affidavit. Substantiating data shall also include any and all illustrations, specifications, and other relevant data including catalogue information which describes the requested substituted “or equal” material, process, or article and substantiates that it is an “or equal” to the material, process, or article specified. In addition, the submittal documentation must also include a statement of the cost implications of the substitution being requested stating whether and why the substitution of the “or equal” material, process, or article will reduce or increase the GMP. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted “or equal” material, process or article. Failure to submit all the needed substantiating data, including the signed affidavit, to Architect in a timely fashion so that the substitution can be adequately reviewed may result in the rejection of the proposed substitution. District is not obligated to review multiple substitution submittals for the same product or item due to Contractor’s failure to submit a complete package initially.

F. Time limitations in this Section must be complied with strictly and in no case will an extension of time for completion be granted because of Contractor’s failure to request the substitution of an alternative item at the times and manner set forth in paragraph D. above. Further, Contractor shall bear the costs of all engineering work associated with the review of submittals for substitution of equals.

G. In the event Contractor furnishes a material, process, or article which is more expensive than that specified, the difference in cost of such material, process, or article so furnished shall be borne by Contractor.

H. Contractor agrees to include the provisions of this Section in all subcontractor bid documents.

SECTION 40. COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION

A. The Project is subject to the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity ("Permit"). Such requirements include the preparation and implementation of a Storm Water Pollution Prevention Plan ("SWPPP") and/or implementation of local storm water requirements, which prohibit the discharge of pollutants from the construction site into the receiving waters of the United States (collectively herein, the "Storm Water Requirements"). The District shall be responsible for the (1) preparation of the SWPPP, (2) filing of the Notice of Intent, (3) obtaining the Permit, and (4) periodic oversight of the SWPPP.

B. Contractor shall be responsible for implementing and complying with the provisions of the Permit and the SWPPP, removing SWPPP controls that are not needed, and complying with the standard provisions, monitoring and reporting requirements as required by the Permit. Contractor shall provide copies of all reports and monitoring information to the District, Architect and the District's third party SWPPP consultant.

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

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

SECTION 41. EQUAL OPPORTUNITY CLAUSE

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

A. California Fair Employment and Housing Act (Government Code section 12900 et seq.), and any amendments thereto, prohibiting discrimination or harassment of an employee or applicant because of race, religious creed, color, national origin, ancestry, physical disability,

mental disability, medical condition, genetic information, marital status, age, sex, gender, gender identity, gender expression, sexual orientation, or military or veteran status;

B. Federal Civil Rights Act of 1964 (42 USC 2000e et seq.), and any amendments thereto, prohibiting discrimination in employment on the basis of race, color, national origin, religion, or sex; Title I of the Americans With Disabilities Act of 1990 (42 USC 12101 et seq.) prohibiting discrimination against qualified individuals with a disability in hiring and employment practices;

C. The Age Discrimination in Employment Act (29 USC 621 et seq.), and any amendments thereto, prohibiting age discrimination in employment against individuals who are at least forty years of age;

D. California Labor Code prohibiting discrimination in any aspect of employment or opportunity for employment based on actual or perceived sexual orientation; and

E. Any other laws or regulations prohibiting discrimination as may be applicable to Contractor.

SECTION 42. COMPLIANCE WITH DTSC GUIDELINES – IMPORTED SOIL/SOILS INSPECTION

A. If the Project requires the use of imported soils, Contractor shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in California Law and the California Health and Safety Code. District reserves the right to reject any imported material that has come from agricultural or commercial land uses. Contractor must notify District of the source of material and comply with all applicable Regional Water Quality Control Board rules, regulations, and resolutions and when applicable, with the guidelines of the Department of Toxic Substances Control (“DTSC”).

B. Unless otherwise provided, when a soils investigation report obtained from test holes at the site is available, such report shall not be a part of this Construction Services Agreement. Nevertheless, with respect to any such soils investigation and/or geotechnical report regarding the Site, it shall be the responsibility of Contractor to review and be familiar with such report. Any information obtained from such report or any information given on drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, and does not form a part of this Construction Services Agreement, unless otherwise specifically provided. Contractor is required to make a visual examination of the Site and must make whatever tests it deems appropriate to determine the underground condition of the soil. Limited soil tests and subsurface investigations, if any, are available for review and consideration by Contractor and were conducted for the purpose solely as a matter of convenience and general information for Contractor and Contractor is expected to review and be familiar with such information. No representation is made by District or Architect that the information provided is completely representative of all conditions and materials which may be encountered. If such a report is referenced in the Contract Documents for performance of the Project, such reference shall be to establish minimum requirements only. Further, no

representation is made by District or Architect that information provided is solely adequate for the purposes of construction. District disclaims responsibility for interpretations by Contractor of soil and subsurface investigation, such as in protecting soil-bearing values, rock profiles, presence and scope of boulders and cobbles, soil stability and the presence, level, and extent of underground water. Contractor shall determine means, methods, techniques, and sequences necessary to achieve the required characteristics of completed work. Conditions found after execution of the Construction Services Agreement to be materially different from those reported and which are not customarily encountered in the geographic area of the Project shall be governed by the provisions of this Construction Services Agreement for unforeseen conditions.

SECTION 43. PATENTS; ROYALTIES, AND INDEMNITIES

Contractor shall hold and save District and its officers, agents, and employees harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of this Construction Services Agreement, including its use by District, unless otherwise specifically stipulated in this Construction Services Agreement.

SECTION 44. EXCISE TAX

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

SECTION 45. PROHIBITED INTERESTS

No official of District and no District representative who is authorized in such capacity and on behalf of District to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction, or material supply contract or any subcontract in connection with the construction of the Project, shall be or become directly or indirectly interested financially in this Construction Services Agreement or any part thereof. No officer, employee, architect, attorney, engineer, or inspector of or for District who is authorized in such capacity and on behalf of District to exercise any executive, supervisory, or other similar functions in connection with construction of the Project, shall become directly or indirectly interested financially in this Construction Services Agreement or in any part thereof.

SECTION 46. DRUG-FREE WORK PLACE, NO ASBESTOS AND HAZARDOUS MATERIALS CERTIFICATION

A. Drug-Free Workplace Certification

Contractor shall, for all contracts involving state funds, submit a “Drug-Free Workplace Certification.” This form is attached hereto as Exhibit “G” and must be signed under penalty of perjury and dated prior to commencing work on the Project.

B. Asbestos and Other Hazardous Materials Certification

1. Contractor shall execute and submit an “Asbestos and Other Hazardous Materials Certification.” This form is attached hereto as Exhibit “I” and must be signed under penalty of perjury and dated prior to commencing work on the Project.

2. Contractor, further, is aware that should asbestos-containing materials be installed by Contractor in violation of this certification, or if removal of asbestos-containing materials is part of the Project, decontamination and removal will be performed in accordance with the requirements of all applicable laws and will meet the following criteria:

a. 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”).

b. 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.

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

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

3. 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 District shall be borne entirely by Contractor.

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

its Architect and assigns, for all asbestos liability which may be associated with this work. Contractor further agrees to instruct its employees with respect to the above-mentioned standards, hazards, risk, and liabilities.

SECTION 47. LAWS AND REGULATIONS

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

B. Contractor shall be responsible for familiarity with the Americans with Disabilities Act (“ADA”) (42 USC Section 12101 et seq.). Installations of equipment and other devices shall be in compliance with ADA regulations.

SECTION 48. AGREEMENT MODIFICATIONS

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

SECTION 49. NOTICES

A. All communications in writing between District and Contractor, including, without limitation, applications for payment, shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by fax followed by regular mail, addressed as follows:

If to Contractor:

[Redacted]
[Redacted]
[Redacted]

Attn: [Redacted], [Redacted]

If to District:

Huntington Beach City School District
8750 Dorsett Drive
Huntington Beach, CA 92646
Attn: Gregg Haulk, Superintendent

With a Copy to:

Parker & Covert LLP
17862 East 17th Street, Suite 204
Tustin, CA 92780
Attn: Douglas N. Yeoman, Esq.

B. For the purpose of directions, the representative from Contractor shall be _____, _____, _____, _____, and _____, and District's representative shall be Gregg Haulk, Superintendent, unless otherwise specified in writing.

SECTION 50. THIRD-PARTY CLAIMS

Pursuant to Public Contract Code Section 9201, District shall provide Contractor with timely notification of the receipt of any third-party claim, relating to the Construction Services Agreement. District is entitled to recover its reasonable costs incurred in providing such notification.

SECTION 51. ASSIGNMENT

Neither party to this Construction Services Agreement shall assign this Construction Services Agreement or sublet it as a whole without the written consent of the other, nor shall Contractor assign any monies due or to become due to it hereunder without the prior written consent of District.

SECTION 52. HEADINGS/RECITALS

The headings herein contained are inserted only as a matter of convenience and reference and are not meant to define, limit, or describe the scope or intent of the Contract Documents or in any way to affect the terms and provisions set forth herein. The Recitals set forth at the beginning of this Construction Services Agreement are hereby incorporated herein by this reference.

SECTION 53. INTEGRATION/MODIFICATION

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

SECTION 54. APPLICABLE LAW/PROVISIONS REQUIRED BY LAW DEEMED INSERTED

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

state court situated in the County of Orange, State of California, unless a court finds jurisdiction or venue is only proper in a federal court or a court outside this county.

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

SECTION 55. SUCCESSION OF RIGHTS AND OBLIGATIONS

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

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

CONTRACTOR:

DISTRICT:



Huntington Beach City School District

By: _____

By: _____

Its: _____

Its: _____

EXHIBIT “A”

Scope of Work

The Scope of Work for the Huntington Seacliff Elementary School Modernization Project is expected to include 21st Century Classroom renovations, Learning Commons renovation, Library Courtyard repair, code required upgrades, play field repair and painting. The final scope of the Project will be depicted in the Plans and Specifications for the Project, which when approved by DSA and District will be on file at District’s office, and incorporated herein as if set out in full.

EXHIBIT “B”

Master Budget

(To be Inserted)

EXHIBIT “C”

DVBE Compliance Forms

(To be Inserted)

EXHIBIT "D"

Payment Bond

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the Huntington Beach City School District ("District"), by Board action on October 15, 2019, has awarded to [REDACTED], designated as the "Principal," a contract for the work described as follows:

Huntington Seacliff Elementary School Modernization Project;

WHEREAS, said Principal is required by Division 4, Part 6, Title 3, Chapter 5 (commencing at section 9550) of the California Civil Code to furnish a bond in connection with said contract;

NOW THEREFORE, we the Principal and [REDACTED] as Surety, an admitted Surety insurer pursuant to Code of Civil Procedure, section 995.120, are held and firmly bound unto the Huntington Beach City School District in the penal sum of [REDACTED] Dollars (\$ [REDACTED]) (this amount being not less than one hundred percent (100%) of the total bid price of the contract awarded by the District to the Principal), 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 said Principal or its heirs, executors, administrators, successors, assigns, or subcontractors shall fail to pay any person or persons named in Civil Code section 9100 or 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 for amounts due under the Unemployment Insurance Code, with respect to work or labor thereon of any kind, or shall fail to deduct, withhold, and pay over to the Employment Development Department, any amounts required to be deducted, withheld, and paid over by section 13020 of the Unemployment Insurance Code with respect to work and labor thereon of any kind, or for amounts due as withholding tax pursuant to Section 18663 of the Revenue and Taxation Code, then said Surety will pay for the same, in or to an amount not exceeding the amount hereinabove set forth, and also will pay in case suit is brought upon this bond, such reasonable attorney's fees as shall be fixed by the court, awarded and taxed as provided in Division 4, Part 6, Title 3, Chapter 5 (commencing at section 9550) of the California Civil Code.

This bond shall inure to the benefit of any of the persons, companies, and corporations named in section 9100 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety of 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 hereinabove 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 hereinabove described, nor by any 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 the 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 sections 8400 and 8402 of the California Civil Code, and has not been paid the full amount of his or its claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

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)

IN WITNESS WHEREOF the parties have executed this instrument under their several seals this [redacted] day of [redacted], 20[redacted], 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
Principal, if Corporation)

[redacted]
Principal (Proper Name of Corporation)

By: _____

Signature

Title

By: _____

Signature

Title

(Corporate Seal of Surety)

Surety

By: _____

Attorney-in-Fact

(Attach Attorney-in-Fact
Certificate and Required
Acknowledgments

EXHIBIT "E"

Performance Bond

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the Huntington Beach City School District (hereinafter referred to as "District"), by Board action on October 15, 2019, has awarded to [REDACTED], as Principal, hereinafter designated as "Principal," a contract for the work described as follows:

Huntington Seacliff Elementary School Modernization Project.

AND WHEREAS, said Principal is required under the terms of said contract to furnish a bond for the faithful performance and guaranty of said contract.

NOW, THEREFORE, we the Principal and the undersigned Surety, an admitted Surety insurer pursuant to Code of Civil Procedure section 995.120 are held and firmly bound to the District, in the sum of [REDACTED] Dollars (\$ [REDACTED]) (this amount being not less than one hundred percent (100%) of the total bid price of the contract awarded by the District to the Principal), lawful money of the United States of America, for payment of which sum well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the hereby bounded Principal, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by and will and truly keep and perform all the undertakings, terms, covenants, conditions and agreements in the said contract and any alteration thereof made as therein provided, including, but not limited to the provisions regarding contract duration and liquidated damages, all within the time and in the manner therein designated in all respects according to their true intent and meaning; and shall faithfully fulfill guarantees of all materials and workmanship; and indemnify, defend and save harmless the District, its officers and agents, as stipulated in said contract, 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 contract, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by District, during which time if Principal shall fail to make full, complete, and satisfactory repair and replacements and totally protect the District from loss or damage made evident during the period of one (1) year from the date of acceptance of the work, and 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 obligation of Surety hereunder shall continue so long as any obligation of Principal remains.

Whenever Principal shall be, and is declared by the District to be, in default under the contract, the District having performed the District's obligations thereunder unless excused by

Principal's breach or default, the Surety shall promptly either remedy the default, or shall promptly:

1. Complete the contract in accordance with its terms and conditions; or
2. Obtain a bid or bids for completing the contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, arrange for a contract between such bidder and the District, and make available as work progresses (even though there should be a default or succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price, but not exceeding, including other costs and damages for which Surety may be liable hereunder, the amount set forth in the first executory paragraph hereof. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Principal by the District under the contract and any modifications thereto, less the amount previously properly paid by the District to the Principal.

Surety expressly agrees that the 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 Principal.

Surety shall not utilize Principal in completing the contract nor shall Surety accept a bid from Principal for completion of the work if the District, when declaring the Principal in default, notifies Surety of the District's objection to Principal's further participation in the completion of the work.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the District named herein or the successors or assigns of the District. Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the contract falls due or is made, whichever occurs later.

FURTHER, the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or modification of the contract documents as defined in the Construction Services Agreement ("Contract Documents"), or of the work to be performed thereunder, or the specifications accompanying the same shall in any way affect its obligations on this bond; and it does hereby waive notice of any change, extension of time, alteration or modification of the Contract Documents, or of work to be performed thereunder, or of the specifications.

Principal and Surety agree that if the District is required to engage the services of an attorney in connection with enforcement of the bond, Principal and Surety shall pay District's reasonable attorney's fees incurred, with or without suit, in addition to the above sum.

FURTHER, the said Surety hereby agrees that in the event suit is brought upon this bond by the District and judgment is recovered, the Surety shall pay all costs incurred by the District in such suit, including a reasonable attorney's fees to be fixed by the court.

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

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)

[Signatures follow on next page]

IN WITNESS WHEREOF the parties have executed this instrument under their several seals this [redacted] day of [redacted], 20[redacted], 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
Principal, if Corporation)

[redacted]
Principal (Proper Name of Corporation)

By: _____

Signature

Title

By: _____

Signature

Title

(Corporate Seal of Surety)

Surety

By: _____

Attorney-in-Fact

(Attach Attorney-in-Fact
Certificate and Required
Acknowledgments)

EXHIBIT “F”

Fingerprint Certification

CONTRACTOR CERTIFICATION

With respect to the Construction Services Agreement dated October 16, 2019 by and between Huntington Beach City School District (“District”) and [REDACTED] (“Contractor”) for the provision of construction services, Contractor hereby certifies to the District’s governing board that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with District pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

Contractor’s Representative

Date

CONTRACTOR EXEMPTION

Pursuant to Education Code section 45125.1, the Huntington Beach City School District (“District”) has determined that [REDACTED] (“Contractor”) is exempt from the criminal background check certification requirements for the Construction Services Agreement dated October 16, 2019 by and between the District and Contractor (“Contract”) because:

- The Contractor’s employees will have limited contact with District students during the course of the Contract; or
- Emergency or exceptional circumstances exist.

District Official

Date

SUBCONTRACTOR’S CERTIFICATION

The Huntington Beach City School District (“District”) entered into a contract for construction services with [redacted] (“Contractor”) on or about October 16, 2019 (“Contract”). This certification is submitted by [redacted], a subcontractor or consultant to the Contractor for purposes of that Contract (“Subcontractor”). Subcontractor hereby certifies to the District’s governing board that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with District pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

Subcontractor’s Representative

Date

SUBCONTRACTOR’S EXEMPTION

The Huntington Beach City School District (“District”) entered into a contract for construction services with [redacted] (“Contractor”) on or about October 16, 2019 (“Contract”). Pursuant to Education Code section 45125.1, the District has determined that [redacted], a subcontractor or consultant to the Contractor for purposes of that Contract (“Subcontractor”), is exempt from the criminal background check certification requirements for the Contract because:

- [] The Subcontractor’s employees will have limited contact with District students during the course of the Contract; or

- [] Emergency or exceptional circumstances exist.

District Official

Date

EXHIBIT "G"

Drug-Free Workplace Certification

This Drug-Free Workplace Certification form is part of the Construction Services Agreement made by and between the Huntington Beach City School District ("District") and [REDACTED] ("Contractor") for the Huntington Seacliff Elementary School Modernization Project ("Project") pursuant to the requirements mandated by Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of any property or service from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

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

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

I, the undersigned, agree to fulfill the terms and requirements of Government Code section 8355 listed above and will (a) publish a statement notifying employees concerning the prohibition of controlled substance at the workplace, (b) establish a drug-free awareness program, and

(c) require that each employee engaged in the performance of the Contract be given a copy of the statement required by section 8355(a) and requiring that the employee agree to abide by the terms of that statement.

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

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

CONTRACTOR



Date: _____

By: _____

Its: _____

Date: _____

By: _____

Its: _____

EXHIBIT "H"

Contractor's Certificate Regarding Workers' Compensation

Labor Code section 3700 states that

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

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

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

(c) For any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the state, including each member of a pooling arrangement under a joint exercise of powers agreement (but not the state itself), by securing from the Director of Industrial Relations a certificate of consent to self-insure against workers' compensation claims, which certificate may be given upon furnishing proof satisfactory to the director of ability to administer workers' compensation claims properly, and to pay workers' compensation claims that may become due to its employees. On or before March 31, 1979, a political subdivision of the state which, on December 31, 1978, was uninsured for its liability to pay compensation, shall file a properly completed and executed application for a certificate of consent to self-insure against workers' compensation claims. The certificate shall be issued and be subject to the provisions of section 3702."

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 the code, and I will comply with such provisions before commencing the performance of the work of this contract.

If contractor is a corporation, this Certification shall be executed by either the chairman of the board, president, or vice president, and if a different individual, also by the secretary, chief financial officer, or assistant treasurer.

[Signatures follow on next page]

(Proper Name of Contractor)

By: _____

(Signature of Authorized Signor)

(Title of Signor)

By: _____

(Signature of Authorized Signor)

(Title of Signor)

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

EXHIBIT "I"

ASBESTOS AND OTHER HAZARDOUS MATERIALS CERTIFICATION

This Asbestos and Other Hazardous Materials Certification form is part of the Construction Services Agreement made by and between the Huntington Beach City School District (hereinafter referred to as the "District") and [redacted] (the "Contractor") for the Huntington Seacliff Elementary School Modernization Project (hereinafter referred to as the "Project").

To the best of my knowledge, information, and belief, in completing the Contractor's work for the Project, no material furnished, installed, or incorporated into the Project will contain, or in itself be composed of, any asbestos, polychlorinated biphenyl (PCB), any material listed by the federal or state EPA 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.

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

Executed on this [redacted] day of [redacted], 20[redacted] at [redacted].

[redacted]
Name of Contractor (Print or Type)

By: _____
Signature

By: _____
Signature

Print Name

Print Name

Title

Title

Subscribed and sworn before me
this ____ day of _____, 20__

Notary Public in and for
the State of California

My Commission Expires: _____

EXHIBIT “J”

MONTHLY REPORT

Skilled and Trained Workforce

(Public Contract Code section 2600 et. seq.)

Month: _____, 20__

SKILLED WORKFORCE COMPLIANCE SECTION

In accordance with Public Contract Code section 2600 et. seq. all the workers of _____
[INSERT NAME OF CONTRACTOR/SUBCONTRACTOR]
performing work in an apprenticeable occupation in the building and construction trades on the Project
known as _____ [INSERT PROJECT NAME AND LOCATION]
(the “Project”) are either skilled journeypersons or apprentices registered in an apprenticeship program
approved by the Chief of the Division of Apprenticeship Standards of the California Department of
Industrial Relations (the “Chief”). “Skilled journeyperson” means a worker who either:

- (1) Graduated from an apprenticeship program for the applicable occupation that was approved by the Chief or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the Federal Secretary of Labor.
- (2) Has at least as many hours of on-the-job-experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the Chief.

TRAINED WORKFORCE COMPLIANCE SECTION – CHECK APPLICABLE BOX

In addition, the required percentage of the skilled journeypersons employed by _____
[INSERT NAME OF CONTRACTOR/SUBCONTRACTOR]
to perform work on the Project are graduates of an apprenticeship program for the applicable
occupation.¹ A graduate of an apprenticeship program means either of the following:

- (1) An individual that has been issued a certificate of completion under the authority of the California Apprenticeship Council for completing an apprenticeship program approved by the Chief pursuant to Section 3075 of the Labor Code, or
- (2) An individual that has completed an apprenticeship program located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

_____ [INSERT NAME OF
CONTRACTOR/SUBCONTRACTOR] does not comply this month with the required percentage of skilled
journeypersons on this Project and has developed a plan to meet the percentage in the future.
See attached proposed plan.

_____ [INSERT NAME OF

CONTRACTOR/SUBCONTRACTOR] is exempt from skilled journeypersons percentage requirement on this Project due to Subcontractor's employment of skilled journeypersons performing fewer than 10 hours of work during the above-referenced month and/or the subcontract does not exceed one-half of 1 percent of the price of the prime contract.

I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct and complies with Public Contract Code Section 2601, subdivisions (d)(1) and (e). I also understand that the information I provided in this form is to be used by Contractor to periodically monitor Subcontractor's use of a skilled and trained workforce. Subcontractor agrees to provide Contractor with information supporting what I have declared on this form upon request by Contractor.

Date: _____

Contractor/Subcontractor: _____

Signature: _____

Name/Title: _____

¹Skilled journeypersons employed to perform work on the Project by Contractor or its subcontractors at every tier must be graduates of an apprenticeship program for the applicable occupation at the following percentages per Section 2601: at least 30 percent for work performed on or after January 1, 2017; at least 40 percent for work performed on or after January 1, 2018; at least 50 percent for work performed on or after January 1, 2019; and at least 60 percent for work performed on or after January 1, 2020. The increases for 2018, 2019, and 2020 shall not apply to work performed in the following occupations: acoustical installer bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, settler, or finisher. A percentage of graduates does not apply to the teamster occupation.

Rev. 2019.03