



AGREEMENT FOR CONSTRUCTION SERVICES

AGREEMENT NUMBER \_\_\_\_\_

THIS CONTRACT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between \_\_\_\_\_ (“Contractor”) and \_\_\_\_\_ School District (“District”) (“Contract”).

- 1. The Contractor shall furnish to the District for a total price of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (“Contract Price”), including a contingency allowance as provided in the project specifications of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) the following services (“Services” or “Work”):

[LIST SERVICES OR ATTACH SCOPE OF WORK AND DESIGNATE AS EXHIBIT “A”]

- 2. Contractor shall perform the Work at \_\_\_\_\_ (“Premises” or “Site”). The Project is the scope of Work performed at the Site.
3. Work shall be completed within \_\_\_\_\_ ( \_\_\_\_\_ ) consecutive calendar days (“Contract Time”) from the date specified in the District’s Notice to Proceed.
4. Contractor agrees that if the Work is not completed within the Contract Time and/or pursuant to the completion schedule, construction schedule, or project milestones developed pursuant to provisions of the Contract, it is understood, acknowledged, and agreed that the District will suffer damage which is not capable of being calculated. Pursuant to Government Code section 53069.85, Contractor shall pay to the District, as fixed and liquidated damages for these incalculable damages, the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per day for each and every calendar day of delay beyond the Contract Time or beyond any completion schedule, construction schedule, or project milestones established pursuant to the Contract.

- 5. The Contract Documents include only the following documents, as indicated:

- \_\_\_\_\_ Notice to Bidders
\_\_\_\_\_ Instructions to Bidders
\_\_\_\_\_ Bid Form and Proposal
\_\_\_\_\_ Bid Bond
\_\_\_\_\_ Designated Subcontractors List
\_\_\_\_\_ Notice to Proceed
\_\_\_\_\_ Terms and Conditions to Contract
\_\_\_\_\_ Noncollusion Declaration
\_\_\_\_\_ Prevailing Wage Certification
\_\_\_\_\_ Asbestos & Other Hazardous Materials Certification
\_\_\_\_\_ Lead-Product (s) Certification
\_\_\_\_\_ Roofing Project Certification
\_\_\_\_\_ Insurance Certification and Endorsements
\_\_\_\_\_ Performance Bond
\_\_\_\_\_ Payment Bond
\_\_\_\_\_ Specifications

- \_\_\_ Workers' Compensation Certification
- \_\_\_ Criminal Background Investigation Certification
- \_\_\_ Drug-Free Workplace Certification
- \_\_\_ Tobacco-Free Environment Certification
- \_\_\_ Certification of Contractor and Subcontractor
- \_\_\_ PWC 100 submitted on Dept. of Industrial Relations website
- \_\_\_ AB1565 Bidder Prequalification (if applicable)
- \_\_\_ Certification of Financial Relationships –AB 635
- \_\_\_ Certification of Financial Relationships in Regard to Roofing Project

- 6. Contractor shall not commence the Work under this Contract until the Contractor has submitted and the District has approved the performance bond, payment (labor and material) bond, the certificate(s) and affidavit(s), and the endorsement(s) of insurance required under the Terms and Conditions and the District has issued a Notice to Proceed.
- 7. Payment for the Work shall be made in accordance with the Terms and Conditions.
- 8. The architect for the Project is \_\_\_\_\_ (“Architect”), the project manager on the Project is \_\_\_\_\_ (“Project Manager”), and the project inspector on the Project is \_\_\_\_\_ (“Project Inspector”). Contractor hereby acknowledges that the Architect, the Project Manager, the Project Inspector, and the Division of the State Architect have authority to approve and/or stop Work if the Contractor’s Work does not comply with the requirements of the Contract Documents, Title 24 of the California Code of Regulations, and all applicable laws. No work shall be carried on except with the knowledge and under the inspection of said Project Inspector. Project Inspector shall have free access to any or all parts of work at any time. Contractor shall furnish Project Inspector reasonable opportunities for obtaining such information as may be necessary to keep Project Inspector fully informed respecting progress, manner of work, and character of materials. The Contractor shall be liable for any delay caused by its non-compliant Work or its failure to provide proper notification for inspection.
- 9. Inspection and acceptance of the Work shall be performed by representative of the District.
- 10. Any notice required or permitted to be given under this Contract shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

<u>District</u>	<u>Contractor</u>
_____ School District	Name: _____
ATTN: _____	ATTN: _____
[ADDRESS] _____	[ADDRESS] _____
[E - MAIL] _____	[E - MAIL] _____

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

11. Contractor shall guarantee all labor and material used in the performance of this Contract for a period of one year from the date of the District's written approval of the Work or as provided in the job specifications.
12. This Contract incorporates by this reference the Terms and Conditions attached hereto. Contractor, by executing this Contract, agrees to comply with all the Terms and Conditions.
13. Each party has the full power and authority to enter into and perform this Contract, and the person signing this Contract on behalf of each party has been properly authority and empowered to enter into this Contract.
14. By signing this Agreement, Contractor certifies, under penalty of perjury, that all the information provided in the Contract Documents is true, complete, and correct.

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 20__	Dated: _____ 20__
_____ <b>School District</b>	<b>Contractor:</b> _____
Signature: _____	Signature: _____
Print Name: _____	Print Name: _____
Print Title: _____	Print Title: _____
Address: _____	Address: _____
Telephone: _____	Telephone: _____
Facsimile: _____	Facsimile: _____
E-Mail: _____	E-Mail: _____

**Information regarding Contractor:**

License No.: _____	_____ :
Address: _____	Employer Identification and/or Social Security Number
_____	
Telephone: _____	
Facsimile: _____	
E-Mail: _____	

**NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, the District requires the Contractor to furnish the information requested in this section.**

Type of Business Entity:

- Individual                       Other: \_\_\_\_\_  
 Sole Proprietorship  
 Partnership  
 Limited Partnership  
 Corporation, State: \_\_\_\_\_  
 Limited Liability Company

## TERMS AND CONDITIONS TO CONTRACT

1. **NOTICE TO PROCEED:** District shall provide a Notice to Proceed to Contractor pursuant to the Contract at which time Contractor shall proceed with the Work.
2. **STANDARD OF CARE:** Contractor shall perform, diligently prosecute and complete the Work in a good and workmanlike manner within the Contract Time, and in strict conformity with all Contract Documents.
3. **SITE EXAMINATION:** Contractor has examined the Site and certifies that it accepts all measurements, specifications and conditions affecting the Work to be performed at the Site. By submitting its quote, Contractor warrants that it has made all Site examination(s) that it deems necessary as to the condition of the Site, its accessibility for materials, workers and utilities, and Contractor's ability to protect existing surface and subsurface improvements. No claim for allowance of time or money will be allowed as to any other undiscovered condition on the Site.
4. **PERMITS, LICENSES AND REGISTRATION:** Contractor and all of its employees, agents, and subcontractors shall secure and maintain in force, at Contractor's sole cost and expense, all licenses, registration and permits as are required by law, in connection with the furnishing of materials, supplies, or services herein listed.
5. **PROJECT INSPECTION CARD:** Contractor shall verify that forms DSA 152 Project Inspection Card (or current version) are issued for the Project prior to commencement of construction.
6. **NOTIFICATION:** Contractor shall notify the Architect and Project Inspector, in writing, of the commencement and completion of construction of each and every aspect of the work at least 48 hours in advance by submitting form DSA 156 (or the most current version) to the Project Inspector. Forms are available on the DSA's website at: <http://www.dgs.ca.gov/dsa/Forms.aspx>.
7. **EQUIPMENT AND LABOR:** Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the services herein described, the services to be performed at such times and places as directed by and subject to the approval of the authorized District representative indicated in the Work specifications attached hereto.
8. **SUBSTITUTIONS:** No substitutions of material from those specified in the Work Specifications shall be made without the prior written approval of the District. Contractor shall be responsible for any re-design costs occasioned by District's acceptance and/or approval of any substitute, as well as any costs that the District incurs for professional services, including DSA fees. District may deduct those costs from any amounts owing to Contractor for the review of the request for substitution, even if the request for substitution is not approved. Contractor shall, in the event that a substitute is less costly than that specified, credit the District with one-hundred percent (100%) of the net difference between the substitute and the originally specified material.

**9. INDEPENDENT CONTRACTOR STATUS:** While engaged in carrying out the Services of this Contract, the Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the District. Contractor shall be solely responsible for its own Worker's Compensation insurance, taxes, and other similar charges or obligations. Contractor shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its agents or employees.

**10. CONTRACTOR SUPERVISION:** Contractor shall provide competent supervision of personnel employed on the job Site, use of equipment, and quality of workmanship.

**11. WORKERS:** Contractor shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of the Contractor or a subcontractor whom the District may deem incompetent or unfit shall be dismissed from the Site and shall not again be employed at Site without written consent from the District.

**12. SUBCONTRACTORS:** Subcontractors, if any, engaged by the Contractor for any Service or Work under this Contract shall be subject to the approval of the District. Contractor agrees to bind every subcontractor by the terms of the Contract as far as such terms are applicable to subcontractor's work, including, without limitation, all indemnification, insurance, bond, and warranty requirements. If Contractor shall subcontract any part of this Contract, Contractor shall be fully responsible to the District for acts and omissions of its subcontractor and of persons either directly or indirectly employed by itself. Nothing contained in the Contract Documents shall create any contractual relations between any subcontractor and the District.

**13. SAFETY AND SECURITY:** Contractor is responsible for maintaining safety in the performance of this Contract. Contractor shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.

**14. FINGERPRINTING OF EMPLOYEES:** Contractor shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. Contractor shall not permit any employee to have any contact with District pupils until such time as the Contractor has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. Contractor's responsibility shall extend to all employees, subcontractors, agents, and employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Contractor. Unless the District determines that the Contractor will have limited contact with students, verification of compliance with this section and the Criminal Background Investigation Certification required with this Contract shall be provided to the District prior to Contractor performing any portion of the Work.

**15. TRENCH SHORING:** If this Contract is in excess of \$25,000 and is for the excavation of any trench deeper than five (5) feet, Contractor must submit and obtain District acceptance, in advance of excavation, of a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

**16. EXCAVATIONS OVER FOUR FEET:** If this Contract includes excavations over four (4) feet,

Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any: (1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (2) Subsurface or latent physical conditions at the site differing from those indicated; or (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. The District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work shall issue a change order under the procedures described in the Contract. In the event that a dispute arises between the District and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all Work to be performed under the contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

**17. LEAD-BASED PAINT:** Pursuant to the Lead-Safe Schools Protection Act (Education Code Section 32240 et seq.) and other applicable law, no lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall be utilized on this Project, and only trained and state-certified contractors, inspectors and workers shall undertake any action to abate existing risk factors for lead. Pursuant to the Renovation, Repair and Painting Rule (title 40 of the Code of Federal Regulations part 745 (40 CFR 745)), all contractors who disturb lead-based paint in a six-square-foot area or greater indoors or a 20-square-foot area outdoors must be trained by an EPA accredited provider and certified by the EPA. Contractor must execute the Lead-Based Paint Certification, if applicable.

**18. CLEAN UP:** Debris shall be removed from the Premises. The Site shall be in order at all times when work is not actually being performed and shall be maintained in a reasonably clean condition.

**19. PROTECTION OF WORK AND PROPERTY:** Contractor shall erect and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public, and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of life or of Work or of adjoining property, Contractor, without special instruction or authorization from District, is permitted to act at his discretion to prevent such threatened loss or injury.

**20. FORCE MAJEURE:** The Contractor shall be excused from performance hereunder during the time and to the extent that it is prevented from obtaining delivery, or performing by act of God, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, product, plant, or facilities by the government, when satisfactory evidence thereof is presented to the District, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the Contractor.

**21. CORRECTION OF ERRORS:** Contractor shall perform, at its own cost and expense and without reimbursement from the District, any work necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care required herein.

**22. ACCESS TO WORK:** District representatives, Architect, and Project Inspector shall at all time have access to the Work wherever it is in preparation or in progress. Contractor shall provide safe and proper facilities for such access.

**23. OCCUPANCY:** District reserves the right to occupy buildings at any time before formal Contract completion and such occupancy shall not constitute final acceptance or approval of any part of the Work covered by this Contract, nor shall such occupancy extend the date specified for completion of the Work.

**24. PAYMENT:** On a monthly basis, Contractor shall submit an application for payment based upon the estimated value for materials delivered or services performed under the Contract as of the date of submission ("Application for Payment"). Within thirty (30) days after District's approval of the Application for Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as verified by Architect and Inspector and certified by Contractor) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. The District may withhold or deduct from any payment an amount necessary to protect the District from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the District in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop payment notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract price or by the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of the Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by District during the prosecution of the Work; (9) erroneous or false estimates by the Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages, as determined by the District, incurred by the District for which Contractor is liable under the Contract; and (11) any other sums which the District is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including section 1727 of the California Labor Code. The failure by the District to deduct any of these sums from a progress payment shall not constitute a waiver of the District's right to such sums. The District shall retain five percent (5%) from all amounts owing as retention. Retention shall be paid pursuant to Public Contract Code sections 7107, 7200 and 7201.

**25. CHANGE IN SCOPE OF WORK:** Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition, or deletion is approved in advance and in writing by a valid change order executed by the District. Contractor specifically understands, acknowledges, and agrees that the District shall have the right to request any alterations, deviations, reductions, or additions to the Project or Work, and the cost thereof shall be added to or deducted from the amount of the Contract Price by fair and reasonable valuations. Contractor also agrees to provide the District with all information requested to substantiate the cost of the change order and to inform the District whether the Work will be done by the Contractor or a subcontractor. In addition to any other information requested, Contractor shall submit, prior to approval of the change order, its request for a time extension (if any), as well as all information necessary to substantiate its belief that such change will delay the completion of the Work. If Contractor fails to submit its request for a time extension or the necessary supporting information, it shall be deemed to have waived its right to request such extension.

**26. INDEMNIFICATION:** To the furthest extent permitted by California law, Contractor agrees to defend, indemnify, and hold harmless District, its officers, agents, employees, and/or volunteers

from any and all claims, demands, losses, damages and expenses, including legal fees and costs, or other obligations or claims arising out of any liability or damage to person or property, or any other loss, sustained or claimed to have been sustained arising out of activities of the Contractor or those of any of its officers, agents, employees, or subcontractors of Contractor, whether such act or omission is authorized by this Agreement or not. Contractor shall also pay for any and all damage to the Real and Personal Property of the District, or loss or theft of such Property, done or caused by such persons. District assumes no responsibility whatsoever for any property placed on District premises by Contractor, Contractor's agents, employees or subcontractors. Contractor further hereby waives any and all rights of subrogation that it may have against the District. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the District. The provisions of this Indemnification do not apply to any damage or losses caused solely by the negligence of the District or any of its officers, agents, employees, and/or volunteers.

**27. CONTRACTOR'S INSURANCE:** Contractor, at its own cost and expense, shall procure and maintain during the term of this Contract, policies of insurance for the following types of coverage

27.1 Workers' Compensation and Employers' Liability Insurance. Contractor shall procure and maintain, during the term of this Agreement, Workers' Compensation Insurance, as required by California law, on all of its employees engaged in work related to the performance of this Agreement. In the case of any such work which is subcontracted, Contractor shall require all subcontractors to provide Workers' Compensation Insurance for all of the subcontractor's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workers' Compensation Insurance.

Contractor and all subcontractors shall procure and maintain, during the term of this Agreement Employers' Liability insurance of \$1,000,000.

27.2 Commercial General Liability Insurance. Contractor shall procure and maintain, during the term of this Agreement, not less than the following General Liability Insurance coverage:

	<u>Each Occurrence</u>	<u>Aggregate</u>
Low Risk Projects	\$ 1,000,000.00	\$ 2,000,000.00
Intermediate Risk	\$ 2,000,000.00	\$ 4,000,000.00
High Risk	\$ 5,000,000.00	\$ 10,000,000.00

Commercial General Liability insurance shall include products/completed operations, broad form property damage, and personal and advertising injury coverage.

Any and all subcontractors hired by Contractor in connection with the Services described in this Contract shall maintain such insurance unless the Contractor's insurance covers the subcontractor and its employees.

27.3 Automobile Liability. If vehicles will be driven on district property, Contractor shall procure and maintain, during the full term of this Agreement following Automobile Liability Insurance with the following minimum coverage limits:

Personal vehicles: \$ 500,000.00 combined single limit or  
\$ 100,000.00 per person / \$300,000.00 per accident

Commercial vehicles: \$1,000,000.00 combined single limit



Contractor's and any and all subcontractor's Commercial Automobile Liability Insurance shall name the District, its employees, and school board members as additional insureds.

27.4 Builder's Risk. District shall procure and maintain, during the term of this Contract, Builders' Risk coverage.

27.5 Other Coverage as Dictated by the District. Contractor shall procure and maintain, during the term of this Agreement, the following other Insurance coverage:

	<u>Each Occurrence</u>	<u>Aggregate</u>
<input type="checkbox"/> Pollution Liability	\$ 1,000,000.00	\$ 2,000,000.00
<input type="checkbox"/> Other: _____	\$ _____	\$ _____

27.6 Certificates of Insurance. Contractor and any and all subcontractors working for Contractor shall provide certificates of insurance to the District as evidence of the insurance coverage required herein, not less than fifteen (15) days prior to commencing work for the District, and at any other time upon the request of the District. Certificates of such insurance shall be filed with the District on or before commencement of the services under this Agreement.

Contractor's and any and all Contractor subcontractor's Commercial General Liability insurance shall name the District, its employees, and school board members; the Architect; and the Project Manager as additional insureds. The Contractor's policy(ies) shall be primary; any insurance carried by the District, other than Builder's Risk, shall only be secondary and supplemental.

Insurance written on a "claims made" basis is to be renewed by the Contractor and all Contractor subcontractors for a period of five (5) years following termination of this Agreement. Such insurance must have the same coverage and limits as the policy that was in effect during the term of this agreement, and will cover the Contractor for all claims made.

The policy(ies) shall not be amended or modified and the coverage amounts shall not be reduced without thirty (30) days written notice to the District prior to cancellation.

27.7 Failure to Procure Insurance. Failure on the part of Contractor, or any of its subcontractors, to procure or maintain required insurance shall constitute a material breach of contract under which the District may immediately terminate this Contract.

**28. PAYMENT BOND AND PERFORMANCE BOND:** Contractor shall not commence the Work until it has provided to the District, in a form acceptable to the District, a Payment (Labor and Material)

Bond and a Performance Bond, each in an amount equivalent to one hundred percent (100%) of the Contract Price issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the District.

**29. WARRANTY/QUALITY:** Unless a longer warranty is called for elsewhere in the Contract Documents, the Contractor, manufacturer, or their assigned agents shall guarantee the workmanship, product or service performed against defective workmanship, defects or failures of materials for a minimum period of one (1) year from filing the Notice of Completion with the county in which the Site is located. All workmanship and merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards.

**30. CONFIDENTIALITY:** The Contractor shall maintain the confidentiality of all information, documents, programs, procedures, and all other items that Contractor encounters while performing the Contractor's Services to the extent allowed by law. This requirement shall be ongoing and shall survive the expiration or termination of this Contract and specifically includes all student, parent, and disciplinary information.

**31. COMPLIANCE WITH LAWS:** Contractor shall give all notices and comply with all laws, ordinance, rules and regulations bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.

**32. LABOR CODE REQUIREMENTS:** The Contractor shall comply with all applicable provisions of the California Labor Code, Division 3, Part 7, Chapter 1, Articles 1 – 5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars (\$1,000). Copies of the prevailing rate of per diem wages are on file with the District. In addition, the Contractor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the California Labor Code, beginning with Section 1720, and including Section 1735, 1777.5 and 1777.6, forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts.

**32.1 State Labor Compliance:** Contractor shall perform the Work of the Project while complying with all the applicable regulations, including section 16000, et seq., of Title 8 of the California Code of Regulations and is subject to State labor compliance monitoring and enforcement by the Compliance Monitoring Unit of the Department of Industrial Relations.

**32.2 Certified Payroll Records:** Contractor and its subcontractor(s) shall keep accurate certified payroll records of employees and shall electronically submit certified payroll records directly to the Labor Commissioner weekly and within ten (10) days of any request by the District or the Labor Commissioner in accordance with section 16461 of Title 8 of the California Code of Regulations.

**33. ANTI-DISCRIMINATION:** It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work

because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment Practice Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).

**34. DISABLED VETERAN BUSINESS ENTERPRISES:** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building (SFP Funds) to have a participation of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). If this Contract uses SFP Funds, Contractor must submit, with its executed Contract, appropriate documentation to the District identifying the steps Contractor has taken to solicit DVBE participation in conjunction with this Contract.

**35. ANTI-TRUST CLAIM:** Contractor and its subcontractor(s) agree to assign to the District all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or a subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor, without further acknowledgment by the parties.

**36. DISPUTES:** In the event of a dispute between the parties as to performance of the Work, the interpretation of this Contract, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute by those procedures set forth in Public Contract Code section 20104, et seq., if applicable. Pending resolution of the dispute, Contractor agrees it will neither rescind the Contract nor stop the progress of the Work, but will allow determination by the court of the State of California, in the county in which the District's administration office is located, having competent jurisdiction of the dispute. All claims of over \$375,000, which are outside the scope of Public Contract Code section 20104, et seq., may be determined by mediation if mutually agreeable, otherwise by litigation. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Contract. The demand for mediation of any claim of over \$375,000 shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice, and the demand shall not be made later than the time of Contractor submission of the request for final payment. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Design-Builder shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Contractor's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the claimant submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.

**37. ATTORNEY FEES/COSTS:** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

**38. TERMINATION:** If Contractor fails to perform the Services and Contractor's duties to the satisfaction of the District, or if Contractor fails to fulfill in a timely and professional manner Contractor's obligations under this Contract, or if Contractor violates any of the terms or

provisions of this Contract, District shall have the right to terminate this Contract effective immediately upon the District giving written notice thereof to the Contractor. The Contractor and its performance bond surety, if any, shall be liable for all damages caused to the District by reason of the Contractor's failure to perform and complete the Contract. District shall also have the right in its sole discretion to terminate the Contract for its own convenience upon District giving three (3) days written notice thereof to the Contractor. In case of a termination for convenience, Contractor shall be paid for the actual cost for labor, materials, and services performed that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise, and five percent (5%) of the total cost of Work performed as of the date of termination, or five percent (5%) of the value of the Work yet to be performed, whichever is less. This five percent (5%) shall be full compensation for all of Contractor's and its subcontractor(s)' mobilization and/or demobilization costs and any anticipated loss profits resulting from termination of the Contractor for convenience. Termination shall have no effect upon any of the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of termination.

**39. ASSIGNMENT OF CONTRACT:** Contractor shall not assign or transfer in any way any or all of its rights, burdens, duties, or obligations under this Contract without the prior written consent of the District.

**40. TIME IS OF THE ESSENCE:** Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Contract.

**41. CALCULATION OF TIME:** For the purposes of this Contract, "days" refers to calendar days unless otherwise specified.

**42. GOVERNING LAW AND VENUE:** Contractor hereby acknowledges and agrees that District is a public entity, which is subject to certain requirements and limitations. This Contract and the obligations of District hereunder are subject to all applicable federal, state and local laws, rules, and regulations, as currently written or as they may be amended from time to time. This Contract shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Contract, the action shall be brought in state or federal court situated in the County of **Ventura**, State of California. Contractor hereby waives and expressly agrees not to assert, claim or allege, in any way, that it is not subject to the personal jurisdiction of the courts named above. Contractor further agrees to waive any claim or allegation that the suit, action, or proceeding is either brought in an inconvenient forum or that the related venue is improper.

**43. BINDING CONTRACT:** This Contract shall be binding upon the parties hereto and upon their successors and assigns, and shall inure to the benefit of said parties and their successors and assigns.

**44. DISTRICT WAIVER:** District's waiver of any term, condition, covenant or waiver of a breach of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant or the waiver of a breach of any other term, condition or covenant.

**45. CAPTIONS AND INTERPRETATIONS:** Paragraph headings in this Contract are used solely for convenience, and shall be wholly disregarded in the construction of this Contract. No provision of this Contract shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Contract shall be construed as if jointly prepared by the parties.

**46. INVALID TERM:** If any provision of this Contract is declared or determined by any court of

competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be a part of this Contract.

**47. PROVISIONS REQUIRED BY LAW DEEMED INSERTED:** Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included therein.

**48. ENTIRE CONTRACT:** This Contract sets forth the entire Contract between the parties hereto and fully supersedes any and all prior agreements, understanding, written or oral, between the parties hereto pertaining to the subject matter thereof. This Contract may be modified only by a writing upon mutual consent.