

CONTRACT AGREEMENT FORM

THIS AGREEMENT FOR CONSTRUCTION SERVICES ("Agreement"), entered into this 9th day of February, 2016, by and between the Marysville Joint Unified School District ("DISTRICT") and United Building Contractors, Inc., a California Corporation ("CONTRACTOR"). The DISTRICT and Contractor may be referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

A. DISTRICT is the owner of certain real property commonly known as: **Linda Elementary School**, located at: **6180 Dunning Avenue, Marysville, CA 95901**, county of Yuba, state of California ("Project Sites").

B. DISTRICT is contracting to provide site preparation and assistance with the **Linda HVAC Project - 8155 at the Linda Elementary School Site ("Project")**.

C. CONTRACTOR has been selected as the lowest responsible and qualified bidder for the Project.

D. DISTRICT desires that the CONTRACTOR complete the Project in accordance with the terms and conditions of this Agreement and all contract documents incorporated herein.

E. CONTRACTOR is willing to complete the Project in accordance with the terms and conditions set forth in this Agreement and all contract documents incorporated herein.

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained in this Agreement, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1 - SCOPE OF WORK: The CONTRACTOR shall furnish all labor, materials, equipment, tools, and utility and transportation services, and perform and complete all work required to complete the Project in strict accordance with the contract documents enumerated in Article 7 below. The CONTRACTOR shall be liable to the DISTRICT for any damages arising as a result of a failure to comply with that obligation, and the CONTRACTOR shall not be excused with respect to any failure to so comply by an act or omission of the Architect, Engineer, Inspector, or representative of any of them, unless such act or omission actually prevents the CONTRACTOR from fully complying with the contract documents and the CONTRACTOR protests, in accordance with the contract documents, that the act or omission is preventing CONTRACTOR from fully complying with the contract documents. Such protest shall not be effective unless reduced to writing and filed with the DISTRICT within seven (7) days of the date of

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occurrence of such act or omission preventing the CONTRACTOR from fully complying with the Contract Documents. CONTRACTOR shall perform that work designated in CONTRACTOR'S Bid Form which constitutes at least 15% of the total work, exclusive of supervisory and clerical work, without the services of any subcontractor.

ARTICLE 2 - TIME OF COMPLETION:

CONTRACTOR shall have fifty three (53) calendar days from the Notice to Proceed to complete the work, anticipated notice to proceed to occur about March 8, 2016.

The DISTRICT may give the Notice to Proceed within thirty (30) days of the award of the bid by the DISTRICT. Once the CONTRACTOR has received the Notice to Proceed, the CONTRACTOR shall commence all work as specified in the Notice to Proceed, as well as the Project Schedule, and shall diligently schedule, execute and fully complete the required work in accordance with the current Project Schedule and within the time period specified in the Notice to Proceed.

In the event that the DISTRICT desires to postpone giving the notice to proceed beyond this ninety (90) day period, it is expressly understood that with reasonable notice to the CONTRACTOR, giving the notice to proceed may be postponed by the DISTRICT. It is further expressly understood by the CONTRACTOR, that the CONTRACTOR shall not be entitled to any claim of additional compensation as a result of the DISTRICT's postponement of giving the notice to proceed.

If the CONTRACTOR believes that a postponement will cause hardship to it, the CONTRACTOR may terminate the contract with written notice to the DISTRICT within ten (10) days after receipt by the CONTRACTOR of the DISTRICT's notice of postponement. It is further understood by the CONTRACTOR that in the event that the CONTRACTOR terminates the contract as a result of postponement by the DISTRICT, CONTRACTOR shall not be entitled to any compensation or damages for bid preparation, associated costs or otherwise, including work performed, if any, by the CONTRACTOR at the time of notification of postponement. Should the CONTRACTOR terminate the contract as a result of a notice of postponement, the DISTRICT shall have the authority to award the contract to the next lowest responsible bidder.

In case of delays to Project completion by strikes, by lockouts, by fire, by embargoes, by earthquake, by acts of war or God, or by any other cause beyond the reasonable control of DISTRICT and/or CONTRACTOR then neither DISTRICT nor CONTRACTOR will be entitled to any damages, restitution or compensation, additional or otherwise, from the other for such delays. For any other delays, unless caused solely by DISTRICT, CONTRACTOR shall not be entitled to an extension of time.

ARTICLE 3 - LIQUIDATED DAMAGES: It being impracticable and infeasible to determine the amount of actual damage, it is agreed that the CONTRACTOR will pay

Revised 03-05-2015

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the DISTRICT the sum of One Thousand Five Hundred Dollars (\$1,500.00) per calendar day for each and every day of delay beyond the time set for completion of the Project as liquidated damages and not as a penalty or forfeiture. CONTRACTOR shall pay a percentage of the liquidated commensurate with the CONTRACTOR's responsibility for each calendar day of delay as determined by the Construction Manager and the DISTRICT in completing the work within the stipulated time as a result of: (a) the CONTRACTOR's failure to complete the Contract within the time specified in the Notice to Proceed and/or; (b) the CONTRACTOR's failure to complete the Contract in accordance with the Project Schedule. In the event the same is not paid, the CONTRACTOR further agrees that the DISTRICT may deduct such amount thereof from any money due or that may become due the CONTRACTOR under the contract. This Article shall not be construed as preventing the DISTRICT from the recovery of damages under provisions of the contract documents.

ARTICLE 4 - CONTRACT PRICE: The DISTRICT shall pay to CONTRACTOR as full consideration for the faithful performance of the contract, subject to any additions or deductions as provided in the contract documents, the sum of **three hundred thousand sixty nine thousand and nine hundred ninety eight dollars and 00/100 (\$369,998.00)**, said sum being the total amount stipulated in the proposal. Payment shall be made as set forth in the General Conditions.

Should any Change Order result in an increase in the contract price, the cost of such Change Order shall be agreed to in advance by the CONTRACTOR and the DISTRICT, subject to the monetary limitations set forth in Public Contract Code section 20118.4. In the event that the CONTRACTOR proceeds with a change in work without written agreement between the DISTRICT and CONTRACTOR regarding the cost of a Change Order, the CONTRACTOR waives any claim of additional compensation for such additional work.

ARTICLE 5 - HOLD HARMLESS AGREEMENT: CONTRACTOR shall defend, indemnify and hold harmless DISTRICT, Architect, Inspector, Construction Manager, the State of California and their officers, employees, agents and independent contractors from all liabilities, claims, actions, liens, judgments, demands, damages, losses, costs or expenses of any kind arising from death, personal injury, property damage or other cause based or asserted upon any act, omission, or breach connected with or arising from the progress of Work or performance of service under this Agreement or the Contract Documents. As part of this Indemnity, CONTRACTOR shall protect and defend, at its own expense, DISTRICT, Architect, Inspector, the State of California and their officers, employees, agents and independent contractors from any legal action including attorneys' fees or other proceeding based upon such act, omission, or breach.

Furthermore, CONTRACTOR agrees to and does hereby defend, indemnify and hold harmless DISTRICT, Architect, Inspector, Construction Manager, the State of California and their officers, employees, agents and independent contractors from every

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claim or demand made, and every liability, loss, damage, expense or attorneys fees of any nature whatsoever, which may be incurred by reason of:

(a) Liability for (1) death or bodily injury to persons; (2) damage or injury to, loss (including theft), or loss of use of, any property; (3) any failure or alleged failure to comply with any provision of law or the Contract Documents; or (4) any other loss, damage or expense, sustained by any person, firm or corporation or in connection with the Work called for in this Agreement or the Contract Documents, except for liability resulting from the sole or active negligence, or the willful misconduct of the DISTRICT.

(b) Any bodily injury to or death of persons or damage to property caused by any act, omission or breach of CONTRACTOR or any person, firm or corporation employed by CONTRACTOR, either directly or by independent contract, including all damages or injury to, loss (including theft), or loss of use of, any property, sustained by any person, firm or corporation, including the DISTRICT, arising out of or in any way connected with Work covered by this Agreement or the Contract Documents, whether said injury or damage occurs either on or off DISTRICT property, but not for any loss, injury, death or damages caused by the sole or active negligence or willful misconduct of the DISTRICT.

(c) Any dispute between CONTRACTOR and CONTRACTOR'S subcontractors/ supplies/ sureties, including, but not limited to, any failure or alleged failure of the CONTRACTOR (or any person hired or employed directly or indirectly by the CONTRACTOR) to pay any Subcontractor or Materialman of any tier or any other person employed in connection with the Work and/or filing of any stop notice or mechanic's lien claims.

(d) In any legal or equitable action or proceeding, including arbitration and mediation, and other litigation, brought either to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees, costs and expenses incurred therein, including expert witness fees and costs.

CONTRACTOR, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the DISTRICT, its officers, agents or employees, on any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the DISTRICT, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

ARTICLE 6 - PROVISIONS REQUIRED BY LAW: Each and every provision of law and clause required 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 herein, and if through mistake or otherwise any such provision is not inserted or is not inserted

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correctly, then upon application of either party the contract shall forthwith be physically amended to make such insertion or correction.

ARTICLE 7 - COMPONENT PARTS OF THE CONTRACT: The Contract entered into by this Agreement consists of the following Contract Documents, all of which are component parts of the Contract as if herein set out in full or attached hereto:

Notice Inviting Bids	Compensation/Employers
Instructions to Bidders	Liability Endorsement
Notice to Contractors	General Liability Endorsement
Statement of Experience	Automobile Liability
Designation of Subcontractors	Endorsement
Non-Collusion Affidavit	Contractor's Certificate
Bid Guarantee Form	Regarding Drug-Free
Bid Bond	Workplace
Bid Form	Contractor's Certificate
Contractor's Certificate	Regarding Alcohol and Tobacco
Regarding Worker's	Contractor Certification
Compensation	Regarding Background Checks
Agreement	References
Payment Bond	General Conditions
Performance Bond	Specifications
Guarantee	Project Schedule
Escrow Agreement for Security	All Addenda as Issued
Deposit In Lieu of Retention	Drawings (if applicable)
Workers'	

All of the above named Contract Documents are intended to be complementary. Work required by one of the above named Contract Documents and not by others shall be done as if required by all.

ARTICLE 8 - PREVAILING WAGES: Wage rates for this Project shall be in accordance with the general prevailing rate of holiday and overtime work in the locality in which the work is to be performed for each craft, classification, or type of work needed to execute the contract as determined by the Director of the Department of Industrial Relations. Copies of schedules of rates so determined by the Director of the Department of Industrial Relations are on file at the administrative office of the DISTRICT and are also available from the Director of the Department of Industrial Relations.

The following Labor Code sections by way of illustration and not limitation are hereby referenced and made a part of this Agreement and CONTRACTOR stipulates to the provisions contained therein.

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1. Chapter 1 of Part 7 of Division 2 of the Labor Code (Section 1720 et seq.)
2. California Code of Regulations, Title 8, Chapter 8, Subchapters 3 & 4 (Section 16000 et seq.)
3. California Labor Code Section 1771.4

ARTICLE 9 - RECORD AUDIT: In accordance with Government Code section 8546.7, records of both the DISTRICT and the CONTRACTOR shall be subject to examination and audit by the Auditor General for a period of three (3) years after final payment.

ARTICLE 10 - CONTRACTOR'S LICENSE: The CONTRACTOR must possess throughout the Project the legally-required contractor's license classification for the specific Bid Package, issued by the State of California, which must be current and in good standing.

IN WITNESS WHEREOF, this Agreement has been duly executed by the above named parties, on the day and year first above written. To the extent that there exists any conflicts or inconsistencies between this Agreement and the General Conditions, the provisions contained in the General Conditions shall govern.

DISTRICT

Ryan DiGiulio
Typed or Printed Name

Assistant Superintendent
Title

Signature

Date

CONTRACTOR

Jim Gilmores
Typed or Printed Name

President
Title

Signature



**IMPORTANT!
PLEASE READ CAREFULLY
INSTRUCTIONS RELATING TO THE IDDP**

LIWDR

As you are aware, funds administration is a mandatory requirement for the issuance of any final bonds under the Contractor Credit Program. To help ensure the smooth processing of your final bond and meet any contract award deadlines, please follow the below instructions regarding the attached **Irrevocable Directive of Draw Proceeds (IDDP)**.

FOR BID BONDS:

1. Hold the IDDP until after the bids have been opened.
2. If you are the lowest bidder and anticipate being awarded the job, contact the obligee (contract officer, purchasing director, or project manager, etc.) as soon as possible and make them aware that your final bonds will require your participation in funds administration. This way, the obligee can incorporate the execution of the IDDP into their contracting process.
3. Sign and notarize the IDDP.
4. Provide the obligee with the signed and notarized IDDP along with our letter to the obligee explaining the program.
5. Should the obligee have any questions regarding the IDDP or funds administration, let us know and we will contact them. (Please provide us with the contact name, telephone number and email address)
6. Have the obligee sign the IDDP and return the original copy to you.
7. Return the original copy to us. (We must receive an original copy back to issue the final bonds)

FOR FINAL BONDS:

1. Sign and notarize the IDDP.
2. Provide the obligee with the signed and notarized IDDP along with our letter to the obligee explaining the program.
3. Should the obligee have any questions regarding the IDDP or funds administration, let us know and we will contact them. (Please provide us with the contact name, telephone number and email address)
4. Have the obligee sign the IDDP and return the original copy to you.
5. Return the original copy to us. (We must receive an original copy back to issue the final bonds)

Don't hesitate to contact us with any questions.

United Building Contractors, Inc.
275 Fairchild Ave., Suite 106
Chico, CA 95973

IRREVOCABLE DIRECTIVE OF DRAW PROCEEDS

To: Marysville Joint Unified School District, (Marysville, CA)
Re: Linda Elementary School HVAC & Lighting Replacement #16-1017, (Linda, CA)

As an express condition precedent to issuance of payment and/or performance bonds for your Project, **National Specialty Insurance Company or State National Insurance Company, Inc.** ("Surety") as Contract Surety for **United Building Contractors, Inc.** ("Contractor") requires us to employ Cinium Risk Management, LLC, a wholly-owned subsidiary of Cinium Financial Services Corporation, as project accountant ("Project Accountant") to control disbursement of payments made by you for work performed by us on your Project ("Contract Funds") pursuant to our contract (the "Contract"). The Project Accounting Agreement between Contractor and Project Accountant requires that payments of all Contract Funds, including but not limited to change orders, modifications, amendments, retainage, interest or claim proceeds, if any, be made payable to Project Accountant to be deposited into its Project Accounting Account and disbursed in accordance with the term of the Project Accounting Agreement. This directive is not intended as an assignment of the Contract or of our performance obligations thereunder and Project Accountant shall not be deemed to be a party to the Contract.

Please consider this our irrevocable directive to you (as Bond Oblige) to make any and all payments of Contract Funds payable solely in the name of Cinium Risk Management, LLC and addressed to:


For funds sent via <u>U.S. Postal Regular Mail:</u> Cinium Risk Management, LLC M&T Bank Lockbox PO Box 8000 Dept. #717 Buffalo, NY 14267	For funds sent via <u>Overnight/Express Mail Courier:</u> Cinium Risk Management, LLC M&T Bank Lockbox 8000717 626 Commerce Drive Amherst, NY 14228
For funds sent via <u>Wire Transfer:</u> Bank: M&T Bank 4446 State Route 42, Monticello, NY 12701 (845) 794-6798 ABA: 022 000 046 Account: Cinium Risk Management, LLC Project Accounting Account Account #: 9861135458 Reference: United Building Contractors, Inc.; Linda Elementary School HVAC & Lighting Replacement #16-1017, (Linda, CA)	

or at such other address as Project Accountant shall subsequently provide to you in writing. All payments made as directed above shall be deemed to be payments to Contractor, the same as if made directly to Contractor.

By the signature of the Contractor, the Contractor represents to Bond Oblige: (1) nothing in this directive amends or alters any of the Contractor's obligations under the Contract, and Contractor covenants to perform the Contract in accordance with its terms; and (2) the Contractor hereby releases, defends and indemnifies the Bond Oblige from and against any and all damages, costs, liabilities and claims arising from or in connection with this directive or the Bond Oblige's payment to the Project Accountant.

By countersignature below, you certify your agreement to comply with this directive of draw proceeds. Our directive and this certification by you is irrevocable and can only be changed by the written directive of Contractor accompanied by the written and properly notarized consent of the Surety (not Surety Agent).

United Building Contractors, Inc.
275 Fairchild Ave., Suite 106
Chico, CA 95973
(536) 062-46331

By: 
Printed Name: JIM GILMORE
Title: PRESIDENT

PLEASE SEE
ATTACHED NOTARY
CERTIFICATE
MRZ 1/21/16

CONTRACTOR ACKNOWLEDGEMENT:

State of _____ }
County of _____ } ss:
}

On the _____ day of _____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

Marysville Joint Unified School District,
(Marysville, CA)
Linda Elementary School HVAC & Lighting
Replacement #16-1017. (Linda, CA)

By: _____

Printed Name: _____

Title: _____

Address: _____

Phone: _____

Email: _____

California All-Purpose Certificate of Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of BUTTE

s.s.

On 1/27/16

before me,

Martin Rodriguez, Notary Public

Name of Notary Public, Title

personally appeared

James Harold Givone

Name of Signer (1)

Name of Signer (2)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature]

Signature of Notary Public



Seal

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of _____

containing _____ pages, and dated _____

The signer(s) capacity or authority is/are as:

- ☐ Individual(s)
☐ Attorney-in-fact
☐ Corporate Officer(s)

Title(s)

- ☐ Guardian/Conservator
☐ Partner - Limited/General
☐ Trustee(s)
☐ Other: _____

representing: _____

Name(s) of Person(s) Entity(ies) Signer is Representing

Additional Information

Method of Signer Identification

Proved to me on the basis of satisfactory evidence:

- ☐ form(s) of identification ☐ credible witness(es)

Notarial event is detailed in notary journal on:

Page # _____ Entry # _____

Notary contact: _____

Other

- ☐ Additional Signer ☐ Signer(s) Thumbprints(s)
☐ _____

CINIUM™

Re: Irrevocable Directive of Draw Proceeds &
Funds Administration

Dear Bond Oblige:

Our unique bonding program requires mandatory project accounting for **all** of our contractors and bonded projects. Project accounting provides risk mitigation benefits not only to the surety but to your organization as the bond obligee by helping to ensure that liens are avoided and the project proceeds to completion smoothly. Unlike typical sureties, it also allows us to provide additional products to our contractor clients, including project disbursement, credit and supplier discount services.

You should have received a copy of the Irrevocable Directive of Draw Proceeds from the contractor requesting that payments be sent to our affiliate project accountant, Cinium Risk Management. **This does not alter your requisition process with the contractor nor does it alter the project contract;** the only change is that payments are to be sent to us instead of the contractor. Upon receipt of draw proceeds, we will ensure that payments are then made to the contractor's suppliers, labor, and any subcontractors, which again will help ensure that the project is completed satisfactorily.

We have found that the obligees on the bonds we have issued under this program appreciate the added protection that project accounting provides to them.

We would appreciate your assistance in having the Irrevocable Directive acknowledged by your organization, so we can issue the bonds and have the contractor mobilize on this project.

Should you have any questions, please do not hesitate to contact Contract Underwriting at (855) 424-6486. Your time and consideration are deeply appreciated.

Yours truly,

Cinium Underwriter Services Group
Attachment



PARTIAL LIST OF OBLIGEEES

The following is a partial list of obligees who have participated in the Contractor Credit Program through Cinium Underwriter Services Group in the states in which the Company is licensed and admitted.

CALIFORNIA

Apple Valley School District
Bonita Unified School District
California Department of Transportation
California State University
City of Beverly Hills
City of Fremont
City of Indian Wells
City of Half Moon Bay
City of Long Beach
City of McFarland
City of Norwalk
City of Pleasanton
City of Shasta Lake
Claremont Unified School District
County of Alameda
County of Butte
County of El Dorado
County of Riverside
Desert Sands Unified School District
Kern County Schools
Pico Water District
Placentia-Yorba Linda Unified School District
Planada School District
Rosemead Unified School District
San Bernardino County
State of California Military Department

FLORIDA

Greater Orlando Aviation Authority
Village of Pinecrest

HAWAII

State of Hawaii Department of Education
University of Hawaii Manoa Pacific Cooperative

ILLINOIS

Arlington Heights Park District
Maywood- Melrose Park- Broadview School District
Mount Prospect Park District
Pullman Park Development
United Township High School
Village of Granville
Village of Waukegan
Waukegan Housing Authority
Waukegan Public Library

LOUISIANA

City of New Orleans
New Orleans Sewage & Water Board
State of Louisiana Division of Administration, Office of Community Development

MARYLAND

Baltimore Community Lending Board of Education of Baltimore County
Druid Heights Community Development Corp.
East Baltimore Development Inc.
State of Maryland Department of General Services
State of Maryland- Maryland Port Administration

MISSOURI

City of Raytown
Lambert-St. Louis International Airport
St. Louis Public School District
State of Missouri

NEW JERSEY

Borough of Harvey Cedars
Borough of Ship Bottom
Borough of Surf City
City of Clifton Board of Education
City of New Brunswick
City of Newark
City of Orange Township
Highland Park School District
Holmdel School District
Monmouth County
Mount Glen Lakes Dam Association
New Community Corporation
New Jersey Housing Mortgage Finance Agency
South Jersey Transportation Authority
Town of Stafford
Township of Lakewood
Township of Long Beach
Township of Old Bridge
Township of Weehawken
Westfield Board of Education

NEW YORK

City of Glen Cove
City of Lockport
City of Mount Vernon
City of New York
City of Peekskill
City of Syracuse
Clerk of the County of New York



PARTIAL LIST OF OBLIGEES

The following is a partial list of obligees who have participated in the Contractor Credit Program through Cinium Underwriter Services Group in the states in which the Company is licensed and admitted.

GEORGIA

City of Morgan
Paulding County Board Community
Development of Niagara Falls
County of Nassau
Dormitory Authority of the State of NY
Hoosick Falls School
Metropolitan Transit Authority
Nassau County Board of Elections
New York City Department of Design &
Construction
New York City Department of Education
New York City Department of
Environmental Protection
New York City Health & Hospitals Corp.
New York Department of Environmental
Protection
New York Power Authority
New York State Department of
Environmental Conservation
Peekskill Housing Authority
Portchester
Schenectady County
State of New York
Suffolk County Water Authority
Town of Brookhaven
Town of Canaan
Town of Huntington
Town of Islip
Village of Caledonia
Village of Suffern
Westhampton Beach Union Free School
District
Yonkers Board of Education

PENNSYLVANIA

Borough of Ambridge
Borough of Oakmont
Bradford County Commissioners
Chester Economic Development
City of Philadelphia

Borough of Oakmont
Bradford County Commissioners
City of Philadelphia
Commonwealth of PA
Community Development Program
of Beaver County
Darby Borough Community
Development Board
Delaware River Port Authority
Department of General Services
President Township
School District of Philadelphia
Township of Cheltenham

WASHINGTON

Arlington Airport

PRIVATE OBLIGEES

Ace Alliance, Inc.
Altitude, LLC
Ameresco Construction
Applied Projects Company, Inc.
Ashland Construction Company
Atlantic South Construction, Inc.
Bancorp Bank
Bard College
Brooklyn Academy of Music
Charles River Development Group
Clark/McCarthy Joint Venture
Construction Masters
Dagi, Inc.
Desert Arc
Dillard University
Dobrinski Bros.
Federal Express Corp.
General Theological Seminary
Gwinnett Health Center
Harkins Builders, Inc.
High Meadow Cooperative
Hudson Meridian Construction
Hollister Construction Services
Image Changers, Inc.

Instituform Technologies, Inc.
J.D. Diffenbaugh, Inc.
John W. Brawner Contracting
Juneau Construction Company
Keating Building Corp.
Lewis Contractors
L.F. Driscoll
Matt Construction Corp.
McDonald Building Company
Meja Construction Inc.
Outreach Development Corp.
Ready Mix USA
Red Wiggler Foundation
Regan Development Corp.
The Conlan Company
The Salvation Army
San Juan Construction
Sparrow Construction Corp.
Superior Printing Co.
United Veterans Construction, LLC
Walsh Construction Company
Wal-Mart/Sam's Club
Weatherproofing Technologies, Inc.
Wharton-Smith, Inc.
White Oak Contracting
Whiting-Turner Contracting Co.

GENERAL CONDITIONS

MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT 8155 – LINDA ELEMENTARY SCHOOL HVAC PROJECT

The MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT, a public school district organized and existing under the laws of the State of California ("District") and **United Building Contractors, Inc., a California Corporation** ("Contractor") acknowledge and agree to the following terms and conditions for the construction and completion of the **8155 – Linda Elementary School HVAC Project** ("Project"). District or Contractor may be referred to individually as a "Party" or collectively as the "Parties."

ARTICLE I CONTRACTOR QUALIFICATIONS, GENERAL DUTIES AND STATUS

Contractor warrants that it has the following qualifications:

(a) Experience. Contractor represents to District that Contractor is experienced in the construction of the type of facility desired by District and possesses all necessary licenses and qualifications required to build and deliver the completed Project within the timelines specified in this Agreement, **the project manual and drawings**.

(b) Licenses. Contractor and its agents shall be licensed and regulated by the California Contractors State License Board and possess the license(s) listed in the Notice to Contractors. Should Contractor or its agents not be so licensed at any time during the term of this Agreement, Contractor is subject to penalties under the law and the Agreement shall be void.

(c) Financial Solvency. Contractor represents and warrants that it is financially solvent, able to pay its debts as they mature, and is possessed of sufficient working capital to complete this Agreement; that it is able to furnish the plant, tools, materials, supplies, equipment, and labor, and is experienced in and competent to perform the work contemplated by this Agreement; and that it is authorized to do business in the State of California where the Project Site is located.

ARTICLE II CONTRACT DOCUMENTS

Section 1. The "Contract Documents" consist of the Agreement between the District and Contractor, the Documents listed in Article 7 therein, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to bid, instructions to bidders, notice to bidders, and the requirements contained in the Bid Documents, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is a written amendment to the Contract signed by parties, a Change Order, a Construction Change Directive, or a written order for a minor change in the Work issued by the Architect or Construction Manager. The Contract Documents collectively form the Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The

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Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Architect or Construction Manager and Contractor, between the District and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the District and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract Documents intended to facilitate performance of the Architect's duties.

Section 2. The Contract Documents are complementary and are intended to include all items required for the proper execution and completion of the Work. All Contract Documents form the Contractors contract with the District. Any item of Work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided by Contractor as if shown or mentioned in both.

Section 3. The Drawings and Specifications generally describe the Work to be performed by the Contractor. Generally, the Specifications describe Work which cannot be readily indicated on the Drawings and indicate types, qualities, and methods of installation of the various materials and equipment required for the Work. It is not intended to mention every item of Work in the Specifications, which can be adequately shown on the Drawings, or to show on the Drawings all items of Work described or required by the Specifications even if they are of such nature that they could have been shown. All materials or labor for Work, which is shown on either the Drawings or the Specifications (or is reasonably inferable therefrom as being necessary to complete the Work), shall be provided by the Contractor to provide a complete Project. It is intended that the Work be of sound, quality construction, and the Contractor shall be responsible for the inclusion of adequate amounts to cover installation of all items indicated, described, or implied in the portion of the Work to be performed by them.

ARTICLE III
WORK

Section 1. Intent. The Contractor shall provide all items and services necessary for the proper design, construction, execution and completion of the Project, including but not limited to any and all items and services consistent with and reasonably inferable from the governing Contract Documents (defined below) as necessary to produce the intended results, whether or not the items and services are specifically mentioned in them. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all, unless certain services or equipment are specifically excluded in this Agreement. The scope of work for the Project is provided in Exhibit A, attached hereto and incorporated herein. **Also included and incorporated into the project are the project manual and construction drawings.**

Section 2. Definition. For the purposes of this Agreement, the term "Contract Documents" shall mean means those construction documents for the Project, including without limitation, the plans and specifications which have been adopted by the District, approved by any other agencies having jurisdiction over the Project and reviewed by the Contractor.

Section 3. Independent Contractor Status. Contractor is and shall at all times be deemed to be an independent contractor and shall be wholly responsible for the manner in which it performs the services required by the terms of this Agreement. Nothing herein contained shall be

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construed as creating the relationship of employer and employee, or principal and agent, between the District and Contractor or any of Contractor's agents or employees. Contractor assumes exclusively the responsibility for the acts of its employees as they relate to the services to be provided during the course and scope of their employment. Contractor, its agents and employees shall not be considered in any manner to be District employees. District shall be permitted to monitor the activities of the Contractor to determine compliance with the terms of this Agreement and all Contract Documents.

Section 4. Change of Entity. Contractor shall not change the name or legal structure of its entity without first notifying District in writing.

Section 5. Cooperation. Contractor shall cooperate with District in making such changes as District may request in the Contract Documents.

Section 6. Construction Work. All construction work done by the Contractor shall be performed in accordance with the Contract Documents. All construction work which Contractor is not capable of performing with its own forces shall be let by Contractor to subcontractors (hereinafter called "Subcontractors"), in its own name, and not as an agent of the District.

(a) Subcontracting. Contractor agrees to bind every Subcontractor by the terms of this Agreement as far as such terms are applicable to Subcontractor's work. If subcontracts any part of this Agreement, Contractor shall be as fully responsible to District for acts and omissions of each Subcontractor and of persons either directly or indirectly employed by Subcontractor. Nothing contained herein shall create any contractual relation between any Subcontractor and District.

(b) Payment to Subcontractors. Contractor shall make timely payment of all Subcontract amounts when and as due, except that notwithstanding provisions to the contrary in a particular Subcontract, Contractor shall not pay such Subcontractor any sums corresponding to sums withheld from Contractor by District on account of defects, deficiencies, acts, or omissions of such Subcontractor. In no event shall any such payments be made later than the thirty (30) day time limit imposed by Public Contract Code section 20104.50, unless good cause is shown. Contractor shall indemnify, defend and hold District harmless from any claims or actions which allege that any subcontractor or supplier was not paid with respect to the Project.

Section 7. Work and Materials. Contractor covenants that all the work on the Project will be done in a good and workmanlike manner that complies with the industry standard for similar projects and that all materials furnished and used in connection therewith will be new and in conformance with the established industry standard unless otherwise approved by the District.

Section 8. Supervision. Contractor shall provide competent supervision of all phases of the work and shall cause the work to be performed in strict and complete accordance with the Contract Documents. All personnel and Subcontractors used by Contractor in the performance of the work shall be qualified by training and experience to perform their assigned tasks, and shall have all necessary licenses. At the request of District, Contractor shall not use in the

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performance of the work any person or Subcontractor deemed by District to be incompetent, careless, unqualified to perform the work, or otherwise unsatisfactory to District.

Section 9. Licenses and Permits. Contractor is obligated to obtain all necessary licenses, building and other permits, and similar authorizations from governmental authorities required to perform its obligations hereunder, and shall give all notices required by, and otherwise comply with, all applicable laws, ordinances, rules, regulations, and restrictions.

Section 10. Protection of Project Site. Contractor shall protect and prevent damage to all unfinished phases of the Project, including but not limited to the protection thereof from damage by the elements, theft, or vandalism.

Section 11. Acts and Omissions of Employees. Contractor shall be responsible to the District for acts and omissions of Contractor's employees, subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing or completing portions of the Project under direct or indirect contract with the Contractor or any of its subcontractors.

**ARTICLE IV
COORDINATION AND COMMUNICATION WITH DISTRICT**

Contractor shall coordinate all work with the District and shall communicate with the District on a regular basis to provide updates on the progress of the Work. Contractor acknowledges that District will be performing Work on the Project and will assist in the coordination of such work with the District, and assist with the coordination and/or supervision of any Work performed by the District when requested.

**ARTICLE V
PROGRESS PAYMENTS**

Section 1. The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the District to the Contractor for performance of the Work under the Contract Documents.

Section 2. Within thirty (30) days after approval of the Request for Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as certified by Architect and Inspector and verified by Contractor) unless Contractor has filled out the Escrow Agreement for Security Deposit in Lieu of Retention up to the last day of the previous month, less the aggregate of previous payments. The value of the Work completed shall be Contractor best estimate. No inaccuracy or error in said estimate shall operate to release the Contractor, or any surety upon any bond, from damages arising from such Work, or from the District's enforcement of each and every provision of this Contract, and the District shall have the right subsequently to correct any error made in any estimate for payment.

The Contractor shall not be entitled to have any payment requests processed, or be entitled to have any payment made for work performed, so long as any lawful or proper direction given by the District concerning the Work, or any portion thereof, remains incomplete.

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Section 3. The Architect shall, within seven (7) days after receipt of the Contractor's Application for Payment, either approve such payment or notify the Contractor in writing of the Architect's reasons for withholding approval in whole or in part as provided in Article IV below. The review of the Contractor's Application for Payment by the Architect is based on the Architect's observations at the Project site and the data comprising the Application for Payment that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents, (2) results of subsequent tests and inspections, (3) minor deviations from the Contract Documents correctable prior to completion, and (4) specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified.

Section 4. Contractor shall not be entitled to payment for any non-conforming work performed, so long as any lawful or proper direction concerning that non-conforming work or any portion thereof given by the District is not corrected by Contractor. District shall withhold from the Progress Payments one hundred fifty (150%) of the estimated value of non-conforming work unless satisfactorily corrected or remedied. This provision shall also apply in the event that a portion of non-conforming work may impact other completed work, resulting in a need to reconstruct or re-work related work. The District shall not unreasonably withhold payment for unrelated and uninvolved work in the event of dispute over non-complying work without entering into negotiations make a good faith effort to arrive at settlement of said conflict.

Section 5. No payment requests will be processed unless Contractor has submitted copies of the Certified Payroll records for the Work which correlates to the payment request.

**ARTICLE VI
PAYMENTS WITHHELD**

Section 1. District may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor, as in its judgment may be necessary to cover:

(a) Payments which may be past due and payable for just claims against Contractor or any subcontractors, or against and about the performance of work on the Project.

(b) The cost of defective work which Contractor has not remedied.

(c) Liquidated damages assessed against Contractor.

(d) Penalties for violation of labor laws.

(e) The cost of materials ordered by District.

(f) The cost of completion of this agreement, if there exists a reasonable doubt that this agreement can be completed for the balance then unpaid to Contractor.

(g) Damage to another contractor.

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- (h) Site clean up as provided in Article X.
- (i) Payments to indemnify, defend, or hold harmless District.
- (j) Any payments due to District including but not limited to payments for failed tests, utilities or imperfections.
- (k) Extra services for Architect.

Section 2. Extra services for the Project Inspector including but not limited to reinspection required due to Contractor's failed tests or installation of unapproved or defective materials, and Contractor's requests for inspection and Contractor's failure to attend the inspection. In order to ensure the timely completion of the Project, the District may elect to use the funds withheld to pay subcontractors, vendors or laborers. Prior to doing so, the District shall provide the Contractor written notice of District's intent to disburse the monies. If the Contractor does not object to this written notice within ten (10) days of its mailing, the District may disburse said monies and shall be held liable to the Contractor only if such disbursement is not made in good faith.

Section 3. Upon remedy of any reason for withholding payment, payment shall be made for amounts withheld by District.

ARTICLE VII
LIQUIDATED DAMAGES

Section 1. Contractor and District hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood that the District will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed the Contractor shall pay to District as fixed and liquidated damages, and not as a penalty, One Thousand Five Hundred Dollars (\$1,500.00) for each calendar day beyond the Contract completion date or beyond any completion schedule, construction schedule or Project milestones established in or pursuant to the Project Schedule, or beyond the time indicated in the Project Schedule for any individual Contract activity. Contractor expressly understands, acknowledges and agrees that such liquidated damages can and shall be imposed if the Contractor does not meet each and every aspect of any activity schedule, completion schedule, construction schedule or Project milestone established in or pursuant to the Project Schedule **which is included in and a part of the project manual**. Any liquidated damages recovered by the District shall not, however, limit the District's right to separately recover any actual out-of-pocket damages it suffers due to Contractor's delay. Contractor and his surety shall be liable for the amount thereof pursuant to Government Code section 53069.85. The District may deduct the liquid damages from the retention if not paid by Contractor.

Section 2. Contractor shall not be charged for liquidated damages because of any delays in completion which are not the fault or negligence of Contractor, including but not restricted to Acts of God. Contractor shall, within ten calendar (10) days of beginning any such delay, notify District in writing of causes of delay. Contractor shall provide documentation and justification

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to substantiate the delay and its relation to the Project's critical path. District shall ascertain the facts and extent of delay and grant an extension of time for completing work when, in its judgment, the facts justify the granting of such an extension. The District's finding of facts regarding delay shall be final and conclusive. Any extension of time granted by District shall apply only to that portion of work affected by the delay and shall not apply to other portions of work not so affected.

**ARTICLE VIII
PROGRESS SCHEDULE**

Section 1. The Project Schedule in the bid documents. Within ten (10) calendar days after being awarded the contract, Contractor shall submit a progress schedule for District and Architect's approval. The schedule shall not exceed time limits set forth in the Contract Documents and/or Notice to Proceed and shall comply with all of the scheduling requirements as set forth in the Specifications. Failure to submit a schedule or submittal of a schedule which shows completion of the Work beyond the specified completion date shall be deemed a material breach by the Contractor. The scheduling is necessary for the District and Architect's adequate monitoring of the progress of the Project. The Architect and/or District may disapprove of any schedule or require modification to it if, in the opinion of the Architect or District adherence to the progress schedule will not cause the Work to be completed in accordance with the Agreement and the project manual.

Section 2. Contractor shall not be granted an extension of time for failure to obtain necessary approvals for deferral approvals due to failure to comply with laws, building codes, and other regulations (including Title 24 of the California Code of Regulations). Contractor shall schedule all deferred approval items and shop drawings in its progress schedule. If Contractor fails to include deferred approval items and shop drawings in its schedule which results in a critical path delay, then Contractor shall be subject to the assessment of liquidated damages. Contractor shall not be granted an extension of time for failure to obtain necessary approvals for deferral approvals due to its failure to comply with law, building codes and other regulations (including Title 24 of the California Code of Regulations).

Section 3. Contractor shall proceed expeditiously with adequate forces and shall achieve Completion within the Contract Time.

**ARTICLE IX
CHANGES IN THE WORK**

Section 1. There shall be no change whatsoever in the drawings, specifications, or in the Work without an executed Change Order, Construction Change Directive, or order by the Architect for a minor change in the Work as herein provided. District shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the District's Governing Board has authorized the same and the cost thereof approved in writing by Change Order or executed Construction Change Directive. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order. The provisions of the Contract Documents shall apply

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to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications. Notwithstanding anything to the contrary in this Article 7, all Change Orders shall be prepared and issued by the Architect and shall become effective when executed by the District's Governing Board, the Architect, the Contractor, and the DSA (if necessary).

Section 2. Should any Change Order result in an increase in the Contract price, the cost of such Change Order shall be agreed to, in writing, in advance by Contractor and District and be subject to the monetary limitations set forth in Public Contract Code section 20118.4. In the event that Contractor proceeds with any change in Work without first notifying District and obtaining the Architect's and District's consent to a Change Order, Contractor waives any claim of additional compensation for such additional work.

Section 3. CONTRACTOR UNDERSTANDS, ACKNOWLEDGES, AND AGREES THAT THE REASON FOR THIS NOTICE REQUIREMENT IS SO THAT DISTRICT MAY HAVE AN OPPORTUNITY TO ANALYZE THE WORK AND DECIDE WHETHER THE DISTRICT SHALL PROCEED WITH THE CHANGE ORDER OR ALTER THE PROJECT SO THAT SUCH CHANGE IN WORK BECOMES UNNECESSARY.

Section 4. The Architect will have authority to order minor changes in the Work not involving any adjustment in the Contract Sum, or an extension of the Contract Time, or a change which is inconsistent with the intent of the Contract Documents. Such changes shall be effected by written Change Order and shall be binding on the District and the Contractor. The Contractor shall carry out such written orders promptly.

Section 5. A "CO" is a written instrument prepared by the Architect and signed by the District (as authorized by the District's Governing Board), the Contractor, the Architect, and the DSA (if necessary), stating their agreement upon all of the following:

- (a) A description of a change in the Work;
- (b) The agreed amount of the adjustment in the Contract Sum, if any; and
- (c) The extent of the adjustment in the Contract Time, if any.

Section 6. A COR is a written request prepared by the Contractor requesting that the District and the Architect issue a CO based upon a proposed change by the Contractor. A COR shall include breakdowns to validate any change in Contract Price due to proposed change or claim. A COR shall also include any additional time required to complete the Project. If Contractor fails to request a time extension in a COR, then the Contractor is thereafter precluded from requesting or claiming a delay.

Section 7. The amount of the increase or decrease in the Contract Price from a CO, if any, shall be determined in one or more of the following ways as applicable to a specific situation and agreed to by the Parties in writing:

- (a) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

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- (b) By unit prices contained in Contractor's original bid and incorporated in the Project documents or fixed by subsequent agreement between District and Contractor;
- (c) Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.
- (d) By cost of material and labor and percentage of overhead and profit.

**ARTICLE X
CLEAN-UP**

Contractor at all times shall keep the premises reasonably free from debris such as waste, rubbish, and excess materials and equipment caused by work on the Project. Contractor shall not leave debris under, in or about the premises at the end of any day and shall keep the premises free from any attractive nuisances. If Contractor fails to clean up at the completion of the work, District may do so and the cost of such clean up shall be charged back to the Contractor or may be subtracted from any payments due to Contractor.

**ARTICLE XI
CORRECTION OF WORK BEFORE ACCEPTANCE**

Section 1. Correction of Work. Contractor shall promptly remove from the premises all work determined by District as failing to conform to the Contract Documents, applicable building codes, ADA, Title 24 of the California Code of Regulations, Field Act or DSA requirements, whether incorporated into the Contract Documents or not. Contractor shall promptly replace and re-execute its own work to comply with all applicable documents, laws and guidelines without additional expense to the District and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement. If Contractor does not remove or correct such condemned work within a reasonable time, District may remove it and may store the material at Contractor's expense. The costs associated with such removal and clean up shall be charged to the Contractor.

Section 2. Notice of Defect. District shall provide Contractor prompt written notice of all defective construction of which District has actual knowledge or work that does not conform with the Contract Documents.

Section 3. Failure to Correct Defective or Non-conforming Work. If the Contractor fails to correct nonconforming or defective work within a reasonable time, the District may correct it after THREE (3) days written notice and all costs related to such work shall be charged to Contractor.

**ARTICLE XII
INSPECTION, COMPLETION, AND CLOSE-OUT**

Section 1. Final inspection will be made upon written notification from Contractor to District that all work has been completed. A final walk through of the Project to determine completion and to record the Notice of Completion shall occur only upon a valid claim by Contractor that the Project is complete.

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Section 2. District shall accept completion of the Project and have the Notice of Completion recorded within ten (10) days of acceptance of completion of the Project when the entire work has been completed to the satisfaction of the District. The Project may only be accepted as complete by action of the Board.

Section 3. Contractor shall prepare and directly submit to the applicable governmental agencies the final Project accounting and close-out reports including all DSA, CDE, SAB and OPSC forms required for the final close-out of the Project. District shall cooperate and assist Contractor as necessary.

Section 4. All plans, drawings, designs, specifications, and other incidental architectural and engineering work or materials or other Contract Documents and copies furnished thereof by District are District's property. They are not to be used in other work and are to be returned to District upon completion of the Project.

Section 5. Upon issuance of the Notice of Completion, Contractor shall deliver to District one (1) complete set of final as-built drawings, operating manuals, repair parts lists, service instructions and equipment warranties.

**ARTICLE XIII
ACCESS TO WORK**

District and its representatives shall at all times have reasonable access to the Project. Contractor shall provide safe and proper facilities for such access during normal working hours. District and its representatives shall observe all Project safety requirements.

**ARTICLE XIV
OCCUPANCY**

District may, with advance agreement of Contractor, which shall not be unreasonably withheld, occupy portions of the Project before completion of the Project, and such occupancy shall not constitute final acceptance of any part of work covered by this Agreement pursuant to Public Contract Code section 7107. As noted in Article 10, section 2, the Project may only be accepted as complete by action of the District's Governing Board.

**ARTICLE XV
INTEGRATION OF WORK**

The Contractor shall be responsible for cutting, fitting, or patching to complete the Work and to make all parts fit together properly. Contractor shall be responsible for ensuring that all trades are coordinated and scheduled so as to ensure the timely and proper execution of the work. When modifying existing work or installing new Work adjacent to existing work, Contractor shall match, as closely as conditions of the Project site and materials will allow, the finishes, textures, and colors of the original work, refinishing existing work at no additional cost to District. All cost caused by defective or ill-timed work shall be borne by Contractor. Contractor shall be solely responsible for protecting existing work on adjacent properties and shall obtain all required permits for shoring and excavations near property lines.

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**ARTICLE XVI
INSPECTOR OF RECORD**

Section 1. One or more Project inspectors employed by the District and approved by the Division of the State Architect will be assigned to the Work in accordance with the requirements of Title 24 of the California Code of Regulations. The Inspector(s) duties are as specifically defined in Title 24.

Section 2. All Work shall be under the observation of the Inspector. The Inspector shall have free access to any or all parts of the Work at any time. The Contractor shall furnish the Inspector such information as may be necessary to keep the Inspector fully informed regarding progress and manner of Work and character of materials. Such observations shall not, in any way, relieve the Contractor from responsibility for full compliance with all terms and conditions of the Contract, or be construed to lessen to any degree the Contractor responsibility for providing efficient and capable superintendence. The Inspector is not authorized to make changes in the drawings or specifications nor shall the Inspector's approval of the Work and methods relieve the Contractor of responsibility for the correction of subsequently discovered defects, or from its obligation to comply with the Contract Documents.

Section 3. The Inspector shall have the authority to reject Work whenever provisions of the Contract Documents are not being complied with, and Contractor shall instruct its Subcontractors and employees accordingly. In addition, the Inspector may stop any Work that poses a probable risk of harm to persons or property. The Contractor shall instruct its employees, Subcontractors, material and equipment suppliers, etc., accordingly. The absence of any Stop Work order or rejection of any portion of the Work shall not relieve the Contractor from any of its obligations pursuant to the Contract Documents.

**ARTICLE XVII
INSURANCE**

Section 1. Contractor shall maintain all course of construction and other insurance as necessary to protect said equipment and work. The District shall not become responsible for risk of loss or other insurable risk until final Notice of Completion and Final Payment has been made to Contractor. Contractor shall cause the following insurance coverage to be maintained at its sole cost and expense during the term of work performed hereunder to protect Contractor and District from all claims for personal injury, including accidental death, to any person, as well as from all claims for property damage arising from operations under this Agreement:

(a) Commercial general liability insurance including Contractor's risk, blanket contractual, broad form property damage, completed operations and independent contractor's liability, all applicable to personal injury, bodily injury, and property damage to a limit of \$1,000,000 each occurrence and \$2,000,000 aggregate.

(b) Comprehensive automobile liability insurance including owned, hired, and non-owned automobiles, for bodily injury and property damage to a combined single limit of \$1,000,000 each occurrence.

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(c) Contractor shall require its subcontractors, if any, to take out and maintain similar public liability and property damage insurance and comprehensive automobile liability insurance in an amount of \$1,000,000 each occurrence and \$2,000,000 aggregate.

Section 2. Endorsements shall state in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date and cancellation and reduction notice. Endorsements shall clearly state that the District and District Inspector are named as "Additional Insured" under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by the District. Said endorsements must be provided in a form deemed suitable to the District, in its sole and absolute discretion. All proof of insurance required herein shall be delivered before the commencement of any work on the Project by Contractor. All insurance policies must be issued by California admitted insurers. A non-California admitted insurer may be accepted at the sole discretion of the District.

**ARTICLE XVIII
BONDS**

Section 1. Contractor shall furnish separate performance and payment bonds, each in an amount equal to one hundred percent (100%) of the contract price on forms acceptable to the District. All bonds shall be provided by a California admitted surety as defined in California Code of Civil Procedure section 995.120. Personal sureties and unregistered sureties are unacceptable. Contractor shall keep the performance bond in effect until expiration of the guarantee/warranty period referenced herein. Contractor shall keep the payment bond in effect for an additional six (6) months after the period in which stop notices may be filed as set forth in Civil Code section 3184.

**ARTICLE XIX
INDEMNITY**

Section 1. Contractor agrees to and does hereby indemnify, defend and hold harmless District, its Board members, its officers, agents, District Inspector, and its employees from every claim or demand made, and every liability, loss, damage, or expense of any nature whatsoever, which may arise out of or in connection with the Project, including without limitation the following:

(a) Liability for damages for death or bodily injury to persons, injury to, loss or theft of property, or any other loss, damage or expense arising from the above, sustained by any person or entity, including without limitation, District, Contractor or any person, firm, subcontractor or contractor employed by either District or Contractor upon or in connection with the Project, except for liability resulting from the active and primary negligence or willful misconduct of District, its officers, employees, agents or independent contractors who are directly employed by the District; and

(b) Any injury to or death of persons or damage to property caused by any act, neglect, default or omission of Contractor, or any person, firm or subcontractor employed by Contractor, either directly or by independent contract, including all damages due to



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loss or theft, sustained by any person, firm or Contractor, including District, arising out of, or in any way connected with Contractor's performance, whether said injury or damage occurs either on or off District property, or if the liability arose from the negligence or willful misconduct of anyone employed by Contractor, either directly or by independent contract.

Section 2. Contractor, at its own expense, cost and risk, shall defend any and all actions, suits, claims, demands or other proceedings to the extent of the above-described indemnification that may be brought or instituted against District, its Board, its officers, agents, or employees, and shall pay or satisfy any judgment that may be rendered against District, its Board, its officers, agents, or employees in any action suit or other proceedings as a result thereof.

Section 3. Contractor shall require that indemnity language in substantially the same form as set forth above be inserted in any agreements with its subcontractors.

Where approval by the District or representative of the District is indicated, it is understood to be conceptual approval only and does not relieve Contractor of responsibility for complying with all laws, codes, industry standards and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Contractor or its subcontractors.

**ARTICLE XX
MATERIALS**

Section 1. Unless otherwise specified, all materials shall be new and meet or exceed industry standard for school construction and all workmanship shall be of good quality. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of work and shall be stored properly and protected as required by this Agreement.

Section 2. No materials, supplies, or equipment for work under this Agreement shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which any interest therein, or in any part thereof, is retained by seller or supplier. Contractor warrants good title to all material, supplies and equipment installed or incorporated in work and agrees upon completion of all work and final payment to deliver premises, together with all improvements and appurtenances constructed or placed thereon by Contractor to District free from any claim, liens or charges.

Section 3. Contractor further agrees that neither it nor any person, firm or contractor furnishing any materials or labor covered by the Agreement shall have any right to lien upon the premises or any improvement of appurtenances thereon, except that Contractor may install metering devices or other equipment of utility companies or of political subdivisions, title to which is commonly retained by utility company or political subdivision. In the event of installation of any such metering device or equipment, Contractor shall advise District as to owner thereof.

Section 4. Nothing contained in this section, however, shall defeat or impair the rights of persons furnishing material or labor under any bond given by Contractor for their protection, or

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any rights under any applicable law permitting such persons to look to funds due to Contractor and in the hands of the District.

Materials shall be stored on the premises in such manner so as not to interfere with the work and so that no portion of the structure shall be overloaded. Additionally, Contractor shall make efforts to store materials in a manner so to not create an attractive nuisance.

**ARTICLE XXI
WORKERS**

Section 1. Contractor and each subcontractor shall furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Project, organize the procurement of all materials and equipment so that they will be available at the time they are needed for the Project, and keep an adequate force of skilled and fit workers on the job to complete the Project in accordance with all requirements of the Contract Documents.

Section 2. Contractor shall at all times enforce strict discipline and good order among Contractor's employees and contractors and shall not employ on work any unfit person or anyone not skilled in work assigned to Contractor.

Section 3. Contractor shall remove from the work site any person in the employ of the Contractor whom District may deem incompetent or unfit and such worker shall not again participate in the work and shall not again be employed on it except with written consent of District.

Section 4. Contractor shall take all reasonable steps necessary to ensure that any of its employees, consultants, subcontractors and suppliers, or any of its subcontractors' employees report for work in a manner fit to do their job. Such employees: (i) shall not utilize tobacco on the Project site, and (ii) shall not be under the influence of or in possession of any alcoholic beverage or of any controlled substance (except a controlled substance as prescribed by a physician so long as the performance or safety at the Project Site is not affected thereby). Contractor shall advise its employees of these requirements before they enter on the site and shall immediately remove from the site any employee in violation of these requirements as determined by Contractor or by the District. Contractor shall impose these requirements on its subcontractors.

Section 5. District shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of Contractor, or any subcontractor, material or equipment supplier, or other party involved on the Project, for cause. Any person in the employ of Contractor or subcontractors the District may deem incompetent, unfit, troublesome or otherwise undesirable shall be excluded from the work site and shall not again be employed on it except with District's written consent.

Section 6. Contractor shall take all reasonable steps necessary to ensure that any employees of Contractor or any of its subcontractors' employees comply with all federal, state and local laws prohibiting harassment and/or violence in the workplace.

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Section 7. Unless exempted, Contractor shall comply with the applicable requirements of Education Code sections 45125.1 and 45125.2 with respect to fingerprinting of employees who may have contact with the District's pupils. During construction on the Project it is not anticipated that students will be onsite until occupancy and warranty period. In order to comply with the requirements of Education Code sections 45125.1 and 45125.2, Contractor shall not permit any employee or employees or any employee or employees of any subcontractor to come in contact with District pupils until the Department of Justice has ascertained that the employee has not been convicted of a violent or serious felony.

Contractor shall comply with the requirements of the Military Leave of Absence Act (Military & Veterans Code, § 394 et seq.). Contractor shall ensure that its subcontractors on the Project also comply with the requirements of the Military Leave of Absence Act.

**ARTICLE XXII
WAGE RATES**

Section 1. Pursuant to the provisions of Article 2 (commencing at Section 1770), Chapter 1, Part 7, Division 2 of the California Labor Code, the governing body of District has ascertained the general prevailing rate of per diem wages in the locality in which this public work is to be performed for each craft, classification, or type of workmen needed to execute the contract.

Section 2. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided in Labor Code section 1773.1 apprenticeship or other training programs authorized by Labor Code section 3093, and similar purposes when the term "per diem wages" is used herein.

Section 3. Each worker needed to execute the work must be paid travel and subsistence payments as defined in the applicable collective bargaining agreements filed in accordance with Labor Code section 1773.8.

Section 4. Holiday and overtime work when permitted by law shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified.

Section 5. Each worker of the Contractor or any of its subcontractors engaged in work on the Project shall be paid not less than the prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractors and such workers.

Section 6. Contractor shall, as a penalty to the District, forfeit an amount as determined by the Labor Commissioner pursuant to Labor Code section 1775 for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the director for such work. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Contractor.

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Section 7. Copies of the determined prevailing wage rates are on file and available upon request at the District's office and are otherwise available at <http://www.dir.ca.gov/>. Contractor shall be responsible for knowing and implementing all prevailing wage rates at all times during the Project. Contractor shall post, at appropriate conspicuous points on the site of the Project, a schedule showing all determined general prevailing wage rates.

Section 8. Any worker employed to perform work on the Project which is not covered by any classification available at the office of the Department of Industrial Relations, shall be paid not less than the minimum rate of wages specified for the classification which most nearly corresponds with work to be performed by him, and that minimum wage rate shall be retroactive to the time of initial employment of the person in the classification.

**ARTICLE XXIII
LABOR COMPLIANCE**

Section 1. Labor Compliance Program; Record of Wages Paid; Inspection.

(a) A Contractor and/or subcontractor shall not be qualified to bid on, be listed on a bid proposal (subject to the requirements of Public Contract Code section 4104), or engage in the performance of any contract for public work unless currently registered and qualified to perform public work pursuant to Labor Code §1725.5, except under the limited circumstances set forth in Labor Code §1771.1(a). This requirement shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work awarded on or after April 1, 2015. The District may not accept a bid or enter into a contract for a public works project with an unregistered contractor and/or subcontractor(s).

(b) Pursuant to Labor Code §1771.4, this Contract is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Each Contractor and subcontractor performing work on the Project shall be required to comply with the provisions of the California Labor Code, beginning with section 1720, and the regulations of the Department of Industrial Relations' Division of Labor Standards Enforcement (i.e., the Labor Commissioner), including, but not limited to, the standard provisions requiring payment of prevailing wages, maintenance and submission of certified payroll records, and the hiring of apprentices as appropriate. Unless otherwise specified, the Contractor shall be required to post job site notices regarding the requirements of this paragraph, as prescribed by regulation. For all new public works projects awarded on or after April 1, 2015, Contractor and each Subcontractor shall be required to furnish the records specified in Labor Code §1776 directly to the Labor Commissioner at least monthly, or more frequently if specified in the Contract Documents, and in a format prescribed by the Labor Commissioner. This requirement shall apply to all projects, whether new or ongoing, on or after January 1, 2016.

(c) Contractor and each subcontractor shall be responsible for complying with the provisions California Labor Code beginning with Section 1720, and the regulations of the Department of Industrial Relations, including, but not limited to, the standard provisions requiring payment of prevailing wages, maintenance and submission of

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certified weekly payrolls, and hiring of apprenticeship as appropriate. Contractor shall work with the Compliance Monitoring Unit to ensure the full compliance with the Department of Industrial Relations and applicable labor law.

Section 2. Pursuant to Labor Code section 1776, Contractor stipulates to the following:

(a) Contractor and each subcontractor shall keep an accurate payroll record, 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 him or her on the Project. Such records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information of such forms.

Section 3. The payroll records enumerated under Section 10(a) shall be certified and available for inspection at all reasonable hours at the principal office of the Contractor.

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

Section 4. A certified copy of all payroll records enumerated in Section 10(a) shall be provided for inspection and furnished to a representative of the District, the Division of Labor Standards Enforcement and Division of Apprenticeship Standards of the Department of Industrial Relations.

Section 5. A certified copy of all payroll records enumerated in Section 10(a) shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The requesting Party shall, prior to being provided the records, reimburse the costs of preparation by the 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 the Contractor.

Section 6. Contractor shall file a certified copy of the records enumerated in Section 10(a) with the entity that requested such records within ten (10) days after receipt of the written request.

Section 7. Any copy of records made available for inspection as copies and furnished upon request to the public 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 the Contractor awarded the contract or performing the contract shall not be marked or obliterated.

Section 8. Contractor shall inform the District of the location of the records enumerated under Section 10(a), including the street address, city, and county, and shall, within five (5) working days, provide a notice of a change of location and address.

Section 9. In the event of noncompliance with the requirements of this section 13, the Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice

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specifying non-compliance. Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of Twenty-Five Dollars (\$25.00) to the District for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from any progress payment then due.

Section 10. The responsibility for compliance with this Article shall rest upon Contractor. Contractor shall submit certified payrolls with each pay request, including as required by Labor Code Section 177.4.

Section 11. Apprentices. All apprentices employed by Contractor to perform services under the Agreement shall be paid the standard wage paid to apprentices under the regulation of the craft or trade at which that apprentice is employed, and shall be employed only at the work of the craft or trade in which that apprentice is registered. Only apprentices, as defined in Labor Code section 3077, who are in training under apprenticeship standards and written apprenticeship agreements under Chapter 4 (commencing at Section 3070), Division 3 of the Labor Code, are eligible to be employed under this Agreement. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprenticeship agreements under which that apprentice is training.

Section 12. When the Contractor to whom the contract is awarded by the District or any subcontractor under the Contractor, employs workers in any apprenticeable craft or trade, the Contractor and subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site of the public work, for a certificate approving the Contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship.

Section 13. Contractor or subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who are employed in the craft or trade on the public work, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but in no case shall the ratio be less than one hour of apprentice work for each five hours of labor performed by a journeyman, except as otherwise provided in Section 1777.5, of the Labor Code. However, the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five (5) journeymen.

Section 14. "Apprenticeable craft or trade" as used in Labor Code section 1777.5 and this Article, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

Section 15. Contractor, or any subcontractor, who, in performing any of the work under this Agreement, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship programming shall contribute to the fund or funds in each craft or trade in which Contractor employs

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journeymen or apprentices on the public work in the same amount or upon the same basis and in the same manner as other contractors do. Where the trust fund administrators are unable to accept the funds, contractors not signatory to the trust agreement shall pay like amount to the California Apprenticeship Council. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in Labor Code section 227.

Section 16. The responsibility of compliance with Labor Code section 1777.5 and this section 13 for all apprenticeable occupations is with the Contractor.

The interpretation and enforcement of Sections 1777.5 and 1777.7 of the Labor Code shall be in accordance with the rules and procedures of the California Apprenticeship Council.

**ARTICLE XXIV
WORKERS' COMPENSATION INSURANCE**

Section 1. Contractor shall provide, at all times in which it is providing or performing any work on the Project, at its sole cost and expense, workers' compensation insurance for all of its employees engaged in work under the terms hereof. In case any of Contractor's 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 the Contractor's insurance. In case any class of employees engaged in work under this Agreement, on or at the site of the Project is not protected under Workers' Compensation laws, Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employee, not otherwise protected. Contractor shall file with the District certificates of its insurance protecting workers. Contractor is required to secure payment of compensation to its employees in accordance with the provisions of Section 3700 of the Labor Code.

Section 2. An authorized officer of Contractor shall sign under penalty of perjury, date and notarize a certificate which states the following:

(a) I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of the Agreement.

**ARTICLE XXV
WARRANTY/GUARANTEE**

Section 1. 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 done and facilities constructed pursuant to this Agreement will be free of faulty materials or workmanship and hereby agrees, immediately upon receiving notification from District, to remedy, repair or replace, without cost to District, all defects which may appear as a result of faulty materials or workmanship in the Project, at any time, or from

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time to time, during a period beginning with commencement of the Project and ending one (1) year after the Notice of Completion date for the Project.

Section 2. The foregoing warranty of Contractor applies to the remedy, repair or replacement of defects which may appear in connection with the Project, but the foregoing warranty of Contractor does not guarantee against damage to the Project sustained by 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.

Section 3. 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 hereinabove shall not apply to latent defects appearing in the Project, and with respect to such defects, the applicable statute of limitations shall apply. The term of Contractor's warranty/guarantee shall not preclude any claim by District for breach of contract, or other legal claim, brought within the applicable statute of limitation, for failure to construct the Project in strict accordance with the Contract Documents.

Section 4. In the event of any failure of Contractor to comply with above mentioned conditions within one week after being notified in writing, District is hereby authorized to proceed to have defects repaired and made good at the expense of Contractor which hereby agrees to pay reasonable costs and charges therefore immediately on demand.

Section 5. If, in the opinion of the District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the District, the District will attempt to give the notice required by this Article. If Contractor cannot be contacted or does not comply with the District's requirements for correction within a reasonable time as determined by the District, the District may, notwithstanding the provisions of this Article 36, proceed to make such necessary correction and the reasonable cost shall be charged against Contractor, which shall be paid on demand by District. Such action by the District will not relieve the Contractor of the guarantee provided in this Article or elsewhere in this Agreement.

This Article 20 does not in any way limit the guarantee on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish and assign to District all appropriate guarantee and warranty certificates upon completion of the Project.

**ARTICLE XXVI
TITLE OF WORK**

Section 1. Immediately upon the performance of any of the Work, as between Contractor and District, title thereto shall vest in District; provided, however, the vesting of such title shall not impose any obligations on District or relieve Contractor of any of its obligations hereunder.

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**ARTICLE XXVII
WARRANTY OF TITLE**

Section 1. Contractor warrants title to all work. Contractor further warrants that all work is free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material and equipment suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work. Failure to keep work free of liens, claims, security interests or encumbrances is grounds to make a claim against Contractor's payment and performance bond to immediately remedy and defend.

If a lien or stop notice of any nature should at any time be filed against the Work or any District property, by any entity which has supplied material or services at the request of the Contractor, Contractor and Contractor's surety shall promptly, on demand by District and at Contractor's and surety's own expense, take any and all action necessary to cause any such lien or stop notice to be released or discharged immediately there from.

If the Contractor fails to furnish to the District within ten (10) calendar days after demand by the District, satisfactory evidence that a lien or stop notice has been so released, discharged, or secured, then District may discharge such indebtedness and deduct the amount required therefor, together with any and all losses, costs, damages, and attorney's fees and expense incurred or suffered by District from any sum payable to Contractor under the Contract.

**ARTICLE XXVIII
LAWS AND REGULATIONS**

Contractor shall give all notices and comply with all applicable laws, ordinances, rules and regulations. If Contractor performs any work which is contrary to any applicable law, ordinance, rule or regulation, Contractor shall bear all costs and expenses arising there from, with the exception of design errors or omissions that the Contractor could not reasonably have identified.

**ARTICLE XXIX
NOTICE AND SERVICE**

Section 1. The District's representative is the District's Superintendent or any other party, as designated by the District in writing to the Contractor.

Section 2. Notice to either Party shall be in writing, addressed to the Party to be notified at the address specified herein, and either (i) personally delivered, (ii) sent by an overnight courier service such as Federal Express, (iii) sent by first-class mail, registered or certified mail, postage prepaid, return receipt requested, or (iv) sent by facsimile or electronic mail.

Section 3. Any such notice shall be deemed received: (i) on the date of receipt if personally delivered; (ii) on the date of receipt as evidenced by the receipt provided by an overnight courier service, if sent by courier; (iii) three (3) business days after deposit in the U.S. Mail, if sent by mail; or (iv) on the date faxed or e-mailed as evidenced by dated transmittal and delivery confirmation.

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If to the Contractor:

United Building Contractors
Attn: Jim Gilmour

Phone: 530-345-8455

Fax: 530-345-8885

Email: Jim.G@unitedbuildingcontractors.com

If to the District:

MARYSVILLE JOINT UNIFIED SCHOOL
DISTRICT

Attention: Director of Facilities

1919 B Street, Room 214

Marysville, CA 95901

Phone: (530) 749-6151

Fax: (530) 742-0573

Email: cjensen@mjusd.com

**ARTICLE XXX
CONTINUATION OF WORK**

In the event of a dispute between the Parties as to performance of the work or the interpretation of the Contract Documents, or payment or nonpayment for work performed or not performed, the Parties shall attempt to resolve the dispute, provided the District is not in default under the terms of the Agreement or in material breach of the Agreement. Pending resolution of this dispute, Contractor agrees to continue the work diligently to completion. If the dispute is not resolved, Contractor agrees it will not stop the progress of the work on the Project.

**ARTICLE XXXI
PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

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

**ARTICLE XXXII
NON-DISCRIMINATION**

Pursuant to the provisions of Labor Code section 1735, Contractor and its subcontractors shall not unlawfully discriminate in the employment of persons on this Project because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or gender.

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**ARTICLE XXXIII
ALTERNATIVE DISPUTE RESOLUTION**

Section 1. If either Party possesses a claim or dispute with respect to the duties and responsibilities required under this Agreement, that Party shall give the other written notice and demand an informal conference to meet and confer for settlement of the issues in dispute. Notice shall be given within fifteen (15) days of knowledge of the claim or dispute. Such notice shall contain a general written statement of the damage sustained and any estimated delays as a result of such claimed damage. Upon receipt of a Party's demand, the other Party shall schedule a "meet and confer" conference, to take place within thirty (30) days, at a time and location convenient to all Parties. Senior representatives of the District and Contractor, with the authority to settle on the Party's behalf, will attend the meet and confer conference in good faith, in an attempt to resolve any controversy or claim between the Parties. Attendance at this conference shall be a condition precedent to the initiation of arbitration, mediation or a civil action.

**ARTICLE XXXIV
LABOR/EMPLOYMENT SAFETY**

Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 USC, section 651 et seq.).

**ARTICLE XXXV
TERMINATION**

Section 1. The District may terminate the Contractor and/or this Contract for the following reasons:

- (a) Persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- (b) Persistently or repeatedly is absent, without excuse, from the job site;
- (c) Fails to make payment to Subcontractors;
- (d) Persistently disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; or
- (e) Otherwise is in substantial breach of a provision of the Contract Documents.

Section 2. When any of the above reasons exist, the District may, without prejudice to any other rights or remedies of the District under the contract documents or at existing at law, and after giving the Contractor and the Contractor's surety, if any, written notice of seven (7) days, terminate the Contractor and/or this Contract and may, subject to any prior rights of the surety:

- (a) Take possession of the Project and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

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(b) Accept assignment of Subcontracts. Contractor acknowledges and agrees that if the District (in its sole and absolute discretion) decides to take over completion of the Project, the Contractor agrees to immediately assign all Subcontracts to the District which the District has chosen to accept; and

(c) Complete the Work by any reasonable method the District may deem expedient, including contracting with a replacement contractor or contractors.

Section 3. If the District terminates the Contract for one of the reasons stated above, the Contractor shall not be entitled to receive further payment until the Work is complete. All costs associated with the termination and completion of the Project shall be the responsibility of the Contractor and/or its surety.

Section 4. If the unpaid balance of the Contract Sum exceeds costs of completing the Work, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the District. The amount to be paid to the Contractor, or District, as the case may be, shall be certified by the Architect upon application. This payment obligation shall survive completion of the Contract.

**ARTICLE XXXVI
MISCELLANEOUS**

Section 1. Integration Clause. This Agreement, together with all Contract Documents, represents the entire Agreement between the Contractor and the District, and supersedes all prior negotiations, representations or agreements, either written or oral.

Section 2. Time of the Essence. Time is of the essence for all provisions of this Agreement in which a definite time for performance is specified.

Section 3. "Governing Law and Venue." This Agreement shall be governed by and construed in accordance with the laws of the State of California excluding its choice of law rules and venue shall be in the County of Yuba.

Section 4. Interpretation. Neither the Parties nor their respective counsel shall be deemed the drafters of this Agreement for purposes of construing its provisions. The language in all parts of this Agreement shall in all cases be construed according to fair meaning, not strictly for or against any of the Parties.

**ARTICLE XXXVII
NON-UTILIZATION OF ASBESTOS MATERIAL**

(a) Contractor shall not utilize any asbestos-containing materials.

(b) 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, decontaminations and removals will meet the following criteria:

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(c) 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).

(d) 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.

(e) The asbestos consultant shall be chosen and approved by District who shall have sole discretion and final determination in this matter.

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

(g) 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 as may be incurred by District shall be borne entirely by Contractor.

(h) Hold Harmless: Interface of work for the Project with work containing asbestos shall be executed by Contractor at his/her risk and at his/her discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos-containing products. By execution of the Agreement, Contractor acknowledges the above and agrees to hold harmless District, its Governing Board, employees, agents, and Architect and assigns for all asbestos liability which may be associated with this Work. Contractor further agrees to instruct his/her employees with respect to the above-mentioned standards, hazards, risks and liabilities.

**ARTICLE XXXVIII
SITE CONDITIONS AND CONSTRUCTION DOCUMENTS**

Section 1. Site Conditions and Construction Documents. Contractor acknowledges that it has, to the extent necessary to complete the Project, investigated the Site, including, without limitation, a review of the soils reports for the Site as provided by District, and that to the extent one has been provided the soils report discloses no currently known problems with respect to the site conditions. Contractor further acknowledges that it has (or that prior to commencement of construction it will have) performed value engineering and a constructability review of the Plans and Specifications as necessary to satisfy itself that said documents are adequate for the Project's construction and that Contractor has not identified any errors or omissions in the Plans and Specifications that will adversely affect construction of the Project.

**ARTICLE XXXIX
HAZARDOUS MATERIALS**

Section 1. Contractor shall not use or permit the Site or any part thereof to be used to generate, manufacture, refine, treat, store, handle, transport or dispose of, transfer, produce or

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process Hazardous Materials, except, and only to the extent, if necessary to maintain the improvements at the Project and then, only in compliance with all Environmental Regulations, and any state equivalent laws and regulations, nor shall it permit, as a result of any intentional or unintentional act or omission on its part or by any tenant, subtenant, licensee, guest, invitee, contractor, employee and agent, the storage, transportation, disposal or use of Hazardous Materials or the Release or threat of Release of Hazardous Materials on, from or beneath the Project or onto any other property excluding, however, those Hazardous Materials in those amounts ordinarily found in the inventory of schools and school facilities, the use, storage, treatment, transportation and disposal of which shall be in compliance with all Environmental Regulations. Upon the occurrence of any Release or threat of Release of Hazardous Materials through no fault of District, Contractor shall promptly commence and perform, or cause to be commenced and performed promptly, without cost to Contractor, all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials so released, on, from or beneath the Site and Project or other property, in compliance with all Environmental Regulations.

Section 2. Contractor, at its sole cost and expense, shall comply with all federal, state, and local laws relating to the use, storage, discharge, release and disposal of Hazardous Materials (as defined below) in or about the site and/or the Project. Contractor shall not cause or permit any Hazardous Materials to be brought upon, kept, or used in or about the Project site by Contractor or Contractor's agents, employees, or independent contractors or the agents, employees, or independent contractors of any subcontractors in a manner or for a purpose prohibited by any federal, state, or local agency or authority.

Section 3. Contractor shall immediately provide District with telephonic notice, which shall promptly be confirmed by written notice, of any and all discharge, release, and disposal of any Hazardous Materials onto or within the Project site which by law must be reported to any federal, state, or local agency.

Section 4. Contractor shall be responsible for and shall indemnify, protect, defend, and hold harmless District and District's agents, employees, and independent contractors from any and all liability, damages, injuries, causes of action, claims, judgments, costs, penalties, fines, losses, and expenses which result from Contractor's (or from Contractor's agents, employees, and independent contractors) use, storage, accumulation, discharge, release, or disposal of Hazardous Materials in, upon, or about the Project site.

Section 5. The obligations under this section 39 shall survive the expiration or early termination of this Agreement.

Section 6. Definition of Hazardous Materials. As used in this Agreement, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term "Hazardous Materials" includes, without limitation, any material or substance which is (i) petroleum, (ii) asbestos, (iii) designated as a "hazardous substance" pursuant to section 311 of the Federal Water Pollution Control Act (33 U.S.C. section 1317), (iv) defined as a "hazardous waste" pursuant to section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. section 6901, et seq. (42 U.S.C. section 6903), or (v) defined as a

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“hazardous substance” pursuant to section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. section 9601 et seq. (42 U.S.C. section 9601).

ARTICLE XL
COMPLIANCE WITH STORM WATER PERMIT FOR CONSTRUCTION

Section 1. If required, Contractor, per CA Green Code section 5.106.1, shall develop with the Architect’s assistance a Storm Water Pollution Prevention Plan (SWPPP) that has been designed, specific to this site, conforming to the State Storm water NPDES Construction Permit or local ordinance, whichever is stricter, as is required for other projects one acre or more. The plan should cover prevention of soil loss by storm water run-off and/or wind erosion, of sedimentation, and/or of dust/particulate matter air pollution.

Section 2. Contractor shall comply with all conditions of the State Water Resources Control Board (“State Water Board”) to obtain a National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (“Permit”) for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale.

Section 3. Contractor shall be responsible for filing any required Notice of Intent and /or obtaining any Permits. District shall provide a draft of the Storm Water Pollution Prevention Program (“SWPPP”) for the Project to Contractor upon request. It shall be Contractor’s responsibility to evaluate the cost of compliance with the SWPPP in determining the contract price. Contractor shall include all costs of compliance with specified requirements in the contract price.

Section 4. Contractor shall be responsible for implementing and complying with the provisions of Ca Green Code section 5.106.1, any Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required. Contractor shall provide copies of all reports and monitoring information to District.

Section 5. 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.

Section 6. Failure to comply with the Permit is a violation of federal and state law. Contractor hereby agrees to indemnify and hold harmless District, its officers, agents, and employees from and against any and all claims, demands, losses or liabilities of any kind or nature which District, its officers, agents, and employees may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the negligence or willful misconduct of District, its officers, agents or employees. District may seek damages from Contractor for delay in completing the Project caused by Contractor’s failure to comply with Permit.

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**ARTICLE XLI
LEAD-SAFE SCHOOLS PROTECTION ACT**

Section 1. LEAD. Pursuant to the Lead-Safe Schools Protection Act (Education Code section 32240, et seq.) and other applicable law, Contractor shall not use lead-based paint, lead plumbing or solders, or other potential sources of lead contamination in the construction of any new school facility or the modernization of any existing school facility

**ARTICLE XLII
ARCHITECT'S STATUS**

Section 1. Architect shall be District's representative during construction and until final payment is due. 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 the Construction Documents. Architect shall have authority to stop work whenever such stoppage may be necessary in Architect's reasonable opinion to insure the proper execution of the Construction Documents.

Section 2. Architect shall be, in the first instance, the judge of the performance of the work. Architect shall exercise authority under the Construction Documents to enforce Contractor's faithful performance. Architect shall ensure that the quality of the finished work is in accordance with the Construction Documents.

Section 3. Architect shall have all authority and responsibility established by law, including Title 24 of the California Code of Regulations. Architect has the authority to enforce compliance with the Construction Documents and Contractor shall promptly comply with instructions from Architect or an authorized representative of Architect.

Section 4. On all questions related to the quantities, the acceptability of material, equipment or workmanship, the execution, progress or sequence of work, the interpretation of plans, specifications or drawings, and the acceptable performance of Contractor, the decision of Architect shall govern and shall be precedent to any payment unless otherwise ordered by the Governing Board. The progress and completion of the work shall not be impaired or delayed by virtue of any question or dispute arising out of or related to the foregoing matters and the instructions of Architect relating thereto.

Section 5. General supervision and direction of the work by Architect shall in no way imply that Architect or his or her representatives have control over, charge of, or are responsible for construction means, methods, techniques, schedules, sequences or procedures, fabrication, procurement, shipment, delivery, receipt, installation, or for safety precautions and programs in connection with the work, since these are solely Contractor's responsibility under the Construction Documents.

Section 6. Architect shall not be responsible for Contractor's, subcontractors', material or equipment suppliers', or any other person's schedules or failure to carry out the work in accordance with the Construction Documents. Architect shall not have control over or charge of acts or omissions of Contractor, subcontractors, their agents or employees, or any other persons

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or entities performing or supplying portions of the work. Contractor shall not be relieved of obligations to perform the work in accordance with the Construction Documents either by activities or duties of Architect in Architect's administration of the Construction Documents, or by tests, inspections, or approvals required or performed by persons other than Contractor.

ARTICLE XLIII
RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY DISTRICT FOR
PROFESSIONAL SERVICES

Section 1. If at any time prior to the completion of the requirements under the Construction Documents, through no fault of its own, District is required to provide or secure additional professional services for any reason by any act of Contractor, Contractor shall be invoiced by District for any costs incurred for any such additional services, which costs shall be deducted from the contract price and progress payments. Such invoicing shall be independent from any other District remedies. If payments then or thereafter due to Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to District. Additional services shall include, but shall not be limited to, the following:

- (a) Services made necessary by the default of Contractor.
- (b) Services made necessary due to the defects or deficiencies in the work of Contractor.
- (c) Services required by failure of Contractor to perform according to any provision of the Construction Documents.
- (d) Services in connection with evaluating substitutions of products, materials, equipment, subcontractors proposed by Contractor, and making subsequent revisions to drawings, specifications, and providing other documentation required (except for the situation where the specified item is no longer manufactured or available).
- (e) Services for evaluating and processing claims submitted by Contractor in connection with the work outside the established Change Order process.
- (f) Services required by the failure of Contractor to prosecute the work in a timely manner in compliance within the specified time of completion.
- (g) Services in conjunction with the testing, adjusting, balancing and start-up of equipment other than the normal amount customarily associated for the type of work involved.
- (h) Services in conjunction with more than one (1) re-review of required submittals of shop drawings, product data, and samples.

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ARTICLE XLIV
TRENCHES

Section 1. If required to complete the project, Contractor shall provide adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life and limb in trenches and open excavation which conform to applicable safety standards.

Section 2. If this Project involves the excavation of any trench or trenches five (5) feet or more in depth, Contractor shall, in advance of excavation, submit to District, or to whomever District designates, a detailed plan showing the design or 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 such plan varies from the Shoring System Standards established by the Construction Safety Orders of the Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer employed by Contractor, and all costs therefor shall be included in the price named in this agreement for completion of the work as set forth in the Construction Documents. In no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by CAL OSHA and a CAL OSHA permit for such plan delivered to District. (Labor Code sections 6500 and 6705; Health and Safety Code section 17922.5).

Section 3. Pursuant to Labor Code section 6705, nothing in this Section 12.9 shall impose tort liability upon District or any of its employees.

Section 4. If this Project involves the digging of trenches or excavations that extend deeper than four (4) feet below the surface, the following shall apply:

- (a) Contractor shall promptly, and before the following conditions are disturbed, notify District, in writing, of any:
 - (i) Material that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - (ii) Subsurface or latent physical conditions at the Site different from those indicated.
 - (iii) 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 agreement.

Section 5. 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

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increase in 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 Construction Documents.

Section 6. In the event a dispute arises between District and Contractor, whether the conditions 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 the Construction Documents, but shall proceed with all the work to be performed under the Construction Documents. 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. (Public Contract Code section 7104.)

**ARTICLE XLV
REGIONAL NOTIFICATION CENTER**

Section 1. Except in an emergency, Contractor shall contact the appropriate regional notification center at least two working days prior to commencing any Excavation if the excavation will be conducted in an area or in a private easement which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the District, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and carried out by Contractor unless such an inquiry identification number has been assigned to the Contractor or any subcontractor of the Contractor and the District has been given the identification number by Contractor.

Section 2. For the purposes of this section 57, "emergency" shall be defined as a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage (Government Code section 4216).

**ARTICLE XLVI
STATE AUDIT**

Section 1. Pursuant to and in accordance with the provisions of Government Code Section 8546.7, or any amendments thereto, all books, records and files of District, Contractor, or any subcontractor connected with the performance of this agreement involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000.00), including, but not limited to, the costs of administration of this agreement, shall be subject to the examination and audit of the State Auditor at the request of District or as part of any audit of District for a period of three (3) years after final payment is made under this agreement.

**ARTICLE XLVII
DVBE REQUIREMENTS**

Section 1. In accordance with Education Code section 17076.11 the District has a DVBE participation goal of three (3%) per year of the overall dollar amount of state funds allocated to

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the District. Contractor shall make a good faith effort to contact and utilize DVBE contractors and suppliers in securing bids for performance of the Project. Contractor is encouraged to retain documentation of its good faith efforts in the event such documentation is requested by District. Good faith efforts are demonstrated by evidence of the following: (i) Contact was made with the District regarding the identification of DVBEs; (ii) Contact was made with other state agencies and with local DVBE organizations to identify DVBEs; (iii) Advertising was published in trade papers and papers focusing on DVBEs; (iii) Invitations to bid were submitted to potential DVBE contractors; and (iv) Available DVBEs were considered.

Section 2. Contractor shall certify that a good faith effort was made to include DVBE contractors and suppliers in the Project. Prior to and as a condition for final payment on the Project, Contractor shall provide appropriate documentation to the District so that the District can assess its success at meeting the DVBE participation goal.

**ARTICLE XLVIII
CLAIM REQUIREMENTS**

Section 1. Claims in Excess of \$375,000. For all claims in excess of Three Hundred Seventy-Five Thousand Dollars (\$375,000), Contractor shall give written notice of claim to the District Representative within thirty (30) days of the date of the District Representative's estimate of sums due, stating in detail all grounds alleged by Contractor to justify an adjustment to the District Representative's estimate. Thereafter, Contractor must comply with the requirements of the California Government Code regarding claims against public entities (Government Code sections 900 and following).

Contractor's notice of claim shall be certified under penalty of perjury and in compliance with the California False Claims Act, as set forth in Section 23.03 hereof. Failure to include these required certifications will constitute grounds for immediate rejection of the claim and shall be deemed a waiver and absolute bar of the claim, including any right to pursue the claim further. Failure to comply with these notices and/or time requirements shall constitute a waiver of the claim and an absolute bar against further pursuing the claim.

Section 2. Claims of \$375,000 or Less. All claims under this agreement of Three Hundred Seventy-Five Thousand Dollars (\$375,000) or less shall be resolved in accordance with Section 20104 et seq. of the Public Contract Code, except that the claim must be submitted no later than thirty (30) days of the date of the District Representative's estimate of sums due. Contractor's claim shall be certified under penalty of perjury and in compliance with the California False Claims Act, as set forth in Section 23.03 hereof. Failure to include these required certifications will constitute grounds for immediate rejection of the claim and shall be deemed a waiver and absolute bar of the claim, including any right to pursue the claim further.

Failure to comply with the time requirements set forth above shall constitute a waiver of the claim and an absolute bar against further pursuing the claim.

Pursuant to Public Contract Code sections 20104-20104.8, in addition to the notice and claim provisions set forth throughout the Contract Documents, the following terms and conditions shall apply.

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Section 3. § 20104. Application of article; inclusion of article in plans and specifications.

(a) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(b) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(c) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state or the Regents of the University of California.

(d) "Claim" means 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 contract for a public work 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 the local agency.

(e) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(f) This article applies only to contracts entered into on or after January 1, 1991.

Section 4. § 20104.2. Claims; requirements; tort claims not covered by this article.

(a) For any claim subject to this article, the following requirements apply.

(b) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(c) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within forty-five (45) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(d) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(e) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within fifteen (15) days after receipt of

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the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(f) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(g) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(h) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within thirty (30) days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(i) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within fifteen (15) days of receipt of the local agency's response or within fifteen (15) days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

(j) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim 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 the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(k) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

Section 5. § 20104.4 Civil actions; mediation and arbitration; qualifications and expenses of mediators and arbitrators; trial de novo; witnesses.

The following procedures are established for all civil actions filed to resolve claims subject to this article:

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(a) Within sixty (60) days, but no earlier than thirty (30) days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within fifteen (15) days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to a court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(c) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(d) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorneys' fees of the other party arising out of trial de novo.

(e) The court may, upon request by any party, order any witnesses to participate in mediation or arbitration process.

Section 6. § 20104.6. Payment by local agency of undisputed portion of claim; interest on arbitration award or judgment.

(a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

Section 7. Claim Certification. The claim certification required by this Section 23.04 shall provide as follows:

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CLAIM CERTIFICATION

Under penalty of perjury, and with specific reference to the California False Claims Act, Government Code sections 12650, et seq., I certify that submission of the attached claim is made in good faith; that the supporting data prepared by the undersigned company are accurate and complete to the best of my knowledge and belief; that submission of the claim to District does not violate the False Claims Act; and that I am duly authorized to certify the claim on behalf of the claimant.

Dated: 1/26/14

Corporate Seal

Company United Building Contractors

Print Name Jim Guano

Signature [Signature]

Title President

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EXHBIT A – SCOPE OF WORK

Scope of Work: Includes but is not to:

Removal and replacement/installation of at least 19 individual package units along with the removal and addition of non-proprietary nor semi-proprietary controls, preferably wireless internet based.

Additional disconnects, duct sealing, power, mechanical ductwork, structural mounting curb reinforcement, roofing patch and repair, miscellaneous electrical and plumbing work, and systems commissioning are and may also be required. Contractor/subcontractor is to visit school site to verify the location of electrical locations including the replacement and or repair of the electrical wiring for the HVAC unit in room 104.

Removal and reinstallation of other miscellaneous hardware and components for T-Stats and RTPU's such as manual air dampers, verification of existing ductwork and access panels. All newly installed exterior components will be painted to match the existing exterior or as otherwise specific by MJUSD facilities staff and as applicable.

Removal and installation of parking lot light fixture heads. Installation of sensors is also included.

Assets with a value of \$500.00 or greater must be inventoried by contractor/subcontractor including locations, model and serial numbers including the unit cost on a spreadsheet and on the drawings. All related site work, as shown in the project documents and all other components are required for a complete and operational project. All costs for the land versus building costs will be tracked per category in order to service the Districts inventory/asset management needs. All at Linda Elementary School located at 6180 Dunning Avenue, Marysville, California 95901 in Yuba County.

Job site will be keep secure, clean and orderly and distractions will be kept to a minimum to the largest extent possible along with barricades and detours as applicable and per OSHA and other related standards. Contractor to return reusable items to district and district has the right to refuse. Contractor is responsible for the removal and disposal of all materials from the job site.

END OF SECTION

CONTRACT AGREEMENT FORM

THIS AGREEMENT FOR CONSTRUCTION SERVICES ("Agreement"), entered into this 9th day of February, 2016, by and between the Marysville Joint Unified School District ("DISTRICT") and United Building Contractors, Inc., a California Corporation ("CONTRACTOR"). The DISTRICT and Contractor may be referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

- A. DISTRICT is the owner of certain real property commonly known as: Marysville High School (MHS) located at: 12 East 18th Street, Marysville, Ca 95901, County of Yuba, state of California ("Project Sites").
- B. DISTRICT is contracting to provide site preparation and assistance with the MHS Nutritional Services Kitchen Modernization at the MHS ("Project").
- C. CONTRACTOR has been selected as the lowest responsible and qualified bidder for the Project.
- D. DISTRICT desires that the CONTRACTOR complete the Project in accordance with the terms and conditions of this Agreement and all contract documents incorporated herein.
- E. CONTRACTOR is willing to complete the Project in accordance with the terms and conditions set forth in this Agreement and all contract documents incorporated herein.

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained in this Agreement, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1 - SCOPE OF WORK: The CONTRACTOR shall furnish all labor, materials, equipment, tools, and utility and transportation services, and perform and complete all work required to complete the Project in strict accordance with the contract documents enumerated in Article 7 below. The CONTRACTOR shall be liable to the DISTRICT for any damages arising as a result of a failure to comply with that obligation, and the CONTRACTOR shall not be excused with respect to any failure to so comply by an act or omission of the Architect, Engineer, Inspector, or representative of any of them, unless such act or omission actually prevents the CONTRACTOR from fully complying with the contract documents and the CONTRACTOR protests, in accordance with the contract documents, that the act or omission is preventing CONTRACTOR from fully complying with the contract documents. Such protest shall not be effective unless reduced to writing and filed with the DISTRICT within seven (7) days of the date of

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occurrence of such act or omission preventing the CONTRACTOR from fully complying with the Contract Documents. CONTRACTOR shall perform that work designated in CONTRACTOR'S Bid Form which constitutes at least 15% of the total work, exclusive of supervisory and clerical work, without the services of any subcontractor.

ARTICLE 2 - TIME OF COMPLETION:

CONTRACTOR shall have 53 calendar days from the Notice to Proceed to complete the work, anticipated notice to proceed to occur about February 9, 2016.

The DISTRICT may give the Notice to Proceed within thirty (30) days of the award of the bid by the DISTRICT. Once the CONTRACTOR has received the Notice to Proceed, the CONTRACTOR shall commence all work as specified in the Notice to Proceed, as well as the Project Schedule, and shall diligently schedule, execute and fully complete the required work in accordance with the current Project Schedule and within the time period specified in the Notice to Proceed.

In the event that the DISTRICT desires to postpone giving the notice to proceed beyond this ninety (90) day period, it is expressly understood that with reasonable notice to the CONTRACTOR, giving the notice to proceed may be postponed by the DISTRICT. It is further expressly understood by the CONTRACTOR, that the CONTRACTOR shall not be entitled to any claim of additional compensation as a result of the DISTRICT's postponement of giving the notice to proceed.

If the CONTRACTOR believes that a postponement will cause hardship to it, the CONTRACTOR may terminate the contract with written notice to the DISTRICT within ten (10) days after receipt by the CONTRACTOR of the DISTRICT's notice of postponement. It is further understood by the CONTRACTOR that in the event that the CONTRACTOR terminates the contract as a result of postponement by the DISTRICT, CONTRACTOR shall not be entitled to any compensation or damages for bid preparation, associated costs or otherwise, including work performed, if any, by the CONTRACTOR at the time of notification of postponement. Should the CONTRACTOR terminate the contract as a result of a notice of postponement, the DISTRICT shall have the authority to award the contract to the next lowest responsible bidder.

In case of delays to Project completion by strikes, by lockouts, by fire, by embargoes, by earthquake, by acts of war or God, or by any other cause beyond the reasonable control of DISTRICT and/or CONTRACTOR then neither DISTRICT nor CONTRACTOR will be entitled to any damages, restitution or compensation, additional or otherwise, from the other for such delays. For any other delays, unless caused solely by DISTRICT, CONTRACTOR shall not be entitled to an extension of time.

ARTICLE 3 - LIQUIDATED DAMAGES: It being impracticable and infeasible to determine the amount of actual damage, it is agreed that the CONTRACTOR will pay the DISTRICT the sum of One Thousand Five Hundred Dollars (\$1,500.00) per

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calendar day for each and every day of delay beyond the time set for completion of the Project as liquidated damages and not as a penalty or forfeiture. CONTRACTOR shall pay a percentage of the liquidated commensurate with the CONTRACTOR's responsibility for each calendar day of delay as determined by the Construction Manager and the DISTRICT in completing the work within the stipulated time as a result of: (a) the CONTRACTOR's failure to complete the Contract within the time specified in the Notice to Proceed and/or; (b) the CONTRACTOR's failure to complete the Contract in accordance with the Project Schedule. In the event the same is not paid, the CONTRACTOR further agrees that the DISTRICT may deduct such amount thereof from any money due or that may become due the CONTRACTOR under the contract. This Article shall not be construed as preventing the DISTRICT from the recovery of damages under provisions of the contract documents.

ARTICLE 4 - CONTRACT PRICE: The DISTRICT shall pay to CONTRACTOR as full consideration for the faithful performance of the contract, subject to any additions or deductions as provided in the contract documents, the sum of sixty six thousand two hundred fifty five dollars and 00/100 (\$66,255.00), said sum being the total amount stipulated in the proposal. Payment shall be made as set forth in the General Conditions.

Should any Change Order result in an increase in the contract price, the cost of such Change Order shall be agreed to in advance by the CONTRACTOR and the DISTRICT, subject to the monetary limitations set forth in Public Contract Code section 20118.4. In the event that the CONTRACTOR proceeds with a change in work without written agreement between the DISTRICT and CONTRACTOR regarding the cost of a Change Order, the CONTRACTOR waives any claim of additional compensation for such additional work.

ARTICLE 5 - HOLD HARMLESS AGREEMENT: CONTRACTOR shall defend, indemnify and hold harmless DISTRICT, Architect, Inspector, Construction Manager, the State of California and their officers, employees, agents and independent contractors from all liabilities, claims, actions, liens, judgments, demands, damages, losses, costs or expenses of any kind arising from death, personal injury, property damage or other cause based or asserted upon any act, omission, or breach connected with or arising from the progress of Work or performance of service under this Agreement or the Contract Documents. As part of this indemnity, CONTRACTOR shall protect and defend, at its own expense, DISTRICT, Architect, Inspector, the State of California and their officers, employees, agents and independent contractors from any legal action including attorneys' fees or other proceeding based upon such act, omission, or breach.

Furthermore, CONTRACTOR agrees to and does hereby defend, indemnify and hold harmless DISTRICT, Architect, Inspector, Construction Manager, the State of California and their officers, employees, agents and independent contractors from every

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claim or demand made, and every liability, loss, damage, expense or attorneys fees of any nature whatsoever, which may be incurred by reason of:

(a) Liability for (1) death or bodily injury to persons; (2) damage or injury to, loss (including theft), or loss of use of, any property; (3) any failure or alleged failure to comply with any provision of law or the Contract Documents; or (4) any other loss, damage or expense, sustained by any person, firm or corporation or in connection with the Work called for in this Agreement or the Contract Documents, except for liability resulting from the sole or active negligence, or the willful misconduct of the DISTRICT.

(b) Any bodily injury to or death of persons or damage to property caused by any act, omission or breach of CONTRACTOR or any person, firm or corporation employed by CONTRACTOR, either directly or by independent contract, including all damages or injury to, loss (including theft), or loss of use of, any property, sustained by any person, firm or corporation, including the DISTRICT, arising out of or in any way connected with Work covered by this Agreement or the Contract Documents, whether said injury or damage occurs either on or off DISTRICT property, but not for any loss, injury, death or damages caused by the sole or active negligence or willful misconduct of the DISTRICT.

(c) Any dispute between CONTRACTOR and CONTRACTOR'S subcontractors/ supplies/ sureties, including, but not limited to, any failure or alleged failure of the CONTRACTOR (or any person hired or employed directly or indirectly by the CONTRACTOR) to pay any Subcontractor or Materialman of any tier or any other person employed in connection with the Work and/or filing of any stop notice or mechanic's lien claims.

(d) In any legal or equitable action or proceeding, including arbitration and mediation, and other litigation, brought either to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees, costs and expenses incurred therein, including expert witness fees and costs.

CONTRACTOR, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the DISTRICT, its officers, agents or employees, on any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the DISTRICT, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

ARTICLE 6 - PROVISIONS REQUIRED BY LAW: Each and every provision of law and clause required 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 herein, and if through mistake or otherwise any such provision is not inserted or is not inserted

MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT
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correctly, then upon application of either party the contract shall forthwith be physically amended to make such insertion or correction.

ARTICLE 7 - COMPONENT PARTS OF THE CONTRACT: The Contract entered into by this Agreement consists of the following Contract Documents, all of which are component parts of the Contract as if herein set out in full or attached hereto:

Notice Inviting Bids	Compensation/Employers
Instructions to Bidders	Liability Endorsement
Notice to Contractors	General Liability Endorsement
Statement of Experience	Automobile Liability
Designation of Subcontractors	Endorsement
Non-Collusion Affidavit	Contractor's Certificate
Bid Guarantee Form	Regarding Drug-Free
Bid Bond	Workplace
Bid Form	Contractor's Certificate
Contractor's Certificate	Regarding Alcohol and Tobacco
Regarding Worker's	Contractor Certification
Compensation	Regarding Background Checks
Agreement	References
Payment Bond	General Conditions
Performance Bond	Specifications
Guarantee	Project Schedule
Escrow Agreement for Security	All Addenda as Issued
Deposit In Lieu of Retention	Drawings (if applicable)
Workers'	

All of the above named Contract Documents are intended to be complementary. Work required by one of the above named Contract Documents and not by others shall be done as if required by all.

ARTICLE 8 - PREVAILING WAGES: Wage rates for this Project shall be in accordance with the general prevailing rate of holiday and overtime work in the locality in which the work is to be performed for each craft, classification, or type of work needed to execute the contract as determined by the Director of the Department of Industrial Relations. Copies of schedules of rates so determined by the Director of the Department of Industrial Relations are on file at the administrative office of the DISTRICT and are also available from the Director of the Department of Industrial Relations.

The following Labor Code sections by way of illustration and not limitation are hereby referenced and made a part of this Agreement and CONTRACTOR stipulates to the provisions contained therein.

MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT
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1. Chapter 1 of Part 7 of Division 2 of the Labor Code (Section 1720 et seq.)
2. California Code of Regulations, Title 8, Chapter 8, Subchapters 3 & 4 (Section 16000 et seq.)
3. California Labor Code Section 1771.4

ARTICLE 9 - RECORD AUDIT: In accordance with Government Code section 8546.7, records of both the DISTRICT and the CONTRACTOR shall be subject to examination and audit by the Auditor General for a period of three (3) years after final payment.

ARTICLE 10 - CONTRACTOR'S LICENSE: The CONTRACTOR must possess throughout the Project the legally-required contractor's license classification for the specific Bid Package, issued by the State of California, which must be current and in good standing.

IN WITNESS WHEREOF, this Agreement has been duly executed by the above named parties, on the day and year first above written. To the extent that there exists any conflicts or inconsistencies between this Agreement and the General Conditions, the provisions contained in the General Conditions shall govern.

DISTRICT

Ryan DiGiulio

Typed or Printed Name

Assistant Superintendent, Business Svrs.
Title

Signature

Date

CONTRACTOR

Jim Guilmon

Typed or Printed Name

President
Title

Signature



IMPORTANT!
PLEASE READ CAREFULLY
INSTRUCTIONS RELATING TO THE IDDP

MHS

As you are aware, funds administration is a mandatory requirement for the issuance of any final bonds under the Contractor Credit Program. To help ensure the smooth processing of your final bond and meet any contract award deadlines, please follow the below instructions regarding the attached **Irrevocable Directive of Draw Proceeds (IDDP)**.

FOR BID BONDS:

1. Hold the IDDP until after the bids have been opened.
2. If you are the lowest bidder and anticipate being awarded the job, contact the obligee (contract officer, purchasing director, or project manager, etc.) as soon as possible and make them aware that your final bonds will require your participation in funds administration. This way, the obligee can incorporate the execution of the IDDP into their contracting process.
3. Sign and notarize the IDDP.
4. Provide the obligee with the signed and notarized IDDP along with our letter to the obligee explaining the program.
5. Should the obligee have any questions regarding the IDDP or funds administration, let us know and we will contact them. (Please provide us with the contact name, telephone number and email address)
6. Have the obligee sign the IDDP and return the original copy to you.
7. Return the original copy to us. (We must receive an original copy back to issue the final bonds)

FOR FINAL BONDS:

1. Sign and notarize the IDDP.
2. Provide the obligee with the signed and notarized IDDP along with our letter to the obligee explaining the program.
3. Should the obligee have any questions regarding the IDDP or funds administration, let us know and we will contact them. (Please provide us with the contact name, telephone number and email address)
4. Have the obligee sign the IDDP and return the original copy to you.
5. Return the original copy to us. (We must receive an original copy back to issue the final bonds)

Don't hesitate to contact us with any questions.

United Building Contractors, Inc.
275 Fairchild Ave., Suite 106
Chico, CA 95973

IRREVOCABLE DIRECTIVE OF DRAW PROCEEDS

To: Marysville Joint Unified School District, (Marysville, CA)
Re: MHS Nutrition Service Kitchen Remodel, (Marysville, CA)

As an express condition precedent to issuance of payment and/or performance bonds for your Project, **National Specialty Insurance Company or State National Insurance Company, Inc.** ("Surety") as Contract Surety for **United Building Contractors, Inc.** ("Contractor") requires us to employ Cinium Risk Management, LLC, a wholly-owned subsidiary of Cinium Financial Services Corporation, as project accountant ("Project Accountant") to control disbursement of payments made by you for work performed by us on your Project ("Contract Funds") pursuant to our contract (the "Contract"). The Project Accounting Agreement between Contractor and Project Accountant requires that payments of all Contract Funds, including but not limited to change orders, modifications, amendments, retainage, interest or claim proceeds, if any, be made payable to Project Accountant to be deposited into its Project Accounting Account and disbursed in accordance with the term of the Project Accounting Agreement. This directive is not intended as an assignment of the Contract or of our performance obligations thereunder and Project Accountant shall not be deemed to be a party to the Contract.

Please consider this our irrevocable directive to you (as Bond Oblige) to make any and all payments of Contract Funds payable solely in the name of Cinium Risk Management, LLC and addressed to:

For funds sent via <u>U.S. Postal Regular Mail</u>: Cinium Risk Management, LLC M&T Bank Lockbox PO Box 8000 Dept. #717 Buffalo, NY 14267	For funds sent via <u>Overnight/Express Mail Courier</u>: Cinium Risk Management, LLC M&T Bank Lockbox 8000717 626 Commerce Drive Amherst, NY 14228
For funds sent via <u>Wire Transfer</u>: Bank: M&T Bank 4446 State Route 42, Monticello, NY 12701 (845) 794-6798 ABA: 022 000 046 Account: Cinium Risk Management, LLC Project Accounting Account Account #: 9861135458 Reference: United Building Contractors, Inc.; MHS Nutrition Service Kitchen Remodel, (Marysville, CA)	

or at such other address as Project Accountant shall subsequently provide to you in writing. All payments made as directed above shall be deemed to be payments to Contractor, the same as if made directly to Contractor.

By the signature of the Contractor, the Contractor represents to Bond Oblige: (1) nothing in this directive amends or alters any of the Contractor's obligations under the Contract, and Contractor covenants to perform the Contract in accordance with its terms; and (2) the Contractor hereby releases, defends and indemnifies the Bond Oblige from and against any and all damages, costs, liabilities and claims arising from or in connection with this directive or the Bond Oblige's payment to the Project Accountant.

By countersignature below, you certify your agreement to comply with this directive of draw proceeds. Our directive and this certification by you is irrevocable and can only be changed by the written directive of Contractor accompanied by the written and properly notarized consent of the Surety (not Surety Agent).

United Building Contractors, Inc.
275 Fairchild Ave., Suite 106
Chico, CA 95973
(536) 062-46331

By: _____

Printed Name: JIM GILMAN

Title: PRESIDENT

PLEASE SEE
ATTACHED NOTARY
CERTIFICATE
MAR 1/27/16

CONTRACTOR ACKNOWLEDGEMENT:

State of _____ }
County of _____ } ss:

On the _____ day of _____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

Marysville Joint Unified School District,
(Marysville, CA)
MHS Nutrition Service Kitchen Remodel,
(Marysville, CA)

By: _____

Printed Name: _____

Title: _____

Address: _____

Phone: _____

Email: _____

California All-Purpose Certificate of Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of BUTTE

s.s.

On 1/27/16 before me, Martin Rodriguez, Notary Public

Name of Notary Public, Title

personally appeared James Harold Gimore

Name of Signer (1)

Name of Signer (2)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature]
Signature of Notary Public



Seal

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of _____

containing _____ pages, and dated _____

The signer(s) capacity or authority is/are as:

- ☐ Individual(s)
☐ Attorney-in-fact
☐ Corporate Officer(s) _____
Title(s)

- ☐ Guardian/Conservator
☐ Partner - Limited/General
☐ Trustee(s)
☐ Other: _____

representing: _____
Name(s) of Person(s) Entity(ies) Signer is Representing

Additional Information

Method of Signer Identification

Proved to me on the basis of satisfactory evidence:

- ☐ form(s) of identification ☐ credible witness(es)

Notarial event is detailed in notary journal on:

Page # _____ Entry # _____

Notary contact: _____

Other

- ☐ Additional Signer ☐ Signer(s) Thumbprints(s)

☐ _____

CINIUMTM

Re: Irrevocable Directive of Draw Proceeds &
Funds Administration

Dear Bond Oblige:

Our unique bonding program requires mandatory project accounting for **all** of our contractors and bonded projects. Project accounting provides risk mitigation benefits not only to the surety but to your organization as the bond obligee by helping to ensure that liens are avoided and the project proceeds to completion smoothly. Unlike typical sureties, it also allows us to provide additional products to our contractor clients, including project disbursement, credit and supplier discount services.

You should have received a copy of the Irrevocable Directive of Draw Proceeds from the contractor requesting that payments be sent to our affiliate project accountant, Cinium Risk Management. **This does not alter your requisition process with the contractor nor does it alter the project contract;** the only change is that payments are to be sent to us instead of the contractor. Upon receipt of draw proceeds, we will ensure that payments are then made to the contractor's suppliers, labor, and any subcontractors, which again will help ensure that the project is completed satisfactorily.

We have found that the obligees on the bonds we have issued under this program appreciate the added protection that project accounting provides to them.

We would appreciate your assistance in having the Irrevocable Directive acknowledged by your organization, so we can issue the bonds and have the contractor mobilize on this project.

Should you have any questions, please do not hesitate to contact Contract Underwriting at (855) 424-6486. Your time and consideration are deeply appreciated.

Yours truly,

Cinium Underwriter Services Group
Attachment



PARTIAL LIST OF OBLIGEEES

The following is a partial list of obligees who have participated in the Contractor Credit Program through Cinium Underwriter Services Group in the states in which the Company is licensed and admitted.

CALIFORNIA

Apple Valley School District
Bonita Unified School District
California Department of Transportation
California State University
City of Beverly Hills
City of Fremont
City of Indian Wells
City of Half Moon Bay
City of Long Beach
City of McFarland
City of Norwalk
City of Pleasanton
City of Shasta Lake
Claremont Unified School District
County of Alameda
County of Butte
County of El Dorado
County of Riverside
Desert Sands Unified School District
Kern County Schools
Pico Water District
Placentia-Yorba Linda Unified School District
Planada School District
Rosemead Unified School District
San Bernardino County
State of California Military Department

FLORIDA

Greater Orlando Aviation Authority
Village of Pinecrest

HAWAII

State of Hawaii Department of Education
University of Hawaii Manoa Pacific Cooperative

ILLINOIS

Arlington Heights Park District
Maywood- Melrose Park- Broadview School District
Mount Prospect Park District
Pullman Park Development
United Township High School
Village of Granville
Village of Waukegan
Waukegan Housing Authority
Waukegan Public Library

LOUISIANA

City of New Orleans
New Orleans Sewage & Water Board
State of Louisiana Division of Administration, Office of Community Development

MARYLAND

Baltimore Community Lending Board of Education of Baltimore County
Druid Heights Community Development Corp.
East Baltimore Development Inc.
State of Maryland Department of General Services
State of Maryland- Maryland Port Administration

MISSOURI

City of Raytown
Lambert-St. Louis International Airport
St. Louis Public School District
State of Missouri

NEW JERSEY

Borough of Harvey Cedars
Borough of Ship Bottom
Borough of Surf City
City of Clifton Board of Education
City of New Brunswick
City of Newark
City of Orange Township
Highland Park School District
Holmdel School District
Monmouth County
Mount Glen Lakes Dam Association
New Community Corporation
New Jersey Housing Mortgage Finance Agency
South Jersey Transportation Authority
Town of Stafford
Township of Lakewood
Township of Long Beach
Township of Old Bridge
Township of Weehawken
Westfield Board of Education

NEW YORK

City of Glen Cove
City of Lockport
City of Mount Vernon
City of New York
City of Peekskill
City of Syracuse
Clerk of the County of New York

CINIUMTM

PARTIAL LIST OF OBLIGEEES

The following is a partial list of obligees who have participated in the Contractor Credit Program through Cinium Underwriter Services Group in the states in which the Company is licensed and admitted.

GEORGIA

City of Morgan
Paulding County Board Community
Development of Niagara Falls
County of Nassau
Dormitory Authority of the State of NY
Hoosick Falls School
Metropolitan Transit Authority
Nassau County Board of Elections
New York City Department of Design &
Construction
New York City Department of Education
New York City Department of
Environmental Protection
New York City Health & Hospitals Corp.
New York Department of Environmental
Protection
New York Power Authority
New York State Department of
Environmental Conservation
Peekskill Housing Authority
Portchester
Schenectady County
State of New York
Suffolk County Water Authority
Town of Brookhaven
Town of Canaan
Town of Huntington
Town of Islip
Village of Caledonia
Village of Suffern
Westhampton Beach Union Free School
District
Yonkers Board of Education

PENNSYLVANIA

Borough of Ambridge
Borough of Oakmont
Bradford County Commissioners
Chester Economic Development
City of Philadelphia

Borough of Oakmont
Bradford County Commissioners
City of Philadelphia
Commonwealth of PA
Community Development Program
of Beaver County
Darby Borough Community
Development Board
Delaware River Port Authority
Department of General Services
President Township
School District of Philadelphia
Township of Cheltenham

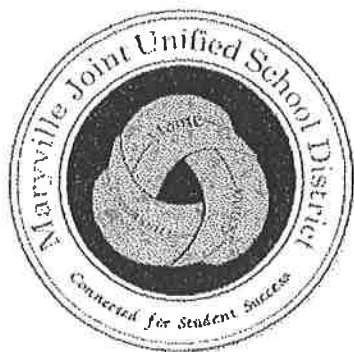
WASHINGTON

Arlington Airport

PRIVATE OBLIGEEES

Ace Alliance, Inc.
Altitude, LLC
Ameresco Construction
Applied Projects Company, Inc.
Ashland Construction Company
Atlantic South Construction, Inc.
Bancorp Bank
Bard College
Brooklyn Academy of Music
Charles River Development Group
Clark/McCarthy Joint Venture
Construction Masters
Dagi, Inc.
Desert Arc
Dillard University
Dobrinski Bros.
Federal Express Corp.
General Theological Seminary
Gwinnett Health Center
Harkins Builders, Inc.
High Meadow Cooperative
Hudson Meridian Construction
Hollister Construction Services
Image Changers, Inc.

Instituform Technologies, Inc.
J.D. Diffenbaugh, Inc.
John W. Brawner Contracting
Juneau Construction Company
Keating Building Corp.
Lewis Contractors
L.F. Driscoll
Matt Construction Corp.
McDonald Building Company
Meja Construction Inc.
Outreach Development Corp.
Ready Mix USA
Red Wiggler Foundation
Regan Development Corp.
The Conlan Company
The Salvation Army
San Juan Construction
Sparrow Construction Corp.
Superior Printing Co.
United Veterans Construction, LLC
Walsh Construction Company
Wal-Mart/Sam's Club
Weatherproofing Technologies, Inc.
Wharton-Smith, Inc.
White Oak Contracting
Whiting-Turner Contracting Co.



MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT
1919 B STREET
MARYSVILLE, CA 95901

General Conditions

BID No. 16-1005

GENERAL CONTRACTING SERVICES
MHS NUTRITION SERVICES KITCHEN MODERNIZATION -
8164

GENERAL CONDITIONS

MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT MHS NUTRITION SERVICES KITCHEN MODERNIZATION – 8164 PROJECT

The MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT, a public school district organized and existing under the laws of the State of California ("**District**") and **United Building Contractors, Inc.**, a California Corporation ("**Contractor**") acknowledge and agree to the following terms and conditions for the construction and completion of the **MHS Nutrition Services Kitchen Modernization (8164) Project**. District or Contractor may be referred to individually as a "Party" or collectively as the "Parties."

ARTICLE I CONTRACTOR QUALIFICATIONS, GENERAL DUTIES AND STATUS

Contractor warrants that it has the following qualifications:

(a) Experience. Contractor represents to District that Contractor is experienced in the construction of the type of facility desired by District and possesses all necessary licenses and qualifications required to build and deliver the completed Project within the timelines specified in this Agreement.

(b) Licenses. Contractor and its agents shall be licensed and regulated by the California Contractors State License Board and possess the license(s) listed in the Notice to Contractors. Should Contractor or its agents not be so licensed at any time during the term of this Agreement, Contractor is subject to penalties under the law and the Agreement shall be void.

(c) Financial Solvency. Contractor represents and warrants that it is financially solvent, able to pay its debts as they mature, and is possessed of sufficient working capital to complete this Agreement; that it is able to furnish the plant, tools, materials, supplies, equipment, and labor, and is experienced in and competent to perform the work contemplated by this Agreement; and that it is authorized to do business in the State of California where the Project Site is located.

**MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT
MHS NUTRITION SERVICES KITCHEN MODERNIZATION – 8164 PROJECT**

**ARTICLE II
CONTRACT DOCUMENTS**

Section 1. The "Contract Documents" consist of the Agreement between the District and Contractor, the Documents listed in Article 7 therein, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to bid, instructions to bidders, notice to bidders, and the requirements contained in the Bid Documents, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is a written amendment to the Contract signed by parties, a Change Order, a Construction Change Directive, or a written order for a minor change in the Work issued by the Architect or Construction Manager. The Contract Documents collectively form the Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Architect or Construction Manager and Contractor, between the District and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the District and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract Documents intended to facilitate performance of the Architect's duties.

Section 2. The Contract Documents are complementary and are intended to include all items required for the proper execution and completion of the Work. All Contract Documents form the Contractors contract with the District. Any item of Work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided by Contractor as if shown or mentioned in both.

Section 3. The Drawings and Specifications generally describe the Work to be performed by the Contractor. Generally, the Specifications describe Work which cannot be readily indicated on the Drawings and indicate types, qualities, and methods of installation of the various materials and equipment required for the Work. It is not intended to mention every item of Work in the Specifications, which can be adequately shown on the Drawings, or to show on the Drawings all items of Work described or required by the Specifications even if they are of such nature that they could have been shown. All materials or labor for Work, which is shown on either the Drawings or the Specifications (or is reasonably inferable therefrom as being necessary to complete the Work), shall be provided by the Contractor to provide a complete Project. It is intended that the Work be of sound, quality construction, and the Contractor shall be responsible for the inclusion of adequate amounts to cover installation of all items indicated, described, or implied in the portion of the Work to be performed by them.

**ARTICLE III
WORK**

Section 1. Intent. The Contractor shall provide all items and services necessary for the proper design, construction, execution and completion of the Project, including but not limited to any and all items and services consistent with and reasonably inferable from the governing Contract Documents (defined below) as necessary to produce the intended results, whether or not the items and services are

Revised 01-30-2015

*Marysville Joint Unified School District
MHS Nutrition Services Kitchen Modernization- 8164
General Conditions*

*Bid No. 16-1005
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MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT
MHS NUTRITION SERVICES KITCHEN MODERNIZATION – 8164 PROJECT

specifically mentioned in them. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all, unless certain services or equipment are specifically excluded in this Agreement. The scope of work for the Project is provided in Exhibit B, attached hereto and incorporated herein.

Section 2. Definition. For the purposes of this Agreement, the term "Contract Documents" shall mean means those construction documents for the Project, including without limitation, the plans and specifications which have been adopted by the District, approved by any other agencies having jurisdiction over the Project and reviewed by the Contractor.

Section 3. Independent Contractor Status. Contractor is and shall at all times be deemed to be an independent contractor and shall be wholly responsible for the manner in which it performs the services required by the terms of this Agreement. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the District and Contractor or any of Contractor's agents or employees. Contractor assumes exclusively the responsibility for the acts of its employees as they relate to the services to be provided during the course and scope of their employment. Contractor, its agents and employees shall not be considered in any manner to be District employees. District shall be permitted to monitor the activities of the Contractor to determine compliance with the terms of this Agreement and all Contract Documents.

Section 4. Change of Entity. Contractor shall not change the name or legal structure of its entity without first notifying District in writing.

Section 5. Cooperation. Contractor shall cooperate with District in making such changes as District may request in the Contract Documents.

Section 6. Construction Work. All construction work done by the Contractor shall be performed in accordance with the Contract Documents. All construction work which Contractor is not capable of performing with its own forces shall be let by Contractor to subcontractors (hereinafter called "Subcontractors"), in its own name, and not as an agent of the District.

(a) Subcontracting. Contractor agrees to bind every Subcontractor by the terms of this Agreement as far as such terms are applicable to Subcontractor's work. If subcontracts any part of this Agreement, Contractor shall be as fully responsible to District for acts and omissions of each Subcontractor and of persons either directly or indirectly employed by Subcontractor. Nothing contained herein shall create any contractual relation between any Subcontractor and District.

(b) Payment to Subcontractors. Contractor shall make timely payment of all Subcontract amounts when and as due, except that notwithstanding provisions to the contrary in a particular Subcontract, Contractor shall not pay such Subcontractor any sums corresponding to sums withheld from Contractor by District on account of defects, deficiencies, acts, or omissions of such Subcontractor. In no event shall any such payments be made later than the thirty (30) day time limit imposed by Public Contract Code section 20104.50, unless good cause is shown.

MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT
MHS NUTRITION SERVICES KITCHEN MODERNIZATION – 8164 PROJECT

Contractor shall indemnify, defend and hold District harmless from any claims or actions which allege that any subcontractor or supplier was not paid with respect to the Project.

Section 7. Work and Materials. Contractor covenants that all the work on the Project will be done in a good and workmanlike manner that complies with the industry standard for similar projects and that all materials furnished and used in connection therewith will be new and in conformance with the established industry standard unless otherwise approved by the District.

Section 8. Supervision. Contractor shall provide competent supervision of all phases of the work and shall cause the work to be performed in strict and complete accordance with the Contract Documents. All personnel and Subcontractors used by Contractor in the performance of the work shall be qualified by training and experience to perform their assigned tasks, and shall have all necessary licenses. At the request of District, Contractor shall not use in the performance of the work any person or Subcontractor deemed by District to be incompetent, careless, unqualified to perform the work, or otherwise unsatisfactory to District.

Section 9. Licenses and Permits. Contractor is obligated to obtain all necessary licenses, building and other permits, and similar authorizations from governmental authorities required to perform its obligations hereunder, and shall give all notices required by, and otherwise comply with, all applicable laws, ordinances, rules, regulations, and restrictions.

Section 10. Protection of Project Site. Contractor shall protect and prevent damage to all unfinished phases of the Project, including but not limited to the protection thereof from damage by the elements, theft, or vandalism.

Section 11. Acts and Omissions of Employees. Contractor shall be responsible to the District for acts and omissions of Contractor's employees, subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing or completing portions of the Project under direct or indirect contract with the Contractor or any of its subcontractors.

ARTICLE IV
COORDINATION AND COMMUNICATION WITH DISTRICT

Contractor shall coordinate all work with the District and shall communicate with the District on a regular basis to provide updates on the progress of the Work. Contractor acknowledges that District will be performing Work on the Project and will assist in the coordination of such work with the District, and assist with the coordination and/or supervision of any Work performed by the District when requested.

ARTICLE V
PROGRESS PAYMENTS

Section 1. The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the District to the Contractor for performance of the Work under the Contract Documents.

Revised 01-30-2015

*Marysville Joint Unified School District
MHS Nutrition Services Kitchen Modernization- 8164
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Section 2. Within thirty (30) days after approval of the Request for Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as certified by Architect and Inspector and verified by Contractor) unless Contractor has filled out the Escrow Agreement for Security Deposit in Lieu of Retention up to the last day of the previous month, less the aggregate of previous payments. The value of the Work completed shall be Contractor best estimate. No inaccuracy or error in said estimate shall operate to release the Contractor, or any surety upon any bond, from damages arising from such Work, or from the District's enforcement of each and every provision of this Contract, and the District shall have the right subsequently to correct any error made in any estimate for payment.

The Contractor shall not be entitled to have any payment requests processed, or be entitled to have any payment made for work performed, so long as any lawful or proper direction given by the District concerning the Work, or any portion thereof, remains incomplete.

Section 3. The Architect shall, within seven (7) days after receipt of the Contractor's Application for Payment, either approve such payment or notify the Contractor in writing of the Architect's reasons for withholding approval in whole or in part as provided in Article IV below. The review of the Contractor's Application for Payment by the Architect is based on the Architect's observations at the Project site and the data comprising the Application for Payment that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents, (2) results of subsequent tests and inspections, (3) minor deviations from the Contract Documents correctable prior to completion, and (4) specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified.

Section 4. Contractor shall not be entitled to payment for any non-conforming work performed, so long as any lawful or proper direction concerning that non-conforming work or any portion thereof given by the District is not corrected by Contractor. District shall withhold from the Progress Payments one hundred fifty (150%) of the estimated value of non-conforming work unless satisfactorily corrected or remedied. This provision shall also apply in the event that a portion of non-conforming work may impact other completed work, resulting in a need to reconstruct or re-work related work. The District shall not unreasonably withhold payment for unrelated and uninvolved work in the event of dispute over non-complying work without entering into negotiations make a good faith effort to arrive at settlement of said conflict.

Section 5. No payment requests will be processed unless Contractor has submitted copies of the Certified Payroll records for the Work which correlates to the payment request.

**ARTICLE VI
PAYMENTS WITHHELD**

Section 1. District may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor, as in its judgment may be necessary to cover:

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- (a) Payments which may be past due and payable for just claims against Contractor or any subcontractors, or against and about the performance of work on the Project.
- (b) The cost of defective work which Contractor has not remedied.
- (c) Liquidated damages assessed against Contractor.
- (d) Penalties for violation of labor laws.
- (e) The cost of materials ordered by District.
- (f) The cost of completion of this agreement, if there exists a reasonable doubt that this agreement can be completed for the balance then unpaid to Contractor.
- (g) Damage to another contractor.
- (h) Site clean up as provided in Article X.
- (i) Payments to indemnify, defend, or hold harmless District.
- (j) Any payments due to District including but not limited to payments for failed tests, utilities or imperfections.
- (k) Extra services for Architect.

Section 2. Extra services for the Project Inspector including but not limited to reinspection required due to Contractor's failed tests or installation of unapproved or defective materials, and Contractor's requests for inspection and Contractor's failure to attend the inspection. In order to ensure the timely completion of the Project, the District may elect to use the funds withheld to pay subcontractors, vendors or laborers. Prior to doing so, the District shall provide the Contractor written notice of District's intent to disburse the monies. If the Contractor does not object to this written notice within ten (10) days of its mailing, the District may disburse said monies and shall be held liable to the Contractor only if such disbursement is not made in good faith.

Section 3. Upon remedy of any reason for withholding payment, payment shall be made for amounts withheld by District.

**ARTICLE VII
LIQUIDATED DAMAGES**

Section 1. Contractor and District hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood that the District will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed the Contractor shall pay to District as fixed and liquidated damages, and not as a penalty, One

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Thousand Five Hundred Dollars (\$1,500.00) for each calendar day beyond the Contract completion date or beyond any completion schedule, construction schedule or Project milestones established in or pursuant to the Project Schedule, or beyond the time indicated in the Project Schedule for any individual Contract activity. Contractor expressly understands, acknowledges and agrees that such liquidated damages can and shall be imposed if the Contractor does not meet each and every aspect of any activity schedule, completion schedule, construction schedule or Project milestone established in or pursuant to the Project Schedule. Any liquidated damages recovered by the District shall not, however, limit the District's right to separately recover any actual out-of-pocket damages it suffers due to Contractor's delay. Contractor and his surety shall be liable for the amount thereof pursuant to Government Code section 53069.85. The District may deduct the liquid damages from the retention if not paid by Contractor.

Section 2. Contractor shall not be charged for liquidated damages because of any delays in completion which are not the fault or negligence of Contractor, including but not restricted to Acts of God. Contractor shall, within ten calendar (10) days of beginning any such delay, notify District in writing of causes of delay. Contractor shall provide documentation and justification to substantiate the delay and its relation to the Project's critical path. District shall ascertain the facts and extent of delay and grant an extension of time for completing work when, in its judgment, the facts justify the granting of such an extension. The District's finding of facts regarding delay shall be final and conclusive. Any extension of time granted by District shall apply only to that portion of work affected by the delay and shall not apply to other portions of work not so affected.

**ARTICLE VIII
PROGRESS SCHEDULE**

Section 1. The Project Schedule in the bid documents. Within ten (10) calendar days after being awarded the contract, Contractor shall submit a progress schedule for District and Architect's approval. The schedule shall not exceed time limits set forth in the Contract Documents and/or Notice to Proceed and shall comply with all of the scheduling requirements as set forth in the Specifications. Failure to submit a schedule or submittal of a schedule which shows completion of the Work beyond the specified completion date shall be deemed a material breach by the Contractor. The scheduling is necessary for the District and Architect's adequate monitoring of the progress of the Project. The Architect and/or District may disapprove of any schedule or require modification to it if, in the opinion of the Architect or District adherence to the progress schedule will not cause the Work to be completed in accordance with the Agreement.

Section 2. Contractor shall not be granted an extension of time for failure to obtain necessary approvals for deferral approvals due to failure to comply with laws, building codes, and other regulations (including Title 24 of the California Code of Regulations). Contractor shall schedule all deferred approval items and shop drawings in its progress schedule. If Contractor fails to include deferred approval items and shop drawings in its schedule which results in a critical path delay, then Contractor shall be subject to the assessment of liquidated damages. Contractor shall not be granted an extension of time for failure to obtain necessary approvals for deferral approvals due to its failure to comply with law, building codes and other regulations (including Title 24 of the California Code of Regulations).

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Section 3. Contractor shall proceed expeditiously with adequate forces and shall achieve Completion within the Contract Time.

**ARTICLE IX
CHANGES IN THE WORK**

Section 1. There shall be no change whatsoever in the drawings, specifications, or in the Work without an executed Change Order, Construction Change Directive, or order by the Architect for a minor change in the Work as herein provided. District shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the District's Governing Board has authorized the same and the cost thereof approved in writing by Change Order or executed Construction Change Directive. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications. Notwithstanding anything to the contrary in this Article 7, all Change Orders shall be prepared and issued by the Architect and shall become effective when executed by the District's Governing Board, the Architect, the Contractor, and the DSA (if necessary).

Section 2. Should any Change Order result in an increase in the Contract price, the cost of such Change Order shall be agreed to, in writing, in advance by Contractor and District and be subject to the monetary limitations set forth in Public Contract Code section 20118.4. In the event that Contractor proceeds with any change in Work without first notifying District and obtaining the Architect's and District's consent to a Change Order, Contractor waives any claim of additional compensation for such additional work.

Section 3. CONTRACTOR UNDERSTANDS, ACKNOWLEDGES, AND AGREES THAT THE REASON FOR THIS NOTICE REQUIREMENT IS SO THAT DISTRICT MAY HAVE AN OPPORTUNITY TO ANALYZE THE WORK AND DECIDE WHETHER THE DISTRICT SHALL PROCEED WITH THE CHANGE ORDER OR ALTER THE PROJECT SO THAT SUCH CHANGE IN WORK BECOMES UNNECESSARY.

Section 4. The Architect will have authority to order minor changes in the Work not involving any adjustment in the Contract Sum, or an extension of the Contract Time, or a change which is inconsistent with the intent of the Contract Documents. Such changes shall be effected by written Change Order and shall be binding on the District and the Contractor. The Contractor shall carry out such written orders promptly.

Section 5. A "CO" is a written instrument prepared by the Architect and signed by the District (as authorized by the District's Governing Board), the Contractor, the Architect, and the DSA (if necessary), stating their agreement upon all of the following:

- (a) A description of a change in the Work;

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- (b) The agreed amount of the adjustment in the Contract Sum, if any; and
- (c) The extent of the adjustment in the Contract Time, if any.

Section 6. A COR is a written request prepared by the Contractor requesting that the District and the Architect issue a CO based upon a proposed change by the Contractor. A COR shall include breakdowns to validate any change in Contract Price due to proposed change or claim. A COR shall also include any additional time required to complete the Project. If Contractor fails to request a time extension in a COR, then the Contractor is thereafter precluded from requesting or claiming a delay.

Section 7. The amount of the increase or decrease in the Contract Price from a CO, if any, shall be determined in one or more of the following ways as applicable to a specific situation and agreed to by the Parties in writing:

- (a) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- (b) By unit prices contained in Contractor's original bid and incorporated in the Project documents or fixed by subsequent agreement between District and Contractor;
- (c) Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.
- (d) By cost of material and labor and percentage of overhead and profit.

**ARTICLE X
CLEAN-UP**

Contractor at all times shall keep the premises reasonably free from debris such as waste, rubbish, and excess materials and equipment caused by work on the Project. Contractor shall not leave debris under, in or about the premises at the end of any day and shall keep the premises free from any attractive nuisances. If Contractor fails to clean up at the completion of the work, District may do so and the cost of such clean up shall be charged back to the Contractor or may be subtracted from any payments due to Contractor.

**ARTICLE XI
CORRECTION OF WORK BEFORE ACCEPTANCE**

Section 1. Correction of Work. Contractor shall promptly remove from the premises all work determined by District as failing to conform to the Contract Documents, applicable building codes, ADA, Title 24 of the California Code of Regulations, Field Act or DSA requirements, whether incorporated into the Contract Documents or not. Contractor shall promptly replace and re-execute its own work to comply with all applicable documents, laws and guidelines without additional expense to the District and shall bear the expense of making good all work of other contractors destroyed or damaged by such

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removal or replacement. If Contractor does not remove or correct such condemned work within a reasonable time, District may remove it and may store the material at Contractor's expense. The costs associated with such removal and clean up shall be charged to the Contractor.

Section 2. Notice of Defect. District shall provide Contractor prompt written notice of all defective construction of which District has actual knowledge or work that does not conform with the Contract Documents.

Section 3. Failure to Correct Defective or Non-conforming Work. If the Contractor fails to correct nonconforming or defective work within a reasonable time, the District may correct it after THREE (3) days written notice and all costs related to such work shall be charged to Contractor.

**ARTICLE XII
INSPECTION, COMPLETION, AND CLOSE-OUT**

Section 1. Final inspection will be made upon written notification from Contractor to District that all work has been completed. A final walk through of the Project to determine completion and to record the Notice of Completion shall occur only upon a valid claim by Contractor that the Project is complete.

Section 2. District shall accept completion of the Project and have the Notice of Completion recorded within ten (10) days of acceptance of completion of the Project when the entire work has been completed to the satisfaction of the District. The Project may only be accepted as complete by action of the Board.

Section 3. Contractor shall prepare and directly submit to the applicable governmental agencies the final Project accounting and close-out reports including all DSA, CDE, SAB and OPSC forms required for the final close-out of the Project. District shall cooperate and assist Contractor as necessary.

Section 4. All plans, drawings, designs, specifications, and other incidental architectural and engineering work or materials or other Contract Documents and copies furnished thereof by District are District's property. They are not to be used in other work and are to be returned to District upon completion of the Project.

Section 5. Upon issuance of the Notice of Completion, Contractor shall deliver to District one (1) complete set of final as-built drawings, operating manuals, repair parts lists, service instructions and equipment warranties.

**ARTICLE XIII
ACCESS TO WORK**

District and its representatives shall at all times have reasonable access to the Project. Contractor shall provide safe and proper facilities for such access during normal working hours. District and its representatives shall observe all Project safety requirements.

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**ARTICLE XIV
OCCUPANCY**

District may, with advance agreement of Contractor, which shall not be unreasonably withheld, occupy portions of the Project before completion of the Project, and such occupancy shall not constitute final acceptance of any part of work covered by this Agreement pursuant to Public Contract Code section 7107. As noted in Article 10, section 2, the Project may only be accepted as complete by action of the District's Governing Board.

**ARTICLE XV
INTEGRATION OF WORK**

The Contractor shall be responsible for cutting, fitting, or patching to complete the Work and to make all parts fit together properly. Contractor shall be responsible for ensuring that all trades are coordinated and scheduled so as to ensure the timely and proper execution of the work. When modifying existing work or installing new Work adjacent to existing work, Contractor shall match, as closely as conditions of the Project site and materials will allow, the finishes, textures, and colors of the original work, refinishing existing work at no additional cost to District. All cost caused by defective or ill-timed work shall be borne by Contractor. Contractor shall be solely responsible for protecting existing work on adjacent properties and shall obtain all required permits for shoring and excavations near property lines.

**ARTICLE XVI
INSPECTOR OF RECORD**

Section 1. One or more Project inspectors employed by the District and approved by the Division of the State Architect will be assigned to the Work in accordance with the requirements of Title 24 of the California Code of Regulations. The Inspector(s) duties are as specifically defined in Title 24.

Section 2. All Work shall be under the observation of the Inspector. The Inspector shall have free access to any or all parts of the Work at any time. The Contractor shall furnish the Inspector such information as may be necessary to keep the Inspector fully informed regarding progress and manner of Work and character of materials. Such observations shall not, in any way, relieve the Contractor from responsibility for full compliance with all terms and conditions of the Contract, or be construed to lessen to any degree the Contractor responsibility for providing efficient and capable superintendence. The Inspector is not authorized to make changes in the drawings or specifications nor shall the Inspector's approval of the Work and methods relieve the Contractor of responsibility for the correction of subsequently discovered defects, or from its obligation to comply with the Contract Documents.

Section 3. The Inspector shall have the authority to reject Work whenever provisions of the Contract Documents are not being complied with, and Contractor shall instruct its Subcontractors and employees accordingly. In addition, the Inspector may stop any Work that poses a probable risk of harm to persons or property. The Contractor shall instruct its employees, Subcontractors, material and equipment suppliers, etc., accordingly. The absence of any Stop Work order or rejection of any portion of the Work shall not relieve the Contractor from any of its obligations pursuant to the Contract Documents.

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**ARTICLE XVII
INSURANCE**

Section 1. Contractor shall maintain all course of construction and other insurance as necessary to protect said equipment and work. The District shall not become responsible for risk of loss or other insurable risk until final Notice of Completion and Final Payment has been made to Contractor. Contractor shall cause the following insurance coverage to be maintained at its sole cost and expense during the term of work performed hereunder to protect Contractor and District from all claims for personal injury, including accidental death, to any person, as well as from all claims for property damage arising from operations under this Agreement:

(a) Commercial general liability insurance including Contractor's risk, blanket contractual, broad form property damage, completed operations and independent contractor's liability, all applicable to personal injury, bodily injury, and property damage to a limit of \$1,000,000 each occurrence and \$2,000,000 aggregate.

(b) Comprehensive automobile liability insurance including owned, hired, and non-owned automobiles, for bodily injury and property damage to a combined single limit of \$1,000,000 each occurrence.

(c) Contractor shall require its subcontractors, if any, to take out and maintain similar public liability and property damage insurance and comprehensive automobile liability insurance in an amount of \$1,000,000 each occurrence and \$2,000,000 aggregate.

Section 2. Endorsements shall state in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date and cancellation and reduction notice. Endorsements shall clearly state that the District and District Inspector are named as "Additional Insured" under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by the District. Said endorsements must be provided in a form deemed suitable to the District, in its sole and absolute discretion. All proof of insurance required herein shall be delivered before the commencement of any work on the Project by Contractor. All insurance policies must be issued by California admitted insurers. A non-California admitted insurer may be accepted at the sole discretion of the District.

**ARTICLE XVIII
BONDS**

Section 1. Contractor shall furnish separate performance and payment bonds, each in an amount equal to one hundred percent (100%) of the contract price on forms acceptable to the District. All bonds shall be provided by a California admitted surety as defined in California Code of Civil Procedure section 995.120. Personal sureties and unregistered sureties are unacceptable. Contractor shall keep the performance bond in effect until expiration of the guarantee/warranty period referenced herein. Contractor shall keep the payment bond in effect for an additional six (6) months after the period in which stop notices may be filed as set forth in Civil Code section 3184.

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**ARTICLE XIX
INDEMNITY**

Section 1. Contractor agrees to and does hereby indemnify, defend and hold harmless District, its Board members, its officers, agents, District Inspector, and its employees from every claim or demand made, and every liability, loss, damage, or expense of any nature whatsoever, which may arise out of or in connection with the Project, including without limitation the following:

(a) Liability for damages for death or bodily injury to persons, injury to, loss or theft of property, or any other loss, damage or expense arising from the above, sustained by any person or entity, including without limitation, District, Contractor or any person, firm, subcontractor or contractor employed by either District or Contractor upon or in connection with the Project, except for liability resulting from the active and primary negligence or willful misconduct of District, its officers, employees, agents or independent contractors who are directly employed by the District; and

(b) Any injury to or death of persons or damage to property caused by any act, neglect, default or omission of Contractor, or any person, firm or subcontractor employed by Contractor, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm or Contractor, including District, arising out of, or in any way connected with Contractor's performance, whether said injury or damage occurs either on or off District property, or if the liability arose from the negligence or willful misconduct of anyone employed by Contractor, either directly or by independent contract.

Section 2. Contractor, at its own expense, cost and risk, shall defend any and all actions, suits, claims, demands or other proceedings to the extent of the above-described indemnification that may be brought or instituted against District, its Board, its officers, agents, or employees, and shall pay or satisfy any judgment that may be rendered against District, its Board, its officers, agents, or employees in any action suit or other proceedings as a result thereof.

Section 3. Contractor shall require that indemnity language in substantially the same form as set forth above be inserted in any agreements with its subcontractors.

Where approval by the District or representative of the District is indicated, it is understood to be conceptual approval only and does not relieve Contractor of responsibility for complying with all laws, codes, industry standards and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Contractor or its subcontractors.

**ARTICLE XX
MATERIALS**

Section 1. Unless otherwise specified, all materials shall be new and meet or exceed industry standard for school construction and all workmanship shall be of good quality. Materials shall be

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furnished in ample quantities and at such times as to ensure uninterrupted progress of work and shall be stored properly and protected as required by this Agreement.

Section 2. No materials, supplies, or equipment for work under this Agreement shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which any interest therein, or in any part thereof, is retained by seller or supplier. Contractor warrants good title to all material, supplies and equipment installed or incorporated in work and agrees upon completion of all work and final payment to deliver premises, together with all improvements and appurtenances constructed or placed thereon by Contractor to District free from any claim, liens or charges.

Section 3. Contractor further agrees that neither it nor any person, firm or contractor furnishing any materials or labor covered by the Agreement shall have any right to lien upon the premises or any improvement of appurtenances thereon, except that Contractor may install metering devices or other equipment of utility companies or of political subdivisions, title to which is commonly retained by utility company or political subdivision. In the event of installation of any such metering device or equipment, Contractor shall advise District as to owner thereof.

Section 4. Nothing contained in this section, however, shall defeat or impair the rights of persons furnishing material or labor under any bond given by Contractor for their protection, or any rights under any applicable law permitting such persons to look to funds due to Contractor and in the hands of the District.

Materials shall be stored on the premises in such manner so as not to interfere with the work and so that no portion of the structure shall be overloaded. Additionally, Contractor shall make efforts to store materials in a manner so to not create an attractive nuisance.

**ARTICLE XXI
WORKERS**

Section 1. Contractor and each subcontractor shall furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Project, organize the procurement of all materials and equipment so that they will be available at the time they are needed for the Project, and keep an adequate force of skilled and fit workers on the job to complete the Project in accordance with all requirements of the Contract Documents.

Section 2. Contractor shall at all times enforce strict discipline and good order among Contractor's employees and contractors and shall not employ on work any unfit person or anyone not skilled in work assigned to Contractor.

Section 3. Contractor shall remove from the work site any person in the employ of the Contractor whom District may deem incompetent or unfit and such worker shall not again participate in the work and shall not again be employed on it except with written consent of District.

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Section 4. Contractor shall take all reasonable steps necessary to ensure that any of its employees, consultants, subcontractors and suppliers, or any of its subcontractors' employees report for work in a manner fit to do their job. Such employees: (i) shall not utilize tobacco on the Project site, and (ii) shall not be under the influence of or in possession of any alcoholic beverage or of any controlled substance (except a controlled substance as prescribed by a physician so long as the performance or safety at the Project Site is not affected thereby). Contractor shall advise its employees of these requirements before they enter on the site and shall immediately remove from the site any employee in violation of these requirements as determined by Contractor or by the District. Contractor shall impose these requirements on its subcontractors.

Section 5. District shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of Contractor, or any subcontractor, material or equipment supplier, or other party involved on the Project, for cause. Any person in the employ of Contractor or subcontractors the District may deem incompetent, unfit, troublesome or otherwise undesirable shall be excluded from the work site and shall not again be employed on it except with District's written consent.

Section 6. Contractor shall take all reasonable steps necessary to ensure that any employees of Contractor or any of its subcontractors' employees comply with all federal, state and local laws prohibiting harassment and/or violence in the workplace.

Section 7. Unless exempted, Contractor shall comply with the applicable requirements of Education Code sections 45125.1 and 45125.2 with respect to fingerprinting of employees who may have contact with the District's pupils. During construction on the Project it is not anticipated that students will be onsite until occupancy and warranty period. In order to comply with the requirements of Education Code sections 45125.1 and 45125.2, Contractor shall not permit any employee or employees or any employee or employees of any subcontractor to come in contact with District pupils until the Department of Justice has ascertained that the employee has not been convicted of a violent or serious felony.

Contractor shall comply with the requirements of the Military Leave of Absence Act (Military & Veterans Code, § 394 et seq.). Contractor shall ensure that its subcontractors on the Project also comply with the requirements of the Military Leave of Absence Act.

**ARTICLE XXII
WAGE RATES**

Section 1. Pursuant to the provisions of Article 2 (commencing at Section 1770), Chapter 1, Part 7, Division 2 of the California Labor Code, the governing body of District has ascertained the general prevailing rate of per diem wages in the locality in which this public work is to be performed for each craft, classification, or type of workmen needed to execute the contract.

Section 2. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided in Labor Code section 1773.1

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apprenticeship or other training programs authorized by Labor Code section 3093, and similar purposes when the term "per diem wages" is used herein.

Section 3. Each worker needed to execute the work must be paid travel and subsistence payments as defined in the applicable collective bargaining agreements filed in accordance with Labor Code section 1773.8.

Section 4. Holiday and overtime work when permitted by law shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified.

Section 5. Each worker of the Contractor or any of its subcontractors engaged in work on the Project shall be paid not less than the prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractors and such workers.

Section 6. Contractor shall, as a penalty to the District, forfeit an amount as determined by the Labor Commissioner pursuant to Labor Code section 1775 for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the director for such work. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Contractor.

Section 7. Copies of the determined prevailing wage rates are on file and available upon request at the District's office and are otherwise available at <http://www.dir.ca.gov/>. Contractor shall be responsible for knowing and implementing all prevailing wage rates at all times during the Project. Contractor shall post, at appropriate conspicuous points on the site of the Project, a schedule showing all determined general prevailing wage rates.

Section 8. Any worker employed to perform work on the Project which is not covered by any classification available at the office of the Department of Industrial Relations, shall be paid not less than the minimum rate of wages specified for the classification which most nearly corresponds with work to be performed by him, and that minimum wage rate shall be retroactive to the time of initial employment of the person in the classification.

**ARTICLE XXIII
LABOR COMPLIANCE**

Section 1. Labor Compliance Program; Record of Wages Paid; Inspection.

(a) A Contractor and/or subcontractor shall not be qualified to bid on, be listed on a bid proposal (subject to the requirements of Public Contract Code section 4104), or engage in the performance of any contract for public work unless currently registered and qualified to perform public work pursuant to Labor Code §1725.5, except under the limited circumstances set forth in Labor Code §1771.1(a). This requirement shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work awarded on or after April 1, 2015. The District

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may not accept a bid or enter into a contract for a public works project with an unregistered contractor and/or subcontractor(s).

(b) Pursuant to Labor Code §1771.4, this Contract is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Each Contractor and subcontractor performing work on the Project shall be required to comply with the provisions of the California Labor Code, beginning with section 1720, and the regulations of the Department of Industrial Relations' Division of Labor Standards Enforcement (i.e., the Labor Commissioner), including, but not limited to, the standard provisions requiring payment of prevailing wages, maintenance and submission of certified payroll records, and the hiring of apprentices as appropriate. Unless otherwise specified, the Contractor shall be required to post job site notices regarding the requirements of this paragraph, as prescribed by regulation. For all new public works projects awarded on or after April 1, 2015, Contractor and each Subcontractor shall be required to furnish the records specified in Labor Code §1776 directly to the Labor Commissioner at least monthly, or more frequently if specified in the Contract Documents, and in a format prescribed by the Labor Commissioner. This requirement shall apply to all projects, whether new or ongoing, on or after January 1, 2016.

(c) Contractor and each subcontractor shall be responsible for complying with the provisions California Labor Code beginning with Section 1720, and the regulations of the Department of Industrial Relations, including, but not limited to, the standard provisions requiring payment of prevailing wages, maintenance and submission of certified weekly payrolls, and hiring of apprenticeship as appropriate. Contractor shall work with the Compliance Monitoring Unit to ensure the full compliance with the Department of Industrial Relations and applicable labor law.

Section 2. Pursuant to Labor Code section 1776, Contractor stipulates to the following:

(a) Contractor and each subcontractor shall keep an accurate payroll record, 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 him or her on the Project. Such records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information of such forms.

Section 3. The payroll records enumerated under Section 10(a) shall be certified and available for inspection at all reasonable hours at the principal office of the Contractor.

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

Section 4. A certified copy of all payroll records enumerated in Section 10(a) shall be provided for inspection and furnished to a representative of the District, the Division of Labor Standards Enforcement and Division of Apprenticeship Standards of the Department of Industrial Relations.

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Section 5. A certified copy of all payroll records enumerated in Section 10(a) shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The requesting Party shall, prior to being provided the records, reimburse the costs of preparation by the 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 the Contractor.

Section 6. Contractor shall file a certified copy of the records enumerated in Section 10(a) with the entity that requested such records within ten (10) days after receipt of the written request.

Section 7. Any copy of records made available for inspection as copies and furnished upon request to the public 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 the Contractor awarded the contract or performing the contract shall not be marked or obliterated.

Section 8. Contractor shall inform the District of the location of the records enumerated under Section 10(a), including the street address, city, and county, and shall, within five (5) working days, provide a notice of a change of location and address.

Section 9. In the event of noncompliance with the requirements of this section 13, the Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying non-compliance. Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of Twenty-Five Dollars (\$25.00) to the District for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from any progress payment then due.

Section 10. The responsibility for compliance with this Article shall rest upon Contractor. Contractor shall submit certified payrolls with each pay request, including as required by Labor Code Section 177.4.

Section 11. Apprentices. All apprentices employed by Contractor to perform services under the Agreement shall be paid the standard wage paid to apprentices under the regulation of the craft or trade at which that apprentice is employed, and shall be employed only at the work of the craft or trade in which that apprentice is registered. Only apprentices, as defined in Labor Code section 3077, who are in training under apprenticeship standards and written apprenticeship agreements under Chapter 4 (commencing at Section 3070), Division 3 of the Labor Code, are eligible to be employed under this Agreement. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprenticeship agreements under which that apprentice is training.

Section 12. When the Contractor to whom the contract is awarded by the District or any subcontractor under the Contractor, employs workers in any apprenticeable craft or trade, the Contractor and subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site of the public work, for a certificate approving the

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Contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship.

Section 13. Contractor or subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who are employed in the craft or trade on the public work, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but in no case shall the ratio be less than one hour of apprentice work for each five hours of labor performed by a journeyman, except as otherwise provided in Section 1777.5, of the Labor Code. However, the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five (5) journeymen.

Section 14. "Apprenticeable craft or trade" as used in Labor Code section 1777.5 and this Article, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

Section 15. Contractor, or any subcontractor, who, in performing any of the work under this Agreement, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship programming shall contribute to the fund or funds in each craft or trade in which Contractor employs journeymen or apprentices on the public work in the same amount or upon the same basis and in the same manner as other contractors do. Where the trust fund administrators are unable to accept the funds, contractors not signatory to the trust agreement shall pay like amount to the California Apprenticeship Council. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in Labor Code section 227.

Section 16. The responsibility of compliance with Labor Code section 1777.5 and this section 13 for all apprenticeable occupations is with the Contractor.

The interpretation and enforcement of Sections 1777.5 and 1777.7 of the Labor Code shall be in accordance with the rules and procedures of the California Apprenticeship Council.

**ARTICLE XXIV
WORKERS' COMPENSATION INSURANCE**

Section 1. Contractor shall provide, at all times in which it is providing or performing any work on the Project, at its sole cost and expense, workers' compensation insurance for all of its employees engaged in work under the terms hereof. In case any of Contractor's 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 the Contractor's insurance. In case any class of employees engaged in work under this Agreement, on or at the site of the Project is not protected under Workers' Compensation laws, Contractor shall provide or

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shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employee, not otherwise protected. Contractor shall file with the District certificates of its insurance protecting workers. Contractor is required to secure payment of compensation to its employees in accordance with the provisions of Section 3700 of the Labor Code.

Section 2. An authorized officer of Contractor shall sign under penalty of perjury, date and notarize a certificate which states the following:

(a) I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of the Agreement.

**ARTICLE XXV
WARRANTY/GUARANTEE**

Section 1. 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 done and facilities constructed pursuant to this Agreement will be free of faulty materials or workmanship and hereby agrees, immediately upon receiving notification from District, to remedy, repair or replace, without cost to District, all defects which may appear as a result of faulty materials or workmanship in the Project, at any time, or from time to time, during a period beginning with commencement of the Project and ending one (1) year after the Notice of Completion date for the Project.

Section 2. The foregoing warranty of Contractor applies to the remedy, repair or replacement of defects which may appear in connection with the Project, but the foregoing warranty of Contractor does not guarantee against damage to the Project sustained by 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.

Section 3. 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 hereinabove shall not apply to latent defects appearing in the Project, and with respect to such defects, the applicable statute of limitations shall apply. The term of Contractor's warranty/guarantee shall not preclude any claim by District for breach of contract, or other legal claim, brought within the applicable statute of limitation, for failure to construct the Project in strict accordance with the Contract Documents.

Section 4. In the event of any failure of Contractor to comply with above mentioned conditions within one week after being notified in writing, District is hereby authorized to proceed to have defects repaired and made good at the expense of Contractor which hereby agrees to pay reasonable costs and charges therefore immediately on demand.

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Section 5. If, in the opinion of the District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the District, the District will attempt to give the notice required by this Article. If Contractor cannot be contacted or does not comply with the District's requirements for correction within a reasonable time as determined by the District, the District may, notwithstanding the provisions of this Article 36, proceed to make such necessary correction and the reasonable cost shall be charged against Contractor, which shall be paid on demand by District. Such action by the District will not relieve the Contractor of the guarantee provided in this Article or elsewhere in this Agreement.

This Article 20 does not in any way limit the guarantee on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish and assign to District all appropriate guarantee and warranty certificates upon completion of the Project.

**ARTICLE XXVI
TITLE OF WORK**

Section 1. Immediately upon the performance of any of the Work, as between Contractor and District, title thereto shall vest in District; provided, however, the vesting of such title shall not impose any obligations on District or relieve Contractor of any of its obligations hereunder.

**ARTICLE XXVII
WARRANTY OF TITLE**

Section 1. Contractor warrants title to all work. Contractor further warrants that all work is free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material and equipment suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work. Failure to keep work free of liens, claims, security interests or encumbrances is grounds to make a claim against Contractor's payment and performance bond to immediately remedy and defend.

If a lien or stop notice of any nature should at any time be filed against the Work or any District property, by any entity which has supplied material or services at the request of the Contractor, Contractor and Contractor's surety shall promptly, on demand by District and at Contractor's and surety's own expense, take any and all action necessary to cause any such lien or stop notice to be released or discharged immediately there from.

If the Contractor fails to furnish to the District within ten (10) calendar days after demand by the District, satisfactory evidence that a lien or stop notice has been so released, discharged, or secured, then District may discharge such indebtedness and deduct the amount required therefor, together with any and all losses, costs, damages, and attorney's fees and expense incurred or suffered by District from any sum payable to Contractor under the Contract.

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**ARTICLE XXVIII
LAWS AND REGULATIONS**

Contractor shall give all notices and comply with all applicable laws, ordinances, rules and regulations. If Contractor performs any work which is contrary to any applicable law, ordinance, rule or regulation, Contractor shall bear all costs and expenses arising there from, with the exception of design errors or omissions that the Contractor could not reasonably have identified.

**ARTICLE XXIX
NOTICE AND SERVICE**

Section 1. The District's representative is the District's Superintendent or any other party, as designated by the District in writing to the Contractor.

Section 2. Notice to either Party shall be in writing, addressed to the Party to be notified at the address specified herein, and either (i) personally delivered, (ii) sent by an overnight courier service such as Federal Express, (iii) sent by first-class mail, registered or certified mail, postage prepaid, return receipt requested, or (iv) sent by facsimile or electronic mail.

Section 3. Any such notice shall be deemed received: (i) on the date of receipt if personally delivered; (ii) on the date of receipt as evidenced by the receipt provided by an overnight courier service, if sent by courier; (iii) three (3) business days after deposit in the U.S. Mail, if sent by mail; or (iv) on the date faxed or e-mailed as evidenced by dated transmittal and delivery confirmation.

If to the Contractor:

UNITED BUILDING CONTRACTORS
Attn: Jim Gilmore
735 FAIRCHILD AVE #106
CHICO CA 95973
Phone: 530-345-8455
Fax: 530-345-8885
Email: JMG@UNITEDBUILDINGCONTRACTORS.COM

**If to the District:
DISTRICT**

MARYSVILLE JOINT UNIFIED SCHOOL
Attention: Asst. Superintendent, Business Services
1919 B Street
Marysville, CA 95901
Phone: (530) 749-6115
Fax: (530) 742-0573

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**ARTICLE XXX
CONTINUATION OF WORK**

In the event of a dispute between the Parties as to performance of the work or the interpretation of the Contract Documents, or payment or nonpayment for work performed or not performed, the Parties shall attempt to resolve the dispute, provided the District is not in default under the terms of the Agreement or in material breach of the Agreement. Pending resolution of this dispute, Contractor agrees to continue the work diligently to completion. If the dispute is not resolved, Contractor agrees it will not stop the progress of the work on the Project.

**ARTICLE XXXI
PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

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

**ARTICLE XXXII
NON-DISCRIMINATION**

Pursuant to the provisions of Labor Code section 1735, Contractor and its subcontractors shall not unlawfully discriminate in the employment of persons on this Project because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or gender.

**ARTICLE XXXIII
ALTERNATIVE DISPUTE RESOLUTION**

Section 1. If either Party possesses a claim or dispute with respect to the duties and responsibilities required under this Agreement, that Party shall give the other written notice and demand an informal conference to meet and confer for settlement of the issues in dispute. Notice shall be given within fifteen (15) days of knowledge of the claim or dispute. Such notice shall contain a general written statement of the damage sustained and any estimated delays as a result of such claimed damage. Upon receipt of a Party's demand, the other Party shall schedule a "meet and confer" conference, to take place within thirty (30) days, at a time and location convenient to all Parties. Senior representatives of the District and Contractor, with the authority to settle on the Party's behalf, will attend the meet and confer conference in good faith, in an attempt to resolve any controversy or claim between the Parties. Attendance at this conference shall be a condition precedent to the initiation of arbitration, mediation or a civil action.

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**ARTICLE XXXIV
LABOR/EMPLOYMENT SAFETY**

Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 USC, section 651 et seq.).

**ARTICLE XXXV
TERMINATION**

Section 1. The District may terminate the Contractor and/or this Contract for the following reasons:

- (a) Persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- (b) Persistently or repeatedly is absent, without excuse, from the job site;
- (c) Fails to make payment to Subcontractors;
- (d) Persistently disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; or
- (e) Otherwise is in substantial breach of a provision of the Contract Documents.

Section 2. When any of the above reasons exist, the District may, without prejudice to any other rights or remedies of the District under the contract documents or at existing at law, and after giving the Contractor and the Contractor's surety, if any, written notice of seven (7) days, terminate the Contractor and/or this Contract and may, subject to any prior rights of the surety:

- (a) Take possession of the Project and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- (b) Accept assignment of Subcontracts. Contractor acknowledges and agrees that if the District (in its sole and absolute discretion) decides to take over completion of the Project, the Contractor agrees to immediately assign all Subcontracts to the District which the District has chosen to accept; and
- (c) Complete the Work by any reasonable method the District may deem expedient, including contracting with a replacement contractor or contractors.

Section 3. If the District terminates the Contract for one of the reasons stated above, the Contractor shall not be entitled to receive further payment until the Work is complete. All costs associated with the termination and completion of the Project shall be the responsibility of the Contractor and/or its surety.

Section 4. If the unpaid balance of the Contract Sum exceeds costs of completing the Work, including compensation for professional services and expenses made necessary thereby, such excess shall be

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paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the District. The amount to be paid to the Contractor, or District, as the case may be, shall be certified by the Architect upon application. This payment obligation shall survive completion of the Contract.

**ARTICLE XXXVI
MISCELLANEOUS**

Section 1. Integration Clause. This Agreement, together with all Contract Documents, represents the entire Agreement between the Contractor and the District, and supersedes all prior negotiations, representations or agreements, either written or oral.

Section 2. Time of the Essence. Time is of the essence for all provisions of this Agreement in which a definite time for performance is specified.

Section 3. "Governing Law and Venue." This Agreement shall be governed by and construed in accordance with the laws of the State of California excluding its choice of law rules and venue shall be in the County of Yuba.

Section 4. Interpretation. Neither the Parties nor their respective counsel shall be deemed the drafters of this Agreement for purposes of construing its provisions. The language in all parts of this Agreement shall in all cases be construed according to fair meaning, not strictly for or against any of the Parties.

**ARTICLE XXXVII
NON-UTILIZATION OF ASBESTOS MATERIAL**

- (a) Contractor shall not utilize any asbestos-containing materials.
- (b) 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, decontaminations and removals will meet the following criteria:
 - (c) 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).
 - (d) 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.
 - (e) The asbestos consultant shall be chosen and approved by District who shall have sole discretion and final determination in this matter.

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

(g) 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 as may be incurred by District shall be borne entirely by Contractor.

(h) Hold Harmless: Interface of work for the Project with work containing asbestos shall be executed by Contractor at his/her risk and at his/her discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos-containing products. By execution of the Agreement, Contractor acknowledges the above and agrees to hold harmless District, its Governing Board, employees, agents, and Architect and assigns for all asbestos liability which may be associated with this Work. Contractor further agrees to instruct his/her employees with respect to the above-mentioned standards, hazards, risks and liabilities.

**ARTICLE XXXVIII
SITE CONDITIONS AND CONSTRUCTION DOCUMENTS**

Section 1. Site Conditions and Construction Documents. Contractor acknowledges that it has, to the extent necessary to complete the Project, investigated the Site, including, without limitation, a review of the soils reports for the Site as provided by District, and that to the extent one has been provided the soils report discloses no currently known problems with respect to the site conditions. Contractor further acknowledges that it has (or that prior to commencement of construction it will have) performed value engineering and a constructability review of the Plans and Specifications as necessary to satisfy itself that said documents are adequate for the Project's construction and that Contractor has not identified any errors or omissions in the Plans and Specifications that will adversely affect construction of the Project.

**ARTICLE XXXIX
HAZARDOUS MATERIALS**

Section 1. Contractor shall not use or permit the Site or any part thereof to be used to generate, manufacture, refine, treat, store, handle, transport or dispose of, transfer, produce or process Hazardous Materials, except, and only to the extent, if necessary to maintain the improvements at the Project and then, only in compliance with all Environmental Regulations, and any state equivalent laws and regulations, nor shall it permit, as a result of any intentional or unintentional act or omission on its part or by any tenant, subtenant, licensee, guest, invitee, contractor, employee and agent, the storage, transportation, disposal or use of Hazardous Materials or the Release or threat of Release of Hazardous Materials on, from or beneath the Project or onto any other property excluding, however, those Hazardous Materials in those amounts ordinarily found in the inventory of schools and school facilities, the use, storage, treatment, transportation and disposal of which shall be in compliance with all Environmental Regulations. Upon the occurrence of any Release or threat of Release of Hazardous

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Materials through no fault of District, Contractor shall promptly commence and perform, or cause to be commenced and performed promptly, without cost to Contractor, all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials so released, on, from or beneath the Site and Project or other property, in compliance with all Environmental Regulations.

Section 2. Contractor, at its sole cost and expense, shall comply with all federal, state, and local laws relating to the use, storage, discharge, release and disposal of Hazardous Materials (as defined below) in or about the site and/or the Project. Contractor shall not cause or permit any Hazardous Materials to be brought upon, kept, or used in or about the Project site by Contractor or Contractor's agents, employees, or independent contractors or the agents, employees, or independent contractors of any subcontractors in a manner or for a purpose prohibited by any federal, state, or local agency or authority.

Section 3. Contractor shall immediately provide District with telephonic notice, which shall promptly be confirmed by written notice, of any and all discharge, release, and disposal of any Hazardous Materials onto or within the Project site which by law must be reported to any federal, state, or local agency.

Section 4. Contractor shall be responsible for and shall indemnify, protect, defend, and hold harmless District and District's agents, employees, and independent contractors from any and all liability, damages, injuries, causes of action, claims, judgments, costs, penalties, fines, losses, and expenses which result from Contractor's (or from Contractor's agents, employees, and independent contractors) use, storage, accumulation, discharge, release, or disposal of Hazardous Materials in, upon, or about the Project site.

Section 5. The obligations under this section 39 shall survive the expiration or early termination of this Agreement.

Section 6. Definition of Hazardous Materials. As used in this Agreement, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term "Hazardous Materials" includes, without limitation, any material or substance which is (i) petroleum, (ii) asbestos, (iii) designated as a "hazardous substance" pursuant to section 311 of the Federal Water Pollution Control Act (33 U.S.C. section 1317), (iv) defined as a "hazardous waste" pursuant to section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. section 6901, et seq. (42 U.S.C. section 6903), or (v) defined as a "hazardous substance" pursuant to section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. section 9601 et seq. (42 U.S.C. section 9601).

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**ARTICLE XL
COMPLIANCE WITH STORM WATER PERMIT FOR CONSTRUCTION**

Section 1. If required, Contractor, per CA Green Code section 5.106.1, shall develop with the Architect's assistance a Storm Water Pollution Prevention Plan (SWPPP) that has been designed, specific to this site, conforming to the State Storm water NPDES Construction Permit or local ordinance, whichever is stricter, as is required for other projects one acre or more. The plan should cover prevention of soil loss by storm water run-off and/or wind erosion, of sedimentation, and/or of dust/particulate matter air pollution.

Section 2. Contractor shall comply with all conditions of the State Water Resources Control Board ("State Water Board") to obtain a National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity ("Permit") for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale.

Section 3. Contractor shall be responsible for filing any required Notice of Intent and /or obtaining any Permits. District shall provide a draft of the Storm Water Pollution Prevention Program ("SWPPP") for the Project to Contractor upon request. It shall be Contractor's responsibility to evaluate the cost of compliance with the SWPPP in determining the contract price. Contractor shall include all costs of compliance with specified requirements in the contract price.

Section 4. Contractor shall be responsible for implementing and complying with the provisions of Ca Green Code section 5.106.1, any Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required. Contractor shall provide copies of all reports and monitoring information to District.

Section 5. 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.

Section 6. Failure to comply with the Permit is a violation of federal and state law. Contractor hereby agrees to indemnify and hold harmless District, its officers, agents, and employees from and against any and all claims, demands, losses or liabilities of any kind or nature which District, its officers, agents, and employees may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the negligence or willful misconduct of District, its officers, agents or employees. District may seek damages from Contractor for delay in completing the Project caused by Contractor's failure to comply with Permit.

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**ARTICLE XLI
LEAD-SAFE SCHOOLS PROTECTION ACT**

Section 1. **LEAD.** Pursuant to the Lead-Safe Schools Protection Act (Education Code section 32240, et seq.) and other applicable law, Contractor shall not use lead-based paint, lead plumbing or solders, or other potential sources of lead contamination in the construction of any new school facility or the modernization of any existing school facility

**ARTICLE XLII
ARCHITECT'S STATUS**

Section 1. Architect shall be District's representative during construction and until final payment is due. 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 the Construction Documents. Architect shall have authority to stop work whenever such stoppage may be necessary in Architect's reasonable opinion to insure the proper execution of the Construction Documents.

Section 2. Architect shall be, in the first instance, the judge of the performance of the work. Architect shall exercise authority under the Construction Documents to enforce Contractor's faithful performance. Architect shall ensure that the quality of the finished work is in accordance with the Construction Documents.

Section 3. Architect shall have all authority and responsibility established by law, including Title 24 of the California Code of Regulations. Architect has the authority to enforce compliance with the Construction Documents and Contractor shall promptly comply with instructions from Architect or an authorized representative of Architect.

Section 4. On all questions related to the quantities, the acceptability of material, equipment or workmanship, the execution, progress or sequence of work, the interpretation of plans, specifications or drawings, and the acceptable performance of Contractor, the decision of Architect shall govern and shall be precedent to any payment unless otherwise ordered by the Governing Board. The progress and completion of the work shall not be impaired or delayed by virtue of any question or dispute arising out of or related to the foregoing matters and the instructions of Architect relating thereto.

Section 5. General supervision and direction of the work by Architect shall in no way imply that Architect or his or her representatives have control over, charge of, or are responsible for construction means, methods, techniques, schedules, sequences or procedures, fabrication, procurement, shipment, delivery, receipt, installation, or for safety precautions and programs in connection with the work, since these are solely Contractor's responsibility under the Construction Documents.

Section 6. Architect shall not be responsible for Contractor's, subcontractors', material or equipment suppliers', or any other person's schedules or failure to carry out the work in accordance with the Construction Documents. Architect shall not have control over or charge of acts or omissions of Contractor, subcontractors, their agents or employees, or any other persons or entities performing or

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supplying portions of the work. Contractor shall not be relieved of obligations to perform the work in accordance with the Construction Documents either by activities or duties of Architect in Architect's administration of the Construction Documents, or by tests, inspections, or approvals required or performed by persons other than Contractor.

**ARTICLE XLIII
RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY DISTRICT FOR PROFESSIONAL
SERVICES**

Section 1. If at any time prior to the completion of the requirements under the Construction Documents, through no fault of its own, District is required to provide or secure additional professional services for any reason by any act of Contractor, Contractor shall be invoiced by District for any costs incurred for any such additional services, which costs shall be deducted from the contract price and progress payments. Such invoicing shall be independent from any other District remedies. If payments then or thereafter due to Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to District. Additional services shall include, but shall not be limited to, the following:

- (a) Services made necessary by the default of Contractor.
- (b) Services made necessary due to the defects or deficiencies in the work of Contractor.
- (c) Services required by failure of Contractor to perform according to any provision of the Construction Documents.
- (d) Services in connection with evaluating substitutions of products, materials, equipment, subcontractors proposed by Contractor, and making subsequent revisions to drawings, specifications, and providing other documentation required (except for the situation where the specified item is no longer manufactured or available).
- (e) Services for evaluating and processing claims submitted by Contractor in connection with the work outside the established Change Order process.
- (f) Services required by the failure of Contractor to prosecute the work in a timely manner in compliance within the specified time of completion.
- (g) Services in conjunction with the testing, adjusting, balancing and start-up of equipment other than the normal amount customarily associated for the type of work involved.
- (h) Services in conjunction with more than one (1) re-review of required submittals of shop drawings, product data, and samples.

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**ARTICLE XLIV
TRENCHES**

Section 1. If required to complete the project, Contractor shall provide adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life and limb in trenches and open excavation which conform to applicable safety standards.

Section 2. If this Project involves the excavation of any trench or trenches five (5) feet or more in depth, Contractor shall, in advance of excavation, submit to District, or to whomever District designates, a detailed plan showing the design or 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 such plan varies from the Shoring System Standards established by the Construction Safety Orders of the Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer employed by Contractor, and all costs therefor shall be included in the price named in this agreement for completion of the work as set forth in the Construction Documents. In no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by CAL OSHA and a CAL OSHA permit for such plan delivered to District. (Labor Code sections 6500 and 6705; Health and Safety Code section 17922.5).

Section 3. Pursuant to Labor Code section 6705, nothing in this Section 12.9 shall impose tort liability upon District or any of its employees.

Section 4. If this Project involves the digging of trenches or excavations that extend deeper than four (4) feet below the surface, the following shall apply:

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

- (i) Material that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
- (ii) Subsurface or latent physical conditions at the Site different from those indicated.
- (iii) 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 agreement.

Section 5. 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 Contractor's

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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 Construction Documents.

Section 6. In the event a dispute arises between District and Contractor, whether the conditions 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 the Construction Documents, but shall proceed with all the work to be performed under the Construction Documents. 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. (Public Contract Code section 7104.)

**ARTICLE XLV
REGIONAL NOTIFICATION CENTER**

Section 1. Except in an emergency, Contractor shall contact the appropriate regional notification center at least two working days prior to commencing any Excavation if the excavation will be conducted in an area or in a private easement which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the District, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and carried out by Contractor unless such an inquiry identification number has been assigned to the Contractor or any subcontractor of the Contractor and the District has been given the identification number by Contractor.

Section 2. For the purposes of this section 57, "emergency" shall be defined as a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage (Government Code section 4216).

**ARTICLE XLVI
STATE AUDIT**

Section 1. Pursuant to and in accordance with the provisions of Government Code Section 8546.7, or any amendments thereto, all books, records and files of District, Contractor, or any subcontractor connected with the performance of this agreement involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000.00), including, but not limited to, the costs of administration of this agreement, shall be subject to the examination and audit of the State Auditor at the request of District or as part of any audit of District for a period of three (3) years after final payment is made under this agreement.

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**ARTICLE XLVII
DVBE REQUIREMENTS**

Section 1. In accordance with Education Code section 17076.11 the District has a DVBE participation goal of three (3%) per year of the overall dollar amount of state funds allocated to the District. Contractor shall make a good faith effort to contact and utilize DVBE contractors and suppliers in securing bids for performance of the Project. Contractor is encouraged to retain documentation of its good faith efforts in the event such documentation is requested by District. Good faith efforts are demonstrated by evidence of the following: (i) Contact was made with the District regarding the identification of DVBEs; (ii) Contact was made with other state agencies and with local DVBE organizations to identify DVBEs; (iii) Advertising was published in trade papers and papers focusing on DVBEs; (iii) Invitations to bid were submitted to potential DVBE contractors; and (iv) Available DVBEs were considered.

Section 2. Contractor shall certify that a good faith effort was made to include DVBE contractors and suppliers in the Project. Prior to and as a condition for final payment on the Project, Contractor shall provide appropriate documentation to the District so that the District can assess its success at meeting the DVBE participation goal.

**ARTICLE XLVIII
CLAIM REQUIREMENTS**

Section 1. Claims in Excess of \$375,000. For all claims in excess of Three Hundred Seventy-Five Thousand Dollars (\$375,000), Contractor shall give written notice of claim to the District Representative within thirty (30) days of the date of the District Representative's estimate of sums due, stating in detail all grounds alleged by Contractor to justify an adjustment to the District Representative's estimate. Thereafter, Contractor must comply with the requirements of the California Government Code regarding claims against public entities (Government Code sections 900 and following).

Contractor's notice of claim shall be certified under penalty of perjury and in compliance with the California False Claims Act, as set forth in Section 23.03 hereof. Failure to include these required certifications will constitute grounds for immediate rejection of the claim and shall be deemed a waiver and absolute bar of the claim, including any right to pursue the claim further. Failure to comply with these notices and/or time requirements shall constitute a waiver of the claim and an absolute bar against further pursuing the claim.

Section 2. Claims of \$375,000 or Less. All claims under this agreement of Three Hundred Seventy-Five Thousand Dollars (\$375,000) or less shall be resolved in accordance with Section 20104 et seq. of the Public Contract Code, except that the claim must be submitted no later than thirty (30) days of the date of the District Representative's estimate of sums due. Contractor's claim shall be certified under penalty of perjury and in compliance with the California False Claims Act, as set forth in Section 23.03 hereof. Failure to include these required certifications will constitute grounds for immediate rejection of

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the claim and shall be deemed a waiver and absolute bar of the claim, including any right to pursue the claim further.

Failure to comply with the time requirements set forth above shall constitute a waiver of the claim and an absolute bar against further pursuing the claim.

Pursuant to Public Contract Code sections 20104-20104.8, in addition to the notice and claim provisions set forth throughout the Contract Documents, the following terms and conditions shall apply.

Section 3. § 20104. Application of article; inclusion of article in plans and specifications.

(a) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(b) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(c) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state or the Regents of the University of California.

(d) "Claim" means 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 contract for a public work 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 the local agency.

(e) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(f) This article applies only to contracts entered into on or after January 1, 1991.

Section 4. § 20104.2. Claims; requirements; tort claims not covered by this article.

(a) For any claim subject to this article, the following requirements apply.

(b) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(c) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within forty-five (45) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation

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supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(d) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(e) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(f) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(g) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(h) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within thirty (30) days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(i) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within fifteen (15) days of receipt of the local agency's response or within fifteen (15) days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

(j) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim 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 the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(k) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter

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1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

Section 5. § 20104.4 Civil actions; mediation and arbitration; qualifications and expenses of mediators and arbitrators; trial de novo; witnesses.

The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within sixty (60) days, but no earlier than thirty (30) days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within fifteen (15) days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to a court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(c) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(d) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorneys' fees of the other party arising out of trial de novo.

(e) The court may, upon request by any party, order any witnesses to participate in mediation or arbitration process.

Section 6. § 20104.6. Payment by local agency of undisputed portion of claim; interest on arbitration award or judgment.

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(a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

Section 7. Claim Certification. The claim certification required by this Section 23.04 shall provide as follows:

CLAIM CERTIFICATION

Under penalty of perjury, and with specific reference to the California False Claims Act, Government Code sections 12650, et seq., I certify that submission of the attached claim is made in good faith; that the supporting data prepared by the undersigned company are accurate and complete to the best of my knowledge and belief; that submission of the claim to District does not violate the False Claims Act; and that I am duly authorized to certify the claim on behalf of the claimant.

Dated: 1/20/16

Corporate Seal

Company UNITED BUILDING CONTRACTORS

Print Name Jim Gilmore

Signature [Signature]

Title President