PROJECT MANUAL

MUIR ELEMENTARY MODERNIZATION

DIVISION 0 - INTRODUCTORY PAGES

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SANTA ANA UNIFIED SCHOOL DISTRICT
1601 East Chestnut Avenue
Santa Ana, California 92701-6322
(714) 480-5355

Bid Pack: # 1 **DSA Application Number: 04-110031**
Project Location: Muir Elementary School **Title: Modernization**

NOTICE CALLING FOR BIDS

Notice is hereby given that the governing board ("Board") of the Santa Ana Unified School District ("District") has determined that all bidders for its Muir Elementary School Modernization Project ("Project" or "Contract") must be prequalified prior to submitting a bid on the Project **(Required for Prime Contractors ONLY. Subcontractors are not required to be prequalified).** Any contractor that has not prequalified* on a District project within the past twelve (12) months and is interested in bidding on the Project must submit a fully completed and sealed Prequalification Questionnaire to the District by the date and time indicated herein.

Prequalification Questionnaire Deadline: **Date and Time of Submission of Prequalification Questionnaire: 4:00 pm – Thursday, January 5, 2012.**

Place of Prequalification Questionnaire Receipt: Facilities-Construction Department
Santa Ana Unified School District
1601 East Chestnut Avenue
Santa Ana, California 92701-6322

* Any contractor that has prequalified on a District project within the past twelve (12) months may satisfy the prequalification requirements for **this** project if it included information from its earlier Prequalification Questionnaire demonstrating that it had contracted for and completed construction of a minimum of five (5) California K-14 public school district or community college district construction projects of the same license requirement and same type of scope of work, **and that the contractors total base bid amount does not exceed their prequalified bid amount which is equal to fifty percent (50%) of the contractors bonding capacity.** Otherwise, the contractor must submit additional information as indicated in the Prequalification Questionnaire to be eligible for prequalification for **this** project.

Bid Submission Deadline:
Date and Time of Bid Opening: 3:00 pm –Monday, January 30, 2012

Place of Bid Receipt: Facilities-Construction Department
Santa Ana Unified School District
1601 East Chestnut Avenue
Santa Ana, California 92701-6322

NOTICE IS HEREBY GIVEN that the Santa Ana Unified School District (the "**District**") now invites the submission of sealed bids for the award of a contract for the construction of the project identified above.

The District's Construction Manager for this Project is **C.W. Driver, (949) 261-5100**.

The District's Architect for the Project is: **gkk works, (949) 250-1500**

Bids submitted to the District in response to this Notice Calling for Bids (this "**Notice**") must be submitted in a sealed envelope which is plainly marked with the bidder's name and California State Contractor's License Number, the Project name and number set forth above. All bids must be submitted on the bid form attached hereto ("**Bid Form**") and must otherwise comply with the requirements set forth in the document entitled "**Information for Bidders**" attached hereto. Each bid shall be accompanied in the same sealed envelope with the following: (1) bid security in an amount not less than ten percent (10%) of the total bid price in the form of either cash, a certified or cashier's check payable to the District, or a "**Bid Bond**" in the form attached hereto; (2) a completed "**Noncollusion Affidavit**"; (3) "**Designation of Subcontractors**" all of which must be on the forms attached hereto.

The successful bidder and all of its subcontractors of all tiers shall pay all workers on all work performed pursuant to this Agreement not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed within the boundaries of the District, pursuant to sections 1770 et seq. of the California Labor Code. Prevailing wage rates are available from the District or on the Internet at: http://www.dir.ca.gov. The successful bidder upon award of the Agreement shall post a copy of the prevailing wage rates at each work site.

The District will conduct a voluntary informational job walk and conference relative to the Project. The location of that job walk and conference shall be at **Muir Elementary School; 1951 North Mabury St., Santa Ana, CA 92707, at the flag pole.** The job walk and conference will commence promptly at **3:00 p.m. on December 29, 2011.**

Those bids timely received at the specified location shall be opened and publicly read aloud at the above-stated Date and Time of Bid Opening and at the above-stated Place of Bid Receipt.

The District requires that each bidder possess the following classification(s) of contractor's license(s) at the time the bid is submitted**:**

Bid Package No.	Description	License
BP # 1	**General Construction**	**B**

The Bidder's license(s) must remain active and in good standing at the time of the Bid Opening and throughout the term of the Agreement.

The District reserves the right to reject any or all bids or to waive any irregularities or informalities in any bids or in the bidding process.

The "**Project Documents**" (as defined in the Information for Bidders) are on file at the following location: **C2 Reprographics, 3180 Pullman Street, Costa Mesa, CA 92626**. The Project Documents include the plans and specifications pursuant to which the Project is to be constructed and upon which the bidders are to base their bids ("**Plans and Specifications**").

Option 1: View from C2 Reprographics' Planwell site by following these directions:

- Access the site by going to Internet Explorer to connect to www.c2repro.com
- Click on **Planwell**, then **Public Planroom**, then search by **Muir Elementary Building Improvements**.

Option 2: Purchase CD (Compact Disc) or paper bid documents by the following these directions:

- Send email request to planwell@c2repro.com. Reference **Muir Elementary Building Improvements** in Email Title.
- Call C2 Reprographics at (866) 632-8329. Ask for the Planwell Department.

Management and coordination for the project is the responsibility of the District's Construction Manager, **C.W. Driver**. All inquires about the project are to be directed to **C.W. Driver, 15615 Alton Parkway, Suite 150, Irvine, CA 92618, Phone (949) 261-5100, Fax (949) 261-5167**.

The bidder to whom the District awards the contract for the construction of the Project (the "**Agreement**") must complete the work required under the Agreement by the date indicated in the Agreement (the "**Completion Date**").

Pursuant to Public Contract Code Section 22300, the Agreement will contain provisions permitting the successful bidder to substitute securities for any monies withheld by the District to ensure performance under the Agreement or permitting payment of retentions earned directly into escrow.

The District shall award the Agreement, if it awards it at all, to the lowest responsive responsible bidder based on: The base bid amount only.

Prior to the Bid Submission Deadline, any bidder may withdraw its bid in person or by written request. No bids may be withdrawn between the Bid Submission Deadline and the ninetieth (90th) calendar day thereafter, inclusive, and all bids shall be effective throughout that entire ninety (90) day period.

Date of this Notice: December 8, 2011

Santa Ana Unified School District

By: _____

Joe Dixon
Assistant Superintendent of
Facilities & Governmental Relations

ADVERTISED IN: Orange County Register

ADVERTISEMENT DATES: December 15, 2011
December 22, 2011

SANTA ANA UNIFIED SCHOOL DISTRICT
1601 East Chestnut Avenue
Santa Ana, California 92701-6322
(714) 480-5355

Bid Pack: # 1 **DSA Application Number: 04-110031**

INFORMATION FOR BIDDERS

WARNING: READ THIS DOCUMENT CAREFULLY
DO NOT ASSUME THAT IT IS THE SAME DOCUMENT AS OTHER SIMILAR DOCUMENTS YOU MAY HAVE SEEN, EVEN FROM THE SAME DISTRICT

1. **Preparation of Bid Form and Related Documents**. Pursuant to the attached Notice Calling for Bids ("**Notice**"), the Santa Ana Unified School District (the "**District**") has invited bids for the award of a contract for the construction of the project identified above ("**Project**"). All such bids must be submitted on the bid form attached hereto ("**Bid Form**") and must be accompanied by the documents and items designated in the Notice. The Bid Form and such other documents and items submitted therewith must otherwise comply with the requirements of the Notice and of this document (this "**Information for Bidders**"). The Bid Form and all documents submitted therewith must be legibly completed, in full, at the time of submission, and must otherwise comply with the requirements of the Notice and of this Information for Bidders.

2. **Delivery of Bids**. All bids must be submitted at the time, place and manner stated in the Notice. It is the bidder's sole responsibility to ensure that its bid is received prior to the Bid Submission Deadline identified in the Notice. In accordance with Government Code Section 53068, any bid received after that Bid Submission Deadline shall be returned to the bidder unopened.

3. **Opening of Sealed Bids**. All sealed bids timely and properly submitted will be opened and publicly read aloud at the time and place identified in the Notice.

4. **Courtesy Informational Job Walk and Conference**. A bidder's attendance or non-attendance of the courtesy informational job walk and conference identified in the Notice will not affect that bidder's eligibility to submit bids for the Project. **Mandatory** job walks will be referenced as such in the Notice.

5. **Conformity and Responsiveness of Bid to Project Documents**. The bid must conform and be responsive to all of the documents listed below, which are collectively referred to herein as the "**Project Documents**". The bidder should carefully examine the Project Documents. The Project Documents consist of:

5.1 The Notice Calling for Bids

5.2 This Information for Bidders;

5.3 The Bid Form

5.4 The form of Bid Bond:

5.5 The Noncollusion Affidavit;

5.6 The Designation of Subcontractors;

5.7 The form of construction agreement ("Agreement");

5.8 The General Conditions to the Agreement

5.9 The Special Conditions to the Agreement

5.10 The General Requirements to the Agreement

5.11 The "Plans" and the "Specifications" (sometimes collectively referred to as the "Plans and Specifications") pursuant to which the Project is to be constructed, which Plans and Specifications have been prepared by the District's architect identified in the Notice ("Architect");

5.12 The form of Faithful Performance Bond;

5.13 The form of Payment Bond;

5.14 The form of Escrow Agreement for Security Deposits in Lieu of Retention;

5.15 The form of Certificate of Insurance

5.16 The Workers' Compensation Certificate;

5.17 Contractor's Certificate Regarding Non-Asbestos Statement

5.18 The Drug Free Workplace Certificate;

5.19 The construction schedule developed by the District, the Architect, and/or the District's other consultant(s) establishing timelines for the commencement and completion of the work (and the individual components thereof) to be performed under the Agreement (the "**Construction Schedule**")

5.20 The Disabled Veterans Business Enterprise Form

5.21 Any other "**Addendum**" or "**Addenda**" to any of the foregoing now or hereafter issued by the District. As used herein, the term "Addendum" means changes to the Plans, Specifications, or other Project Documents which alter, explain or clarify

the Project Documents, but only if those changes have been authorized in writing by the District prior to the Bid Submission Deadline specified in the Notice.

6. **Document Submission Checklist**. Each bidder shall provide the following documents only as indicated below:

Specification Section #	Document Name	Submit with Bid	Submit Upon Notice of Award
00410	Bid Form	X	
00411	Bid Bond or other Bid Security	X	
00412	Noncollusion Affidavit	X	
00413	Designation of Subcontractors	X	
00500	Agreement		X
00610	Performance Bond		X
00611	Payment Bond		X
00416	Disabled Veterans Business Enterprise Participation Certification		X
00435	Certificate of Insurance		X
00436	Workers Compensation Insurance Certificate		X
00437	Contractor's Certificate Regarding Non-Asbestos Containing Materials		X
00454	Drug-Free Workplace Certification		X

7. **Bid Security**. Each Bid shall be accompanied by a bid security in the form of cash, a certified or cashier's check payable to the District, or a Bid Bond in the form attached hereto. The amount of the bid security shall not be less than ten percent (10%) of the total bid price, including all additive alternates, payable to the District and shall be given as a guarantee that the bidder, if awarded the contract, will execute the Agreement and all required documents with the Agreement within **five (5) "Business Days**" after the District's Notice of Award. If the bidder fails or refuses to timely execute the Agreement and all required documents with the Agreement as indicated herein, the bid security shall be forfeited to the District.

8. **Duration of Faithful Performance Bond**. The Faithful Performance Bond shall remain in full force and effect through the guarantee period as specified in the General Conditions.

9. **Signatures**. Any of the Project Documents which is to be executed by the bidder must be signed in the name of the bidder and must bear the signature of the person or

persons duly authorized by the bidder to sign those documents on the bidder's behalf. The signatures of all persons on the Bid Form and related documents shall be in longhand. All such signatures shall specify the title of the office or other position relative to the bidder held or occupied by the person signing on the bidder's behalf. In any case, the District may require proof (in the form of incumbency certificates, resolutions of governing bodies, or other evidence satisfactory to the District) that the person or persons signing said Project Documents are authorized by the bidder to do so on behalf of the bidder. Furthermore, at the time the Agreement is executed, the District may require a certification signed by the bidder (in the manner set forth above) designating an individual person who shall be the agent of the bidder authorized to sign any and all necessary documents for the bidder relative to the Project.

10. **Numbers**. Numbers contained in the Bid Form and related documents shall be expressed both in written words and in Arabic numerals. Discrepancies between written words and figures, or words and numerals, will be resolved in favor of numerals or figures.

11. **Erasures, Corrections, Inconsistencies, and Illegible Portions of Bids**. The bid submitted must not contain any erasures, interlineations, or other corrections unless each such erasure, interlineations or correction creates no inconsistency and is authenticated by affixing the initials of the person(s) signing the bid on the bidder's behalf in the margin immediately adjacent to the erasure, interlineations or correction. All handwritten interlineations or corrections must be made in ink. If the values of the written words and the corresponding Arabic numerals in the bid conflict, the values expressed by written words shall control over those expressed by Arabic numerals. In the event of inconsistency between any other words and figures in the bid, words shall control figures. If the District determines that any bid is unintelligible, illegible or ambiguous, the District may reject such bid as not being responsive. If the line item and the total amount named by a bidder for any item are not in agreement, the line item alone shall be considered as representing the bidder's intention, and the total amount of the bid shall be corrected.

12. **Modifications to Bid or Project Documents by Bidder**. Changes in or additions to the bid or to any of the Project Documents, any alternative proposals, or any other modifications which are not specifically called for by the District in writing may result in the District's rejection of the bid as not being responsive. No oral or telephonic modification of any bid will be considered. However, the District may (but is not required to) consider written modifications faxed or e-mailed to the District prior to the opening of bids, but only if (a) the District is satisfied prior to the opening of bids that that the modifications were authorized by and transmitted by or at the direction of the bidder, and (b) a paper copy of the fax or e-mail transmission is delivered to the Place of Bid Receipt (as defined in the Notice) prior to the Bid Submission Deadline specified in the Notice.

13. **Examination of Project Site**. At its own expense and prior to submitting its bid, each bidder shall: visit the Project site; determine the local conditions which may in any way affect the performance of the work to be performed under the Agreement, including

without limitation the general prevailing rate of per diem wages and other relevant cost factors; familiarize itself with all Federal, State and local laws, ordinances, rules, regulations and codes affecting the performance of the work, including without limitation the cost of permits and licenses required for the work; make such surveys and investigations, including investigation of subsurface or latent physical conditions at the Project site or other locations where work is to be performed under the Agreement, as the bidder may deem necessary for performance of the work at its bid price; determine the character, quality, and quantities of the work to be performed and the materials and equipment to be provided; and correlate the bidder's observations, investigations, and determinations with all requirements of the Project. Under no circumstances shall any bidder be present on school grounds unless escorted by authorized District personnel. To the extent that the Project Documents describe or depict existing Project site conditions, those descriptions and depictions are provided only for informational purposes; the District does not warrant said information and shall not be liable for any loss sustained by the bidders (successful or otherwise) resulting from any variance between the site conditions as so depicted and the actual conditions revealed during the bidder's pre-bid examination or during the progress of the work.

14. **Examination and Interpretation of Project Documents**. Each bidder must thoroughly familiarize itself with the Project Documents. If any bidder is in doubt as to the true meaning of any part of the Project Documents, or finds discrepancies in or omissions from the Project Documents, the bidder may submit to the District a written request for an interpretation or correction thereof. The bidder submitting the written request shall be responsible for its prompt delivery. Any interpretation or correction of the Project Documents will be made only by Addendum duly issued by the District, and a copy of such Addendum will be hand-delivered, mailed, faxed and/or e-mailed to each bidder known to have received a copy of the Plans and Specifications or to have reviewed any of the other Project Documents. The District will not be responsible for any other explanation or interpretation of the Project Documents. No person is authorized to make any oral interpretation of any provision in the Project Documents, nor shall any oral interpretation of Project Documents be binding on the District. If discrepancies exist in or among any of the Project Documents, the District's interpretation of the Project Documents with respect to those discrepancies shall prevail.

15. **Withdrawal of Bids**. Any bid may be withdrawn, either personally or by written request, at any time prior to the "Date and Time of Bid Opening" identified in the Notice. The bid security for bids withdrawn prior to that date and time shall be returned. No bidder may withdraw any bid for a period of ninety (90) days after the Date and Time of Bid Opening.

16. **Submission of Bid Constitutes Bidder's Representation Upon Which District Can Rely**. Submission of a bid shall constitute the bidder's representation to the District that the bidder:

16.1 Has visited the Project site and conducted such diligent investigations as specified in Section 12 above;

16.2 Has examined the Project Documents and satisfied itself as to the meanings there-of pursuant to the provisions of Section 13 above;

16.3 Has determined that the Plans and Specifications and other Project Documents are sufficient for bidding and completing the work required by the Agreement;

16.4 Is capable of reading and understanding the Project Documents and is capable of completing the work required of it in accordance with the Plans and Specifications and other Project Documents;

16.5 Accepts the Plans and Specifications and other Project Documents as establishing an acceptable standard for plans, specifications, and drawings;

16.6 Agrees that the work required under the Agreement, General Conditions, Special Conditions and other Project Documents can and will be completed by the bidder to the District's in accordance with the Construction Schedule;

16.8 Has otherwise complied with all the requirements of the provisions of the Notice and this Information for Bidders.

16.9 The District shall be entitled to rely on all of the foregoing representations, and the bidder's submission of a bid shall be incontrovertible evidence of the truth of those representations.

17. **Qualifications of Insurers**. Insurers who are to provide policies of insurance required under the Project Documents must be admitted and licensed to do business in California, must have an agent for service of process in California, and must have an **"A"** policyholder's rating and a financial size rating of at least **Class VIII** in accordance with the most current Best's Key Rating Guide, Property-Casualty.

18. **Addenda**. It shall be the bidder's responsibility to ascertain whether any Addenda have been issued by the District subsequent to the Notice, and to ensure that the bid submitted responds to and takes into account all such Addenda issued by the District prior to the submission of the bid. Each Addendum received during the bidding period shall be properly acknowledged in the designated space on the Bid Form with the information therein requested. If any Addendum or Addenda have been issued by the District and not noted in the designated space on the Bid Form as having been received, the bid may be declared non-responsive.

19. **No Multiple Bids; Exceptions**. No bidder may submit more than one bid in response to the Notice to act as a general contractor or prime contractor for the Project. Notwithstanding the foregoing, (a) any bidder may submit multiple bids if and to the extent that alternate bids are specifically called for in writing by the District; and (b) prior to the Bid Submittal Deadline identified in the Notice, any bidder may withdraw its existing bid and submit a new bid. Furthermore, the fact that a subcontractor or material supplier may be named in the bids of more than one bidder will not disqualify that subcontractor or material supplier and will not cause said bids to be declared non-responsive.

20. **Award of Contract**. The District reserves the right to reject any or all bids, or to waive any irregularities or informalities in any bids or in the bidding process. The award of the contract, if made by the District, will be by action of the District's Board of Education and will be made to the lowest responsive and responsible bidder. If two identical acceptable low bids are received from responsive and responsible bidders, the District will determine which bid will be accepted pursuant to Public Contract Code Section 20117. In the event the District chooses to award the contract to a bidder, and such bidder fails or refuses to execute the Agreement and provide the required documents within **five (5) Business Days** after the award of the contract to the bidder, then the District may award the contract to the next lowest responsive and responsible bidder or, in the District's sole discretion, the District may reject all bids.

21. **Alternatives**. The Notice and related documents may call for a base bid alone, or for a base bid together with alternative additions and/or deductions. If alternate bids are called for, the District shall have the discretion to award the base bid alone or on the base bid and any combination of the alternatives.

22. **Prequalification of Bidders**. If the District is prequalifying contractors for this Project, all bidders must comply with the Notice Calling for Bids and the Prequalification Questionnaire.

23. **Subcontractors**. Each bidder shall comply with the provisions of the Subletting and Subcontracting Fair Practices Act (Public Contract Code Sections 4100 *et seq.*), including without limitation the following:

23.1 **Designation of Subcontractors**. The bidder shall submit, on the "Designation of Subcontractors" form furnished with the Project Documents, a list of the subcontractors that the bidder proposes to use on the Project. The bidder is required to list the name and the location of the place of business of each subcontractor who will do either of the following for an amount in excess of one-half of one percent (½%) of the bidder's total bid price: (a) perform work or labor or render service to the bidder in connection with the Project, or (b) specially fabricate and install a portion of the work on the Project according to detailed drawings contained in the Plans and Specifications.

23.2 **Restrictions on Substitution of Subcontractors**. No bidder whose bid is accepted shall (a) substitute any subcontractor in place of any subcontractor listed on the "Designation of Subcontractors" form, (b) permit any of the bidder's subcontracts related to the Project to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in that Designation of Subcontractors form with the original bid, or (c) assign or subcontract any portion of the work on the Project in excess of one-half of one percent (½%) of the bidder's total bid as to which the Designation of Subcontractors form submitted with the original bid did not designate a subcontractor; except in all cases as authorized in the Public Contract Code Sections 4107 and 4107.5 and otherwise in compliance with the provisions of the Subletting and Subcontracting Fair Practices Act.

23.3 **Remedies for Violation**. The bidder's violation of this Section 23 or of the Subletting and Subcontracting Fair Practices Act can result in the District invoking the remedies of Public Contract Code Sections 4110 and 4111, and District hereby reserves any and all rights in this regard.

24. **Workers' Compensation**. In accordance with the provisions of Section 3700 of the Labor Code, the successful bidder shall secure the payment of compensation to all employees. The successful bidder who has been awarded the contract shall sign and file with District (as indicated in Section 17 above) three (3) original counterparts of the Workers' Compensation Certificate, which states, in part, as follows: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

25. **Contractor's License**. If, at the "Date and Time of Bid Opening" specified in the Notice, the bidder is not properly licensed to perform the work on the Project called for under the Notice and required under the Agreement and the Notice in accordance with the Contractor's State License Law, set forth at Division 3, Chapter 9, of the Business and Professions Code (commencing with Section 7000), then that bidder's bid will be rejected as non-responsive pursuant to Business and Professions Code Section 7028.15(e). If at any time the District believes that the bidder was not so licensed at said Date and Time of Bid Opening, then the District shall make no payment to the bidder for work or materials under the Agreement unless and until the bidder causes the State Contractors License Board, pursuant to Business and Professions Code Section 7031(d), to provide a verified certificate of licensure to the District which establishes that the bidder was properly licensed at the Time and Date of Bid Opening. Any bidder not so licensed is subject to penalties under the law, and the Agreement entered into with such bidder will be considered void. If the license classification specified in the Notice is that of a "specialty contractor" as defined in Business and Professions Code Section 7058, then the specialty contractor who is awarded the contract for the Project shall construct a majority of the Project's work, in accordance with the provisions of Business and Professions Code Section 7059(b).

26. **Anti-Discrimination**. It is the District's policy that in connection with all work performed under contracts to which the District is a party, there be no unlawful discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, age or marital status physical disability, mental disability, or medical condition. The successful bidder agrees to comply with applicable federal and state laws including, but not limited to, the California Fair Employment and Housing Act, beginning with Government Code Section 12900, and with Labor Code Section 1735. In addition, the successful bidder agrees to require like compliance by any subcontractors employed on the Project by such bidder.

27. **Unused**

28. **Substitution of Equipment and Materials**. The Plans and Specifications and other portions of the Project Documents may specifically identify (by brand name, trade name or otherwise) materials, processes, services or equipment to be used on the Project, but may allow the bidder to propose alternate materials, processes, services or equipment which the bidder believes to be "equal" to those specified by the District. Any such proposal shall be subject to applicable law, the following provisions, and the provisions in Section 1630 – Product Substitution Procedures:

28.1 **Failure to Propose a Substitute "Equal" Item Constitutes Bidder's Agreement to Use the Specified Item**. If the bidder fails to indicate (in the manner specified below) a proposed substitute material, process, service or equipment, then its bid shall be deemed to offer the material, process, service or equipment specified by the District.

28.2 Requests for substitutions prior to award of the Contract shall be done a minimum of Ten (10) calendar days prior to bid opening.

28.3 Request for substitutions after award of the contract can only be done as stated in the Supplemental Conditions (00800)

28.3 All requests for substitutions shall only be allowed pursuant to the provisions in Section 01630 – Product Substitution Procedures.

28.4 **District's Right to Reject Proposed Substitutions**. The District reserves the right to reject any such proposed substituted item. If the District rejects a proposed "equal" item, the bidder will then supply the material, process, service or equipment originally designated by the District, or a substitute therefore (timely requested by the bidder pursuant to this Section 28 and Section 01630 – Product Substitution Procedures) which meets with the approval of the District, which approval may be withheld in the District's sole discretion.

28.5 **Approval of Substitute Items**. The District is not responsible for locating or securing any information, which is not included in such substantiating data. The burden of proof as to the quality or suitability of proposed substituted items shall be borne by the bidder. The District shall be the sole judge as to the quality and suitability of proposed substituted items, and decisions of the District shall be final and conclusive. If the bidder fails to timely provide such information, or if the District determines in its sole discretion that the proposed substitute is not at least equally suitable for the Project as the item originally designated by the District, then the District may reject the proposed substitution, in which case the bidder shall use the material, process, service or equipment originally specified by the District. The District shall notify the successful bidder of the District's decision concerning the proposed substitution of "equal" items. All such decisions by the District shall be in writing, and no proposed substituted item shall be deemed approved unless the District has so indicated in writing. These time limitations shall be complied with strictly, and in no case will an extension of

time for completion be granted because of the bidder's failure to request the substitution of an item at the times and in the manner set forth herein.

28.6 **Preference for Supplies Produced in California**. Price, fitness and quality being equal with regard to supplies, the District shall always prefer supplies manufactured, grown or produced in California, and shall next prefer supplies partially manufactured, grown, or produced in the United States, all pursuant to Government Code Section 4300, et seq.. The District may, at its discretion, use of such supplies in connection with the Project, pursuant to Government Code Section 4334, provided that (a) the bids of said suppliers or the prices quoted by them do not exceed by more than five percent (5%) the lowest bids/prices quoted by out-of-state suppliers, (b) the major portion of the manufacture of the supplies is not done outside of California and (c) in the opinion of the District and/or its officers, the public good will be served thereby.

28.7 The District is not responsible and/or liable in any way for a Contractor's damages and/or claims related, in any way, to that Contractor's basing its bid on any requested substitution that the District has not approved.

29. **Proof of Surety's Qualifications**. Upon the District's request, any surety proposed by the bidder must provide the District with the documents identified in Code of Civil Procedure Section 995.660 in order to qualify for the issuance of bonds for the Project.

30. **Liquidated Damages**. All work to be performed by the successful bidder and its subcontractors in connection with the Project must be completed within the time limits set forth in the Notice. By submitting its bid, each bidder that the District may assess liquidated damages as indicated in Section 00500 – Agreement.

31. **Drug-Free Workplace Certification**. Pursuant to the Drug-Free Workplace Act of 1990 (Government Code Sections 8350 *et seq*.), the successful bidder will be required to execute a Drug-Free Workplace Certificate upon execution of the Agreement. The bidder will be required to take positive measures outlined in that certificate in order to ensure the presence of a drug-free workplace. Failure to abide with the conditions set forth in the Drug-Free Workplace Act of 1990 could result in penalties including termination of the Agreement or suspension of payment there under.

32. **Non-collusion Affidavit**. In accordance with the provisions of Public Contract Code Section 7106 (and as indicated in the Notice), each bid must be accompanied by a properly notarized Non-Collusion Affidavit.

33. **Escrow Agreement**. Public Contract Code Section 22300 permits the substitution of securities for any monies withheld by a public agency to ensure performance under a contract. At the request and expense of the successful bidder awarded the contract, securities equivalent to the amount withheld as retention shall be deposited with the District, or with a state or federally chartered bank in California as the escrow agent, who shall then pay such monies to the successful bidder.

34. **Change Orders**. All requests for information, requests for clarification, requests for interpretation, and proposed change orders must be submitted in the form(s) set forth in the Project Documents and must otherwise comply with the provisions of Articles 15 and 16 of the General Conditions. The amount of allowable charges submitted pursuant to a change order shall be limited to the charges allowed under Article 16 of the General Conditions. Indirect, consequential and incidental costs, project management costs, extended home office and field office overhead, administrative costs and profit and other charges not specifically authorized under Articles 16 and 21 of the General Conditions will not be allowed.

35. **Contractor's Certificate Regarding Non-Asbestos Containing Materials**. The District shall also require the successful bidder to complete and deliver to the District a "Contractor's Certificate Regarding Non-Asbestos Containing Materials" in the form prescribed by the District.

36. **Criminal Record Checks**. Education Code Section 45125.1 provides that if there is a possibility that the employees of any entity that has a contract with a school district may have any contact with pupils, those employees shall submit or have submitted their fingerprints in a manner authorized by the Department of Justice together with a fee determined by the Department of Justice to be sufficient to reimburse the Department of Justice for its costs incurred in processing the application.

The Department of Justice shall ascertain whether the individual whose fingerprints were submitted to it has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the Department. When the department of Justice ascertains that an individual whose fingerprints were submitted to it has a pending criminal proceeding for a violent felony listed in Penal Code Section 667.5(c) or a serious felony listed in Penal Code Section 1192.7(c), or has been convicted of such a violent felony or serious felony, the Department shall notify both the employer and the District of the criminal information pertaining to the individual. The notification shall be delivered to the employer by telephone or electronic mail, and to the District by first-class mail.

The bidder shall not permit an employee to come in contact with pupils until the Department of Justice has ascertained that the employee has not been convicted of a violent felony or serious felony as defined in the above-referenced Penal Code Sections. The bidder shall certify in writing to the District's Board of Education that none of the bidder's employees who may come in contact with pupils have been convicted of a violent or serious felony. The bidder shall provide a list of the names of its employees who may come in contact with pupils to the District's Board of Education. In addition, pursuant to Education Code Section 45125.1(g), the successful bidder shall certify in writing to the District that neither the bidder nor any of its employees who's fingerprints are required to be submitted to the Department of Justice and who may come in contact with pupils have been convicted of any such violent felony or serious felony.

37. **Apprenticeship Requirements**. Pursuant to Labor Code Section 1777.5(o), contracts of general contractors, or of specialty contractors not bidding through a general contractor, and involving less than $30,000, are exempted from the provisions of Labor Code Section 1777.5. A subcontractor bidding through a general contractor must comply with Labor Code Section 1777.5 (no matter how small the subcontract), if the contract between the general contractor and the District is covered by Labor Code Section 1777.5.

38. **Prevailing Wage Requirements**. In compliance with provisions of Labor Code Sections 1720 *et seq.* and 1770 *et seq*., all workers employed by the bidder subcontractors relative to the Agreement shall be paid not less than the prevailing rate of per diem wages, including payment for travel and subsistence, holiday, and overtime work as determined by the Director of the California Department of Industrial Relations for each craft, classification, or type of worker needed to execute the work under the contract. The Contractor is fully and totally responsible at all times for compliance with payment of prevailing wages pursuant to provisions of Labor Code Sections 1720 *et seq.* and 1770 *et seq*.

39. **Protest.** Any bid protest by any Bidder regarding any other bid must be submitted in writing to the District, before 5:00 p.m. of the **THIRD (3rd)** business day following bid opening.

39.1 The protest must contain a complete statement of any and all bases for the protest.

39.2 The protest must refer to the specific portions of all documents that form the bases for the protest.

39.3 The protest must include the name, address and telephone number of the person representing the protesting party.

39.4 The party filing the protest must concurrently transmit a copy of the protest and any attached documentation to all other parties with a direct financial interest that may be adversely affected by the outcome of the protest. Such parties shall include all other bidders or proposers who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.

39.5 The procedure and time limits set forth in this paragraph are mandatory and are each bidder's sole and exclusive remedy in the event of bid protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the bid protest, including filing a Government Code Claim or legal proceedings.

END OF SECTION

SANTA ANA UNIFIED SCHOOL DISTRICT
1601 East Chestnut Avenue
Santa Ana, California 92701-6322
(714) 480-5355

Bid Pack: # 1 **DSA Application Number: 04-110031**

BID FORM

Bidders wishing to bid for the above-referenced project ("Project") must submit their bids on this Bid Form. Only bids which are submitted on this Bid Form will be accepted. This entire Bid Form must be completed and delivered in the manner specified in the Notice Calling for Bids ("Notice") and in the corresponding document entitled "Information for Bidders" ("Information for Bidders"), each of which was issued by the Santa Ana Unified School District ("District") in connection with the Project. This Bid Form must be submitted to the "Place of Bid Receipt" and by the "Bid Submission Deadline" specified in the Notice. When submitting this Bid Form, the Bidder must include in the same envelope as this Bid Form the other documents required by the Notice. Bidders should carefully review the Notice and the Information for Bidders when completing and submitting this Bid Form and related documents. Failure to properly submit and complete the entire Bid Form and all of the other documents as required by the Notice and the Information for Bidders may invalidate the bid and cause the District to reject the bid as non-responsive.

The name, address and other information identifying the bidder who is submitting this Bid Form ("**Bidder**") is as follows:

Name:_____

Type of Entity (*check one*):___ Corporation
___ General partnership
___ Limited partnership
___ Limited liability partnership
___ Limited liability company
___ Individual
___ Other (specify)

State in which Bidder was organized (if Bidder is an entity) or in which Bidder resides (if Bidder is an individual) (*check one*)

___ California ___ Other (*specify*): _____

Bidder's Street Address: _____
_____
_____
Attention: _____

Bidder's Mailing Address: _____
_____
_____
Attention: _____

Bidder's Telephone Number: (_____) ____ – _____
Bidder's Fax Number: (_____) ____ – _____
Bidder's e-mail address: _____

Bidder's California State Contractor's License Number: _____

Class of Bidder's California State Contractor's License: _____

Name under which Bidder does business (if different from Bidder's legal name):
_____

1. **Submission of Bid**. The Bidder hereby submits this bid to the District and agrees to perform all work required by the "**Agreement**" (as that term is defined in the Information for Bidders) for the construction of the Project, at the Bid Price specified in Section 3 below and subject to all of the terms, conditions, representations and warranties set forth in this Bid Form.

2. **Bid Price**. As used in this Bid Form, the Bidder's "**Bid Price**" is _____ Dollars and _____ Cents ($_____). If the "**Plans and Specifications**" or other "**Project Documents**" (as those terms are defined in the Information for Bidders) call for a base bid and one or more additive or deductive alternate bids, then that Bid Price shall be deemed the "**Base Bid**" and the following bid prices shall be deemed the "**Alternate Bids**":

Alternate Bid No. 1 *(Provide new flooring per District Standards in Building 6 & 7.)*
as identified in Section 01230: _____
____ Dollars and _____ Cents ($_____)

Alternate Bid No. 2 *(Paint existing ceiling grid at Buildings 6 & 7.)*
as identified in Section 01230: _____
____ Dollars and _____ Cents ($_____)

Alternate Bid No. 3 *(None.)*
as identified in Section 01230: _____
____ Dollars and _____ Cents ($_____)

Alternate Bid No. 4 *(None.)*
as identified in Section 01230: _____
____ Dollars and _____ Cents ($_____)

(*Attach additional sheets if necessary to specify more alternate bids*)

3. **Representations of Bidder in Connection with Bid Price**. The Bidder hereby acknowledges, represents and warrants to the District that the Bidder's calculation of its Bid Price (including the Base Bid and any Alternate Bids, if applicable) has been based, among other things, on the following, all of which are true and correct:

3.1 **Familiarity with Project Documents**. The Bidder is familiar with all of the Project Documents, and the Bid Price (including the Base Bid and Alternate Bids, if applicable) and each line-item component comprising the same has to the extent deemed necessary by the Bidder been determined based on the Bidder's review of the Plans and Specifications and all other Project Documents.

3.2 **Familiarity with Local Conditions**. As to the work, which is to be done by or under the control of the successful bidder pursuant to the Project Documents, the Bidder is familiar with the local conditions affecting both the performance and the cost of that work at the place where the work is to be performed. The Bid Price (including the Base Bid and Alternate Bids, if applicable) and each line-item component comprising the same has to the extent deemed necessary by the Bidder been determined based on the Bidder's visits to the Project site and the Bidder's familiarity with said conditions.

3.3 **Performance of Work**. The Bidder hereby proposes and agrees to be bound by all the terms and conditions of the Project Documents and agrees to perform, within the time stipulated, all of the general contractor's obligations and duties there under, including without limitation the obligations to furnish, provide and pay for any and all of the labor, materials, tools, expendables, equipment, facilities, utility and transportation services, applicable taxes, bonds, insurance policies, and incidental items necessary to perform the entire "**Agreement**" (as that term is defined in the Information for Bidders) and to complete in a good workmanlike manner all of the work required to build the Project in strict conformity with the Project Documents and with any legal requirements related to that performance and completion.

3.4 **Addenda**. The Bidder acknowledges receipt of all of the following Addenda issued by the District in connection with the Project which modify and are included as a part of the Project Documents:

Addendum No. ____ dated _____, 20___;

Addendum No. ____ dated _____, 20___;

Addendum No. ____ dated _____, 20___;

Addendum No. ____ dated _____, 20___;

(*Attach additional sheets if necessary to describe additional Addenda issued by the District*)

4. **District's Right to Reject Bid**. The Bidder understands that the District reserves the right to reject this bid for the reasons specified in the Notice, in the Information for Bidders, in this Bid Form, and as otherwise authorized by applicable law.

5. **Withdrawal of Bid**. The Bidder understands that it may withdraw this bid at any time prior to the "Date and Time of Bid Opening" identified in the Notice, but that it may not withdraw this bid at any time within ninety (90) days following the Date and Time of Bid Opening.

6. **Documents and Items Submitted *PRIOR* to Bid**. If the District is prequalifying contractors for this Project, all bidders must comply with the Notice Calling for Bids and the Prequalification Questionnaire and must check the applicable item::

_____ The Bidder has prequalified for a District project within the past twelve (12) months and the information it provided for that past project satisfies the criteria for this Project; or

_____ The Bidder has prequalified for a District project within the past twelve (12) months and is providing additional information as required by the Notice Calling for Bids; or

_____ The Bidder is submitting a Prequalification Questionnaire as required by the Notice Calling for Bids.

7. **Documents and Items Submitted with this Bid**. The following documents and items are hereby submitted to the District along with this Bid Form. The Bidder acknowledges that its failure to include any one or more of those documents and items may result in the District rejecting this bid as non-responsive.

7.1 **Bid Security**. The required bid security is attached. The Bidder understands and agrees that if the District accepts this bid and awards the contract for the Project to the Bidder, and if the Bidder thereafter fails or refuses to return executed copies of the Agreement and any or all other documents required from the Bidder under the Project Documents at the

time and in the manner required by the Project Documents, then the bid security shall be forfeited to the District.

7.2 **Designation of Subcontractors**. The required list (or, if the Project involves alternate bids, lists) of proposed subcontractors is (are) attached hereto on the form prescribed by the District. The Bidder represents and warrants that such list(s) is (are) complete and that the Bidder will comply with the Subletting and Subcontracting Fair Practices Act (Public Contract Code Sections 4100 *et seq*.).

7.3 **Noncollusion Affidavit**. The properly executed and notarized noncollusion affidavit required by Public Contract Code Section 7106 is attached.

8. **Execution of Documents and Commencement of Work Following Award of Contract**. If the District decides to accept this bid and award the contract for the Project to the Bidder, then within **five (5)** "**Business Days**" (defined as days on which the District is opened for business) after the District delivers written notice of such acceptance and award to the Bidder, the Bidder will execute and deliver to the District the following documents:

- **Agreement – Section 00500**,
- **Faithful Performance Bond – Section 00610**
- **Payment Bond – Section 00611,**
- **Disabled Veterans Business Enterprise Participation Certification– Section 00416,**
- **Certificate of Insurance – Section 00435**
- **Workers' Compensation Insurance Certificate – Section 00436**,
- **Contractor's Certificate Regarding Non-Asbestos Containing Materials – Section 00437**,
- **Drug Free Workplace Certification – Section 00454**,
- All other Project Documents required by the Information to Bidders to be executed and delivered to the District at that time.

The Bidder further agrees to commence the work required under the Agreement within one (1) day after the District delivers to the Bidder a "**Notice to Proceed**" with the Project, which notice shall be in such form and content as determined by the District unless otherwise specified in the Agreement. The District may, at its discretion, indicate in the Notice to Proceed a later date for the Bidder to commence the work required under the Agreement.

9. **Delivery of Notices to Bidder**. Written communications conveying acceptance of bid, requests for additional information or other correspondence should be mailed, delivered, faxed or e-mailed to the Bidder at the addresses set forth in Section 1 above.

10. **Principals of Bidder**. The name of all of the Bidder's shareholders, partners, members or other persons having an ownership interested in the Bidder or otherwise having an interest as principals in this bid or in the Bidder are as follows:

_____

_____

_____

(*Attach additional sheets if necessary*)

11. **Assignment of Rights**. In submitting this bid, the Bidder offers and agrees (as required by Public Contract Code Section 7103.5(b) and Government Code Section 4552) that if the bid is accepted, the Bidder will assign to the District all rights, title and interest in and to all causes of action the Bidder may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Business & Professions Code Sections 16700 *et seq*.) arising from purchases of goods, materials, or services by the Bidder for sale to the District pursuant to the bid. Such assignment shall be made and become effective at the time the District tenders final payment under the Agreement, without further acknowledgement by the Bidder or the District.

12. **Bidder's License**. The Bidder hereby represents and warrants that (a) it has been issued a California State Contractor's License, (b) the number and class of that license are accurately set forth in Section 1 above, (c) the license is in full force and effect and will remain in full force and effect throughout the term of the Agreement, (d) the license entitles the Bidder to perform and otherwise provide the work required under the Agreement and the other Project Documents, and (e) any and all subcontractors to be employed or engaged by the Bidder will have appropriate licenses.

13. **Compliance with Immigration Reform and Control Act**. The Bidder hereby certifies that it is, and at all times during the term of the Agreement shall be, in full compliance with the provisions of the Federal Immigration Reform and Control Act of 1986 (Public Law 99-603) ("**IRCA**") in the hiring of its employees, and the Bidder shall indemnify, hold harmless and defend the District against any and all actions, proceedings, penalties or claims arising out of the Bidder's failure to comply strictly with the IRCA.

14. **Financial Information**. If requested by the District, the Bidder shall furnish financial statements (in addition to any which may be enclosed herewith pursuant to Section 7.5 above), references, and other information required by the District sufficiently comprehensive to permit the District to appraise the Bidder's ability to perform the obligations required under the Agreement and the other Project Documents.

15. **Warranty Regarding Completion Date**. The Bidder hereby warrants that if the District awards the contract to the Bidder, the Bidder shall cause all work required under the Project Documents to be completed by the Completion Date identified in the Notice. Time is of the essence. The Bidder agrees that failure to complete said work by that

Completion Date will result in the imposition of liquidated damages in the amounts specified in indicated in Section 00500 – Agreement.

16. **Change Orders**. All requests for information, requests for clarification, requests for interpretation, and proposed change orders must be submitted in the form(s) set forth in the Project Documents and must otherwise comply with the provisions of Articles 15 and 16 of the General Conditions. The amount of allowable charges submitted pursuant to a change order shall be limited to the charges allowed under Article 16 of the General Conditions. Indirect, consequential and incidental costs, project management costs, extended home office and field office overhead, administrative costs and profit and other charges not specifically authorized under Articles 16 and 21 of the General Conditions will not be allowed.

The undersigned hereby declares that all of the representations of this bid are made under penalty of perjury under the laws of the State of California.

Dated: _____, 20___

Name of Bidder: _____

By: _____
(*Signature of the person signing on behalf of Bidder, or printed name of corporation or other entity signing on behalf of Bidder*)

Name: _____
(*Printed name here*)

Title: _____
(*i.e., President, General Partner, etc.*)

SANTA ANA UNIFIED SCHOOL DISTRICT
1601 East Chestnut Avenue
Santa Ana, California 92701-6322
(714) 480-5355

Bid Pack: # 01-1 **DSA Application Number: 04-110031**

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we _____ _____ as Principal (hereinafter called the "**Principal**") and _____ _____ as Surety, (hereinafter called the "**Surety"**) are held and firmly bound unto the SANTA ANA UNIFIED SCHOOL DISTRICT (hereinafter called the "**District**") in the penal sum of
_____ Dollars ($_____),

lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally, firmly by these presents. The condition of this obligation is such that whereas the Principal has submitted the accompanying Bid dated _____, 20___, for the construction of:

Santa Ana Unified School District
Muir Elementary Modernizations
PROJECT NO. **04-110031**

NOW THEREFORE, if the District accepts the Principal's bid, and if within **five (5) business days** (*i.e.* days on which the District is opened for business) thereafter the Principal enters into a written contract with the District in accordance with the bid as accepted, and if by no later than said **fifth (5th)** business day the Principal shall give the required bonds with good and sufficient sureties for the faithful performance and proper fulfillment of such contract, and for the prompt payment of labor and material furnished in connection with that contract, or in the event of the failure of the Principal to enter into such contract and to give such bonds, if the Principal shall pay to the District within ten (10) business days after the District's request the difference between the amount specified in the bid and the amount for which District may in good faith contract with another party to perform the work covered by the bid, then the above obligation shall be void and of no effect, otherwise it shall remain in full force and effect. The full payment of the sum stated above shall be due immediately if Principal fails to execute the Contract as indicated herein.

Forfeiture of this bond shall not preclude District from seeking any or all other remedies provided by law to cover losses sustained as a result of the Principal's failure to do any

of the foregoing, and this bond shall not be a limitation on the Principal's liability therefore.

Upon the District's request, the Surety will provide the District with all of the documents specified in subdivision (a) of California Code of Civil Procedure Section 995.660.

If the District is required to initiate legal proceedings to recover on this bond, it may also recover (in addition to any other relief to which it may be entitled) all reasonable costs and expenses incurred in connection with those legal proceedings, including, without limitation, reasonable attorneys' fees, accountants' fees and experts' fees.

Unless otherwise required by law, no bidder may withdraw its bid for ninety (90) days after the date of the bid opening.

Any claims under this bond may be addressed to the Surety at the following address:

_____
_____
_____
_____
Attention: _____
Telephone No.: (_____) _____-_____
Fax No.: (_____) _____-_____
E-mail Address: _____

IN WITNESS WHEREOF the above-bounded parties have executed this instrument on _____, 20___.

"Principal"

_____
_____

By: _____
Name: _____
Title: _____

"Surety"

_____
_____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Attach evidence (in the form of a Power of Attorney or some other evidence satisfactory to the District) that the Surety's signatory or signatories who have signed this bond on behalf of the Surety are authorized by the Surety to do so and to bind the Surety to the obligations set forth herein.

SANTA ANA UNIFIED SCHOOL DISTRICT
1601 East Chestnut Avenue
Santa Ana, California 92701-6322
(714) 480-5355

Bid Pack: # 1 **DSA Application Number: 04-110031**

NONCOLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

(Public Contract Code Section 7106)

State of California)
) ss
County of _____)

_____, being first duly sworn, deposes and says that
(Name of person signing bid)

he or she is _____, of _____,
(Title of Signer) (Name of Bidder)

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

I certify and declare under penalty of perjury under the laws of the State of California that all the foregoing information in this Noncollusion Affidavit is true and correct.

Contractor: _____

By: _____

Name: _____

Title: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____, personally appeared _____, 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:_____ [place seal here]

SANTA ANA UNIFIED SCHOOL DISTRICT
1601 East Chestnut Avenue
Santa Ana, California 92701-6322
(714) 480-5355

Bid Pack: # 1 **DSA Application Number: 04-110031**

DESIGNATION OF SUBCONTRACTORS

In compliance with the Subletting and Subcontracting Fair Practices Act (Public Contract Code Sections 4100 *et seq*.) and any amendments thereto, each bidder submitting a bid as a general or prime contractor on the project identified above shall set forth below the name, license number, and the location of the place of business of each subcontractor who will perform work or labor or render service to the bidder in or about the construction of the work or improvement to be performed in connection with the project, or a subcontractor licensed by the State of California who, under subcontract to the bidder, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of one percent (0.5%) of the bidder's total bid; In case more than one subcontractor is named for the same kind of Work, state the portion that each will perform. Vendors or suppliers of materials only do not need to be listed.

If a bidder fails to specify a subcontractor for any portion of the work in excess of one half of one percent (0.5%) of the bidder's total bid, then the bidder shall be deemed to have agreed that the bidder is fully qualified to perform that portion, and that the bidder alone shall perform that portion. Violation of this provision (including without limitation the procurement of subcontractors for the project if no subcontractor is specified herein) can result in the District invoking any available remedies, including without limitation the remedies of Public Contract Code Sections 4110 and 4111, and District hereby reserves any and all rights in this regard.

The bidder should use the form attached on the following page to designate its subcontractors for the project. To the extent that additional space is needed, the bidder should complete and attach additional copies of that form. In addition to information necessary to identify the subcontractors, each page of that form should include the bidder's name, the bid number, the project number, the project title, and the school name.

Alternates. Each page of that form should also indicate whether the designation of contractors pertains to the bidder's base bid or (if the project involves alternate bids) an alternate bid; if the designation pertains to an alternate bid, the alternate bid number should also be specified.

[Form on the Next Page]

Name of Bidder: _____

Bid No: _____ **Project No.:** _____ **Project Title:** _____ **School:** _____

This Designation Pertains to (*Check one*): ____ **Base Bid** ____ **Alternate Bid No.** ____

Portion of Work to be Performed by Subcontractor	Name of Subcontractor	License No.	Location

Contractor: _____

By: _____

Name: _____

Title: _____

SANTA ANA UNIFIED SCHOOL DISTRICT
1601 East Chestnut Avenue
Santa Ana, California 92701-6322
(714) 480-5355

Bid Pack: # 1 **DSA Application Number: 04-110031**

DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION CERTIFICATION

Certification of Participation. At the time of execution of the Contract, the Contractor will provide a statement to the District of the participation of DVBEs in the Contract at that time.

Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program ("Program") for the construction and/or modernization of school buildings to have a participation goal for disabled veteran business enterprises ("DVBE") of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district on projects that receive state funding.

1. **Disabled Veteran Business Enterprise.** A DVBE is a business enterprise certified by the California Office of Small Business as a DVBE.

2. **DVBE Participation Policy.** The District is committed to achieving this DVBE participation goal. The District encourages Contractor to ensure maximum opportunities for the participation of DVBEs in the Work of the Contract.

3. **DVBE Participation Goal.** The three percent (3%) participation goal is not a quota, set-aside or rigid proportion.

4. **Submission of Report.** During performance of the Contract, Contractor shall monitor the Work of the Contract, award of subcontracts and contracts for materials, equipment and supplies for the purpose of determining DVBE participation in the Work of the Contract.

a. Contractor shall report on a monthly basis all DVBEs utilized in the performance of the Work, the type or classification of the Work performed by each DVBE, and the dollar value of the Work performed by each DVBE.

b. Upon completion of the Work of the Contract, Contractor shall submit a report to the District in the form attached hereto identifying all DVBEs utilized in the

performance of the Work, the type or classification of the Work performed by each DVBE, and the dollar value of the Work performed by each DVBE.

i. The submission to the District of this report is a condition precedent to the District's obligation to make payment of the Final Payment under the Contract Documents. The submission of this report shall be in addition to, and not in lieu of, any other conditions precedent set forth in the Contract Documents for the District's obligation to make payment of the Final Payment.

ii. The District reserves the right to request additional information or documentation from the Contractor evidencing efforts to comply with the three percent (3%) DVBE participation goal.

DVBE PARTICIPATION REPORT

Contractor Name: _____ Date: _____

Project Name: _____ Project Number: _____

DVBE Firm Name	Trade / Portion of Work	Subcontract / Contract Value
Add more sheets as needed to include all information for each DVBE		

Does the cumulative dollar value of these DVBE contracts meet or exceed the participation goal of three percent (3%) of the final Contract Price, as adjusted by all change orders?

YES _____ NO _____

If your response is "NO", please attach to this report a detailed description of the reasons for your firm did not achieve the participation goal of three percent (3%) of the final Contract Price.

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

_____
Name of Contractor

_____
Signature

_____
Print Name

_____
Title

_____
Date

SANTA ANA UNIFIED SCHOOL DISTRICT
1601 East Chestnut Avenue
Santa Ana, California 92701-6322
(714) 558-5576

Bid Number: 1 **DSA Application Number: 04-110031**
Project Title: Modernization **School: Muir Fundamental Elementary**

CONTRACTOR'S PREQUALIFICATION QUESTIONNAIRE

_____, 20___

The Santa Ana Unified School District ("District") has determined that bidders on this Project must be prequalified prior to submitting a bid on the project. Each prospective contractor shall be currently licensed and shall submit the following information to establish its qualifications to bid to perform construction work on the Project. **A Contractor's bid for the Project will not be accepted unless the District has prequalified the Contractor.**

A Contractor who submits a complete Prequalification Questionnaire thereby consents to and will comply with the procedures outlined below and as set forth in greater detail in this document.

A. **Form.** Each Contractor shall fully complete the Prequalification Questionnaire and timely submit all documents as indicated therein. No other prequalification documents submitted by Contractor will meet these requirements. All information requested in the Prequalification Questionnaire must be provided in order for a Prequalification Questionnaire to be considered responsive. The Prequalification Questionnaire shall be submitted simultaneously as one package – it shall not be submitted piecemeal. Contractors shall submit one (1) completed Prequalification Questionnaires in a sealed envelope as indicated above. A Contractor's submission of an incomplete and/or unclear Prequalification Questionnaire will likely result in a determination that the Contractor is non-responsive.

B. **District's Review.** Information submitted in the Prequalification Statement shall not be public information and shall not be open to public inspection, to the extent permitted by law. Once a Contractor's Prequalification Statement is submitted, the District will notify the Contractor if the Contractor meets the prequalification requirements and, if so, the maximum size of the contract upon which the Contractor is prequalified to bid, which will be fifty percent (50%) of the Contractor's total aggregate bonding capacity as indicated herein.

C. **Nonresponsiveness.** A Contractor's Prequalification Questionnaire shall be deemed nonresponsive if:

1. The Prequalification Questionnaire is not returned on time.
2. Contractor does not provide all requested information on District forms.
3. The Prequalification Questionnaire is not signed under penalty of perjury by individuals who have the authority to bind the Contractor on whose behalf they are signing.
4. Information contained in the Prequalification Questionnaire is not updated under penalty of perjury when it is no longer accurate.
5. Any information provided by the Contractor is misleading or inaccurate in any material manner (e.g., financial resources are overstated; previous violations of law are not accurately reported). Even after a Contractor has been prequalified, the District reserves the right to revoke that determination at any subsequent time, to terminate any contract awarded, and to cease making payments if it determines that any information provided by the Contractor in its Prequalification Questionnaire or subsequently was incomplete, misleading, or inaccurate in any material manner.

D. **Previously Prequalified Contractors**. All Contractors must satisfy the Essential Criteria for this Project, as indicated in section (F)(1)(a). A Contractor that prequalified on a District project within the past twelve (12) months and needs to update their list in order to maintain their prequalification status by listing additional projects to satisfy these criteria must submit a Prequalification Questionnaire, but need only do the following:

1. Write "Unchanged" on all sections of the Prequalification Questionnaire that remain unchanged;
2. Provide additional information for the sections of the Prequalification Questionnaire that the Contractor must update, including "**Section: G. PROJECT REFERENCES**"; and
3. Recertify the Prequalification Questionnaire by executing "**Section: L. CERTIFICATION."**

E. **Appealing A Prequalification Finding**

A Contractor may appeal the District's decision. If a Contractor decides to appeal the District's prequalification decision, it must follow this procedure: Within three (3) working days from receipt of the District's prequalification notice/finding, Contractor must submit, in writing, a request for a meeting with the District's staff. Contractor must submit with the request any and all information that it believes supports a finding that District's determination should be changed.

FAILURE OF A CONTRACTOR TO TIMELY FOLLOW THIS APPEAL PROCEDURE SHALL BE A WAIVER OF THE CONTRACTOR'S RIGHT TO APPEAL THE DISTRICT'S DECISION.

A. CONTRACTOR'S INFORMATION

Firm name: _____

Address: _____

Telephone: _____

Fax: _____

Mobile Telephone: _____

E-mail: _____

By: _____ Date:_____
(Name of individual completing Prequalification Questionnaire)

Years in business as a **insert license requirement** licensed contractor: _____

Types of work performed with own forces: _____

_____

_____

Years in business under current firm name: _____

Years at the above address: _____

Receipt and acceptance of the following addenda is hereby acknowledged:

No._____, Dated _____

No._____, Dated _____

No._____, Dated _____

B. CURRENT ORGANIZATION AND STRUCTURE OF THE BUSINESS

For Firms That Are Corporations:

1 Date incorporated : _____
2 Type of corporation (e.g., S Corp., C Corp., LLC): _____
3 Under the laws of what state: _____
4 Provide all the following information for each person who is either (a) an officer of the corporation (president, vice president, secretary, treasurer), or (b) the owner of at least ten percent (10%) of the corporation's stock. Attach all additional references and/or information on separate signed sheets.

Name	Position	Years with Co.	% Ownership

For Firms That Are Partnerships:

1 Date of formation: _____
2 Type of partnership (e.g., general, limited): _____
3 Under the laws of what state: _____
4 Provide all the following information for each partner who owns ten percent (10%) or more of the firm. Attach all additional references and/or information on separate signed sheets.

Name	Position	Years with Co.	% Ownership

For Firms That Are Sole Proprietorships:

1 Date of commencement of business: _____

Name	Position	Years with Co.

For Firms That Intend to Bid as a Joint Venture:

1 Date of commencement of joint venture: _____

2 Provide all of the following information for each firm that is a member of the joint venture that expects to bid on one or more projects. Attach all additional references and/or information on separate signed sheets.

Name of Firm	% of Ownership of Joint Venture

3 Provide all the following information for each owner of a firm that is a participant in a joint venture. Attach all additional references and/or information on separate signed sheets.

Firm Name	Name of Owner	Position	Years with Co.	% Owner-ship of Co.

C. ASSOCIATED FIRMS

Identify every construction firm and/or construction management firm that the contractor or any person listed above has been associated with (as owner, general partner, limited partner or officer) at any time during the past five (5) years. Attach all additional references and/or information on separate signed sheets. NOTE: For this question, "owner" and "partner" refer to ownership of ten percent (10%) or more of the business, or ten percent (10%) or more of its stock, if the business is a corporation.

State Person's Name or "Contractor" if Your Firm was Associated with Another Firm	Construction Firm or Construction Management Firm Name	Contractor's License No.	Dates of Person's Participation with Company

D. HISTORY OF THE BUSINESS AND ORGANIZATIONAL PERFORMANCE

Has there been any change in ownership of the firm at any time during the past three years? **NOTE**: A corporation whose shares are publicly traded is not required to answer this question.

(Please circle one) **Yes** **No**

If "yes," explain on a separate signed sheet.

Is the firm a subsidiary, parent, holding company, or affiliate of another construction firm? **NOTE**: Include information about other firms if one firm owns ten percent (10%) or more of another, or if an owner, partner, or officer of your firm holds a similar position in another firm.

(Please circle one) **Yes** **No**

If "yes," explain on a separate signed sheet, including the name of the related company and the percent ownership

Are any corporate officers, partners or owners connected to any other construction firms? **NOTE**: Include information about other firms if an owner, partner, or officer of your firm holds a similar position in another firm.

(Please circle one) **Yes** **No**

If "yes," explain on a separate signed sheet.

State your firm's gross revenues for each of the past three (3) years:

Year	Gross Revenue
	$
	$
	$

E. CONTRACTOR'S LICENSES

Contractor shall be licensed in the State of California and shall submit the following information:

1. Name of license holder exactly as on file with the California State License Board: ___ _____

2. License classification(s): _____

3. License #: _____

4. Expiration Date: _____

5. Number of years license holder has held the listed license(s): _____

6. Number of years contractor has done business in California under contractor's license law: _____

7. Number of years contractor has done business in California under **current** contractor's license: _____

8. Has your firm changed names or license numbers in the past five years?
   (Please circle one) **Yes** **No**

   If "yes," explain on a separate signed sheet, including the reason for the change.

F. EVALUATION CRITERIA

1. Essential Criteria

a. Has your firm contracted for and completed at least five (5) separate construction projects during the past five (5) years for a California K-14 public school district or California community college district, each performed under the same license classification required by the District for the scope of work you will bid on for this Project?

(Please circle one) **Yes** **No**

b. Is your total base bid amount for this Project fifty percent (50%) or less than your current total aggregate bonding capacity?

(Please circle one) **Yes** **No**

c. Has your firm held for the past five (5) years without revocation or suspension all contractors license(s) necessary to perform the scope of work you will bid on for this Project?

(Please circle one) **Yes** **No**

d. Has your firm and/or any firm identified above in Section B and/or Section C defaulted on a contract within the past five (5) years or declared bankruptcy or been placed in receivership within the past five (5) years?

(Please circle one) **Yes** **No**

e. Has your firm and/or any firm identified above in Section B and/or Section C ever been disqualified, debarred, forbidden, found non-responsible, or otherwise prohibited, from performing work and/or bidding on work for any school district or other public agency within California within the past five (5) years?

(Please circle one) **Yes** **No**

f. Has your firm and/or any firm identified in Section B and/or Section C ever been terminated for cause by any school district or other public agency on any project within California within the past five (5) years?

(Please circle one) **Yes** **No**

g. Has your firm and/or any firm identified in Section B and/or Section C or any of its owners or officers been convicted of a crime involving the bidding for, awarding of, or performance of a contract with a public entity; making a false claim(s) to any public entity; or fraud, theft, or other act of dishonesty to any contracting party?

(Please circle one) **Yes** **No**

If you answered "NO" to Question a, b, or c or "YES" to Question d, e, f, or g then STOP. You are not eligible for prequalification at this time. Otherwise, please complete the remainder of this Prequalification Questionnaire.

2. Other Criteria

a. Has your firm and/or any firm identified in Section B or Section C ever been cited and/or assessed any penalties for non-compliance with state and/or federal laws and/or regulations, including public bidding requirements and Labor Code violations, within the past five (5) years?

(Please circle one) **Yes** **No**

If "yes," indicate on separate signed sheet(s) the project name(s), violation(s), and date(s) of incidents.

b. Has your firm and/or any firm identified in Section B or Section C ever been cited and/or assessed penalties by the Environmental Protection Agency, any air quality management district, any regional water quality control board, or any other environmental agency within the past five (5) years?

(Please circle one) **Yes** **No**

If "yes," indicate on separate signed sheet(s) the project name(s), violation(s), and date(s) of citation.

c. Has CAL OSHA cited and assessed penalties against your firm and/or any firm identified above in Section B and/or Section C for any "serious," "willful" or "repeat" violations of its safety or health regulations within the past five (5) years?

(Please circle one) **Yes** **No**

If "yes," indicate on separate signed sheet(s) the project name(s), violation(s), and date(s) of citation. If the citation was appealed to the Occupational Safety and Health Appeals Board and a decision has been issued, state the case number and the date of the decision.

d. Has the federal Occupational Safety and Health Administration cited and assessed penalties against your firm and/or any firm identified above in Section B and/or Section C within the past five (5) years?

(Please circle one) **Yes** **No**

If "yes," indicate on separate signed sheet(s) the project name(s), violation(s), and date(s) of citation. If you have filed an appeal of a citation and the Appeals Board has not yet ruled on your appeal, or if there is a court appeal pending, you need not include information about the citation.

e. Has your firm and/or any firm identified in Section B or Section C been required to pay either back wages or penalties for its failure to comply with California's prevailing wage laws, with California's apprenticeship laws or regulations, or with federal Davis-Bacon prevailing wage laws within the past five (5) years?

(Please circle one) **Yes** **No**

If "yes," attach a separate signed page or pages, describing the nature of each violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid and the amount of back wages and penalties that you were required to pay.

f. Provide the name, address and telephone number of the apprenticeship program (approved by the California Apprenticeship Council) from whom you intend to request the dispatch of apprentices to your company for use on any public work project for which you are awarded a contract by the District.

_____

_____

G. PROJECT REFERENCES

List ***ALL*** projects that your firm contracted for and completed during the past five (5) years. Within that list, you must identify the five (5) projects that satisfy the Essential Criteria section (F)(1)(a). You may limit your response to the **ten (10) most-recently completed projects**, but you must include the projects that satisfy the above-referenced Essential Criteria, even if they are not within your firm's ten (10) most recently completed projects.

Include all information indicated below and attach references on separate signed sheets as necessary. Please use and attach additional signed sheets when needed to explain or clarify any response.

Project Name/Identification: _____

1 Name of contractor/entity performing work: _____
2 Project owner: _____
3 Project architect (name and telephone number for District reference): _____
4 If contractor was a subcontractor on the project, name of general contractor: _____
_____
5 Specific license classification required by the contract/scope of work: _____
6 Project address/location: _____
7 Original completion date: _____
8 Date completed: _____
9 Initial contract value (as of time of bid award): _____
10 Final contract value: _____
11 Were liquidated damages assessed (If yes, explain): _____
12 Contact for verification (name and telephone number for District reference): _____
_____
13 Did the project include constructing or modernizing an earthquake resistant building? ___
_____
14 Did the project owner, general contractor, architect, or construction manager file claim(s) in an amount exceeding $50,000 against you or your firm, or did you or your firm file claim(s) in an amount exceeding $50,000 against a project owner, general contractor, architect, or construction manager? If yes, explain and indicate on separate signed sheet(s) the project name(s), claim(s), and date(s) of claim(s).

H. CONTRACTOR'S BONDING/SURETY

Contractors must fully comply with all bid conditions including, without limitation, a ten percent (10%) bid bond, a hundred percent (100%) payment bond, and a hundred percent (100%) performance bond. Contractor's surety must be admitted and authorized to transact business as a surety in California. List all sureties utilized in the past five (5) years. Use separate signed sheets as necessary, with all requested information.

Name of bonding company (not agency): _____
_____

Address of company: _____
_____

Name of agent: _____

Address and telephone number of agent: _____
_____

Years contractor has been with this surety: _____

1 Amounts paid out by or work performed by surety in the past five (5) years that were in any way related to construction activities of contractor and/or any firm identified above in section B and/or Section C (Please provide an explanation on separate signed sheets): $ _____

2 Has your firm and/or any firm identified in Section B above paid a premium of more than one percent (1%) for a performance and payment bond on any project(s) at any time during the past five (5) years? If yes, state the percentage paid. You may provide an explanation for a percentage rate higher than one percent, if you wish to do so: _____
_____%

3 During the past five (5) years, has your firm and/or any firm identified above in Section B and/or Section C, ever been denied bond coverage by a surety company, or has there ever been a period of time when your firm had no surety bond in place during a public construction project when one was required?

(Please circle one) **Yes** **No**

If yes, provide details on a separate signed sheet indicating the date(s) when your firm was denied coverage and the name of the company or companies which denied coverage; and the period(s) during which you had no surety bond in place.

4 Provide written evidence from your surety of your firm's current total aggregate bonding capacity.

I. CONTRACTOR'S INSURANCE

List all insurers your firm and any firm identified in Section B utilized in the past five (5) years. Use separate signed sheets as necessary, with all requested information.

1 Name of insurance company ("Insurer"): _____
_____

2 Address of Insurer: _____
_____

3 Name of agent: _____

4 Address of agent: _____
_____

5 Telephone number of agent: _____

6 Years your firm and any firm identified in Section B has been with this Insurer: _____

7 Amounts paid out by Insurer in the past five (5) years that were in any way related to construction activities of your firm or any firm identified in Section B (Please provide an explanation on separate signed sheets): $ _____

8 Insurer's "Best" rating: _____

J. WORKERS' COMPENSATION EXPERIENCE MODIFICATION RATE

State your firm's Workers' Compensation Experience Modification Rate for the past five (5) years (including any firm identified in Section B, above):

Year	Modification Rate
(**Current**):	

Within the past five (5) years, has there ever been a period when your firm or any firm identified in Section B above had employees but was without workers' compensation insurance or state-approved self-insurance?

(Please circle one) **Yes** **No**

If yes, indicate on separate sheet(s) of paper the date(s) and reason(s) for the absence of workers' compensation insurance.

K. CONTRACTOR'S FINANCIAL INFORMATION

Your firm must submit an audited or reviewed financial statement for the past two (2) full fiscal years. A letter verifying availability of a line of credit may also be attached; however, it will be considered as supplemental information only, and is not a substitute for the required financial statement.

L. CERTIFICATION

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

Date: _____

Proper Name of Contractor: _____

Signature:_____

By: _____ (Print Name)

Title: _____

SANTA ANA UNIFIED SCHOOL DISTRICT
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Bid Pack: # 1 **DSA Application Number: 04-110031**

CERTIFICATE OF INSURANCE

The undersigned, _____ (the "**Insurance Company**"), hereby certifies to Santa Ana Unified School District (the "District") as follows:

The following policies of insurance ("**Policies**") have been issued by the Insurance Company to _____ (the "**Insured**"), and the policies are in full force and effect as of the execution of this Certificate of Insurance:

Policy Number	Expiration Date	Type of Coverage	Amount of Coverage: Each Occurrence	Amount of Coverage: Aggregate
		A. Commercial General Liability Combined, Single Limit	$2,000,000	$5,000,000
		B. Automobile Liability (Any Auto) Combined, Single Limit	$2,000,000	$5,000,000
		C. Excess Liability	Sufficient to cover the above limits if the above policies do not cover the required limits.	
		D. Employers' Liability	$2,000,000	
		E. Builder's Risk (Course of Construction)	N/A	
		F. Workers' Compensation Insurance	Statutory Limits	

The following types of coverage are included in said policies (indicate by "X" in space):

A. **Commercial General Liability**

Commercial General	YES _____	NO _____
Comprehensive General	YES _____	NO _____
Premises-Operations	YES _____	NO _____
Explosion and Collapse Hazard	YES _____	NO _____
Underground Hazard	YES _____	NO _____
Products/Completed Operations	YES _____	NO _____
Contractual Insurance	YES _____	NO _____
Broad Form Property Damage Including Completed Operations	YES _____	NO _____
Independent Contractors	YES _____	NO _____
Personal Injury	YES _____	NO _____

B. **Builder's Risk (Course of Construction)**

Fire	YES _____	NO _____
Vandalism	YES _____	NO _____
Malicious Mischief	YES _____	NO _____

The District and Construction Manager is named as an additional insured on all such policies, except as follows: (*if no exceptions, indicate "no exceptions"*): _____.

This Certificate of Insurance is not an insurance policy and does not amend, extend, or alter the coverage afforded by the Policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this Certificate of Insurance may be issued or may pertain, the insurance afforded by the Policies described herein is subject to all the terms, exclusions, and condition of such Policies.

The Insurance Company will give at least thirty (30) days written notice by certified mail to the District and Construction Manager prior to any material change or cancellation of said Policies.

The Insurance Company is admitted and licensed to do business in California, has an agent for service of process in California, and has an **"A"** policyholder's rating and a financial size rating of at least **Class VIII** in accordance with the most current Best's Key Rating Guide, Property-Casualty.

Dated: _____, 20___

_____	_____
Named Insured	Insurance Company
_____	_____
Street Address	Street Address
_____	_____
City and State	City and State
	By:_____
	(Signature of Company Representative)
	Printed Name:_____
	Title:_____

No substitution or revision to the above certificate form will be accepted. If the insurance called for is provided by more than one insurance company, a separate certificate in the exact above form shall be provided for each insurance company.

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WORKERS' COMPENSATION CERTIFICATE

Labor Code Section 3700 provides as follows:

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

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

Dated: _____, 20___

Contractor: _____

By: _____

Name: _____

Title: _____

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CONTRACTOR'S CERTIFICATE REGARDING
NON-ASBESTOS CONTAINING MATERIALS

Per Section 11.2.1 of the General Conditions.

Contractor Name (the "Contractor") hereby certifies that no asbestos or asbestos-containing materials shall be used in this Project or in any tools, devices, clothing, or equipment used to affect the _____ which we have installed in the _____ Project at Santa Ana Unified School District under Project – _____

(a) The Contractor further certifies that he/she/it has instructed the Contractor's employees with respect to the above mentioned restrictions and has discussed with those employees the hazards, risks and liabilities associated with asbestos and asbestos-containing materials.

(b) Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite and actinolite.

(c) Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.

(d) Any disputes involving the question of whether or not material contains asbestos shall be settled by electron microscopy; the costs of any such tests shall be paid by the Contractor if the material is found to contain asbestos.

(e) All work or materials found to contain asbestos or work or material installed with asbestos-containing equipment will be immediately rejected and this work will be removed at no additional cost to the District.

Contractor: _____

By: _____

Name: _____

Title: _____

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Work Plan and Milestone Schedule

Task Name	Finish Date
Pre-construction:	October 03, 2012
Bid Opening:	January 30, 2012
Award:	February 15, 2012
Notice to Proceed:	February 22, 2012
Start Construction Phase:	June 15, 2012
Construction Completion:	August 21, 2012
Punchlist/Closeout completion:	35 Days from Filing of Notice of Completion

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Drug-Free Workplace Certification

This Drug-Free Workplace Certification is required pursuant to Government Code Sections 8350 *et seq*., the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract for the procurement of any property or services from any state agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract awarded by a state agency may be subject to suspension of payments or termination of the contract, and the contractor may be subject to debarment from future contracting, if the State agency determines that specified acts have occurred.

The District is not a "state agency" as defined in the applicable section(s) of the Government Code, but the District is a local agency and public school district under California law and requires all contractors on District projects to comply with the provisions and requirements of Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990.

Pursuant to Government Code Section 8355, the undersigned (hereinafter referred to as the "**Contractor**") hereby certifies that the Contractor will provide a drug-free workplace by doing all of the following:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying actions, which will be taken against employees for violations of the prohibition;

(b) Establishing a drug-free awareness program to inform employees about all of the following:

(1) The dangers of drug abuse in the workplace;

(2) The Contractor's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation and employee-assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations;

(c) Requiring that each employee engaged in the performance of the contract awarded to the Contractor in connection with the above-referenced Project ("**Agreement**") by the Santa Ana Unified School District ("**District**") be given a copy of the statement required by subdivision (a) and that, as a condition of employment on that Agreement, the employee agrees to abide by the terms of the statement.

The Contractor understands that if the District determines that the Contractor has either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of Government Code Section 8355, then the Agreement is subject to suspension of payments, termination, or both. The Contractor further understands that if it violates the terms of the Drug-Free Workplace Act of 1990, the Contractor may be subject to debarment in accordance with the requirements of Government Code Sections 8350 *et seq*.

The Contractor acknowledges that it is aware of the provisions of Government Code Sections 8350 *et seq*., and hereby certifies that the Contractor will adhere to the requirements of the Drug-Free Workplace Act of 1990.

_____
Name of Contractor

_____
Signature

_____
Print Name

_____
Title

_____
Date

SANTA ANA UNIFIED SCHOOL DISTRICT
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AGREEMENT

THIS AGREEMENT, dated the ____ day of _____, 20___, is entered into by and between SANTA ANA UNIFIED SCHOOL DISTRICT (hereinafter referred to as the "District"), and_____. (hereinafter referred to as the "Contractor").

The District and the Contractor, for the consideration stated herein, agree as follows:

Project Documents. References herein to the "complete contract" or the "Project Documents" shall mean not only this Agreement but also the "General Conditions" and all other "Project Documents" identified in Section 5 of the "Information for Bidders" issued by the District in connection with the above-referenced project (the "Project"). The Project Documents are complementary, and what is called for by any one shall be as binding as if called for by all. Without limiting the generality of the foregoing, all of the General Conditions are incorporated herein by this reference as though fully set forth in this Agreement.

Contractor's Performance of Work. The Contractor shall perform within the time set forth in Paragraph 4 of this Agreement everything required to be performed, and shall provide and furnish all the labor, materials, necessary tools, expendable equipment, and all utility and transportation services as described in the complete contract and required for construction for that certain project identified by the District as John Muir Fundamental Elementary Modernization and designated by the District as its Project No. 04-110031. All of said work to be performed and materials to be furnished shall be completed in a good workmanlike manner in strict accordance with the "Plans and Specifications" (as defined in the Information for Bidders) and all provisions of the complete contract. The Contractor shall be liable to the District for any damages arising as a result of a failure to fully comply with this obligation, and the Contractor shall not be excused with respect to any failure to so comply by any act or omission of the architect, engineer, and/or inspector assigned to the Project by the District (the "Architect", "Engineer" and "Inspector", respectively), or by the California Department of General Services' Division of the State Architect ("DSA"), or by any representative of any of them, unless such act or omission actually prevents the Contractor from fully complying with the requirements of the Project Documents, and unless the Contractor protests at the time of such alleged prevention that the act or omission is preventing the Contractor from fully complying with the Project Documents. Such protest shall not be effective unless reduced to writing and filed with the District within three (3) "Business Days" (defined as days on which the District is opened for business) of the date of occurrence

of the act or omission preventing the Contractor from fully complying with the Project Documents.

Compensation to Contractor. The District shall pay to the Contractor, as full consideration for the faithful performance of this Agreement, and subject to any additions or deductions as provided in the Project Documents, the sum of _____ and _____Cents (_____).

Commencement and Completion of Work. The work required to be performed by the Contractor under this Agreement shall start no later than the specified commencement date listed in the "Notice to Proceed" and shall be completed no later than_____.

Liquidated Damages. Time is of the essence. The Contractor acknowledges that the District will suffer damage if (a) the Contractor fails to complete (or cause its subcontractors to complete) any of the construction milestones identified in any approved Construction Schedule (as that term is defined in the General Conditions) by the deadline dates identified for such completion in the Construction Schedule (including without limitation any construction milestones or deadline dates contained in any submittal schedule, procurement schedule, commissioning schedule or close-out schedule), or (b) the work required of the Contractor under this Agreement is not completed by the time specified herein above. Since it is impractical and infeasible to determine the amount of actual damage, the parties hereto agree that in accordance with Government Code Section 53069.85, the Contractor shall pay to the District as fixed and liquidated damages, and not as a penalty, the sum of:

_____**One Thousand Five Hundred Dollars ($1,500.00**_____)

for each consecutive calendar day of delay, from and including the date on which the delay began, through and including the day on which the delay ceased (and including all intervening weekend days and holidays), until the work that is the subject of the delay is completed and accepted. This amount shall be deducted from any payments due to or to become due to the Contractor. The Contractor and the Contractor's surety shall be liable for the amount thereof. Time extensions may be granted by the District as provided in Article 14 of the General Conditions.

Default by Contractor. If the Contractor fails to furnish tools, equipment, or labor in the necessary quantity or quality, or fails to prosecute the work or any part thereof contemplated by this Agreement in a diligent and workmanlike manner, or fails to comply with any of the Project Documents, then the District's Board of Education, the District's Superintendent, or any designee of the Superintendent may deliver a written notice to the Contractor demanding that the Contractor cure such failure. If such failure is not cured within the time frame indicated in that notice and as indicated in the Project Documents, then the Contractor shall automatically be deemed to be in default of this Agreement without further notice from the District. Without limiting any other remedy available to the District pursuant to the Project Documents and/or applicable law, such default shall entitle the District to (a) exclude the Contractor from the Project premises (or any portion thereof in the District's discretion), (b) take possession of said premises (or portion thereof), together with all material and equipment thereon, and/or

(c) complete all or any portion of the work contemplated by this Agreement, either by (i) furnishing the tools, equipment, labor or material necessary, or (ii) letting the unfinished portion of said work (or the portion taken over by the District) to another contractor, or (iii) a combination of those methods. The cost to the District of exercising any such remedy shall be a charge against the Contractor; the Contractor agrees to pay all such costs to the District upon the District's demand, and agrees that the District shall also have the right to deduct any or all such costs from any money due or becoming due to the Contractor from the District under this Agreement or any other agreement. Any surety executing any bond included among the Project Documents or otherwise agreeing to perform the Contractor's obligations under this Agreement shall also be liable for payment of said costs incurred by the District in connection with the exercise of the remedies described above, if the Contractor fails to pay those costs as required hereby.

Indemnification, Defense and Hold Harmless. The Contractor shall indemnify, defend, and hold harmless the District, the Architect, the District's owner's representative assigned to the Project by the District, the District's project manager assigned to the Project, and the District's construction manager assigned to the Project, and each of their respective shareholders, governing board members, directors, officers, partners, members, managers, agents, employees, engineers, contractors, subcontractors, volunteers, or consultants (the "Indemnified Parties") from an against any and all actions, agreements, attorneys' fees, causes of action, claims, contracts, costs, covenants, damages, debts, demands, expenses, judgments, lawsuits, liabilities, liens, losses, obligations, orders, and rights of whatever kind or nature in law, equity or otherwise, which arise out of or are in any way connected with the bidder's (or any of its subcontractors', its consultants' or its independent contractors') performance of work under this Agreement (or any subcontract there under) or otherwise in connection with the Project, (collectively, the "Claims"), save and except such Claims that are determined by a court of competent jurisdiction to have arisen from the active negligence or willful misconduct of an Indemnified Party. Without limiting the generality of the foregoing, the Contractor will indemnify, defend and hold harmless the Indemnified Parties against Claims arising from or in any way connected to:

The negligence or willful misconduct of the Contractor or its shareholders, directors, officers, partners, members, managers, agents, employees, engineers, consultants, contractors, or subcontractors;

The death of or bodily injury to any person, regardless of whether that death or injury occurs at the Project site or on or off of any other District property;

Injury to property, loss of property, or theft of property, regardless of whether that injury, loss or theft occurs at the Project site or on or off of any other District property; or

Any other loss, damage or expense sustained by the Contractor.

The Contractor – at it's own expense, cost, and risk – shall defend at the District's request any and all Claims that may be brought or instituted against any of the Indemnifies Parties, and shall pay or satisfy any judgment that may be rendered against

any of the Indemnified Parties in any action, suit or other proceedings as a result thereof.

Insurance. The Contractor shall, at its expense, purchase and keep in force throughout the term of this Agreement, policies of insurance which are issued by insurers meeting the qualifications established by Article 18 of the General Conditions and Section 00435 – Certificate of Insurance. Those policies shall provide the types of insurance required by Contract Documents. The Contractor and its insurer shall provide a completed Certificate of Insurance in the form attached as Section 00435 – Certificate of Insurance, and not an insurance company form.

Substitution of Securities for Moneys Withheld, or Payment to Escrow Holder of Retentions, Pursuant to Public Contract Code § 22300. Pursuant to Public Contract Code Section 22300, and at the request and expense of the Contractor, securities equivalent to the amount of any monies withheld by the District to ensure the Contractor's performance under this Agreement shall done in compliance with in the form of the Escrow Agreement for Security Deposits in Lieu of Retention – Section 00501.

Additional Requirements if Project Involves Trenches or Excavations. Pursuant to Public Contract Code Section 7104, if the Project involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, then the provisions of Section 7.7 of the General Conditions apply to this Agreement and are hereby incorporated herein by reference.

Resolution of Construction Claims. Public Contract Code Section 20104(c) requires that the provisions of Public Contract Code Sections 20104 through 20104.6, or a summary thereof, "be set forth in the plans and specifications for any work which may give rise to a claim under" those Code Sections. Such a summary is set forth at Article 19 of the General Conditions and is hereby deemed also to be set forth in its entirety in the Plans and Specifications.

Prevailing Wages. The Contractor and all Subcontractors under the Contractor shall pay all workers on all Work performed pursuant to this Agreement not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed within the boundaries of the District, pursuant to sections 1770 et seq. of the California Labor Code.

Stipulation Regarding Working Hours. Pursuant to Labor Code Section 1813, the Contractor hereby stipulates to the matters set forth in Section 9.5.3 of the General Conditions.

Stipulation Regarding Apprentices. Pursuant to Labor Code Section 1777.5(n), the Contractor hereby stipulates to the matters set forth in Section 9.4 of the General Conditions.

Assignment of Rights. In entering into this Agreement, the Contractor offers and agrees (as required by Public Contract Code Section 7103.5(b) and Government Code Section 4552) to assign to the District all rights, title and interest in and to all causes of action the Contractor may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Business & Professions Code Sections 16700 *et seq*.) arising from purchases of goods, materials, or services by the Contractor for sale to the District pursuant to this Agreement. Such assignment shall be made and become effective at the time the District tenders final payment under this Agreement, without further acknowledgement by the Contractor or the District.

Examination and Audit by State Auditor. Pursuant to Government Code Section 8546.7, the District and the Contractor are each subject to the examination and audit of the State Auditor, at the District's request or as part of any audit of the District, for a period of three (3) years after final payment under this Agreement.

Inspector's Field Office. The minimum size of the Inspector's field office identified in Section 7.11.2 of the General Conditions shall be 8' x 10' (80) square feet.

Authority to Execute and Perform Agreement. If the Contractor is a corporation, partnership, limited liability company or other legal entity, the persons signing this Agreement on the Contractor's behalf hereby represent and warrant that (a) the Contractor is duly formed and in good standing in the state in which it was formed, (b) the Contractor is authorized to do business in California, and (c) the person signing this Agreement on the Contractor's behalf is authorized by the Contractor to act for and bind the Contractor to this Agreement and to obligate the Contractor to perform pursuant to the terms of this Agreement and the other Project Documents.

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

Entire Agreement. The "complete contract" (that is, this Agreement and the other Project Documents) constitutes the entire agreement of the parties. No other agreements, oral or written, pertaining to the work to be performed, exists between the parties. This Agreement and the other Project Documents can be modified only by an amendment in writing, signed by both parties and pursuant to action of the District's Board of Education.

Change Orders. The District represents to the Contractor that the resolution adopted by the District's Board of Education to approve the District's entry into this Agreement specifically authorizes the District's Associate Superintendent of Business Services, or his designee, to approve change orders under Article 16 of the General Conditions.

"Days" Means Calendar Days. All references to "Business Days" in any of the Project Documents is defined as days on which the District is opened for business. All other references to "days" in the Project Documents shall mean calendar days.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first set forth above.

"Contractor"

By: _____

Name: _____

Title: _____

Date: _____

NOTE: If the Contractor is a corporation, Contractor must attach a certified copy of the corporation's by-laws, or of the resolution of the Board of Directors of the corporation, authorizing the above person to execute this Agreement and the bonds required by the Contract Documents.

"District"
Santa Ana Unified School District,
a political subdivision of the State of California

By: _____
Name: Joe Dixon
Title: Assistant Superintendent Facilities & Governmental Relations

Date: _____

Attest:

By: _____
Name: Michael P. Bishop, Sr., CBO
Title: Deputy Superintendent, Operations

Date: _____

SANTA ANA UNIFIED SCHOOL DISTRICT
1601 East Chestnut Avenue
Santa Ana, California 92701-6322
(714) 480-5355

Bid Pack: # 1 **DSA Application Number: 04-110031**

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement ("Escrow Agreement") is made and entered into this _____ day of _____, 20___, by and between the Santa Ana Unified School District ("District" or "Owner"), and _____ ("Contractor"), whose address is _____, and _____ ("Escrow Agent"), a state or federally chartered bank in the state of California, whose address is _____ _____.

For the consideration hereinafter set forth, District, Contractor, and Escrow Agent agree as follows:

1. Pursuant to section 22300 of Public Contract Code of the State of California, which is hereby incorporated by reference, Contractor has the following two (2) options:

   ☐ Deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by District pursuant to the Construction Contract No. _ _____ entered into between District and Contractor for the _____[Name of Project], in the amount of _____($_____) dated, _____, 20_____, (the "Contract"); **or**

   ☐ On written request of Contractor, District shall make payments of the retention earnings for the above referenced Contract directly to Escrow Agent.

   When Contractor deposits the securities as a substitute for Contract earnings under subsection "(a)" above, Escrow Agent shall notify District within ten (10) calendar days of the deposit. The market value of the securities at the time of substitution and at all times from substitution until the termination of the Escrow Agreement shall be at least equal to the cash amount then required to be withheld as retention under terms of Contract between District and Contractor.

   Securities shall be held in name of **Santa Ana Unified School District**, and shall designate Contractor as beneficial owner.

2. District shall make progress payments to Contractor for those funds which otherwise would be withheld from progress payments pursuant to Contract provisions, provided that Escrow Agent holds securities in form and amount specified above.

3. When District makes payment of retention earned directly to Escrow Agent, Escrow Agent shall hold them for the benefit of Contractor until the time that the escrow created under this Escrow Agreement is terminated. Contractor may direct the investment of the payments into securities. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the Parties shall be equally applicable and binding when District pays Escrow Agent directly.

4. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account, and all expenses of District. The District will charge Contractor $ _0__ for each of District's deposits to the escrow account. These expenses and payment terms shall be determined by District, Contractor, and Escrow Agent.

5. Interest earned on securities or money market accounts held in escrow and all interest earned on that interest shall be for sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to District.

6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from District to Escrow Agent that District consents to withdrawal of amount sought to be withdrawn by Contractor.

7. District shall have the right to draw upon the securities and/or withdraw amounts from the Escrow Account in event of default by Contractor. Upon seven (7) days written notice to Escrow Agent from District of the default, if applicable, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by District.

8. Upon receipt of written notification from District certifying that the Contract is final and complete, and that Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.

9. Escrow Agent shall rely on written notifications from District and Contractor pursuant to Paragraphs 5 through 8, inclusive, of this Escrow Agreement and District and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of securities and interest as set forth above.

10. Names of persons who are authorized to give written notice or to receive written notice on behalf of District and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of the District:

_____
Title

_____
Name

_____
Signature

_____
Address

_____

On behalf of the Contractor:

_____
Title

_____
Name

_____
Signature

_____
Address

_____

On behalf of the Escrow Agent:

_____
Title

_____
Name

_____
Signature

_____
Address

_____

At the time the Escrow Account is opened, the District and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Escrow Agreement.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement by their proper officers on the date first set forth above.

"District"
Santa Ana Unified School District, a political subdivision of the State of California

By: _____
Name: _____
Title: _____

Attest:

By: _____
Name: _____
Title: _____

"Escrow Agent"

_____
Title

_____
Name

_____
Signature

_____
Address

_____

"Contractor"

_____,
a _____
_____

By: _____
Name: _____
Title: _____

SANTA ANA UNIFIED SCHOOL DISTRICT
1601 East Chestnut Avenue
Santa Ana, California 92701-6322
(714) 480-5355

Bid Pack: # 1 **DSA Application Number: 04-110031**

[Date]

[Name and address of successful bidder]

Re: Notice of Award of Contract
SANTA ANA UNIFIED SCHOOL DISTRICT
MUIR ELEMENTARY MONDERNIZATION
Project No: **04-110031**

Dear_____:

The Board of Education of the Santa Ana Unified School District at a regular meeting held on _____, 20__, accepted your bid in the amount of $_____ for the above-referenced project.

Before commencing work on this project, it will be necessary for you to complete, sign and deliver to us three (3) originals of each of the following documents:

- **Agreement** (enclosed) – initial all pages and sign
- **Faithful Performance Bond** (enclosed) – must also be signed by Surety
- **Payment Bond** (enclosed) – must also be signed by surety
- **Certificate of Insurance** (enclosed) – must also be signed by insurance company
- **Disabled Veterans Business Enterprise Participation Certification** (enclosed)
- **Workers' Compensation Insurance Certificate** (enclosed)
- **Drug-Free Workplace Certification** (enclosed)
- **Contractor's Certificate Regarding Non-Asbestos Containing Materials** (enclosed)

You must send all of those documents to my attention within **five (5) business days** after the date of this letter. The District can only send you a Notice to Proceed authorizing you to begin work on the Project after we receive those documents from you. Please be sure to obtain all of the necessary insurance required by those

documents, and to notify your insurance carriers that copies of all notices and other documentation regarding this project should be sent to my attention.

If you have questions or need further instructions relative to this project, please contact me at (714) 480-5355.

Sincerely,

Joe Dixon
Assistant Superintendent,
Facilities & Governmental Relations

Santa Ana Unified School District

JD

Enclosures

SANTA ANA UNIFIED SCHOOL DISTRICT
1601 East Chestnut Avenue
Santa Ana, California 92701-6322
(714) 480-5355

Bid Pack: #1 **DSA Application Number: 04-110031**
Project Name: Muir Fundamental Elementary **Project Title: Modernization**

[Date]

[Company]
[Address]

[City]

Re: Notice to Proceed
SANTA ANA UNIFIED SCHOOL DISTRICT
Muir Fundamental Elementary Modernization (MOD)

Dear _____:

This letter constitutes the "**Notice to Proceed**" with the above-referenced project from Santa Ana Unified School District. The commencement date on which you are to begin your work on the project is February 22, 2012.

Pursuant to the requirements of the Contract Documents, you must also submit seven (7) copies of the following documents, all checked and approved by you, not later than the following dates:

- A construction schedule by no later than **March 07, 2012** seven (7) copies, that addresses the work in his Contract as indicated in the Contract Documents;
- All other schedules by no later than **March 07, 2012** seven (7) copies, including a schedule of values and a procurement schedule as indicated in the Contract Documents;
- All submittals by no later than **March 07, 2012** seven (7) copies;
- All shop drawings by no later than **March 07, 2012** seven (7) copies;
- All materials lists by no later than **March 07, 2012** seven (7) copies;
- All samples by no later than **March 07, 2012** seven (7) copies;
- Contractor's Safety plan by no later than **March 07, 2012** seven (7) copies;

- **Copy of Subcontracts**. A copy of each written subcontract between the Contractor and any first-tier Subcontractor, whether listed or not (and a written statement signed by the Contractor giving the name of the Subcontractor and the terms and conditions of any unwritten subcontract), no later than **March 07, 2012** – one (1) copy

Enclosed for your use are the following documents:

(a) One fully signed original counterpart of the Agreement;

(b) Two sets of Progress Payment Request Forms AIA G702. Please make copies of these blank forms as necessary, because each time you submit requests for progress payments, you must submit to the Construction Manager for the District's approval seven (7) original Progress Payment request forms. Additional sets of these forms can be made available to you by the Construction Manager upon your request.

(c) One Guaranty Form, to be signed and submitted upon completion of your work under the Agreement.

We look forward to working with you on this Project.

Sincerely,

Joe Dixon
Assistant Superintendent,
Facilities & Governmental Relations

Santa Ana Unified School District

Enclosures

SANTA ANA UNIFIED SCHOOL DISTRICT
1601 East Chestnut Avenue
Santa Ana, California 92701-6322
(714) 480-5355

Bid Pack: # 1 **DSA Application Number: 04-110031**

FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that:

WHEREAS, the SANTA ANA UNIFIED SCHOOL DISTRICT (hereinafter called the "**District**") awarded to _____ _____ (hereinafter called the "**Principal**") the contract for the construction of the work described as follows (the "**Project**"):

Santa Ana Unified School District
Muir Fundamental Elementary Modernization
PROJECT NO. **04-110031**

AND WHEREAS, in connection with that award the Principal has executed the accompanying construction contract entitled "Agreement" and dated _____, 20__ (the "**Agreement**");

AND WHEREAS, the Principal is required under the terms of the Agreement to furnish a bond for the faithful performance of the Agreement;

NOW, THEREFORE, we the undersigned _____ _____ as Surety, (hereinafter called the "**Surety"**) and Principal are hereby jointly and severally held and firmly bound to the District, in the sum of

_____ Dollars ($_____) ("**Bond Amount**")

lawful money of the United States of America, this amount being not less than one hundred percent (100%) of the total bid price of the contract awarded by the District for the Project as evidenced by the Agreement, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the Principal, its heirs, executors, administrators, successors or assigns shall in all things stand to and abide by and well and truly keep and perform all the undertakings, terms, covenants, conditions, and agreements in the Agreement and in any other document referenced in

the Agreement as creating obligations on behalf of the Principal, and in all respects according to their true intent and meaning, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

The following provisions shall apply to this Faithful Performance Bond ("**Bond**"):

1. Upon written notice from the District to the Surety that the Principal is in default or is being terminated under the Agreement, the Surety shall take all required action within the time frame(s) as indicated in the Agreement, including Section 00700-General Conditions. Surety shall also promptly (but in no event later than fourteen (14) days after the delivery of said notice) do one of the following at the Surety's expense:

(a) Perform and complete the Agreement itself, through its agents or through independent contractors; the Surety acknowledges and agrees that if it elects to proceed under this Section 1(a), then the Surety's liability in connection with the construction and completion of the work called for under the Agreement is not limited to the Bond Amount;

(b) Obtain bids or negotiated proposals from qualified contractors acceptable to the District for a contract ("**New Contract**") for the performance and completion of the work required by the Agreement in accordance with the terms and conditions of the Agreement; cause the New Contract to be prepared for execution by the District and the contractor whose bid or proposal is accepted by the Surety ("**New Contractor**"), submit the New Contract to the District for its review and approval, and make any changes thereto reasonably requested by the District; cause the New Contractor to sign the New Contract in the form approved by the District; cause the New Contract to be secured with performance and payment bonds in the same form as this Bond and the accompanying Payment Bond, executed by a new surety whose qualifications and financial strength are at least equal to that of the Surety; and pay to the District, concurrent with the District's execution of the New Contract, an amount equal to the difference between the "Cost of Completion" (as defined in Section 4 below), less the "Balance of the Agreement Price" (as defined in Section 5 below), provided, however, that said amount payable by the Surety to the District shall in no event exceed the Bond Amount;

(c) Subject to the prior written consent of the District (which written consent may be granted, conditionally granted, or denied in the District's sole discretion), finance the Principal's performance and completion of the Agreement, and cause the Principal to perform and complete the same; any payments by the Surety to or on behalf of the Principal pursuant to this Section 1(c) shall not be credited against the Bond Amount; or

(d) Pay the District an amount equal to the Cost of Completion minus the Balance of the Agreement Price (provided, however, that said amount payable by the Surety may not exceed the Bond Amount, unless agreed to by the Surety);

2. Notwithstanding anything to the contrary set forth in Section 1 above or anywhere else in this Bond, the Surety shall not utilize the Principal in completing the

Agreement, nor shall the Surety accept a bid from the Principal for the completion of the work required under the Agreement, if the District notifies the Surety of the District's objection to the Principal's further participation in the completion of the Agreement and the work required there under.

3. The Surety acknowledges and agrees that the District may reject any contractor or subcontractor proposed by the Surety in connection with the fulfillment of the Surety's obligations under Section 1(a) and/or 1(b) above.

4. As used herein, the term "**Cost of Completion**" means the cost payable by the District to the New Contractor under the New Contract, if the District enters into a New Contract pursuant to Section 1(b) above, or, in all other cases, the District's estimate of the cost of completing the work required under the Agreement. In either case, the "Cost of Completion" shall include, without limitation: the cost of correcting the Principal's (or its subcontractors' or material men's) defective work; legal, design professional and delay costs resulting from the Principal's default under the Agreement; legal, design professional and delay costs resulting from the Surety's failure to timely perform its obligations under this Bond; liquidated damages specified in the Agreement, or, if none are specified in the Agreement, actual damages caused by the Principal's default under the Agreement; and the costs to the District of soliciting bids for the completion of the work called for under the Agreement and the costs to the District of preparing and entering into a new contract with the successful bidder.

5. As used herein, the term "**Balance of the Agreement Price**" means the total amount payable to the Principal by the District under the Agreement, less any amounts already paid or owing by the District to the Principal pursuant to the terms of the Agreement.

6. No change, extension of time, alteration, or addition to the terms of the Agreement, or to the work to be performed there under, or to the Plans and Specifications or any other Project Documents accompanying the same, shall in any way affect the Principal's and the Surety's obligation on this Bond. The Surety hereby waives notice by District of any such change, extension of time, alteration or addition.

7. Forfeiture of this Bond shall not preclude the District from seeking any or all other remedies provided by law to cover losses sustained as a result of the Principal's failure to do any of the foregoing, and this Bond shall not be a limitation on the Principal's liability therefore.

8. Upon the District's request, the Surety will provide the District with all of the documents specified in subdivision (a) of California Code of Civil Procedure Section 995.660.

9. If any dispute between the Surety and the District related to this Bond should result in litigation, or if any action at law or in equity is taken to enforce or interpret the terms and conditions of this Bond, then the prevailing party shall (in addition to any other relief to which that party may be entitled) be reimbursed for all reasonable costs

and expenses incurred in connection with such litigation, including, without limitation, reasonable attorneys' fees, accountants' fees and experts' fees. As used herein, the term "prevailing party" shall include without limitation any party against whom a cause of action, complaint, cross-complaint, counter-claim, cross-claim or third party complaint is voluntarily dismissed, with or without prejudice.

10. This Bond shall be construed and interpreted in accordance with and shall be governed and enforced in all respects according to the laws of the State of California, without regard to conflicts of laws principles.

11. All judicial proceedings brought against the District or the Surety arising out of or relating to this Bond may be brought in any state or federal court of competent jurisdiction in the County of Orange, State of California, and by execution and delivery of this Agreement the District and the Surety each accepts for itself and in connection with its properties, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts, waives any defense of forum non conveniens and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Bond. The District and the Surety each hereby agrees that service of all process in any such proceeding in any such court may be made by registered or certified mail, return receipt requested, to any other party at its address provided herein, such service being hereby acknowledged by each party to be sufficient for personal jurisdiction in any action against said party in any such court and to be otherwise effective and binding service in every respect. Nothing herein shall affect the right to serve process in any other manner permitted by law.

12. Any claims under this bond may be addressed to the Surety at the following address. This cannot be the Principal's broker for this bond, but must be an employee of the Surety or the Surety's legal counsel:

_____

_____

_____

_____

Attention: _____

Telephone No.: (_____) _____-_____

Fax No.: (_____) _____-_____

E-mail Address: _____

IN WITNESS WHEREOF the above-bounded parties have executed this instrument on _____, 20___.

"Principal"	**"Surety"**
_____	_____
_____	_____
By: _____	**By:** _____
Name: _____	**Name:** _____
Title: _____	**Title:** _____
By: _____	**By:** _____
Name: _____	**Name:** _____
Title: _____	**Title:** _____

Attach evidence (in the form of a Power of Attorney or some other evidence satisfactory to the District) that the Surety's signatory or signatories who have signed this Bond on behalf of the Surety are authorized by the Surety to do so and to bind the Surety to the obligations set forth herein.

SANTA ANA UNIFIED SCHOOL DISTRICT
1601 East Chestnut Avenue
Santa Ana, California 92701-6322
(714) 480-5355

Bid Pack # 1 **DSA Application Number: 04-110031**

SUBCONTRACTOR
FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that:

WHEREAS, the SANTA ANA UNIFIED SCHOOL DISTRICT (hereinafter called the "**District**") awarded to _____ _____ (hereinafter called the "**Contractor**") the contract for the construction of the work described as follows (the "**Project**"):

Santa Ana Unified School District
Muir Fundamental Elementary Modernization (MOD)
PROJECT NO. **04-110031**

AND WHEREAS, in connection with that award the Contractor has executed the accompanying construction contract entitled "Agreement" and dated _____, 200____(the "**Agreement**");

AND WHEREAS, the Contractor has executed the accompanying construction subcontract entitled "Subcontract" and dated _____, 20___ (the "**Subcontract**") with_____ _____ (hereinafter called the "**Principal**");

AND WHEREAS, the Principal is required under the terms of the Subcontract to furnish a bond for the faithful performance of the Agreement;

NOW, THEREFORE, we the undersigned _____ _____ as Surety, (hereinafter called the "**Surety"**) and Principal are hereby jointly and severally held and firmly bound to the Contractor and the District, in the sum of

_____ Dollars ($_____) ("**Bond Amount**")

lawful money of the United States of America, this amount being not less than one hundred percent (100%) of the total price of the Subcontract, for the payment of which

sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the Principal, its heirs, executors, administrators, successors or assigns shall in all things stand to and abide by and well and truly keep and perform all the undertakings, terms, covenants, conditions, and agreements in the Agreement or the Subcontract and in any other document referenced in the Agreement or the Subcontract as creating obligations on behalf of the Principal, and in all respects according to their true intent and meaning, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

The following provisions shall apply to this Faithful Performance Bond ("**Bond**"):

1. Upon written notice from the District or Contractor to the Surety that the Principal is in default under the Agreement or the Subcontract, the Surety shall promptly (but in no event later than fourteen (14) days after the delivery of said notice) do one of the following at the Surety's expense:

(a) Perform and complete the Subcontract itself, through its agents or through independent contractors; the Surety acknowledges and agrees that if it elects to proceed under this Section 1(a), then the Surety's liability in connection with the construction and completion of the work called for under the Subcontract is not limited to the Bond Amount;

(b) Obtain bids or negotiated proposals from qualified contractors acceptable to the Contractor and the District for a contract ("**New Contract**") for the performance and completion of the work required by the Subcontract in accordance with the terms and conditions of the Agreement and the Subcontract; cause the New Contract to be prepared for execution by the Contractor and the contractor whose bid or proposal is accepted by the Surety ("**New Contractor**"), submit the New Contract to the Contractor and the District for its review and approval, and make any changes thereto reasonably requested by the Contractor or the District; cause the New Contractor to sign the New Contract in the form approved by the Contractor and the District; cause the New Contract to be secured with performance and payment bonds in the same form as this Bond and the accompanying Subcontractor Payment Bond, executed by a new surety whose qualifications and financial strength are at least equal to that of the Surety; and pay to the Contractor, concurrent with the Contractor's execution of the New Contract, an amount equal to the difference between the "Cost of Completion" (as defined in Section 4 below), less the "Balance of the Subcontract Price" (as defined in Section 5 below), provided, however, that said amount payable by the Surety to the Contractor shall in no event exceed the Bond Amount;

(c) Subject to the prior written consent of the Contractor and the District (which written consent may be granted, conditionally granted, or denied in the Contractor's or the District's sole discretion), finance the Principal's performance and completion of the Subcontract, and cause the Principal to perform and complete the

same; any payments by the Surety to or on behalf of the Principal pursuant to this Section 1(c) shall not be credited against the Bond Amount; or

(d) Pay the Contractor an amount equal to the Cost of Completion minus the Balance of the Subcontract Price (provided, however, that said amount payable by the Surety may not exceed the Bond Amount, unless agreed to by the Surety);

2. Notwithstanding anything to the contrary set forth in Section 1 above or anywhere else in this Bond, the Surety shall not utilize the Principal in completing the Subcontract, nor shall the Surety accept a bid from the Principal for the completion of the work required under the Subcontract, if, at the time the Contractor or the District notifies the Surety that the Principal is in default under the Subcontract, the District also notifies the Surety of the District's objection to the Principal's further participation in the completion of the Subcontract and the work required there under.

3. The Surety acknowledges and agrees that the District may reject any contractor or subcontractor proposed by the Surety in connection with the fulfillment of the Surety's obligations under Section 1(a) and/or 1(b) above.

4. As used herein, the term "**Cost of Completion**" means the cost payable by the Contractor to the New Contractor under the New Contract, if the Contractor enters into a New Contract pursuant to Section 1(b) above, or, in all other cases, the Contractor's estimate of the cost of completing the work required under the Subcontract. In either case, the "Cost of Completion" shall include, without limitation: the cost of correcting the Principal's (or its subcontractors' or material men's) defective work; legal, design professional and delay costs resulting from the Principal's default under the Subcontract; legal, design professional and delay costs resulting from the Surety's failure to timely perform its obligations under this Bond; liquidated damages specified in the Subcontract, or, if none are specified in the Subcontract, actual damages caused by the Principal's default under the Subcontract; and the costs to the Contractor of soliciting bids for the completion of the work called for under the Subcontract and the costs to the Contractor of preparing and entering into a new contract with the successful bidder.

5. As used herein, the term "**Balance of the Subcontract Price**" means the total amount payable to the Principal by the Contractor under the Subcontract, less any amounts already paid or owing by the Contractor to the Principal pursuant to the terms of the Subcontract.

6. No change, extension of time, alteration, or addition to the terms of the Subcontract or the Agreement, or to the work to be performed there under, or to the Plans and Specifications or any other Project Documents accompanying the same, shall in any way affect the Principal's and the Surety's obligation on this Bond. The Surety hereby waives notice by Contractor or District of any such change, extension of time, alteration or addition.

7. Forfeiture of this Bond shall not preclude the Contractor or District from seeking any or all other remedies provided by law to cover losses sustained as a result of the Principal's failure to do any of the foregoing, and this Bond shall not be a limitation on the Principal's liability therefore.

8. Upon the Contractor's or District's request, the Surety will provide the District with all of the documents specified in subdivision (a) of California Code of Civil Procedure Section 995.660.

9. If any dispute between the Surety and the Contractor or the District related to this Bond should result in litigation, or if any action at law or in equity is taken to enforce or interpret the terms and conditions of this Bond, then the prevailing party shall (in addition to any other relief to which that party may be entitled) be reimbursed for all reasonable costs and expenses incurred in connection with such litigation, including, without limitation, reasonable attorneys' fees, accountants' fees and experts' fees. As used herein, the term "prevailing party" shall include without limitation any party against whom a cause of action, complaint, cross-complaint, counter-claim, cross-claim or third party complaint is voluntarily dismissed, with or without prejudice.

10. This Bond shall be construed and interpreted in accordance with and shall be governed and enforced in all respects according to the laws of the State of California, without regard to conflicts of laws principles.

11. All judicial proceedings brought against the Contractor or the District or the Surety arising out of or relating to this Bond may be brought in any state or federal court of competent jurisdiction in the County of Orange, State of California, and by execution and delivery of the Subcontract, the Contractor, the District and the Surety each accepts for itself and in connection with its properties, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts, waives any defense of forum non conveniens and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Bond. The Contractor, the District and the Surety each hereby agrees that service of all process in any such proceeding in any such court may be made by registered or certified mail, return receipt requested, to any other party at its address provided herein, such service being hereby acknowledged by each party to be sufficient for personal jurisdiction in any action against said party in any such court and to be otherwise effective and binding service in every respect. Nothing herein shall affect the right to serve process in any other manner permitted by law.

12. If Contractor is in default of its Agreement with the District and/or the District has terminated the Contractor for cause under the Agreement, the District may elect to assume all Contractor's rights under this Bond.

13. Any claims under this bond may be addressed to the Surety at the following address. This cannot be the Principal's broker for this bond, but must be an employee of the Surety or the Surety's legal counsel::

_____

_____

_____

_____

Attention: _____

Telephone No.: (_____) _____-_____

Fax No.: (_____) _____-_____

E-mail Address: _____

IN WITNESS WHEREOF the above-bounded parties have executed this instrument on _____, 200___.

"Principal"	**"Surety"**
_____	_____
_____	_____
By: _____	**By:** _____
Name: _____	**Name:** _____
Title: _____	**Title:** _____
By: _____	**By:** _____
Name: _____	**Name:** _____
Title: _____	**Title:** _____

Attach evidence (in the form of a Power of Attorney or some other evidence satisfactory to the District) that the Surety's signatory or signatories who have signed this Bond on behalf of the Surety are authorized by the Surety to do so and to bind the Surety to the obligations set forth herein.

SANTA ANA UNIFIED SCHOOL DISTRICT
1601 East Chestnut Avenue
Santa Ana, California 92701-6322
(714) 480-5355

Bid Pack: # 1 **DSA Application Number: 04-110031**

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that:

WHEREAS, the SANTA ANA UNIFIED SCHOOL DISTRICT (hereinafter called the "**District**") awarded to _____ _____ (hereinafter called the "**Principal**") the contract for the construction of the work described as follows (the "**Project**"):

Santa Ana Unified School District
Fundamental Elementary Modernization (MOD)
PROJECT NO. **04-110031**

AND WHEREAS, in connection with that award the Principal has executed the accompanying construction contract entitled "Agreement" and dated _____, 20___ (the "**Agreement**");

AND WHEREAS, the Principal is required under the terms of the Agreement to furnish a payment bond,

NOW, THEREFORE, we the undersigned _____ _____ as Surety, (hereinafter called the "**Surety"**) and Principal are hereby jointly and severally held and firmly bound to the District, in the sum of

_____ Dollars ($_____) ("**Bond Amount**")

lawful money of the United States of America, this amount being not less than one hundred percent (100%) of the total bid price of the contract awarded by the District for the Project as evidenced by the Agreement, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT If the Principal or any of the Principal's subcontractors fails to pay as and when due, with respect to Agreement or the Project:

- any of the persons named in Section 3181 of the California Civil Code;

- any amounts due under the California Unemployment Insurance Code with respect to work or labor performed under the Agreement; or

- for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from wages of employees of the Principal and/or the Principal's subcontractors pursuant to Section 13020 of the California Unemployment Insurance Code with respect to the work and labor,

then the Surety will pay the same in an aggregate amount not exceeding the Bond Amount, and also will pay, in case suit is brought upon this Payment Bond ("**Bond**"), such reasonable attorney's fees as shall be fixed by the court, awarded and taxed as provided in Division 3, Part IV, Title XV, Chapter 7 (commencing at Section 3247) of the California Civil Code.

This Payment Bond shall inure to the benefit of any of the persons named in Section 3181 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this Bond.

The Surety shall not be exonerated or released from the obligation of this Bond by any of the following: (a) any change, extension of time (including without limit an extension of time for payment), alteration, or addition to the terms of the Agreement, or to the work to be performed there under, or to the Plans and Specifications or any other Project Documents accompanying the same; (b) any rescission or attempted rescission of the Agreement or this Bond; (c) any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of claimants otherwise entitled to recover under the Agreement or this Bond; and (f) any fraud practiced by any person other than the claimant seeking to recover on this Bond. This Bond shall be construed most strongly against the Surety and in favor of all persons for whose benefit this Bond is given. Under no circumstances shall the Surety be released from liability to those for whose benefit this Bond has been given, by reason of any breach of the Agreement between the District and the Principal or on the part of any obligee. The sole conditions of recovery shall be that claimant is a person described in Sections 3110 and 3112 of the California Civil Code and that the claimant has not been paid the full amount of the claimant's claim. The Surety does hereby waive, notice of any such change, extension of time, alteration or addition.

The Surety hereby waives notice by District of any such change, extension of time, alteration or addition.

Any claims under this Bond may be addressed to the Surety at the following address. This cannot be the Principal's broker for this bond, but must be an employee of the Surety or the Surety's legal counsel:

_____
_____
_____
_____

Attention: _____

Telephone No.: (_____) _____-_____

Fax No.: (_____) _____-_____

E-mail Address: _____

IN WITNESS WHEREOF the above-bounded parties have executed this instrument on _____, 20___.

"Principal"	**"Surety"**
_____	_____
_____	_____
By: _____	**By:** _____
Name:_____	**Name:**_____
Title: _____	**Title:** _____
By: _____	**By:** _____
Name:_____	**Name:**_____
Title: _____	**Title:** _____

Attach evidence (in the form of a Power of Attorney or some other evidence satisfactory to the District) that the Surety's signatory or signatories who have signed this Bond on behalf of the Surety are authorized by the Surety to do so and to bind the Surety to the obligations set forth herein.

SANTA ANA UNIFIED SCHOOL DISTRICT
1601 East Chestnut Avenue
Santa Ana, California 92701-6322
(714) 480-5355

Bid Pack #: 1 **DSA Application Number: 04-110031**

SUBCONTRACTOR PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that:

WHEREAS, the SANTA ANA UNIFIED SCHOOL DISTRICT (hereinafter called the "**District**") awarded to _____ _____ (hereinafter called the "**Contractor**") the contract for the construction of the work described as follows (the "**Project**"):

Santa Ana Unified School District
Muir Elementary Modernization
PROJECT NO. **04-110031**

AND WHEREAS, in connection with that award the Contractor has executed the accompanying construction contract entitled "Agreement" and dated _____, 200___ (the "**Agreement**");

AND WHEREAS, the Contractor has executed the accompanying construction subcontract entitled "Subcontract" and dated _____, 200___ (the "**Subcontract**") with_____ _____ (hereinafter called the "**Principal**");

AND WHEREAS, the Principal is required under the terms of the Subcontract to furnish a payment bond,

NOW, THEREFORE, we the undersigned _____ _____ as Surety, (hereinafter called the "**Surety"**) and Principal are hereby jointly and severally held and firmly bound to the Contractor and the District, in the sum of

_____ Dollars ($_____) ("**Bond Amount**")

lawful money of the United States of America, this amount being not less than one hundred percent (100%) of the total price of the Subcontract, for the payment of which

sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT If the Principal or any of the Principal's subcontractors fails to pay as and when due, with respect to Agreement or the Subcontract or the Project:

- any of the persons named in Section 3181 of the California Civil Code;
- any amounts due under the California Unemployment Insurance Code with respect to work or labor performed under the Agreement or the Subcontract; or
- for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from wages of employees of the Principal and/or the Principal's subcontractors pursuant to Section 13020 of the California Unemployment Insurance Code with respect to the work and labor,

then the Surety will pay the same in an aggregate amount not exceeding the Bond Amount, and also will pay, in case suit is brought upon this Payment Bond ("**Bond**"), such reasonable attorney's fees as shall be fixed by the court, awarded and taxed as provided in Division 3, Part IV, Title XV, Chapter 7 (commencing at Section 3247) of the California Civil Code.

This Payment Bond shall inure to the benefit of any of the persons named in Section 3181 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this Bond.

The Surety shall not be exonerated or released from the obligation of this Bond by any of the following: (a) any change, extension of time (including without limit an extension of time for payment), alteration, or addition to the terms of the Agreement or the Subcontract, or to the work to be performed there under, or to the Plans and Specifications or any other Project Documents accompanying the same; (b) any rescission or attempted rescission of the Agreement or the Subcontract or this Bond; (c) any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of claimants otherwise entitled to recover under the Agreement or the Subcontract or this Bond; and (f) any fraud practiced by any person other than the claimant seeking to recover on this Bond. This Bond shall be construed most strongly against the Surety and in favor of all persons for whose benefit this Bond is given. Under no circumstances shall the Surety be released from liability to those for whose benefit this Bond has been given, by reason of any breach of the Agreement or the Subcontract or on the part of any obligee. The sole conditions of recovery shall be that claimant is a person described in Sections 3110 and 3112 of the California Civil Code and that the claimant has not been paid the full amount of the claimant's claim. The Surety does hereby waive, notice of any such change, extension of time, alteration or addition.

The Surety hereby waives notice by District or Contractor of any such change, extension of time, alteration or addition.

Any claims under this Bond may be addressed to the Surety at the following address:

_____
_____
_____
_____

Attention: _____

Telephone No.: (_____) _____-_____

Fax No.: (_____) _____-_____

E-mail Address: _____

IN WITNESS WHEREOF the above-bounded parties have executed this instrument on _____, 200___.

"Principal"	**"Surety"**
_____	_____
_____	_____
By: _____	**By:** _____
Name:_____	**Name:**_____
Title: _____	**Title:** _____
By: _____	**By:** _____
Name:_____	**Name:**_____
Title: _____	**Title:** _____

Attach evidence (in the form of a Power of Attorney or some other evidence satisfactory to the District) that the Surety's signatory or signatories who have signed this Bond on behalf of the Surety are authorized by the Surety to do so and to bind the Surety to the obligations set forth herein.

SANTA ANA UNIFIED SCHOOL DISTRICT
1601 East Chestnut Avenue
Santa Ana, California 92701-6322
(714) 480-5355

Bid Pack: #1 **DSA Application Number: 04-110031**

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GENERAL CONDITIONS

ARTICLE 1

PURPOSE OF THESE GENERAL CONDITIONS

These General Conditions ("**General Conditions**") contain general terms and conditions which are applicable to that certain construction agreement ("**Agreement**") that has been or will be entered into by Santa Ana Unified School District (the "**District**") and the contractor identified therein (the "**Contractor**") in connection with the District's construction project identified by the Project Number listed on the title page of these General Conditions (the "**Project**").

ARTICLE 2

DEFINITIONS

Except as otherwise defined in these General Conditions, all capitalized terms contained in these General Conditions shall mean those terms as they are defined in the following documents: (a) the Agreement; (b) the Notice Calling for Bids issued by the District in connection with the Project (the "**Notice Calling for Bids**"); (c) the Information for Bidders issued by the District in connection with the Project (the "**Information for Bidders**"); and (d) all of the other Project Documents identified in the Information for Bidders (collectively, the "**Project Documents**" or "**Contract" or "Contract Documents" or "Agreement"**). In addition, the following terms shall have the following meanings in these General Conditions:

2.1 "**Applicable Laws**" shall have the meaning set forth in Section 6.1 below.

2.2 "**Construction Manager**" means a person or entity retained by the District in connection with the Project to oversee the Contractor's performance of its obligations under the Agreement and the other Project Documents. If there is no Construction Manager for the Project, all references to the Construction Manager herein should be deemed to be references to the District.

2.3 "**Construction Schedule**" means a schedule of the anticipated progress of the Work, to be prepared by the Contractor and approved by the District pursuant to the provisions of Article 5 of these General Conditions.

2.4 "**Contract Price**" means the amount payable to the Contractor under the Agreement.

2.5 "**Contractual Completion Date**" means the date specified in the Agreement for the completion of the Work.

2.6 **District:** The Santa Ana Unified School District. The governing board of the District or its designees will act for the District in all matters pertaining to the Contract. The District may, at any time:

2.6.1 Direct the Contractor to communicate with or provide notice to the Construction Manager or the Architect on matters for which the Contract Documents indicate the Contractor will communicate with or provide notice to the District; and/or

2.6.2 Direct the Construction Manager or the Architect to communicate with or direct the Contractor on matters for which the Contract Documents indicate the District will communicate with or direct the Contractor.

2.7 "**DSA**" means the California Department of General Services' Division of the State Architect.

2.8 "**Hazardous Materials**" shall have the meaning set forth in Article 11 below.

2.9 "**Hazardous Material Laws**" means any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Material affecting the Property, including, without limitation, the laws, ordinances, and regulations referred to in Article 11 below.

2.10 "**Inspector**" means a person or entity retained by the District for the purpose of inspecting the quality of the Work to determine whether that Work conforms to the requirements of the Plans and Specifications and other Project Documents.

2.11 "**Notice of Award**" means written notice from the District to the Contractor advising the Contractor that the District's Board of Education has accepted the Contractor's bid. The Notice of Award may be conditioned upon the Contractor's provision of documents or performance of acts identified in the Notice of Award.

2.12 "**Notice to Proceed**" means written notice from the District to the Contractor instructing the Contractor to proceed with the Work.

2.13 [RESERVED]

2.14 "**Prime Contractor"** or "**Contractor"** means a contractor on the Project who has responsibility for one or more trades or crafts necessary to the construction of the Project, and who has entered into a direct contractual relationship with the District (as opposed to a subcontractor of a general contractor or other third party). Although Prime Contractors are not referenced elsewhere in these General Conditions, Prime Contractors may be identified in other Project Documents if the District has elected to use a "multi-prime" delivery method for the Project by entering into numerous separate "prime" contracts with various Prime Contractors for construction of separate aspects of the Work, rather than entering into only one "general" contract with one general contractor for all of the Work. In such a case, all references to "Contractor" herein shall

be deemed references to the Prime Contractor who is a party to the prime contract, which constitutes the Agreement.

2.15 "**Subcontractor"** means any person or entity having a direct contractual relationship with the Contractor and who furnishes labor or services as part of the Work on the Project. The term "Subcontractor" does not include a person or entity who merely provides material, supplies, equipment or appliances, but who does not design or alter same to meet the Plans or Specifications or who does not install the material, supplies, equipment or appliances, otherwise provide labor according to plans, drawings, and specifications of the Work.

2.16 "**Work**" means the performance of any labor or other services performed for the Project, or the provision of any materials, supplies, equipment, appliances or other items in connection with the Project, by the Contractor or by any Subcontractor. Without limiting the generality of the foregoing, "**Work**" includes all materials, supplies, equipment and appliances which have been incorporated into the construction contemplated by the Project Documents or delivered to the Project site for incorporation into such construction.

2.17 **"Work Activity**" means an activity, which requires time and resources (including manpower, equipment, or material) to complete. Work Activities shall include, but not be limited to: mobilization; submittals; Architect's review of each submittal; procurement, delivery installation and checkout of equipment or material; Subcontractor's items of Work; and all major construction activities.

ARTICLE 3

RELATIONSHIP OF PARTIES

3.1 **Architect**. The Architect shall observe the progress and quality of the Work on behalf of the District.

3.1.1 **Architect's Authority**. The Architect has the authority to enforce compliance with the Project Documents, and is otherwise authorized to act on behalf of the District relative to the Project, but only to the extent expressly provided in the Project Documents. Without limiting the generality of the foregoing, the Architect shall have the authority to do all of the following:

(a) **Determination of Satisfactory Performance**. To the extent determined by District, to determine the acceptability of Work and/or of the Contractor's performance under the Agreement and the other Project Documents, including without limitation rendering decisions on behalf of the District as to (i) the quantity or quality of materials or equipment, (ii) the acceptability of such materials or equipment or of any workmanship or services, or (iii) the execution, progress or sequence of any Work;

(b) **Interpretation of Plans and Specifications**. To interpret Plans, Specifications, and other drawings relative to the Project;

(c) **Authority to Stop Work**. To stop the Work whenever such stoppage may be necessary in the Architect's reasonable opinion to ensure the proper execution of the Project Documents;

(d) **Authority to Enforce Contractor's Performance**. To enforce the Contractor's faithful performance of the Contractor's obligations under the Agreement and the other Project Documents; and

(e) **Authority Established by Law**. To exercise any and all other authority and responsibility established by law, including without limitation Title 24 of the California Code of Regulations.

3.1.2 **Contractor to Comply with Architect's Instructions**. The Contractor shall promptly comply with instructions from the Architect (which may be delivered by the Construction Manager) relative to compliance with Project Documents and relative to any other matter as to which the Architect has authority pursuant to the Project Documents. If the Contractor fails to do so, the District shall have the right to suspend payments otherwise owing to the Contractor under the Project Documents until the Architect has notified the District of the Contractor's compliance. The Contractor shall not delay or otherwise impair the progress or completion of the Work, even if payments to the Contractor are suspended hereunder or even if the Contractor otherwise disagrees with any of the Architect's or the District's instructions or decisions.

3.1.3 **Architect's Activities Do Not Relieve Contractor of its Obligations**. General supervision and direction of the work by the Architect shall not imply that the Architect or the District are in any way responsible for the safety of the Contractor, Subcontractors or their employees, shall not imply that the Architect or the District will maintain supervision over the Contractor's construction methods or personnel, and shall not relieve the Contractor of any of its obligations under the Project Documents.

3.2 **Inspectors**.

3.2.1 **District's Use of Inspectors**. One or more Inspectors, including special inspectors, as required, will be employed or otherwise retained by the District in accordance with requirements of Title 24 of the California Code of Regulations and will be assigned to the Project. Each such Inspector shall have such rights and duties relative to the Project as shall be established by the District, including without limitation those set forth in Section 4-342 of Title 24 of the California Code of Regulations.

3.2.2 **Contractor's Duties Relative to the Inspection**. Neither the Contractor nor any of its Subcontractors shall perform any Work except with the knowledge and under the inspection of the Inspector(s). Each Inspector shall have free access to any or all parts of the Work at any and all times. The Contractor shall furnish each Inspector reasonable opportunities for obtaining such information as may be necessary to keep the Inspector fully informed as to all aspects of the Work.

3.2.3 **Inspector's Right to Stop Work**. The Inspector shall have authority to stop the Work whenever the Inspector discovers that the Work is not being conducted in accordance with the provisions of Project Documents. The Contractor shall instruct its employees accordingly. Nothing in this paragraph is intended to limit the rights of the Architect or the Construction Manager to stop the Work pursuant to provisions herein.

3.2.4 **Limitation on Inspector's Authority**. No Work shall be performed by the Contractor solely upon the instructions or comments by the Inspector. The Inspector has no authority to interpret the Project Documents or order extra Work. Any extra work performed without the written instruction of the District shall be at Contractor's sole cost and expense and there will be no delay damages incurred by the District for such work.

3.2.5 **Inspector's Activities Do Not Relieve Contractor of its Obligations**. The Inspector's inspection of the Work shall not imply that the Inspector or the District is in any way responsible for the safety of the Contractor, Subcontractors or their employees, shall not imply that the Inspector or the District will maintain supervision over the Contractor's construction methods or personnel, and shall not relieve the Contractor of any of its obligations under the Project Documents.

3.3 **Contractor**.

3.3.1 **The Contractor is an Independent Contractor**. The Contractor is and shall at all times be deemed to be an independent contractor. The Contractor shall be wholly and solely responsible for and have control over the manner in which it performs the services required of it by the terms of the Project Documents, including without limitation construction means, methods, techniques, sequences, procedures, safety precautions, furnishing of equipment and materials, and coordination of all portions of the Work. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the District and the Contractor or any of the Contractor's agents or employees. The 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. The Contractor, its agents and employees shall not be entitled to any rights or privileges of the District's employees and shall not be considered in any manner to be the District's employees. The District shall be permitted to monitor the activities of the contractor to determine compliance with the terms of the Project Documents.

3.3.2 **Representation as to Contractor's License**. The Contractor represents and warrants to the District that (a) the Contractor is duly licensed by the Contractor's State License Board, (b) all of the license information pertaining to the license number(s) and license class(es) contained in the Bid Form and the other Project Documents are true and correct, (c) each such license is currently in full force and effect, and (d) the Contractor has received no notice, written or otherwise, as to any pending or contemplated suspension, revocation or termination of any such license.

3.3.3 **Limitations on Changes to Contractor's Name or Entity**. The Contractor shall not change its name or its type of legal entity without first (a) notifying the District in writing of the proposed change, and (b) entering into written agreements modifying the Project Documents, to the extent requested by the District, if the District reasonably determines that modification of those Project Documents is necessary due to the change proposed by the Contractor.

3.4 **Subcontractors**.

3.4.1 **Contractor is Responsible for Subcontractors' Work**. The Contractor agrees to bind every Subcontractor by terms of the Project Documents as far as such terms are applicable to the Subcontractor's Work. If the Contractor shall subcontract any part of the Work, the Contractor shall be as fully responsible to the District for acts and omissions of any Subcontractor, and of persons either directly or indirectly employed by any Subcontractor, as it is for acts and omissions of persons directly employed by the Contractor.

3.4.2 **No Contractual Relationship Between District and Subcontractors**. Nothing contained in Project Documents shall create any contractual relation between any Subcontractor and the District, nor shall the Project Documents be construed to be for the benefit of any Subcontractor. The District's consent to any Subcontractor shall not in any way relieve the Contractor of any obligations under the Project Documents, and no such consent shall be deemed to waive any provision of any of the Project Documents.

3.4.3 **Coordination of Work of Subcontractors.** The Contractor shall be responsible for the coordination of the trades, Subcontractors, and material men engaged upon the Contractor's Work. The Contractor shall instruct all trades, Subcontractors and material men to cooperate with each other so that each can execute its Work properly. If one or more Subcontractors disagree with each other or with the Contractor as to the interpretation of the Plans, Specifications or other Project Documents, either with respect to the obligations of the Subcontractor there under or otherwise, it shall be the Contractor's responsibility to resolve the disagreement and to obtain or execute the performance of the Work under dispute.

3.4.4 **Subletting and Subcontracting Fair Practices Act**. The Contractor represents and warrants to the District that the Contractor has complied with all of the provisions of the Subletting and Subcontracting Fair Practices Act (Public Contract Code §§ 4100 *et seq.*). The Contractor covenants that it will continue to comply with that Act throughout the duration of the Project and the term of the Project Documents.

3.4.5 **Additional Requirement Where Contractor is a "Specialty Contractor"**. In accordance with Business and Professions Code § 7059, if the Contractor is designated as a "specialty contractor" (as defined in Business and Professions Code § 7058), all of the work to be performed outside of the Contractor's

license specialty shall be performed by a licensed subcontractor in compliance with the Subletting and Subcontracting Fair Practices Act.

3.4.6 **Copies of Subcontracts**. A copy of each written subcontract between the Contractor and any first-tier Subcontractor, whether listed or not (and a written statement signed by the Contractor giving the name of the Subcontractor and the terms and conditions of any unwritten subcontract), shall be delivered to the District and the Construction Manager by no later than _____ **as indicated in the Notice to Proceed**. Each subcontract shall contain a reference to the Agreement between the District and the Contractor, and the terms of that Agreement and all parts of the Project Documents shall be made a part of such subcontract insofar as applicable to the Work covered by the Subcontract. Each subcontract will provide for termination in accordance with these General Conditions. Each subcontract shall provide for its annulment by the Contractor at the order of the District if (in the opinion of the District, the Architect or the Construction Manager referenced below) the Subcontractor fails to comply with the requirements of the Project Documents insofar as the same may be applicable to the portion of the Work that is the subject of the subcontract. Nothing herein contained shall relieve the Contractor of any liability or obligation hereunder.

3.5 **Construction Manager**. The District may, in its discretion, elect to retain a Construction Manager relative to the Project to oversee the Contractor's performance of its obligations under the Agreement and the other Project Documents. If there is no Construction Manager for the Project, all references to the Construction Manager herein should be deemed to be references to the District.

3.5.1 **Construction Manager is District's Representative**. The Construction Manager shall be the District's representative during construction of the Work.

3.5.2 **Communication to be Conducted Through Construction Manager**. If a Construction Manager has been designated by the District for this Project (or upon subsequent written notice from the District or the Architect that a Construction Manager has been appointed, which notice shall identify the Construction Manager), then (a) all communications between the Contractor, on the one hand, and the District and/or the Architect, on the other hand, shall be made through the Construction Manager, and (b) wherever the Project Documents call for the Contractor to deliver any notice or document to the District and/or the Architect, that notice or document shall instead by delivered to the Construction Manager, who shall then forward it to the District and/or the Architect.

3.5.3 **Authority of Construction Manager**. The Construction Manager has the authority to enforce compliance with the Project Documents and to act on behalf of the District relative to the Project, but only to the extent expressly provided for in the Project Documents. Without limiting the generality of the foregoing, the Construction Manager shall have the authority: (a) to stop the Work whenever such stoppage may be necessary in the Construction Manager's reasonable opinion to ensure the proper execution of the Project Documents; (b) to enforce the Contractor's faithful performance

of its obligations under the Agreement and the other Project Documents; and (c) to exercise any and all other authority and responsibility established by law.

3.5.4 **Contract Administration**. The Construction Manager shall assist the District and the Architect in administering the Project Documents and enforcing the Contractor's compliance therewith. The Contractor shall cooperate (and shall cause its Subcontractors to cooperate) with the Construction Manager in this regard.

3.5.5 **Construction Manager to Monitor Progress of Work**. Among its other duties, the Construction Manager may be required by the District to monitor the progress of the Work. The Contractor shall cooperate (and shall cause its Subcontractors to cooperate) with the Construction Manager with respect to such its monitoring. Such monitoring shall not imply that the Construction Manager or the District are in any way responsible for the safety of the Contractor, Subcontractors or their employees, shall not imply that the Construction Manager or the District will supervise the Contractor's construction methods or personnel, and shall not relieve the Contractor of any of its obligations under the Project Documents.

3.5.6 **Construction and Staging Areas**. The Contractor shall cooperate with the Construction Manager to minimize the size of the Project's construction and staging areas.

3.5.7 **Pre-Construction, Construction and Progress Meetings**. The Construction Manager will chair all pre-construction, construction and progress meetings, which shall occur no less frequently than weekly and which must be attended by the Contractor. The Construction Manager shall prepare and distribute minutes of those meetings.

ARTICLE 4

INTERPRETATION AND RELATIONSHIP OF DOCUMENTS

4.1 **Intent of the Project Documents**. The intent of the District in preparing the Project Documents is that the Project Documents be interpreted to include all items necessary for the proper execution and completion of the Work by the Contractor. Plans and Specifications are intended to delineate and describe the Project and its component parts to such a degree as will enable skilled and competent contractors to intelligently bid upon the Work, and to carry the Work to a successful conclusion. The Project Documents are complementary, and what is required by any one document shall be binding and required to be performed as part of the Work as if required by all of the Project Documents. (By way of example and not as a limitation, anything which may be called for in the Specifications and not shown on the Plans or other drawings, or vice versa, shall have the same effect as if called for and/or shown in both.) The Contractor is required to perform all activities, at no extra cost to the District, which are reasonably inferable from the Project Documents as being necessary to produce the intended results.

4.2 **Purpose of Plans vs. Purpose of Specifications**. Generally, the Specifications address quality, types of materials and contract conditions, while the Plans and other drawings show placement, sizes, fabrication, and details of materials. The Plans and Specifications are intended to be complementary.

4.3 **Organization of the Plans and Specifications**. The organization of the Specifications into divisions, sections, subsections and paragraphs, and the arrangement of the Plans and other drawings in to disciplines, shall not control the Contractor in dividing the Work among it own forces and/or those of its Subcontractors, and no claim will be entertained by the District based on said organization and arrangement. The extent of the Work to be furnished by any vender or supplier, or to be performed by any trade or Subcontractor, shall be determined by the Contractor.

4.4 **Questions Regarding Perceived Inconsistencies**. If the Contractor discovers or otherwise becomes aware of any inconsistencies and/or conflicts in the Project Documents, the Contractor shall immediately request an interpretation in writing from the Architect (through the Construction Manger) pursuant to Article 15 below before proceeding with the Work. If the Contractor fails to make such request and commences or proceeds with the Work or any part thereof without first seeking clarification from the Architect, the (a) the Contractor shall replace or adjust any Work not in conformance (as determined by the Architect) with the Project Documents and shall be responsible for any resultant or added cost, (b) the Contractor waives any claim for extra work or damages as a result of any ambiguity, conflict or lack of information, and (c) no excuse will thereafter be entertained for failure to carry out the Work in a timely or satisfactory manner.

4.5 **Effect of Inconsistencies as to Quality or Quantity**. If the Contractor, the District, the Architect and/or the Construction Manager determine that there is an inconsistency and/or conflict in the quality or quantity of Work required by the Project Documents, the Contractor shall be required to provide – at no extra cost to the District – the greater quality or quantity of Work indicated in accordance with the Architect's interpretation.

4.6 **Order of Priority Among Conflicting Project Documents**. If the provisions of any of the Project Documents conflict or are inconsistent with the provisions of any other Project Document, the inconsistency or conflict shall be resolved by giving precedence to the Contract Documents in the following order:

4.6.1 Addenda, amendments or modifications executed after the execution of the Agreement, the most recent of which shall have priority over those executed earlier;

4.6.2 The Agreement, including all exhibits, attachments, appendices, supplements and Addenda referenced therein, with later Addenda having priority over earlier Addenda;

4.6.3 The Supplemental Conditions;

4.6.4 These General Conditions;

4.6.5 “Division Zero” of the Specifications (as those divisions are identified in the project manual prepared by the District and delivered to the Contractor)

4.6.6 “Division One” of the Specifications (as those divisions are identified in the project manual prepared by the District and delivered to the Contractor)

4.6.7 The Plans and Specifications (and in the case of an inconsistency between the Plans and Specifications, (a) the better quality or greater quantity of Work shall be provided in accordance with the District’s interpretation and (b) the Specifications shall govern as to material, workmanship and installation procedures);

4.7 **Conflicts Within the Plans**. If the Plans are internally inconsistent, those inconsistencies shall be resolved as follows:

4.7.1 Schedules, when identified as such, shall govern over all other portions of the Plans;

4.7.2 Specific notes shall govern over all other notes and all other portions of the plans except the schedules identified in 4.7.1 above;

4.7.3 Larger scale drawings shall govern over smaller scale drawings as to shape and details of construction;

4.7.4 Figured or numerical dimensions shall govern over dimensions obtained by scaling; and

4.7.5 Work not particularly shown or specified shall be the same as similar parts that are shown or specified.

4.8 **Conflicts Within the Specifications**. As to conflicts within the Specifications, the Supplemental Conditions shall govern over these General Conditions, which shall govern over all other sections of the Specifications, except for specific modifications thereto that may be stated in any Addenda to the Agreement. No other item in any of the Specifications or other Project Documents shall modify these General Conditions.

4.9 **Conflicts Between Project Documents and Other Documents or Applicable Laws**. If the requirements of any Applicable Laws, Project Documents, manufacturers’ specifications or industry standards are in conflict, the more restrictive requirements or higher quality mandated by the foregoing shall govern. In all instances, material and equipment shall be installed in strict accordance with each manufacturer’s most recent published recommendations and specifications. Furthermore, the Plans and Specifications are intended to comply with all Applicable Laws, and where any of Applicable Law is referred to in the Project Documents, that Applicable Law shall be considered as a part of the Agreement within the limits specified, and the Contractor shall bear all expenses of correcting Work done contrary to said laws, ordinances, rules

and regulations if the Contractor (a) performed such Work without first consulting the Architect for instructions or clarification regarding the Work or (b) disregarded the Architect's instructions regarding that Work.

4.10 **Omissions**. If the Project Documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials, or equipment, but if there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the Project Documents in accordance with such standard. For all materials and equipment specified or indicated in the Plans and Specifications, the Contractor shall provide all labor, materials, equipment, and services necessary for complete assemblies and complete working systems. Incidental items not indicated on the Plans and not mentioned in the Specifications, that can legitimately and reasonably be inferred as belonging to the Work, or be necessary in good practice to provide a complete assembly or system, shall be furnished as though itemized in the Plans and Specifications in every detail. Similarly, if details of work which are manifestly necessary to carry out the intent of the Plans and Specifications, or which are customarily performed, are misdescribed in or omitted from the Plans and Specifications, such details shall be deemed to be an implied requirement of the Project Documents. In any such case, the omissions or misdescriptions shall not relieve the Contractor from performing such omitted Work, and the Contractor shall perform the same as if fully and correctly set forth and described in the Plans and Specifications. As used herein, "minor detail" includes without limitation (a) substantially identical components where the price of each such component is small even though the aggregate cost or importance is substantial, and (b) a single component which is incidental, even though its cost or importance may be substantial. The quality and quantity of the parts or material so supplied shall conform to trade standards and be compatible with the type, composition, strength, size and profile of the parts and materials otherwise set forth in the Project Documents.

4.11 **References to Trade Names**. Materials or other Work described in words which have a well known technical or trade meaning shall be deemed to refer to such recognized standards. The Project Documents are not intended to include detailed descriptions of any materials or methods commonly known to the trade under any "trade name" or "trade term". Instead, the mere mention or notation of such "trade name" or "trade term" shall be considered a sufficient notice to the Contractor that it will be required to complete the Work so named with all of its incidental and accessory items according to the best practices of the trade.

4.12 **Named Materials and Equipment Must Be Furnished and Installed**. The naming of any material and/or equipment shall imply that the Contractor is to furnish and install the same, including all incidental and accessory items thereto and/or labor necessary to achieve full and complete functioning of the material and/or equipment as per the best practices of the trade(s) involved, unless specifically noted otherwise.

4.13 **Substituted Items**. If the Contractor furnishes material, processes, services or equipment more expensive than that specified, any additional cost of such material, process, service, or equipment so furnished shall be borne by the Contractor. Any engineering, design fees, or approval agencies' fees required to make adjustments in material or Work of all trades directly or indirectly affected by the approved substituted items shall be borne entirely by the Contractor. Any difference in cost between an approved substitution which is lower in cost than the originally specified item shall be refunded by the Contractor to the District. All requests for substitutions shall be done in compliance with the requirements of Section 1630 – Product Substitution Procedures.

4.14 **Detail Drawings and Instructions**. In case of ambiguity, conflict or lack of information which is not resolvable in accordance with the foregoing Sections, the Architect may, at the District's request, furnish additional instructions by means of drawing or otherwise, as necessary for proper execution of the Work. All such drawings and instructions shall be consistent with the existing Project Documents, and shall upon completion become part of the Project Documents. Such additional drawings and instructions shall be furnished with reasonable promptness, provided that the Contractor informs the Architect of the relationship of the request to the critical path of construction. Work shall be executed in conformity therewith.

4.15 **Ownership of Drawings**. All Plans, Specifications, drawings, designs, and other incidental architectural and engineering work or materials and other Project Documents and copies thereof furnished by the District are District's property. They are not to be used in other work and are to be returned to the District on request at completion of the Work, and may be used by the District as it may require, without any additional costs to the District.

4.16 **Other Contracts**. The District reserves the right to let other contracts in connection with the Work or the Project. Nothing herein contained shall be interpreted as granting to the Contractor exclusive occupancy at the site of the Project.

4.16.1 **Cooperation Among Contractors**. The Contractor shall afford other contractors reasonable opportunity for introduction and storage of their materials and execution of their work, and the Contractor shall properly connect and coordinate its Work with that of such other contractors. The Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any Work by the Contractor and any other contractor is likely (in the opinion of the District, the Inspector, the Architect or the Construction Manager) to cause interference with performance of the Work or the contractual obligations of either contractor, then the District shall decide which contractor shall cease work temporarily and which contractor shall continue or whether the Work can be coordinated so that both contractors may proceed simultaneously.

4.16.2 **Scope of Project**. The Contractor shall ascertain to its own satisfaction the scope of the Project and the nature of any other contracts that have been or may be awarded by the District in connection with the Project, as necessary to

allow the Contractor to perform its obligations under the Agreement in the light of such other contracts, if any.

4.16.3 **No District Liability Relative to Other Contracts**. The District shall not be responsible for any damages suffered or extra costs incurred by the Contractor resulting directly or indirectly from the award, performance or attempted performance of any other contract or contracts relative to the Project, or caused by any decision or omission of the District, the Architect or the Construction Manager regarding the order of precedence in performance of contracts.

ARTICLE 5

CONSTRUCTION SCHEDULE

5.1 **Commencement, Performance and Completion of Work**. It is expressly understood and agreed that the date on which the Work is commenced, the rate of progress of the Work, and the date on which the Work is completed, are all of the essence of the Agreement and the other Project Documents. The Work shall be prosecuted at such time, in such manner, and on such part or parts of the Project as may be required to complete the Project as contemplated in Project Documents and the Construction Schedule to be prepared by the Contractor and approved by the District pursuant to the provisions of this Article 5.

5.2 **Preparation of Initial Construction Schedule Upon District's Notice to Proceed**. The Contractor shall prepare and submit to the District, the Architect and the Construction Manager, an initial Construction Schedule no later than the date indicated in the Notice to Proceed**.** The initial Construction Schedule shall be developed using Microsoft Project in the form of a Critical Path Method (CPM) network diagram and shall be sufficient detail to show the sequence of activities required to complete performance of all Work, the early start and early finish dates of activities, and the critical path of the Project. A tabular report shall accompany the network diagram and shall, at a minimum, include: the activity number for each activity; the description and duration of each activity; all predecessors to and successors from each activity; and the early start, early finish, late start, late finish, and total float for each activity. The report shall support the network diagram submitted.

5.3 **Work Activities Reflected in Construction Schedule**. The Work Activities comprising the initial Construction Schedule shall be described in sufficient detail to assure the adequate planning has been done for proper execution of the Work and such that the Construction Schedule provides an appropriate basis for monitoring and evaluating the progress of the Work. Exclusive of those Work Activities for substantial review and material fabrication and delivery, Work Activity duration shall not be less than one (1) no more than five (5) calendar days, unless otherwise approved by the District. Work Activities consisting of the Architect's review of a submittal by the Contractor shall be limited to 30 days unless longer period of time specified elsewhere in the Project Documents.

5.4 **Float**. The initial Construction Schedule shall begin and end as indicated in the Notice to Proceed. The Contractor may submit an initial Contractor's Construction Schedule which shows that the Work will be competed on an earlier date (the "**Early Completion Date**") than the Contractual Completion Date. However, the acceptance of a Construction Schedule containing an Early Completion Date will not change the Contractual Completion Date. The Contractual Completion Date shall control in any determination of liquidated damages or extension of time. The difference in time between the Early Completion Date and the Contractual Completion Date shall be considered as float, slack time or contingency. Float, slack time, or contingency within the schedule, and total float within the overall schedule, is not for the exclusive use of either the District or the Contractor, but jointly owned by both parties and is a resource available to and shared by both parties as needed to meet Contract milestones and the Contractual Completion Date. The Contractor shall not sequester shared float time through such strategies as extending activity duration estimates to consume available float, using preferential logic, using extensive crew/resource sequencing, etc. Since float time within the Construction Schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Contractual Completion Date. Since float time within the Construction Schedule is jointly owned, it is acknowledged that District-caused delays on the Project may be offset by the District-caused time savings (*i.e.*, critical path submittals returned in less time than allowed by the Agreement, approvals of substitution requests which result in a savings of time to the Contractor, etc.). In such an event, the Contractor shall not be entitled to receive a time extension or delay damages until all the District-caused time savings are exceeded and the Contractual Completion Date is also exceeded.

5.4.1 The District is not required to accept an earlier (advanced) schedule; i.e., one that shows early completion dates for the Contract Times.

5.4.2 Contractor shall not be entitled to extra compensation in event agreement is reached on an earlier (advanced) schedule and Contractor completes its Work, for whatever reason, beyond completion date shown in earlier (advanced) schedule but within the Contractual Completion Date.

5.5 **District's Approval of Initial Construction Schedule**. The District, within ten (10) business days after receipt of the initial Construction Schedule, shall meet with the Contractor and selected Subcontractors requested by the District, to review the initial Construction Schedule. Within ten (10) business days thereafter the District shall deliver written comments to the Contractor as to that initial Construction Schedule. Within ten (10) business days after the District's delivery of those written comments, the Contractor shall revise the initial Construction Schedule in accordance with District's comments, and deliver the revised Construction Schedule to the District. Within twenty (20) days thereafter the District shall either accept the revised Construction Schedule by written notice to the Contractor or deliver to the Contractor additional written comments as to the Construction Schedule. It is anticipated that not more than two (2) submittals of the initial Construction Schedule will be needed in order to obtain an accepted schedule. Once accepted by the District, the Construction Schedule shall be relied on by the parties until either an updated schedules is prepared

by the Contractor to reflect actual completed Work, approved changes, or recognized delays, and submitted to the District for approval. When the initial Construction Schedule has been accepted pursuant to this paragraph, the Contractor shall submit to the District three (3) complete copies if the accepted Construction Schedule and network diagram. That submittal shall be a condition precedent to the processing of the Contractor's second (2nd) application to the District for payment under the Agreement.

5.6 **Effect of Change Orders**. Upon issuance of a change order or Notice to Proceed for all change orders including time extensions, the approved time extension shall be reflected in the next weekly report submitted by the Contractor as indicated below and in the next monthly update submitted by the Contractor as indicated below.

5.7 **Weekly Reports**. Once each week, or as approved by the District, the Contractor shall submit a report and schedule listing the activities began, completed, or in progress in the past week, and the activities scheduled to begin, complete or to be in progress for succeeding two (2) weeks. This report shall cover all work activities listed on the Construction Schedule. The report or schedule may be submitted in bar chart form or in a schedule narrative document.

5.8 **Monthly Updates**. Five (5) days prior to the submittal of the Contractor's monthly payment request, the Contractor shall submit an updated Construction Schedule reflecting progress to date, estimated start and completion dates for Work Activities not yet began, status of ongoing activities, approved changes to the Work, and any schedule revisions. The monthly submittal to the District shall be accompanied by three (3) copies of a bound report. The bound report shall include the information described in the Contractor's Schedule Narrative Report Outline listed below:

CONTRACTOR'S SCHEDULE NARRATIVE REPORT OUTLINE

- Contractor's transmittal letter
- Description of problem areas (referenced to change order or claim numbers as appropriate)
- Current and anticipated delays not resolved by approved change order, including:
    - Cause of the delay
    - Correction action and schedule adjustments to correct the delay
    - Known or potential impact of the delay or other activities, milestone, and project completion date.
- Changes in construction sequence
- Pending items and status thereof including, but not limited to:
    - Pending change orders

    - Time extension requests
    - Other items
- Project competition date status:
    - If ahead of schedule, the number of calendar days ahead
    - If behind schedule, the number of calendar days behind
- Other project or scheduling concerns
- Updated network diagram
- Tabular report as specified in (b) above, including a listing of completed activities in progress.

The submittal of the updated Construction Schedule which satisfies the requirements of this Section, accurately reflects the status of the Work and incorporates all changes into the Project, shall be a condition precedent to the processing of the Contractor's monthly payment application.

5.9 **Additional Revisions Requested by District**. Predicated upon the results of District's review of monthly submissions of the updated network diagram and schedule narrative, or the joint District/Contractor review in any given month, the Contractor may be required to revise the Construction Schedule. Conditions under which a revision will be made include the following:

5.9.1 When a delay in completion of any Work Activities or sequence of Work Activities results in an indicated extension of the Project completion or interim milestone dates detailed herein by thirty (30) calendar days.

5.9.2 When delays in submittals or equipment or material deliveries, or Work stoppages, are encountered which make rescheduling of the Work necessary.

5.9.3 When the Construction Schedule does not represent the actual prosecution and progress of the Project.

All revisions and additions to the Construction Schedule are subject to review and acceptance or rejection by the District.

5.10 **Contractor's Failure to Adhere to Construction Schedule**. If at any time during the Project, the Contractor fails to complete any activity by its latest scheduled completion date, which late completion will impact the end date of the Work past the Contractual Milestone Completion Date(s), then the Contractor shall, within **48 hours**, submit to the Construction Manager (a) a written narrative statement as to how and when the Contractor will reorganize the Work to return to the current Construction Schedule and (b) a written recovery schedule showing that such reorganization will not

delay or otherwise impact the Work or Work Activity of any other contractor, Subcontractor, or material supplier on the Project. If any such other contractor, Subcontractor or material supplier asserts a delay claim or other claim against the District as a result of the Contractor's late completion or reorganization of Work identified in this Subsection, then the Contractor shall indemnify, defend and hold the District harmless from and against those claims pursuant to the indemnification provision in the Agreement. Whenever it becomes apparent from the current monthly progress evaluation and updated Construction Schedule data that any milestone date(s) (including without limitation the Contractual Completion Date) will not be met, the Contractor shall take some or all of the following actions:

5.10.1 Increase construction manpower in such quantities and crafted as shall substantially eliminate the backlog of Work and meet the current Contractual Completion Date.

5.10.2 Increase the number of working hours per shift, the number of shifts per day, the number of work days per week, or the amount of construction equipment, or any combination of foregoing sufficient to substantially eliminate the backlog of Work.

5.10.3 Rescheduled Work items to achieve concurrent accomplishment of Work Activities.

Under no circumstances will the addition of equipment or construction forces, increasing the working hours, or any other method, manner, or procedure to allow the Project to be completed by the Contractual Completion Date as required hereunder be considered justification for a change order or treated as an acceleration.

5.11 **Limitation on Time Extensions and Delay Damages**. It is agreed that no time extensions shall be granted nor delay damages paid unless the delay can be clearly demonstrated by the Contractor on the basis of the updated Construction Schedule current as of the month the change was issued or the delay occurred and which delay cannot be mitigated, offset, or eliminated through actions as revising the intended sequence of work or other means. MOREOVER, IF THE CONTRACTOR SUBMITS A REVISED CONSTRUCTION SCHEDULE SHOWING AN EARLIER COMPLETION DATE FOR THE PROJECT, THE DISTRICT'S ACCEPTANCE OF THIS REVISED CONSTRUCTION SCHEDULE SHALL NOT ENTITLE THE CONTRACTOR TO ANY DELAY CLAIM OR DAMAGES DUE TO ANY SUCH REVISED CONSTRUCTION SCHEDULE.

ARTICLE 6

CONTRACTOR'S OBLIGATIONS PRIOR TO COMMENCEMENT OF WORK

6.1 **Knowledge of and Compliance with Applicable Laws**. The Contractor shall familiarize itself with all Applicable Laws. At all times during the term of the Agreement, the Contractor shall conduct the Work, and shall cause its Subcontractor's

to conduct the Work, in compliance with all Applicable Laws. The Contractor shall keep on the job site at all times and a copy of Titles 8, 17, 19 and 24 of the California Code of Regulations, and shall be acquainted with and comply with the provisions of said Titles, including without limitation those duties (i) applicable to the Contractor which are codified at Section 4-343 of said Title 24 and (ii) applicable to conditions on the Project site set forth in said Titles 8 and 17. As used herein, the term "**Applicable Laws**" shall mean all statutes, ordinances, governmental regulations, judicial orders and other legal requirements applicable to the conduct, performance and/or results of the Work. Without limiting the generality of the foregoing, Applicable Laws shall include the following, as they existed on the date that the Plans were approved by the DSA (with respect to construction of the Work in accordance with the Plans and Specifications) or as they may hereafter be amended, supplemented, revised or replaced (with respect to all other aspects of the Contractor's performance under the Agreement):

6.1.1 The California Building Code and Amendments.

6.1.2 The Construction Safety Rules of the Division of Industrial Safety of the State of California.

6.1.3 The National Electric Code.

6.1.4 The Uniform Plumbing Code of the Western Plumbing Officials Association.

6.1.5 The State Building Code, Title 24, Part 2, California Code of Regulations, including pertinent provisions contained in the Annual Supplements.

6.1.6 Title 19, Public Safety, California Code of Regulations.

6.1.7 Title 24, Part 1, Building Standards Administrative Code, California Code of Regulations.

6.1.8 Federal Standards of Department of Labor, Occupational Safety and Health Administration, and all applicable codes, ordinances and regulations of State, County and City agencies and entities having jurisdiction there over.

6.1.9 Specification Standards of Public Works.

6.2 **Examination of Project Documents**. Before commencing any Work, The Contractor shall carefully study and compare all Plans, Specifications and other Project Documents. If at any time (during the Contractor's initial review or later) the Contractor observes that the Plans, Specifications, or any other Project Documents appear to conflict with or to be at variance with any Applicable Laws, or appear to contain any error, inconsistency or omission, the Contractor shall promptly notify the Construction Manager in writing, and the Construction Manager shall forward the notice to the District and the Architect. Any changes to the Project Documents in question deemed necessary by the Architect shall be adjusted as provided for herein. The Contractor shall be liable to the District for damage resulting from errors,

inconsistencies, or omissions in the Project Documents that the Contractor recognized and knowingly failed to report, if a similarly skilled, knowledgeable, and experienced contractor would have discovered and reported.

6.3 **Site Investigation**. The Contractor represents and warrants to the District that prior to the execution of the Agreement the Contractor examined the Project site as required by the Information for Bidders.

6.4 **Contractor Shall Inspect for Defects in Existing Work**. If any part of the Contractor's Work depends for proper execution or results upon the Work of any other contractor or upon any other existing conditions or improvements, the Contractor shall (prior to commencing its own Work) measure and inspect all Work, conditions or improvements already in place and promptly report to the Architect and the Construction Manager in writing (a) any discrepancy between existing Work, conditions or improvements and the requirements set forth in the Project Documents, and (b) any defects in or other aspects of such existing Work, conditions or improvements that will prevent, interfere with or make more difficult the Contractor's performance of its Work. The Contractor will be held accountable for any and all damages incurred by the District arising from the Contractor's failure to measure and inspect Work, conditions and improvements as required by this Subsection. The Contractor's failure to make the measurements, inspections and reports required by this paragraph shall constitute the Contractor's acceptance of all such existing Work, conditions and improvements as being suitable and proper to receive the Contractor's own Work, except as to defects which may develop in other contractors' work after the Contractor's performance of its own Work.

6.5 **Soils Investigations and Reports**. If and when a soils investigation report has been obtained from test holes at the Site, such report will be made available for the Contractor's use in preparing its bid and Work under this Agreement. Any information obtained from such report or any other information given on drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only. As a result of Contractor's investigation, any soils conditions encountered by Contractor during the course of Work under this Agreement which are found from zero (0) to four (4) feet below the surface shall be the sole responsibility of the Contractor and Contractor shall be liable for any unforeseen soil conditions. If, during the course of Work under this Agreement, Contractor encounters unforeseen subsurface conditions below the four (4) feet threshold which differ materially from those indicated in the soils investigation report, then Contractor shall notify the District within five (5) calendar days of discovery of the condition, and changes to the contract price may be made in accordance with Article 16. Contractor agrees that no claim against District will be made by Contractor for damages and hereby waives any rights to damages in the event the Contractor fails to notify District within the five-day period mentioned above.

WARNING: ON SOIL FROM 0 TO 4 FEET, DISTRICT DOES NOT WARRANT THE SOILS AT THE PROJECT SITE. SOILS INVESTIGATION REPORT IS PROVIDED FOR CONTRACTORS INFORMATION ONLY. CONTRACTOR

HAS CONDUCTED AN INDEPENDENT INVESTIGATION OF THE PROJECT SITE AND THE SOILS CONDITIONS OF THE SITE. DISTRICT DOES NOT WARRANT THE SOILS CONDITIONS OF THE SITE AND CONTRACTOR IS FULLY RESPONSIBLE TO ASCERTAIN SITE CONDITIONS FOR THE PURPOSES OF DETERMINING CONSTRUCTION MEANS AND METHODS PRIOR TO COMMENCING CONSTRUCTION. THE SOILS INVESTIGATION REPORT IS NOT A CONTRACT DOCUMENT.

The Contractor agrees that no claim against the District will be made by the Contractor for damages in connection with the foregoing, and hereby waives any rights to damages arising out of such subsurface or latent conditions.

6.6 **Layout and Field Engineering**. All field engineering required for laying out of the Work and establishing grades for earthwork operations shall be furnished by the Contractor at its expense. Such work shall be done by a qualified civil engineer approved by the Architect.

6.7 **Field Measurements and Verification of Dimensions**. The Contractor shall verify all indicated dimensions before ordering materials or equipment, or before performing Work. The Contractor shall take field measurements, verify field conditions, and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Project Documents before commencing Work. Errors, inconsistencies or omissions discovered shall be reported to the Construction Manager at once pursuant to the requirements above. Upon commencement of any item of Work, the Contractor shall be responsible for dimensions related to such item of Work and shall make any corrections necessary to make the Work properly fit at no additional cost to the District. This responsibility for verification of dimensions is a non-delegable duty and may not be delegated to Subcontractors or agents.

6.8 **Surveys**. Surveys to determine location of property lines and corners will be supplied by the District. Surveys to determine locations of construction, grading, and site work shall be provided by the Contractor.

6.9 **Appointment of Contractor's Superintendent**. Prior to the commencement of the Work, the Contractor shall appoint a competent superintendent ("**Contractor's Superintendent**") satisfactory to the District. Before commencing the Work, the Contractor shall give written notice to the Construction Manager of the name, qualifications and experience of the Contractor's Superintendent. The Contractor's Superintendent shall be present at the Project site at all times when Work is being conducted. If the District finds the Contractor's Superintendent to be unsatisfactory, the Contractor shall replace the Contractor's Superintendent with one acceptable to the District. The Contractor's Superintendent shall not be changed except with the written consent of the District, unless the Contractor's Superintendent ceases to be employed by the Contractor, in which case the Contractor shall notify the Construction Manager in writing and replace the Contractor's Superintendent with another person acceptable to the District. The Contractor's Superintendent shall represent the Contractor, and all

directions given to the Contractor's Superintendent shall be as binding as if given to the Contractor. If the Contractor's Superintendent is not cooperating or is non-responsive to the District, the Architect or the Construction Manager, then the Contractor shall remove the Contractor's Superintendent and replace him or her with another person acceptable to the District within **twenty-four (24) hours** after written instructions from the District (delivered by the Construction Manager) to do so.

6.10 **Permits, Licenses, Approvals and Certificates**. The Contractor comply with the provisions in the Supplemental Conditions (Section 00800) related to the obtaining and paying for approvals, certificates, fees, inspections, licenses, permits or similar requirements necessary for the performance of the Work.

6.10.1 **Approvals Noted on Plans and Specifications**. Without limiting the generality of the foregoing, if the Plans, Specifications, or other drawings that are part of the Project Documents state that materials, processes, or procedures must be approved by the DSA, the State Fire Marshall, or any other governmental entity or agency, the Contractor shall be responsible for obtaining those approvals.

6.10.2 **Environmental Clearances**. The Contractor shall provide to state and federal agencies all information necessary for environmental clearances and other authorizations necessary for performance of the Work. The Contractor shall comply with any and all conditions of such clearances and authorizations, including giving notices during construction when so required. The Contractor shall not be compensated for any delays in obtaining environmental clearances and authorizations; however, an appropriate extension of time will be granted in accordance with the provisions of Article 14 below, if the Contractor demonstrates to the satisfaction of the District that the Contractor has made every reasonable effort to obtain the requisite clearance or authorizations and cannot obtain same in a timely manner.

6.11 **Insurance**. Prior to commencing the Work, the Contractor shall procure the insurance required by Article 18 below.

ARTICLE 7

MANNER IN WHICH WORK IS TO BE PERFORMED

7.1 **Contractor's Supervision of Work**. The Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills as may be necessary to perform the Work in accordance with the Project Documents. The Contractor represents and warrants to the District that the Contractor is a skilled, knowledgeable, and experienced contractor who is able to so supervise and direct the Work.

7.2 **Performance of Work in Violation of Applicable Laws**. If the Contractor performs any work which it knew, or through exercise of reasonable care should have known, to be contrary to Applicable Laws, and failed to give notice to the

Construction Manager as required herein above, the Contractor shall bear all costs arising there from.

7.3 **Materials and Work**.

7.3.1 **Payment**. Except as otherwise specifically stated in the Agreement, the Contractor shall provide and pay for all materials, supplies, tools, equipment, labor transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete the Project within specified time.

7.3.2 **Quality**. Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted or specified, and workmanship shall be of good quality.

7.3.3 **Quantity and Availability**. Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of work and shall be stored properly and protected as required.

7.3.4 **Placement of Orders for Materials and Equipment**. The Contractor shall, after issuance of the Notice to Proceed by the District, place orders for materials and/or equipment as specified so that delivery of same may be made without delays to the Work. As indicated in the Notice to Proceed, the Contractor shall prepare and deliver to the Construction Manager a procurement schedule identifying the dates in which each such order has been or will be placed. The Contractor shall, upon demand from the Architect or Construction Manager, furnish to the Architect and Construction Manager documentary evidence showing that orders have been placed and that scheduled delivery dates will be met. If the Contractor fails to do so, the District reserves the right to place orders for such materials and/or equipment as it may deem advisable in order that the Work may be completed by the Contractual Completion Date, and all expenses incidental to the procuring of said materials and/or equipment shall be paid for by the Contractor.

7.3.5 **Ownership, Title, Storage and Inventory**. No materials, supplies, or equipment for work under the Agreement shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by seller or supplier. The Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the Work and agrees upon completion of all Work to deliver the Project site, together with all improvements and appurtenances constructed or placed thereon by the Contractor, to the District free from any claims, liens, or charges. The title to new materials and/or equipment and attendant liability for its protection and safety, shall remain in the Contractor until incorporated in the Work and accepted by the District. No part of said materials and/or equipment shall be removed from its place of storage except for immediate installation in the Work. The Contractor shall keep an accurate inventory of all said materials and/or equipment in a manner satisfactory to the District or its authorized representative.

7.4 **Integration of Work**. The Contractor shall do all cutting, fitting, patching, and preparation of Work as required to make its several parts come together properly, and fit it to receive or be received by Work of other contractors or existing conditions shown upon, or reasonably implied by, the Plans and Specifications, and shall follow all directions given by the Construction Manager on behalf of the District or the Architect.

7.4.1 **Costs Associated with Integration Work**. All costs caused by defective or ill-timed Work shall be borne by the Contractor.

7.4.2 **Damage to Existing Work**. The Contractor shall not endanger any Work by cutting, excavating, or otherwise altering Work and shall not cut or alter Work of any other contractor without the written consent of the Architect. The 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.

7.4.3 **Matching Existing Work**. When modifying existing work or installing new Work adjacent to existing work, the Contractor shall match, as closely as conditions of site and materials will allow, the finishes, textures, and colors of the original work, refinishing existing work as required, at no additional cost to the District.

7.4.4 **Effect on Integration of Phased Project**. The Contractor is aware that the Project may be split into several phases. If the Project is split into phases then the Contractor has made allowances for any delays or damages which may arise from coordination with contractors for other phases. If any delays should arise from a contractor working on a different phase, the Contractor's sole remedy for damages, including delay damages, shall be against the contractor who caused such damage and not the District. The Contractor shall provide access to contractors for other phases as necessary to prevent delays and damages to contractors working on other phases of construction.

7.5 **Coordination With Other Work**. The District reserves the right to do other work in connection with the Project or adjacent thereto by contract or otherwise, and the Contractor shall at all times conduct its Work so as to impose no hardship on the District or others engaged in the District's work nor to cause any unreasonably delay or hindrance thereto. Where two or more contractors are employed on related or adjacent work, each shall conduct their operations in such a manner as not to cause delay or additional expense to the other.

7.6 **Tests and Inspections**. If the Project Documents. the District's written instructions, or any laws, ordinances or orders of any public authority require any Work to be specially tested or approved, then the Contractor shall give notice of the Work's readiness for observation or inspection at least two (2) working days prior to being tested or covered. If inspection is by authority other than the District, the Contractor shall inform the District's Inspector of the date fixed for such inspection. Required certificates of inspection shall be secured by the Contractor. Observations by District's Inspector shall be promptly made, and where practicable, at source of supply. If any Work should be covered without approval or consent of District's Inspector, the Work

must be uncovered for examination and satisfactorily reconstructed at the Contractor's expense in compliance with the Agreement. Costs of tests, inspections, re-inspections, and any materials found to be not in compliance with the Agreement shall be paid for by the Contractor. Other costs for test and inspection shall be paid by the District. Tests and inspections will comply with California Code of Regulations Title 24, Section 4-335.

7.7 **Trenches**. The Contractor shall provide adequate sheeting, shoring, and bracing, or an equivalent method, for the protection of life and limb in trenches and open excavation which conform to all Applicable Laws. If the Agreement involves the excavation of any trench or trenches five feet or more in depth, then no excavation of such trench or trenches shall be commenced until the Contractor has delivered to the Construction Manager evidence that the Contractor has obtained the permit or permits required in connection therewith pursuant to Labor Code Section 6500 and Health and Safety Code Section 17922.5.

7.8 **Removal and Restoration of Existing Utility Lines**.

7.8.1 **Extent of District's Responsibility**. Pursuant to Government Code Section 4215, the District assumes the responsibility for removal, relocation, and protection of utilities located on the construction site at the time of commencement of construction under the Agreement with respect to any such utility facilities which are not identified in the Plans and Specifications. Notwithstanding anything to the contrary set forth in this Subsection, however, the parties agree that except for identification in the Project Documents of main or trunk line utility facilities, the provisions of this Subsection shall not apply to, and the District shall have no obligation to indicate, the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Project site can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the Project site.

7.8.2 **Discovery of Utility Facilities Not Shown on Plans and Specifications**. If the Contractor, while performing Work under the Agreement, discovers utility facilities not identified by the District in the Plans or Specifications, the Contractor shall immediately notify the Construction Manager and the utility involved.

7.8.3 **Compensation to Contractor in Connection with Utility Lines**. When the Contractor is required to locate, remove or relocate utility facilities not identified in the Project Documents with reasonable accuracy, the Contractor shall be compensated for the cost thereof. The Contractor shall also be compensated for the costs of repairing any damage resulting from the discovery of such unidentified utility facility when such damage does not result from the failure of the Contractor to exercise reasonable care. All such compensation to the Contractor shall be base on an actual cost plus nine percent (9%) mark-up, in lieu of fifteen percent (15%) mark-up as identified in Article 16.

7.8.4 **District's Performance of Repair or Relocation Work**. The District (or the public utility, where it is the owner of the utility facilities) shall have the

sole discretion to perform repairs, or relocation work at a reasonable price, where such work is required to facilitate the Project.

7.8.5 **Contractor's Responsibility**. Except as expressly provided in this Subsection, the Contractor shall be responsible at its own cost for all work, expense or special precautions caused by the existence or proximity of utilities encountered at the Project site or in the performance of the Work, including without limitation the repair of any damage resulting from hand or exploratory excavation or any other damage that may result from the existence or proximity of those utilities. The Contractor is cautioned that the utilities encountered at the Project site may include communications cables or electrical cables conducting high voltage. When excavating in the vicinity of the ducts enclosing such cables, special precautions are to be observed by the Contractor at its own cost and shall include the following: all cables and their enclosure ducts shall be exposed by careful hand excavation so as not to damage the ducts or cables nor cause injury to persons; and appropriate warning signs, barricades and safety devices shall be erected. As part of any Work to be performed by the Contractor hereunder, the Contractor shall provide the notices required by, and shall proceed in accordance with, Government Code Sections 4216.2, 4216.3 and 4216.4, and the Contractor pay all fees charged pursuant to Government Code Sections 4216 *et seq.*, which may be reimbursed as indicated in the Supplemental Conditions.

7.8.6 **Contractor to Provide Drawings of Utilities**. The Contractor shall provide to the Construction Manager (for delivery to the Architect and the District) as-built drawings of all utilities encountered and constructed to the Project site, indicating the size, horizontal location, and vertical location based on the Project bench mark or a stable datum.

7.8.7 **No Liquidated Damages**. The Contractor shall not be assessed liquidated damages for delay in the completion of the Project which delay is caused by the failure of the District or the owner of the utility to provide for removal or relocation of such unidentified utility facilities.

7.8.8 **Assessment for Other Delays**. Nothing herein shall preclude assessment against the Contractor for any other delays in completion of the Work.

7.9 **Minimizing Interference with School Operations**. If the Project site includes all or any portion of a school facility operated by the District, then all construction activities, all loading and unloading of construction materials and equipment, and all other Work, will be scheduled and conducted so as to minimize disruptions to (a) the District's operation of the school facility, including student testing and tests, (b) campus activities, and (c) campus users.

7.10 **Protection of Persons and Property**.

7.10.1 **Protection Against Damage**. The Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of the Agreement and shall take all

necessary measures and be responsible for the proper care and protection of all materials delivered and Work performed until completion and final acceptance by the District. The Contractor shall provide such heat, covering, and enclosures as are necessary to protect all work, materials, equipment, appliances, and tools against damage by weather conditions. All Work shall be solely at the Contractor's risk with the exception of damage to the work caused by "acts of God" as defined in Public Contract Code Section 7105.

7.10.2 **Safety of Personnel**. The Contractor shall take, and require subcontractors to take, all necessary precautions for safety of workers and shall comply with all applicable federal, state, local and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to the Work site and to provide a safe and healthful place of employment. The Contractor shall furnish, erect and properly maintain at all times, as directed by the District or the Architect or required by conditions and progress of Work, all necessary safety devices, safeguards, construction canopies, signs audible devices for protection of the blind, safety rails, belts and nets, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction. The Contractor shall designate a responsible employee, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety and health of workers. Name and position of person so designated shall be reported in writing to the District by the Contractor. The Contractor shall correct any violations of safety laws, standards, orders, rules, or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, such violation shall be corrected immediately by the Contractor at the Contractor's expense.

7.10.3 **Emergency Action by Contractor**. In an emergency affecting safety of persons, Work or adjoining property, the Contractor, without special instruction or authorization from the Architect, the Construction Manager or the District, is hereby permitted to act at the Contractor's discretion to prevent such threatened loss or injury. Furthermore, the Contractor shall take such actions if expressly instructed by the Construction Manager. Any compensation claimed by the Contractor on account of emergency work shall be determined by written agreement with the District.

7.10.4 **Protection of Existing Structures and Facilities**. The Contractor shall take adequate precautions to protect existing roads, sidewalks, curbs, pavements, utilities, adjoining property and structures (including, without limitation, protection from settlement or loss of lateral support), and to avoid damage thereto, and repair any damage thereto caused by construction operations.

7.10.5 **Safety of Students**. When performing new construction on existing school sites, the Contractor shall (a) become informed and take into specific account the maturity of the students on the site, (b) perform work which may interfere with school activities only before or after school hours, (c) enclose Work areas with a

substantial barricade, and (d) arrange the Work to cause a minimum amount of inconvenience and danger to students and faculty in their regular school activities.

7.10.6 **Protection of Shrubs and Trees**. The Contractor shall provide substantial barricades around all shrubs or trees in the vicinity of the Work, except with respect to any shrubs or trees which the Construction Manager specifies by written notice to the Contractor are not required to be preserved.

7.10.7 **Material Delivery Routes**. The Contractor shall deliver materials to Work sites over routes designated by the Construction Manager.

7.10.8 **Dust Abatement**. The Contractor shall take preventive measures to eliminate objectionable dust.

7.10.9 **Enforcement of District Rules and Regulations**. The Contractor shall, to the extent directed by the Construction Manager, enforce all District policies and procedures regarding signs, advertising, fires, and smoking, and shall require that all workers at the Project site comply with all such rules and regulations while on the Project site.

7.10.10 **Survey Markers and Monuments**. The Contractor shall take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If the Contractor or any Subcontractor accidentally disturbs any such marker, monument or device, then the Contractor shall at its expense cause a civil engineer approved by the District to replace the marker, monument or device.

7.11 **Utilities and Facilities at Project Site**. At all times during the Contractor's and Subcontractors' performance of the Work, the Contractor shall maintain the following utilities and facilities at the Project site:

7.11.1 **Utilities**. All utilities necessary for the performance of the Work – including without limitation electricity, water, gas, and telephone – shall be furnished and paid for by the Contractor. The Contractor shall also furnish and install all related and necessary temporary distribution systems for those utilities (including meters, if necessary) from distribution points to points on the Project site where utility service is necessary to carry on the Work. Upon completion of the Work, the Contractor shall remove all temporary utility distribution systems. If the Project consists of the construction of additions to existing facilities, the Contractor may, with written permission of the District, use the District's existing utilities by making prearranged payments to the District for utilities used by the Contractor for construction.

7.11.2 **Sanitary Facilities**. The Contractor shall provide sanitary temporary toilet facilities in no fewer numbers than required by law and such additional facilities as shall be directed by the Construction Manager and/or the District for the use of all persons working at the Project site. The toilet facilities shall be maintained in a sanitary condition at all times and shall be left at the site until removal is directed by the

Construction Manager and/or the District,. Use of the permanent toilet facilities that are part of the Work under construction shall not be permitted.

7.12 **Sound and Noise Controls**. The Contractor shall comply with all sound control and noise level rules, regulations and ordinances which apply to the Work. In the absence of any such rules, regulations and ordinances, the Contractor shall conduct the Work so as to minimize disruption to others due to sound and noise caused by the Work, and shall be responsive to the District's or the Construction Manager's requests to reduce noise levels. Each internal combustion engine used for any purpose on the Project or related to the Project shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the Project without a muffler.

7.13 **Emission Controls**. Construction equipment shall be fitted with modern emission control devices and shall be kept in proper tune.

7.14 **Archeological Artifacts**. If the Contractor discovers any artifacts during excavation and/or construction, the Contractor shall stop all affected work and notify the District, which will call in a qualified archaeologist designated by the California Archaeological Inventory to assess the discovery and suggest any further mitigation that the archeologist deems necessary. If the Contractor discovers human remains, the Contractor shall notify the District, and the District shall be responsible for contacting the county coroner and a qualified archaeologist. If the remains are determined to be Native American, the District shall contact the appropriate tribal representatives to oversee removal of the remains.

7.15 **Cleanup of Project and Work Site**. The Contractor at all times shall keep the Project site free from debris such as waste, rubbish, and excess materials and equipment caused by the Work. The Contractor shall not leave debris under, in, or about the Work site, but shall promptly remove same. Upon direction from the Construction Manager and/or District, the contractor shall provide adequate manpower to remove all debris from the project site to a level of cleanliness determined by the District within twenty four (24) hours. Upon completion of the Work, the Contractor shall clean the interior and exterior of all buildings that are part of the Project or otherwise involved in the Work, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected. The Contractor shall clean and polish all glass, plumbing fixtures, and finish hardware and similar finish surfaces and equipment and shall remove temporary fencing, barricades, planking, sanitary facilities and similar temporary facilities from the Project site. If the Contractor fails to clean up as required by this Section, the District shall do so and the cost thereof shall be charged to the Contractor.

7.16 **Payments by Contractor**. The Contractor shall pay for the following goods and services at the following times:

7.16.1 **Transportation and Utilities**. The Contractor shall pay for all transportation and utility services not later than the twentieth (20th) day of the calendar month following that in which such services are rendered.

7.16.2 **Materials, Tools and Equipment**. The Contractor shall pay for all materials, tools, and other expendable equipment to the extent of ninety percent (90%) of cost thereof, not later than the twentieth (20th) day of the calendar month following that in which such materials, tools, and equipment are delivered at site of Project, and shall pay the balance of the cost thereof not later than the thirtieth (30th) day following completion of that part of the Work in or on which such materials, tools, and equipment are incorporated or used.

7.16.3 **Amounts Owed to Subcontractors**. The Contractor shall pay to each of its Subcontractors, not later than the tenth (10th) day following each payment by the District to the Contractor the respective amounts allowed the Contractor on account of work performed by the respective Subcontractor to the extent of such Subcontractor's interest therein.

7.17 **Liens and Lien Releases**. The Contractor agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any Work covered by the Agreement shall have any right to lien upon premises or any improvement or appurtenance thereon, except that the 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, the Contractor shall advise the District as to owner thereof. Nothing contained in this Subsection, however, shall defeat or impair the rights of persons furnishing material or labor under any bond given by the Contractor for their protection or any rights under any law permitting such persons to look to funds due the Contractor in hand of the District, and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing materials or labor when no formal contract is entered into for such materials or labor. The Contractor agrees that at any time upon the request of the District, the Architect or the Construction Manager, the Contractor will submit a sworn statement setting forth the work performed or material furnished by subcontractors and material men, and the amount due and to become due to each, and that before the final payment called for under the Contract the Contractor will, if requested, submit to the District (with copies to the Architect and the Construction Manger) a complete set of vouchers showing what payments have been made for materials and labor used in connection with the Work. The Contractor and all Subcontractors and material suppliers under the Contractor's control shall as a condition of receipt and processing of pay requests by the District, submit conditional and unconditional lien releases as applicable. Failure by the Contractor and its Subcontractors and material suppliers to comply with this requirement will result in the rejection of the pay requests, and payment thereon will be suspended pending compliance with this requirement. Upon compliance, the District will re-commence processing of such pay requests.

7.18 **District's Access to Work**. The District and its representatives shall at all times have access to the Work wherever it is in preparation or progress. The Contractor shall provide safe and proper facilities for such access so that the District's representatives may perform their functions.

7.19 **District's Right to Perform Work**. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, including, but not limited to the following, the District may perform the Work as indicated herein:

- Failure to supply adequate workers on the entire Project or any part thereof;
- Failure to supply a sufficient quantity of materials;
- Failure to perform any provision of this Contract;
- Failure to comply with safety requirements, or due to Contractor is creation of an unsafe condition;
- In the case of bona fide emergency;
- Failure to order materials in a timely manner;
- Failure to prepare deferred-approval items or shop drawings in a timely manner;
- Failure to comply with Contractor's schedule which would result in a delay to the critical path;
- Failure to comply with the Subletting and Subcontracting Fair Practices, Public Contract Code section 4100, et seq.

7.19.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails (within **48 hours** after receipt of written notice or a shorter time period expressly stated in the written notice from the District in an emergency situation) to commence and continue correction of such default with diligence and promptness, the District may correct such deficiencies without prejudice to other remedies the District may have pursuant to the Agreement and applicable law, after providing a **seven (7) day** written notice to Contractor and Surety.

(a) If during this **seven (7) day** period, Surety personally delivers notice to District that it intends to perform such work, District shall allow Surety **seven (7) days** to perform. In an emergency situation, the District may correct such deficiencies without prejudice to other remedies the District may have pursuant to the Agreement and applicable law, after providing **48 hours** notice to the Contractor.

(b) In either case, the Contractor will be invoiced the cost of correcting such deficiencies, including compensation for additional services and expenses made necessary by such default, or neglect. The invoice amount shall be deducted from the next payment due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the District.

ARTICLE 8

COMPLETION OF WORK

8.1 **Finished Work**. The Contractor shall be responsible to see that the finished work complies accurately with the Project Documents.

8.2 **Walk-Through As Prerequisite to Determination of Completion**. When the Contractor believes that the Work is complete except for minor corrective items, it shall so notify the Construction Manager. Promptly thereafter, the Construction Manager shall schedule a final walk-through of the Project by the Contractor, the District, the Architect, the Inspector and the Construction Manager to determine whether and to what extent the Work is complete. Any erroneous claims of completion by the Contractor resulting in a premature walk-through shall be at the Contractor's sole cost and expense, and the District shall be entitled to reduce its payments to the Contractor under the Agreement by an amount equal to any costs incurred by the District due to the erroneous claims by the Contractor that the Project is complete. Minor corrective (or "punch-list") items shall be identified in the final walk-through of the Project.

8.3 **District's Acceptance of Work**. The District, in its sole discretion, may either (a) accept the Work as complete notwithstanding the need to complete minor corrective items (as distinguished from incomplete items), if the Work has otherwise been completed to the satisfaction of the District and the Inspector, or (b) refrain from accepting the Work as complete until the entire Work and all portions thereof, including all punch-list items, have been completed to the satisfaction of the District and the Inspector. The Work shall only be accepted as complete by an action of the District's School Board.

8.4 **Notice of Completion**. Once the District has accepted the Work as indicated herein above, the District shall thereafter cause a Notice of Completion to be recorded in the Orange County Recorder's Office.

8.5 **Contractor's Failure to Correct Punch-List Items**. If the Contractor fails to complete the minor corrective items prior to the expiration of the thirty-five (35) day period immediately following recording of the Notice of Completion, the District shall withhold from the final payment owing to the Contractor under the Agreement an amount equal to twice the estimated cost, as determined by the District, of each item until such time as the item is completed. At the end of such 35-day period, if there are items remaining to be corrected, the District may elect to proceed as permitted herein.

8.6 **Rejection and Correction of Work**. If at any time, before or after completion of the Work, the District discovers that the Contractor has varied from the Plans, Specifications or other drawings, or otherwise failed to perform the Work in accordance with the Project Documents, then the District shall, after consultation with the Architect, either (a) reject any and all such Work, or (b) deduct from any amounts due to the Contractor the sum of money equivalent to the difference in value between the Work performed and that called for by the Plans, Specifications and drawings. If the

district rejects such Work then the Contractor shall promptly remove all Work and materials identified by the District as failing to conform to the Project Documents, whether incorporated or not. The Contractor shall promptly replace and re-perform its own Work to comply with Project Documents 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 the Contractor does not remove such Work within a reasonable time, fixed by written notice, the District may remove it and may store any usable material related thereto at the Contractor's expense. If the Contractor does not pay expenses of such removal within **seven (7) days**, the District may, upon **seven (7) days** written notice, sell such materials at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by the Contractor.

ARTICLE 9

WAGES, HOURS AND WORK FORCE

9.1 **Contractor to Supply Sufficient Workforce**. The Contractor shall be responsible for providing a sufficient work force as necessary to meet scheduled commencement, completion and other milestone dates set forth in the Construction Schedule. Overtime and/or weekend work necessary to meet Contractual Completion Date or any other date(s) identified in the Construction Schedule shall not constitute a basis for a claim for additional compensation. The Contractor may determine whether to utilize split shifts or overtime compensation for timely completion.

9.2 **Duty to Provide Fit Workers**. The Contractor and its Subcontractors shall at all times enforce strict discipline and good order among their employees and shall not employ on the Project any unfit person or anyone not skilled in the Work assigned to such person. It shall be the Contractor's responsibility to ensure compliance with this requirement. If the Construction Manager, the Architect or the District, in their sole discretion, deems that any person engaged by the Contractor or any Subcontractor in the Work is incompetent, unfit, troublesome or otherwise undesirable, then the Construction Manager shall so notify the Contractor, and the Contractor shall immediately exclude that person from the Project site and shall not again employee that person upon the Project without the prior written consent of the District and the Construction Manager. If the Contractor fails to exclude such person from the Project site, the District shall (without limiting any of the District's other rights) have the right to do so.

9.3 **Prevailing Wages.**

9.3.1 **Availability of Information as to Prevailing Wage Rates**. Prevailing wage rates are available from the District or on the Internet at: <http://www.dir.ca.gov>. The Contractor shall post a copy of such wage rates at appropriate conspicuous points on the site of the Project, including a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.

9.3.2 **Contractor Must Pay Prevailing Wages**. The Contractor shall pay and shall cause to be paid each worker engaged in Work on the Project not less than the general prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor and such workers.

9.3.3 **Holiday and Overtime Rates**. Work performed on holidays, 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. Holidays shall be defined in the collective bargaining agreement applicable to each particular craft, classification or type of worker employed.

9.3.4 **Prevailing Waged Include Health & Welfare, Pension, Vacation, Travel Time and Subsistence Payments**. Pursuant to Labor Code Section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Labor Code Section 1773.8. The Contractor shall pay all such payments as defined in the applicable collective bargaining agreements filed with the Department of Industrial Relations in accordance with Labor Code Section 1773.8.

9.3.5 **Rates for Unclassified Work**. Any worker employed to perform Work on the Project, which Work is not covered by any craft or classification listed in the general prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the craft or classification which most nearly corresponds to work to be performed by them, and such minimum wage rate shall be retroactive to time of initial employment of such person in such craft or classification.

9.3.6 **Changes to Prevailing Rate Published After Solicitation of Bids**. The prevailing rates payable by the Contractor hereunder are those obtained by the District at the time bids for the Work were solicited, regardless of any subsequent determination by the Director of the Department of Industrial Relations of a change in any prevailing rate of per diem wages in the locality in which the Work is to be performed.

9.3.7 **Penalty to Contractor for Failure to Pay Prevailing Rates**. Pursuant to Labor Code Section 1775, the Contractor shall as a penalty to the District forfeit up to Fifty Dollars ($50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of per diem wages, determined by the Director of the Department of Industrial Relations, for such craft or classification in which such worker is employed for any Work done under the Agreement by the Contractor or by any of its Subcontractors. The amount of the penalty shall be determined by the California State Labor Commission and shall be based on consideration of the Contractor's mistake, inadvertence or neglect in failing to pay the correct prevailing rate of per diem wage, or the previous record of the Contractor in meeting his or her prevailing rate of per diem wage obligations, or the Contractor's willful failure to pay the correct prevailing rate of per diem wages. A mistake, inadvertence or neglect in failing to pay the correct

prevailing rate of per diem wage is not excusable if the Contractor had knowledge of his or her obligations under the Agreement and the Applicable Laws. The difference between such prevailing rate of per diem wage and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing rate of per diem wage shall be paid to each worker by the Contractor.

9.4 **Apprentices**. The Contractor acknowledges and agrees that, if the Agreement involves a dollar amount greater than or a number of working days greater than that specified in Labor Code Section 1777.5, then the Agreement is governed by the provisions of Labor Code Section 1777.5 with respect to the use of properly registered apprentices, and all of the following provisions shall apply:

9.4.1 **Use of Apprentices**. Apprentices of any crafts or trades may be employed and, when required by Labor Code Section 1777.5, shall be employed upon the Project, provided they are properly registered in full compliance with the provisions of the Labor Code. In employing apprentices, the Contractor and each Subcontractor shall also comply with Labor Code Section 1777.6, which forbids certain discriminatory practices in the employment of apprentices. It shall be the Contractor's responsibility to ensure compliance with this requirement and with laws relative to the use of apprentices, including without limitation Labor Code Sections 1777.5, 1777.6 and 1777.7 and Title 8, Sections 200 *et seq*., of the California Code of Regulations. The Contractor shall become fully acquainted with all such laws regarding apprentices prior to commencement of the work. The District suggests that the Contractor contact the State Division of Apprenticeship Standards with any questions regarding laws applicable to apprentices.

9.4.2 **Payment to Apprentices**. Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work of the craft or trade to which he or she is registered.

9.4.3 **Apprenticeship Standards and Agreements**. Only apprentices, as defined in Labor Code Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing at Section 3070), Division 3 of the Labor Code, are eligible to be employed on public works (including the Project). The employment and training of each apprenticeship shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he or she is training.

9.4.4 **Certificate Approving Contractor or Subcontractor Under Applicable Apprenticeship Standards**. Pursuant to Labor Code Section 1777.5, the Contractor and any Subcontractors employing workers in any apprenticeship craft or trade in performing any work under the Agreement shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or Subcontractor under the applicable apprenticeship standards for the employment and training of apprentices. The Contractor and its Subcontractors shall each submit contract award information to the applicable joint apprenticeship committee which shall include an

estimate of journeyman hours to be performed under the Agreement, the number of apprentices to be employed and the approximate dates the apprentices will be employed.

9.4.5 **Evidence of Compliance**. At any time upon the request of the Construction Manager, the Contractor shall provide the Construction Manager with evidence satisfactory to the District of the Contractor's compliance with these requirements.

9.4.6 **Contractor's Failure to Comply with Laws Regarding Apprentices**. If the Contractor or Subcontractor willfully fails to comply with Labor Code Section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, the Contractor or Subcontractor shall: (a) be denied the right to bid on any subsequent District project for one year from the date of such determination; and (b) forfeit as a penalty to the District one hundred dollars ($100) per day for each calendar day of noncompliance, which shall be withheld from any payment due or to become due under the terms of the Agreement. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council.

9.5 **Hours of Work**.

9.5.1 **Eight-Hour Day**. As provided in Article 3, (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any Subcontractor on any subcontract under the Agreement upon the work or upon any part of the work contemplated by the Agreement shall be limited and restricted by the Agreement to eight (8) hours per day, and forty (40) hours during any one week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, Work performed by employees of the Contractor or Subcontractor in excess of eight (8) hours per day, or forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

9.5.2 **Record of Hours**. The Contractor shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by the Contractor or Subcontractor in connection with the work or any part of the work contemplated by the Agreement. The record shall be kept open at all reasonable hours to the inspection of the District and to the Division of Labor Standards Enforcement, Department of Industrial Relations.

9.5.3 **Penalty Payable by Contractor Relative to Overtime**. Pursuant to Labor Code Section 1813, the Contractor shall pay to the District a penalty of Twenty-Five Dollars ($25) for each worker employed in the execution of this Contract by the Contractor or by any Subcontractor for each calendar day during which such worker is

required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code.

9.5.4 **No Additional Expense to District for Overtime**. Any Work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to the District.

9.5.5 **Representation Regarding Previous Violations of Work-Hour Laws**. In executing the Agreement, the Contractor swears, under penalty of perjury, that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately proceeding two-years because of the Contractor's failure to comply with an order of the National Labor Relations Board. Pursuant to Public Contact Code Section 10296), the District may rescind the Agreement if the Contractor falsely swears to this statement.

9.6 **Provision of First Aid to Workers**. The Contractor shall maintain emergency first aid treatment for the Contractor's workers on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C.A., Sec. 651 et seq.).

ARTICLE 10

DOCUMENTATION

10.1 **Documentation of Work**. The Contractor shall keep on the job site at all times one legible copy of all Project Documents, including without limitation Addenda, change orders, Plans, Specifications, drawings and schedules. Said documents shall be kept in good order and available to the District, the Architect, the Inspector(s), the Construction Manager, and all governmental entities having jurisdiction over the Project.

10.2 **District's Audit Rights**. Pursuant to and in accordance with the provisions of Government Code Section 8546.7, or any amendments thereto, all books, records and files of the District, the Contractor, or any Subcontractor or material supplier connected with the performance of the 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 the Agreement, shall be subject to the examination and audit of the State Auditor at the request of the District or as part of any audit of the District for a period of three (3) years after final payment is made under the Agreement. In connection with any such audit, the District and/or the State Auditor shall have access to the Contractor's facilities, shall be allowed to interview all of the Contractor's current or former employees to discuss matters pertinent to the performance of the Agreement, shall have access to all necessary records, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this requirement. Without limiting the generality of the foregoing:

10.2.1 **Right of Examination and Audit**. The District and the Auditor General shall have the right to perform the examinations and audits that are indicated herein.

10.2.2 **Place of Audit and Examination**. Examinations and audits hereunder may be conducted at the Contractor's principal offices during the Contractor's regular business hours, or at such other reasonable times and places determined by the District and/or the Auditor General. Where the examinations and audits are conducted at the Contractor's offices (or at those of the Contractor's Subcontractors, material suppliers or insurers), the Contractor shall provide (or cause said parties to provide) the District and the Auditor General with appropriate work space necessary to allow the District and the Auditor General to conduct the audits and examinations that are indicated herein.

10.2.3 **Records Subject to Audit**. The Contractor's, Subcontractors', material suppliers' and insurers' records which are subject to audit hereunder shall include any and all information, documentation, materials and data of every kind and character relative to the Project or the Project Documents, including without limitation: books and records; papers; subscriptions; recordings; agreements; purchase orders; leases; contracts; subcontracts (including proposals of successful and unsuccessful bidders, bid recaps and similar documents); commitments; notes; daily diaries; superintendent reports; drawings; receipts; vouchers; memoranda; original estimates; estimating worksheets; correspondence; change order files (including documentation of negotiated settlements); back-charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other supporting evidence deemed necessary by the District and/or the Auditor General to carry out the purposes of the examination and audit (collectively, the "**Auditable Records**").

10.2.4 **Format of Auditable Records**. The District and the Auditor General shall have the right to obtain both paper copies and (if available) computer readable data copies of the Auditable Records that are indicated herein.

10.2.5 **Employee Interviews**. In connection with the examinations and audits that are indicated herein., the District and the Auditor General, during the term of the Agreement and for a period of three years after final payment has been made there under (or longer if required by law), shall each: (a) have access to the Contractor's (and its Subcontractors' material suppliers and insurers) facilities; and (b) be allowed to interview all current and former employees of the Contractor (and its Subcontractors' material suppliers and insurers) to discuss matters pertinent to the performance of the Agreement.

10.2.6 **Applicability to Third Parties**. The Contractor shall require all of its Subcontractors, material suppliers' and insurance agents to comply with provisions herein by insertion of the requirements hereof in each written contract between said parties and the Contractor. The Contractor will cooperate fully and will cause all such parties to cooperate fully in furnishing or in making available to the District and the

Auditor General from time to time whenever requested in an expeditious manner any all Auditable Records (as defined herein) .in the possession of such parties requested by the District or the Auditor General.

10.2.7 **Cost of Audit or Examination**. If an audit or examination that is indicated herein, discloses overcharges (of any nature) by the Contractor to the District in excess of one-half of one percent (.5%) of the total contract billings under the Agreement, the reasonable actual cost of the audit or examination shall be reimbursed to the District by the Contractor.

10.2.8 **Overpayments or Underpayments Disclosed by Audit or Examination**. If any audit or inspection conducted hereunder discloses any overpayment or underpayment made by the District to the Contractor under the Agreement, then within a reasonable amount of time (not to exceed 90 calendar days) from presentation of the District or Auditor General of its findings to the Contractor, (a) the District shall pay any shortfall to the Contractor, and (b) the Contractor shall refund any overpayment to the District.

10.3 **Drawings Reflecting Actual Construction**. During the course of construction, the Contractor shall maintain drawings kept up each day to show the Project as it is actually constructed. Every sheet of the Plans and Specifications which differs from the actual construction shall be marked and sheets so changed shall be noted on the title sheets of the Plans and Specifications. All change orders shall be shown by reference to sketch drawings, and any supplementary drawings or change order drawings shall be included. The Contractor shall review the “as-built” drawings with the Construction Inspector at least once a month to demonstrate that all changes that have occurred are being fully and accurately recorded. All “record” drawings of the Work shall be prepared by an appropriate engineer approved by the Architect.

10.4 **Records Related to Change Orders**. The Contractor shall maintain all records relating to costs in connection with change orders, as required herein below.

10.5 **Payroll Records**.

10.5.1 **Contractor Must Keep Accurate Payroll Records**. Pursuant to the provisions of Labor Code Section 1776, the Contractor shall keep and shall cause each subcontractor performing any portion of the work under the Agreement to 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 the Contractor in connection with the work.

10.5.2 **Inspection of Payroll Records**. The payroll records indicated herein above shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

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

(b) A certified copy of all payroll records indicated herein above shall be made available for inspection or furnished upon request to a representative of the District, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(c) A certified copy of all payroll records indicated herein above shall be made available for inspection upon request by the public or copies thereof made; provided, however, that a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to this Subsection, 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 the records at the principal office of the Contractor.

(d) The form of certification shall be as follows:

I, _____ (*printed name*), the undersigned, am _____ _____(*position in business*) with the authority to act for and on behalf of _____ (*Name of business and/or name of the Contractor*), certify under penalty of perjury that the records or copies thereof submitted and consisting of _____ _____ (*description and number of pages*) are the originals or true, full and correct copies of the originals which depict the payroll record(s) of the actual disbursements by way of cash, check, or whatever form to the individual or individuals named.

Dated: _____ Signature: _____

10.5.3 **Filing Certified Copies With Requesting Entities**. Contractor shall file a certified copy of the payroll records indicated herein above with the entity that requested the records within five (5) days after receipt of a written request. In the event that the Contractor fails to comply within the five (5) day period, the Contractor shall, as a penalty to the District, forfeit Twenty-Five Dollars ($25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

10.5.4 **Non-Disclosure of Confidential Employee Information**. Any copy of payroll records made available for inspection as copies and furnished upon request to the public by the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a

manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor shall not be marked or obliterated.

10.5.5 **Location of Payroll Records**. The Contractor shall inform the District of the location of the payroll records indicated herein above, including the street address, city and county, and shall, within five (5) working days, provide a written notice of a change of location and address.

10.5.6 **Responsibility for Compliance**. It shall be the responsibility of the Contractor to ensure compliance with the provisions of this Subsection and the provisions of Labor Code Section 1776.

ARTICLE 11

HAZARDOUS MATERIALS, ASBESTOS, AND DIFFERING CONDITIONS

11.1 **Hazardous Materials**. Neither the Contractor, any Subcontractor, nor any of their material suppliers shall use or bring upon the Project site any Hazardous Materials, except in compliance with all applicable Hazardous Materials Laws. As used herein, the term "**Hazardous Materials**" means any hazardous or toxic substance, material, or waste which now is or hereafter becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined as "Hazardous Waste," "Extremely Hazardous Waste," or "Restricted Hazardous Waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "Hazardous Substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "Hazardous Material," "Hazardous Substance," or "Hazardous Waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "Hazardous Substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) listed under Article 4 of Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, or defined as a hazardous or extremely hazardous waste under Article 2 of Title 22 of the California Code of Regulations, Division 4.5, Chapter 10 (viii) designated as a "Hazardous Substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1321), (ix) defined as a "Hazardous Waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6921 et seq. (42 U.S.C. § 6903), or (x) defined as a "Hazardous Substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (42 U.S.C. § 9601).

11.2 **Asbestos**.

11.2.1 **Non-Utilization of Asbestos-Containing Material**. Neither the Contractor nor any Subcontractor shall use or install any asbestos-containing materials in the Project. Upon the District's request, the Contractor will be required to execute and submit a "Certificate Regarding Non-Asbestos-Containing Materials" in form and content acceptable to the District. Should asbestos-containing materials be installed by the Contractor in violation of that certification, then the Contractor shall bear the entire cost of such removal, including without limitation the cost of the District's asbestos removal contractor, the cost of the District's asbestos consultant, analytical and laboratory fees, time delays and additional costs as may be incurred by the District.

11.2.2 **Contractor's Work Which Affects Existing Asbestos**. If the Contractor performs Work in such a manner that it affects existing asbestos-containing materials at the Project site, the Contractor doe so at its own risk and discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos-containing products. The Contractor shall instruct its employees and Subcontractors with respect to those standards, hazards, risks and liabilities.

11.2.3 **Removal of Asbestos**. Removal of asbestos-containing materials shall be done in accordance with the following criteria:

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

(b) The asbestos removal contractor shall be a contractor accredited by the California Environmental Protection Agency and qualified in the removal of asbestos and shall be chosen and approved by the District's asbestos consultant, who shall have sole discretion and final determination in this matter.

(c) The asbestos consultant shall be chosen and approved by the District, which shall have sole discretion and final determination as to that selection.

(d) The Work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the District's asbestos consultant.

11.3 **Discovery of Hazardous Materials**. If the Contractor encounters on the site material reasonably believed to be Hazardous Materials, the Contractor shall immediately stop Work in the area affected and report the condition to the Construction Manager in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the District and the Contractor.

11.4 **Discovery of Differing Conditions**. The Contractor shall promptly notify the Construction Manager in writing of If the Contractor discovers any subsurface or latent physical conditions at the Project site which are different from those indicated in the Project Documents, or if the Contractor discovers any physical conditions at the Project site of an unusual nature or materially different from those ordinarily

encountered and generally recognized as inherent in Work of the character provided for in the Agreement, then the Contractor shall promptly deliver written notice to the Construction Manager of that discovery. Such notice shall be delivered before the conditions are disturbed and in no event later than five (5) days following the Contractor's discovery of those conditions.

11.5 **District's Investigation of Contractor's Report of Hazardous Materials or Differing Conditions**. Upon the Construction Manager's receipt of a notice from the Contractor as indicated herein above, the Construction Manager shall forward that notice to the District, and the District shall promptly investigate the material or conditions. If the District finds that the conditions do materially so differ, or do involve Hazardous Materials, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work shall issue a change order pursuant to Article 16 below. If a dispute arises between the District and the Contractor as to whether the conditions materially differ or involve Hazardous Materials, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, then the Contractor shall not be excused from any scheduled completion date provided for by the Project Documents, but shall proceed with all the Work to be performed under the Project Documents. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties, pursuant to Public Contract Code Section 7104.

11.6 **Material Safety Data Sheets (MSDS)**. The Contractor is required to ensure Material Safety Data Sheets are available in a readily accessible place at the work site for any material requiring a Material Safety Data Sheet per the Federal "Hazard Communication" standard, or employees right to know law. The Contractor is also required to ensure proper labeling on any substance brought onto the job site and that any person working with the material or within the general area of the material is informed of the hazards of the material and follows property handling and protection procedures. Two additional copies of the Material Safety Data Sheets must also be submitted directly to the Construction Manager.

ARTICLE 12

SHOP DRAWINGS

12.1 **Overview of Shop Drawing Procedures**. The Contractor shall check and verify all field measurements and shall submit to the Architect (through the Construction Manager and/or District), a detailed list of activities required for mobilization and start of construction that includes all shop drawings, schedules, and materials list required for the work of various trades by the date indicated in the Notice to Proceed.. All lists should be consistent within requirements as stated in Contract Documents including Article 5 herein. The Architect shall review such drawings, schedules and materials list only for conformance with design concept of Project and compliance with information given in Project Documents, and return as approved or disapproved with guidance as to required corrections within thirty five (35) calendar

days. The Contractor shall make any corrections required by the Architect, file three (3) corrected copies with the Architect (through the Construction Manager), and furnish such other copies as may be needed for construction within ten (10) calendar days. The Architect's approval of such drawings, schedules, or materials list shall not relieve the Contractor from responsibility for deviations unless the Contractor has in writing called the Architect's attention to such deviations at time of submission and secured the Architect's written approval, nor shall it relieve the Contractor from responsibility for errors in shop drawings or schedules. Shop drawings, and all revisions thereto, must be submitted by the Contractor at a time sufficiently early to allow review of same by the DSA if required, and the Architect, and to accommodate the rate of construction progress required under the Project Documents. The Contractor will be required to pay the Architect's reasonable and customary fees in order to expedite review of shop drawings which are not submitted in a timely fashion.

12.2 **Shop Drawings Shall Conform to Plans and Specifications**. All submittals of shop drawings, catalog cuts, data sheets, schedules and material lists shall be complete and shall conform to contract drawings and specifications.

12.3 **Definition of "Shop Drawings"**. The term "shop drawing" as used herein shall be understood to include, but not be limited to, detail design calculations, fabrication and installation drawings, lists, graphs and operating instructions.

12.4 **Transmittal Form**. All shop drawing submittals shall be accompanied by an accurately completed transmittal form using the format designated by the District. Any shop drawing submittal not accompanied by such a form, or where all applicable items on the form are not completed, will be returned for resubmittal. Normally, a separate transmittal form shall be used for each specific item or class of material or equipment for which a submittal is required. Transmittal of shop drawings on various items using a single transmittal form will be permitted only when the items taken together constitute a manufacturer's "package" or are so functionally related that expediency indicates review of the group or package as a whole. At its option, the Contractor or Supplier may obtain from the Architect quantities of the shop drawing transmittal form at reproduction cost.

12.5 **Material and Equipment Suppliers**. The Contractor may authorize a material or equipment supplier to deal directly with the Construction Manager with regard to shop drawings, however, ultimate responsibility for the accuracy and completeness of the information contained in the submittal shall remain with the Contractor.

12.6 **Contractor's Stamp Approving Shop Drawings**. The Contractor's review and approval of shop drawings shall include the following stamp:

> "The Contractor has reviewed and approved not only the field dimensions but the construction criteria and has also made written notation regarding any information in the shop drawings that does not conform to the Project Documents.

This shop drawing has been coordinated with all other shop drawings received to date by the Contractor and this duty of coordination has not been delegated to subcontractors, material suppliers, the Architect, or the engineers on this project.

_____
Signature of the Contractor"

12.7 **Architect's Review of Shop Drawings**. The Architect's review of shop drawings will be limited to checking for general agreement with the Project Documents. The Architect's review shall in no way relieve the Contractor of responsibility for errors or omissions contained therein, nor shall such review operate to waive or modify any provision contained in the Project Documents. Fabricating dimensions, quantities of material, applicable code requirements, and other contract requirements shall be the Contractor's responsibility. Within fourteen (14) calendar days after receipt of shop drawings, the Architect will (through the Construction Manager) return one or more prints of each drawing to the Contractor with the Architect's comments noted thereon. If prints of the shop drawing are returned to the Contractor marked "NO EXCEPTIONS TAKEN," formal revision of said drawing will not be required. If prints of the drawing are returned to the Contractor marked "MAKE CORRECTIONS NOTED," formal resubmittal of said drawings will not be required. If prints of the drawing are returned to the Contractor marked "REVISE AND RESUBMIT," the Contractor shall revise said drawing and shall resubmit six (6) copies of the revised drawing to the Architect (through the Construction Manager). If prints of the drawing are returned to the Contractor marked "REJECTED RESUBMIT," the Contractor shall resubmit six (6) new copies of the drawing to the Architect.

12.8 **Contractor's Re-Submittal of Shop Drawings**. The Contractor shall make a complete and acceptable submittal to the Architect by the second submission of drawings. The District shall withhold funds due the Contractor to cover additional costs of the Architect's review beyond the second submission and any other costs incurred by the District.

12.9 **No Work or Fabrication If Shop Drawings Must Still Be Resubmitted**. Fabrication of an item shall not be commenced before the Architect has reviewed the pertinent shop drawings and returned copies to the Contractor marked with "NO EXCEPTIONS TAKEN," or "MAKE CORRECTIONS NOTED." No Work represented by required shop drawings shall be purchased or commenced until the applicable submittal has been approved. The Work shall conform to the approved shop drawings and all other requirements of the Project Documents. The Contractor shall not proceed with any related Work which may be affected by the Work covered under shop drawings until the applicable shop drawings have been approved, particularly where piping, machinery, and equipment and the required arrangements and clearances are involved.

12.10 **Revisions on Shop Drawings Are Not Grounds for Claims for Extra Work**. Revisions indicated on shop drawings shall be considered as changes

necessary to meet the requirements of the Project Documents and shall not be taken as the basis of claims for extra work.

12.11 **Simultaneous Submission of Related Shop Drawings**. Except where the preparation of a shop drawing is dependent upon the approval of a prior shop drawing, all shop drawings pertaining to the same class or portion of the Work shall be submitted simultaneously.

12.12 **DSA Approval of Shop Drawings and Deferred Approval Items**. Calculations of a structural nature contained in the Shop Drawings, as well as all Deferred Approval items identified in Section 01411 of the Specifications, must be approved by the DSA. Shop drawings, Deferred Approval items, and all revisions thereto, must be submitted by the Contractor to the Construction Manager at a time sufficiently early to allow review of same by the DSA.

12.13 **Limitation on Contractor's Claims Relative to Shop Drawings**. The Contractor shall have no claim for damages or extension of time due to any delay resulting from the Contractor having to make the required revisions to shop drawings unless review by the Architect of said drawings is delayed beyond the time provided hereinbefore and the Contractor can establish that the Architect's delay in review actually resulted in a delay in the Construction Schedule approved by the District. The Contractor shall not be entitled to any claim for damages resulting from DSA review extending beyond **forty-five (45)** calendar days after submittal; however, the District may consider an extension of time due to any delay caused by DSA review.

ARTICLE 13

SAMPLES

13.1 **Contractor's Duty to Provide Samples**. The Contractor shall furnish for the Architect's approval (through the Construction Manager and/or District),all samples as required in the Specifications, together with catalogs and supporting data required by the Architect by the date indicated in the Notice to Proceed. This provision shall not authorize any extension of time for performance of the Work. The Architect shall review such samples, as to conformance with design concept of Work and for compliance with information given in Project Documents and approve or disapprove same within ten (10) working days from receipt of same.

13.2 **Standards**. Unless specified otherwise, sampling, preparation of samples and tests shall be in accordance with the latest standards of the American Society for Testing and Materials.

13.3 **Testing**. Samples shall, upon demand of the Architect, the Construction Manager or the District, be submitted for tests or examinations and considered before incorporation of same into the Work. The Contractor shall be solely responsible for delays due to samples not being submitted in time to allow for tests. Acceptance or rejection will be expressed in writing. Work shall be equal to approved samples in every

respect. Samples which are of value after testing will remain the property of the Contractor.

ARTICLE 14

CONTRACT TIME

14.1 **Commencement and Completion Dates**. The District shall designate in the Notice to Proceed the commencement date, on which the Contractor shall immediately begin and thereafter diligently prosecute the Work to completion. The Contractor agrees to complete the Work on the Contractual Completion Date, unless the Contractual Completion Date is adjusted, in writing, by a change order signed by the District. The Contractor may complete the Work before the Contractual Completion Date if (a) doing so will not interfere with the District or the District's other contractors engaged in related or adjacent activities and (b) the District agrees in writing to such early completion. In requesting to complete the Work ahead of schedule, the Contractor may be responsible for additional management fees from the District's consultants if the District determines that it will incur such additional fees, but in that event the District shall not grant its approval until the District and the Contractor have agreed upon the amount of such additional fees. For purposes of this Section, the Work shall be regarded as completed only when accepted as complete by an action of the District's School Board as indicated above.

14.2 **Adjustment Of Completion Date Due to Unforeseeable or Uncontrollable Acts**. The Contractor shall not be assessed with liquidated damages, nor with the cost of engineering and inspection, during any delay in the completion of the Project caused by acts of God, the public enemy, fire, flood, epidemic, quarantine restriction, strike, freight embargo, discovery of archaeological or pale ontological artifacts, and unusual action of the elements, provided that the Contractor notifies the Construction Manager and the Director of Construction for the District in writing of the causes of delay within **three (3) days** from the beginning of any such delay. The Architect, in conjunction with District and the Construction Manager, shall determine the facts with regard to the delay and the reasonable period of time by which the date of completion should be extended by reason thereof, if any, and advise the District. District's findings thereon shall be final and conclusive. There shall be no compensation to the Contractor for costs associated with this kind of delay. As used herein, the term "unusual action of the elements" is limited to extraordinary, adverse weather conditions or conditions immediately resulting there from which cause a cessation in the progress of the Work and which delay the time of completion of the Work.

14.3 **No Adjustment Based on Normal Weather or Industrial Conditions**. The Contractor shall have no rights to an adjustment in the Contractual Completion Date due to weather conditions or industrial conditions which are normal for Orange County, California. The Contractual Completion Date has been calculated with consideration given to the average climate range and usual industrial conditions prevailing in Orange County, California.

14.4 **Delays Caused by District or Architect**. If the Contractor is delayed in completing the Work by reasons of any act of the Architect or the District which is prohibited in the Agreement, or by reason of changes made pursuant to Article 16 without agreement being reached as to any extension of the Contractual Completion Date, the Contractor shall notify the Construction Manager and the Director of Construction for the District in writing of the causes of the delay within **three (3) days** from the beginning of the delay.

14.5 **Substantiation of Delay**. Promptly following each notice of delay delivered by the Contractor under this Article 14, the Contractor shall provide the Construction Manager with documentation and justification to substantiate the delay and its relation to the Project's critical path.

14.6 **Liquidated Damages**. The Contractor and the District hereby agree that the exact amount of damages for failure to complete the Work by the Contractual Completion Date is extremely difficult or impossible to determine. It is therefore agreed that the Contractor will pay the District the sum of money stipulated per day in the Agreement for each day's delay in completing the work beyond the time prescribed. A final credit change order shall be executed to assess liquidated damages. If the Contractor fails to pay liquidated damages, the District may deduct the amount therefore from any money due or that may become due to the Contractor under the contract.

14.7 **Time is of the Essence**. All time limits specified in the Agreement and the other Project Documents are of the essence of the Contract.

ARTICLE 15

REQUESTS FOR INFORMATION

15.1 **Architect's Response to Requests for Interpretation, Information, Clarification or Instructions**. Following a request by the Contractor for interpretation, clarification or instructions as to the Project Documents, the Architect, with review as required by the Construction Manager and the District, shall, within a reasonable time, issue in writing the interpretation, clarification, or additional detailed instructions requested. Should any details be more elaborate, in the opinion of the Contractor, than scale drawings and specifications warrant, the Contractor shall give written notice thereof to the Construction Manager within **three (3) days** after the Contractor's receipt of same. If no such notice is given to the Construction manager within that time, the details will be deemed a reasonable development of the scale drawings. If such notice is timely given, and if the Architect agrees with the Contractor's opinion, then the Architect will either modify the drawings as indicated above or shall recommend to the District a change order of the extra work required by the additional detail pursuant to Article 16 below.

15.2 **Procedure Where Contractor Believes a Response to a Request for Information Expands the Scope of Work**. If the Contractor believes that any interpretation, clarification, or additional detailed instructions calls for the Contractor to

perform Work beyond the scope of work specified in the Agreement, then the Contractor must submit written notice thereof to the District, the Architect, the Inspector(s) and the Construction Manager within **three (3) calendar days** following receipt of such interpretation, clarification, or additional detailed instructions (and in any event prior to commencement of Work thereon). That notice shall be accompanied by a detailed cost breakdown relative to the additional Work claimed (including without limitation an explanation of any delay impacts related to the claim). If after considering such notice, claim and accompanying material the Architect agrees with the Contractor, the Architect shall either (a) revise its interpretation, clarification or detailed instructions, or (b) authorize the extra Work by a contract change order or by a field instruction with a change order to follow. If the Architect disagrees (and is unable to convince the Contractor that the scope of work has not been increased), the Contractor shall nevertheless perform such Work upon receipt from the District of a written order to do so. At the conclusion of each day in which the Contractor has performed any of the disputed Work, the Contractor shall prepare (and the Inspector shall verify) time and material records for that day. In such case, the Contractor shall have the right to have the claim later determined pursuant to 0 below. The Contractor shall have no claim for additional compensation because of such interpretation, clarification, or additional detailed instructions, unless the Contractor gives the written notice required by this Subsection.

15.3 **Improper Requests for Information**. If the Architect determines that any request by the Contractor for clarification or interpretation is not justified or does not reflect adequate and competent supervision and/or knowledge by the Contractor and/or its Subcontractors, then the Contractor shall pay the reasonable and customary fees incurred by the Architect in processing and responding to the request.

ARTICLE 16

CHANGES TO THE WORK

16.1 **Change Orders in General**.

16.1.1 **District's Right to Issue Change Orders**. The District reserves the right to issue written change orders directing changes in the Agreement at any time prior to the acceptance of the Work without voiding the Agreement, and the Contractor shall promptly comply with each and every such change order. The Contractor may request changes in the Work, but shall not act on the changes until approved in writing by the District. Any changes made without authority in writing from the District shall be the responsibility of the Contractor, and no increase in compensation or time extension will be made for a change involving greater expense to the Contractor, and changes involving greater or lesser expense may be rejected by the District with the consequent responsibility on the Contractor to at his own expense replace the changed work with that originally specified.

16.1.2 **Adjustment of Contract Price Based on Change Orders**. On the basis set forth herein, the Contract Price shall be adjusted for any change order

requiring a different quantity or quality of labor, material or equipment from that originally required, and the partial payments to the Contractor, set forth in Section 21.5 below, shall be adjusted to reflect the change. Whenever the necessity for a change arises, and when so ordered by the District in writing, the Contractor shall take all necessary steps to halt such other Work in the area of the change that might be affected by the change. Changed Work shall be performed in accordance with the original requirements of the Agreement except as modified by the change order. Except as provided in this Article 16, the Contractor shall have no claim for any compensation due to changes in the Work.

16.2 **Proposed Change Orders**.

16.2.1 **Cost Request Bulletin**. The Architect, with the approval of the District, may from time to time issue to the Contractor (delivered through the Construction Manager) a cost request bulletin for a proposed change order.

16.2.2 **Contractor's Response to Cost Request Bulletin**. Within seven (7) calendar days after issuance of the cost request bulletin, the Contractor shall respond by delivering to the Construction Manager the following information: (a) the amount which the Contractor proposes should be added to or subtracted from the Contract Price due to the proposed change order; (b) a detailed cost estimate prepared by the Contractor which supports that proposed price adjustment; (c) any adjustment to the time periods and deadlines for commencement, performance and/or completion of all or any part of the Work that the Contractor believes will be necessitated by and directly attributable to the proposed change order; and (d) a detailed explanation substantiating the Contractor's proposed time adjustment. The amount which the Contractor proposes to add or subtract from the Contract Price should include any and all of the Contractor's expenses in connection with the proposed change, because the Contractor will not be entitled to receive any additional compensation in connection with the proposed change order other than the increased amounts determined pursuant to this Article 16. The Contractor's failure to request an adjustment of the Contract Price when responding to the cost request bulletin shall waive any right to subsequently claim an adjustment of the Contract Price in connection with the changed Work. The Contractor's failure to request an adjustment of time when responding to the cost request bulletin shall waive any right to subsequently claim an adjustment of the time for final completion of the changed Work. The District shall not bear any cost incurred by the Contractor in acquiring information relative to a proposed change order and/or a cost request bulletin.

16.2.3 **District Review of Contractor's Response**. Upon its receipt of the Contractor's response to the cost request bulletin, the Construction Manager shall deliver that response to the Architect. The Architect will review that response and advise the District, which will make the final decision as to whether the change is to be made and as to the amounts (if any) of any adjustment to the Contract Price and time periods to be allowed by the District in connection with the change. Upon request by the District in connection with the Contractor's response to the cost request bulletin, the Contractor shall permit the District (and the Architect and the Construction Manager) to

inspect the original estimate of the anticipated costs of performing the Work that the Contractor used in submitting its bid for the Project, and shall also permit the District (and the Architect and the Construction Manager) to review subcontracts and purchase orders relating to the proposed change order and/or to the Contractor's response to the cost request bulletin.

16.2.4 **Issuance of Change Order**. In situations where the District and the Contractor agree on the amount to be added to be added to or deducted from the Contract Price and the time to be added to or deducted from the time available to commence, perform and complete the Work, the District shall cause the Architect to prepare a change order, which shall be signed by the District, the Architect and the Contractor. Once the change order has been fully signed, the Contractor shall proceed with the changed Work (unless a different commencement date is specified in the change order).

16.2.5 **Commencement of Changed Work in Absence of Agreement**. If the District and the Contractor are unable to agree upon an adjustment to the Contract Price or upon a time adjustment in connection with the changed Work proposed by the cost request bulletin, the Contractor shall (upon notice from the District delivered by the Construction Manager) proceed with the changes pursuant to the provisions of Sections 16.4 and 16.5 below, reserving the right as indicated below to further pursue its claim for a time adjustment or Contract Price adjustment.

16.2.6 **Commencement of Changed Work If Contractor Fails to Respond to Cost Request Bulletin**. If the Contractor fails to respond to the cost request bulletin within the time and in the manner specified above, and if the Contractor has not obtained (through the Construction Manager) the District's permission for a delay in submission (which permission the District may grant or deny in its sole discretion), then the District may order the Contractor in writing to begin the work immediately, and the Contract Price shall be adjusted in accordance with District's estimate of cost, unless the Contractor within fifteen (15) days following the completion of the changed Work presents proof convincing to the District that the District's estimate is in error.

16.2.7 **Commencement of Changed Work in Emergencies**. Notwithstanding anything to the contrary set forth in this Article 16, the District may require the Contractor to proceed immediately with any changes to Work where, in the District's opinion, an emergency situation exists requiring immediate commencement of such changes, in accordance with Section 7.10.3 above.

16.3 **Allowable Costs In Connection With Change Orders**. The only estimated or actual costs which will be allowed because of changed work, and the manner in which such costs shall be computed, are as follows:

16.3.1 **Labor**. Costs are allowed for the actual payroll cost to the Contractor for labor, field supervision (but not field office supervision), and engineering or technical services directly required for the performance of the changed work (but not site management such as field office estimating, clerical, engineering, or management), including payments, assessments, or benefits required by lawful labor union collective bargaining agreements, compensation insurance payments, contributions made to the State pursuant to the Unemployment Insurance Code, and for taxes paid to the federal government required by the Social Security Act of August 14, 1935, as amended. No labor coast will be recognized at a rate in excess of prevailing wage in the locality at the time the work is performed, nor will the use of a classification which would increase the labor cost be permitted unless the Contractor establishes to the satisfaction of the District the necessity for payment at a higher rate, unless otherwise stipulated by the PSA.

16.3.2 **Materials**. Costs are allowed for the cost to the Contractor for the materials directly required for the performance of the changed Work. Such cost of materials may include the costs of procurement, transportation, sales tax, and delivery if necessarily incurred. If a trade discount by the actual supplier is available to the Contractor, it shall be credited to the District. If the materials are obtained from a supply or source owned wholly or in part by the Contractor, payment therefore will not exceed the current wholesale price of such material. If, in the opinion of the District, the cost of materials is excessive, or if the Contractor fails to furnish satisfactory evidence of the cost from the actual supplier thereof, then in either case the cost of the materials shall be deemed to be the lowest wholesale price at which similar materials are available in the quantities required at the time they were needed. The District reserves the right to furnish such materials, as it deems advisable and the Contractor shall have no claim for costs or profit on material furnished by the District.

16.3.3 **Equipment**.

(a) Costs are allowed for the actual cost to the Contractor for the use of equipment directly required in the performance of the changed work except that no payment will be made for time while equipment is inoperative due to breakdowns or non-working days. The rental time shall include the time required to move the equipment to the Project site from the nearest available source for rental of such equipment, and to return it to the source. If such equipment is not moved by its own power, then loading and transportation costs will be paid. However, neither moving time nor loading and transportation costs of will be paid if the equipment is used on the Project in any other way than upon the changed work. Individual pieces of equipment having a replacement value of $100.00 or less shall be considered to be tools or small equipment, and no payment therefore will be made.

(b) For equipment owned, furnished or rented by the Contractor, no cost therefore shall be recognized in excess of the rental rates established by the distributors or rental agencies in the locality where the work is performed.

(c) The amount to be paid by the Contractor including mark–up for the use of equipment as set forth above shall constitute full compensation to the Contractor for the cost of fuel, power, oil, lubrication, supplies, small tools, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators who shall be paid for as provided in Section 16.3.1 above), and any and all costs to the Contractor incidental to the use of such equipment.

16.3.4 **Work by Subcontractors and Vendors**. For any portion of the changed Work which is performed by a Subcontractor, the Contractor shall furnish to the District a detailed estimate, in conformance with the Proposed Cost Change Form provided in these General Conditions, prepared and signed by the Subcontractor of the cost to the Subcontractor for performing the Changed Work. The combined costs for subcontractors overhead, profit, taxes, indirect supervision, insurance, bonds, and any other costs not allowed by the Article 16 shall not exceed fifteen percent (15%). The aggregate mark-ups allowed by multi-tiered subcontractors shall not exceed twenty-six percent (26%). Estimates to be deleted from the Subcontractor's portion of the work shall be the gross cost of the deducted Work plus at least six percent (6%) for overhead, bond, insurance, and related savings. The Contractor shall be entitled to no more than five percent (5%) of the mark-up for Subcontractor performed work or on material or vendor invoices.

For the changed Work to be furnished by a vendor, the Contractor shall furnish upon demand of the District, a lump sum estimate of the costs of the items including taxes and cartage to the Contractor prepared by the vendor. No vendor mark-up for overhead, profit, layout, supervision or bonds will be allowed for changed work furnished by a vendor.

16.3.5 **General Contractor's Mark-Up for Added Work**. When changed work is self-performed by the Contractor, the Contractor may add to the total cost estimates for such work no more than fifteen percent (15%) of profit, overhead, insurance, taxes, indirect supervision, bonds, and any other costs allowed by this Article 16 and in accordance with the Proposed Cost Change Form provided in these General Conditions. However, the General Contractor shall be entitled to no more than five percent (5%) of the mark-up if a Subcontractor performed the work. Refer to Section 7.8.3 above for limitations upon increased costs relative to utility lines.

16.3.6 **Credit for Deleted Work**. Where an entire item or section of Work is deleted from the Contract, the entire subcontract costs bid cost shall be considered the appropriate deduction less the value of Work performed, and shall have at least five percent (5%) mark-up added thereto for the Contractor's saved overhead, bonds, insurance, and taxes. If subcontract cost or bid cost is not identifiable, then estimates of the amount to be deducted from the Contract Price shall be the gross cost of the deducted work plus at least five percent (5%) for saved overhead, bonds, insurance, and taxes. For proposed change orders, which involve both added and omitted Work, the Contractor shall separately estimate the cost of the added Work before mark-ups, and separately estimate the cost of the omitted Work before

allowance of a credit. If the difference between the costs results in the increase to the Contract Price, the mark-up for added Work shall be applied to the difference, and if the difference in the costs results in a decrease, then the mark-up for deleted Work shall be applied to the difference.

16.3.7 **Market Values**. Cost for added Work shall be no more than market values prevailing at the time of the change, unless the Contractor can establish to the satisfaction of the District that it investigated all possible means of obtaining Work at prevailing market values and that the excess cost could not be avoided.

16.3.8 **Contractor Must Keep Records Substantiating Costs of Changed Work**. The Contractor must keep and submit to the Inspector for verification time and material records substantiating the Contractor's costs in connection with the performance of Work required by change orders. The Contractor shall deliver copies thereof to the Construction Manager upon request, together with such other proof reasonable requested by the District of the Contractor's costs.

16.3.9 **Format for Proposed Cost Change**. The following format shall be used as applicable by the District and the Contractor to communicate proposed additions and deductions to the Contract. A copy of a proposed Construction Change Directive form is provided at the end of this Article.

		EXTRA	CREDIT
(a)	Material (attach itemized quantity and unit cost plus sales tax)	_____	_____
(b)	Labor (attach itemized hours and rates)	_____	_____
(c)	Equipment (attach invoices)	_____	_____
(d)	Subtotal	_____	_____
(e)	If Subcontractor performed Work, add Subcontractor's overhead and profit to portions performed by Sub-contractor, not to exceed fifteen percent (15%) of item (d).	_____	_____

		EXTRA	CREDIT
(f)	Liability and Property Damage Insurance, Worker's, Compensation Insurance, Social Security, and Unemployment Taxes, not to exceed as follows: FICA @ **6.2%**- with a wage ceiling of $84,900; Medicare @ **1.45%**- no wage ceiling; FUTA @ **.8%**- with a wage ceiling of $7,000; ETT and SUI @ **2.3%**- with a wage ceiling of $7,000; Workers' Compensation @ **5.94%**; Liability and Property Damage @ **2.5%**. **Total not-to-exceed is 19.19%.** (*Note: Modifications to these percentages will be evaluated and possibly modified only on a case-by-case basis and only after proper proof of alternate percentages are documented and approved in advance. In addition, as wage ceilings are met, those corresponding percentages must drop from the "burden" calculations).*	_____	_____
(g)	Subtotal	_____	_____
(h)	General Contractor's Overhead and Profit: Not to exceed fifteen percent (15%) of Item (g) if Contractor performed the work. No more than five percent (5%) of Item (g) if Subcontractor performed the work. If work was performed by Contractor and Subcontractors, portions performed by Contractor shall not exceed fifteen percent (15%) if Item (g), and portions performed by Subcontractor shall not exceed five percent (5%) of Item (g)	_____	_____
(i)	Subtotal	_____	_____
(j)	Bond not to exceed one percent (1%) of Item (g)	_____	_____
(k)	TOTAL	_____	_____
(l)	Time	_____	_____

The undersigned Contractor approves the foregoing Change Order or Construction Change Directive as to the changes, if any, and the contract price specified for each item and as to the extension of time allowed, if any, for completion of the entire work on account of said Change Order or Construction Change Directive, and

agrees to furnish all labor, materials and service and perform all work necessary to complete any additional work specified therein, for the consideration stated herein. It is understood that said Change Order or Construction Change Directive shall be effective when approved by the Governing Board of the District.

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

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

16.4 **Failure to Agree as to Cost for Added Work**. Notwithstanding the failure of the District and the Contractor to agree as to the cost of the proposed change order, the Contractor, upon written order from the District, shall proceed immediate with the changed Work. A field instruction or letter signed by the District shall be used for this written order. At the start of each day's work on the change, the Contractor shall notify the District in writing as to the size of the labor force to be used for the changed work and its location. Failure to notify may result in the non-acceptance of the costs for that day. At the completion of each day's work, the Contractor shall furnish to the District a detailed summary of all labor, materials, and equipment employed in the changed Work. The District may compare its records with the Contractor's daily summary and may make any necessary adjustments to the summary. After the District and the Contractor agree upon and sign the daily summary, the summary shall become the basis for determining costs for the additional Work. The sum of these costs when added to the appropriate mark-up will constitute the payment for the changed Work. Subsequent adjustments, however, may be made based on later audits by the District. When changed Work is performed at locations away from the job site, the Contractor shall furnish in lieu of the daily summary, a summary submitted at the completion of the Work containing a detailed statement of labor, material, and equipment used in the Work. This latter summary shall be signed by the Contractor who shall certify thereon that the information is true. The Contractor shall maintain on demand and furnish on demand of the District itemized statements of cost from all vendors and subcontractors who perform changed work or furnish materials and equipment for such Work. All statements must be signed by the vendors and the subcontractors.

16.5 **Failure to Agree as to Cost for Deleted Work**, When a proposed change order contains a deletion of any work, and the District and the Contractor are unable to agree upon the cost thereon, the District's estimate shall be deducted from the Contract Price and may be withheld from the payment due to the Contractor until the Contractor presents proof convincing to the District that District's estimate was in error. The amount to be deducted shall be the costs to the Contractor for labor, materials, and equipment which would have been used on the deleted work together with the amount

for overhead and bonds. The guidelines set forth in Section 16.3 above shall be used in computing the amounts involved.

16.6 **Allowable Time Extensions**. For any change in the Work, the Contractor shall be entitled only to such adjustments in time by which completion of the entire Work is delayed due solely to performance of the changed Work. However, no extension of time shall be granted for a change in the Work unless the Contractor demonstrates to the satisfaction of the District that (a) the Work is on the critical path as shown on an updated Construction Schedule showing that an extension of time is required, and (b) the Contractor is making, or has made, every reasonable effort to guarantee completion of the additional Work called for by the change within the time originally allotted for the Work. Any such time adjustment shall be on a calendar day basis, except that if the new Contractual Completion Date falls on a Saturday, Sunday, or legal holiday, it shall be extended through the next working day.

Construction Manager May Authorize Minor Variations in Limited Situations. The Construction Manager may authorize minor variations in the Work, but only if those minor variations (a) do not affect the Contract Price, (b) do not affect the Construction Schedule, (c) do not violate Applicable Laws, and (d) are consistent with the overall intent of the Plans, Specifications and other Project Documents.

CONSTRUCTION CHANGE DIRECTIVE NO.

PROJECT:
_____

TO: _____

You are hereby directed to provide the extra work necessary to comply with this Construction Change Directive.

DESCRIPTION OF CHANGE:
_____

_____

NOTE:

Contractor agrees to furnish all labor and materials and perform all of the above-described work in accordance with the above terms in compliance with the applicable sections of the Contract documents. The amount of the charges under this Construction Change Directive is limited to the charges allowed under the Agreement including the General Conditions. The adjustment in the contract

sum, if any, and the adjustment in the contract time, if any, set out in this Construction Change Directive shall constitute the entire compensation and/or adjustment in the contract time and contract sum due to the Contractor arising out of the change in the work covered by this Construction Change Directive, unless otherwise provided in this Construction Change Directive.

CHANGE ORDER NO.

PROJECT:_____

TO:_____

You are hereby directed to provide the extra work necessary to comply with this Change Order.

DESCRIPTION OF CHANGE:_____

_____

COST (This cost shall not be exceeded): _____

Original Contract Price: $_____

Change Order Amount: $_____

New Contract Price: $_____

TIME FOR COMPLETION: _____

Original Completion Date:_____

Time for Completion of CO:_____

New Completion Date: _____

NOTE:

Contractor agrees to furnish all labor and materials and perform all of the above-described work in accordance with the above terms in compliance with the applicable sections of the Contract documents. The amount of the charges under this Change Order is limited to the charges allowed under the Agreement including the General Conditions. The adjustment in the contract sum, if any, and the adjustment in the contract time, if any, set out in this Change Order shall constitute the entire compensation and/or adjustment in the contract time and contract sum due to the Contractor arising out of the change in the work covered by this Change Order, unless otherwise provided in this Change Order. It is understood that this Change Order shall be effective when approved by the Governing Board of the District.

ARTICLE 17

BONDS

The Contractor shall furnish a Payment Bond in an amount equal to one hundred percent (100%) of Contract Price as security for payment to persons performing labor and furnishing materials in connection with this Project, and shall furnish a separate Faithful Performance Bond in an amount equal to one hundred percent (100%) of the Contract Price as security for faithful performance of the Agreement. Those bonds shall be in the forms included among the Project Documents.

ARTICLE 18

INSURANCE

The Contractor will procure at the Contractor's own expense, and before commencement of any Work under the Agreement, the following insurance:

18.1 **Commercial General Liability and Property Damage Insurance**. The Contractor shall procure and maintain during the life of the Agreement such commercial general liability, property damage insurance as shall protect the Contractor and the District from all claims for personal injury, including accidental death, to any person (including, as to the District, injury or death to the Contractor's or subcontractor's employees), as well as from all claims for property damage arising from operations under the Agreement, in amounts as set forth in the Agreement. The amount of such insurance shall be as specified in the Agreement. The Contractor shall require its Subcontractors to procure and maintain similar commercial general liability and property damage insurance in like amounts, or in such other amounts specified in the Agreement.

18.2 **Automobile Liability Insurance**. The Contractor shall procure and maintain during the life of the Agreement such automobile liability as shall protect the Contractor and the District from all claims for personal injury, including accidental death, to any person (including, as to the District, injury or death to the Contractor's or subcontractor's employees), as well as from all claims for property damage arising from operations under the Agreement, in amounts as set forth in the Agreement. The amount of such insurance shall be as specified in the Agreement. The Contractor shall require its Subcontractors to procure and maintain similar automobile liability insurance in like amounts, or in such other amounts specified in the Agreement.

18.3 **Umbrella Liability Insurance.** Contractor may procure and maintain, during the life of this Contract, an Umbrella Liability Insurance Policy to meet the policy limit requirements of the required policies if Contractor's underlying policy limits are less than required. There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Umbrella Liability Insurance Policy. Any Umbrella Liability Insurance Policy shall protect Contractor, District, State,

Construction Manager(s), Project Manager(s), and Architect(s) in amounts and including the provisions as set forth in the Contract Documents.

18.4 **Builder's Risk Insurance: Builder's Risk "All Risk" Insurance. Not Required.**

18.5 **Workers' Compensation Insurance**. In accordance with the provisions of Section 3700 of the California Labor Code, the Contractor and every Subcontractor shall be required to secure the payment of compensation to its employees. In that regard, the Contractor shall provide, during the life of the Agreement, workers' compensation insurance for all of its employees engaged in Work under the Agreement, on or at the site of the Project, and, in case any of its Work is sublet, the Contractor shall require each Subcontractor similarly to provide workers' compensation insurance for all of that Subcontractor'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 the Agreement, on or at the site of the Project, is not protected under applicable workers' compensation statutes, the Contractor shall provide (or, where appropriate, shall cause its Subcontractors to provide) adequate insurance coverage for the protection of such employees not otherwise protected before the Contractor or Subcontractor commences work. The Contractor shall file with the District certificates of its insurance protecting workers and a thirty (30) day notice shall be provided to the District before the cancellation or reduction of any policy of the Contractor or Subcontractor. The Contractor shall submit proof of insurance and shall provide endorsements on the forms provided by the District or on forms approved by the District. Such endorsements shall be submitted concurrently with the Project Documents.

18.6 **Proof of Insurance**. The Contractor shall submit to the District (through the Construction Manager) proof of insurance and shall provide endorsements on the forms approved by the District. Such endorsements shall be submitted concurrently with the Contractors' execution of the Agreement. The Contractor shall not commence work, nor shall it allow any subcontractor to commence work, under the Agreement or relative to the Project until all insurance certificates and endorsements required by this Article 18 have been obtained and delivered to the Construction Manager for approval by the District and the District has approved same. Each policy of insurance required by this Article 18 shall be with an insurance company with a minimum rating of "A/VIII", as rated by the current edition of the Best'' Key Rating Guide/Property-Casualty, published by A.M. Best Co., Oldwick, New Jersey 08858 and must be admitted carriers in California (no surplus lines or other non-admitted carriers otherwise permitted to do business in California will be accepted). Certificates and insurance policies shall include the following:

18.6.1 A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amount of insurance until notice has been mailed to the Santa Ana Unified School District stating date of cancellation or reduction. Date of cancellation or reduction may not be less than thirty (30) days after date of mailing notice."

18.6.2 Language stating in particular the names of the insured parties, the extent of the insurance, the location and Project to which the insurance applies, the expiration date, the name and address of the District representative to whom cancellation and reduction notices will be sent, and the length of any notice period.

18.6.3 A statement that the District, the Architect and the Construction Manager are each a named additional insured under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by the District.

18.7 **District May Obtain Insurance at Contractor's Expense**. If the Contractor fails to provide insurance as required by the Agreement, the District may, at the District's option, procure and maintain such insurance as the District may deem proper, at the Contractor's expense, in the name of the Contractor (or Subcontractor, as applicable), and may deduct the cost thereof from any sums which are due or to become due to the Contractor under the Agreement.

ARTICLE 19

CLAIMS AND DAMAGES

19.1 **Continuing Contract Performance.** Pending final resolution of a Claim, including, negotiation, mediation, arbitration, or litigation, the Contractor shall proceed diligently with performance of the Contract, and the District shall continue to make any undisputed payments in accordance with the Contract. If the dispute is not resolved, Contractor agrees it will neither rescind the contract nor stop the progress of the work, but Contractor's sole remedy shall be to submit such controversy to determination by a court of competent jurisdiction in the county where the project is located, after the project has been completed, and not before. At the District's sole option, the District may submit individual disputes for binding arbitration and Contractor agrees to the resolution determined for each individual dispute by Arbitrator, including resolution of time and delays. If binding arbitration is utilized for individual disputes, such resolution is full and final as to that particular claim.

19.2 **Claims for Concealed Trenches or Excavations Greater Than Four Feet Below the Surface.** When any excavation or trenching extends greater than four feet below the surface or if any condition involving hazardous substances are encountered:

19.2.1 Immediately upon discovery, The Contractor shall promptly, and before the following conditions are disturbed, notify the public entity, by telephone and in writing, of the condition except:

(a) If such condition is a hazardous waste condition, Contractor's bid includes removal or disposal of hazardous substances. Material that the Contractor believes may be a 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 the provisions of existing law. In such case, the applicable notice procedures of Article 7 apply.

(b) Subsurface or latent physical conditions at the Site differing from those indicated.

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

19.2.2 The public entity shall investigate the conditions, and if District finds that the conditions do materially so differ, do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work shall issue a change order or construction change directive under the procedures described in the Contract.

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

19.3 **Claims Procedures**. Procedure applicable to all Claims:

19.3.1 **Definition of Claim**: A "Claim" means a separate demand by the Contractor for (1) time extension, (2) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Agreement and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (3) and amount the payment of which is disputed by the District.

19.3.2 **Claim Notification**: The Contractor shall within **seven (7) days** after the claim arises, submit a notification, in writing, with the District stating clearly the basis for the claim. If the notification is not submitted within **seven (7) days** after the claim arises, the Contractor shall be deemed to have waived all right to assert the claim, and the claim shall be denied. Claims submitted after the final payment date shall also be considered null and void by the District.

19.3.3 **Formal Claim Submission**: If the Contractor does not concur with the District's decision regarding the Claim Notification, the Contractor will issue a formal Claim Appeal within **fourteen (14) days** of receipt of the District's decision and all detailed information in support of the Claim Appeal within **thirty (30) days**. All appeals shall be submitted before final payment. If the Claim Appeal is not submitted within **fourteen (14) days** and detailed information within **thirty (30) days**, the Contractor shall be deemed to have waived its right to assert the Claim and the Claim shall be denied. Contractor's failure to submit any detailed information which is in the

possession of Contractor shall render such information inadmissible by Contractor at trial or arbitration.

19.3.4 **Appeal Claim Format**: The Contractor shall provide all written detailed documentation which supports the claim, including but not limited to: arguments, justifications, cost, estimates, schedule analysis and detailed documentation. The format of the Claim Appeal shall be as follows:

(a) Cover letter.

(b) Summary of factual basis of claim and amount of claim.

(c) Summary of the basis of the claim, including the specific clause and section under the Contract under which the claim is made.

(d) Documents relating to the claim, including:

(i) Specifications

(ii) Drawings

(iii) Clarifications (RFIs)

(iv) Other relevant information

(v) Analysis of claim merit

(vi) Analysis of claim cost

(vii) For claims relating to time extensions, an analysis and supporting documentation evidencing any effect upon the critical path

(viii) Certification

(ix) Chronology of events and related correspondence

(x) Daily reports and logs

19.3.5 **Certification**: The Contractor (and subcontractors, if applicable) shall submit with the claim a certification under penalty of perjury:

(a) That the Contractor has reviewed the claim and that such claim is made in good faith;

(b) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief;

(c) The amount requested accurately reflects the amount of compensation for which the Contractor believes the District is liable.

(d) That the Contractor is familiar with Government Code Sections 12650 et seq. and Penal Code Section 72 and that false claims can lead to substantial fines and/or imprisonment.

19.3.6 **Signature of Certification**: If the Contractor is not an individual, the certification shall be executed by an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

19.3.7 **Mandatory Claim Appeal Procedure**: The Contractor's Claim Appeal shall be denied if it fails to provide the written basis of the claim and certification as set forth herein.

19.3.8 **District May Request Additional Information**: The District may request in writing any additional documentation supporting the claim or documentation relating to defenses to the claim which the District may assert.

19.4 **Binding Arbitration of Individual Claim Issues**. At the District's sole option, the District may submit individual disputes, or claims, to binding arbitration and Contractor agrees to the resolution determined for each individual dispute by Arbitrator, including resolution of time and delays. If binding arbitration is utilized, such resolution is a full and final resolution of the particular claim or dispute. Under no circumstances may the Contractor stop work, rescind its contract or otherwise slow the progress of Work during resolution of individual claims in binding Arbitration.

19.5 **Resolution of Disputes in Court of Competent Jurisdiction**. If claims are not submitted and resolved through binding arbitration as indicated above, such claim or controversy shall be submitted to a court in the county of competent jurisdiction after the Project has been completed, and not before.

ARTICLE 20

WARRANTY OF WORK

20.1 **Warranty as to Condition of Work**. The Contractor warrants that the Work (including without limitation any equipment furnished by the Contractor as part of the materials) shall: (a) be free from defects in workmanship and material; (b) be free from defects in any design performed by the Contractor; (c) be new, (d) conform and perform to the requirements stated in the specifications or, where detail requirements are not so stated, shall conform to applicable industry standards; and (e) be suitable for the use stated in the specifications.

20.2 **Warranty Period**. The warranty period for discovery of defective work shall commence on the date stamped on the Notice of Completion verifying County recordation and continue for the period set forth in the specifications or for one year if not so specified. If, during the warranty period, the Work is not available for use due to defective work, such time of unavailability shall not be counted as part of the warranty period. The warranty period for corrected defective work shall continue for a duration equivalent to the original warranty period.

20.3 **Correction of Defective Work**. The District shall give the Contractor prompt written notice after discovery of any defective Work. The Contractor shall correct any such defective Work, as well as any damage to any other part of the work resulting from such defective Work, and provide repair, replacement, or reimbursement, at its sole expense, in a manner approved by the District and with due diligence and dispatch as required to make the Work ready for use by the District, ordinary wear and tear and unusual abuse or neglect excepted. Such corrections shall include, but not be limited to, any necessary adjustments, modifications, changes of design, removal, repair, replacement or reinstallation, and shall include all necessary parts, materials, tools, equipment, transportation charges and labor as may be necessary, and cost of removal and replacement of Work shall be performed at a time and in such a manner so as to minimize the disruption to District's use of the Work.

20.4 **District's Right to Correct Defects**. In the event of failure of the Contractor or Surety to commence and pursue with diligence said repairs or replacements within **forty-eight (48) hours** after being notified in writing, the District is hereby authorized to proceed to have defects repaired or replaced and made good at expense of the Contractor and Surety who hereby agree to pay costs and charges therefore immediately on demand.

20.5 **Limitation on Notice Requirements**. 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 or to prevent interruption of operations of the District, the District will attempt to give the written notice required by this Article 20. If the Contractor or its surety cannot be contacted, or if neither the Contractor or its surety complies 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, proceed to make such correction or provide such attention and the costs of such correction or attention shall be charged against the Contractor and its surety. Such action by the District will not relieve the Contractor and its surety of the warranties and guarantees provided in this Article 20 or elsewhere in the Project Documents.

20.6 **No Effect on Other Guarantees**. This Article does not in any way limit the guarantees 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. The Contractor shall furnish to the District all appropriate guarantee or warranty certificates upon completion of the Project or upon request by the District.

20.7 **Warranties, Guarantees and Obligations.** The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor by the General Conditions and amendments thereto; and all of the rights and remedies available to District there under, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Paragraph will be as effective as if

repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

20.8 **Form of Guaranty**. If required by the District, all guarantees required under this Article 20 shall be in writing on a guarantee form prepared by the District.

20.9 **Instruction Manuals**. The Contractor shall provide to the District instruction manuals for all warrantied items which require same.

20.10 **No Limitation on District's Other Rights**. Nothing herein shall limit any other rights or remedies available to the District.

20.11 **Attorneys' Fees**. The District may collect its reasonable costs and attorneys' fees in any action to enforce this Article.

ARTICLE 21

PAYMENTS TO CONTRACTOR

21.1 **Cost Breakdown and Periodic Estimates**. The Contractor shall furnish the following, at the times specified, on forms approved by the District:

21.1.1 Within three (3) calendar days after the District's award to the Contractor of the contract for the Project, a detailed estimate giving complete breakdown of the Contract Price for the Project (and each site thereof, where the Project involves multiple sites), which shall include all subcontracts and supplier agreements, showing dollar amounts of these agreements to justify the subsequently-provided schedule of values;

21.1.2 Monthly itemized estimate of work done for purpose of making partial payments thereon; and

21.1.3 Within five (5) calendar days of request of the District, a schedule of estimated monthly payments which shall be due the Contractor under the Agreement.

Values employed in making up any of these schedules are subject to the Architect's written approval and will be used only for determining basis of partial payments and will not be considered as fixing a basis for additions to or deductions from contract price.

21.2 **Monthly Payments by the District to the Contractor**. Unless otherwise specified in writing, each month within thirty (30) days after receipt by the District of the monthly progress schedule and the certification of application for payment by the Architect, the District shall pay to the Contractor a sum equal to ninety percent (90%) of value of work performed and of materials delivered subject to or under the control of the District and unused up to the last day of the previous month, less aggregate previous payments. Monthly payments shall be made only on the basis of monthly estimates which shall be prepared by the Contractor on a form approved by the District and filed

before the fifth (5th) day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall operate to release the Contractor or its surety from any damages arising from such Work or from enforcing each and every provision of the Agreement, 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 ESTIMATES PROCESSED OR BE ENTITLED TO HAVE ANY PAYMENT FOR WORK PERFORMED SO LONG AS ANY LAWFUL OR PROPER DIRECTION CONCERNING WORK, OR ANY PORTION THEREOF, GIVEN BY THE DISTRICT, THE CONSTRUCTION MANAGER OR THE ARCHITECT SHALL REMAIN UNCOMPLIED WITH BY THE CONTRACTOR.

21.3 **Schedule of Values**. To assist in computing partial payments, the Contractor shall submit to the Architect, the Construction Inspector, and the District a "Schedule of Values" of the Contractor's actual and estimated cost for each item of Work. The cost breakdowns shall be sufficient detail for use in estimating the Work to be completed each month and shall be submitted by the date indicated in the Notice to Proceed. Closeout Documentation shall have a value in the Schedule of Values of not less than 5%. The value for Closeout Documentation shall be in addition to and shall not be a part of the Contract retention.

21.4 **Monthly Payment Requests**. Once each month during the progress of the Work, the Contractor shall submit to the Architect a partial payment request which has been received and agreed to by the Architect and the District's Inspector (as well as by the Construction Manager, if one has been appointed by the District for the Project). The partial payment request shall be based on the approved bid breakdown for the cost of the Work completed plus the acceptable materials delivered to the site or stored subject to the control of the Contractor and not yet installed. The partial payment request shall be submitted on the monthly anniversary of the day selected by the Contractor in the job starting meeting.

21.5 **Partial Payments; Retention**. The Architect and Construction Inspector shall review and certify as to the validity of the requests. No partial payment shall be made without the certification of the Architect. Partial payment requests shall be processed within a minimum of a ten percent (10%) retention. The retention is part of the security for the fulfillment of the Agreement by the Contractor. Partial payment shall not be construed as acceptance of any work which is not in accordance with requirements of the Agreement. Once the partial payment request has been certified by the Architect and the Construction Inspector, it shall be submitted to the District's Construction Manager for approval and processing. Such procedures provided for sixty (60) days processing, from the date the receipt at the District Office by the Construction Manager, prior to late payment penalty.

21.6 **Information Required from Contractor**. The District has discretion to require from the Contractor any of the following information with the application for payment: (a) certified payroll covering the period of the prior application for payment; (b) unconditional waivers and releases from all subcontractors and suppliers for which

payment was requested under the prior application for payment; (c) receipts or bills of sale for any items.

21.7 **Contractor's Certificate**. Before payment is made hereunder, a certificate in writing shall be obtained from the Architect stating that the Work for which the payment is demanded has been performed in accordance with the terms of the Project Documents and that the amount stated in the certificate is due under the terms of the Project Documents, which certificate shall be attached to and made a part of the claim made and filed with the District, provided that if the Architect shall, within three (3) days after written demand therefore, fail to deliver such certificate to the District, the Contractor may file its claim with the District without said certificate, but together with such claim shall be filed a statement that demand was made for such certificate and that the same was refused. Thereupon, the District will either allow said claim as presented or shall, by an order entered on the minutes of said the District state the reasons for refusing to allow said claim. It is understood, moreover, that the certificate of the Architect shall not be conclusive upon the District, but advisory only.

21.7.1 **Payment Does Not Constitute Acceptance of Work**. **No payment by the District hereunder shall be interpreted so as to imply that the District has inspected, approved, or accepted any part of the Work. The Final Payment of the retention of the value of the Work done under the Agreement, if unencumbered, shall be made thirty-five (35) days after recording by the District of the Notice Of Completion. Acceptance will be made only by action of the District's School Board as indicated above.**

21.8 **Final Payment**. Unless otherwise provided, on or before making request for final payment of the undisputed amount due under the Agreement, the Contractor shall submit to the District, in writing, a summary of all claims for compensation under or arising out of the Agreement which were timely filed. The acceptance by the Contractor of the payment of the final amount shall constitute a waiver of all claims against the District under or arising out of the Agreement, except those previously made, in a timely manner and in writing, and identified by the Contractor as unsettled at the time of the Contractor's final request for payment.

21.9 **Adjustments to Contract Price**. If the Contractor defaults or neglects to carry out the Work in accordance with the Project Documents or fails to perform any provision thereof, the District may, after **forty-eight (48) hours** written notice to the Contractor and without prejudice to any other remedy it may have, make good such deficiencies. The District shall adjust the total Contract Price by reducing the amount thereof by the cost of making good such deficiencies. If the District deems it inexpedient to correct Work not done in accordance with the Project Documents, an equitable reduction in the Contract Price shall be made therefore.

21.10 **Payments Withheld in Addition to Retention Amounts**. In addition to any other amounts which the District may retain under this Article 21, the District may withhold a sufficient amount or amounts of any payment or payments otherwise due to the Contractor, as in its judgment may be necessary to cover:

21.10.1 Payments which may be past due and payable for claims against the Contractor or any Subcontractors, or against and about the performance of Work on the Project.

21.10.2 The value determined by the District to be attributable to delayed delivery of the initial Construction Schedule beyond the time required under Article 5.

21.10.3 The value determined by the District attributable to the Contractor's failure to provide updated as-built drawings for the Inspector's review.

21.10.4 The cost of defective Work which the Contractor has not remedied.

21.10.5 Claims made pursuant to the stop notice provisions of Civil Code Sections 3082 *et seq*.

21.10.6 Liquidated damages assessed against the Contractor.

21.10.7 Penalties for violation of labor laws.

21.10.8 The cost of materials ordered by the District for the Project to the extent authorized under these General Conditions or the other Project Documents.

21.10.9 The cost of completion of the Work if there exists a reasonable doubt that the Work can be completed for the balance then unpaid to the Contractor.

21.10.10 Damage to another contractor.

21.10.11 Site clean-up as provided herein.

21.10.12 Payments to indemnify, defend, or hold harmless the District.

21.10.13 Any payments due to the District including but not limited to payments for failed tests, utilities or imperfections.

21.10.14 Extra services for the Architect, including without limitation additional back-check to sign off punch-list items.

21.10.15 Extra services for the Inspector and/or Construction Manager, including without limitation (a) reinspection required due to the Contractor's failed tests or installation of unapproved or defective materials and (b) the Contractor's requests for inspection and the Contractor's subsequent failure to attend that inspection.

21.10.16 Failure to complete a punch list with diligence.

21.10.17 Failure of the Contractor to submit on a timely basis all Closeout Documentation as defined in the specifications in a manner and form that is

proper, sufficient, and reasonably acceptable to the District, and to not cause a delay in the completion or approval of the Project.

If the above grounds are in the opinion of the District removed by or at the expense of the Contractor, payment shall be made for amounts withheld because of them. The District may apply such withheld amount or amounts to payment of such claims or obligations at its discretion. In so doing, the District shall make such payments on behalf of the Contractor. If any payment is so made by the District, then such amount shall be considered as a payment made under contract by the District to the Contractor and the District shall not be liable to the Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. The District will render the Contractor an accounting of such funds disbursed on behalf of the Contractor. As an alternative to payment of such claims or obligations, the District, in its sole discretion, may reduce the total Contract Price as provided herein above.

21.11 **Reimbursable Expenses**. Any payments to third parties made by the Contractor on the District's behalf in connection with the Project, whether or not specifically characterized in any of the Project Documents as being "reimbursable" (but excluding payments for items that are specifically identified in any of the Project Documents as payable by the Contractor at the Contractor's expense), shall be calculated as direct reimbursable expenses and shall not be included in the Contractor's base bid; as such, the amount of reimbursement owing by the District to the Contractor shall be limited to the actual payment made by the Contractor to the third party, and shall not include any mark-up, premium or other additional amount for the Contractor's profit, overhead or other expenses. The Contractor shall submit requests for reimbursement of such payments as part of the Contractor's monthly payment requests pursuant to the restrictions indicated herein above, and payment by the District shall be made pursuant to the above provisions.

ARTICLE 22

DISTRICT'S RIGHT TO TERMINATE AGREEMENT

TERMINATION OR SUSPENSION OF THE CONTRACT

22.1 **Termination By The Contractor For Cause. Grounds for Termination.** The Contractor may terminate the Contract if the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible, for only the following reasons:

(a) Issuance of an order of a court or other public authority having jurisdiction; or

(b) An act of government, such as a declaration of national emergency.

If one of the above reasons exists, the Contractor may, upon written notice of seven (7) additional days to the District, terminate the Contract and recover from the District payment for Work executed and for costs that are actual, reasonable, and verified by the Architect with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit, and damages.

22.2 **Termination By The District For Cause. Grounds for Termination.** 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, suppliers, material men, etc.;

(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.

22.3 **Notification of Termination.** When any of the above reasons exist, the District may, without prejudice to any other rights or remedies of the District 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 takeover 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.

22.4 **Payments Withheld**. If the District terminates the Contract for one of the reasons stated in Paragraph 22.2, 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.

22.5 **Payments Upon Completion.** 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.

22.6 **Termination Of Contract By District (Contractor Not At Fault). Termination for Convenience.** District may terminate the Contract upon fifteen (15) calendar days of written notice to the Contractor and use any reasonable method the District deems expedient to complete the project, including contracting with replacement contractor or contractors, if it is found that reasons beyond the control of either the District or Contractor make it impossible or against the District's interest to complete the work. In such a case, the Contractor shall have no claims against the District except: (1) the actual cost for labor, materials, and services performed which may be documented through timesheets, invoices, receipts, or otherwise and which has not already been paid by the District, and (2) ten percent (10%) profit and overhead of item (1), and (3) five percent (5%) termination cost of the total of items (1) and (2). Contractor acknowledges and agrees that if the District (in its sole and absolute discretion) decides to takeover completion of the Project, the Contractor agrees to immediately assign all subcontracts to the District which the District has chosen to accept.

22.7 **Non-Appropriation of Funds/ Insufficient Funds.** In the event that sufficient funds are not appropriated to complete the Project or the District determines that sufficient funds are not available to complete the Project, District may terminate or suspend the completion of the Project at any time by giving written notice to the Contractor. In the event that the District exercises this option, the District shall pay for any and all work and materials completed or delivered onto the site for which value is received, and the value of any and all work then in progress and orders actually placed which cannot be canceled up to the date of notice of termination. The value of work and materials paid for shall include a factor of fifteen percent (15%) for the Contractor's overhead and profit and there shall be no other costs or expenses paid to Contractor. All work, materials and orders paid for pursuant to this provision shall become the property of the District. District may, without cause, order Contractor in writing to suspend, delay or interrupt the Project in whole or in part for such period of time as District may determine. Adjustment shall be made for increases in the cost of performance of the Agreement caused by suspense, delay or interruption.

22.8 **Remedies Other Than Termination.** If a default occurs, the District may, without prejudice to any other right or remedy, including, without limitation, its right to terminate the Contract pursuant to these General Conditions, do any of the following:

(a) Permit the Contractor to continue under this Contract, but make good such deficiencies or complete the Contract by whatever method the District may deem expedient, and the cost and expense thereof shall be deducted from the Contract Price or paid by the Contractor to the District on demand;

(b) If the workmanship performed by the Contractor is faulty or defective materials are provided, erected or installed, then the District may order the Contractor to remove the faulty workmanship or defective materials and to replace the same with work or materials that conform to the Contract Documents, in which event the Contractor, at its sole costs and expense, shall proceed in accordance with the District's order and complete the same within the time period given by the District in its notice to the Contractor; or

(c) Initiate procedures to declare the Contractor a non-responsible bidder for a period of two to five years thereafter.

All amounts expended by the District in connection with the exercise of its rights hereunder shall accrue interest from the date expended until paid to the District at the maximum legal rate. The District may retain or withhold any such amounts from the Contract Price. If the Contractor is ordered to replace any faulty workmanship or defective materials pursuant to Paragraph (b) above, the Contractor shall replace the same with new work or materials approved by the Architect and the District, and, at its own cost, shall repair or replace, in a manner and to the extent the Architect and the District shall direct, all work or material that is damaged, injured or destroyed by the removal of said faulty workmanship or defective material, or by the replacement of the same with acceptable work or materials. In no event shall anything in this Paragraph be deemed to constitute a waiver by the District of any other rights or remedies that it may have at law or in equity, it being acknowledged and agreed by the Contractor that the remedies set forth in this Paragraph are in addition to, and not in lieu of, any other rights or remedies that the District may have at law or in equity.

ARTICLE 23

MISCELLANEOUS

23.1 **Prohibited Interests**. No official of the District who is authorized in such capacity and on behalf of the District to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Project, shall become directly or indirectly interested financially in the Project or in any part thereof. No officer, employee, architect, attorney, engineer or inspector of or for the District who is authorized in such capacity and on behalf of the District to exercise any executive, supervisory or other similar functions in connection with construction of Project shall become directly or indirectly interested financially in this Project or in any part thereof. The Contractor shall receive no compensation and shall repay the District for any compensation received by the Contractor under the Agreement, should the Contractor aid, abet or knowingly participate in violation of this Subsection.

23.2 **Notice of Taxable Possessory Interest**. The terms of the Agreement may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to the Agreement, the private party may be subjected to the payment of property taxes levied on such interest.

23.3 **Assignment of Antitrust Actions**. Public Contract Code Section 7103.5 provides:

> In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body (the District) all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

The Contractor, for itself and all subcontractors, agrees to assign to the District all rights, title, and interest in and to all such causes of action the Contractor and all Subcontractors may have under the Agreement. This assignment shall become effective at the time the District tenders final payment to the Contractor, and the Contractor shall require assignments from all subcontractors to comply herewith.

23.4 **Occupancy**. The District reserves the right to occupy buildings and/or portions of the site at any time before completion, and such occupancy shall not constitute final acceptance of any part of the Work covered by the Agreement, nor shall such occupancy extend the date specified for completion of the Work. Beneficial occupancy of building(s) does not commence any warranty period nor shall it entitle the Contractor to any additional compensation due to such occupancy.

23.5 **Patents, Royalties and Indemnities**. The Contractor shall hold and save the District and its School Board, officers, agents, and employees harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Agreement, including its use by the District, unless otherwise specifically provided in the Project Documents, and unless such liability arises from the sole negligence, or active negligence, or willful misconduct of the District.

23.6 **Non-Discrimination**. In the performance of the terms of the Agreement, the Contractor agrees that it will not engage in nor permit such subcontractor as it may employ to engage in unlawful discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons.

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

23.8 **No Assignment**. The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of the Agreement or of its rights, title or interest in or to the same or any part thereof. If the Contractor shall assign, transfer, convey, sublet or otherwise dispose of the Agreement or its right, title or interest therein, or any part thereof, such attempted or purported assignment, transfer, conveyance, sublease or other disposition shall be null, void and of no legal effect whatsoever; and the Agreement may, at the option of the District, be terminated, revoked and annulled, and the District shall thereupon be relieved and discharged from any and all liability and obligations growing out of the same to the Contractor, and to its purported assignee or transferee.

23.9 **Notice**. All written notices required to be given pursuant to the Agreement and these General Conditions shall be either (a) personally delivered, (b) deposited in the United States express mail or first class mail, registered or certified, return receipt requested, postage prepaid, (c) delivered by overnight courier service, or (d) delivered by facsimile or e-mail transmission, provided that the original of such facsimile notice, or a copy of such e-mail notice, is sent by certified U.S. mail, postage prepaid, no later than one business day following such facsimile or e-mail transmission. All such notices shall be deemed delivered upon actual receipt (or upon the first attempt at delivery pursuant to the methods specified in clauses (a), (b) or (c) above if the intended recipient refuses to accept delivery). All notices to the Contractor shall be delivered to the addresses specified in the Bid Form, or to such other address as the Contractor may from time to time specify by written notice to the District: All notices to the District shall be delivered to the Construction Manager (with a copy to the District at the address shown as the “place of bid receipt” on the Notice Calling for Bids), or to such other address as the District may from time to time specify by written notice to the Contractor.

23.10 **No Waiver**. The failure of the District in any one or more instances to insist upon strict performance of any of the terms of the Agreement or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.

23.11 **No Oral Agreements**. No oral agreement or conversation with any officer, agent, or employee of the District, either before or after the execution of the Contract, shall affect or modify any of the terms or obligations contained in any of the document comprising the Contract.

23.12 **Time is of the Essence**. Time is of the essence of every provision contained in the Agreement an in these General Conditions.

23.13 **Indemnification. Contractor**. Contractor shall defend, indemnify and hold harmless the District and others as indicated in Section 00500 – Agreement and as indicated herein. Contractor shall ensure that its contract with each of its subcontractors contains provisions requiring the subcontractors to defend, indemnify and hold harmless the District, and others as indicated in Section 00500 – Agreement.

END OF SECTION

SANTA ANA UNIFIED SCHOOL DISTRICT
1601 East Chestnut Avenue
Santa Ana, California 92701-6322
(714) 480-5355

Bid Pack: # 1 **DSA Application Number: 04-110031**

SUPPLEMENTAL CONDITIONS

The following conditions (**"Supplemental Conditions"**), while not applicable to some or all of the other construction and/or modernization projects undertaken by the Santa Ana Unified School District (the **"District"**), are applicable to the Project identified above (the **"Project"**). The Supplemental Conditions shall have the same force and effect with respect to the Project as if they were set forth in their entirety in the District's General Conditions for the Project, to which these Supplemental Conditions are attached.

1. Milestone Schedule- This Prime Contractor shall perform the Work of the Project by the date(s) indicated below:

Task Name	**Finish Date**
Notice to Proceed:	February 22, 2012
Start Construction Phase:	June 15, 2012
Project Final Completion:	August 21, 2012

2. Submittal Schedule- This Prime Contractor shall provide along with their submittals, a detailed six (6) part schedule as follows and by the dates indicated:

Submittal	**Date by which Contractor Must Provide Submittal**
1. Submittal and shop drawing schedule.	Thirty-Five (1) Days from the District's issuance of a Notice to Proceed.
2. Procurement schedule with all copies of purchase orders and subcontractor agreements.	Thirty-Five (1) Days from the District's issuance of a Notice to Proceed.
3. Manufacturing schedule with all long lead and special inspection requirements.	Thirty-Five (1) Days from the District's issuance of a Notice to Proceed.

4. Delivery schedule.	Thirty-Five (1) Days from the District's issuance of a Notice to Proceed.
5. Detailed construction schedule.	Thirty-Five (1) Days from the District's issuance of a Notice to Proceed.
6. Commissioning, Warranty, Closeout and punchlist schedule.	Thirty-Five (1) Days from the District's issuance of a Notice to Proceed.

3. **ENVIRONMENTAL CONDITIONS AND RESTRICTIONS**. Many District properties or construction projects are the subject of Environmental Impact Reports, electromagnetic field (EMF) studies, joint use agreements, purchase agreements, leases, recorded declarations, or other documents which impose restrictions or conditions on the manner in which construction activities on the property must be carried out. That is the case with this Project. When preparing your bid for this Project, be aware that in addition to the other general and special conditions applicable to the Project as disclosed by the other Project Documents, construction of the Project must be done in a way that fully incorporates the requirements created by the documents identified below. All of those requirements are deemed "Special Conditions" under the Project Specifications, and if you are the successful bidder you must comply with those requirements as a condition to the award of the Project. Copies of the relevant pages of those documents are attached immediately following this page. If you would like to see complete copies of those documents, they are available from the District.

4. **OCIP.** "OCIP" means any Owner Controlled Insurance Program. If the District has elected to include this Project in an OCIP, then the insurance provisions in the Contract Document shall apply only to the extent that the insurance required therein is not provided by the District through the OCIP. In that case, the Contractor shall refer to the OCIP attachment to these Supplemental Conditions to determine the extent to which the provisions that OCIP shall apply to the Project.

5. **Product Substitutions.**- Requests for substitutions **after** award of the Contract shall not be permitted. This time period can be changed or extended by the District only, in its sole discretion.

6. **Labor Compliance Program.** The District and/or the Department of Industrial Relations is implementing a labor compliance program ("LCP") on

the Project. Contractor specifically acknowledges and understands that it shall perform the Work of this Agreement while complying with all the applicable provisions of the LCP, including, without limitation, the requirement that the Contractor and all of its Subcontractors shall timely submit complete and accurate certified payroll records with each application for payment, or the District cannot issue payment.

7. **Subcontractor Bonding.** In addition to furnishing its own bonds, Contractor shall require all of its Subcontractors whose total subcontract(s) with Contractor on the Project exceed **one hundred thousand dollars ($100,000)** to furnish:

a. A Payment Bond in an amount equal to one hundred percent (100%) of its subcontract(s) price(s) with Contractor as security for payment to persons performing labor and furnishing materials in connection with its subcontract(s) with Contractor, and

b. A separate Faithful Performance Bond in an amount equal to one hundred percent (100%) of its subcontract(s) price with Contractor as security for faithful performance of its subcontract(s) with Contractor.

c. All Subcontractor bonds shall:

i. Be in the forms included among the Project Documents specifically prepared for subcontractor bonding

1. Subcontractor Faithful Performance: Section 00610-S; and

2. Subcontractor Payment Bond: Section 00611-S

ii. List the Contractor and the District as obligees.

iii. Be provided to the District prior to any work being performed by that Subcontractor(s).

iv. Be treated in the same manner as Contractor's bonds, including them remaining in full force and effect through the guarantee period as specified in the General Conditions.

d. All costs of Subcontractor bonds shall be included in Contractor's bid price.

If applicable check the check off box

8. **Short Project Duration.** The Contractor acknowledges that the Project must be completed in a very short time frame and that the notice provisions in the Contract Documents before the District may take over and perform the Work

of the Contract are hereby revised as follows and **Subsection 7.19 if the General Conditions (00700) is hereby revised to the following**:

7.1.9 District's Right to Perform Work. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, including, but not limited to the following, the District may perform the Work as indicated herein:

- Failure to supply adequate workers on the entire Project or any part thereof;
- Failure to supply a sufficient quantity of materials;
- Failure to perform any provision of this Contract;
- Failure to comply with safety requirements, or due to Contractor is creation of an unsafe condition;
- In the case of bona fide emergency;
- Failure to order materials in a timely manner;
- Failure to prepare deferred-approval items or shop drawings in a timely manner;
- Failure to comply with Contractor's schedule which would result in a delay to the critical path;
- Failure to comply with the Subletting and Subcontracting Fair Practices, Public Contract Code section 4100, et seq.

7.9.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails (within **24 hours** after receipt of written notice or a shorter time period expressly stated in the written notice from the District in an emergency situation) to commence and continue correction of such default with diligence and promptness, the District may correct such deficiencies without prejudice to other remedies the District may have pursuant to the Agreement and applicable law, after providing a **three (3) day** written notice to Contractor and Surety.

(a) If during this **three (3) day** period, Surety personally delivers notice to District that it intends to perform such work, District shall allow Surety **three (3) days** to perform. In an emergency situation, the District may correct such deficiencies without prejudice to other remedies the District may have pursuant to the Agreement and applicable law, after providing **24 hours** notice to the Contractor.

(b) In either case, the Contractor will be invoiced the cost of correcting such deficiencies, including compensation for additional services and expenses made necessary by such default, or neglect. The invoice amount shall be deducted from the next payment due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the District.

9. **Contract Contingent on Funding.** The District is seeking state bonds for the Project and Contractor acknowledges that the District reserves its right to delay the award of the Contract and/or suspend and/or terminate the Project as allowable herein, if those funds do not equal or exceed the amounts that the District expects.

11. **Contractor's Statement of Responsibility.** Contractor shall provide to the District, on Contractor's letterhead and signed by a person duly authorized by the Contractor to sign on the bidder's behalf, the following statement. A form for this use has been attached to the Construction Procedure Manual (Section 1305):

The Contractor acknowledges that per Section 1706A of the 2007 California Building Code, Title 24, Part 2, a contractor responsible for the construction of a main wind or seismic force resisting system, designated seismic system or a wind or seismic resisting component listed in the statement of special inspections (structural tests and inspection schedule and as noted on the approved plans) shall submit a written statement of responsibility to the Project Inspector and the District prior to the commencement of work on the system or component. To comply with the requirements of Section 1706A, the Contractor acknowledges the following:

1. *The Contractor is aware of the special requirements contained in the statements of special inspections (structural tests and inspection schedule and as noted on the approved plans) prepared by the architect of record or the registered design professional per the requirements of the Department of the State Architect (DSA) and Title 24.*

2. *Control will be exercised to obtain conformance with the construction documents approved by DSA.*

3. *The Contractor has procedures for exercising control within the Contractor's organization, the method and frequency of reporting, and the distribution of the reports.*

   [PROVIDE A BRIEF DESCRIPTION OF THE PROCEDURE(S):]

4. *The Contractor has the qualified personnel to exercise such control.*

   [SPECIFY THE NAME (S) OF THE PERSON (S) EXERCISING SUCH CONTROL, THEIR POSITIONS WITHIN YOUR COMPANY AND A BRIEF DESCRIPTION OF THEIR QUALIFICATIONS:]