AGREEMENT

THIS AGREEMENT IS MADE AND ENTERED INTO THIS **17th** `DAY OF **April**, **2013**, by and between the San Leandro Unified School District ("District" or "Owner") and **Zolman Construction & Development, Inc.** ("Contractor") ("Agreement"). The District and the Contractor agree as follows:

1. **The "Project" or "Contract" or "Work":** Contractor shall furnish all tools, equipment, apparatus, facilities, labor, and material necessary to perform and complete in a good and workmanlike manner, the work of the following project:

   PROJECT NAME: **District Offices & Instructional Material Center (IMC) HVAC and ROOF REPLACEMENT**
   BID NO.: **13-04**

   The Work shall be performed and completed as required in the Contract Documents as defined in the General Conditions including, without limitation, the Drawings and Specifications, under the direction and supervision of, and subject to, the approval of the District or its authorized representative.

2. **The Contract Documents**:

   a. The complete Contract consists of all Contract Documents as defined in the General Conditions and incorporated herein by this reference. All obligations of the District and Contractor are fully set forth and described in the Contract Documents. The Contract Documents are intended to cooperate so that Work called for in one and not mentioned in the other or vice versa is to be performed the same as if mentioned in all Contract Documents.

   b. **Interpretation of Contract Documents**: Questions concerning the intent, precedence, or meaning of the Contract Documents, including the Drawings or Specifications, shall be submitted to the District for interpretation. Inconsistencies in the Contract Documents shall be resolved by giving precedence in the following order:

      (i) District-approved modifications, beginning with the most recent (if any);
      (ii) Agreement;
      (iii) Special Conditions (if any);
      (iv) Supplemental Conditions (if any);
      (v) General Conditions;
      (vi) Remaining Division 0 documents;
      (vii) Division 1 Documents (Specifications – General Conditions);
      (viii) Division 2 through Division 16 documents (Technical Specifications);
      (ix) Figured dimensions;
      (x) Large-scale drawings;
      (xi) Small-scale drawings.

      In no case shall a document calling for lower quality and/or quantity material or workmanship control. The decision of the District in the matter shall be final.

3. **Time For Completion**: It is hereby understood and agreed that the Contractor shall complete **Milestone #1 by July 1, 2013; and Contract Completion on or before September 16, 2013.** The District shall not approve an early completion schedule by Contractor. A schedule showing the Work completed in less than the Contract Time indicated in the Contract, shall be considered to have Project Float.

4. **Completion-Extension Of Time**: If Contractor fails to complete the Work within the Contract Time, due allowance being made for the contingencies provided for herein, Contractor shall become liable to District for all loss and damage that District may suffer on account thereof. Contractor shall coordinate its Work with the work of all other contractors. The District shall not be liable for delays resulting from Contractor's failure to coordinate its Work with other contractors in a manner that allows for timely completion of Contractor's Work. Contractor shall be liable for delays to other contractors caused by Contractor's failure to coordinate its Work with the work of other contractors.

5. **Liquidated Damages**: Time is of the essence for all Work to be performed. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that District will sustain in the event of and by reason of Contractor's delay; therefore, Contractor shall forfeit to District the following sum(s) ("Liquidated Damages"):

    - **Milestone No. 1: <u>Five Hundred dollars, ($500),</u>** per day as Liquidated Damages for each and every day's delay beyond the time herein prescribed in finishing the Work of Milestone No. 1. See Document 00 01 15 for description of milestones.

    - **Project Completion: <u>One thousand five hundred dollars, ($1,500),</u>** per day as Liquidated Damages for each and every day's delay beyond the Contract Time to complete all the Work.

    a. Each portion of the Liquidated Damages shall be calculated cumulatively. For example, if Contractor is late in completing two milestones and the entire Project, Contractor will forfeit three separate Liquidated Damages amounts.

    b. It is hereby understood and agreed that neither the total cumulative Liquidated Damages amount nor any portion of the Liquidated Damage amount are penalties.

    c. District may deduct Liquidated Damages from money due or that may become due Contractor under this Agreement. Contractor's forfeiture of Liquidated Damages to District, and District's right to retain Liquidated Damages, are as indicated in Government Code section 53069.85 and as indicated herein and in the General Conditions.

    d. Liquidated Damages are automatically and without notice of any kind forfeited by Contractor upon the accrual of each day of delay. Neither District's failure or delay in deducting Liquidated Damages from payments otherwise due the Contractor, nor District's failure or delay in notifying Contractor of the forfeiture of Liquidated Damages, shall be deemed a waiver of District's right to Liquidated Damages.

    e. Contractor and Surety shall be liable for and pay to District the entire amount of Liquidated Damages including any portion that exceeds the amount of the Contract Price then held, retained or controlled by District.

    f. Liquidated Damages shall be in addition, and not in lieu of, District's right to charge Contractor for the District's cost of completing or correcting items of the Work.

    g. District may extend the Contract time if Work is delayed for causes outside the Contractor's control, as further described in the General Conditions. This provision does not exclude the recovery of damages for delay by either party under other provisions in the Contract Documents.

6. **Loss Or Damage**: District and its authorized representatives shall not be answerable or suffer loss, damage, expense, or liability for any loss or damage that occurs to the Work, or any part thereof, during its construction and before Completion. Contractor shall assume all liabilities of every kind or nature arising from the Work, either by accident, negligence, theft, vandalism, or any cause whatever; and shall hold District and

its authorized representatives harmless from all liability of every kind and nature arising from accident, negligence, or any cause whatever.

7. **Insurance and Bonds**: Contractor shall provide all required certificates of insurance, and payment and performance bonds.

8. **Performance Of Work**: If Contractor fails to perform the Work properly or fails to perform any provisions of this Contract, the District, may, pursuant to the General Conditions and without prejudice to any other remedy it may have, cure the deficiencies and deduct the cost thereof from the payment then or thereafter due Contractor.

9. **Authority of Architect, Construction Manager, Project Inspector, and DSA**: Contractor hereby acknowledges that the Architect(s), the Construction Manager(s), the Project Inspector(s), and the Division of the State Architect have authority to approve and/or stop Work if Contractor's Work does not comply with the requirements of the Contract Documents, Title 24 of the California Code of Regulations, and all applicable laws. Contractor shall be liable for any delay caused by its non-compliant Work.

10. **Assignment Of Contract**: Neither the Contract, nor any part thereof, nor any moneys due or to become due thereunder, may be assigned by Contractor without the written approval of District, nor without the written consent of the Surety on Contractor's Performance Bond (the "Surety"), unless the Surety has waived in writing its right to notice of assignment.

11. **Classification Of Contractor's License**: Contractor hereby acknowledges that it currently holds valid Type **B** Contractor's license(s) issued by the State of California, Contractor's State Licensing Board, in accordance with division 3, chapter 9, of the Business and Professions Code and in the classification called for in the Contract Documents.

12. **Payment of Prevailing Wages**: Contractor and all Subcontractors under Contractor shall pay all workers on Work performed pursuant to this Contract 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.

13. **Labor Compliance Program**: If a labor compliance program is implemented for 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 labor compliance program administered by the District and/or the California Department of Industrial Relations and that the project is subject to monitoring and enforcement by the Division of Labor Standards Enforcement. The Contractor's compliance shall include, without limitation, the requirement that Contractor and all of its Subcontractors register online, and electronically submit at least monthly their complete, accurate certified payroll records directly to the DIR, Division of Labor Standards Enforcement, Compliance Monitoring Unit timely with each application for payment, or the District cannot issue payment to the Contractor.

14. **Contract Price**: In consideration of the foregoing covenants, promises, and agreements, Contractor offers, in the amounts stated below, to perform the Work according to the Contract Documents. District covenants, promises, and agrees that it will pay and cause to be paid to Contractor in full and in accordance with the

General Conditions, and as the Contract Price the following amount(s):

Nine hundred ninety seven thousand and 00 Dollars

($997,000.00), (**Base Contract Amount**)

+ **Fifty thousand and 00 Dollars**

($50,000.00), (**Allowance Amount for repairing dryrot damage and other unanticipated conditions**)

= **One million forty seven thousand and 00 Dollars**

($1,047,000.00), ("Contract Price")

a. The above Allowances are within the Contract Price only to the extent Contractor has performed Work encompassed by the Allowance description, Contractor has appropriately invoiced for that Work, and District has approved Contractor's invoice. Contractor shall invoice only for components of the Work encompassed by the Allowance description, in the identical structure as a Change Order. The unused portion of each Allowance shall be retained by the District.

b. The Contract Price shall be paid in lawful money of the United States pursuant to the payment provisions in the General Conditions.

15. Authority of Contractor's Representative: Contractor hereby certifies that its legal representative as defined in the General Conditions and the person(s) it employees on the Project at or above the level of project superintendent, each have the authority to legally bind the Contractor.

16. Severability: If any term, covenant, condition, or provision of the Contract Documents is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions in the Contract Documents shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

IN WITNESS WHEREOF, accepted and agreed on the date indicated above:

Dated: _____, 2013

SAN LEANDRO UNIFIED SCHOOL DISTRICT

By: _____

Print Name: Song Chin-Bendib

Print Title: Assistant Superintendent, Business & Operations

Dated: _____, 2013

Zolman Construction & Development, Inc.
(CONTRACTOR)

By: _____

Print Name: _____

Print Title: _____

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.

END OF DOCUMENT